***HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY**

+ Criminal Petition Nos.4819, 4843, 4844, 4867, 4938 and 5384 of 2020

% Dated 19-01-2021

Crl. Petition No.4819 of 2020:

1. Chekka Guru Murali Mohan & Anr.

..... Petitioners

Vs.

$ The State of Andhra Pradesh through SHO, CID PS, AP, Mangalagiri, Guntur District, Rep. by Public Prosecutor, High Court of Andhra Pradesh & Anr.

..Respondents

! Counsel for the petitioners : Sri Siddardha Luthra, Learned senior counsel, Sri Posani Venkateswarlu, learned senior counsel, Sri K.S. Murthy, Sri Ginjupalli Subba Rao, Ms.S.Pranathi, Sri A.K. Kishore Reddy and Sri M.V. Subba Reddy

^ Counsel for the 1st respondent-State : Learned Advocate General and learned Public Prosecutor

Counsel for the 2nd respondent -*de facto* complainant: Sri O.Kailashnath Reddy

<GIST:

> HEAD NOTE:

? Cases referred

1. AIR1984SC718=(1984)2 SCC 500
2. 1987 (1) BomCR 59 = 1986 MhLJ 1004;
3. 1908 CLJ 342;
4. Judgment in Civil Appeal No. 196 of 2011 dated 02.03.2020
5. (2007) 8 SCC 705;
6. (2013) 1 SCC 353;
7. (1866) 35 Beav 27;
8. (1788) 2 Bro. C.C. 400 = 29 E. R. 224;
9. (1886) 11 App Cas 232, 235;
10. 1817 SCC OnLine US SC 28=15 US 178 (1817) = 4 L.Ed.214 = 2 Wheat. 178
11. 1915 SCC OnLine Sind JC 6 = AIR 1915 Sind 21;
12. (1896) 20 Bom 522;
13. (1905) ILR 27 All 561;
14. (2009) 8 SCC 751;
15. (2004)11 SCC 585;
16. (1980) 2 SCC 665;
17. 2010 (8) Supreme 389;
18. 1992 Supp.(1) SCC 335 = 1992 CriLJ 527;

19. (2015) 8 SCC 293;
20. (2000) 1 SCC 210;
21. (2013) 10 SCC 591;
22. (2007) 1 SCC 1;
23. AIR 1964 SC 72;
24. (2012) 2 SCC 688;
25. (1977) 4 SCC 451;
26. (2011) 10 SCC 632;
27. Judgment dated 26.11.2020 in Spl.L.P.(Cri) No.4931 of 2020;
28. (2004) 15 SCC 691;
29. Crl.P.No.1719 of 2020, dated 21.10.2020.

IN THE HIGH COURT OF THE STATE OF ANDHRA PRADESH

Criminal Petition Nos.4819, 4843, 4844, 4867, 4938 and 5384 of 2020

Crl. Petition No.4819 of 2020:

1. Chekka Guru Murali Mohan & Anr.

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Vs.

The State of Andhra Pradesh through SHO, CID PS, AP, Mangalagiri, Guntur District, Rep. by Public Prosecutor, High Court of Andhra Pradesh & Anr.

..Respondents

ORDER PRONOUNCED ON: 19-01-2021

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? --
2. Whether the copies of judgment may be marked to Law Reporters/Journals -Yes-
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? -Yes-

JUSTICE CHEEKATI MANAVENDRANATH ROY

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH R0Y

Criminal Petition Nos.4819, 4843, 4844, 4867, 4938 and 5384 of 2020

COMMON ORDER:

This batch of Criminal Petitions, under Section 482 Cr.P.C., are filed, seeking quash of the common F.I.R. in Crime No.49 of 2020 of C.I.D.P.S., A.P., Amaravati of Mangalagiri, registered against the petitioners for the offences punishable under Sections 420, 409, 406 and 120-B of I.P.C.

2) A person by name Sri Salivendra Suresh of Velagapudi village, who is totally a stranger to the sale transactions in question, which are sought to be impeached on the ground of playing fraud and cheating the sellers of the land by the petitioners, who are purchasers of the lands, lodged a report with Mangalagiri Police.

3) Synoptic outline of the contents of the report germane to dispose of these Criminal Petitions may be stated as follows:

(a) It is alleged in the report that the *de facto* complainant is a resident of Velagapudi village, which is situated within the Capital Region Development Authority (hereinafter called as "C.R.D.A."). He has been following the news being published and the debates in the Legislative Assembly relating to the irregularities that took place in respect of the lands situated within the capital area. There has been no capital for the State of Andhra Pradesh after the erstwhile common State of Andhra Pradesh was bifurcated into two States i.e. the State of

Telangana and the State of Andhra Pradesh. Therefore, as per the Andhra Pradesh Reorganisation Act, Sivaramakrishna Committee was constituted to decide as to where the capital for the residuary State of Andhra Pradesh is to be located. The then Chief Minister Sri Nara Chandra Babu Naidu brought the Capital Region Development Authority Act in the month of December, 2014 and declared that 25 villages which are adjacent to the Krishna River will be the capital region.

(b) However, even prior to it several people who got acquaintance with important people in the Government got information as to where the capital would be located and they purchased the lands within the said area and adjacent to the C.R.D.A. region from the farmers of that locality deceptively.

(c) Whileso, after the month of July, 2019 it has been widely published in the media that persons who got close acquaintance with the important persons in the erstwhile government purchased lands in their names and in the name of their companies on the basis of the prior information got to them regarding location of the capital city and that the farmers, who have no information regarding location of capital in their area, have sold the lands. He also came to know when the Bill was introduced in the Assembly by the present Government to abolish the C.R.D.A. enactment, during the debates took place in the Assembly, that officials who worked in the Government in high positions and the political leaders who are in power at that time have purchased lands in their names and in binami names

by using their black money within the C.R.D.A. region and adjoining the said C.R.D.A. region for paltry sale consideration and thereby had monetary gain for them. All this was done as per the conspiracy hatched up between the officials and the political leaders and the persons who purchased the said lands.

(d) Therefore, when he verified the sale transactions that took place in the C.R.D.A. region in the website of the Registration Department, it came to light that (1) Lalitha Super Specialty Hospital; (2) Sri Thottempudi Venkateswara Rao, Cherukuri Tejaswi of North West Holdings Private Limited which belongs to them; (3) Sri C. D. Murali Mohan and Sri B.V.R.Sarma to whom Vertex Homes Private Limited belongs; (4) Gayathri Realtors Limited, Chennai; (5) Smt.Kilaru Srihasa W/o.Kilaru Rajesh, who is close associate of Sri Nara Chandra Babu Naidu and Sri Nara Lokesh and (6) Good Life Estates, Vijayawada, (petitioners herein) have purchased vast extent of lands in the said capital region area and near to it. It is stated that as per the information collected by the *de facto* complainant, even before officially declaring the area where the capital is going to be located, the officials of the Government and political leaders clandestinely divulged the information relating to area where the capital is going to be located to their kith and kin and to their men and companies and on the basis of the said information furnished, the aforesaid persons and companies have purchased the lands from the farmers of the said area. Therefore, the farmers who sold the lands have been

cheated and deceived. So, it is alleged by the *de facto* complainant in the report that there has been a conspiracy hatched up between the highly placed government officials and the political leaders on one hand and the persons who purchased the lands during the period from June, 2014 to December, 2014 before officially declaring the location of the capital area in as much as the official information has been clandestinely leaked to the persons who purchased the lands from the farmers. Therefore, he prayed in his report to enquire into the matter and take necessary legal action in this regard.

4) The said report was lodged on 07.09.2020 at about 13.30 hours by the *de facto* complainant with the police. Initially, an entry was made in the General Diary i.e. G.D. by the police. As per record, as per the instructions of the Additional Deputy General of Police, C.I.D. A.P., preliminary enquiry was ordered on the allegations set out in the said report. Accordingly, Sri R.S. Kishore Kumar, Inspector of Police, CID, RO, Vijayawada, has conducted a preliminary enquiry relating to the said allegations. He has submitted his preliminary enquiry report to the Addl. Dy.G.P., CID, Mangalagiri, on 16.09.2020 stating that he has enquired one Marella Nagi Reddy S/o.Rami Reddy of Kaza village and he stated that in the month of June, 2014 one Chilakapati Srinivas of Bethampudi village approached him and asked him to sell his land to Good Life Estates Private Limited and he refused. Thereafter, he again came to him and pressurized him to sell

the property for Rs.40.00 Lakhs and accordingly, he sold the said land to Good Life Estates Private Limited represented by K.Venkateswarlu and J.Srinivasa Rao, and that few months thereafter the then Government announced location of capital at Thulluru area and Bethempudi village is also located in the capital region and consequently, the value of the land has increased. It is also stated in the preliminary enquiry report that the Inspector of Police also examined one Pandi Hanumantha Rao S/o.Satyanarayana of Nehru Nagar, Guntur, and he stated that he had land in Namburu village and in the month of July, 2014 he sold his land to one V.V.R. Varma and C.V. Murali Mohan, who are the representatives of Vertex Homes Private Limited and later the capital area was announced and Namburu village is just abetting the core capital area and as such value of the said lands is also increased and when the aforesaid persons who sold the lands questioned the above purchasers in this regard over phone as to why they purchased the lands without disclosing the proposal of location of the capital at the said lands that the purchasers threatened them with dire-consequences.

5) Based on the said preliminary enquiry report dated 16.09.2020 wherein it is stated that the preliminary enquiry revealed that the contents of the report lodged by the *de facto* complainant disclose commission of a cognizable offence, the present F.I.R. was registered as per the instructions of the Addl. Dy.G.P., CID, AP., Mangalagiri, in Crime No.49 of 2020 for the

offences punishable under Sections 420, 409, 406 and 120-B of IPC. The said case is now under investigation.

6) The petitioners in this batch of Criminal Petitions, who are all shown as accused in the aforesaid F.I.R., sought quash of the said common F.I.R. registered against them on the ground that the facts of the case even if they are taken to be true at its face value do not constitute any offence punishable under Sections 420, 409, 406 and 120-B of IPC and allowing the proceedings to be continued against them pursuant to the registration of the aforesaid F.I.R. would amount to abuse of process of law.

7) Learned Public Prosecutor appearing for the State filed counter-affidavit and additional counter-affidavit along with material papers opposing the claim of the petitioners for quash of the F.I.R. The 2nd respondent who is the *de facto* complainant also filed his counter-affidavit opposing the claim of the petitioners to quash the F.I.R. The counter-affidavit of the 2nd respondent *de facto* complainant is nothing but verbatim reproduction of the contents of the F.I.R. The pleas taken by the learned Public Prosecutor in his counter-affidavit and additional counter-affidavit would be dealt with while referring to the elaborate arguments addressed by the learned Advocate General on behalf of the State, to avoid repetition of the pleas. It would be suffice to make a detailed reference of the submissions made by the learned Advocate General on behalf of

the State which covers the pleas taken in the counter-affidavit and additional counter-affidavit filed by the prosecution.

8) When these Criminal Petitions came up for final hearing before this Court, I have heard Sri Siddardha Luthra, learned senior counsel, Sri Posani Venkateswarlu, learned senior counsel, and other learned counsel for the petitioners Sri K.S. Murthy, Sri Ginjupalli Subba Rao, Ms.S.Pranathi, Sri A.K. Kishore Reddy and Sri M.V. Subba Reddy, in all these Criminal Petitions and the learned Advocate General, assisted by the learned Public Prosecutor for the State at length. Heard Sri O.Kailashnath Reddy, learned counsel appearing for the *de facto* complainant. Also considered the written submissions filed by learned Public Prosecutor.

RIVAL CONTENTIONS:

9) Learned counsel for the petitioners and learned senior counsel Sri Siddardha Luthra, vehemently contended that the facts of the case do not constitute any offences punishable under Sections 420, 409, 406 and 120-B of IPC for which F.I.R. was registered against the petitioners. They would submit that many of the petitioners who are in the field of business have only purchased the lands in the process of developing their business activity in the field of real estate and in the construction field. Therefore, purchasing lands for a valid consideration under registered sale deeds does not amount to commission of any offence.

10) It is contended that the news relating to location of capital for the newly carved out State of Andhra Pradesh between the Krishna District and the Guntur District adjacent to Krishna river and the highway between the Krishna District and the Guntur District is afloat and has been in speculation from the time when the Andhra Pradesh Reorganisation Act for bifurcation of the common State of Andhra Pradesh was passed in the Parliament in the month of March, 2014. They would contend that even when the government was formed in the month of June, 2014, that the then Chief Minister publicly announced immediately after his swearing in ceremony on 09.06.2014 that the Government is contemplating to locate the new capital for the State of Andhra Pradesh in between the Krishna District and the Guntur District by the side of the Krishna river and the same has been widely published in all widely circulated newspapers. Even subsequently also the news relating to the proposal of the Government to locate the capital between the Krishna District and the Guntur District has been continuously published in various widely circulated Telugu and English newspapers. Therefore, the proposal of the Government to locate the capital between the Krishna District and the Guntur District adjacent to Krishna river is very much in the public domain and it is not a non-public information either in the Government circle or in the public circle. Therefore, they would contend that if the petitioners who got information through the news published in the newspapers regarding the

proposal of the Government to locate the capital in the said area purchase any lands in the said area which are willingly sold by the owners of the said lands for a valid sale consideration that it does not amount to any offence under law and no criminal liability can be attributed to the petitioners in the given facts and circumstances of the case.

11) Therefore, they would contend that launching criminal prosecution against the petitioners on the alleged vague report lodged by a stranger to the said sale transactions at the instance of some vested interests who are behind him and on the basis of the alleged statements said to have been given by the sellers of the land subsequently after lapse of six long years of selling away their lands, during the course of investigation alleging that the fact that the capital is going to be located in the said area where their lands are situated is not disclosed to them before purchasing the lands and that there is hike in the price of lands subsequent to declaration of the capital officially by the Government, clearly amounts to abuse of process of law. Therefore, learned counsel for the petitioners prayed to quash the F.I.R. on the ground that criminal prosecution in the said facts and circumstances of the case is not legally maintainable against them.

12) It is finally contended by the learned Counsel for the petitioners that the *de facto* complainant, who is a stranger to the sale transactions and who did not sustain any loss on account of the said sale transactions, has no *locus standi* to

lodge the said report with the police and initiate criminal prosecution against the petitioners.

13) *Per contra*, learned Advocate General with the able assistance of Sri R.Srinivasa Reddy, learned Public Prosecutor for the State of Andhra Pradesh, vehemently contended that the contents of the F.I.R. reveal that the petitioners, who have purchased the lands within and abetting the capital region got prior information from the top officials working in the Government and from the political leaders in the Government with whom they got close acquaintance regarding exact location of the capital area and the proposed villages which would come within the purview of the capital area and based on the prior information unauthorizedly furnished to them that they purchased lands from the farmers without disclosing to them that the capital city is going to be located at their villages and the said concealment of material fact amounts to cheating the sellers in as much as, as per the explanation appended to Section 415 IPC makes it clear that a dishonest concealment of fact is a deception within the meaning of the said Section. Therefore, he would contend that there has been a conspiracy between the petitioners who purchased the lands and the top government officials who are working in the Government at that time and the political leaders relating to unauthorized disclosure of the information relating to location of capital and as such these facts which are supported by the statements given by some of the vendors of the lands during the course of

investigation *prima facie* make out the offences punishable under Section 420 of IPC and also under Section 120-B of IPC. So, the learned Advocate General would vehemently contend that the matter requires deep probe to unearth the said conspiracy hatched up between the petitioners on one hand and the top government officials working at that time and the political leaders.

14) Repelling the contention relating to the *locus standi* of the *de facto* complainant to lodge the report, learned Advocate General would submit that the concept of *locus standi* is alien to criminal law and any person who got information relating to commission of offence is legally entitled to lodge report to set the criminal law into motion except only in certain cases which are carved out in Sections 195 to 199 of Cr.P.C. which require *locus standi* and as the present offences are not within the purview of Sections 195 to 199 Cr.P.C., the contention raised by the petitioners regarding the *locus standi* of the *de facto* complainant to lodge the report has no merit.

15) He would further contend that as per Section 55(5)(a) of the Transfer of Property Act, the buyer is bound to disclose to the seller any facts as to the nature or extent of seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest. Therefore, the petitioners being the buyers of the land are under the legal obligation under Section 55(5)(a) of the T.P. Act to disclose to

the seller that the capital is going to be located in the said area and as they did not disclose the said fact before purchasing the lands and concealed the said fact it would clearly come within the purview of the explanation appended to Section 415 of IPC of dishonest concealment of fact which is a deception within the meaning of the said section. Therefore, he would submit, that a clear case of Section 420 IPC is made out. So, he contends that there is no merit in the contention of the petitioners that the facts of the case do not constitute any offence punishable under Section 420 IPC and in fact the facts of the case clearly constitute the offences punishable under Sections 420 and 120-B of IPC.

16) The learned Advocate General then contended that the employees working in the concerned section in the secretariat, who are involved in preparing the G.Os. in determining the area covered by C.R.D.A. gave statements under Section 161 Cr.P.C. and under Section 164 Cr.P.C. before the police and the learned Magistrate respectively during the course of investigation that some irregularities have taken place in preparing the draft G.Os. without mentioning the names of the villages covered by the said capital region which are kept under secret and as such these statements *prima facie* establish that some illegalities and irregularities took place in the matter of preparing the said G.Os. which also establish conspiracy as alleged by the prosecution.

17) He would also submit that these facts relatively also establish that there has been offence of insider trading on account of the conspiracy hatched up between the higher officials in the government, political leaders of the then Government and the petitioners who purchased the aforesaid lands which requires deep probe during the course of investigation. Therefore, the learned Advocate General prayed for dismissal of these Criminal Petitions.

18) In reply to the aforesaid contentions raised by the learned Advocate General on behalf of the State, learned Senior Counsel Sri Siddhardh Luthra, would submit that Section 55(5)(a) of the T.P. Act only imposes an obligation on the buyer to disclose to the seller only a fact relating to the nature and extent of the seller's interest in the property which may materially increase the value of such interest and it does not cover the information relating to the reason for purchase of the said lands by the buyer or any future benefit that they may derive in respect of the said lands. Therefore, learned Senior Counsel would submit that the non disclosure of the fact that the capital is going to come within the said region to the seller even if true it does not amount to concealment of material fact as required under Explanation appended to Section 415 IPC. He would then contend that the mere fact that there is subsequent increase in the value of the property on account of location of capital in the said area cannot afford a ground to prosecute the petitioners for the offence punishable under Section 420 IPC. It

is contended that as per Section 55(vi)(a) of the T.P. Act, the buyer is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof when the ownership of the property has passed to him. Therefore, when the buyer is legally entitled to the benefit of increase in the value of the property on account of the ownership of the property that was passed to him, the sellers cannot legitimately complain that they were cheated by the buyers as there is subsequent increase in the value of the property.

19) The learned Senior Counsel Sri Siddhardh Luthra further contends that the offence of insider trading is not made an offence under any of the provisions of the IPC and it relates only to the fraud played pertaining to sale and purchase of securities and bonds in the stock market and it is only made an offence under The Securities and Exchange Board of India Act, 1992 (herein after called as "SEBI Act"). So, he would contend that invoking the said theory of insider trading even relatively or contextually to prosecute the petitioners in this case for the offences punishable under the IPC is legally unsustainable. He finally contends that the alleged irregularities and illegalities spoken to by some of the official witnesses in their 164 Cr.P.C. statements said to have been given before the learned Magistrate, at best show that there is contravention of the business rules, and even if it is true, they do not establish anything incriminating against these petitioners who have

nothing to do with the said preparation of G.Os. and as such the said statements do not in any way support the case of the prosecution against these petitioners.

20) Having regard to the magnitude of the vital issues and contentions raised by the prosecution and also the petitioners, as elaborately discussed supra, and particularly as the findings that may be recorded in this judgment in the given facts and circumstances of the case, would have far reaching consequences on all the sale transactions that have already taken place and that may take place in future, I have given my earnest, anxious and thoughtful consideration to the aforementioned rival contentions raised by both the parties.

21) Although arguments have been also addressed by learned Counsel appearing for some of the petitioners in these Criminal Petitions that the present Government in order to wreak vengeance against the petitioners and against some of the persons who have some acquaintance with the erstwhile Government, the present prosecution has been illegally and maliciously launched to harass and humiliate the petitioners by distorting the facts to drag the petitioners into the alleged conspiracy with the Government officials by concocting a false story, this Court is of the considered view that without entering into any controversy relating to the said motive attributed to the present Government by the petitioners, that these Criminal Petitions have to be decided dispassionately irrespective of the motives that are attributed on either side, strictly adhering to

question of fact, question of law, and interpretation of the legal provisions relevant in the context to determine the present controversy involved in these Criminal Petitions. The Court is primarily required to see in the given facts and circumstances of the case, whether the facts of the case emanating from the record even taken to be true at its face value, constitute any offences punishable under Sections 420, 409, 406 and 120-B of IPC for which the F.I.R. is registered. If the facts of the case *prima facie* constitute all or any one of the offences for which the F.I.R. is registered, the Court shall allow the investigation to go on to find out the truth or otherwise of the said allegations. If the facts of the case do not constitute any offences for which the F.I.R. is registered and no offence is made out from the facts of the case, then it amounts to abuse of process of law to allow the criminal proceedings initiated pursuant to registration of F.I.R. to be continued against the petitioners and the F.I.R. registered against them is liable to be quashed. So, the main focus of the Court should be on the vital issue of ascertaining whether the facts of the case constitute any offence or offences for which the F.I.R. is registered or not.

22) This is a very peculiar and very interesting case and in fact a case of first of its kind where the prosecution seeks to criminalize private sale transactions entered into between the petitioners as buyers of the land and the sellers of the land long back about six years ago by invoking the concept/theory of offence of insider trading applying the same relatively to the

facts of the case, primarily on the ground that the petitioners as buyers of the land did not disclose to the owners of the land that the capital city is going to be located in the said area and thereby concealed the said material fact and cheated the owners of the land and on the ground that as the location of the capital was officially declared subsequently that there is a phenomenal increase in the value of the land and the owners of the land sustained loss on account of concealment of the said fact.

23) Therefore, when that be the substratum of the prosecution case, the paramount questions that arise for determination are whether it is legally permissible to criminalize private sale transactions willingly entered into by the owners/sellers of the land with the buyers for a valid sale consideration, on the sole ground that the buyers did not inform the sellers of the land that the capital area is going to be located at their lands or not under Section 420 of IPC? Whether it amounts to dishonest concealment of fact as per the Explanation appended to Section 415 of IPC? Even if there is subsequent increase in the value of the land on account of official announcement of location of the capital subsequently at that area, whether any offence under Section 420 of IPC is constituted or not is also the question to be determined. Then the other important question for determination is whether the concept of offence of insider trading is applicable to the present facts of the case. Finally, it is to be ascertained whether any element of criminality is involved in the transaction or not.

LOCUS STANDI OF THE *DE FACTO* COMPLAINANT TO LODGE REPORT WITH THE POLICE:-

24) Before adverting to the above vital questions, the Court is first inclined to decide the cavil raised relating to the *locus standi* of the *de facto* complainant to lodge the report with the police setting the criminal law into motion. No doubt, admittedly, the *de facto* complainant is absolutely a stranger to the sales transactions that took place between the petitioners and the vendors in respect of the sale of the lands in question. The *de facto* complainant is not the person who sold the lands to the petitioners or to anyone and he is not the person who sustained any loss on account of the said sale transactions. However, it is to be noted that as rightly contended by the learned Advocate General that it is settled proposition of law that the concept of *locus standi* to set criminal law into motion is alien to criminal law. Any person who got information regarding commission of a cognizable offence is entitled to bring the same to the notice of the concerned police to investigate regarding the truth or otherwise of the said version and set the criminal law into motion. As per our criminal jurisprudence, the basic principle is that, eventually, every offence is against the society. Therefore, any person who got acquaintance with the facts of the case relating to commission of any cognizable offence can set the criminal law into motion by lodging a report to that effect. Only in exceptional cases which are exempted from this principle, which are set out in Sections 195 to 199

Cr.P.C. in respect of certain offences, the criminal has to be set into motion only by a person who is aggrieved. The present offences for which the petitioners are sought to be prosecuted do not fall within the purview of the exceptional cases under Sections 195 to 199 Cr.P.C.

25) Legal position in this regard is not *res nova* and the same has been authoritatively very well settled. The Constitutional Bench of the Supreme Court in the case of **A.R. Antulay v. Ramdas Sriniwas Nayak and Ors**.[1] had an occasion to deal with this concept of *locus standi* of a person to set the criminal law into motion. The Apex Court at para No.6 of the Judgment held as follows:

> "It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Cr.P.C. envisages two parallel and independent agencies for taking criminal offences to Court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law."

Further held as follows:

> *"Locus standi* of the complainant is a concept foreign to criminal jurisprudence save and except that where the statue creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision. …. While Section 190 Cr.P.C. permits anyone to approach the Magistrate with a complaint, it does not prescribe any

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[1] AIR1984SC718=(1984)2 SCC 500

> qualification the complainant is required to fulfil to be eligible to file a complaint. But where an eligibility criterion for a complainant is contemplated specific provisions have been made such as to be found in Sections 195 to 199 Cr.P.C. These specific provisions clearly indicate that in the absence of any such statutory provision, a locus standi of a complainant is a concept foreign to criminal jurisprudence. In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision.

26) Also held that the general principle of nearly universal application is founded on a policy that an offence i. e. an act or omission made punishable by any law for the time being in force (See Section 2(n) Cr.P.C.) is not merely an offence committed in relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendatta or vengeance. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate proceedings cannot be whittled down, circumscribed or fettered by putting it into a straight jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception.

27) The Bombay High Court of Nagpur Bench in the case of **Shriram Krishnappa Asegaonkar v. State of Maharashtra**[2] held at para No.12 of the judgment as follows:

> "There is, therefore, no doubt that the complaint of offence of cheating punishable under Section 420 IPC can be filed by any person to set the law in motion and that it is not necessary that such a complaint should be filed by only the person deceived."

28) In arriving at the said conclusion, the Bombay High Court relied on the judgment of the Division Bench of the Calcutta High Court in the case of Mahadeolal v. Emperor[3] wherein the Calcutta High Court held that the prosecutor in criminal case is really the Crown and the complainant merely sets the machinery of the laws in motion, and, in a case of cheating it has been held therein that it is not necessary that complainant should have been the person deceived. In that case a pleader was deceived by writing a letter of cancellation of contract and the complaint was filed by servant of a firm, who became aware of the deception. It was held that the prosecution initiated by the servant of a firm is maintainable.

29) So, in view of the law enunciated in the aforesaid judgments, the contention of the petitioners that the *de facto* complainant has no *locus standi* to initiate criminal prosecution by way of lodging a report with the police has no merit and it is

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[2] 1987 (1) BomCR 59 = 1986 MhLJ 1004
[3] 1908 CLJ 342

liable to be rejected. The cavil is answered accordingly in favour of the prosecution.

30) However, though the plea relating to *locus standi* raised by the petitioners is not legally sustainable, justification on the part of the stranger to the alleged sale transactions in question, who is the *de facto* complainant, in lodging a report with the police initiating criminal prosecution against the petitioners and that too after lapse of six years and its genuineness is certainly a relevant factor which requires consideration and the same will be adverted to at the appropriate time while dealing with the same during the course of discussion of this judgment.

CONCEPT OF INSIDER TRADING AND ITS APPLICATION TO THE FACTS OF THE CASE:-

31) Ferreting out the origin and history of the offence of insider trading reveal that basically the offence of insider trading relates to trading of a public company's stock or other securities (such as bonds or stock options) based on material, nonpublic information about the company. In various countries, some kinds of trading based on insider information is illegal, because it is seen as unfair to other investors who do not have access to the information, as the investor with insider information could potentially make larger profits than a typical investor could make. The study on the subject reveals that the rules governing the offence of insider trading are complex and

vary significantly from country to country. The extent of enforcement also varies from one country to another. Trading by specific insiders, such as employees, is commonly permitted as long as it does not rely on material information not in the public domain. Rules prohibiting or criminalizing insider trading on material nonpublic information exist in most jurisdictions around the world, but the details and the efforts to enforce them vary considerably. In the United States, Sections 16(b) and 10(b) of the Securities Exchange Act, 1934 directly and indirectly address insider trading. The United States Congress enacted this law after the stock market crashed in 1929.

32) In the European Union and the United Kingdom, trading on nonpublic information is, under the rubric of market abuse, subject at a minimum to civil penalties and to possible criminal penalties as well. United Kingdom's Financial Conduct Authority has the responsibility to investigate and prosecute insider dealing, defined by the Criminal Justice Act, 1993. Japan enacted its first law against insider trading in 1988. The Australian legislation in this regard arose out of the report of 1989 parliamentary committee report which recommended removal of the requirement that the trader be 'connected' with the body corporate.

33) Thus, the history pertaining to the offence of insider trading clearly reveals that the above laws are brought in this regard mainly to curb the insider trading in the field of stock

market. So, it is apparent that the said offence of insider trading is essentially an offence relating to trading of public company stocks or other securities such as bonds or stock options based on material, nonpublic information about the company. Absolutely, it has nothing to do with the sale and purchase of land which is an immovable property which are private sale transactions wholly unrelated to the affairs of stock market business. As it is found that the insiders in the company who are associated with the affairs of the company have been furnishing nonpublic information unauthorisedly to some investors relating to sale of shares, bonds and other securities and as it is resulting into loss to other investors which is found to be unfair, to curb these illegal acts of insider trading, various countries across the world brought various enactments.

34) Similarly, India also brought into force the Securities and Exchange Board of India Act, 1992, to curb the offence of insider trading in the field of stock market in India.

35) As per the statement of objects and reasons of the said enactment, originally SEBI was established in 1988 through a government resolution to promote orderly and healthy growth of the securities market and for investors' protection. This SEBI has been monitoring the activities of stock exchanges, mutual funds, merchant bankers, etc., to achieve these goals. As the capital market has witnessed tremendous growth, characterised particularly by the increasing participation of the public, it is

felt that investors' confidence in the capital market can be sustained largely by ensuring investors' protection. With this end in view, Government decided to vest SEBI immediately with statutory powers required to deal effectively with all matters relating to capital market. So, the said Act 15 of 1992 was introduced with the above objective and the SEBI Bill has been passed by both the Houses of Parliament and received the assent of the President on 4th April 1992 and it came on to the Statute Book as the Securities and Exchange Board of India Act, 1992 with effect from 30-01-1992.

36) Therefore, insider trading in India is an offence according to Section 12-A and 15-G of the SEBI Act. As per the provisions of the aforesaid Act, the offence of insider trading is said to be committed when a person with access to nonpublic, price sensitive information **about the securities of the company** subscribes, buys, sells, or deals, or agrees to do so or counsels another to do so as principal or agent. Price-sensitive information is information that materially affects the **value of the securities**. Section 12-A of the SEBI Act deals with the acts which constitute insider trading relating to sale of any securities listed or proposed to be listed on a recognized stock exchange and Section 15-G deals with imposing penalty for committing the said offence of insider trading.

37) Therefore, insider trading is only made an offence in India under the SEBI Act, 1992 and it essentially deals with the sale and purchase of securities in the field of stock market

based on nonpublic material information. It is a special enactment which specifically and exclusively deals with the offences relating to sale of securities in stock market. Insider trading is not made an offence specifically under the Indian Penal Code. No provisions akin to Section 12-A and 15-G of the SEBI Act is incorporated in IPC by the Parliament relating to private sale transactions of purchase or sale of land which is an immovable property by invoking the said concept/theory of insider trading. Therefore, the offence of insider trading is totally alien to our criminal law under IPC. It is a concept or offence totally unknown to our criminal law under Indian Penal Code.

38) When the said concept of offence of insider trading is not made applicable to purchase of any immovable property like lands of private individuals and when the same is only confined to purchase of securities and bonds under the SEBI Act, the same cannot be even contextually or relatively applied or invoked to criminalize the private sale transactions relating to purchase of a land which is an immovable property in the guise of the offence of insider trading. The provisions of Sections 12-A and 15-G of the SEBI Act or any of its provisions cannot be read into and imported into the provisions of the IPC much less into Section 420 of IPC. It is not at all the intention of the Parliament to attribute any criminal liability to such private sale transactions of immovable property either under Section 420 IPC or under any provisions in the scheme of I.P.C. Therefore,

this Court has absolutely no hesitation to hold that the said concept/theory of the offence of insider trading which is essentially an offence dealing with illegal sale of securities and bonds of the company cannot be applied to the private sale transactions relating to sale and purchase of lands to criminalize the said transactions under any of the provisions of the IPC much less under Section 420 of IPC. It is legally impermissible to prosecute the petitioners for the offences under Sections 420, 406, 409 and 120-B of IPC by applying the said concept of insider trading and in the guise of the said concept of insider trading.

39) Learned Advocate General would contend that the said concept of the offence of insider trading is to be relatively applied to the present facts of the case as the present facts of the case are somewhat akin to the said offence of insider trading as envisaged under the SEBI Act. By the said argument, obviously, the idea that is sought to be conveyed by the learned Advocate General is that as the allegations in the F.I.R. show that the petitioners obtained prior information from the higher officials in the Government and political leaders regarding exact location of the capital and thereby purchased the lands in the said area based on the said information, that the facts of the case constitute an offence akin to insider trading in purchasing the said lands. This Court is unable accede the said contention. It is elaborately discussed supra, while dealing with the concept of offence of insider trading and found that the said offence of

insider trading essentially deals with only sale and purchase of securities and bonds based on non-public material information under the special enactment with the object of protecting the capital market and to instill investors' confidence in the capital market. Therefore, when it is only confined to the sale and purchase of securities and bonds in the field of capital market, as already held supra, the same cannot be read into the provisions of IPC much less into Section 420 IPC. Parliament never intended to make private sale transactions relating to landed property an offence by applying the concept of insider trading or to bring the same within the purview of the said concept of insider trading. Therefore, the said contention holds no water.

RIGHT TO ACQUIRE PROPERTY IS A CONSTITUTIONAL RIGHT AND A LEGAL RIGHT:

40) Earlier Article 19(1)(f) and Article 31 of the Constitution of India are part of Chapter III of the Constitution dealing with fundamental rights of a citizen. Article 19(1)(f) guaranteed to the Indian citizen a right to acquire, hold and dispose of property. Article 31 provided that "no person shall be deprived of his property save by authority of law". Therefore, in view of Article 19(1)(f) and Article 31 of the Constitution, right to property was part of fundamental right of a citizen. Subsequently, by 44th constitutional amendment both Article 19(1)(f) and Article 31 were repealed with effect from 20.06.1979. So, the right to property ceased to be a

fundamental right. However, the right to acquire property continues to be a constitutional right, legal right and also a human right. Provision akin to Article 31 has been incorporated under Article 300-A in Chapter-IV of the Constitution under the rubric "right to property".

41) The Supreme Court, in the case of **D.B. Basnett v. The Collector, East District, Gangtok, Sikkim**[4] held at para 14 of the judgment as follows:

> "We may note that even though rights in land are no more a fundamental right, still it remains a constitutional right under Article 300A of the Constitution of India."

42) The Apex Court in the case of **Chairman, Indore Vikas Pradhikaran v. Pure Industrial Coke & Chemicals Ltd.**[5] held in following terms:

> "The right to property is now considered to be not only a constitutional right but also a human right.
>
> Under Article 17 of the Universal Declaration of Human Rights, 1948 dated 10-12-1948, adopted in the United Nations General Assembly Resolution, it is stated that: (i) Everyone has the right to own property alone as well as in association with others. (ii) No one shall be arbitrarily deprived of his property.
>
> Earlier human rights existed to the claim of individuals right to health, right to livelihood, right to shelter and employment etc, but now human rights have started gaining a multifaceted approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights.

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[4] Judgment in Civil Appeal No. 196 of 2011 dated 02.03.2020
[5] (2007) 8 SCC 705

> Also held that, property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provision being made that no person shall be deprived of his property save in accordance with law."

43) In **Tuka Ram Kana Joshi v. Maharashtra Industrial Development Corporation**[6] the Supreme Court reiterated that right to property is now considered to be, not only a constitutional or a statutory right, but also a human right. Though it is not a basic feature of the constitution or a fundamental right, the right to property is considered very much to be part of new dimensions where human rights are considered to be in realm of individual's rights such as the right to health, the right to livelihood, the right to shelter and employment etc., and such rights are gaining an even greater multifaceted dimension.

44) From the aforesaid exposition of law, it is now abundantly made clear that a citizen has a legal and constitutional right to acquire and hold property. The said right of an individual to hold a property apart from being a legal right, has also been held to be a human right.

45) Since the prosecution seeks to criminalize the private sale transactions validly entered into by the petitioners as buyers with their sellers for a valid sale consideration under valid registered sale deeds by which they acquired the landed

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[6] (2013) 1 SCC 353

property in question, the aforesaid right of the petitioners as citizens of the country to acquire property as part of their constitutional right, legal right, and human right assumes significance in this context. Therefore, for that limited purpose, the aforesaid legal position has been dealt with in this case.

FACTUAL FINDINGS:-

46) In the background of the aforesaid legal position that the right to property is a constitutional right and legal right of a citizen of the country, it is to be now seen whether buying a land without informing the seller the purpose of buying the said land or latent advantage which he may derive pertaining to the sale transaction which is within the knowledge of the buyer would amount to an offence under Section 420 of IPC and also under Sections 406 and 409 of IPC or not.

47) Before embarking upon an enquiry on this vital aspect, to have a comprehensive understanding of the case of the prosecution, few relevant facts needs a mention to have a clarity regarding the substratum of the prosecution case.

48) The erstwhile combined State of Andhra Pradesh which was originally constituted under the States Reorganization Act, 1956 with effect from 01-01-1956 was bifurcated into two States i.e., the State of Telangana and the State of Andhra Pradesh in the year 2014 as per the Andhra Pradesh Reorganization Act 2014. The said enactment was passed by the Parliament on 03.03.2014. Both the States i.e.,

the State of Telangana and the residuary State of the present Andhra Pradesh were formed with effect from 02-06-2014 which is the appointed day under the Andhra Pradesh Reorganization Act. In the General Assembly Elections held in the month of April, 2014 for the residuary State of Andhra Pradesh, the Telugu Desam Party came into rule. The Hyderabad city which was the capital city for the erstwhile combined state of Andhra Pradesh was made the capital for the State of Telangana. There is no capital city for the State of Andhra Pradesh. Therefore, as there is no capital for the State of Andhra Pradesh, the State Government had to take steps to establish a capital city for the newly carved out State of Andhra Pradesh. So, the Government has passed the Capital Region Development Authority enactment (hereinafter called as "C.R.D.A. Act") to build a capital city between the Krishna District and the Guntur District by the side of the Krishna river consisting of 25 villages in the said C.R.D.A. region. G.O.Ms.No.252 and G.O.Ms.No.254 were issued to that effect notifying the capital region on 30.12.2014. A concept of land pooling was introduced under the aforesaid enactment to acquire the lands from the owners of the lands in the said villages for the purpose of establishing the capital city.

49) Whileso, after the Andhra Pradesh Reorganisation Act was passed on 03.03.2014 as there was speculation regarding location of capital between the Krishna District and the Guntur District, various people have purchased lands in between the

said Krishna and Guntur Districts and the present petitioners are also among the said persons who purchased the lands in the said area. Some of the lands were purchased by them are within the capital region and most of the lands are beyond the capital region and also beyond the proposed inner ring road. The location of these lands purchased by the petitioners is identified as per the plans submitted by the prosecution along with the C.D. file.

50) Now, the main case of the prosecution is that the petitioners who purchased the said lands during the period from June, 2014 to December, 2014 got prior information regarding the exact location of the capital city unauthorisedly from higher officials in the Government and the political leaders and based on the said information they have purchased the said lands from the owners of the said lands and at that time they did not disclose to the owners that the capital city is going to come within the said area and thereby cheated the sellers of the land and they derived monetary benefit on account of increase in the land value subsequently, after location of the capital in that area is officially announced under the aforesaid G.Os. on 30.12.2014 and this has resulted into loss to the owners of the land who sold the same oblivious of the fact that the capital city is going to come in that area. Precisely this is the substratum of the prosecution case.

51) Therefore, in the light of the aforesaid version of the prosecution, the crucial question that arises for consideration is

even if the said version of the prosecution is to be taken as true at its face value, whether it constitute any offences punishable under Sections 420, 409, 406 and 120-B of IPC or not.

SECTIONS 420 AND 415 OF I.P.C.

52) For better appreciation, Sections 420 and 415 of IPC are reproduced hereunder for ready reference:

> "**S.420. Cheating and dishonestly inducing delivery of property**.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

53) While the above Section 420 of IPC deals with the punishment for the offence of cheating, Section 415 IPC defines what is cheating, and it reads thus:

> "**S.415. Cheating**.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".
>
> *Explanation*.—A dishonest concealment of facts is a deception within the meaning of this section.

54) At the outset it is to be noticed that certain illustrations are given below Section 415 IPC illustrating some

instances of offence of cheating and the facts of the case are not coming within the purview of any of the said illustrations.

55) A combined reading of the aforesaid two Sections 415 and 420 IPC makes it manifest that the necessary ingredients which are to be essentially established to constitute an offence of cheating under Section 420 of IPC are (i) There must be a false representation said to have been made by the accused to the person deceived knowing fully well that the said representation made by the accused is false at the time of making it; (ii) the accused must induce the deceived person fraudulently or dishonestly to deliver any property to him or to any person based on the said false representation made by the accused; (iii) and consequently it must result into loss or damage to the said person, in body, mind or property.

56) So, going by the ingredients contemplated under Sections 415 and 420 of IPC, it is obvious that deception is the quintessence of the offence of cheating. So, to hold a person to be guilty of cheating another person, usually and generally, there must be an allegation that a false representation was made by the accused to the person deceived knowing fully well that the said representation is false to his knowledge at the time of making it and thereby he must induce the person deceived to deliver any property to him or to any person and consequently the person deceived must sustain damage or harm to him either in body, mind, reputation or to any property. Admittedly, as per the facts of the prosecution case, it is not their case that the

petitioners made any false representation to the owners of the lands at the time of sale of the said lands and induced them to deliver the said property to them. So, the above basic ingredients required to constitute an offence of cheating under Section 420 IPC are conspicuously absent in the facts of the case.

57) It is also to be noticed that the alleged deception must be fraudulent and the alleged inducement must be dishonest in order to attract the offence under Sections 420 r/w. 415 IPC, in view of the express language employed in the definition of cheating in Section 415 IPC. Thus, certain negative terms like dishonest, fraudulent etc. are used to attribute criminal liability to a person. So, no act can be construed as an offence under the Section unless they are committed dishonestly and fraudulently. Considering the cardinal principle of criminal law that there can be no offence unless it is done with requisite *mens rea* i.e. guilty intention, the above qualifying words like dishonestly and fraudulently are used.

58) Section 24 IPC defines the term “dishonestly” and it reads as follows:

> “S.24. Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing, “dishonestly”.”

59) Wrongful gain and wrongful loss are again defined in Section 23 IPC and it reads as follows:

> "S.23. "Wrongful gain".- Wrongful gain is the gain by unlawful means of property to which the person gaining is not legally entitled.
>
> "Wrongful loss".- Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled."
>
> "Gaining wrongfully, losing wrongfully" – A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully. A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property."

60) Thus, a comprehensive definition of wrongful gain and wrongful loss, which are required to be established to prove a dishonest act under Section 24 IPC is given. The word "wrongful" means prejudicially affecting a party in some legal right. For either wrongful loss or gain, the property must be lost to the owner, or the owner must be wrongfully kept out of it.

61) Similarly the term "fraudulently" is defined in Section 25 IPC and it reads as follows:

> "S.25. Fraudulently.- A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

62) The literal meaning of the word "defraud" is almost synonym to 'deception' and 'hoodwink' etc. When the petitioners have acquired the property lawfully by paying valid sale consideration to the sellers under registered sale deeds, it cannot be said that any element of fraud or deception is involved in the transaction.

63) Therefore, when the facts of the case are viewed in the light of the aforesaid definition of "dishonestly" under Section 24 IPC and the wrongful gain and wrongful loss under Section 23 IPC, this Court is at a loss to understand as to what is the dishonest act that was committed by the petitioners relating to the said sale transactions and what is the wrongful gain and wrongful loss that is involved in the transaction and how the petitioners gained property by unlawful means to which they are not legally entitled and how the petitioners have deprived the sellers of the property by unlawful means to cause wrongful loss to them.

64) In the context, it is very much relevant to note that the facts of the case show that as per the recitals in the sale deeds that the sellers have voluntarily offered to sell their lands to the petitioners to meet their family and legal necessities and the petitioners have accepted the said offer and purchased the lands by paying valid sale consideration under registered sale deeds. Therefore, it is a lawful sale transaction and it cannot be said that the petitioners had wrongful gain by unlawful means of property to which they are not legally entitled. Similarly, as the sellers have sold the lands under registered sale deeds after receiving valid sale consideration to a tune of lakhs of rupees, no wrongful loss is also caused to them by unlawful means by the petitioners. The landed property was acquired lawfully i.e. by lawful means by the petitioners. So, it cannot be said under any stretch of reasoning that the petitioners have wrongfully

acquired the property. Therefore, absolutely no act of dishonesty is involved in the transaction.

65) However, learned Advocate General invoked the Explanation appended to Section 415 IPC which says that "a dishonest concealment of fact is a deception within the meaning of this section" and thereby contended that the petitioners did not inform the sellers of the land that the capital is going to come in the said area where the said lands are located and suppressing the said fact that they have purchased the lands and if the petitioners informed the sellers that the capital is going to come within that area that the sellers might not have agreed to sell the said lands and consequently, as there is subsequent increase in the value of the land after location of the capital is notified by a G.O. on 30.12.2014 that the sellers are put to monetary loss due to the acts of the petitioners in concealing the said fact in buying the said land and as such the facts of the case attract the definition of cheating under Section 415 IPC and the facts of the case constitute an offence under Section 420 of IPC. Thus, the learned Advocate General as usual with the ability of adroit eloquence at his command made his best effort to convince this Court that in the light of the Explanation appended to Section 415 IPC, that a case under Section 420 IPC is constituted in the facts and circumstances of the case.

66) I am unable to persuade myself to countenance the said contention raised by the learned Advocate General. In this

context, in the first place it has to be seen that is it necessary on the part of the buyer of the land to disclose the reason of buying the land or the purpose of purchasing the land or any latent advantage which he may have in purchasing the land which is within the knowledge of the buyer to the seller at the time of entering into the said sale transaction. Even if the petitioners got any prior knowledge that there is a proposal to locate the capital city in the said area whether they are legally bound to disclose or inform the said fact to the seller of the land and whether its nondisclosure amounts to dishonest concealment of fact as required under Explanation appended to Section 415 IPC or not. These are the paramount questions required to be determined in view of the above vital contention raised by the learned Advocate General.

67) Before adverting to the same, it is apposite to note that illustration (i) among the illustrations given below Section 415 of IPC clearly explains as to what amounts to concealment of fact. It reads thus:

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

68) Therefore, it is only concealment of such information or non-disclosure relating to right in the land that amounts to dishonest concealment of material fact and not every

extraneous information not relating to a right or interest of the seller in the land.

69) Further, while answering the said question, it is relevant to note that a transaction relating to sale of land between two persons is essentially a contract between the buyer and the seller. There would be an offer to sell the land and acceptance of the said offer to purchase the land between the said two persons. It involves payment of valid sale consideration as per the terms and conditions adumbrated in their contract to complete the said sale transaction of selling and buying of the said land. Therefore, it is essentially a civil transaction covered by the Indian Contract Act. There are certain rights and liabilities imposed on both the buyer and the seller under Section 55 of the Transfer of Property Act.

70) Learned Advocate General invoking Section 55(5)(a) of the T.P. Act and placing heavy reliance on it, would contend that the petitioners being the buyers of the land are bound to disclose the sellers that there is a proposal to locate the capital city in that area and that there is likelihood of increase in the value of the said land in future and as the same is not disclosed to the seller that it amounts to dishonest concealment of material fact as contemplated under the Explanation appended to Section 415 IPC. In order to appreciate the said contention of the learned Advocate General, it is expedient to extract Section 55(5)(a) of the T.P. Act, which reads thus:

"Section 55(5) the buyer is bound –

> (a) to disclose to the seller any fact as to the nature or extent of the seller's interest in the property of which the buyer is aware, but of which he has reason to believe that the seller is not aware, and which materially increases the value of such interest."

71) A bare reading of the aforesaid provision makes it manifest that there is only a liability on the buyer to disclose to the seller any fact regarding the **nature** or **extent of the seller's interest** in the property of which buyer is aware and which he has reason to believe that the seller is not aware which may materially increases the value of **such interest**. Therefore, the underlying words that are to be noticed in the aforesaid provision are **nature** or **extent of seller's interest** in the property. Therefore, the crucial question that needs to be considered in this regard is whether the said expression "nature or extent of the seller's interest in the property" comprehends within it the information relating to proposed location of capital in the said land or not and also information relating to latent advantage that the buyer may derive in future upon happening of an event which is certain or uncertain. It is also to be seen whether the buyer got duty to disclose that there is a possibility of increase in the value of the land in the future or not. Certainly, that is not the intendment of the Parliament under Section 55(5)(a) of the T.P.Act. In the considered view of this Court it does not cover the disclosure of information relating to latent advantage in respect of the land as per settled law in this regard.

72) The nature of the duty of the buyer to disclose the facts within his knowledge relating to the interest of the seller in the property, as contemplated under Section 55(5)(a) of T.P. Act has been succinctly explained by famous jurist and author Mulla in the commentaries on Transfer of Property Act in its Ninth Edition at page No.534 as follows:

> "The rule matters only title of the seller in respect of the property. Although the seller's title is ordinarily a matter exclusively within his knowledge yet there may be cases where the buyer has information which the seller lacks. In such a case, he must not make an unfair use of it. He must give the information to the seller. …. An English illustration in this regard is the case of **Summers v. Griffiths**[7] where an old woman sold property at an undervalue believing that she could not make out a good title to it while the purchaser knew that she could. The purchaser was held to have committed a *suppressio veri* and the sale was set aside as fraudulent."

73) The same case is also cited as an illustration to explain the nature of the duty of the buyer under Section 55(5)(a) of the Transfer of Property Act in the commentaries on the Law of Transfer of Property Act authored by Sri G.C.V. Subbarao, in its Fourth Edition at page No.1197.

74) Therefore, the legal position is now made abundantly clear that the nature of the duty that is imposed on the buyer under Section 55(5)(a) of the T.P. Act is only relating to the interest of the seller in his property which the buyer is aware

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[7] (1866) 35 Beav 27.

and the seller is not aware which is required to be disclosed by the buyer.

75) This duty imposed on the buyer under Section 55(5)(a), the Act also does not embrace within itself any information pertaining to the latent advantages in respect of the land which the buyer is aware and the seller is not aware and it does not cover such situation, in view of the law enunciated in various cases discussed infra and as per the opinion expressed by various jurists and authors based on the decided case law on the point.

76) In the commentaries on the Law of Transfer of Property Act authored by a renowned jurist Sri G.C.V. Subbarao, in its Fourth Edition at page No.1197, under the caption "Buyer's liabilities before completion of sale" while dealing with the requirement of disclosure of facts materially increasing the value under Section 55(5)(a) of the T.P. Act, it is stated as under:

> **"Latent advantages need not be disclosed:** A buyer is not bound to disclose latent advantages or communicate to his vendor facts which may influence his own judgment in purchasing the property. In *Fox vs. Mackreth* ((1788) 2 Bro. C.C. 400 = 29 E. R. 224), A knowing that there was a coal-mine in the estate of B of which he knew B was ignorant entered into a contract to purchase the estate of B for the price of the estate, without considering the mine. It was held that the contract could not be set aside on the ground of fraud since B, as the buyer, was not obliged from the nature of the contract, to apprise the seller of the existence of the mine."

77) This judgment in **Fox vs. Mackreth**[8] provides a complete answer to the vital contention raised by the learned Advocate General that the petitioners as buyers are bound to disclose to the sellers that the capital city is going to come in the said area while purchasing the said land and non-disclosure of the same amounts to dishonest concealment of fact as contemplated under Explanation appended to Section 415 IPC.

78) In the case of **Fox vs. Mackreth**[8], the relevant observations made in the said judgment are very apt to consider to drive home the point involved in this case. It is observed as follows:

> "The doubt I have is, whether this case affords facts from which principles arise to set aside this transaction, which will not, by necessary application, draw other cases into hazard. And without insisting upon technical morality, I don't agree with those who say that where an advantage has been taken in a contract, which a man of delicacy would not have taken, it must be set aside; suppose for instance, that A, knowing there to be a mine in the estate of B, of which he knew B, was ignorant, should enter into a contract to purchase the estate of B, for the price of the estate, without considering the mine, could the court set it aside? Why not, since B, was not apprised of the mine, and A. was? Because B, as the buyer, was not obliged, from the nature of the contract, to make the discovery. It is therefore essentially necessary, in order to set aside the transaction, not only that a great advantage should be taken, but it must arise from some obligation in the party to make the discovery. The Court will not correct a contract, merely because a man of nice honour would not have entered into it; it must fall within some definition of

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[8] (1788) 2 Bro. C.C. 400 = 29 E. R. 224

> fraud; the rule must be drawn so as not to affect the general transactions of mankind."

79) As per the above illustration given in the judgment that even if a buyer is aware of the fact that there is coal mine in the land of the seller, and he buys the land without apprising the seller of the said fact, for a valid price, it does not amount to fraud as buyer has no legal obligation to inform the said fact to the seller. When that be the clear legal position, the present case absolutely stands on a better footing when compared to the above illustration, where the petitioners also have no legal obligation to inform the sellers that there is a proposal to locate the capital city in their area.

80) Even in the commentaries on the Transfer of Property Act authored by another eminent jurist Mulla in the Ninth Edition at page No.534 while dealing with the buyer's duty of disclosure under Section 55(5)(a) of the T.P.Act stated that there is no doubt that the buyer is under no duty to disclose latent advantages and this is also the law in England as stated in the judgment of Lord Selborne in **Coaks v. Boswell**[9].

81) In **Coaks v. Boswell**[9] it is held as hereunder:

> "Every such purchaser is bound to observe good faith in all that he says or does, with a view to the contract, and (of course) to abstain from all deceit, whether by suppression of truth or by suggestion of falsehood. **But inasmuch as a purchaser is (generally speaking) under no antecedent obligation to communicate to his vendor**

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[9] (1886) 11 App Cas 232, 235

> **facts which may influence his own conduct or judgment when bargaining for his own interest, no deceit can be implied from his mere silence as to such facts, unless he undertakes or professes to communicate them. This, however, he may be held to do, if he makes some other communication which, without the addition of those facts, would be necessarily or naturally and probably misleading."**

82) While expressing the above opinion, Jurist Mulla also referred the judgment in **Fox v. Mackrett**[8], which is already cited supra, in which it is held that the buyer need not disclose the existence of a coal mine of which the seller is unaware.

83) The Supreme Court of United States in the case of **Laidlaw et al. v. Organ**[10], speaking through the Hon'ble Chief Justice Marshall delivered the opinion of the Court on the similar issue in the said case as follows:

> "The question in this case is, whether the intelligence of extrinsic circumstances, which might influence the price of the commodity, and which was exclusively within the knowledge of the vendee, ought to have been communicated by him to the vendor? **The court is of opinion that he was not bound to communicate it.** It would be difficult to circumscribe the contrary doctrine within proper limits, where the means of intelligence are equally accessible to both parties."

84) Therefore, considering the analogy in the aforesaid judgments of English cases and American case, the legal position is manifestly clear that the information which is in the knowledge of the petitioners relating to proposal of location of

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[10] 1817 SCC OnLine US SC 28 = 15 US 178 (1817) = 4 L.Ed.214 = 2 Wheat. 178

the capital in the area where the lands in question are purchased, even if it is true, need not be informed to the sellers and they have no legal obligation to disclose or inform the same to the sellers of the land at the time of purchasing the said lands. So, it does not amount to dishonest concealment of fact as contemplated under Explanation appended to Section 415 IPC. In this context, as already noticed, it is also significant to note that it is not a mere concealment of fact that is made an act of deception under the said Explanation and it is only a dishonest concealment of fact that is made an act of deception under the said Explanation. When there is no legal obligation to disclose the fact, as discussed supra, non-disclosure of the same does not amount to dishonest concealment of the fact. In the case of **Karachi Municipality v. Bhojraj**[11] the Court of Judicial Commissioner, Sind dealt with this Explanation to Section 415 IPC. In the said case, the accused was charged for heating the Karachi Municipality. He executed a sale deed in favour of Karachi Municipality in respect of certain land, and received the price. It was subsequently discovered that the land was mortgaged by the accused and the other members of his family were interested in it. Alleging that the fact that the land was mortgaged was suppressed at the time of execution of sale deed, he was sought to be prosecuted and in the said process Explanation appended to Section 415 IPC as has been done in

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[11] 1915 SCC OnLine Sind JC 6 = AIR 1915 Sind 21

this case, was invoked. It was argued that the accused dishonestly concealed the fact of mortgage and that there was a member of the joint family. The Court rejecting the said contention held as follows:

> "No concealment of fact is dishonest unless there is a legal obligation to disclose. A defect in title has been held to be a material defect in the property under Section 55(1)(a) of the T.P. Act as per the ratio laid down in **Haji Essa v. Dayabai**[12]**.** There is no duty on the seller to disclose these unless the buyer could not with ordinary care discover them. The Municipality could easily have ascertained the existence of a prior mortgage and knew that the seller was a Hindu.

Further held as follows:

> "The cheating must refer to some false representation which induced the Municipality to agree to buy the land."

Also held that the law on this point has been correctly stated in the case of **Emperor v. Bishen Das**[13].

85) In **Emperor v. Bishen Das**[13], it is held while dealing with Section 415 IPC that sale of immovable property without mentioning encumbrances does not amount to cheating and the accused cannot be convicted on the ground that he omits to mention that there is an encumbrance on the property at the time of its sale. It is held that unless it is shown that he was asked by the vendee whether the property was encumbered and he said that it was not, or that he sold the property on the

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[12] (1896) 20 Bom 522
[13] (1905) ILR 27 All 561

representation that it was unencumbered, he cannot be held responsible for offence of cheating.

86) In this context, it is apt to refer relevant observations made by the Court in the said judgment which will have direct impact on the present case. It is held as follows:

> "It is true that the explanation appended to Section 415 lays down that a dishonest concealment of facts is a deception within the meaning of the section. If we turn to the definition of the word "dishonestly" to be found in Section 24 of the Code we find that a dishonest act is an act done with the intention of causing wrongful gain to one person or wrongful loss to another. Section 23 defines "wrongful gain" as a gain by unlawful means of property to which the person gaining is not legally entitled. Similarly, "wrongful loss" is defined as the loss by unlawful means of property to which the person losing it is legally entitled. The unlawfulness of the means used is a necessary element in criminal dishonesty. Now in the present instance I cannot find anything unlawful in the means used by the applicant. **There was no obligation cast on him by law (vide Section 55 of the Transfer of Property Act) to disclose to his vendee the existence of the mortgage, in as much as the mortgage had been effected by a registered instrument and the vendee could with ordinary care have ascertained its existence.** He might also have ascertained its existence by questioning his vendor. Had he done so, and had the vendor falsely represented the property to be unencumbered, the case would have been very different, as there would have been an actual misrepresentation by the vendor sufficient to constitute the offence of cheating."

Further held as follows:

> "I have no hesitation in holding that the dishonest concealment of facts referred to in the explanation to Section 415 is a dishonest concealment of facts which it is

> the duty of the person concealing them to disclose to the person with whom he is dealing."

Finally, it is held as follows:

> "The same is the law in England. In the case of Horsfall v. Thomas (1862) 31 L.J., 322 Bramwell, B, says:- "The fraud must be committed by the affirmance of something not true within the knowledge of the affirmer or by the suppression of something which is true and which it was his duty to make known. Where there is a concealment of a fact I am of opinion that there is neither fraud nor dishonesty within the meaning of the Criminal Law unless there is a duty imposed by law as between the accused and the person with whom he is dealing to make that fact known. For the above reasons, I quash the conviction of the applicant Bishan Das under Section 417 of the Indian Penal Code."

87) Thus, from the conspectus of the law as expounded and enunciated in all the above Indian cases and U.K. and U.S. cases with reference to the Explanation appended to Section 415 IPC and the legal obligations and liabilities under Section 55 of the T.P. Act, the legal position is manifestly clear as cloudless sky that when there is absolutely no legal obligation on the part of the buyer to disclose the said fact to the seller at the time of sale of the land that it does not amount to dishonest concealment of fact as contemplated under Explanation appended to Section 415 IPC.

88) The mere fact that there is a possibility of increase in the value of the land subsequent to the sale also cannot afford a ground to prosecute the buyer for the offence of cheating.

89) In the context, the contention of the learned Senior Counsel Sri Siddhardh Luthra, appearing for one of the petitioners, merits consideration. He would contend that Section 55(6) of the T.P. Act envisages that the buyer is entitled to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof, where the ownership of the property was passed to him. Therefore, when the petitioners lawfully became owners of the said lands, on account of transfer of ownership of the said lands to them, the petitioners as buyers are legally entitled to the subsequent benefit of any improvement or increase in the value of the property. Therefore, in the facts and circumstances of the case, the alleged omission to disclose the fact cannot said to be a fraudulent one as stated in the last part of Section 55 of the T.P. Act also which was invoked by the learned Advocate General.

90) Further, illustration (d) to Section 17 of the Indian Contract Act which defines 'fraud' under the said Act can also profitably be used to drive home the point involved in this case and it reads thus:

> "(d) A and B, being traders, enter upon a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B."

91) Now, the Explanation appended to Section 17 of the Indian Contract Act is also relevant in the context to drive home the point, and it reads thus:

> "Explanation.—Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstance of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, is, in itself, equivalent to speech."

92) Thus, in the light of the above legal position, viewed from any angle, even if the petitioners really got any information regarding location of the capital in the said area where the lands are purchased, the mere non-disclosure of the said information to the sellers at the time of purchasing the said lands cannot be construed as a dishonest concealment of fact for the purpose of fastening criminal liability to the petitioners for the offence under Section 420 IPC.

93) Another significant fact needs to be noticed is that the sale transactions relate to sale of land that took place long back about six years ago in the year 2014. The owners of the land, who sold their lands, had absolutely no demur whatsoever from any quarter for all this length of time in respect of sale of the said lands. They never expressed any grievance at any point of time earlier that they have been cheated by the petitioners by suppressing the fact that the capital city is going to be located in their area at the time of selling the lands. They did never raise their finger in this regard for all this length of time even after notifying the location of the capital city. Now, abruptly when some stranger lodged a report with the police who had nothing to do with the sale transactions, the sellers allegedly came up with the above said version before the police that they

have been cheated by the petitioners by not informing them that the capital is going to come in their area at the time of selling their lands. So, in the said circumstances, the credibility and authenticity of the said belated version now introduced is really at stake. Therefore, the prosecution version now introduced by way of the said statements of the sellers would certainly be incredulous. If really they got grievance in this regard, they would have initiated both civil and criminal action in this regard long back when location of the capital city was notified on 30.12.2014 itself about six years back. They did not initiate any civil action to declare the sale as void on the ground of fraud or deception or on the ground of suppression of material fact. They also did not launch any criminal prosecution based on the above grounds. Therefore, the above belated version now introduced by the prosecution by way of alleged statements of sellers is far from truth. In view of the said reasons, it throws any amount of doubt on the justification of the *de facto* complainant who is a stranger to the said sale transactions in lodging the present report. Therefore, in the said circumstances, the contention of the petitioners that there are vested interests behind the *de facto* complainant who engineered the preparation of the said report lodged by him with a concocted story to illegally prosecute the petitioners cannot be completely ruled out.

94) In this context, it is relevant to consider the judgment of the Apex Court in **Mohd. Ibrahim v. State of Bihar**[14] wherein it is held at para No.7 as follows:

> "7. This Court has time and again drawn attention to the growing tendency of complainants attempting to give the cloak of a criminal offence to matters which are essentially and purely civil in nature, obviously either to apply pressure on the accused, or out of enmity towards the accused, or to subject the accused to harassment. Criminal courts should ensure that proceedings before it are not used for settling scores or to pressurise parties to settle civil disputes. …"

It is also held at para No.15 as follows:

> "15…….. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint. ……."

RECITALS OF THE SALE DEED BELIE THE VERSION OF THE SELLERS:

95) While the facts of the prosecution case as projected and the submissions made on behalf of the prosecution as discussed supra do not find favour to attract any offence under Section 420 IPC, in the light of the above discussion, even the factual aspects emanating from the record also do not support the case of the prosecution. A meticulous perusal of the recitals of the registered sale deeds executed by the sellers in

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[14] (2009) 8 SCC 751

favour of the petitioners selling their lands to them clearly proves that it is not the petitioners as buyers who have approached the sellers to sell the property to them. The recitals of the sale deed show that it is the sellers who offered to sell their lands to the petitioners to meet their legal necessities.

96) The contents of the sale deeds show that as lands are not found to be profitable to the vendors and as they are in dire necessity of money either for the purpose of meeting their family expenses or to discharge their debts that the owners have decided to sell away their lands and thereby offered to sell the lands to the petitioners and the petitioners have accepted their offer and sale consideration to a tune of lakhs of rupees was arrived at by consensus between both of them and on receipt of the said sale consideration that the sale deeds have been registered by the owners of the lands in favour of the petitioners. Therefore, it is now evident that the petitioners did not approach the owners of the land with a request to sell the lands to them so as to believe or say that the petitioners have induced them to sell the lands by suppressing the fact that the capital is going to be located in the said area. Therefore, the recitals in the sale deeds completely belies the version of the prosecution that the petitioners induced the sellers to sell the land by offering high value of sale price and by suppressing the fact that the capital is going to be located in that area. Recitals of the sale deeds clinchingly establishes that the offer to sell the lands was made by the owners/sellers of the land

and the petitioners accepted the said offer and purchased the said lands. When that be the case, the question of informing the owners of the lands by the petitioners that the capital is going to be located in the said area completely loses its significance and the same does not arise at all. So, the evidence in the form of recitals of the sale deeds completely negate the contention of the prosecution. There is absolutely no dispute regarding the fact that the sale deeds contain the said recitals that the owners have offered to sell the lands to the petitioners to meet their legal necessities. In fact, in the last column of the table appended to the written submissions made by the learned Public Prosecutor, the prosecution itself elicited the said recitals in the sale deeds showing that for the purpose of meeting the family necessities of the owners of the said lands, they have sold the same to the petitioners, both in Telugu and in the translated version in English. So, these recitals absolutely clinch the issue and prove that there is no truth in the version of the prosecution that the petitioners approached the owners of the lands with a request to sell the lands by suppressing the said material fact.

97) The submission of the learned Advocate General that recitals in all the sale deeds are stereo type recitals and they are usual recitals which find mention in the sale deeds and as such they cannot be considered to disbelieve the present version of the sellers is devoid of any merit and the same cannot be countenanced. Accepting the said contention amounts to

distortion of true facts borne out by record and would also result into travesty of truth. It would also be taking an erroneous view contrary to express recitals of the sale deeds which is not permissible under law.

98) No doubt, during the course of investigation it is shown that some of the owners of the lands, who sold their lands to the petitioners i.e. L.Ws.3 to 11 and 13 to 16 stated in their statements before the police given under Section 161 Cr.P.C. that one Srinivas, who is the broker/mediator, approached him on behalf of the petitioners to sell the lands and when they initially rejected his request to sell the lands, that subsequently, he convinced them by offering high sale price and that the owners have sold their lands after accepting the said sale price and that at that time the owners do not know that the capital is going to be located in the said area and subsequently they came to know that the Government notified their area as the capital region and that the petitioners without disclosing the said fact to them have purchased their lands and on account of increase in the value of the lands, thereafter, that they are put to loss and they are and they have been accordingly cheated. The recitals of the sale deeds completely belie the said version given by L.Ws.3 to 11 and 13 to 16 in their 161 Cr.P.C. statements. As already discussed supra, their own unequivocal declaration made in the sale deeds show that they voluntarily offered to sell their lands to the petitioners to meet their legal necessities and family necessities. Therefore,

they are now estopped from contending contrary to their own declaration made in the form of recitals in the registered sale deeds which are admittedly signed by them before the competent registering authority. So, there cannot be any truth in the subsequent version given by them before the police that some real estate broker approached them on behalf of the petitioners and requested them to sell their lands and that there is suppression of material fact in the said process.

INFORMATION RELATING TO LOCATION OF CAPITAL IS VERY MUCH IN PUBLIC DOMAIN:-

99) Be that as it may, even the version of the prosecution that the proposal of the Government to locate capital city in the area between the Krishna District and the Guntur District by the side of the Krishna river and adjacent to the highway is not known to the sellers of the land and the petitioners clandestinely obtained the said information from the top officials and the political leaders in the then government unauthorisedly and thereby purchased the lands on the basis of the said information without disclosing the said fact to the owners of the land is far from truth. The material placed before this Court by the petitioners in the form of paper publications completely belies the said version. It is noticed supra that the appointed day for formation of the residuary State of Andhra Pradesh under the A.P. Reorganisation Act, 2014, is 02.06.2014. The new Government for the said State was formed after General Assembly Elections on 09.06.2014. The

Chief Minister sworn in on 09.06.2014. These facts are incontrovertible facts. Immediately after the swearing-in-ceremony, the then Chief Minister declared publicly that the capital city is going to come within the Krishna District and the Guntur District by the side of the Krishna river. This news has been widely published in all the widely circulated Telugu and English newspapers. On 10.06.2014 it was published in English newspaper with the headlines "*AP capital near Guntur, Naidu says he wants capital between Guntur and Vijayawada*". The news reads as under:

> "It is official. The new capital of Andhra Pradesh will come up between Vijayawada and Guntur. Andhra Pradesh Chief Minister N. Chandrababu Naidu announced this on Monday (i.e. on 09.06.2014).
>
> Speaking to the media at his residence, Mr.Naidu said that if the capital comes up between Vijayawada and Guntur it will develop like Hyderabad city."

100) In Andhra Jyothi, Telugu daily newspaper, it was published on 10.06.2014 that the new capital will be between Vijayawada and Guntur as it is geographically in centre. It is stated in the news that it was clarified by the Chief Minister of newly formed Andhra Pradesh Nara Chandrababu Naidu that the new capital will be between Vijayawada and Guntur as they are geographically centrally located in Seemandhra. So, inclined to form capital at that place.

101) In Eenadu, Telugu daily newspaper, which is another widely circulated local news paper, it was published on 02.07.2014 that the Andhra Pradesh Government is

contemplating to establish the new capital for the State would be established by the side of Krishna river, making Amaravati as main centre and that the Government is also contemplating to construct big flyover bridges connecting all the areas in the capital region. It has been stated in the said news that the capital is to be developed on both sides of river Krishna to be linked with heavy bridges and the State Government is working out on the collection of details of Government lands in the said area. In Times of India, English newspaper, also it was published on 02.07.20214 with the headline "AP capital in Amaravati? "Low land prices swing it in favour of ancient Satavahana Town". The news published in the said newspaper reads as follows:

> "The new capital city of Andhra Pradesh will be built around the ancient town of Amaravti."

102) Again on 23.07.2014 a news was published in Sakshi, Telugu daily newspaper, which is another widely circulated newspaper in the State, with the caption "Capital will be in between Krishna and Guntur and it is the suitable place for building capital city said by Chairman of Advisory Committee Narayana. It has been published in the said news that the Advisory Committee Chairman and the Minister for Municipal Administration Dr.P.Narayana, informed that they met Sri Sivaramakrishnan in Delhi and apprised him that the area between Krishna and Guntur Districts would be suitable for building new capital city in the State as it would be in equal

distance to North Coastal Districts and Rayalaseema Districts apart from having water sources, airport, rail and road facilities etc. The photograph showing the Advisory Committee Chairman and Kambhampati Rammohan Rao talking to Sri Sivaramakrishnan was also published.

103) Again in Eenadu, Telugu daily newspaper, a news was published on 24.09.2014 stating that the capital city would be on ring road and it may be anywhere throughout the length of 184 K.Ms as the farmers are now coming forward and that 30,000 acres are necessary and the aerial photograph of Putrajaya Nagara was also published in the newspaper. On 05.09.2014 it was published in Economic Times, which is a English daily newspaper, with the caption "Andhra Pradesh's new capital will be in Vijayawada region announces CM N.Chandrababu Naidu". The news reads that putting an end to months of speculation over the issue even as some ambiguity remained on the exact location, Chief Minister N. Chandrababu Naidu announced in the State Assembly on Thursday that the new capital of Andhra Pradesh will be located in Vijaywada region. On 26.10.2014 it was published in Andhra Jyothi, Telugu daily newspaper, that the capital city will be located within the purview of Tulluru Mandal and 14 villages in the said Mandal are identified and in the first spell 30,000 acres of land is going to be acquired from the farmers under Land Pooling Scheme. On 30.10.2014 The Economic Times published the news that the Andhra Pradesh will have a "riverfront" capital on

the south side of river Krishna as the State Government ended months of suspense and speculation today by announcing that 17 villages in the existing Guntur District would be developed as new capital city. It is also stated that it is for the first time that the Telugu Desam Party lead government had come out with a clear location of the new capital as it had so far been saying it would come within Vijayawada region. Most importantly it is to be noted that the names of the proposed villages that would form part of the new capital area are published in the above news paper stating that Neerukonda, Kurugallu and Nidamarru in Mangalagiri Mandal; Borupalem, Tulluru, Nelapadu, Nekkallu, Sakhamuru, Mandadam, Malkapuram, Velagapudi, Mudalingayapalem, Uddandarayapalem, Lingayapalem, Rayapudi, Apparajupalem and Dondapadu in Tulluru Mandal would form part of capital area.

104) In Deccan Chronicle, English daily newspaper, it was published on 31.10.2014, stating that in tune with the dream of Chief Minister N. Chandrababu Naidu of building a “riverfront capital”, the Cabinet sub-committee, on land pooling, met here on Thursday, identified 17 villages - 14 in Tulluru Mandal and three in Mangalagiri of Guntur District and most of the villages that will be formed part of the A.P. capital on the banks of the river Krishna. Learned counsel for the petitioners submit that same news has been widely announced in T.V. channels also. But, they did not produce evidence to that effect.

105) The prosecution did not deny publication of the above news relating to the proposal of the Government to locate the capital city by the side of Krishna river between the Krishna District and the Guntur District in newspapers. So, publication of the aforesaid news is again an incontrovertible fact. Therefore, the above news which was widely published both in Telugu and English widely circulated newspapers in the State of Andhra Pradesh, clearly establishes that the information relating to the proposal of the Government to locate the capital in the said area is very much in the public domain right from June, 2014 when the present State of Andhra Pradesh was formed with effect from 02.06.2014. The above news also bears ample testimony of the fact that there is wide spread speculation and anticipation among the people in the public circle that the capital city is going to be located between the Krishna and Guntur Districts by the side of Krishna river and by the side of the highway. When that be the fact, it cannot be said that the said information is only within the exclusive knowledge of the concerned top government officials and political leaders and it is a non-public information as has been contended by the learned Advocate General. In fact, the said information relating to location of the capital area at a particular region is very much in the public domain as it was announced by no less than a responsible authority like the very Chief Minister of the State immediately on the date of his swearing-in-ceremony itself i.e. on 09.06.2014 which was

published in the newspapers on 10.06.2014. Therefore, it cannot be said that the petitioners have secured the information unauthorisedly from the top government officials and political leaders regarding the area where the capital would be located. It cannot also be said that the sellers are not aware of the said fact or information. In fact, it is an information known to the whole world on account of wide publicity given to the said news in the newspapers. So, not only the petitioners, even the owners of the land are aware of the said information relating to the proposal of the government to locate the capital city in the said area. Therefore, the sellers of the land cannot now plead ignorance of the said information that the capital is going to be located in their area and contend that the said information was suppressed and not disclosed to them at the time of selling the lands and as such they sustained loss. At the cost of repetition it is to be held that the said information is very much in the public domain and the whole world knows about the same. The evidence in the form of the aforesaid wide publication in the newspapers bespeaks to that effect.

106) As per the submissions made by the learned Advocate General, the Cabinet took decision regarding location of capital on 01.09.2014 and it was announced in the Legislative Assembly on 02.09.2014. Therefore, on account of announcement of the said information relating to the area where the capital would be located in the Legislative Assembly, the said news is again in public domain.

107) So, when the said information is very much in the public domain and when even the sellers are aware of the same, it cannot be legitimately contended that there has been concealment of material fact dishonestly as required under Explanation appended to Section 415 IPC to attribute any criminal liability of deception to the petitioners. In fact the plan submitted by the Investigating Officer along with the C.D. file show that not only the petitioners, but there are several other people who have purchased lands in and around the proposed capital region. Probably on account of the information that is available to them in the public domain, which is published in newspapers, all of them have purchased lands in the said area. As the right to acquire and own property is a constitutional right, legal right and human right, none can find fault with the said buyers in purchasing the lands as any citizen is entitled to acquire lands in exercise of their constitutional and legal right. So, no criminal liability can be fastened to the petitioners or any persons who purchased lands in the proposed capital region to prosecute them for any offence under criminal law. Therefore, no offence under Section 420 IPC is made out or constituted from the facts of the case.

APPLICABILITY OF SECTIONS 406 AND 409 OF IPC TO THE FACTS OF THE CASE:

108) Section 406 IPC deals with punishment for criminal breach of trust. It says that whoever commits criminal breach

of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. Criminal breach of trust is defined in Section 405 IPC.

109) A reading of Section 405 IPC makes it manifest that when a person is entrusted with the property, or with any dominion over property, and if he dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, is said to have committed the offence of criminal breach of trust. So, there must be an allegation of entrustment of property to the petitioners and consequent breach of trust. There is absolutely no allegation that any property was entrusted to the petitioners by any one or the petitioners had any domain over the property that was entrusted to them and that they have dishonestly misappropriated or converted the same to their own use or dishonestly disposed of the said property in violation of any direction of law prescribing the mode in which such trust is to be discharged. Therefore, on the face of the allegations and the contents of the F.I.R., absolutely no offence whatsoever is made out or constituted against the petitioners for the said offence punishable under Section 406 IPC relating to criminal breach of trust. Explanations 1 and 2 appended to Section 405 IPC make the position very clear that only when there is an entrustment of some property to the accused and when they

dishonestly misappropriates the said property or converts to their own use or disposes of any such property, then only the said section attracts and not otherwise. The illustrations (a) to (f) given under Section 405 IPC also make the said position very clear. The word 'entrusted' used in the section is very important to note and unless there is entrustment, there can be no offence of criminal breach of trust under Section 406 IPC. So, Section 406 IPC is wholly inapplicable to the facts of the case.

110) As regards the offence under Section 409 IPC, it relates to criminal breach of trust by public servant, banker, merchant or agent. It reads thus:

> **"409. Criminal breach of trust by public servant, or by banker, merchant or agent**.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

111) So, the predominant requirement which is essential to attract the offence under Section 409 IPC is that the accused must be a public servant or a banker or a merchant or an agent and the property is to be entrusted to him in any one of the above capacities and while holding domain over the said property in his capacity as a public servant, banker, merchant or agent, broker or attorney, if he commits any criminal breach

of trust in respect of the said property, it is said that an offence under Section 409 IPC is committed. Therefore, the prosecution has to necessarily establish that the accused is a public servant or a banker or an agent and that the property was entrusted to him in the said capacity and he has committed any criminal breach of trust in respect of the said property. Admittedly, it is not at all the case of the prosecution that the petitioners are public servants or bankers or merchants or agents and that any property was entrusted to them in any such capacity and that they have committed any criminal breach of trust in respect of the said property. Therefore, the necessary ingredients contemplated under law which are required to establish the said offence under Section 409 IPC are totally lacking in this case. Therefore, no offence whatsoever is constituted against the petitioners from the contents of the F.I.R. or from the material collected during the course of investigation against the petitioners under Section 409 IPC. Ergo, Section 409 of IPC is also wholly inapplicable to the facts of the case.

OFFENCE UNDER SECTION 120-B OF IPC:

112) There remains Section 120-B of IPC to be dealt with. While Section 120-B of IPC deals with punishment for criminal conspiracy, Section 120-A of IPC defines what is criminal conspiracy. It reads thus:

> "**120A. Definition of criminal conspiracy**.—When two or more persons agree to do, or cause to be done,—
> (1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

113) A plain reading of the aforesaid Section shows that there must be an agreement between two or more persons to do or cause to be done (1) an illegal act, or (2) an act which is not illegal by illegal means. Therefore, an agreement between two persons to do an illegal act or to do an act which is not illegal by illegal means is designated as an offence of criminal conspiracy. It is significant to note that the proviso to Section 120-A of IPC makes it clear that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act. So, the emphasis is on the expression "illegal act" used in the Section. Now, it is relevant to note that what is an illegal act is defined under Section 43 of IPC. For better appreciation, it is extracted hereunder and it reads thus:

"43. "Illegal", "Legally bound to do".—The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action; and a person is said to be "legally bound to do" whatever it is illegal in him to omit."

114) A reading of the aforesaid definition of illegal act makes it manifest that it is applicable to a fact or situation which is an offence or which is prohibited by law. As per the findings recorded by this Court supra, after undertaking elaborate discussion relating to the question of fact and question of law based on the facts and circumstances of the case, it is held in no uncertain terms that no offence whatsoever was committed by the petitioners under Sections 420, 406, and 409 IPC and that the facts of the case do not constitute any offences under Sections 420, 406 and 409 of IPC. Therefore, as a corollary it is to be held that there was no attempt made by the petitioners in agreement with any other person to do an illegal act or an offence or even to do an act which is not illegal by illegal means. Since, the petitioners have purchased the lands in question which are willingly sold by the owners with their own volition for a valid consideration under registered sale deeds and lawfully became owners of the same, no act whatsoever which is not illegal, but by illegal means was committed. By adopting a legal process, the petitioners have purchased the lands and legally became owners of the same.

115) The circumstances in a case, when taken together, on their face value, should indicate meeting of minds between the conspirators for the intended object of committing an illegal act or committing an act which is not illegal, by illegal means. A few bits here and a few bits there on which prosecution relies

cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. In **Esher Singh v. State of Andhra Pradesh**[15] at the end of para No.38 with reference to the earlier judgment in **V.C.Shukla v. State (Delhi Admn.)**[16] held as above. The same view was again expressed following the judgment in **Esher Singh**'s[15] case, stating that a few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy, at the end of para.56 in **John Pandian v. State**[17].

116) The above view taken by the Apex Court squarely applies to the present facts of the case. In the present case, the facts of the case show that the prosecution is making an attempt to pick up sporadic instances here and there hypothetically and knit the same to concoct a story of conspiracy to somehow bring the same within the scope of Section 120-B of IPC. Therefore, no offence under Section 120-B of IPC is also made out and constituted from the facts of the case.

117) The learned Advocate General would contend that some of the employees working in the concerned Section in the Secretariat, whose duty is to prepare draft G.Os. gave

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[15] (2004)11 SCC 585
[16] (1980) 2 SCC 665
[17] 2010 (8) Supreme 389

statements under Section 161 and Section 164 Cr.P.C. before the investigating officer and the learned Magistrate stating that at the time of drafting the G.O.Ms.No.252 and 254 dated 30.12.2014 notifying the capital region area, that the established procedure is not followed and that there are irregularities committed in drafting the said G.Os. as the names of the villages falling in the capital region are not disclosed in the draft G.O. and as such, it indicates that there has been a conspiracy in bringing out the said G.O. relating to the location of the capital area and the villages covered by the said capital area. Therefore, he would contend that the matter requires investigation to find out the conspiracy angle in this regard. The said contention is also devoid of any merit. If at all any business rules are contravened in drafting the said G.Os. or preparing the draft G.Os. in this regard and even if there are any illegalities and irregularities in drafting the said G.Os., the petitioners, who are totally strangers to the said Government Department have nothing to do with the said drafting of G.Os. There is also nothing incriminating against these petitioners in the said 164 Cr.P.C. statement and other statements under Section 161 Cr.P.C. given by the employees of the Secretariat. So, these statements, even if true, do not establish commission of any offence punishable under Sections 420, 406, 409 and 120-B of IPC against the petitioners herein.

118) Thus, after considering entire gamut of the prosecution case and all the allegations and factual aspects

emanating from the record, as projected by the prosecution, meticulously and minutely in legal parlance, even stretching the reasoning to the extent of straining it, the facts of the case absolutely do not admit commission of any offence whatsoever much less the offence punishable under Sections 420, 406, 409 and 120-B of IPC, which are registered against the petitioners. No criminal liability can be attributed to them on the simple ground which is untenable that they did not inform the sellers that the capital city is going to come in their area and as such, the sellers have sustained monetary loss in view of subsequent increase in the value of the lands. It is really beyond the comprehension of this Court as to how the said private sale transactions can be criminalised on the said flimsy grounds and criminal liability can be attributed to the buyers of the lands to prosecute them under criminal law. In fact it would be beyond the comprehension of any reasonable and prudent man as to how the buyers of the land can be prosecuted under criminal law in the given facts and circumstances of the case.

119) In fact, criminalizing any such private sale transactions and prosecuting the buyers of the land in the given facts and circumstances of the case on the premise of concealment of a fact even if true and on the ground that there has been loss to the sellers of the land in view of the subsequent increase in the value of the lands would create a very dangerous trend in the field of criminal law and it would open the flood gates of the criminal prosecution, as every vendor/seller of

lands, who sold away their lands may subsequently make an attempt to prosecute every buyer of the land whenever there is phenomenal increase in the value of the lands subsequently. Law does not permit such criminal prosecution of the buyer of the land on the said ground. Undoubtedly, it is a sort of speculative criminal prosecution that was launched by the State against the petitioners in this case, which is not permissible under law. Therefore, it is undoubtedly an attempt by the prosecution to fire a blind shot in a dark room to prosecute these petitioners in the above facts and circumstances of the case.

120) In view of the above factual findings based on the prevailing legal position recorded by this Court, the entire prosecution case bristles with several fatal legal infirmities and the same strikes at the very bottom of the substratum of the prosecution case and it cuts the case of the prosecution at its roots. Therefore, as the facts of the case do not constitute any offences punishable under Sections 420, 406, 409 and 120-B of IPC, the prosecution against the petitioners amounts to sheer abuse of process of law. The contents of the F.I.R. also do not disclose commission of any cognizable offences. So, the F.I.R. registered against them is liable to be quashed.

121) The grounds on which the F.I.R. is liable to be quashed under Section 482 Cr.P.C. and under Article 226 of the Constitution of India are enumerated by the Supreme Court in

the case of **State of Haryana v. Bhajan Lal**[18]. At para No.102 of the judgment, the Apex Court held as follows:

> "In the backdrop of the interpretation of 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 channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
>
> (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.

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[18] 1992 Supp.(1) SCC 335 = 1992 CriLJ 527

> (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."

122) Thus, as per the law enunciated by the Apex Court above, grounds No.1 to 3 and 5 are clearly applicable to the present facts of the case. As this Court found from the contents of the F.I.R. and the material collected during the course of investigation done so far that the allegations made in the F.I.R. 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 for the offences punishable under Sections 420, 406, 409 and 120-B of IPC and also found that the allegations in the F.I.R. and materials collected during the course of investigation done so far do not disclose commission of a cognizable offence justifying investigation and also found that the allegations made in the F.I.R. 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, the F.I.R. registered against the petitioners is liable to be quashed.

123) The Apex Court in the case of **Vesa Holdings Private Limited v. State of Kerala**[19] held that the complaint did not disclose any criminal offence at all. Allowing the police investigation to continue would amount to abuse of process of Court and High Court committed error in refusing to exercise power to quash proceedings. Impugned order is set aside.

124) In the case of **State of Karnataka v. Arun Kumar Agarwal**[20]**,** the Apex Court held at para No.15 of the judgment as follows:

> "... The acts of persons will not be subject of criminal investigation unless a crime is reported to have been committed or reasonable suspicion thereto arises. **On mere conjecture or surmise as a flight of fancy that some crime might have been committed, somewhere, by somebody but the crime is not known,** the persons involved in it or the place of crime unknown, cannot be termed to be reasonable basis at all for starting a criminal investigation."

It is further held:

> "....The attempt made by the High Court in this case appears to us to be in the nature of blind shot fired in the dark without even knowing whether there is a prey at all. That may create sound and fury but not result in hunting down the prey. ....."

125) Though learned Advocate-General submits that text of WhatsApp messages of some of the petitioners secured during

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[19] (2015) 8 SCC 293
[20] (2000) 1 SCC 210

the course of investigation show that they had communication with some N.R.Is. alleging that as the capital city is coming in the said area that they have to hurry to purchase the lands in that area, as can be seen from the C.D. file produced by the prosecution, no such text of WhatsApp messages are available in it. Even if it is true, it cannot be an incriminating material against the petitioners in view of the above discussion and findings.

126) Apropos the judgments relied on by the learned Advocate General are concerned, he relied on the judgments in the cases of **Umesh Kumar v. State of Andhra Pradesh**[21]**; Prakash Singh Badal v. State of Punjab**[22] on the proposition of law that criminal prosecution cannot be vitiated merely on the basis of allegation of political vendetta if there is substance in the allegations. Irrespective of the motive attributed by the petitioners to the State in launching the criminal prosecution, this Court has decided the case on its merits based on law and found that there is no substance in the report lodged against the petitioners to prosecute them. Therefore, these cases are of no avail to the prosecution. For the same reason, the judgment in **S.Pratap Singh v. State of Punjab**[23] is not of any relevance. He relied on the cases decided in **Imtiyaz Ahmad v. State of U.P.**[24]**; Kurukshetra University v. State of Haryana**[25] and

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[21] (2013) 10 SCC 591
[22] (2007) 1 SCC 1
[23] AIR 1964 SC 72
[24] (2012) 2 SCC 688

State of Rajasthan v. Ravi Shankar Srivastava[26] on the proposition that the investigation cannot be stayed as a matter of routine specifically at the initial stage. These cases are distinguishable on facts and as this Court found that the allegations set out in the F.I.R. do not *prima facie* constitute any offense against the petitioners, in view of the authoritative pronouncements on the point in **Bhajan Lal**'s[18] case (cited supra), this Court is inclined to quash the F.I.R.

127) The learned Advocate General also relied on the judgment of the Apex Court in the case of **Skoda Auto Volkswagen India Pvt. Ltd. v. The State of Uttar Pradesh**[27]**.** The observation made by the Apex Court at para No.41 of the said judgment is more in favour of the petitioners. It is held in the said judgment that, "it is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on." As this Court found that no cognizable offence or offences of any kind is disclosed in the F.I.R., this Court is inclined to quash the F.I.R.

128) He then relied on the judgment rendered in the case of **State of Madhya Pradesh v. Awadh Kishore Gupta**[28] on the proposition that allegation of *mala fides* are no consequences for quashing of F.I.R. Irrespective of the *mala fides* that are

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[25] (1977) 4 SCC 451
[26] (2011) 10 SCC 632
[27] Judgment dated 26.11.2020 in Spl.L.P.(Cri) No.4931 of 2020
[28] (2004) 15 SCC 691

attributed by the petitioners, based on factual aspects and legal position applicable to the facts and circumstances of the case, this Court has arrived at the above conclusion.

129) The unreported judgment of this Court rendered in the case of **Anne Sudhir Babu v. State of A.P.**[29], relied on by the prosecution is distinguishable on facts. That was a case where originally a report was lodged against certain accused relating to commission of certain offences. Incidentally the role played by the Tahsildar in committing certain irregularities in respect of the lands in question was mentioned in F.I.R. Police registered case against him also and shown him as accused No.4. He questioned the F.I.R. registered against him on the ground that no allegation was made against him regarding commission of any offence and only incidentally his role was referred in the F.I.R. and as such that the registration of the said F.I.R. against him is not valid. So, in that context the Court held that even though the role played by him was incidentally mentioned in the F.I.R. that nothing prevents the police from registering the case against him and investing the same. So, this judgment does not support the case of the prosecution in this case.

130) For the aforesaid reasons, all the judgments relied on behalf of the State are distinguishable on facts and they are of no avail to the prosecution case.

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[29] Crl.P.No.1719 of 2020, dated 21.10.2020.

DENOUEMENT:-

131) To sum up, the upshot of the above detailed discussion is that right to acquire property is a constitutional right and legal right of the petitioners as citizens of this country. As they purchased the lands, in exercise of the said constitutional and legal right and acquired property from the sellers who willingly and voluntarily sold them to the petitioners for a valid sale consideration under registered sale deeds, the said private sale transactions cannot be criminalized and no criminal liability can be attributed to the petitioners in the facts and circumstances of the case to prosecute them for any offences much less for the offences punishable under Sections 420, 406, 409 and 120-B of IPC. The concept of the offence of insider trading which is essentially an offence in the field of stock market relating to selling and buying the securities and bonds cannot be applied to the offences under Indian Penal Code and cannot be read into Section 420 IPC or into any provisions in the scheme of Indian Penal Code. The said concept of offence of insider trading is totally alien to IPC and it is unknown to our criminal jurisprudence under the Indian Penal Code. So, it cannot even contextually or relatively applied to the facts of the case to prosecute the petitioners. Applying the said concept of insider trading to the facts of the case to prosecute the petitioners is totally misconceived and legally unsustainable in the given facts and circumstances of the case.

The petitioners have no legal obligation to disclose the information relating to latent advantages in purchasing the land to the sellers at the time of buying the said land. Therefore, it does not amount to dishonest concealment of fact as contemplated under the Explanation appended to Section 415 IPC. It does not amount to any deception under Section 420 IPC read with Section 415 IPC. The sellers did not sustain any loss on account of the said sale transactions. No element of criminality is involved in the sale transaction. So, the petitioners cannot be even remotely connected with any criminal acts or offence to attribute or fasten any criminal liability to them in the facts and circumstances of the case. Therefore, the allegations set out in the F.I.R. coupled with the material collected during the course of investigation so far done, do not make out any case or constitute any offences under Sections 420, 406, 409 and 120-B of IPC. No offence of conspiracy to do any illegal act or to commit an offence is made out from the facts of the case. Therefore, in the said facts and circumstances of the case, the prosecution of the petitioners for the alleged offences for which the F.I.R. was registered is wholly unjustifiable and clearly opposed to all cannons and basic tenets of criminal law and it amounts to sheer abuse of process of law warranting interference of this Court in exercise of its inherent powers under Section 482 Cr.P.C. to quash the same in view of the law enunciated and the grounds enumerated by the Apex Court in **Bhajan Lal**'s[18] case (cited supra).

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132) In the light of the aforesaid findings, the only irresistible conclusion that can be drawn in the facts and circumstances of the case is that the prosecution against the petitioners for the alleged offences is not at all maintainable and the same is liable to be quashed.

133) In fine, the Criminal Petitions are allowed. The common F.I.R. in Crime No.49 of 2020 of C.I.D.P.S., A.P., Amaravati of Mangalagiri, registered against the petitioners for the offences punishable under Sections 420, 409, 406 and 120-B of I.P.C. and all the proceedings initiated pursuant to the registration of the said F.I.R. are hereby quashed.

Consequently, miscellaneous applications, pending if any, shall also stand closed.

JUSTICE CHEEKATI MANAVENDRANATH ROY

Date:19-01-2021.

Note:
L.R. copy to be marked.
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cs