IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 20TH DAY OF DECEMBER, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.5633 OF 2023 (GM- RES)

BETWEEN:

SRI.K.MADAL VIRUPAKSHAPPA
S/O LATE MALLAPA
AGED 74 YEARS
R/AT CHANNESHPURA VILLAGE
CHANNAGIRI TALUK
DAVANGERE DISTRICT
DAVANGERE – 577 221.

... PETITIONER

(BY SRI PRABHULING K.NAVADGI, SR.ADVOCATE FOR
SRI SANDEEP S.PATIL, ADVOCATE)

AND:

1 . STATE OF KARNATAKA
BY KARNATAKA LOKAYUKTA POLICE
BENGALURU DIVISION
THROUGH ITS SPECIAL PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

2 . SRI SHREYAS KASHYAP
S/O B.S.GURURAJ
AGED ABOUT 36 YEARS
R/O NO.9TH CROSS
ASHOK NAGAR, BANASHANKARI I STAGE

BENGALURU – 560 050.

... RESPONDENTS

(BY SRI ASHOK HARANAHALLI, SENIOR COUNSEL,
SRI B.B.PATIL, ADVOCATE FOR R1;
R2 - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE COMPLAINT DTD 02/03/2023 MADE BY R-2 (VIDE ANNEXURE-A) IN SO FAR AS THE PETITIONER IS CONCERNED AND QUASH THE F.I.R IN CRIME NO.13/2023 DTD 02/03/2023 REGISTERED BY KARNATAKA LOKAYUKTHA POLICE-RESPONDENT NO.1 (VIDE ANNEXURE-B) FOR OFFENCES UNDER SEC 7(A) AND (B), 7A, 8, 9 AND 10 OF THE PREVENTION OF CORRUPTION ACT, 1988 AND CONSEQUENTLY, ALL FURTHER PROCEEDINGS THERETO, PENDING ON THE FILE OF THE LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE AND SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED MPS/MLAS IN THE STATE OF KARNATAKA AT BENGALURU (CCH-82)VIDE ANNEXURE-C IN SO FAR AS THE PETITIONER IS CONCERNED.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.09.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.13 of 2023 for offences punishable under Sections 7(a) & (b), 7A, 8, 9 and 10 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short).

2. Facts, in brief, adumbrated are as follows:-

The petitioner is a representative of the public having begun his career as a Member of the Zilla Panchayath in the year 1999 and at the relevant point in time was a Member of the Legislative Assembly of the State of Karnataka. Before embarking upon consideration of the issue in the *lis*, the accused in the crime and relationship with certain others is required to be noticed. Accused No.1 is the petitioner/Chairman of the Karnataka Soaps and Detergents Limited ('KSDL' for short), a Government of Karnataka undertaking. Accused No.2 is Prashanth Madal son of accused No.1 who is working as a Financial Adviser and Chief Accounts Officer at the Bengaluru Water Supply and Sewerage Board ('the Board' for short). Accused Nos.3 to 6 are employees of one Chemixil Corporation Limited.

3. A complaint comes to be registered on 02-03-2023 alleging that accused No.2 has demanded and accepted bribe for clearing bills or directing the tender to be in a particular manner. One of the tenderers was the complainant. This complaint then becomes a

crime in Crime No.13 of 2023 for the aforesaid offences. Registration of crime is what has driven the petitioner to this Court in the subject petition.

4. Heard Sri Prabhuling Navadgi, learned senior counsel appearing for the petitioner and Sri B.B.Patil, learned counsel appearing for respondent No.1.

5. The learned senior counsel appearing for the petitioner would vehemently contend that Section 7(a) & (b) or Section 7A of the Act cannot be laid against the petitioner as there is no semblance of any demand or acceptance of bribe since the petitioner who is arrayed as accused No.1 is nowhere in the picture but has been dragged into the web of crime only for the reason that he is the Chairman of KSDL and accused No.2 may have taken money on behalf of his father. He would further contend that prior approval as obtaining under Section 17A of the Act for registration of crime is not taken, as the petitioner is a public servant and for registration of a crime against public servant prior approval under

Section 17A of the Act is imperative. He would seek quashment of the crime against the petitioner on the aforesaid grounds.

6. On the other hand, the learned senior counsel Sri Ashok Haranahalli representing the Lokayukta would vehemently refute the submissions to contend that the petitioner may not even be in the picture but he is the Chairman of KSDL. His son has flexed his power to demand and accept money. Whether it is for the petitioner or for himself is a matter of investigation. It is too early in the stage for interdicting the crime is the emphatic submission of the learned senior counsel. He would submit that this is a case of trap and in the case of trap, obtaining prior approval under Section 17A of the Act is not the law as the proviso to Section 17A permits registration of crime without prior approval in cases of trap. He would seek dismissal of the petition.

7. The learned senior counsel appearing for the petitioner, in reply, would submit that no where the petitioner was caught red-handed for it to become proceedings of a trap. Trap is laid on the son of the petitioner. Though the house of the petitioner is searched

it would not become a trap for which prior approval under Section 17A is imperative and its non-compliance would lead to quashment of FIR itself is the submission of the learned senior counsel.

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record. In furtherance whereof the following issues arise for my consideration:

(i) Whether the ingredients of Sections 7(a) & (b), 7A, 8, 9 and 10 of the Act that are alleged in Crime No.13 of 2023 arraigning the petitioner as accused No.1 does meet necessary ingredients in the case at hand?

(ii) Whether prior approval under Section 17A of the Act, in the facts and circumstances of the case, was necessary prior to registration of crime?

Issue No.(i):

Whether the ingredients of Sections 7(a) & (b), 7A, 8, 9 and 10 of the Act that are alleged in Crime No.13 of 2023 arraigning the petitioner as accused No.1 does meet necessary ingredients in the case at hand?

9. Before embarking upon consideration of the issue on its merits, I deem it appropriate to notice the provisions of law *qua* the

offences alleged and its elucidation by the Apex Court. Sections 7, 7A, 8, 9 and 10 of the Act read as follows:

> ***"7. Offence relating to public servant being bribed****.—Any public servant who,—*
>
> *(a) obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
>
> *(b) obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
>
> *(c) performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,*
>
> *shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*
>
> *Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.*
>
> *Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.*
>
> *Explanation 2.—For the purpose of this section,—*

(i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;

(ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.

***7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence**.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

***8. Offence relating to bribing of a public servant**.—(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—*

(i) to induce a public servant to perform improperly a public duty; or

(ii) to reward such public servant for the improper performance of public duty;

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration.—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the latter.

***9. Offence relating to bribing a public servant by a commercial organisation**.—(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—*

(a) to obtain or retain business for such commercial organisation; or

(b) to obtain or retain an advantage in the conduct of business for such commercial organisation:

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under Section 8, whether or not such person has been prosecuted for such offence.

(3) For the purposes of Section 8 and this section,—

(a) "commercial organisation" means—

(i) a body which is incorporated in India and which carries on a business, whether in India or outside India;

(ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;

(iii) a partnership firm or any association of persons formed in India and which carries on a business whether in India or outside India; or

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under Sections 7-A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.]

***10. Person in charge of commercial organisation to be guilty of offence**.—Where an offence under Section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

Explanation.— For the purposes of this section, "director", in relation to a firm means a partner in the firm."

The afore-quoted are the alleged offences against the petitioner and others in Crime No.13 of 2023. Section 7 deals with offence relating to public servant being bribed. Sub-sections (a) and (b) of Section 7 which are alleged pertain to demand and acceptance of undue advantage by a public servant for performing or forbearing from performing of a duty. Sub-clause (c) deals with performance or inducement to another public servant to perform a duty or forbear from such performance as a consequence of accepting an undue advantage from anybody. Therefore, the soul that runs through Section 7 is demand of undue advantage by a public servant viz., demand of illegal gratification by a public servant; acceptance; for performance or forbearance from performance of a duty. To put it straight demand and acceptance is *sine qua non* to prove Section 7. The other offences alleged are the ones punishable under Sections 8, 9 and 10.

10. Section 8 deals with bribing of a public servant, which cannot be alleged against the petitioner but perhaps against other

accused. Same goes with Sections 9 and 10. Therefore, what is alleged against the petitioner is only Section 7(a) & (b) of the Act. Interpretation of Section 7(a) and (b) *qua* its ingredients need not detain this Court for long or delve deep into the matter. The Apex Court in the case of ***N.VIJAYAKUMAR v. STATE OF TAMIL NADU***[1] has held as follows:

> ***"26. It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779: (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55: (2014) 5 SCC (Cri) 543] In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe. Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court.***
>
> ***27.*** *The relevant paras 7, 8 and 9 of the judgment in B. Jayaraj [B. Jayaraj v. State of A.P., (2014) 13 SCC 55: (2014) 5 SCC (Cri) 543] read as under: (SCC pp. 58-59)*
>
> *"7. Insofar as the offence under Section 7 is concerned, it is a settled position in law that demand of*

[1] *(2021) 3 SCC 687 (3 Judge Bench)*

illegal gratification is sine qua non to constitute the said offence and mere recovery of currency notes cannot constitute the offence under Section 7 unless it is proved beyond all reasonable doubt that the accused voluntarily accepted the money knowing it to be a bribe. The above position has been succinctly laid down in several judgments of this Court. By way of illustration, reference may be made to the decision in C.M. Sharma v. State of A.P. [C.M. Sharma v. State of A.P., (2010) 15 SCC 1: (2013) 2 SCC (Cri) 89] and C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779 : (2009) 2 SCC (Cri) 1] .

8. In the present case, the complainant did not support the prosecution case insofar as demand by the accused is concerned. The prosecution has not examined any other witness, present at the time when the money was allegedly handed over to the accused by the complainant, to prove that the same was pursuant to any demand made by the accused. When the complainant himself had disowned what he had stated in the initial complaint (Ext. P-11) before LW 9, and there is no other evidence to prove that the accused had made any demand, the evidence of PW 1 and the contents of Ext. P-11 cannot be relied upon to come to the conclusion that the above material furnishes proof of the demand allegedly made by the accused. We are, therefore, inclined to hold that the learned trial court as well as the High Court was not correct in holding the demand alleged to be made by the accused as proved. The only other material available is the recovery of the tainted currency notes from the possession of the accused. In fact such possession is admitted by the accused himself. Mere possession and recovery of the currency notes from the accused without proof of demand will not bring home the offence under Section 7. The above also will be conclusive insofar as the offence under Sections 13(1)(d)(i) and (ii) is concerned as in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any

valuable thing or pecuniary advantage cannot be held to be established.

9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act. Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."

The above said view taken by this Court fully supports the case of the appellant. In view of the contradictions noticed by us above in the depositions of key witnesses examined on behalf of the prosecution, we are of the view that the demand for and acceptance of bribe amount and cellphone by the appellant, is not proved beyond reasonable doubt. Having regard to such evidence on record the acquittal recorded by the trial court is a "possible view" as such the judgment [State of T.N. v. N. Vijayakumar, 2020 SCC OnLine Mad 7098] of the High Court is fit to be set aside. Before recording conviction under the provisions of the Prevention of Corruption Act, the courts have to take utmost care in scanning the evidence. Once conviction is recorded under the provisions of the Prevention of Corruption Act, it casts a social stigma on the person in the society apart from serious consequences on the service rendered. At the same time it is also to be noted that whether the view taken by the trial court is a possible view or not, there cannot be any definite proposition and each case has to be judged on its own merits, having regard to evidence on record.

(Emphasis supplied)

11. A subsequent judgment in the case of ***K.SHANTHAMMA v. STATE OF TALANGANA***[2] elaborates the concept of demand and acceptance. The Apex Court has held as follows:

> ***"11.*** *In P. Satyanarayana Murthy v. State of A.P. [P. Satyanarayana Murthy v. State of A.P., (2015) 10 SCC 152: (2016) 1 SCC (Cri) 11], this Court has summarised the well-settled law on the subject in para 23 which reads thus: (SCC p. 159)*
>
> > ***"23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and 13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."***
> >
> > *(emphasis supplied)*
>
> ***12.*** *The prosecution's case is that the appellant had kept pending the return of commercial tax filed by the said Society for the year 1996-97. The appellant had issued a notice dated 14-2-2000 to the said Society calling upon the said Society to produce the record. Accordingly, the necessary books were produced by the said Society. The case made out by PW 1 is that when he repeatedly visited the office of the appellant in February 2020, the demand of Rs 3000 by way of illegal gratification was made by the appellant for passing the assessment order. However, PW 1, in his cross-examination, accepted that the notice dated 26-2-2000 issued by the appellant was received by the said Society on 15-3-2000 in*

[2] *(2022) 4 SCC 574*

which it was mentioned that after verification of the books of accounts of the said Society, exemption from payment of commercial tax as claimed by the said Society was allowed. PW 1 accepted that it was stated in the said notice that there was no necessity for the said Society to pay any commercial tax for Assessment Year 1996-97.

13. *According to the case of PW 1, on 23-3-2000, he visited the appellant's office to request her to issue final assessment order. According to his case, at that time, initially, the appellant reiterated her demand of Rs 3000. But she scaled it down to Rs 2000. Admittedly, on 15-3-2000, the said Society was served with a notice informing the said Society that an exemption has been granted from payment of commercial tax to the said Society. Therefore, the said Society was not liable to pay any tax for the year 1996-97. The issue of the final assessment order was only a procedural formality. Therefore, the prosecution's case about the demand of bribe made on 23-3-2000 by the appellant appears to be highly doubtful.*

… …. …

18. *PW 2, Shri B.D.V. Ramakrishna had no personal knowledge about the demand. However, he accepted that on 15-3-2000, the said Society received a communication informing that the said Society need not pay any tax for the year 1996-97. PW 3 Shri L. Madhusudhan was working as Godown Incharge with the said Society. He stated that on 15-3-2000, when he visited the appellant's office, ACTO served the original notice dated 26-2-2000 in which it was mentioned that the Society was not liable to pay any tax. It is his version that when he met the appellant on the same day, she enquired whether he had brought the demanded amount of Rs 3000. However, PW 3 did not state that the appellant demanded the said amount for granting any favour to the said society.*

19. *PW 4 Ahmed Moinuddin was ACTO at the relevant time. He deposed that on 27-3-2000, the appellant instructed him to prepare the final assessment order, which was kept ready in the morning. He stated that he was called at 6 p.m. to the chamber of the appellant along with books of the said Society. At that time, PW 1 was sitting there. He stated that the appellant subscribed her signature on a Register of the*

said Society and put the date as 26-2-2000 below it. He was not a witness to the alleged demand. However, in the cross-examination, he admitted that the appellant had served a memo dated 21-3-2000 to him alleging that he was careless in performing his duties.

***20.** Thus, this is a case where the demand of illegal gratification by the appellant was not proved by the prosecution. Thus, the demand which is sine qua non for establishing the offence under Section 7 was not established."*

(Emphasis supplied)

12. In a later judgment in the case of ***NEERAJ DUTTA v. STATE***[3] the Apex Court clarifies the judgment rendered by five Judge Bench in ***NEERAJ DUTTA V. STATE***. The Apex Court has held as follows:

*"**LEGAL POSITION***

***8.** Before we analyze the evidence, we must note that we are dealing with Sections 7 and 13 of the PC Act as they stood prior to the amendment made by the Act 16 of 2018 with effect from 26th July 2018. We are referring to Sections 7 and 13 as they stood on the date of commission of the offence. Section 7, as existed at the relevant time, reads thus:*

*"**7. Public servant taking gratification other than legal remuneration in respect of an official act.—***

Whoever, being, or expecting to be a public servant, accepts or obtains or agrees to accept or attempts to obtain from any person, for himself or for

[3] *2023 SCC OnLine SC 280*

any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person or for rendering or attempting to render any service or disservice to any person, with the Central Government or any State Government or Parliament or the Legislature of any State or with any local authority, corporation or Government company referred to in clause (c) of section 2, or with any public servant, whether named or otherwise, shall be punishable with imprisonment which shall be not less than three years but which may extend to seven years and shall also be liable to fine.

Explanations.-

(a) *"Expecting to be a public servant"- If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.*

(b) *"Gratification". The word "gratification" is not restricted to pecuniary gratifications or to gratifications estimable in money.*

(c) *"Legal remuneration"- The words "legal remuneration" are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government or the organisation, which he serves, to accept.*

(d) *"A motive or reward for doing". A person who receives a gratification as a motive or reward for doing what he does not intend or is not in a position to do, or has not done, comes within this expression.*

(e) Where a public servant induces a person erroneously to believe that his influence with the Government has obtained a title for that person and thus induces that person to give the public servant, money or any other gratification as a reward for this service, the public servant has committed an offence under this section."

9. *Section 13(1)(d), as existed at the relevant time, reads thus:*

*"**13. Criminal misconduct by a public servant.—***

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

(a) ……
(b) ……
(c) ……
(d) if he,-

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

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

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

(e) ……."

10. *The demand for gratification and the acceptance thereof are sine qua non for the offence punishable under Section 7 of the PC Act.*

11. *The Constitution Bench[4] was called upon to decide the question which we have quoted earlier. In paragraph 74,*

the conclusions of the Constitution have been summarised, which read thus:

> *"**74.** What emerges from the aforesaid discussion is summarised as under:*
>
> *(a)* ***Proof of demand and acceptance of illegal gratification by a public servant as a fact in issue by the prosecution is a sine qua non in order to establish the guilt of the accused public servant under Sections 7 and 13(1)(d)(i) and (ii) of the Act.***
>
> *(b)* ***In order to bring home the guilt of the accused, the prosecution has to first prove the demand of illegal gratification and the subsequent acceptance as a matter of fact. This fact in issue can be proved either by direct evidence which can be in the nature of oral evidence or documentary evidence.***
>
> *(c)* ***Further, the fact in issue, namely, the proof of demand and acceptance of illegal gratification can also be proved by circumstantial evidence in the absence of direct oral and documentary evidence.***
>
> *(d) In order to prove the fact in issue, namely, the demand and acceptance of illegal gratification by the public servant, the following aspects have to be borne in mind:*
>
> *(i) if there is an **offer to pay by the bribe giver** without there being any demand from the public servant and the latter simply accepts the offer and receives the illegal gratification, it is a **case of acceptance** as per Section 7 of the Act. In such a case, there need not be a prior demand by the public servant.*
>
> *(ii) On the other hand, **if the public servant makes a demand** and the bribe giver*

accepts the demand and tenders the demanded gratification which in turn is received by the public servant, it is ***a case of obtainment****. In the case of obtainment, the prior demand for illegal gratification emanates from the public servant. This is an offence under Section 13(1)(d)(i) and (ii) of the Act.*

(iii) ***In both cases of (i) and (ii) above, the offer by the bribe giver and the demand by the public servant respectively have to be proved by the prosecution as a fact in issue. In other words, mere acceptance or receipt of an illegal gratification without anything more would not make it an offence under Section 7 or Section 13(1)(d), (i) and (ii) respectively of the Act.*** *Therefore, under Section 7 of the Act, in order to bring home the offence, there must be an offence which emanates from the bribe giver which is accepted by the public servant which would make it an offence.* ***Similarly, a prior demand by the public servant when accepted by the bribe giver and in turn there is a payment made which is received by the public servant, would be an offence of obtainment under Section 13(1)(d) and (i) and (ii) of the Act.***

(e) ***The presumption of fact with regard to the demand and acceptance or obtainment of an illegal gratification may be made by a court of law by way of an inference only when the foundational facts have been proved by relevant oral and documentary evidence and not in the absence thereof.*** *On the basis of the material on record, the Court has the discretion to raise a presumption of fact while considering whether the fact of demand has been proved by the prosecution or not. Of course, a presumption*

of fact is subject to rebuttal by the accused and in the absence of rebuttal presumption stands.

(f) In the event the complainant turns 'hostile', or has died or is unavailable to let in his evidence during trial, demand of illegal gratification can be proved by letting in the evidence of any other witness who can again let in evidence, either orally or by documentary evidence or the prosecution can prove the case by circumstantial evidence. The trial does not abate nor does it result in an order of acquittal of the accused public servant.

(g) ***In so far as Section 7 of the Act is concerned, on the proof of the facts in issue, Section 20 mandates the court to raise a presumption that the illegal gratification was for the purpose of a motive or reward as mentioned in the said Section.*** *The said presumption has to be raised by the court as a legal presumption or a presumption in law. Of course, the said presumption is also subject to rebuttal. Section 20 does not apply to Section 13(1)(d)(i) and (ii) of the Act.*

(h) We clarify that the presumption in law under Section 20 of the Act is distinct from presumption of fact referred to above in point

(e) as the former is a mandatory presumption while the latter is discretionary in nature."

(emphasis added)

12. *The referred question was answered in paragraph 76 of the aforesaid judgment, which reads thus:*

"76. *Accordingly, the question referred for consideration of this Constitution Bench is answered as under:*

In the absence of evidence of the complainant (direct/primary, oral/

> ***documentary evidence), it is permissible to draw an inferential deduction of culpability/guilt of a public servant under Section 7 and Section 13(1)(d) read with Section 13(2) of the Act based on other evidence adduced by the prosecution****."*
>
> *(emphasis added)*

13. *Even the issue of presumption under Section 20 of the PC Act has been answered by the Constitution Bench by holding that only on proof of the facts in issue, Section 20 mandates the Court to raise a presumption that illegal gratification was for the purpose of motive or reward as mentioned in Section 7 (as it existed prior to the amendment of 2018). In fact, the Constitution Bench has approved two decisions by the benches of three Hon'ble Judges in the cases of B. Jayaraj and P. Satyanarayana Murthy. There is another decision of a three Judges' bench in the case of N. Vijayakumar v. State of Tamil Nadu, which follows the view taken in the cases of B. Jayaraj and P. Satyanarayana Murthy. In paragraph 9 of the decision in the case of B. Jayaraj, this Court has dealt with the presumption under Section 20 of the PC Act. In paragraph 9, this Court held thus:*

> ***"9. Insofar as the presumption permissible to be drawn under Section 20 of the Act is concerned, such presumption can only be in respect of the offence under Section 7 and not the offences under Sections 13(1)(d)(i) and (ii) of the Act. In any event, it is only on proof of acceptance of illegal gratification that presumption can be drawn under Section 20 of the Act that such gratification was received for doing or forbearing to do any official act.*** *Proof of acceptance of illegal gratification can follow only if there is proof of demand. As the same is lacking in the present case the primary facts on the basis of which the legal presumption under Section 20 can be drawn are wholly absent."*
>
> *(emphasis added)*

14. The presumption under Section 20 can be invoked only when the two basic facts required to be proved under Section 7, are proved. The said two basic

facts are 'demand' and 'acceptance' of gratification. The presumption under Section 20 is that unless the contrary is proved, the acceptance of gratification shall be presumed to be for a motive or reward, as contemplated by Section 7. It means that once the basic facts of the demand of illegal gratification and acceptance thereof are proved, unless the contrary are proved, the Court will have to presume that the gratification was demanded and accepted as a motive or reward as contemplated by Section 7. However, this presumption is rebuttable. Even on the basis of the preponderance of probability, the accused can rebut the presumption.

15. *In the case of N. Vijayakumar, another bench of three Hon'ble Judges dealt with the issue of presumption under Section 20 and the degree of proof required to establish the offences punishable under Section 7 and clauses (i) and (ii) Section 13(1)(d) read with Section 13(2) of PC Act. In paragraph 26, the bench held thus:*

> *"**26.** It is equally well settled that mere recovery by itself cannot prove the charge of the prosecution against the accused. Reference can be made to the judgments of this Court in C.M. Girish Babu v. CBI [C.M. Girish Babu v. CBI, (2009) 3 SCC 779: (2009) 2 SCC (Cri) 1] and in B. Jayaraj v. State of A.P. [B. Jayaraj v. State of A.P., (2014) 13 SCC 55 : (2014) 5 SCC (Cri) 543]* ***In the aforesaid judgments of this Court while considering the case under Sections 7, 13(1)(d)(i) and (ii) of the Prevention of Corruption Act, 1988 it is reiterated that to prove the charge, it has to be proved beyond reasonable doubt that the accused voluntarily accepted money knowing it to be bribe.*** *Absence of proof of demand for illegal gratification and mere possession or recovery of currency notes is not sufficient to constitute such offence. In the said judgments it is also held that even the presumption under Section 20 of the Act can be drawn only after demand for and acceptance of illegal gratification is proved. It is also fairly well settled that initial*

presumption of innocence in the criminal jurisprudence gets doubled by acquittal recorded by the trial court."
(emphasis added)

16. Thus, the demand for gratification and its acceptance must be proved beyond a reasonable doubt.

17. Section 7, as existed prior to 26th July 2018, was different from the present Section 7. The unamended Section 7 which is applicable in the present case, specifically refers to "any gratification". The substituted Section 7 does not use the word "gratification", but it uses a wider term "undue advantage". When the allegation is of demand of gratification and acceptance thereof by the accused, it must be as a motive or reward for doing or forbearing to do any official act. The fact that the demand and acceptance of gratification were for motive or reward as provided in Section 7 can be proved by invoking the presumption under Section 20 provided the basic allegations of the demand and acceptance are proved. In this case, we are also concerned with the offence punishable under clauses (i) and (ii) Section 13(1)(d) which is punishable under Section 13(2) of the PC Act. Clause (d) of sub-section (1) of Section 13, which existed on the statute book prior to the amendment of 26th July 2018, has been quoted earlier. On a plain reading of clauses (i) and (ii) of Section 13(1)(d), it is apparent that proof of acceptance of illegal gratification will be necessary to prove the offences under clauses (i) and (ii) of Section 13(1)(d). In view of what is laid down by the Constitution Bench, in a given case, the demand and acceptance of illegal gratification by a public servant can be proved by circumstantial evidence in the absence of direct oral or documentary evidence. While answering the referred question, the Constitution Bench has observed that it is permissible to draw an inferential deduction of culpability and/or guilt of the public servant for the offences punishable under Sections 7 and 13(1)(d) read with Section 13(2) of the PC Act. The conclusion is that in absence of direct evidence, the demand and/or acceptance can always be

> ***proved by other evidence such as circumstantial evidence.***
>
> ***18. The allegation of demand of gratification and acceptance made by a public servant has to be established beyond a reasonable doubt. The decision of the Constitution Bench does not dilute this elementary requirement of proof beyond a reasonable doubt.*** *The Constitution Bench was dealing with the issue of the modes by which the demand can be proved. The Constitution Bench has laid down that the proof need not be only by direct oral or documentary evidence, but it can be by way of other evidence including circumstantial evidence. When reliance is placed on circumstantial evidence to prove the demand for gratification, the prosecution must establish each and every circumstance from which the prosecution wants the Court to draw a conclusion of guilt. The facts so established must be consistent with only one hypothesis that there was a demand made for gratification by the accused. Therefore, in this case, we will have to examine whether there is any direct evidence of demand. If we come to a conclusion that there is no direct evidence of demand, this Court will have to consider whether there is any circumstantial evidence to prove the demand."*
>
> *(Emphasis supplied)*

The Apex Court, as noted hereinabove, was clarifying the judgment of a five Judge Bench in ***NEERAJ DUTTA v. STATE***[4]. The Apex Court holds that basic concept of demand and acceptance of undue advantage and it being *sine quo non* for an offence under Section 7 is not diluted even by the five Judge Bench. What would unmistakably emerge from the afore-quoted judgments of the Apex

[4] *2022 SCC OnLine 1724*

Court is that if there is no demand and only acceptance, it would not meet necessary ingredients of Section 7. On the bedrock of the principles laid down by the Apex Court in the afore-quoted judgments, the case at hand requires to be considered.

13. The offence alleged against the petitioner is only under Section 7 quoted *supra*. The crime in Crime No.13 of 2023 comes to be registered pursuant to a complaint so made on 02-03-2023 by the 2nd respondent. Since the entire issue has sprung from the complaint, I deem it appropriate to notice the complaint. The complaint reads as follows:

> *"ರವರಿಗೆ,*
> *ಪೊಲೀಸ್ ಅಧೀಕ್ಷಕರು*
> *ಕರ್ನಾಟಕ ಲೋಕಾಯುಕ್ತ,*
> *ಎಂ.ಎಸ್.ಬಿಲ್ಡಿಂಗ್,*
> *ಬೆಂಗಳೂರು ನಗರ.*
>
> *ಮಾನ್ಯರೆ,*
>
> *ಶ್ರೀ ಶ್ರೇಯಸ್ ಕಶ್ಯಪ್ ಬಿನ್ ಬಿ.ಎಸ್.ಗುರುರಾಜ್, 36 ವರ್ಷ, Chemixil Corporation, ಕಂಪನಿ ಪಾಲುದಾರರು, # 109, ಶ್ರೇಷ್ಟಭೂಮಿ ಕಾಂಪ್ಲೇಕ್ಸ್, ಕೆ.ಆರ್.ರಸ್ತೆ, ಬೆಂಗಳೂರು, ವಾಸ ನಂ.1150, 9ನೇ ಕ್ರಾಸ್, ಅಶೋಕನಗರ, ಬನಶಂಕರಿ 1ನೇ ಹಂತ, ಬೆಂಗಳೂರು–560050, ಮೊಬೈಲ್ ನಂ.9886324494 ಆದ ನಾನು ನೀಡುತ್ತಿರುವ ದೂರು ಏನೆಂದರೆ.*
>
> ***ವಿಷಯ:*** *ಕೆಮಿಕಲ್ ಆಯಿಲ್ ಸಪ್ಲೆ ಮಾಡುವ ಸಲುವಾಗಿ ಮಂಜೂರು ಮಾಡಿರುವ ಟೆಂಡರ್ ಮತ್ತು ಈ ಸಂಬಂಧ ನೀಡಿರುವ ವಿರೀದಿ ಆದೇಶಕ್ಕಾಗಿ (ಪರ್ಚೇಸ್ ಆರ್ಡರ್) ಹಾಗು ಸರಬರಾಜು ಮಾಡಿದ ರಾಸಾಯನಿಕ ಸರಕಿಗೆ ಯಾವುದೇ ಅಡಚಣೆಯಿಲ್ಲದೇ ಬಿಲ್‌ನ ಮೊತ್ತವನ್ನು ಬಿಡುಗಡೆ ಮಾಡಿಸಿಕೊಡಲು*

81,00,000/– ರೂ. ಲಂಚದ ಹಣವನ್ನು ನೀಡುವಂತೆ ಬೇಡಿಕೆಯಿಟ್ಟಿರುವ ಎಂ.ಎಲ್.ಎ. ಶ್ರೀ ಮಾಡಳ್ ವಿರೂಪಾಕ್ಷಪ್ಪ, ಅಧ್ಯಕ್ಷರು, ಕರ್ನಾಟಕ ಸಾಬೂನು ಮತ್ತು ಮಾರ್ಜಕ ನಿಗಮ ಮತ್ತು ಅವರ ಮಗನಾದ ಬಿ.ಡಬ್ಲ್ಯೂ.ಎಸ್.ಎಸ್.ಬಿ.ಯಲ್ಲಿ ಪ್ರಧಾನ ಲೆಕ್ಕಾಧಿಕಾರಿಯಾಗಿರುವ ಶ್ರೀ ಪ್ರಶಾಂತ ಮಾಡಳ್ ರವರುಗಳ ವಿರುದ್ಧ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ಕೋರಿ.

ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ವಾಸ ಮಾಡಿಕೊಂಡು ಬೆಂಗಳೂರಿನ ಕೆ.ಆರ್.ರಸ್ತೆಯಲ್ಲಿ Chemixil Corporation ಎಂಬ ಹೆಸರಿನಲ್ಲಿ ಪಾಲುದಾರಿಕೆ ಕಂಪನಿಯನ್ನು ನಡೆಸುತ್ತಿರುತ್ತೇನೆ. ಸದರಿ ಕಂಪನಿಯಿಂದ ಕರ್ನಾಟಕ ರಾಜ್ಯದ ವಿವಿಧ ಸಂಸ್ಥೆಗಳಿಗೆ ರಾಸಾಯನಿಕ ಕಚ್ಚಾ ವಸ್ತುಗಳನ್ನು ಸರಬರಾಜು ಮಾಡುತ್ತಿರುತ್ತೇನೆ. ಅದೇ ರೀತಿ ನನ್ನ ಪರಿಚಯಸ್ಥರಾದ ಶ್ರೀ ಟಿ.ಎ.ಎಸ್. ಮೂರ್ತಿ ರವರು ಬೆಂಗಳೂರಿನ ಚಾಮರಾಜಪೇಟೆಯಲ್ಲಿ M.S. Delicia Chemicals ಎಂಬ ಹೆಸರಿನಲ್ಲಿ ಪಾಲುದಾರಿಕೆ ಕಂಪನಿಯನ್ನು ನಡೆಸುತ್ತಿರುತ್ತಾರೆ.

ಕರ್ನಾಟಕ ಸಾಬೂನು ಮತ್ತು ಮಾರ್ಜಕ ನಿಗಮದಿಂದ ಕೆಮಿಕಲ್ ಆಯಿಲ್ ಸಪ್ಲೆ ಮಾಡುವ ಸಂಬಂಧ 2023ರ ಜನವರಿ ಯಲ್ಲಿ ಕರೆಯಲಾಗಿದ್ದ ಟೆಂಡರ್‌ನಲ್ಲಿ ಮೇಲ್ಕಂಡ ನಮ್ಮ ಕಂಪನಿ ಮತ್ತು M.S. Delicia Chemicals ಕಂಪನಿಗಳು ಭಾಗಿಯಾಗಿದ್ದು, ಟೆಂಡರ್ ಹಾಕುವ ಸಮಯದಲ್ಲಿ ನಾವು ಸರಬರಾಜು ಮಾಡುವ ರಾಸಾಯನಿಕ ವಸ್ತುವಿನ ಮಾದರಿಯನ್ನು ಮತ್ತು ನಾವು ಸರಬರಾಜು ಮಾಡಬೇಕೆಂದಿರುವ ರಾಸಾಯನಿಕ ವಸ್ತುವಿನ ದರವನ್ನು ನೀಡಬೇಕಾಗಿದ್ದು, ನಮ್ಮಗಳ ಕಂಪನಿಗೆ ಟೆಂಡರ್‌ಅನ್ನು ಮಂಜೂರು ಮಾಡಲು, ಖರೀದಿ ಆದೇಶ ನೀಡಲು ಹಾಗು ಖರೀದಿ ಆದೇಶದ ರೀತ್ಯಾ ಸರಬರಾಜು ಮಾಡಿದ ರಾಸಾಯನಿಕ ಸರಕಿಗೆ ಯಾವುದೇ ಅಡೆತಡೆಯಿಲ್ಲದೇ ಬಿಲ್‌ನ ಮೊತ್ತವನ್ನು ಬಿಡುಗಡೆ ಮಾಡಲು ಶೇ.30 ರಷ್ಟು ಲಂಚದ ಹಣವನ್ನು ನೀಡಬೇಕಾಗಿರುತ್ತದೆ. ಅದರಂತೆ ನಾವು ಟೆಂಡರ್ ಮಂಜೂರು ಮಾಡಿಸಲು ಮತ್ತು ಸರಬರಾಜು ಮಾಡಿದ ರಾಸಾಯನಿಕ ಸರಕಿಗೆ ಯಾವುದೇ ಅಡೆತಡೆಯಿಲ್ಲದೇ ಬಿಲ್‌ನ ಮೊತ್ತವನ್ನು ಬಿಡುಗಡೆ ಮಾಡುವ ಸಂಬಂಧ ಕರ್ನಾಟಕ ಸಾಬೂನು ಮತ್ತು ಮಾರ್ಜಕ ನಿಗಮದ ಅಧ್ಯಕ್ಷರಾದ ಶ್ರೀ ಮಾಡಳ್ ವಿರೂಪಾಕ್ಷಪ್ಪ ರವರನ್ನು ನಿಗಮದ ಕಛೇರಿಯಲ್ಲಿ ಭೇಟಿ ಮಾಡಲಾಗಿ, ಸದರಿಯವರು ಕಮೀಷನ್ ಹಣದ ವಿಚಾರದಲ್ಲಿ ತನ್ನ ಮಗನಾದ ಬಿ.ಡಬ್ಲ್ಯೂ.ಎಸ್.ಎಸ್.ಬಿ.ಯಲ್ಲಿ ಪ್ರಧಾನ ಲೆಕ್ಕಾಧಿಕಾರಿಯಾಗಿರುವ ಶ್ರೀ ಪ್ರಶಾಂತ ಮಾಡಳ್ ರವರ ಜೊತೆ ಮಾತುಕತೆ ನಡೆಸಿ ಕಮೀಷನ್ ಹಣದ ಮೊತ್ತವನ್ನು ಅಂತಿಮಗೊಳಿಸುವಂತೆ ತಿಳಿಸಿರುತ್ತಾರೆ. ಅದರಂತೆ ನಾನು ಮತ್ತು ಡೆಲಿಷಿಯಾ ಕೆಮಿಕಲ್ಸ್ ಕಂಪನಿಯ ಪಾಲುದಾರರಾದ ಶ್ರೀ ಟಿ.ಎ.ಎಸ್.ಮೂರ್ತಿ ರವರು ದಿನಾಂಕ: 12–01–2023 ರಂದು ಸಂಜೆ ಸುಮಾರು 5–30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಶೇಷಾದ್ರಿಪುರಂನ ಕ್ರೆಸೆಂಟ್ ರಸ್ತೆಯಲ್ಲಿರುವ ಶ್ರೀ ಪ್ರಶಾಂತ ಮಾಡಳ್ ರವರ ಖಾಸಗೀ ಕಛೇರಿಗೆ ಹೋಗಿದ್ದು, ಅಲ್ಲಿ ಅವರ ಸೂಚನೆ ಮೇರೆಗೆ ನಾನು ಒಬ್ಬನೇ ಸದರಿಯವರ ಕೊಠಡಿಗೆ ಹೋಗಿ ಶ್ರೀ ಪ್ರಶಾಂತ ಮಾಡಳ್ ರವರನ್ನು ಭೇಟಿ ಮಾಡಿ ಟೆಂಡರ್ ಸಲುವಾಗಿ ಮಾತನಾಡಿದಾಗ ಅವರು ಟೆಂಡರ್ ಮಂಜೂರು ಮಾಡಿಸಿಕೊಡುವುದಾಗಿ ಮತ್ತು ಯಾವುದೇ ಅಡಚಣೆಯಿಲ್ಲದೇ ಸರಬರಾಜು ಮಾಡಿದ ರಾಸಾಯನಿಕ ಸರಕಿಗೆ ಬಿಲ್ ಮೊತ್ತವನ್ನು ಬಿಡುಗಡೆ ಮಾಡಿಸಿಕೊಡುವುದಾಗಿ ತಿಳಿಸಿ, ಈ ಸಂಬಂಧ ಪ್ರತಿ ಕಂಪನಿಗೆ 60 ಲಕ್ಷ ರೂ.ಗಳಂತೆ ಮೇಲ್ಕಂಡ ಎರಡು ಕಂಪನಿಯಿಂದ 1,20,00,000/– ರೂ.ಗಳ ಲಂಚದ ಹಣವನ್ನು ನೀಡುವಂತೆ ತಿಳಿಸಿದ್ದು, ನಂತರ ನಾನು ಈ ಬಗ್ಗೆ ಟೆಲಿಷಿಯಾ ಕಂಪನಿಯ ಪಾಲುದಾರರಾದ ಶ್ರೀ ಟಿ.ಎ.ಎಸ್.ಮೂರ್ತಿ ರವರ ಜೊತೆ ಚರ್ಚಿಸಿ ಕಮಿಷನ್ ಹಣವನ್ನು ಕಡಿಮೆ ಮಾಡಿಕೊಳ್ಳುವಂತೆ ಕೋರಲಾಗಿ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ಅಂತಿಮವಾಗಿ ನಾನು ಪಾಲುದಾರರಾಗಿರುವ Chemixil Corporation ಕಂಪನಿಯಿಂದ 33,00,000/– ರೂ.ಗಳನ್ನು ಮತ್ತು ಡೆಲಿಷಿಯಾ ಕೆಮಿಕಲ್ಸ್ ಕಂಪನಿಗೆ 48,00,000/–ರೂ.ಗಳನ್ನು, ಎರಡು ಕಂಪನಿಯಿಂದ ಒಟ್ಟು 81,00,000/–

ರೂ.ಗಳ ಲಂಚದ ಹಣವನ್ನು ನೀಡುವಂತೆ ಬೇಡಿಕೆಯಿಟ್ಟಿರುತ್ತಾರೆ ಮತ್ತು ಹಣವನ್ನು ಟೆಂಡರ್ ಮಂಜೂರಾದ ನಂತರ ನಮ್ಮ ಕಂಪನಿಯಿಂದ 5,100 ಕೆ.ಜಿ., GUIACWOOD Oil ಅನ್ನು ಪ್ರತಿ ಕೆ.ಜಿ.ಗೆ 815/– ರೂ.ಗಳಂತೆ ಮತ್ತು M.S. Delicia Chemicals ಕಂಪನಿಯಿಂದ 29,520 ಕೆ.ಜಿ. Abbalide/Musk-50 ಅನ್ನು ಪ್ರತಿ ಕೆ.ಜಿ.ಗೆ 4,349/– ರೂ.ಗಳಂತೆ ಸರವರಾಜು ಮಾಡಲು ಖರೀದಿ ಆದೇಶ ನೀಡಿದ ಕೂಡಲೇ ಕೊಡಬೇಕಾಗಿರುತ್ತದೆ ಎಂದು ತಿಳಿಸಿದ್ದು, ನಂತರ ನಾನು ಈ ವಿಚಾರವನ್ನು ಶ್ರೀ ಟಿ.ಎ.ಎಸ್.ಮೂರ್ತಿ ರವರಿಗೆ ತಿಳಿಸಿದಾಗ ಅದಕ್ಕೆ ಅವರು ಸಹ ಒಪ್ಪಿರುತ್ತಾರೆ. ನಂತರ ನಾನು ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರಿಗೆ ಅವರು ಬೇಡಿಕೆಯಿಟ್ಟಂತೆ 81,00,000/– ರೂ. ಹಣ ಕೊಡುವುದಾಗಿ ಒಪ್ಪಿಕೊಂಡೆನು. ಆ ಸಮಯದಲ್ಲಿ ನಾವು ನಡೆಸಿದ ಸಂಭಾಷಣೆಯನ್ನು ರೆಕಾರ್ಡಿಂಗ್ ಮಾಡಿಕೊಳ್ಳಲು ಸಾಧ್ಯವಾಗಿರುವುದಿಲ್ಲ.

ನಂತರ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ಮೇಲ್ಕಂಡಂತೆ ನಮ್ಮ ಕಂಪನಿಗಳಿಗೆ ಟೆಂಡರ್ ಅನ್ನು ಸಹ ಮಂಜೂರು ಮಾಡಿಸಿ, ನಂತರ ದಿನಾಂಕ: 28–01–2023 ರಂದು ಡೆಲಿಷಿಯಾ ಕಂಪನಿಗೆ ಮತ್ತು ದಿನಾಂಕ: 30–01–2023 ರಂದು ನಮ್ಮ ಕಂಪನಿಗೆ ಖರೀದಿ ಆದೇಶ (ಪರ್ಚೆಸ್ ಆರ್ಡರ್) ಅನ್ನು ಸಹ ಕೊಡಿಸಿರುತ್ತಾರೆ.

ಇದಾದ ನಂತರ ದಿನಾಂಕ: 08–02–2023 ರಂದು ಬೆಳಿಗ್ಗೆ ಸುಮಾರು 11–30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ಅವರ ಮೊಬೈಲ್ ನಂಬರ್–9008339336 ರಿಂದ ನನ್ನ ಮೊಬೈಲ್ ನಂಬರ್–9886324494 ಗೆ ವಾಟ್ಸಪ್ ಕಾಲ್ ಮಾಡಿ ಅವರು ಬೇಡಿಕೆಯಿಟ್ಟಿದ್ದ ಹಣದ ಕುರಿತಂತೆ ವಿಚಾರಿಸಿ ಈ ಬಗ್ಗೆ ಮಾತನಾಡಲು ಶೇಷಾದ್ರಿಪುರಂನಲ್ಲಿರುವ ತನ್ನ ಕಛೇರಿ ಹತ್ತಿರ ಸಂಜೆ ಸುಮಾರು 5–00 ಗಂಟೆ ಸಮಯಕ್ಕೆ ಬರುವಂತೆ ತಿಳಿಸಿದರು. ಅದರಂತೆ ನಾನು ಅದೇ ದಿನ ಸಂಜೆ ಸುಮಾರು 5–10 ಗಂಟೆಗೆ ಅವರ ಕಛೇರಿಗೆ ಹೋಗಿ, ಶ್ರೀ ಪ್ರಶಾಂತ ಮಾಡಳ್ ರವರನ್ನು ಭೇಟಿ ಮಾಡಿ, ಆ ಸಮಯದಲ್ಲಿ ನಾನು ಬೇರೆ ಕೆಲಸದ ಟೆಂಡರ್ ಸಲುವಾಗಿ ಮಾತನಾಡಿದಾಗ ಅವರು ಈಗಾಗಲೇ ಮಂಜೂರು ಮಾಡಿರುವ ಟೆಂಡರ್‌ನ ಕುರಿತಂತೆ ನೀಡಲಾದ ಖರೀದಿ ಆದೇಶದ ಸಂಬಂಧ ಸರಬರಾಜು ಮಾಡಿದ ರಾಸಾಯನಿಕ ಸರಕಿಗೆ ಯಾವುದೇ ಅಡೆತಡೆಯಿಲ್ಲದೇ ಬಿಲ್‌ನ ಮೊತ್ತವನ್ನು ಬಿಡುಗಡೆ ಮಾಡಲು ನೀಡಬೇಕಾಗಿರುವ 81,00,000/– ರೂ. ಲಂಚದ ಹಣದ ಕುರಿತು ಮಾತನಾಡಿದ್ದು ಆಗ ನಾನು ಹಣ ನೀಡಲು ಸ್ವಲ್ಪ ಸಮಯ ಕೊಡುವಂತೆ ಕೇಳಿಕೊಂಡು ಇನ್ನೆರೆಡು ದಿನಗಳಲ್ಲಿ ಬಂದು ಹಣ ನೀಡುವುದಾಗಿ ತಿಳಿಸಿದೆನು. ಈ ಸಮಯದಲ್ಲಿ ನಾನು ಶ್ರೀ ಪ್ರಶಾಂತ ಮಾಡಳ್ ರವರ ಜೊತೆ ನಡೆಸಿದ ಸಂಭಾಷಣೆಯನ್ನು ನಾನು ಧರಿಸಿದ್ದ ಟೆಕ್ಕೋ ವ್ಯೂ ಸ್ಮಾರ್ಟ್ ವಾಚ್‌ನಲ್ಲಿ ವಿಡಿಯೋ ಚಿತ್ರೀಕರಣ ಸಮೇತ ರೆಕಾರ್ಡಿಂಗ್ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ಈ ಸಮಯದಲ್ಲಿ ನಾನು ನನ್ನ ಸ್ಮಾರ್ಟ್ ವಾಚ್‌ನಲ್ಲಿ ದಿನಾಂಕ ಮತ್ತು ಸಮಯವನ್ನು ಸೆಟ್ ಮಾಡಿರದ ಕಾರಣ ರೆಕಾರ್ಡಿಂಗ್‌ನಲ್ಲಿ ದಿನಾಂಕ:02–02–2023 ಎಂಬುದಾಗಿ ರೆಕಾರ್ಡಿಂಗ್ ಆಗಿರುತ್ತದೆ.

ನಾನು ಕಾರಣಾಂತರಗಳಿಂದ ವ್ಯವಹಾರದ ಸಂಬಂಧ ತುರ್ತಾಗಿ ಕೋಲ್ಕತ್ತಾ ಗೆ ಹೋಗಿದ್ದರಿಂದ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರನ್ನು ಭೇಟಿ ಮಾಡಲು ಸಾಧ್ಯವಾಗಿರುವುದಿಲ್ಲ. ಈ ಸಮಯದಲ್ಲಿ ಹಲವಾರು ಬಾರಿ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ಮೇಲ್ಕಂಡ ನನ್ನ ಮೊಬೈಲ್ ನಂಬರ್‌ಗೆ ಅವರ ಮೊಬೈಲ್ ನಂಬರ್‌ನಿಂದ ವಾಟ್ಸಾಪ್ ಕಾಲ್ ಮಾಡಿ ಹಣದ ಕುರಿತು ಮಾತನಾಡಿದ್ದು, ನಾನು ಅವರಿಗೆ ಬೆಂಗಳೂರಿಗೆ ವಾಪಸ್ ಬಂದ ಕೂಡಲೇ ಭೇಟಿ ಮಾಡಿ ಹಣ ತಲುಪಿಸುವುದಾಗಿ ತಿಳೀಸಿದೆನು.

ಅದೇ ರೀತಿ ದಿನಾಂಕ: 28–02–2023 ರಂದು ಸಂಜೆ ಸುಮಾರು 5–39 ಗಂಟೆಯಿಂದ 06–41 ಗಂಟೆ ನಡುವೆ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ಪುನ: ಅವರ ಮೊಬೈಲ್ ನಂಬರ್‌ನಿಂದ

ನನ್ನ ಮೊಬೈಲ್ ನಂಬರ್‌ಗೆ ವಾಟ್ಸಪ್ ಕರೆ ಮಾಡಿದ್ದು, ನಾನು ಕರೆಯನ್ನು ಸ್ವೀಕರಿಸಿರುವುದಿಲ್ಲ. ನಂತರ ದಿನಾಂಕ: 01–03–2023 ರಂದು ಮಧ್ಯಾಹ್ನ 12–00 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಸದರಿ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ಪುನ: ಮೇಲ್ಕಂಡ ಅವರ ಮೊಬೈಲ್ ನಂಬರ್‌ನಿಂದ ನನ್ನ ಮೊಬೈಲ್ ನಂಬರ್‌ಗೆ ವಾಟ್ಸಪ್ ಕರೆ ಮಾಡಿ, ನಾನು ಕೊಳ್ಳತ್ತಾ ದಿಂದ ವಾಪಸ್ ಬಂದಿರುವ ಬಗ್ಗೆ ವಿಚಾರಿಸಿ ಮೇಲ್ಕಂಡ ವ್ಯವಹಾರದ ಸಂಬಂಧ ಈ ದಿನ ಅಂದರೆ ದಿನಾಂಕ: 02–03–2023 ರಂದು ಸಂಜೆ 5–30 ಗಂಟೆಗೆ ಬಂದು ಭೇಟಿಯಾಗುವಂತೆ ತಿಳಿಸಿರುತ್ತಾರೆ. ಅವರು ಈ ಹಿಂದೆ ಬೇಡಿಕೆಯಿಟ್ಟ ಲಂಚದ ಹಣವನ್ನು ಪಡೆದುಕೊಳ್ಳುವ ಸಂಬಂಧ ನನಗೆ ಭೇಟಿಯಾಗಲು ತಿಳಿಸಿರುತ್ತಾರೆ.

ಮೇಲ್ಕಂಡಂತೆ ಕರ್ನಾಟಕ ಸಾಬೂನು ಮತ್ತು ಮಾರ್ಜಕ ನಿಗಮದ ಅಧ್ಯಕ್ಷರಾದ ಎಂ.ಎಲ್.ಎ. ಶ್ರೀ ಮಾಡಳ್ ವಿರೂಪಾಕ್ಷಪ್ಪ ರವರ ಪರವಾಗಿ ಅವರ ಮಗ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ಬೇಡಿಕೆಯಿಟ್ಟಿದ್ದ ಲಂಚದ ಹಣ ನೀಡಲು ನನಗೆ ಇಷ್ಟವಿಲ್ಲದ ಕಾರಣ ಈ ಸಂಬಂಧ ನಾನು ಶ್ರೀ ಟಿ.ಎ.ಎಸ್.ಮೂರ್ತಿ ರವರ ಜೊತೆ ಕೂಲಂಕುಷವಾಗಿ ಚರ್ಚಿಸಲಾಗಿ ಅವರು ಸಹ ಲಂಚದ ಹಣ ನೀಡಲು ಇಷ್ಟವಿಲ್ಲದ ಕಾರಣ ಈ ಬಗ್ಗೆ ಲೋಕಾಯುಕ್ತ ಕ್ಕೆ ದೂರು ನೀಡೋಣವೆಂದು ತೀರ್ಮಾನಿಸಿ, ನನಗೆ ದೂರು ನೀಡುವಂತೆ ಅವರ ಕಂಪನಿಯಿಂದ ಆಥರೈಷೇಷನ್ ಪತ್ರವನ್ನು ನೀಡಿರುತ್ತಾರೆ.

ಆದ್ದರಿಂದ ಕೆಮಿಕಲ್ ಆಯಿಲ್ ಸಪ್ಲೆ ಮಾಡುವ ಸಲುವಾಗಿ ನಾನು ಪಾಲುದಾರಿಕೆ ಪಡೆದಿರುವ Chemixil Corporation ಕಂಪನಿಯಿಂದ ಮತ್ತು ನನ್ನ ಪರಿಚಯಸ್ಥರಾದ ಶ್ರೀ ಟಿ.ಎ.ಎಸ್. ಮೂರ್ತಿ ರವರು ಪಾಲುದಾರಿಕೆ ಹೊಂದಿರುವ Delicia Chemicals ಕಂಪನಿಯಿಂದ ಪಡೆದಿರುವ ಟೆಂಡರ್ ಅನ್ನು ಮಂಜೂರು ಮಾಡಿಸಲು ಮತ್ತು ಕಂಪನಿಗಳಿಂದ ಕೆಮಿಕಲ್ ಆಯಿಲ್ ಅನ್ನು ಸರಬರಾಜು ಮಾಡಲು ಖರೀದಿ ಆದೇಶ ನೀಡಿದ ಕೂಡಲೇ ಹಾಗು ಸರಬರಾಜು ಮಾಡಿದ ರಾಸಾಯನಿಕ ಸರಕಿಗೆ ಯಾವುದೇ ಅಡೆತಡೆಯಿಲ್ಲದೇ ಬಿಲ್‌ನ ಮೊತ್ತವನ್ನು ಬಿಡುಗಡೆ ಮಾಡಲು ಎರಡು ಕಂಪನಿಯಿಂದ ಒಟ್ಟು 81,00,000/– ರೂ.ಗಳ ಲಂಚದ ಹಣವನ್ನು ನೀಡುವಂತೆ ಬೇಡಿಕೆಯಿಟ್ಟಿರುವ ಎಂ.ಎಲ್.ಎ. ಶ್ರೀ ಮಾಡಳ್ ವಿರೂಪಾಕ್ಷಪ್ಪ, ಅಧ್ಯಕ್ಷರು, ಕರ್ನಾಟಕ ಸಬೂನು ಮತ್ತು ಮಾರ್ಜಕ ನಿಗಮ ಮತ್ತು ಅವರ ಮಗನಾದ ಬಿ.ಡಬ್ಲ್ಯೂ.ಎಸ್.ಎಸ್.ಬಿ.ಯಲ್ಲಿ ಪ್ರಧಾನ ಲೆಕ್ಕಾಧಿಕಾರಿಯಾಗಿರುವ ಶ್ರೀ ಪ್ರಶಾಂತ ಮಾಡಳ್ ರವರುಗಳ ವಿರುದ್ಧ ಕನೂನು ಕ್ರಮ ಜರುಗಿಸಲು ತೀರ್ಮಾನಿಸಿರುತ್ತೇವೆ.

ಈ ದೂರಿನೊಂದಿಗೆ ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಡಳ್ ರವರು ಲಂಚದ ಹಣದ ಕುರಿತು ನನ್ನ ಜೊತೆ ನಡೆಸಿದ ಸಂಬಾಷಣೆಯ ರೆಕಾರ್ಡಿಂಗ್ ಇರುವ ಒಂದು ಟೆಕ್ನೋ ವ್ಯೂ ಕಂಪನಿ ಹೆಸರಿನ ಸ್ಮಾರ್ಟ್ ವಾಚ್‌ನಲ್ಲಿ ರೆಕಾರ್ಡಿಂಗ್ ಆಗಿರುವ ವಿಡಿಯೋ ಸಂಭಾಷಣೆಯನ್ನು ನನ್ನ ಲ್ಯಾಪ್‌ಟಾಪ್ ಸಹಾಯದಿಂದ ಒಂದು ಡಿ.ವಿ.ಡಿ.ಗೆ ವರ್ಗಾಯಿಸಿದ್ದು, ಆ ಡಿ.ವಿ.ಡಿ. ಯನ್ನು ಹಾಗೂ ಅವರು ಬೇಡಿಕೆಯಿಟ್ಟಿರುವ ಲಂಚದ ಹಣದ ಸಂಬಂಧ ಒಟ್ಟು 40,00,000/–ರೂ.ಗಳನ್ನು (ನಲವತ್ತು ಲಕ್ಷ ರೂ) ಶ್ರೀವಾರು ಎಕ್ಸಕ್ಲೂಸಿವ್ಸ್ ಹೆಸರು ನಮೂದಿಸಿರುವ ಬಿಳಿ ಬಣ್ಣದ ಹೂ ಚಿತ್ರವುಳ್ಳ ಡಿಸೈನ್‌ನ ಒಂದು ಬ್ಯಾಗ್‌ನಲ್ಲಿ ಹಾಕಿ, ಅದನ್ನು ಮತ್ತೊಂದು ನೀಲಿ ಬಣ್ಣದ ಸ್ಟ್ರಾಬೆರಿ ಹಣ್ಣುಗಳ ಚಿತ್ರವಿರುವ ಬ್ಯಾಗ್‌ನಲ್ಲಿ ಇರಿಸಿ ಈ ದೂರಿನೊಂದಿಗೆ ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ. ನಾನು ಈ ದೂರನ್ನು ನನ್ನ ವಕೀಲರಿಂದ ಟೈಪ್ ಮಾಡಿಸಿ ತಂದಿರುತ್ತೇನೆ. ಜೊತೆಗೆ ಮೇಲ್ಕಂಡ ಕಂಪನಿಗಳಿಗೆ ಟೆಂಡರ್ ಮಂಜೂರಾಗಿರುವ ಬಗ್ಗೆ ಮತ್ತು ಖರೀದಿ ಆದೇಶ ನೀಡಿರುವ ಬಗ್ಗೆ ಸಂಬಂಧಪಟ್ಟಂತೆ ಹಾಗು ಶ್ರೀ ಪ್ರಶಾಂತ್ ಮಾಡಳ್ ರವರು ನನ್ನ ಜೊತೆ ನಡೆಸಿರುವ ವಾಟ್ಸಪ್ ಚಾಟ್‌ನ ಸಂಬಂಧ ಕೆಲವು ದೃಢೀಕೃತ ದಾಖಲಾತಿಗಳನ್ನು ಹಾಜರುಪಡಿಸಿರುತ್ತೇನೆ. ತಾವು ಹೇಳಿದಾಗ ಮೂಲ ವಿಡಿಯೋ ಸಂಭಾಷಣೆ ಇರುವ ನನ್ನ ಟೆಕ್ನೋ ವ್ಯೂ ಕಂಪನಿ ಹೆಸರಿನ ಸ್ಮಾರ್ಟ್ ವಾಚ್ ಅನ್ನು

ಹಾಜರುಪಡಿಸುತ್ತೇನೆ. ನನ್ನ ಈ ದೂರನ್ನು ಸ್ವೀಕರಿಸಿ ಸೂಕ್ತ ಕಾನೂನು ಕ್ರಮ ಜರುಗಿಸುವಂತೆ ತಮ್ಮಲ್ಲಿ ಕೋರುತ್ತೇನೆ.

(ಶ್ರೇಯಸ್ ಕಶ್ಯಪ್)"

The narration in the complaint is that Karnataka Soaps and Detergents Limited, a State owned Company invites tenders for supply of chemical oils. Two companies participated in the tender – one the complainant's company/Chemixil Corporation and the other M/s Delicia Chemicals. It is alleged that in order to get the tender allotted in favour of the complainant's Company and sanction of bills towards the supply of chemicals to be hassle free, the 2nd respondent/complainant meets the petitioner who was the Chairman of KSDL. It is alleged that for the commission amount, the complainant was asked to approach accused No.2, the son of the petitioner who works as Chief Officer in the Board. This is where the name of the petitioner vaguely figures.

14. The later part of the complaint is dedicated to accused No.2, son of the petitioner. It is alleged that accused No.2 demanded a sum of ₹60/- lakhs each from both the participants in the tender which amounted to ₹1.20 crores and upon request made

by the complainant, accused No.2 gave some reduction in the demand of hush money and a total of ₹81/- lakhs was agreed to be paid to accused No.2. The tender was allotted and on 28-01-2023 and 30-01-2023 purchase orders were issued to both the participants. Long thereafter, it is alleged that on 02-03-2023 accused No.2 again called the complainant to meet him in his office at 5.30 p.m. The allegation is that accused No.2 again demanded money on behalf of accused No.1 and since the complainant did not wanted to part with any bribe amount, approached the Lokayukta. This is the gist of the complaint. In the entire complaint there is no whisper of the fact that the petitioner had at any point in time demanded money or accepted it. The entire allegation is against accused No.2 who as per the narration in the complaint *prima facie* guilty of demand and acceptance of bribe. The name of the petitioner no where figures. There is no allegation of ingredients of Section 7(a) and (b) of the Act against the petitioner. If there is not even a whisper of any demand or acceptance of bribe by the petitioner, it is ununderstandable as to how the proceedings can be permitted to be continued against him.

15. The subsequent actions taken by the Lokayukta would also absolve the petitioner. A search is conducted in the office and residence of accused No.2. Huge stack of cash is found to the tune of ₹6.10 crores apart from other movable properties during the search. No where any incriminating material is found *qua* the petitioner. The Lokayukta has filed its statement of objections. The entire narration in the statement of objections is against accused No.2, son of the petitioner. The son of the petitioner is no doubt *prima facie* guilty of demand, acceptance and is answerable to the cash that was found in his house or his office. If the petitioner is nowhere found in any of the instances, merely because he is the father of accused No.2 – the son, he cannot be permitted to be prosecuted. *Prima facie*, it is the son – accused No.2 who has to answer the allegations in a full blown trial, as all the pointers of demand and acceptance are on the son. The submission of the learned senior counsel for the 1st respondent that it cannot be said that the father is not involved in the acts of the son and therefore, further proceedings should be permitted to be continued owing to certain moral obligations cannot be accepted, as it is criminal prosecution and there should be atleast *prima facie* material against

the petitioner. Ambiguity or vagueness in the complaint against any accused would necessarily result in obliteration of crime, the impugned complaint suffers from the same vice of ambiguity or vagueness *qua* the petitioner only.

16. Yet another circumstance which would be in aid of such obliteration is the statement of the General Manager of KSDL recorded under Section 164(5) of the CrPC before the Special Court. The statement reads as follows:

> *"ಸಾಕ್ಷಿಗೆ ತಾನು ಸಾಕ್ಷಿಯನ್ನು ನೀಡಲು ಸ್ವತ: ಇಚ್ಛೆ ಇದೆಯೇ ಎಂದು ಪ್ರಶ್ನಿಸಿ ನಾನು ಹೇಳಿಕೆ ನೀಡಲು ತಯಾರಿದ್ದೇನೆ, ಎಂದು ಒಪ್ಪಿದಂತೆ ಈ ಹೇಳಿಕೆಯನ್ನು ಕೆಳಕಂಡಂತೆ ದಾಖಲಿಸಲಾಗಿದೆ.*
>
> *ನಾನು ಘಟನಾ ಸ್ಥಳವಾದ ಎಂ ಸ್ಟುಡಿಯೋ ನಂ.4/1–2, ಯೂನೀಸ್ಟ್ಟೇರ್ ಬಿಲ್ಡಿಂಗ್, ಕ್ರೆಸೆಂಟ್ ರಸ್ತೆ, ಬೆಂಗಳೂರು ಈ ಸ್ಥಳದಲ್ಲಿ ಅಧ್ಯಕ್ಷರಾದ ಮಾಡಾಳ್ ವಿರುಪಾಕ್ಷಪ್ಪರವರ ಮಗನಾದ ಮಾಡಾಳ್ ಪ್ರಶಾಂತ್ ರವರನ್ನು ಸುಮಾರು 10–12 ಬಾರಿ ಭೇಟಿಯಾಗಿರುತ್ತೇನೆ. ಭೇಟಿಯಾದ ಸಂದರ್ಭದಲ್ಲಿ ಕಂಪನಿಯ ಜಾಹಿರಾತಿನ ಬಗ್ಗೆ ಚರ್ಚಿಸಿರುತ್ತೇನೆ. ಮಾಡಾಳ್ ಪ್ರಶಾಂತ್ ರವರು ತಮ್ಮ ಮೊಬೈಲಿನಿಂದ ನನ್ನ ಮೊಬೈಲಿಗೆ ಅನೇಕ ಬಾರಿ ಕರೆ ಮಾಡಿರುತ್ತಾರೆ ಮತ್ತು ನಾನು ಕರೆ ಮಾಡಿರುತ್ತೇನೆ. ನಾನು ಖರೀದಿ ಸಂದಾನ ಸಮಿತಿಯ ಅಧ್ಯಕ್ಷರಾಗಿರುವುದರಿಂದ ಅಧ್ಯಕ್ಷರು ಮತ್ತು ಅವರ ಮಗ ಮಾಡಾಳ್ ಪ್ರಶಾಂತ್ ರವರು ಖರೀದಿ ಸಂಧಾನ ಸಮಿತಿಯ ಕೆಲಸಗಳನ್ನು ಬೇಗ ಮುಗಿಸಿ ಎಂದು ಒತ್ತಾಯ ಮಾಡುತ್ತಿದ್ದರು. ನೀವು ಕೆಲಸಗಳನ್ನು ಸರಿಯಾಗಿ ಮಾಡದೇ ಇದ್ದಲ್ಲಿ, ಬೇರೆಯವರ ಕಡೆಯಿಂದ ಮಾಡಿಸಿಕೊಳ್ಳುತ್ತೇವೆಂದು ಒತ್ತಾಯ ಮಾಡುತ್ತಿದ್ದರು. ವರ್ಗಾವಣೆಯ ಭಯ ಮತ್ತು ಒತ್ತಡಕ್ಕೆ ಮಣಿದು ನನ್ನನ್ನು ಒಳಗೊಂಡಂತೆ ಎಲ್ಲಾ ಕಂಪನಿಯ ಅಧಿಕಾರಿಗಳು ಅವರ ಆದೇಶವನ್ನು ಪಾಲಿಸುತ್ತಿದ್ದೆವು. ಅಧ್ಯಕ್ಷರು ಮತ್ತು ಅವರ ಮಗ ಮಾಡಾಳ್ ಪ್ರಶಾಂತ್ ರವರು ಟೆಂಡರ್ ಪೂರ್ವದಲ್ಲಿ ಬಿಡ್ಡುದಾರರನ್ನು ಸಂಪರ್ಕಿಸಿ ಯಾರಿಗೆ ಯಾವ ಕಚ್ಚಾವಸ್ತು ಮತ್ತು ಸುಗಂಧ ದ್ರವ್ಯ ಯಾವ ಬೆಲೆಗೆ ನೀಡಬೇಕೆಂಬುದನ್ನು ಮೊದಲೇ ನಿರ್ಧರಿಸುತ್ತಿದ್ದರು ಎಂದು ತಿಳಿದು ಬಂದಿರುತ್ತದೆ. ದೂರುದಾರರಾದ ಕಶ್ಯಪ್ ಇವರ ಬಗ್ಗೆ ನನಗೆ ಯಾವುದೇ ಮಾಹಿತಿ ಇರುವುದಿಲ್ಲ, ಆದರೆ ಅವರ ತಂದೆಯವರಾದ ಗುರುರಾಜ್ ಅವರ ಬಗ್ಗೆ ಮಾಹಿತಿ ಇರುತ್ತದೆ. ಏಕೆಂದರೆ, ಅವರು 25 ವರ್ಷಗಳಿಂದ ಕಚ್ಚಾ ಸಾಮಾಗ್ರಿಗಳನ್ನು ಪೂರೈಕೆ ಮಾಡುತ್ತಿದ್ದರು. ಅಬಲೈಡ್ ಮಸ್ಕ್ 50 ಮತ್ತು ಗಾಪಿಕ್ ವುಡ್ ಗಾಯಿಕ್ ವುಡ್ ಆಯಿಲ್ ಈ ಕಚ್ಚಾ ಸಾಮಗ್ರಿಗಳನ್ನು ಪೂರೈಕೆ ಮಾಡುವ ವಿಚಾರದಲ್ಲಿ ಮಾಡಾಳ್ ಪ್ರಶಾಂತ್ ರವರು ಕಮೀಷನ್ ಹಣವನ್ನು ಕೇಳಿದಾಗ ಅದನ್ನು ಕೊಡಲು*

ಒಪ್ಪದೇ ಇದ್ದಾಗ, ಕಶ್ಯಪ್ ರವರು ದೂರು ದಾಖಲಿಸಿರುತ್ತಾರೆಂದು ತಿಳಿದು ಬಂದಿರುತ್ತದೆ. ಪ್ರಶಾಂತ್ ಮಾಡಾಳ್ ರವರು ಅವರ ಕುಟುಂಬದವರೊಂದಿಗೆ ಕಂಪನಿಗೆ ಸುಮಾರು ಒಂದು ವರ್ಷದ ಹಿಂದೆ ಭೇಟಿ ನೀಡಿದ್ದರು. ತದನಂತರ ಅವರು ಭೇಡಿ ನೀಡಿರುವ ಬಗ್ಗೆ ಮಾಹಿತಿ ಇರುವುದಿಲ್ಲ. ಮಾಡಾಳ್ ವಿರುಪಾಕ್ಷಪ್ಪ ಮತ್ತು ಪ್ರಾಶಾಂತ್ ರವರು ಕಂಪನಿಗೆ ಬರಬೇಕಾದ ಅಧಿಕಾರಿಗಳೂ ಮತ್ತು ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರುಗಳನ್ನು ಅವರೇ ವರ್ಗಾವಣೆ ಮಾಡಿಸಿ ಕೊಳ್ಳುತ್ತಿದ್ದರು. ಕಂಪನಿಯ ಆಡಳಿತದಲ್ಲಿ ಅಧ್ಯಕ್ಷರು ಮತ್ತು ಅವರ ಮಗ ಮಾಡಾಳ್ ಪ್ರಶಾಂತ್ ರವರು ಹಸ್ತಕ್ಷೇಪವನ್ನು ಮಡುತ್ತಿದ್ದರು ಮತ್ತು ಸದರಿ ಹಸ್ತಕ್ಷೇಪವನ್ನು ಸಹಿಸದೇ ಈ ಹಿಂದಿನ ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರಾಗಿದ್ದ ಹರಿಕುಮಾರ ಜಾ ಮತ್ತು ಮಹೇಶ್ ಬಿ ಶಿರೂರ್ ರವರು ಮನಸ್ತಾಪಗೊಂಡು ಬೇರೆ ಇಲಾಖೆಗೆ ವರ್ಗಾವಣೆ ಮಾಡಿಕೊಂಡಿರುತ್ತಾರೆಂದು ನನಗೆ ತಿಳಿದು ಬಂದಿರುತ್ತದೆ."

The statement again nowhere points at the petitioner. The learned senior counsel has contended that the petitioner is in no way involved in the process of tender as he is the Chairman of KSDL to whom appeals against tender would emerge and all the tender process that take place is manned by officers of the lower rung i.e., the Managing Director and his subordinates. The document of tender that has become the subject matter of complaint is also placed before Court. Nowhere the petitioner is even participated in the proceedings. Therefore, on all these counts, permitting further proceedings against the petitioner would become an abuse of the process of law and result in miscarriage of justice. Therefore, the issue No.(i) is answered in favour of the petitioner.

17. Learned senior counsel for the petitioner has also contended that Section 17A of the Act has been violated. In the

light of issue No.1 being answered in favour of the petitioner that there is neither demand nor acceptance and ingredients under Section 7 are not even met to its *prima facie* sense, issue No.2 with regard to whether prior approval under Section 17A in the case of accused No.1 was necessary or not, need not be gone into. **Issue No.(ii) is thus left unanswered**.

18. The matter is at the stage of crime. Interference under Section 482 of the CrPC, at the stage of crime, is extremely limited, but it is not that this Court has no power to obliterate a proceeding at the stage of crime. The Apex Court in the case of ***STATE OF HARYANA v. BHAJAN LAL***[5] has held as follows:

> ***"102.*** *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

[5] *1992 Supp (1) SCC 335*

(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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."*
>
> *(Emphasis supplied)*

The Apex Court lays down 7 postulates of interference. One such postulate is, when a reading of the complaint does not make out any offence against the accused, further proceedings should not be permitted to be continued. ***BHAJAN LAL*** is reiterated by the Apex Court in plethora of judgments. The Apex Court in the case of ***MOHMOOD ALI v. STATE OF UTTAR PRADESH***[6] has held as follows:

> *"**ANALYSIS***
>
> ***9.*** *Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for our consideration is whether the FIR bearing No. 127 of 2022 should be quashed?*
>
> ***10.*** *We are of the view that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence as alleged are disclosed. It is pertinent to note that the FIR in question came to be lodged after a period of 14 years from the alleged illegal acts of the appellants. It is also pertinent to note that in the FIR no specific date or time of the alleged offences has been disclosed.*
>
> ***11.*** *The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of State of*

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[6] *2023 SCC OnLine SC 950*

Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : AIR 1992 SC 604. The parameters are:—

"(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or 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.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

12. *We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 reply of Bhajan Lal (supra).*

13. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the

materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

14. *In State of Andhra Pradesh v. Golconda Linga Swamy, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:—*

> *"5. …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 power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or 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 materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto****.*
>
> *6. In R.P. Kapur v. State of Punjab, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)*

> *(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
>
> *(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;*
>
> *(iii)* ***where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge****.*
>
> *7.* ***In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge****. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death…..”*
>
> *(Emphasis supplied)*

The Apex Court follows ***BHAJAN LAL*** and holds that in certain circumstances the Court exercising its jurisdiction under Section

482 of the CrPC must interfere if the complaint nowhere makes out an offence against the accused. It is for this reason the Apex Court holds that the Court should read beyond the lines and between the lines of the complaint. The Apex Court in the case of ***SALIB v. STATE OF U.P.***[7] has held as follows:

> ***"28. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The***

[7] *2023 SCC OnLine SC 947*

> ***Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.*** *Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."*
>
> *(Emphasis supplied)*

Here again the Apex Court follows the judgment of ***BHAJAN LAL*** and holds that the Court exercising jurisdiction under Section 482 of the CrPC owes a duty to look into the FIR with care and little more closely to determine whether the offences alleged are a product of frivolousness, vexatious or instituted with ulterior motives. These are cases where the Apex Court holds that the High Court exercising jurisdiction under Section 482 of the CrPC should not shut the doors of an accused merely because the crime is registered, as very pendency of crime is a Damocles sword that would be hanging on the head of the accused.

19. If the law laid down by the Apex Court in the cases of ***MAHMOOD ALI*** and ***SALIB*** are taken note of and considered *qua* the facts obtaining in the case at hand, particularly the complaint and the statement under Section 164 CrPC, there is no offence against the petitioner that could become the ingredients of Section 7 or 7A of the Act. In the teeth of no offence being even found to the remotest sense *qua* the ingredients of the offence, permitting further proceedings would only become an abuse of the process of law, degenerate into harassment and ultimately result in miscarriage of justice.

20. For the aforesaid reasons, I pass the following:

O R D E R

(i) Writ Petition is allowed.

(ii) FIR in Crime No.13 of 2023 pending before the LXXXI Additional City Civil & Sessions Judge and Special Court exclusively to deal with Criminal Cases related to elected MPs/MLAs in the State of Karnataka, Bengaluru stands quashed *qua* the petitioner.

(iii) It is made clear that the observations made in the case at hand are only concerning accused No.1 and the same shall not bind or influence the investigation or any pending proceedings before any Court of law against other accused.

Sd/-
JUDGE

bkp
CT:MJ