IN THE HIGH COURT OF ORISSA, CUTTACK

CRLREV No. 618 of 2018

From the order dated 27.06.2018 passed by the Special C.J.M. (C.B.I.), Bhubaneswar in S.P.E. No.42 of 2014.

Asok @ Ashok Mohanty …… Petitioner

-Versus-

Republic of India …… Opposite Party

For Petitioner: - Mr. Santosh Kumar Mund
Senior Advocate

For Opposite Party: - Mr. Sarthak Nayak
Special Public Prosecutor
(C.B.I.)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing: 20.09.2022 Date of Order: 26.10.2022

S.K. SAHOO, J. The petitioner Asok @ Ashok Mohanty who is the former Advocate General of Odisha has filed this criminal revision petition under section 401 of the Code of Criminal Procedure, 1973 (hereafter 'Cr.P.C.') to set aside the impugned order dated 27.06.2018 passed by the learned Special C.J.M. (C.B.I), Bhubaneswar in S.P.E. No.42 of 2014 in rejecting the

petition filed by him under section 239 of Cr.P.C. for discharge and posting the case for consideration of charge. The petitioner has been charge sheeted under sections 120-B, 406, 409, 411, 420, 468, 471 of Indian Penal Code (hereafter 'I.P.C.') read with sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (hereafter '1978 Act'). The said case arises out of CBI, SPE, SCB, Kolkata F.I.R. No.RC.47/S/2014-SCB/KOL dated 05.06.2014.

2. The aforesaid F.I.R. dated 05.06.2014 of the case was registered by treating first information reports of eight cases as original F.I.R. instituted in different police stations of the State of Odisha against the Artha Tatwa (AT) Group of Companies (hereafter 'Company') pursuant to the directions of the Hon'ble Supreme Court dated 09.05.2014 passed in Writ Petition (Civil) No.401 of 2013 filed by Shri Subrata Chattoraj and Writ Petition (Civil) No.413 of 2013 filed by Shri Alok Jena.

In their first information reports, the informants of those eight cases alleged, inter alia, that they along with the other depositors paid huge amounts to the Company for getting higher returns in terms of interests and incentives under various schemes floated by the Company and cheap flats/plots under various projects undertaken by the Company represented by its

Chief Managing Director Pradeep Kumar Sethy. The company neither refunded the amount due to the depositors/investors as agreed upon nor constructed the flats as per agreement and also did not sell the alleged land to the investors/depositors. On being asked by the depositors/investors to refund the money paid to the company by them, accused Pradeep Kumar Sethy and other Directors of the Company closed down the branch offices at various places of Odisha as well as head office of the Company located at SCR-29, Kharvelnagar, Unit-III, Bhubaneswar and fled away and accordingly, the depositors have been cheated by the Company.

In the said case, charge sheet was submitted on 11.12.2014 against the petitioner and other accused persons for commission of offences as aforesaid keeping the further investigation open under section 173(8) of Cr.P.C. In the charge sheet, it is stated against the petitioner that he was the Advocate General of Odisha during the period from June 2009 to September 2014. He had purchased a building located at plot No.11-3B/1332, Category-B measuring 4000 Sq.ft. in Sector-11, Bidanashi, Cuttack from the accused Pradeep Kumar Sethy. As per records, accused Pradeep Kumar Sethy had purchased the said building from one of the Hon'ble Judge of this Court for

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consideration of Rs.1,00,00,000/- (rupees one crore) during April 2011 out of the money flown from the accounts of the Company and later, transferred the said plot to the petitioner. Though the sale transaction was shown to be of Rs.1,01,00,000/- (rupees one crore one lakh), but in fact an amount of Rs.70,00,000/- (rupees seventy lakhs) only was paid by the petitioner to the accused Pradeep Kumar Sethy. During the course of investigation, two money receipts were seized from the official premises of the petitioner indicating the payment of Rs.1,01,00,000/- (rupees one crore one lakh) towards consideration. The said money receipts bore the forged signatures of accused Pradeep Kumar Sethy. During the relevant period of time i.e. during October 2012, when the above transaction took place, agitations were going on in Odisha against the accused Pradeep Kumar Sethy so also against the Company by the depositors which was evident from the registration of the 1st F.I.R. against the Company on 06.10.2012 following which the accused Pradeep Kumar Sethy moved an anticipatory bail application before this Court on 09.10.2012 and during the relevant time, it is the prosecution case that the petitioner entered into a criminal conspiracy with accused Pradeep Kumar Sethy and in furtherance thereof, he extended

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his hospitality towards the said accused as a result of which anticipatory bail was granted to the said accused on 18.10.2012. During the course of investigation, two separate agreements for sale of the said plots were recovered/seized from the possession of the petitioner. In the said two agreements, the consideration agreed upon was rupees one crore and one lakh which was contrary to the consideration amount mentioned in the affidavit dated 03.10.2012 submitted before the Cuttack Development Authority (hereafter 'C.D.A.') for transfer of ownership of the said property. It may be mentioned here that in the said affidavit dated 03.10.2012, the consideration amount was mentioned as rupees one crore and one thousand. As per the charge sheet, the petitioner misappropriated the balance amount of rupees thirty one lakhs that he was supposed to pay to the accused Pradeep Kumar Sethy.

3. In the discharge petition and written notes of submission filed before the learned trial Court, it was urged on behalf of the petitioner that on a bare perusal of the police papers supplied to the petitioner by the prosecution, it appeared that the prosecution has relied upon the following materials:

(i) The statements of one Tapan Kumar Mohanty and Umashankar Acharya to identify the false

signatures of Pradeep Kumar Sethy in the money receipts seized from the office chamber of the petitioner;

(ii) The statement of one Jibankanta Patnaik to the effect that the accused Pradeep Kumar Sethy was introduced by the petitioner to him and also to prove that the petitioner was the Advocate General of Odisha when accused Pradeep Kumar Sethy had applied and got the anticipatory bail;

(iii) The statement of one Baisnab Ch. Das, the Branch Manager of State Bank of India, Tulasipur Banch to prove that Rs.70,00,000/- (rupees seventy lakhs only) was withdrawn from the account of the petitioner vide cheques mentioned in the money receipts recovered from the office of the petitioner;

(iv) The statement of one Dillip Kumar Mohanty to prove payment of Rs.70,00,000/- (rupees seventy lakhs) by the petitioner to Pradeep Kumar Sethy;

(v) The file of Cuttack Development Authority bearing No.Estt-LIC-BD-119/07 in respect of Plot No.11-3B/1332 and the agreements for sale dated

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28.12.2012 and 09.01.2013 between the petitioner and Pradeep Kumar Sethy.

It was further urged on behalf of the petitioner that from the sum total of the aforesaid materials, it would be seen that the crux of the allegation against the petitioner is that though the sale transaction was shown to have been made for Rs.1,01,00,000/- (rupees one crore one lakh), but in fact an amount of Rs.70,00,000/- (rupees seventy lakhs) was paid by the petitioner to the accused Pradeep Kumar Sethy. It further shows that during the course of investigation, some money receipts were seized indicating the payment of Rs.1,01,00,000/- towards the consideration, but on query, it was found that the money receipts bore the forged signatures of accused Pradeep Kumar Sethy. The prosecution has also tried to establish that during the relevant period of time i.e. October 2012 when the above transaction took place, agitations were going on in Odisha against accused Pradeep Kumar Sethy so also against the Company by the depositors which would be evident by registration of the first F.I.R. against the Company on 06.10.2012, following which the accused Pradeep Kumar Sethy moved an application for anticipatory bail before this Court on 09.10.2012 and during the relevant time, the petitioner was the

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Advocate General and he entered into criminal conspiracy with the said accused Pradeep Kumar Sethy and in furtherance thereof extended his hospitality towards the accused for which his application for anticipatory bail was allowed on 18.10.2012.

It was further urged in the discharge petition that during the course of investigation, the I.O. seized two separate agreements for sale of the said plot from the possession of the petitioner. In the said agreements, the consideration amount as agreed upon by the parties was Rs.1,01,00,000/- (rupees one crore and one lakh) which was contrary to the consideration amount mentioned in the affidavit dated 03.10.2012 of the accused Pradeep Kumar Sethy made in connection with transfer of ownership of the said property in favour of the petitioner. In the said affidavit dated 03.10.2012, consideration amount mentioned was Rs.1,00,01,000/- (rupees one crore and one thousand), but the petitioner paid only Rs.70,00,000/- (rupees seventy lakhs) to the accused Pradeep Kumar Sethy and thereby he had misappropriated the remaining amount of Rs.31,00,000/- (rupees thirty one lakhs) which he was supposed to pay to accused Pradeep Kumar Sethy.

It further urged in the discharge petition that though the petitioner was the Advocate General of Odisha during the

relevant time, but it was humanly impossible for him to verify each and every case and to know the facts and points of law involved in the case and particularly in criminal cases, who were the accused persons and what were the accusation against them. The accused Pradeep Kumar Sethy was involved in a criminal case and he filed an application for anticipatory bail through his counsel which was duly opposed to by the State counsel, but the bail application was disposed of. The allegation made by the prosecution to the effect that the petitioner had got acquaintance with the accused Pradeep Kumar Sethy before filing of the case for which he had shown undue favour is nothing but based on surmises and conjectures.

It was further urged in the discharge petition that considering the case of the prosecution, none of the ingredients of any of the offences alleged are made out against the petitioner. Though in the concluding part of the charge sheet filed against the petitioner, it was mentioned that the petitioner misappropriated the balance amount of Rs.31,00,000/- (rupees thirty one lakhs) that he was supposed to pay to the accused Pradeep Kumar Sethy, in view of the definition of 'criminal breach of trust' as per section 405 of the I.P.C., it would be seen that to constitute an offence of criminal breach of trust, it is

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essential that the prosecution should prove that the accused was entrusted with some property and that in respect of such property so entrusted, there was dishonest misappropriation or dishonest use or dishonest conversion by the accused, that the ownership of the property in respect of which criminal breach of trust is alleged to have been committed, was with some persons other than the accused and the later must held it on account of some persons or in some way for benefit. In other words, there must be an entrustment and the word 'any' occurring in the section do not enlarge the meaning of term 'entrustment' and it would arise whenever something whether be it money or any other thing is given to someone with some direction, but the same was not done in the same line. The person aggrieved is the person, whose property has been misappropriated by the accused and he should have set the law into motion to put an accused in the ambit and scope of section 405 of the I.P.C. Accused Pradeep Kumar Sethy with whom the petitioner allegedly entered into an agreement to pay certain amount is not the informant nor he had made any allegation that his property was misappropriated by the accused on a wrong notion. Bereft of that, the document seized by the prosecution from the office of the petitioner to the effect that Rs.31,00,000/- (rupees thirty

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one lakhs) has been paid to accused Pradeep Kumar Sethy was not utilized by the petitioner in any manner and it was still lying in the Bank, which would show that his intention was not deliberate or dishonest to cheat or to misappropriate the money of accused Pradeep Kumar Sethy. Thus, the ingredients of section 405 of the I.P.C. are not attracted in the case inasmuch as to attract this section, there must be entrustment plus misappropriation and as such charge sheet under sections 406/420 of the Indian Penal Code against the petitioner is not tenable either in fact or in law. Here, there is no allegation by the prosecution as to who had entrusted the property to the petitioner and to whom the money was not been paid as per the contract.

It was further urged that there is no evidence that prior to the execution of the agreements dated 28.12.2012 and 09.01.2013 and at the time of filing bail application by the accused Pradeep Kumar Sethy, the petitioner had entered into a criminal conspiracy with the accused. The allegation in the charge sheet is that the petitioner entered into criminal conspiracy with accused Pradeep Kumar Sethy to facilitate grant of bail is totally misconceived. The grant of bail is a judicial order passed by one Hon'ble Judge of this Court and therefore, it is

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very difficult to suggest that the bail order was the outcome of a criminal conspiracy and as such submission of chargesheet under section 120-B of the I.P.C. is not tenable either in the fact or in law. It was further urged in the discharge petition that the other offences as per the charge sheet are not applicable against the petitioner in the facts and circumstances of the case.

In appears from the impugned order that the learned counsel for the petitioner cited certain decisions of the Hon'ble Supreme Court in the cases of **P. Vijayan -Vrs.- State of Kerala reported in (2010) 2 Supreme Court Cases 398** and **Yogesh -Vrs.- State of Maharastra reported in (2008) 10 Supreme Court Cases 394** during course of hearing of the discharge petition.

4. No objection to the discharge petition was filed by the prosecution.

5. After hearing the learned counsel for both the parties, the learned trial Court while rejecting the discharge petition observed as follows:-

> "Admittedly, the petitioner is raising the aforesaid issues as averred in his petition for the first time and that too much after submission of charge sheet. Absolutely, not a single scrap of paper is available with the case record to show that if at all the petitioner has ever challenged

the propriety of the investigation from the day it was registered under the above mentioned penal sections of law. That apart, it is unascertainable as to why and under what circumstance the petitioner did not chose to challenge the order of taking cognizance after submission of charge sheet. Moreover, the alleged overtacts have been committed in pursuance of criminal conspiracy by the petitioner along with other accused persons. Needless to say, this Court has taken cognizance of the offences under sections 120-B, 406, 409, 411, 420, 468, 471 of I.P.C. read with sections 4, 5 and 6 of the 1978 Act in this case being satisfied with the existence of a prima facie case. Further on perusal of the case record, it is found that the above petitioner is involved in the activities of M/s. Artha Tatwa Group of Companies and there exists prima facie materials to proceed against him.

In the above view of the matter, this Court finds no material in the petition filed on behalf of the accused-petitioner namely Ashok Mohanty as such the same is liable to be rejected in the facts and circumstances of this case for the reasons herein before stated."

6. Mr. Santosh Kumar Mund, learned Senior Advocate appearing for the petitioner challenging the impugned order contended that the entire reasoning assigned by the learned trial

Court in rejecting the discharge petition are fallacious. The trial Court seems to be thoroughly confused regarding the scope of section 239 of Cr.P.C. for which it could not adjudicate the contentions raised from the side of the petitioner properly and in accordance with law. Certain documents were produced by the learned Special Public Prosecutor in this Court during the hearing of the criminal revision petition which were not available in the trial Court at the time of consideration of discharge petition and those documents are letter of the Investigating Officer dated 30.10.2017 addressed to Government Examiner of Question Document, Forensic Examination Report dated 30.11.2017, purported petition filed by the prosecution before the learned trial Court on 21.05.2018 along with the documents annexed thereto, 161 Cr.P.C. statement of one Pradyumna Keshari Praharaj and 164 Cr.P.C. statement of Durga Prasad Dhal recorded on 07.11.2017 and his 161 Cr.P.C. statements recorded on 13.10.2017 and 26.10.2017. The learned counsel further submitted that the additional documents submitted by the prosecution in course of hearing of the criminal revision petition though was produced on 21.05.2018 by the I.O. but those were taken away and there is absolutely no reference to such documents in the impugned order and therefore, when at the

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time of consideration of the discharge petition under section 239 Cr.P.C., the trial Court was supposed to consider the police report and the documents sent with it under section 173 of Cr.P.C. and the additional documents produced here before this Court were not available with the learned trial Court, the same should not be taken into account at all. According to Mr. Mund, entertaining new materials produced by the learned Special Public Prosecutor before this Court in exercise of revisional jurisdiction would not be proper and justified as the petitioner got no scope to go through those documents at the time of consideration of the discharge petition by the learned trial Court to have his say. Learned counsel almost reiterated the submissions which were made in the discharge petition and written note of submission filed before the learned trial Court and apart from the decisions which were relied upon in the trial Court, he placed reliance in the cases of **Dr. Vimla -Vrs.- Delhi Administration reported in A.I.R. 1963 Supreme Court 1572**, **Rajendra @ Rajesh @ Raju -Vrs.- State (NCT of Delhi) reported in (2019) 10 Supreme Court Cases 623**, **Dalip Kaur and others -Vrs.- Jagnar Singh and another reported in (2009) 14 Supreme Court Cases 696**, **Archana Rana -Vrs.- State of Uttar Pradesh and another reported in**

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(2021) 3 Supreme Court Cases 751, **M.N.G. Bharateesh Reddy -Vrs.- Ramesh Ranganathan reported in 2022 Supreme Court Cases Online (SC) 1061**, **N. Raghavender -Vrs.- State of Andhra Pradesh (CBI) reported in 2021 Supreme Court Cases Online (SC) 1232**, **State -Vrs.- Siddarth Vashisth reported in 2001 Supreme Court Cases Online Del 270** and **Brij Ballabh Goyal -Vrs.- Shri Satya Dev and another reported in A.I.R. 1960 Raj 213**.

7. Mr. Sarthak Nayak, learned Special Public Prosecutor appearing for the C.B.I., on the other hand, submitted that the close nexus between the petitioner with co-accused Pradeep Kumar Sethy is evident from the statements of Shri Jiban Kanta Pattanaik, Senior Private Secretary to Advocate General along with Shri Durga Prasad Dhal, Advocate and Shri Pradyumna Keshari Praharaj. Shri Jiban Kanta Pattanaik has specifically stated that the petitioner telephonically called him to his residence during the evening hours on 11.01.2013 and asked him to attest the signatures of accused Pradeep Kumar Sethy, who was present at his residence at that time. This indicates that the accused Pradeep Kumar Sethy, C.M.D. of the Company was so close to the petitioner that he was even having access to the residence of the petitioner. Witness Durga Prasad Dhal,

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AQdvocate in his statement recorded under section 164 Cr.P.C. has also clearly stated before the learned J.M.F.C., Bhubaneswar that accused Shri Devasis Panda, the then Additional Government Advocate, who was close to the accused Pradeep Kumar Sethy, was also very close to the petitioner and similarly, Shri Pradyumna Keshari Praharaj has stated that the property at C.D.A., Cuttack was given to the petitioner free of cost so that he would help the company at High Court in case any legal problem arose in future. He has also stated that when series of allegations were leveled against the petitioner for the above property, the petitioner paid only Rs.70.00 lakhs during January-March, 2013 through cheques and remaining amount were never paid by the petitioner.

Mr. Nayak further argued that during the course of investigation, searches were conducted at the residential as well as office premises of the petitioner and two separate agreements for sale of the said plot with building, both executed between the petitioner and accused Pradeep Kumar Sethy were recovered/seized from the possession of the petitioner. In the said two agreements dated 28.12.2012 and 09.01.2013, the consideration agreed upon was Rs.1,01,00,000/- (rupees one crore and one lakh) which was contrary to the consideration

amount as mentioned in another affidavit dated 03.10.2012 submitted to the C.D.A. for transfer of ownership of the said property.

The statement of account of the petitioner collected from the bank during the course of investigation revealed that only Rs.70.00 lakhs was paid by the petitioner to the accused Pradeep Kumar Sethy and balance amount of Rs.31.00 lakhs was never paid by the petitioner. Thus, it is clear that the petitioner in criminal conspiracy with the accused Pradeep Kumar Sethy misappropriated Rs.31.00 lakhs that he had in fact collected from the victim depositors of company.

Mr. Nayak further submitted that the investigation further revealed that the petitioner had submitted another affidavit dated 05.01.2013 to the C.D.A. Though the said affidavit was shown to have been sworn before the Executive Magistrate, Sadar, Cuttack, but investigation revealed that the signature of the Executive Magistrate on the affidavit was forged. Relevant facts and the evidence to prove the offence of forgery and using a forged document as genuine have already been submitted as relied upon documents before the learned trial Court. Therefore, the petitioner is liable for commission of

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offences of using forged documents (valuable security) as genuine knowing the same to be forged.

Mr. Nayak further submitted that during course of investigation, the file relating to the transfer of the property located at plot No.11-3B/1332, Category-B, measuring 4000 Sq.ft. in Sector-11, Bidanashi, Cuttack was seized from the office of the C.D.A. and the said file contained affidavits dated 03.10.2012 sworn by accused Pradeep Kumar Sethy and another affidavit dated 03.10.2012 sworn by the petitioner before the Executive Magistrate, Sadar, Cuttack. Investigation revealed the signatures of Shri Durga Prasad Dhal as well as the Executive Magistrate on the affidavit dated 03.10.2012 sworn by the petitioner are forged. This fact has also been proved from the statement of Shri Durga Prasad Dhal, Advocate recorded under section 164 Cr.P.C. This clearly indicates that the petitioner, right from the beginning, got prepared forged documents namely the affidavits and used the said forged affidavits for transfer of the property from accused Pradeep Kumar Sethy in his name knowing the same to be forged.

He further argued that during course of investigation, searches were conducted at the residential and office premises of the petitioner. During course of search, a

bunch of documents including two money receipts both dated 25.03.2013 towards receipt of total amount Rs.1,01,00,000/- (rupees one crore and one lakh) through cheques indicating cheques numbers (Rs.81.00 lakhs for land and building + Rs.20.00 lakhs for furniture, fixtures in respect of plot No.113-B/1333-2, Sector-11, Markat Nagar, Cuttack) were seized. The said two money receipts bore forged signatures of accused Pradeep Kumar Sethy. Shri Tapan Kumar Mohanty, a witness who was acquainted with the handwritings of accused Pradeep Kumar Sethy has stated that the signatures of the said accused on both the money receipts dated 25.03.2013 were forged.

While supporting the impugned order, it was argued that at the stage of framing of charge, a detailed inquiry and detailed appreciation of defence argument is impermissible. The Court is required to see whether a prima facie case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after the evidence is adduced in the case.

Mr. Nayak further argued that as per the agreement for sale dated 28.12.2012 and 09.01.2013 executed between accused Pradeep Kumar Sethy and the petitioner, the total consideration money for sale of the scheduled property has been

mentioned as Rs.1,01,00,000/- (rupees one crore and one lakh) whereas investigation revealed that only Rs.70.00 lakhs was paid by the petitioner. During the course of interrogation, the accused Pradeep Kumar Sethy revealed before C.B.I. that the remaining amount of Rs.31.00 lakhs was never paid and the same was misappropriated by the petitioner.

It was further argued that the petitioner not only prepared the forged affidavits dated 03.10.2012 and 05.01.2013 shown to be sworn before the Executive Magistrate, Cuttack Sadar, Cuttack but also used those affidavits as genuine by submitting the same to the C.D.A. authorities for transfer of the property from the accused Pradeep Kumar Sethy to his name. C.F.S.L. expert, after forensic examination, has opined that the signature of the identifier is forged on the affidavit dated 03.10.2012 submitted by the petitioner and therefore, the petitioner is liable for commission of offences punishable under sections 468 and 471 of the Indian Penal Code.

Mr. Nayak emphatically argued that on holding the post of Advocate General, it was the duty of the petitioner to ensure that such a matter of grave public importance like the anticipatory bail of accused Pradeep Kumar Sethy be properly represented before this Court so that the accused, who had

allegedly cheated the innocent public at large, should not get anticipatory bail. As Advocate General of the State, he cannot take the plea that he was not having any knowledge about such a case of grave public importance in which state-wide public agitations were going on. The petitioner, as Advocate General, was responsible for proper representation of the facts before this Court so that the accused Pradeep Kumar Sethy would not have got anticipatory bail, but in criminal conspiracy with the said accused, the petitioner intentionally did not do it for which anticipatory bail was granted to the accused by a cryptic order.

While concluding his argument, Mr. Nayak contended that the impugned order is just and proper in the eyes of law and hence, the revision petition filed by the petitioner should be dismissed in the interest of justice. Reliance was placed upon the decisions of the Hon'ble Supreme Court in the cases of **State of Orissa -Vrs.- Debendra Nath Padhi reported in (2005) 30 Orissa Criminal Reports (SC) 177**, **Superintendent and Remembrancer of Legal Affairs West Bengal -Vrs.- Anil Kumar Bhunja and others reported in A.I.R. 1980 S.C. 52** and **State of Maharashtra -Vrs.- Priya Sharan Maharaj and others reported in A.I.R. 1997 S.C. 2041**.

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8. Before adverting to the contentions raised by the learned counsel for the respective parties carefully, on perusal of the impugned order passed by the learned trial Court, it seems that the discharge petition was rejected on the following grounds:-

(i) The petitioner is raising the issues as averred in his petition for the first time and that too much after submission of charge sheet. Absolutely, not a single scrap of paper is available with the case record to show that if at all the petitioner had ever challenged the propriety of the investigation from the day it was registered under the above mentioned penal sections of law;

(ii) This Court has taken cognizance of the offences under sections 120-B, 406, 409, 411, 420, 468, 471 of I.P.C. read with sections 4, 5 and 6 of the 1978 Act on being satisfied with the existence of a prima facie case. It is unascertainable as to why and under what circumstance, the petitioner did not chose to challenge the order of taking cognizance after submission of charge sheet;

(iii) The alleged overtacts have been committed in pursuance of criminal conspiracy by the petitioner along with other accused persons;

(iv) On perusal of the case record, it is found that the petitioner is involved in the activities of M/s. Artha Tatwa Group of Companies.

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The first two reasonings assigned in the impugned order, in my humble view are quite fallacious. Non-challenging of the propriety of investigation from the day the F.I.R. was registered so also the order of taking cognizance after submission of charge sheet, cannot be a ground to reject the discharge petition. Obviously, when the F.I.R. was registered on 05.06.2014 treating the first information reports of eight cases as original F.I.R. of the case in view of the direction of the Hon'ble Supreme Court, the name of the petitioner was not there in the first information report. Where was the necessity for the petitioner to challenge the registration of the F.I.R. lodged on 05.06.2014 immediately after its registration when he was not named as an accused in the said F.I.R.? An accused can challenge the F.I.R. so also the submission of charge sheet and taking of cognizance at different stages but merely because he did not do that, he is not deprived in filing the petition for discharge before the learned trial Court either under section 227 Cr.P.C. or under section 239 of Cr.P.C. at the appropriate stage. In other words, it would be quite unjustified to hold that the accused who challenges the F.I.R. after its registration and the order of taking cognizance after submission of charge sheet can only file the discharge petition in the trial Court. This scope of

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interference with the criminal proceeding is different at different stages. Both the sections 227 and 239 of Cr.P.C. confer valuable right on the accused to file petition for discharge before the learned trial Court. Obviously, if he files such a petition and serves a copy of the same on the learned Public Prosecutor, the latter is at liberty to file objection to such petition and even without filing any written objection, the Public Prosecutor can oppose the discharge petition filed by the accused. There is no bar on the part of the Public Prosecutor in raising oral objection to the discharge petition even though he has not filed the written objection. Mere non-filing of written objection by the Public Prosecutor cannot be a ground on the part of the learned trial Court not to consider the oral objection raised in that behalf. Therefore, I am of the humble view that the petitioner as an accused is quite justified in law in filing a petition for discharge under section 239 Cr.P.C. before the learned trial Court even though earlier he did not challenge the F.I.R. or the order of taking cognizance. Choice of challenging the proceeding at a particular stage lies with the accused and if it is legally permissible, then the Court has to entertain the same and consider the same in accordance with law and cannot reject the

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petition merely on the ground of not challenging the same earlier.

So far as the fourth reasoning assigned by the learned trial Court that the petitioner is involved in the activities of M/s. Artha Tatwa Group of Companies, learned counsel for both the sides fairly submitted there is no such material on record in that respect.

The third reasoning assigned by the learned trial Court that the alleged overtacts have been committed in pursuance of criminal conspiracy by the petitioner along with other accused persons, will be discussed later.

9. At the very outset, it would be apt to discuss the scope and ambit of section 239 of Cr.P.C. which comes under Chapter XIX of the Code and deals with the power of the Magistrate to discharge the accused in the trial of warrant cases.

In the case of **Debendra Nath Padhi** *(supra)*, it is held that section 239 of Cr.P.C. requires the Magistrate, to consider 'the police report and the documents sent with it under section 173' and, if necessary, examine the accused and after giving accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof.

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There can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The material as produced by the prosecution alone is to be considered and not the one produced by the accused. In our view, clearly the law is that at the time of framing charge or taking cognizance, the accused has no right to produce any material.

In the case of **Anil Kumar Bhunja** *(supra)*, it is held that the case was at the stage of framing charges and the prosecution evidence had not yet commenced. The Magistrate was therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in **State of Bihar -Vrs.- Ramesh Singh 1977 Criminal Law Journal 1606**, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the

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stage of section 227 or 228 of the Cr.P.C. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of the offence.

In the case of **Priya Sharan Maharaj** *(supra)*, it is held that at the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

In the case of **P. Vijayan** *(supra)*, it is observed that if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order

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to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the

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Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure.

In my humble view, when the allegations are baseless or without foundation and no prima facie case are made out, it is just and proper to discharge the accused to prevent abuse of process of the Court. If there is no ground for presuming that accused has committed an offence, the charges must be considered to be groundless. The ground may be any valid ground including the insufficiency of evidence to prove the charge. When the materials at the time of consideration for framing the charge are of such a nature that if unrebutted, it would make out no case whatsoever, the accused should be discharged. Appreciation of evidence is an exercise that this Court is not to undertake at the stage of consideration of the application for discharge. The truth, veracity and effect of the materials proposed to be adduced by the prosecution during trial are not to be meticulously adjudged. The likelihood of the accused in succeeding to establish his probable defence cannot be a ground for his discharge.

Keeping in view the ratio laid down by the Hon'ble Supreme Court in the aforesaid cases, when so many points

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were canvassed not only in the discharge petition and written note of submission filed by the petitioner and contentions were also raised during the hearing of the discharge petition citing decisions, it was not proper on the part of the learned trial Court to reject the same in a slipshod manner on some fallacious grounds without even limited evaluation of materials and documents and sifting the evidence to prima facie find out whether sufficient grounds exist or not for the purpose of proceeding against the petitioner. What prompted the learned trial Court to hold that the alleged overt act have been committed in pursuance of criminal conspiracy by the petitioner along with other accused persons, is not borne out from the impugned order. Failure to record reasons can amount to denial of justice, as the reasons are live links between the minds of the decision taker to the controversy in question and the decision or conclusion arrived at. Requirement of a speaking order is judicially recognized as an imperative. Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the 'inscrutable face of the sphinx', it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudicating the validity of the decision. Right to

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reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. (Ref:-**State of Punjab -Vrs.- Bhag Singh : (2004) 1 Supreme Court Cases 547**, **Rajeev Suri -Vrs.- Delhi Development Authority and others : 2021 SCC OnLine SC 7**).

The conclusions arrived at by the learned trial Court in the impugned order without assigning any cogent reasons reflects non-application of mind. In view of fact that the learned trial Court has passed the impugned order in a mechanical manner, though I was contemplating of sending the matter on remand to the said Court to decide the matter afresh by passing a reasoned order discussing the contentions raised but as the matter is pending in this Court since 2018 and the further proceeding in the trial Court has been stayed and taking note of the same, the Hon'ble Supreme Court in its order dated 12.09.2022 passed in SLP (Crl.) Nos.5366-5367 of 2022 requested this Court to dispose of this revision petition in an

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expeditious manner, it would be proper on my part to deal with the submissions raised by the respective parties in favour of discharge and against it instead of remanding the matter to the trial Court to cut short any further delay.

10. There is no dispute that the Hon'ble Supreme Court in its order dated 09.05.2014 passed in the aforesaid two writ petitions filed by Sri Subrata Chattoraj and Sri Alok Jena superficially directed to C.B.I. to look into the larger conspiracy aspect and money trail. The investigation revealed which is also not disputed by the learned counsel for the petitioner that the petitioner purchased a building located in C.D.A. Sector-11, Bidanasi, Cuttack from the accused Pradeep Kumar Sethy who had purchased the same from one of the Hon'ble Judge of this Court during April 2011. The prosecution case is that the purchase of the property was made from the money flown from the accounts of the company which was latter transferred to the petitioner. On 03.10.2012 an application for 3rd party transfer was filed before C.D.A. by accused Pradeep Kumar Sethy and petitioner also filed application before Secretary, C.D.A. enclosing necessary documents and affidavit in prescribed format for transfer of the plot. On 06.10.2012 Balasore P.S. Case No.352 of 2012 was instituted against accused Pradeep

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Kumar Sethy and others for commission of offences under sections 420/506/34 of the I.P.C. along sections 4, 5 and 6 of 1978 Act. Accused Pradeep Kumar Sethy approached this Court for anticipatory bail in BLAPL No.27162 of 2012 on 09.10.2012 and the bail application was allowed as per order dated 18.10.2012. An agreement was entered into by the accused Pradeep Kumar Sethy with the petitioner for sale of property for an agreed consideration of Rs.1,01,00,000/- (rupee one crore and one lakh) only. In the said agreement, it was mentioned that advance amount of Rs.20,00,000/- (rupees twenty lakh) was paid vide cheque no.041990 dated 28.12.2012. Out of the agreed consideration, Rs.81 lakhs was towards the cost of land and building and Rs.20 lakhs was towards cost of furniture, fixtures and electrical and electronic fittings. On 09.01.2013 another agreement was entered into between accused Pradeep Kumar Sethy and the petitioner. The necessity for execution of fresh agreement arose as the cheque bearing no.041990 dated 28.12.2012 could not be encashed and it was refunded for which Rs.20 lakhs was paid as advance through two cheques bearing nos.407101 and 407102 dated 09.01.2013. This amount of rupees twenty lakh was debited from the account of the petitioner on 11.01.2013 as per the statement of witness

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Gouranga Charan Das, Branch Manager, S.B.I., Tulasipur Branch, Cuttack. Another cheque bearing no.407103 dated 08.02.2013 amounting to Rs.10 lakhs was paid to the accused Pradeep Kumar Sethy by the petitioner and on 11.02.2013 the said amount was debited from the account of the petitioner. On 22.03.2013 C.D.A. allowed transfer and allotted the plot in favour of the petitioner and on 25.03.2013 lease deed was executed before the District Sub-Registrar, Cuttack between the C.D.A and the petitioner. On 25.03.2013 the petitioner paid rupees seventy one lakh through eight cheques to accused Pradeep Kumar Sethy, out of which seven cheques were of the value of rupees ten lakh each and another one was of rupees one lakh. Accused Pradeep Kumar Sethy acknowledged the receipt of eight cheques and sent a money receipt to the petitioner, out of which he encashed the cheque bearing nos. 407107, 407108, 407109 and 407110 on 30.03.2013, but did not encash cheque nos.407111, 407112, 407113 and 407114. It is the prosecution case that though the said transaction between the petitioner and the accused Pradeep Kumar Sethy were shown to be Rs. 1,01,00,000/-, but in fact an amount of Rs.70,00,000/- was paid by the petitioner to the said accused.

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When a submission was made on the last date of hearing of this revision petition that the documents which were produced by the learned Special Public Prosecutor before this Court were also produced before the learned trial Court, but those documents were taken away by the Investigating Officer for which those were not available with the Court at the time of passing the impugned order, in order to ascertain the correct state of affairs, this Court vide order dated 20.09.2022 called for the relevant order sheets and the same was sent by the learned trial Court which indicated on 21.05.2018 on the strength of an advance petition filed by the learned Public Prosecutor, C.B.I., the I.O. filed a petition along with some documents in compliance to the order dated 17.04.2018 and another memo was filed by the learned Public Prosecutor with a prayer to take back those documents/statements to keep in safe custody in C.B.I. Malkhana after perusal of the same by the Court in order to facilitate smooth investigation of the case. The learned trial Court allowed the prayer and the I.O. was directed to supply those documents/statements to the learned defence counsel before 26.05.2018 and the original documents/statements were handed over to the I.O. with a direction to keep the same in safe custody. The learned Special Public Prosecutor produced

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documentary proof to indicate that on 22.05.2018 the learned counsel appearing for the petitioner in the trial court received such documents. The learned counsel for the petitioner also did not dispute the same. Therefore, the documents which were produced before this Court by Mr. Nayak, the learned Special Public Prosecutor were not only produced before the learned trial Court and perused by the Court on 21.05.2018 but also the copies were supplied to the learned defence counsel appearing for the petitioner in the trial Court on 22.05.2018 which was much prior to the passing of the impugned order on 27.06.2018.

Though the learned counsel for the petitioner placed reliance in the case of **Siddarth Vashisth** *(supra)*, wherein it was held that the High Court while exercising revisional jurisdiction must not admit further evidence which was not the basis of the view taken by the learned trial Judge and also in the case of **Brij Ballabh Goyal** *(supra)*, wherein it was held that a new question of fact cannot be allowed to be raised in revision, but in my humble view, when certain important statements and documents which were collected after submission of first charge sheet during course of further investigation under section 173(8) of Cr.P.C. were filed in trial Court and copies of the same were also supplied to the learned defence counsel for the petitioner in

the trial Court prior to the consideration of discharge petition, this Court can very well look into such statements and documents at this stage when the rejection of the discharge petition is under challenge as it cannot be said the filing of the documents by the learned Special Public Prosecutor has taken the petitioner for surprise and he has been seriously prejudiced thereby.

The statements of witnesses Jibankanta Pattanaik, Durga Prasad Dhal, Pradyumna Keshari Praharaj indicate about close nexus between the petitioner and accused Pradeep Kumar Sethy, C.M.D. of the Company. The consideration amount for sale of property as mentioned in two agreements dated 28.12.2012 and 09.01.2013 was contrary to the consideration amount mentioned in the affidavit dated 03.10.2012 submitted to the C.D.A. authorities for transfer of ownership of the property. It is strange that in the aforesaid affidavit dated 03.10.2012, accused Pradeep Kumar Sethy has mentioned to have received the consideration money amounting to Rs.1,00,01,000/- (rupees one crore and one thousand) only as agreed between them. In fact, not a single pie had been paid by the petitioner to the accused Pradeep Kumar Sethy as on 03.10.2012. The first cheque was paid by the petitioner to the

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said accused Pradeep Kumar Sethy vide cheque no.041990 dated 28.12.2012 which is mentioned in the agreement dated 28.12.2012. The cheque bearing no.041990 dated 28.12.2012 could not be encashed and it was refunded for which another two account payee cheques bearing nos.407101 and 407102 dated 09.01.2013 of rupees ten lakhs each were issued by the petitioner in favour of the said accused which is mentioned in the agreement dated 09.01.2013. This amount of rupees twenty lakhs was debited from the account of the petitioner on 11.01.2013. A big question mark is raised as to why without receiving a single pie towards the transfer of property, accused Pradeep Kumar Sethy mentioned in his affidavit dated 03.10.2012 submitted to the C.D.A. authorities that he had received consideration money amounting to Rs.1,00,01,000/- (rupees one crore and one thousand) only from the petitioner as agreed between them. Why in spite of receiving eight cheques from the petitioner on 25.03.2013 for total amount of Rs.71,00,000/- (rupees seventy one lakhs), he only presented four cheques for encashment and not the other four cheques of carrying total amount of Rs.31,00,000/- (rupees thirty one lakhs). When search was conducted at the residential and office premises of the petitioner, two money receipts, both were dated

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25.03.2013 stated to have been issued by the accused Pradeep Kumar Sethy, one for an amount Rs.81 lakhs and the other for Rs.20 lakhs were seized, but as per the statement of Tapan Kumar Mohanty, those money receipts bore the forged signatures of accused Pradeep Kumar Sethy. An affidavit dated 05.01.2013 was submitted by the petitioner to the C.D.A. authorities which was allegedly sworn before the Executive Magistrate, Sadar, Cuttack but the investigation revealed that the signature of the Executive Magistrate on the affidavit was forged. Relevant documents and statements to that effect have also been filed before the learned trial Court. The file relating to transfer of property was seized the office of C.D.A. which contained one affidavit dated 03.10.2012 of the accused Pradeep Kumar Sethy and the other affidavit dated 03.10.2012 of the petitioner, but investigation revealed that the signatures of Durga Prasad Dhal as well as the Executive Magistrate on the affidavit of the petitioner were forged. The statement of Durga Prasad Dhal recorded under section 164 of Cr.P.C. substantiates the same.

The charge sheet reveals that in view of the promise of higher returns in terms of interest and incentives under various schemes floated by the Company, the depositors

invested huge amount with the Company for the purchase of cheap flats/plots under various projects/schemes undertaken by the Company represented by its Chief Managing Director i.e. accused Pradeep Kumar Sethy. The Company failed to deliver on its promise and neither did it return the amount due to the depositors/investors as agreed upon nor did it construct the flats as agreed upon. When the investors/depositors attempted to contact the representatives of the Company seeking refund of the money, the accused Pradeep Kumar Sethy and others so connected to the Company fled from the office, thereby cheating the investors/depositors of their hard earned money and savings. After collecting such deposits from the innocent depositors for some period, the Company allegedly completely stopped functioning and thus in that process many investors who had invested money with the company were duped. When agitations were going on against the Company and against the accused Pradeep Kumar Sethy, in view of the close nexus between the said accused with the petitioner, it is the prosecution case that there was no stiff objection from the side of the State during the hearing of the bail application and even case diary was not called for and no prayer was made from the side of the State before the concerned Court seeking time to call

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for the case diary and that facilitated the accused Pradeep Kumar Sethy to get anticipatory bail. What happened between the petitioner and the accused Pradeep Kumar Sethy prior to the grant of bail and after that are very much relevant for the purpose of making out a prima facie case against the petitioner relating to the offences under which charge sheet has been submitted against him.

11. Coming to the accusation of criminal conspiracy against the petitioner as per section 120-B of I.P.C., in the case of **Yogesh *(supra)***, it is held that the basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding

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circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable even if an offence does not take place pursuant to the illegal agreement.

In the case of **Rajendra @ Rajesh @ Raju** *(supra)*, it is held that in order to establish the charge of conspiracy, three essential elements must be shown i.e. a criminal object, a plan or scheme embodying means to accomplish that object, and an agreement between two or more persons to cooperate for the accomplishment of such object. Admittedly, the incorporation of section 10 to the Indian Evidence Act, 1872, suggests that proof of a criminal conspiracy by direct evidence is not easy to get.

There are important statements and material documents which were collected during course of investigation against the petitioner to substantiate criminal conspiracy aspect. There are strong suspicion founded upon such materials which lead this Court to form a presumptive opinion as to the existence of factual ingredients constituting such offence. Whether those statements and documents would be sufficient to hold the

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petitioner guilty is not to be decided in this revision petition. In view of the limited scope of evaluation of such materials and documents on record and sifting of evidence at this stage and since there is prohibition against meticulous assessment of truth, veracity and effect of the evidence adduced by the prosecution, it would not be proper to enter into that arena.

12. Coming to the offences under sections 468 and 471 of I.P.C., the basic requirements are 'forgery' as defined under section 463 of I.P.C. and making a false document as defined under section 464 of I.P.C. In the case of **Dr. Vimla** *(supra)*, while analysing the provisions under sections 463 and 464 of I.P.C., it is held that the expression "defraud" involves two elements, namely, deceit and injury to the person deceived. Injury is something other than economic loss that is, deprivation of property, whether movable or immovable, or of money, and it will include any harm whatever caused to any person in body, mind, reputation or such others. In short, it is a non-economic or non-pecuniary loss. A benefit or advantage to the deceiver will almost always cause loss or detriment to the deceived. Even in those rare cases where there is a benefit or advantage to the deceiver, but no corresponding loss to the deceived, the second condition is satisfied.

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I find that there are prima facie materials on record to show how forged signatures of accused Pradeep Kumar Sethy and an advocate and even the Executive Magistrate were made in creating documents and utilised in connection with transfer of the property in the name of the petitioner. The report of C.F.S.L. expert also lends corroboration to the same. Therefore, there is no dearth of material to prima facie constitute the ingredients of such offences.

13. Coming to the offence under section 420 of the I.P.C., it appears that such accusation is mainly against accused Pradeep Kumar Sethy who allegedly cheated the innocent depositors/investors of their hard earned money. The section requires that a person must commit the offence of cheating as defined under section 415 of I.P.C. and the person cheated must be dishonestly induced to (i) deliver property to any person; or (ii) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

In the case of **Dalip Kaur** *(supra)*, while discussing the provisions under sections 405, 415 and 420 of I.P.C., it is held that an offence of 'cheating' would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of

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contract does not constitute an offence of cheating. The ingredients of section 420 of the I.P.C. are: (i) Deception of any persons; (ii) Fraudulently or dishonestly inducing any person to deliver any property; or (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

In the case of **Archana Rana** *(supra)*, it is held that a fraudulent or dishonest inducement is an essential ingredient of the offence under section 415 Indian Penal Code. A person who dishonestly induced any person to deliver any property is liable for the offence of cheating.

In the case of **M.N.G. Bharateesh Reddy** *(supra)*, it is held that the ingredients of the offence under section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another. Secondly, by doing so the former must induce the person so deceived to (i) deliver any property to any person; or (ii) to consent that any person shall retain any property; or (iii) intentionally induce 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 such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.

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There is no material against the petitioner that such cheating to the innocent depositors/investors made by the accused Pradeep Kumar Sethy was in connivance with the petitioner and therefore, the ingredients of offence under section 420 of the Indian Penal Code are not attracted against the petitioner.

14. Coming to the offence under section 406 and 409 of the I.P.C., there is no dispute that while the former deals with punishment for criminal breach of trust, the latter deals with criminal breach of trust by public servant or by others as mentioned in that section.

In the case of **N. Raghavender** *(supra)*, it is held that the entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under section 405 I.P.C. are a sine qua non for making an offence punishable under section 409 I.P.C. The crucial word used in section 405 I.P.C. is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal

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breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner. Unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, section 409 I.P.C. may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof.

It is the prosecution case that the accused Pradeep Kumar Sethy was entrusted with public money which he had collected from the depositors/investors of the Company under various schemes. He was supposed to account for the same. It is the further prosecution case that such money was utilised in purchasing the property of one of the Hon'ble Judge of this Court and subsequently sold to the petitioner. The documents and affidavits utilised in connection with the transfer of property in the name of the petitioner falsely indicate that the consideration money was more than rupees one crore. It is the further

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prosecution case that by making actual payment of Rs.71 lakhs, the petitioner got the property worth of rupees more than one crore and the paper transaction also falsely reflected the valuation of the property to be more than one crore. When being entrusted with the property or dominion over the property which was purchased by utilizing the public deposits, without receiving the full amount, accused Pradeep Kumar Sethy disposed of the property by way of sale to the petitioner for his use for alleged obvious reasons and thereby the petitioner was benefited by Rs.31 lakhs and in that process, the public money of Rs.31 lakhs was misappropriated and according to the prosecution, such thing happened on account of criminal conspiracy between the two and since the prosecution has collected materials to substantiate such conspiracy, it cannot be said there are complete absence of prima facie materials to constitute the ingredients of the offence under section 409 of I.P.C. which is the aggravated form of criminal breach of trust. The expression 'dishonestly' is defined under section 24 of the Indian Penal Code which states that 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'. In view of the

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materials on record, there has been wrongful gain of Rs.31 lakhs to the petitioner.

15. In my humble view, however, there are no prima facie materials against the petitioner for commission of offence under section 411 I.P.C. which deals with dishonestly receiving stolen money so also for the offences under sections 4, 5 and 6 of 1978 Act.

16. In view of the foregoing discussions, though not for the reasons assigned by the learned trial Court, but on a careful scrutiny, serious deliberations and analysis of the materials on record, it cannot be said that the accusation levelled against the petitioner by the prosecution particularly for the commission of offences under sections 120-B, 409, 468 and 471 of the Indian Penal Code are groundless and that there are no sufficient grounds for proceeding against the petitioner for such offences.

17. Accordingly, the CRLREV petition being devoid of merits, stands dismissed. Consequently, the stay order dated 14.08.2018 which was extended from time to time stands vacated. The learned trial Court shall do well to expedite the framing of charges if there are no other impediments. Since the case is of the year 2014, the learned trial Court shall do well to conclude the trial preferably within one year from the date of

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framing of charges keeping in view the provision under section 309 of Cr.P.C. which provides, inter alia, that in every inquiry or trial, the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded and that no adjournments shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

Before parting, I would like to place it on record by way of abundant caution that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for discharge of the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done by the trial Court at the appropriate stage of the trial.

Urgent certified copy of this order be granted on proper application.

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S.K. Sahoo, J.

Orissa High Court, Cuttack
The 26th October 2022/Pravakar/RKMishra