IN THE COURT OF SH. ARUN BHARDWAJ
SPECIAL JUDGE (PC ACT) (CBI)
(COAL BLOCK CASES-01)
ROUSE AVENUE DISTRICT COURTS, NEW DELHI.

CNR No. DLCT11-000816-2022
Case No. CBI-70/2022
RC NO. 217-2017-A-0006
U/s 120B r/w 218 of IPC r/w 15 & 13(2) r/w 13(1)(d) of P.C. Act 1988

In the matter of: -

CBI

Versus

1. K. Sudhakar S/o Sh. K.V. Ramaniah,
Ex. Additional Legal Advisor, CBI
R/o A-201, Neelkanth Majestic,
Plot No. 5, Sector-17, Road Pali, Kalmboli,
District Raigarh-410218, Maharashtra. ... Accused No.1

2. Vijay Darda S/o Sh. Jawaharlal Darda
Ex. Member of Parliament (Rajya Sabha)
R/o Yavatmal House, Swatantra Sangram Sainani,
Jawaharlal Darda Marg, Nagpur-440022. ... Accused No.2

3. Devendra Darda S/o Sh. Vijay Darda
MD of Lokmat Media Group
R/o Yavatmal House, Swatantra Sangram Sainani,
Jawaharlal Darda Marg, Nagpur-440022. … Accused No. 3

4. Santosh Kumar Bagrodia S/o Late Sh. M.P. Bagrodia,
Ex MP (RS) and Ex. MoS (Coal), Government of India,
R/o Bagrodia House,
52/23, Kishan Marg, D-2, Vasant Kunj,
New Delhi-110070. … Accused No. 4

Present: **Sh. A.P. Singh, Ld. DLA for CBI with Sh. Sanjay Kumar, Ld. ALA for CBI and Sh. N.P. Srivastava, Ld. DLA for CBI.**

Sh. Naveen Kumar, Ld. Counsel for A-1 K. Sudhakar.

Sh. Mudit Jain with Ms. Garima Singh, Ld. Counsels for A-2 and A-3.

Sh. N. Hariharan, Ld. Sr. Advocate with Sh. V. Siddharth, Ld. Counsel for A-4 Santosh Kumar Bagrodia.

ORDER ON CHARGE

1. **Background Facts**: Questioning the allocation of coal blocks made by the Central Government during the period 1993 to 2010, Sh. Manohar Lal

Sharma filed Writ Petition (Crl.) No. 120/2012 before the Hon'ble Supreme Court.

2. Another PIL, Writ Petition (C) No. 463/2012, was also filed by 'Common Cause' in which additional issues were raised and additional reliefs were also prayed.

3. Two prayers were made in these matters.

4. The first prayer was to quash the entire allocation of coal blocks made to private companies by the Central Government.

5. The second prayer was for a court monitored investigation by a Special Investigation Team of CBI and ED into the entire allocation of coal blocks by the Central Government made between 1993 till 2012.

6. I.A. No. 13 of 2014 was filed on 12th January, 2015 by Common Cause and Others in their Writ Petition praying as under:

> "(1) Direct Sh. Ranjit Sinha, Director, CBI not to interfere in the coal block allocation case investigations and prosecutions being carried out by the CBI and to recuse himself from these cases.
>
> (2) Direct an SIT appointed by the Hon'ble Court to investigate the abuse of authority committed by the CBI Director in order to scuttle inquiries, investigations and prosecutions being carried out by the CBI in coal block allocation cases and other important cases."

7. It was mentioned in the said application that Ranjit Sinha, Director CBI had met several persons at his residence who were accused in prominent cases including the Coal Block Allocation scam without any of the investigating officers being present. Ranjit Sinha had several meetings with Vijay Darda and his son Devender Darda who were being investigated in the case of illegal allocation of coal blocks.

8. During hearing of that application, the learned counsel for Common Cause filed a copy of the 'Entry Register' in a sealed cover where details of visits of the accused to the official residence of Ranjit Sinha were recorded.

9. The Hon'ble Supreme Court, in its order dated 14.05.2015, recorded that:

> "32. There is a very high degree of responsibility placed on an investigating agency to ensure that an innocent person is not subjected to a criminal trial. This responsibility is coupled with an equally high degree of ethical rectitude required of an investigating officer or an investigating agency to ensure that the investigations are carried out without any bias and are conducted in all fairness, not only to the accused person but also to the victim of any crime, whether the victim is an individual or the state."

10. The Hon'ble Supreme Court also held in para 36 that the meeting of Ranjit Sinha with the accused persons in the Coal Block Allocation case without the investigating officer being present, is enough to persuade the court that some further inquiry is necessary to ensure that the investigations have been fair in the coal block allocation cases where Ranjit Sinha has had one or more meetings with one or more accused persons.

11. The Hon'ble Supreme Court further held in para 37 that if any independent inquiry shows that the CBI has acted fairly, it will enhance its institutional credibility and its image. On the other hand, if the independent inquiry shows that Ranjit Sinha managed to influence some specific investigations in the Coal Block Allocations case, it will serve the larger public interest and will enable CBI to take appropriate corrective and remedial measures. Either way, through an independent inquiry, the CBI will be the beneficiary rather than the loser.

12. In paragraph 46, the Hon'ble Supreme Court held that:

> "46. With regard to I.A. No. 13 of 2014, since we have held that it was completely inappropriate for Sh. Ranjit Sinha to have met persons accused in the Coal Block Allocation case without the investigating officer being present or without the investigating team being present, it is necessary to look into the question whether any or more such meetings of Sh. Sinha with accused persons without the investigating officer have had any impact on the investigations and subsequent chargesheets or closure reports filed by the CBI. We require assistance in this matter, particularly for determining the methodology for conducting such an inquiry. For rendering assistance to us in this regard, notice be issued to the Central Vigilance Commission returnable on 6th July, 2015."

13. Further, the Hon'ble Supreme Court again recorded in its order dated 7th September, 2015 that the inquiry shall be for the purpose of ascertaining whether the investigations conducted by the Central Bureau of Investigation have been influenced in any manner by Ranjit Sinha in respect of the accused in the Coal Block Allocation case.

14. In that order, it was also recorded that it was suggested to the Hon'ble Supreme Court that Sh. M.L. Sharma (Retd.), Former Special Director, CBI may be an appropriate person to conduct the inquiry. The Hon'ble Supreme Court while appointing Sh. Sharma for conducting the inquiry, expected the inquiry to be completed within 6 to 8 weeks.

15. The report of the inquiry conducted by Sh. M.L. Sharma was submitted to the Hon'ble Supreme Court on 4th March, 2016, **D-9, Page-10**.

16. In respect of RC 219 2012 E 0009 (M/s. AMR Iron and Steel Private Ltd), the question whether visits of accused Vijay Darda, Devender Darda and Santosh Bagrodia influenced/impacted decision-making by Ranjit Sinha was answered in the inquiry as under:

> "Whether visits of accused Vijay Darda, Devender Darda and Santosh Bagrodia influenced/impacted decision making by Sh. Ranjit Sinha

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5.14.1 RCs 8/2012, 9/2012 and 10/2012 were registered on 3.9.2012 on conversion of a PE. The investigation and decision making in these cases continued from September, 2012 to June, 2014. Vijay Darda, Member of Parliament, visited the residence of Shri Ranjit Sinha on 22.11.2013, 22.12.2013 and on 28.1.2014. Devender Darda, his son, made as many as 12 visits from 2.2.2014 to 29.5.2014. Santosh Bagrodia, former MoS (Coal), made as many as 46 visits to Shri Sinha's residence from 9.5.2013 to 8.6.2014. Devender Darda made 05 calls to Shri Sinha between 1.2.2014 to 26.2.2014. Santosh Bagrodia made 12 calls to Shri Sinha, while Sh. Sinha made 25 calls to Santosh Bagrodia from 9.12.2012 to 6.6.2014. **Thus, the abovenamed accused persons were in close contact with Shri Ranjit Sinha through personal meetings and telephonic interaction when the aforesaid cases were under active consideration with the CBI Head Office for passing of final orders.**

5.14.2 …

5.14.3 …

5.14.4 ...

5.14.5 Turning to RC 9/2012, all the officers below, namely, IO, Sr. PP [**Note by this Court**: Senior PP had not recommended prosecution of Santosh Bagrodia], SP, DIG, ALA, Joint Director and Addl. Director, had recommended prosecution of the allocattee company and private persons and some public servants, importantly, Santosh Bagrodia, former MoS (Coal). Shri Sinha did not take any decision in this case and recorded a note dated 13.2.2014 in the file, ignoring almost all the evidence that had come up in investigation and sought Shri Sharan's opinion in the matter. Shri Sharan rendered his opinion on 15.3.2014 in this case and advised that opinion dated 5.3.2014 rendered by him in RC 11/2012 (i.e. M/s NPPL case) may be taken into consideration while deciding this case. In ordinary course, Shri Ranjit Sinha should have taken a decision on unanimous recommendation of the officers below and the opinion of Shri A. Sharan, but he did not do so. He referred the matter, again, to the ALA for advice on merits and also on the opinion of Shri Sharan. Given the fact that Shri A. Sharan positionally stood on a higher pedestal vis-à-vis ALA/CBI, Shri Sinha's seeking ALA's second opinion appears to have been aimed at side-tracking the opinion of Shri A. Sharan. This is evident from the subsequent revised opinion rendered by ALA in which he, now, took a U-turn and opined that no case was made out against Dardas and Santosh Bagrodia or, for that matter, against anyone. This opinion was contradictory to the opinion rendered by him earlier in which he had recommended prosecution of the allocattee company, its Directors and the public servants, including Dardas and Santosh Bagrodia etc. Exculpation of Santosh Bagrodia, Dardas and others by the ALA in the given circumstances is not understandable in as much as the factual matrix of the case had not changed in any manner whatsoever.

5.14.6 It is noteworthy that notwithstanding the ALA's opinion for total closure of the case (ie, against private parties and public servants both), the Joint Director and Addl. Director reiterated their earlier recommendation for prosecution of **Manoj Jayaswal, Vijay Darda, Devendra Darda, Santosh Bagrodia, H.C. Gupta, L.S. Janoti & M/s AMR under IPC and the PC Act second time**.

5.14.7 As mentioned hereinbefore, in these circumstances, Shri Ranjit Sinha was compelled to take a decision in this case on 26.3.2014 because this Hon'ble Court was now seized off the Coal Scam matters, as reflected in its orders dated 10.2.2014, 10.3.2014 and 28.3.2014 in WP (Crl) No. 120/2012. Besides, this Hon'ble Court in its order dated 28.3.2014 had also directed CVC to examine the records of certain coal block matters closed at PE stage by the CBI. These circumstances appear to have compelled Shri Sinha to order prosecution of Dardas on which he was prevaricating so far. Even so, Shri Sinha diluted the case against Vijay Darda by invoking Section 9 of the PC Act which is a milder offence compared to Section 13 of the said Act. He ordered prosecution of Vijay Darda, Devendra Darda, Manoj Jayaswal and M/s AMR **but did not pass any order about Santosh Bagrodia and other public servants** and ordered further investigation to 'unearth' the role of public servants, if any, in this case.

5.14.8 It bears repetition that subsequent to further investigation IO, SP and the DIG reiterated their recommendation for the prosecution of Santosh Bagrodia and the public servants third time. As the Director, CBI, was not taking any decision regarding Santosh Bagrodia and other public servants, it seems that the Addl. Director now decided to recommend closure of the case against Santosh Bagrodia and other public servants for reasons mentioned earlier. Shri Ranjit Sinha, then, immediately ordered closure of the case against Santosh Bagrodia and other public servants vide order dated 9.6.2016.

Observations of the Committee

5.14.9 In the facts and circumstances narrated above, the Committee is of the opinion that the influence of Santosh Bagrodia was working on the mind of Shri Sinha. This demonstrates lack of transparency in the decision making by Shri Ranjit Sinha resulting in the exculpation of Santosh Bagrodia."

17. Vide order dated 23.01.17, the Hon'ble Supreme Court appointed Special Investigating Team led by the Director, CBI along with two officers of CBI to be nominated by the Director to conduct investigation into the abuse of authority prima facie committed by Ranjit Sinha with a view to

scuttle enquiries, investigations and prosecutions being carried out by CBI in coal block allocation cases.

18. It was felt by the Hon'ble Supreme Court that the Director, CBI will require the assistance of somebody well conversant with the law. Therefore, the learned Special Public Prosecutor already appointed by the Hon'ble Supreme Court for conducting the trial in the coal block allocation cases was requested to assist the Director, CBI and his team on legal issues in this case also.

19. It was also made clear by the Hon'ble Supreme Court that the court has not expressed any opinion on the merits of the allegations made by the petitioner or made any comment on the contents of the report prepared by Sh. M.L. Sharma and his team except to say that a prima facie case has definitely been made out for investigation into the abuse of authority by Ranjit Sinha in terms of the report.

20. Thereafter, on conclusion of investigation by the SIT, this chargesheet has been filed.

21. This chargesheet (RC 217 2017 A-0006 ACU-V) concerns allegations of interference in investigation conducted in RC 219 2012 E-0009 (M/s AMR Iron & Steel Pvt. Ltd.) only which was registered on 03.09.2012 u/s 120B r/w 420 IPC and Section 13(2) r/w 13(1)(d) of the P.C. Act, 1988 against (i) M/s AMR Iron & Steel Pvt. Ltd. and its directors namely (ii) Arvind Jayaswal (iii) Manoj Jayaswal (iv) Ramesh Jayaswal (v) Devendra Darda and unknown officials of the Central Government.

22. In the case in hand i.e. CBI vs. K. Sudhakar & Ors., RC 217 2017 A-0006 ACU-V, K.Sudhakar, Ex. Additional Legal Advisor, CBI is arraigned as

accused No. 1, Vijay Darda, Ex Member of Parliament (Rajya Sabha) is arraigned as accused No. 2, Devender Darda son of Vijay Darda is arraigned as accused No. 3 and Santosh Kumar Bagrodia, MP, (RS) and Ex MoS (Coal), Government of India is arraigned as accused No. 4.

23. Column No. 12, Particulars of the Accused Persons-Not Charge sheeted names late Ranjit Sinha, the then Director CBI, as he expired on 16.04.2021.

24. **Allegations in RC 9 (M/s AMR)**: In brief, the allegations in the chargesheet in RC 9 are that M/s AMR misrepresented in its application to MoC for allocation of a coal block in respect of availability of land and water to set up the EUP.

25. It misrepresented to embellish about its net worth by claiming it to be SPV of Lokmat Group of Darda family and IL&FS.

26. Earlier allocations to group companies were concealed.

27. The Screening Committee did not adhere to its guidelines and did not decide inter se priority amongst applicant companies.

28. The Hon'ble Prime Minister as Minister of Coal while approving the recommendations of the Screening Committee had directed that in case any company now recommended for allocation of a coal block was earlier also allocated any coal block, then the progress of development of that coal block shall be examined and in case the development is not satisfactory, the matter shall be put up before the Hon'ble Prime Minister.

29. In MoC, initially it was noted by one Sewak Paul, the dealing hand that the shareholders of M/s. AMR are also shareholders in several other companies which were earlier allocated coal blocks and the progress of

those coal blocks is not satisfactory. In spite of such noting, the matter was not put up before the Hon'ble Prime Minister but a meeting was called by Minister of State (Coal) Santosh Bagrodia.

30. In this meeting, M/s. AMR was directed to give the details of shareholders of M/s. AMR.

31. In response to this meeting, M/s. AMR had given a reply that this company is not part of Jayaswal group.

32. The reply of M/s. AMR was not given to Sh. Sewak Paul but Sh. LS Janoti, Section Officer, dealt with the matter and the file passed through various officers of MoC, including Sh. H.C. Gupta, the then Secretary (Coal) who put up the file before Santosh Bagrodia who further forwarded the file to the PMO.

33. In PMO, the file was not put up before the Hon'ble Prime Minister and a noting was made that as the Hon'ble Prime Minister has already approved the recommendations of the Screening Committee, there is no need to put up the file before the Hon'ble Prime Minister again.

34. Thereafter, Bander Coal Block was allotted to M/S AMR. As a quid pro quo, a sum of Rs. 24.6 crores were given by Manoj Kumar Jayaswal (one of the directors of M/s AMR) through Kolkata based shell companies to M/s ASERA Banka, a company controlled by Dardas for help given by Vijay Darda and Devender Darda in allocation of the said coal block.

35. **Allegations in case in hand**: Since the allegations in this case are that Ranjit Sinha and K Sudhakar entered into a criminal conspiracy with Vijay Darda, Devender Darda and Santosh Kumar Bagrodia and made writings on the files and prepared record, with the intention and

knowledge that their acts will save the other accused Vijay Darda, Devender Darda and Santosh Kumar Bagrodia from legal punishment, it is important to note how the recommendations of the Investigating Officer, in RC No.219 2012 E 0009 (M/s AMR case) were dealt with in the hierarchy of CBI, up to the Director.

36. In the first round, on completion of the investigation, the Investigating Officer, in RC No.219 2012 E 0009 (M/s AMR case) recommended in the FR-I prosecution of (i) Manoj Jayaswal (ii) Vijay Darda (iii) Devendra Darda (iv) Santosh Bagrodia, the then MoS (Coal) (v) H.C. Gupta, former Secretary (Coal) (vi) L.S. Janoti, an official of Ministry of Coal and (vii) M/s AMR Iron & Steel Pvt. Ltd. u/s 120 B r/w Section 420 IPC and Section 13(2) r/w 13(1)(d) of the P.C. Act and the substantive offences thereof (**D-7, Page 000079**).

37. Thereafter, the recommendations of the Investigating Officer were put up before the Sr. PP CBI, who in final report-II dated 19.09.2013 recommended that it is a weak case but recommended prosecution of Manoj Jayaswal and Devendra Darda u/s 120 B r/w 420 IPC and further substantive offence u/s 420 r/w 511 IPC against Manoj Jayaswal and AMR Iron and Steel Pvt. Ltd. He did not recommend prosecution of Vijay Darda, Santosh Bagrodia, the then MoS (Coal), H.C. Gupta, Secretary (Coal) and L.S. Janoti, an official of MoC. He only recommended departmental action against L.S. Janoti and as H.C. Gupta had already retired, no recommendation was given for regular departmental action for gross negligence on his part, **D-7, Page 000116**.

38. Now, the file came to S.P. CBI, who in his comments at para 197/N dated 07.10.2013 recommended prosecution of Manoj Jayaswal, Vijay Darda,

Devendra Darda, Santosh Bagrodia, H.C. Gupta, L.S. Janoti and M/s AMR Iron and Steel Pvt. Ltd. u/s 120 B r/w 420 IPC and 13(2) r/w 13(1) (d) of the P.C. Act, 1988, **D-7, Page 000191**.

39. Therefore, he did not agree with the opinion of Sr. PP and concurred with the opinion of IO of the case regarding prosecution of the public servants.

40. When the matter was put up before DIG, CBI he, vide his comments at para 246/N dated 05.12.2013 recommended prosecution of Manoj Jayaswal, Vijay Darda, Devendra Darda, Santosh Bagrodia, H.C. Gupta, L.S. Janoti and M/s AMR Iron & Steel Pvt. Ltd. u/s 120 B r/w Section 420 IPC r/w 13(2) r/w 13(1)(d) of P.C. Act, 1988 and further investigation as suggested at N?

41. He recommended filing of three charge-sheets against the persons found guilty, however, role of public servants and Screening Committee to be recommended only after completion of further investigation as suggested at N/219 and 234, **D-7, Page 000219**.

42. The HoZ/EoZ-I marked the file to ALA/K. Sudhakar for examination and advise.

43. Thereafter, the Additional Legal Advisor (ALA), CBI K. Sudhakar (vide para 285/N dated 13.01.2014) **D-7, Page 000227**, Joint Director, CBI (vide para 322/N dated 30.01.2014) **D-7, Page 000235** and Additional Director, CBI (vide para 353/N dated 04.02.2014) **D-7, Page 000243** in their comments recommended prosecution of Manoj Jayaswal, Vijay Darda, Devendra Darda, Santosh Bagrodia, H.C. Gupta, L.S. Janoti and M/s. AMR Iron and Steel under Section 120 B, 420 and 13 (2) read with 13 (1) (d) of PC Act, 1988.

44. As per the chargesheet, the ALA opined that these public servants were in criminal conspiracy with the private persons, **D-7, Page 000225-226**.

45. The JD and HoZ/EoZ-I agreed with the ALA that chargesheet be filed in RC 9/2012 **D-7, Page 000236**.

46. As per the chargesheet, the Additional Director in his noting dated 04.02.2014, at para-353/N and 354/N agreed with the Joint Director for prosecution of the aforesaid accused persons, **D-7, Page 000243**.

47. When the matter was placed for final decision before the Director, CBI Ranjit Sinha on 13.02.14, at para-372/N, in E 9/2012 M/s AMR case, he directed to seek the views of Sh. Amarendra Sharan, Senior Advocate who was appearing on behalf of CBI before the Hon'ble Supreme Court in coal allocation matters, **D-7, Page 000246**.

48. The reason why he sought the opinion of Sh. Amarendra Sharan was that the ALA had given his opinion in respect of incorrect disclosure about previous allotment of any coal block, in para 274-275 as under:

> "There are no guidelines formed by Ministry of Coal in this regard. There is also no prohibition, that if any earlier coal blocks were allocated, such companies are not eligible. The advertisement is also silent in this regard.
>
> Investigation disclosed that some other companies which were allocated coal earlier, have been considered in allocation of coal block. Therefore, it cannot be said it has suppressed any material fact. Since, there is no specific disqualification, it cannot be attributed that it is a misrepresentation of facts."

49. The reason why he sought the opinion of Sh. Amarendra Sharan was also that the Joint Director had given his opinion in respect of misrepresentation on net worth to embellish claim for allocation, in para 308 as under:

> "308. I will now revert to the facts revealed in RC 9/2012. The first part of the allegation is falsification with respect to company's association with Lokmat group and IL&FS to embellish its net worth. The company had in its feedback form stated that their project is being implemented by the said two companies. The investigation revealed that the claim of association with Lokmat group was factually wrong. However, the allegation of falsity in its association with IL&FS could not be substantiated. The net worth claim of the company in the feedback form, taking into account the net worth of both the above associates was Rs. 887 Cr (as on 31/03/2007) and Rs.1821 Cr (as on 31/03/2007). In tune with the finding of investigation, if net worth of Lokmat Group ie Rs. 72 Cr (as on 31/03/2006) and Rs.110 Cr (as on 31/03/2007) is reduced from the claimed net worth of the purported SPV, M/s. AMR is still left with substantial net worth, and this negates the attribution of motive in making a misrepresentation on this count. This is particularly so when, as noted before, there was no minimum threshold of net worth required for the purpose of allocation of coal block.

50. The JD had also opined in respect of offence u/s 420 IPC in para 325, 326 and 327 as under:

> "325. At this stage when we have before us the result of investigation in the initial set of RCs registered, it is time to address certain issues of fundamental importane in light of facts in the 03 instant cases, these are -
>
> i) Whether by issuance of allocation letter, the offence of Section 420 IPC or 13(1)(d) was complete? This is also relevant in the context of Section 13(1)(d) of PC Act which speaks of obtaining for himself or for any other person any valuable thing or pecuniary advantage.
>
> ii) Whether the misrepresentation on certain factors, in absence of any prescribed threshold could be taken to be inducement in terms of Section 420?
>
> 326. Most of the cases that have been registered so far out of PE 2 in coal scam have one or more of the following allegations:-
>
> a) That the allocattee company in order to embellish its claim made a misrepresentation on one or more of the parameters which were part of the guidelines to determine the *inter-se* priority amongst various applicants. Misrepresentations on the point of networth embellishing the claim on financial capacity of the company to set up the end use plant and develop the mine: misrepresentation on the point of preparedeness of the company indicated by land acquired or existing capacity etc. are some such examples;
>
> b) That the allocattee company had concealed the previous allocations of coal blocks with the purpose of avoiding scrutiny of the progress achieved in developing such blocks.

c) That the MoC/Screening Committee did not deliberately scrutinize/verify the data furnished by the companies, in connivance with the company.

327. **Whether by issuance of allocation letter, the offence of Section 420 IPC or 13 (1)(d) was complete?**

Major representations on the point noted at a) above has been taken to be amounting to the offence of cheating at the stage of conversion of PE into RC. This is based on a premise that issuance of allocation letter to the company of a coal block is equivalent to deliverance of a property or creation of a valuable security or capable of being converted into a valuable security in terms of Section 420 IPC. The recent pleadings by the government before the Hon'ble Supreme Court who is monitoring the coal scam investigations, raise a serious question mark on this premise. Ld. AG has argued that the issuance of allocation letter does not confer any right on the allocattee company to work mines. Though the government in the instant matter is in adversial (sic) position before the Court, such an argument from the first Law Officer of the country can not be brushed aside. In fact the Sr. PP and Ld. ALA while examining the FRs of first set of 06 cases (including the cases under examination here) have concluded that no loss is caused to the government by allocation letter as the coal extraction has not actually started."

51. The JD had given his opinion on the subject "Whether the misrepresentation on certain factors, in absence of any prescribed threshold could be taken to be inducement in terms of Section 420?" in para-333 to 335 as under:

"Going back to the ingredients of Section 420 IPC, the prosecution would need to prove inducement i.e., the existence of a causal relationship between the deception practised and the act committed. The guidelines prescribe various parameters based on which the Screening Committee was to determine the inter-se priority amongst various applicant. According to the additional guidelines of 2005, the main factor to be considered were-

i. Suitability of coal grading the block,
ii. techno-economic viability/feasibility of the project,
iii. status/stage/level of progress and state of preparedness of the project,
iv. track record of the applicant,
v. recommendation of the concerned administrative Ministry and
vi. the views of the concerned State Govt.

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vii. matching of requirement of the applicant with the mineable reserves available.

According to the prevailing system, no specific weightage was accorded to any of the above factors and the Screening Committee, which was an inter ministerial intergovernmental body used to make recommendation for allocation of a particular block to a particular company/companies based on consensus and subjective assessment. There was also no minimum threshold prescribed for eliminating/qualifying any company on any of the above factors, including net worth or preparedness, etc. Had that been so, it would have been easier to take a decision on prosecution or otherwise. It is true that the Ministry of Power had applied the net worth criteria applicable to UMPPs, to the captive allocation scheme also and made their recommendations to MoC accordingly. Therefore, if a company that was qualified by the Ministry of Power based on exaggerated claim of its net worth can be faulted. The problem in that, however, is twofold: a) that the application of the criteria was not in public domain or part of MoC, guidelines, and b) that the Screening Committee, which eventually recommended in favour of the company was also attended by the representative of Ministry of Power, who did not record his dissent. Similar is the case with Ministry of steel.

In view of above prosecution of a case on account of misrepresentation on these factors is a subjective decision of the investigating officer with an implicit assumption that if they were placed before the Screening Committee, the recommendation would have been otherwise. Both the Law Officers (Senior PP and ALA) don't appear to be comfortable with this assumption.

52. Regarding "Significance of concealment of previous blocks", he recorded in noting at para-341 that:

"Coming to concealment of previous allocations by the applicant companies, it is stated that the form prescribed for application had two points, seeking information about this. A number of companies despite having been previously allocated block, did not reflect the correct information on these points. The objective behind seeking this information was sought to be ascertained during the instant investigation, but the Ministry of Coal could not provide any cogent answer. The investigation so far does not indicate that the progress in previous blocks was being looked into by either the Screening Committee or the Ministry of Coal till a directive in this regard came from PMO while processing the minutes of 36th Screening Committee. Moreover, while information was sought for previous allocation to the company or its group of associates, the terms group or associates was also

> not defined in the guidelines. In any case, since allocation of earlier coal blocks to every company was in the knowledge of Ministry of Coal and, therefore, the allegation that concealment by the company lead to inducement will not hold much water."

53. AD, CBI had also noted in para 349 that:

> "349. Coming to the RC-9/E/2012 pertaining to allocation of coal block to M/s AMR Iron & Steel Private Limited, investigation has shown that the claim of the company of its association with IL&FS is factually not correct, although, the claim of its association with Lokmat group was found to be false. However, for reasons mentioned para 308/N, it would be difficult to attribute any motive in misrepresentation on this count by M/s AMR Iron & Steels Pvt Ltd."

54. Thus, when the file reached Ranjit Sinha for his first noting, there were already divergent views emanating from below along with uncertainty regarding certain legal issued which had been highlighted for taking a considered view.

55. Ranjit Sinha himself brought it on record fairly that he has learnt unofficially that the GoM has cancelled the coal block allotted to M/s. AMR which requires to be checked up.

56. As per the chargesheet, Sh. Amarendra Sharan, had already rendered his opinion in RC 219 2012 E 0011 (M/s. NPPL case) on 05.03.2014, **D-8, Page 255**. He had dealt with the applicability of Section 420 IPC against the companies and its officials. He also discussed the applicability of Section 13 (1) (d) (iii) against public servants.

57. He rendered his opinion in 219 2012 E 0009 (M/s. AMR Iron and Steel Private Ltd) on 15.03.2014 (para 436/N dated 18.03.2014) and stated that he has already given an opinion as to the effect of allocation, concept of wrongful gain and wrongful loss vis-a-vis misrepresentation/concealment

of facts and scope and ambit of Section 13(1)(d) PC Act and stated that he has noticed views on these aspects do differ at various places, which is now required to be reconsidered taking into account his opinion dated 05.03.2014. He further advised that decision in this case be taken considering the overall impact of his opinion in M/s. NPPL case, **D-7, Page 609**.

58. Chargesheet mentions that the JD at para-442/N dated 18.03.2014, citing the opinion of Sh. Amarendra Sharan dated 05.03.2014 and 15.03.2014 noted that a considered view is required to be taken on the opinion of Sh. Amarendra Sharan as the same is at variance with thus far held view of CBI, **D-7, Page 000259**.

59. The Additional Director, CBI vide para-443/N dated 18.03.2014 endorsed the views of JD, **D-7, Page 000260**.

60. Therefore, it became necessary for Ranjit Sinha to seek the opinion of ALA K. Sudhakar.

61. The chargesheet mentions that, on 20.03.2014 at para-445/N, the Director, CBI noted that the Special Counsel has not expressed any opinion in the light of comments made by him at Paras 360-372/Ns. He further noted at para-446/N that the case may again be looked into by ALA authorised by the Hon'ble SC for giving his opinion based on merit of the case and observations made by Special Counsel, **D-7, Page 000260**.

62. Now commenced the 2nd round of opinions in the matter.

63. According to CBI, the then ALA K. Sudhakar in his comments dated 24.03.2014 at para-451-457/Ns, **D-7, Page 000261** took a view totally contrary to the view that he had expressed earlier on 13.01.2014 at para-

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269-287/Ns even though no further investigation was conducted in this case during this period.

64. He analyzed the citations mentioned by Sh. Amarendra Sharan in his opinion and cited the cases decided by the Hon'ble Supreme Court in Balakrishnan P.Pillai (2003) 9 SC 700, S.K. Kale versus State of Maharashtra (1977) Crl.L.J. 604 SC, S.P. Bhatnagar versus State of Maharashtra (1979) Crl. L.J. 566 SC, Abdulla Mohd. Pagrakar versus State (1980) Crl. L.J. 220 SC to buttress his new stand.

65. At para-473/N, he opined that "No criminal case has been made out against the MoS (Coal), Secretary and other public servants. Consequently, this would also be applicable to the private parties as no conspiracy has been established."

66. The chargesheet mentions that this subsequent view of K. Sudhakar was wholly inconsistent with his view expressed earlier. Moreover, no additional facts were brought out during investigation in the intervening period.

67. Next, the file came to JD who in disagreement with the views of ALA, in his noting at para-475/N dated 25.03.2014, reiterated his earlier recommendation for prosecution of Manoj Jayaswal, Vijay Darda, Devender Darda, Santosh Bagrodia, HC Gupta, L.S. Janoti and M/s. AMR Iron and Steel Private Ltd., **D-7, Page 000265.** He, however, invited the attention of Director CBI to his earlier notings including noting on the subject of "Whether the misrepresentation on certain factors, in absence of any prescribed threshold could be taken to be

inducement in terms of Section 420" which have been noted in earlier paragraphs.

68. According to the chargesheet, the Additional Director in his noting dated 25.03.14 also reiterated his earlier recommendation recorded at paras 344-357/N **D-7, Page 000266.** He therefore recommended second time the prosecution of Manoj Jayaswal, Vijay Darda, Devendra Darda, Santosh Bagrodia, H.C. Gupta, L.S. Janoti and M/s. AMR Iron and Steel under Section 120 B, 420 and 13 (2) read with 13 (1) (d) of PC Act, 1988.

69. Ranjit Sinha, the then Director CBI vide order at para 486/N dated 26.03.14, **D-7, Page 000267** approved the prosecution of Manoj Jayaswal, Vijay Darda, Devender Darda and M/s. AMR Iron and Steel Private Ltd under Section 120B, 420 IPC and under Section 9 of PC Act, 1988 and further directed for more probe with regard to the role of public servants in the light of the further comments given by the ALA which were that (i) no evidence of criminal conspiracy amongst the Directors of the company, Dardas, public servants and the Minister vis-à-vis, (ii) no quid pro quo has been established, (iii) no dishonest intention has been established, (iv) the allocation of coal block has been cancelled, (v) neither gain nor loss, (vi) no mens rea has been established and (vii) no dishonest intention has been established.

70. The chargesheet was filed on 27.03.2014 against Manoj Jayaswal, Vijay Darda, Devender Darda and M/s. AMR Iron and Steel Private Ltd under Section 120B, 420 IPC and under Section 9 of PC Act, 1988 pending investigation against public servants.

71. Supplementary Final Report-1 was submitted to Senior Officers of CBI by the Investigating Officer on 27.05.2014 reiterating the prosecution of public servants namely Santosh Bagrodia, H.C. Gupta, L.S. Janoti.

72. Now commenced the 3rd round of recommendations.

73. The Senior PP, in his Supplementary Final Report-II, dated 29.05.2014 recommended prosecution of Manoj Jayaswal and Devender Darda for the offence under Section 120-B read with 420 IPC and substantive offence under Section 420 read with 511 IPC against Manoj Jayaswal and M/s. AMR Iron and Steel Private Ltd. He, however, recommended no action against public servants, **D-7, Page 000115**.

74. The SP CBI in his comments at 626/N dated 30.05.2014, reiterated his views to prosecute the public servants namely, Santosh Bagrodia, H.C. Gupta and L.S. Janoti, **D-7, Page 000296**.

75. The DIG CBI in his comments at para-628/N dated 30.05.2014, reiterated his views to prosecute the public servants namely, Santosh Bagrodia, H.C. Gupta and LS Janoti, **D-7, Page 000297** and marked the file to the Additional Director of CBI who further marked the file to ALA K Sudhakar.

76. The chargesheet alleges that at para-642-648/Ns, dated 04.06.2014 the ALA again cited the cases decided by the Hon'ble Supreme Court in Balakrishnan P.Pillai (2003), S.K. Kale versus State of Maharashtra (1977) in S.P. Bhatnagar versus State of Maharashtra (1979), Abdulla Mohd. Pagrakar versus State (1980) and mentioned at para-648/N that no quid pro quo has been established and no dishonest intention has been established against the public servants, the allocation of coal block has

been canceled, no gain or loss, no dishonest intention has been established. At para-649/N dated 04.06.2014, he recommended for closure of the case qua all the public servants against whom he had earlier recommended prosecution at para-285/N on 13.01.2014, **D-7, Page 000302**.

77. Now, the Additional Director, CBI at para-656/N dated 09.06.2014, discussed the culpability of the public servants namely Santosh Kumar Bagrodia, H.C. Gupta and L.S. Janoti and adopted the views of Senior PP and ALA and recommended for the closure of the case against public servants, **D-7, Page 000303**.

78. It is to be noted here that now he also took a different stand than the one taken by him twice earlier on 04.02.2014, Para 335/N and 354/N and on 25.03.2014, Paras 344-357/N.

79. Thereafter, the file was put up before Ranjit Sinha, Director, CBI who approved the proposal dated 09.06.2014 of the Additional Director for not prosecuting the above-mentioned public servants, Santosh Bagrodia, H.C. Gupta and L.S. Janoti, **D-7, Page 000304**.

80. Para 3.6 of this chargesheet reads "Evidence against Sh. Ranjit Sinha, Sh. K. Sudhakar, Sh. Vijay Darda, Sh. Devender Darda and Sh. Santosh Bagrodia in RC 210 2012 E 0009 (M/s AMR Iron and Steel Limited)."

81. It makes it clear that this chargesheet is only concerning interference in investigation in RC E 9/2012.

82. The chargesheet of the case in hand mentions that Vijay Darda had visited the residence of Ranjit Sinha on 22.11.13, 22.12.13 and 28.01.14, Devender Darda had visited the residence of Ranjit Sinha on 02.02.14,

03.02.14, 06.02.14, 08.02.14, 14.02.14, 26.02.14, 11.03.14, 13.03.14, 21.03.14, 28.03.14, 01.04.14, 28.04.14 and 29.05.14. He had continued to visit the residence of Ranjit Sinha on 28.03.14, 01.04.14, 28.04.14 and 29.05.14, even after the filing of chargesheet on 27.03.14. When he had visited the residence of Ranjit Sinha on 11.03.14, around the same time, Santosh Bagrodia was also there. Santosh Kumar Bagrodia had visited the residence of Ranjit Sinha on 09.05.13, 14.05.13, 17.05.13, 18.05.13, 31.05.13, 02.06.13, 03.06.13, 04.06.13, 06.06.13, 07.06.13, 09.06.13, 13.06.13, 17.06.13, 21.06.13, 02.07.13, 05.07.13, 06.07.13, 18. 07.13, 23.07.13, 28.07.13, 03.08.13, 07.08.13, 18.08.13, 24.08 .13, 15.09.13, 21.09.13, 17. 10.13, 13.11.13, 03.12.13, 08.12.13, 13.01.14, 18.01.14, 26.01.14, 28.01.14, 15.02.14, 07.03.14, 08.03.14, 11.03.14, 13.03.14, 16.03.14, 20.03.14, 03.05.14, 05.06.14 and 08 .06.14.

83. The chargesheet further mentions that during the same period Vijay Darda made two telephonic contacts between 01.01.14 to 27.01.14, Devender Darda made seven telephonic connections between 01.20.14 to 26.02.14 and Santosh Bagrodia made forty-two calls between 09.12.12 to 06.06.14 to Ranjit Sinha.

84. The chargesheet mentions that RC 219 2012 E 0009 (M/s. AMR Iron and Steel Private Ltd) was registered on 03.09.12 and the role of Vijay Darda, Devender Darda and Santosh Kumar Bagrodia was under investigation during the period of their visits to the residence of Ranjit Sinha and their telephonic contacts with him were also for the same period.

85. The chargesheet mentions that the visits of Santosh Kumar Bagrodia ceased on 08.06.14, a day prior to the finalisation of the closure of the case. The chargesheet alleges that the name of Santosh Kumar Bagrodia

was not recommended for prosecution despite clear recommendations from the subordinate officers due to his visits to the official residence of Ranjit Sinha.

86. The chargesheet further alleges that the visits of Vijay Darda and Devender Darda amounted to exercise of undue influence in the case against them, which is evident from the comments of Ranjit Sinha at para-360-372/N which were not based on the record collected in the course of investigation of the case.

87. The chargesheet alleges that Ranjit Sinha approved prosecution for a less serious offence i.e., under Section 9 of PC act, without citing any reasons to take a different and lenient view from the conclusions recorded by the concerned officers dealing with the matter.

88. The chargesheet alleges that these circumstances show that the visits of the aforementioned persons did result in undue influence on Ranjit Sinha, resulting in scuttling of the instant case.

89. The chargesheet concludes that Ranjit Sinha committed criminal misconduct by helping the accused Devender Darda and Vijay Darda during investigation of cases (RC 9/2012-AMR Iron and Steel Private Ltd) by the CBI. It is further alleged that Santosh Bagrodia was also not prosecuted by CBI as Ranjit Sinha had not agreed to the recommendations to prosecute him. As part of the conspiracy K. Sudhakar, the then ALA arbitrarily and flagrantly reversed his earlier opinion/view, without any additional material or valid reason justifying such somersault. The allegation in the chargesheet is that the accused public servants helped the other accused obtain valuable thing (not being

prosecuted or being prosecuted under milder Sections) and have committed offences prosecutable under Section 13 (1) (d) of PC Act, 1988.

90. The conclusion drawn in the chargesheet is that Ranjit Sinha and K. Sudhakar entered into a criminal conspiracy with Vijay Darda, Devender Darda and Santosh Bagrodia and made writings on the files and prepared record with the intention and knowledge that their acts will save the other accused Vijay Darda, Devender Darda and Santosh Bagrodia from legal punishment – have committed an offence punishable under Section 13 (2) read with 13 (1) (d) of the PC Act, 1988.

91. Further, the chargesheet alleges that the aforesaid act on the part of Ranjit Sinha, the then Director, CBI, (since expired), K. Sudhakar, the then Additional Legal Advisor, CBI, Devender Darda, Vijay Darda and Santosh Bagrodia, the then MoS (MoC) prima facie disclose commission of offences under Section 120B read with 218 of IPC read with 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988 and substantive offences thereof.

92. According to chargesheet, the accused are liable to be charged for the following offences:

> i. Prosecution of K. Sudhakar (A-1) the then ALA, CBI u/s 120 B r/w 218 r/w 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988 and substantive offences u/s 218 of IPC and 15 and 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.
>
> ii. Prosecution of Devender Darda (A-2) u/s 120 B r/w 218 of IPC r/w 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.
>
> iii. Prosecution of Vijay Darda (A-3) u/s 120 B r/w 218 of IPC r/w 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.
>
> iv. Prosecution of Santosh Bagrodia (A-4) u/s 120 B r/w 218 of IPC r/w 13 (2) r/w 13 (1) (d) of Prevention of Corruption Act, 1988.

93. **Developments in the court after filing of chargesheet/supplementary chargesheet**: The chargesheet in case in hand i.e., 217 2017 A-0006 ACU-V concludes here.

94. It has discussed the developments uptil approval of proposal of Additional Director dated 09.06.2014 by Director, CBI on 09.06.2014 and has not discussed subsequent developments which took place in the court in this case after filing of the chargesheet.

95. It is important for decision on charge in this case to note the outcome of the proceedings in the chargesheet filed in the case of CBI versus M/s. AMR Iron and Steel Private Ltd, having CBI No. 316/2019 (RC 219 2012 E 0009-Branch CBI/EOU-IV, New Delhi.

96. The said case is pending trial before this court itself. Moreover, a copy of order on charge dated 23.07.2019 passed in AMR Case is also filed on record in this case by Ld counsel for Accused No. 4.

97. The records of the said case show that the chargesheet was filed under Section 120B, 420 IPC and Section 9 of the Prevention of Corruption Act, 1988 against four private persons namely Manoj Jayaswal, Vijay Darda, Devender Darda and M/s. AMR Iron and Steel Private Ltd on 27.03.14 before the learned predecessor of this court.

98. The learned predecessor of this court took cognizance of offences under Section 9 of the Prevention of Corruption Act read with Section 420 IPC and 120 B IPC on 07.05.14.

99. The said chargesheet was transferred to the court of learned Special Judge especially constituted for trying the cases pertaining to coal scam on 19.08.14.

100. On 17.12.14 a supplementary report was filed which was actually closure report qua the three public servants namely, HC Gupta, the then Secretary (Coal), Santosh Kumar Bagrodia, the then Minister of State (Coal) and L.S. Janoti, an official of Ministry of Coal.

101. On considering the supplementary report, the learned predecessor of this court, vide order dated 30.01.15 was of the view that the overall facts and circumstances of the case prima facie show that the officials/officers of Ministry of Coal namely L.S. Janoti and H.C. Gupta and Santosh Bagrodia, Minister of State for Coal have committed the offence of criminal misconduct under Section 13 (1) (d) read with Section 13 (2) of the Prevention of Corruption Act while entering into a criminal conspiracy with the private parties involved in the impugned coal block allocation to M/s. AMR and thereby facilitated M/s. AMR to obtain allocation of "Bander Coal Block" unlawfully.

102. On 21.07.15, the learned predecessor of this court also took cognizance of offence under Section 120 B IPC against the three public servants i.e., H.C. Gupta, Santosh Bagrodia and L.S. Janoti.

103. Cognizance was also taken of the offences under Section 120 B read with Section 409/420 IPC and Section 9/13 (1) (c)/13 (1) (d) of PC Act against these three accused public servants besides taking cognizance of the offence under Section 13 (1) (d) of the PC Act also against them.

104. So far as H.C. Gupta is concerned, cognizance was also taken of the offence under Section 409 IPC and Section 13 (1) (c) of the PC Act.

105. The court also took cognizance of the offences under Section 120-B IPC read with Section 409 IPC and Section 13 (1) (c)/13 (1) (d) of the

Prevention of Corruption Act against the private parties involved namely, Manoj Jayaswal, Vijay Darda, Devender Darda and M/s. AMR while noticing that the learned Predecessor vide orders dated 07.05.14 have already taken cognizance of offences under Section 120-B read with Section 9 of PC Act and Section 420 IPC.

106. The orders dated 30.01.15 and 21.07.15 passed by the learned predecessor of this court were challenged by Santosh Kumar Bagrodia before the Hon'ble Supreme Court in Petition (s) for Special Leave to Appeal (Crl.) CRL MP No. 13032-13033/2015.

107. The final result of these petitions shall be noted shortly in the subsequent paragraphs.

108. The learned predecessor of this court, vide orders dated 23.07.19, discharged Santosh Bagrodia and L.S. Janoti in the case and framed charges against Manoj Jayaswal, Vijay Darda, Devender Darda and M/s. AMR and H.C. Gupta under Section 120-B of IPC.

109. On the query of this Court, it was informed that CBI had proposed to challenge order dated 23.07.2019 discharging Santosh Kumar Bagrodia but they have not received the response from Department of Personnel and Training so far either approving or rejecting the said proposal. Therefore, order of discharge in respect of Santosh Bagrodia has remained unchallenged by CBI till date and has become final now.

110. It is to be noted that Ranjit Sinha, the then Director CBI had also recommended no prosecution of Santosh Bagrodia and L.S. Janoti.

111. It is also to be noted that in the case in hand (RC 217 2017 A-0006 ACU-V), there is no allegation that H.C. Gupta had colluded with Ranjit Sinha

to exonerate him of the offence of criminal misconduct in RC 219 2012 E-0009, M/s AMR Iron & Steel Pvt. Ltd. case. This allegation is only against Vijay Darda, Devender Darda and Santosh Bagrodia.

112. Charge for the substantive offence under Section 420 IPC was framed against Manoj Kumar Jayaswal, Vijay Darda, Devender Darda and company M/s. AMR

113. Charge for the substantive offence under Section 9 of PC Act, 1988 was also framed against Vijay Darda. These are the charges which were also recommended by Ranjit Sinha against these accused persons on 26.03.2014, Para 344-357/N.

114. CBI did not challenge framing of charge under Section 9 of PC Act, 1988 and did not take steps to charge Vijay Darda for the offence under Section 13 (1) (d) read with 13 (2) of PC Act, 1988.

115. Charge under Section 13 (1) (d) of PC Act, 1988 was also framed against H.C. Gupta. Charge for the substantive offence under Section 120-B IPC read with Section 420 IPC/13 (1) (d) of PC Act, 1988 and Section 9 of PC Act was also framed against Manoj Kumar Jayaswal, Vijay Darda, Devender Darda and M/s. AMR and H.C.Gupta.

116. Now, reverting back to the Petition (s) for Special Leave to Appeal (Crl.) CRL MP No. 13032-13033/2015, which were filed by Accused No. 4 Santosh Bagrodia challenging his summoning orders the same were disposed of as they were rendered infructuous with the discharge of Santosh Bagrodia by the learned predecessor of this court vide order dated 23.07.19.

117. **Arguments by CBI**: On behalf of CBI, arguments were addressed by Sh. A.P. Singh, Ld. DLA for CBI on 12.02.2024, 13.02.2024, 21.02.2024 and 04.03.2024. He has relied on the report given by Sh. M.L. Sharma Committee as well as the material on record to submit that in so far as Accused No. 4 Santosh Bagrodia is concerned, his exoneration by Ranjit Sinha from prosecution in this case is the clear cut evidence of conspiracy alleged against Accused No. 4 Santosh Bagrodia. In so far as Accused No. 2 Vijay Darda is concerned, his submissions are that charge sheeting him for a milder offence u/s 9 of PC Act instead of Section 13(2) r/w (13)(1)(d) of PC Act, 1988 is also clear cut evidence of conspiracy alleged against Accused No. 2 Vijay Darda and Accused No. 3 Devendra Darda. In respect of Accused No. 1 K. Sudhakar, he has also laid emphasis on U-turn taken by him in his opinion dated 24.03.2014 to allege the offence of criminal conspiracy. He submitted that the second opinion given by K. Sudhakar contrary to his earlier opinion without there being any investigation squarely covers his case for the offence u/s 218 of IPC.

118. At that time, reliance was placed by CBI on **Maulud Ahmad vs. State of Uttar Pradesh**, Crl. Appeal No. 91 of 67 dated 13.11.1962, **Kamla Prasad Singh vs. Hari Nath Singh and Anr.**, (1967) 3 SCR 828 and **Mauvin Godinho vs. State of Goa,** 2018 Crl. L.J. 1717.

119. In the case of Maulud Ahmad (supra), the appellant had challenged his conviction u/s 218 of IPC. The prosecution case against the appellant was that he had entered a false report in the general diary of the police station to the effect that one C accused of murder had deposited his gun in the police station before the incident took place. The said C was acquitted but the appellant was convicted u/s 218 of IPC. One of the arguments of the

appellant before the Hon'ble Supreme Court were that as C was acquitted of all the offences with which he was charged, the charge against the appellant u/s 218 IPC should fall with it. It was held by the Hon'ble Supreme Court that if the appellant had made the false entry in the diary and manipulated other records with a view to save C for legal punishment that might be inflicted upon him, the mere fact that he was subsequently acquitted of the offence could not make it anytheless an offence u/s 218 IPC. It was noted that the Trial Court had acquitted C by giving him benefit of doubt on the ground that his signature was not found against the entry of deposit of the gun and also against the entry of the return of the gun. It was not established conclusively that C abetted the appellant in maintaining the record but that could not exonerate the appellant for it had been held on the evidence that the false entries had been made in the record by the appellant with a view to save C.

120. In the case of Kamla Prasad Singh (supra), the Hon'ble Supreme Court dealt with the difference in the offence under Section 192 and 218 of IPC. The Hon'ble Supreme Court held that the offence under Section 218 is complete the moment the false record was made with the intention of saving or injuring any person or property and it was not necessary for the completion of this offence that the record should be used in a judicial proceeding so as to cause opinion to be formed touching on a point material to the result of such proceeding.

121. In the case of Mauvin Godinho (supra), certain notifications were issued by the appellant as Minister of Power of state of Goa without approval of the cabinet and by violation of rules. It was held by the Hon'ble Supreme Court that a court while framing charges under Section 227 of the Code

of Criminal Procedure should apply the prima facie standard. When the probative value of the evidence on all the essential elements in the charge taken together as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen, then a prima facie against the accused is said to be made out.

122. **Arguments by Accused No. 1 K. Sudhakar**: On behalf of Accused No. 1 Sh. K. Sudhakar, arguments were addressed by Ld. Counsel Sh. Naveen Kumar on 29.04.2024, 30.04.2024, 02.05.2024 and reliance was placed on **Maulud Ahmad vs. State of U.P.,** 1963 Supp (2) SCR 38; **State of Uttaranchal vs. Sunil Kumar Vaish**, (2011) 4 SCC (Civ) 325, **Mahadeo vs. Sovan Devi**, (2023) 10 SCC 807; **Nirmal Yadav vs. Central Bureau of Investigation**, 2011 SCC Online P&H 15415, **Parveen vs. State of Haryana**, 2021 SCC Online SC 1184, **CBI vs. K. Narayana Rao**, (2012) 3 Guj LH 373, **Abhinandan Jha vs. Dinesh Mishra**, 1967 SCC Online SC 107, **Arvindervir Singh vs. State of Punjab**, (1998) 6 SCC 352, **P. Vijayan vs. State of Kerala**, (2010) 2 SCC 398, **Balwant Rai vs. State of U.P. & Anr.,** Appeal No. 18519 of 2005, **Ajmer Singh vs. State of Haryana**, (2010) 3 SCC 746 and **State of Madhya Pradesh vs. Sheetla Sahai & Ors.,** (2009) 8 SCC 617.

123. For seeking discharge, it is submitted on behalf of K. Sudhakar that there is no evidence of criminal conspiracy with Ranjit Sinha or with any of the persons who visited the house of Ranjit Sinha or accused persons in respect of FIRs. There is no direct or circumstantial evidence that he had ever been called by Director CBI to his house or his chamber at CBI

office or was given directions on telephone to change his opinion. The opinion of law officer falls under privileged communication under Section 126 of the Evidence Act. Referring to the judgements noted in earlier parts of this order, he has submitted that noting recorded in the file is mere noting simpliciter and nothing more, and therefore will not come under Section 218 of IPC. Moreover, the required intention under Section 218 IPC is also missing in the present case, in respect of K. Sudhakar. He has sought to invoke doctrine of equality by comparing the role of Additional Director, CBI. He has submitted that the said Additional Director of CBI had also reversed his opinion but CBI has picked and chosen him for prosecution in an arbitrary manner. He has submitted that there was no investigation in respect of proposal by the SP CBI that there is requirement of reconsideration in view of opinion of Sh. A. Sharan for interpretation of facts. He has submitted that the Director, CBI is the competent authority as officer in charge, vide Section 2 of DSPE Act read with Section 170 of CrPC and he disagreed with the applicant/accused, which shows that there was no conspiracy. He has submitted that he had given legal opinion in all the coal block cases including in those cases where it is revealed that the accused persons of those cases had met Director CBI at his residence. He has submitted that there is no evidence that applicant/accused was won over by Director CBI. He has submitted that since director, CBI has expired and proceedings against him have abated and therefore the charge of conspiracy against him cannot be defended or proved and as the said benefit be also given to present applicant/accused. He has submitted that there is no evidence of pecuniary advantage, and hence there is no mens rea.

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124. In the case of Sunil Kumar Vaish (supra), the Hon'ble Supreme Court has held that:

> "A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. - State of Punjab v. Sodhi Sukhdev Singh AIR 1961 SC 493, Bachhittar Singh v. State of Punjab AIR 1963 SC 395, State of Bihar v. Kripalu Shankar (1987) 3 SCC 34, Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84, Sethi Auto Service Station v. DDA (2009) 1 SCC 180 and Shanti Sports Club v. Union of India (2009) 15 SCC 705."

125. In the case of Mahadeo (supra), the Hon'ble Supreme Court has held in paras 14 and 17 that:

> "15. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as Omkar Sinha v. Sahadat Khan (2022) 12 SCC 228.Reliance was placed on Bachhittar Singh v. State of Punjab 1962 SCC OnLine 11 to hold that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated.
>
> This Court in Municipal Committee v. Jai Narayan & Co. (2023) 14 SCC 786 held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of an opinion by the particular individual."

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126. In the case of Smt. Nirmal Yadav (supra), there is reference to CBI (Crime) Manual-2005. Para 23.21 of the Manual is cited which states that:

> "In important cases where the Director, CBI disagrees with the advice of the Director of Prosecution, the matter shall be referred to the Attorney General of India for his views. Thereafter, the decision taken by the Director, CBI, keeping in view the opinion of the Attorney General, would be deemed to be final."

127. In para 37 of the aforesaid judgment, it is held by the Hon'ble High Court of Punjab & Haryana that:

> "37. To support his above contention, he has referred to Union of India and others vs. Sushil Kumar Modi and others, (1996) 6 Supreme Court Cases 500 wherein it has been observed as under: -
>
> "13.We make it clear that in case of any difference of opinion between the officers of the CBI in relation to the implication of any individual in the crimes or any other matter relating to the investigation, the final decision in the matter would not be taken by the Director, CBI himself or by him merely on the opinion of the Legal Department of the CBI; and in such a situation, the matter would be determined according to the opinion of the Attorney General of India for the purpose of the investigation and filing of the charge-sheet against any such individual. In that event, the opinion would be sought from the Attorney General after making available to him all the opinions expressed on the subject by the persons associated with the investigation as a part of the materials."

128. In para 41, the Hon'ble High Court of Punjab & Haryana has held that:

> "41. In the case of Union of India and Sushil Kumar Modi and others, 1997(4) SCC 770 (Sushil Kumar Modi-II), considering the role of the Investigating Agency, Hon'ble Supreme Court observed as under: -
>
> "5. According to the Code of Criminal Procedure, 1973 the formation of the opinion as to whether or not there is a case to place the accused for trial is that of the police officer making the investigation and the final step in the investigation is to be taken only by the police and by no other authority, see Abhinandan Jha v. Dinesh Mishra...."

129. In the case of Praveen @ Sonu (supra), it is held by the Hon'ble Supreme Court that:

> "12. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. 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 crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused."

130. In the case of K. Narayana Rao (supra), the appellant was legal practitioner and panel advocate of Vijaya Bank. Allegations against him were that he had given false legal opinion in respect of 10 housing loans. Proceedings against him were quashed and set aside by Hon'ble High Court of Andhra Pradesh and said order was challenged before the Hon'ble Supreme Court. The challenge was rejected noticing inter alia that no PW has made any relevant comment or statement about his involvement in the matter. It was also noted in para 13 of the judgment that:

> "13. Discharge of accused under Section 227 of the Code was extensively considered by this Court in P. Vijayan (supra) wherein it was held as under:
>
> 10. ……. 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 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.

11. 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."

131. In the case of Abhinandan Jha (supra), the Hon'ble Supreme Court has held that the entire scheme of Chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in charge of the police station and that opinion determines whether the report is to be under Section 170, being 'a chargesheet' or under Section 169 'a final report'.

132. In the case of Balwant Rai (supra), it was held that the appellant had formed opinion on the basis of evidence collected by other investigating officers. He was otherwise competent to form an opinion. But forming opinion will certainly not attract the ingredients of Section 218 of IPC and there was no evidence of forging, fabricating or mutilation of any evidence.

133. In Ajmer Singh (supra), reliance is placed on Postiglione V. R. (1997) 189 CLR 295 where it is held that equal justice requires that like should be treated alike but that, if there are relevant differences, due allowance should be made for them.

134. In Sheetla Sahai (supra), the Hon'ble Supreme Court has held that:

"47. It is also interesting to notice that the prosecution had proceeded against the officials in a pick and choose manner. We may notice the following statements made in the counter-affidavit which had not been denied or disputed to show that not only those accused who were in office for a very short time but also those who had retired long back before the file was moved for the purpose of obtaining clearance for payment of additional amount from the government, viz., M.N. Nadkarni who worked as Chief Engineer till 24.03.1987 and S.W. Mohogaonkar, Superintending Engineer who worked till 19.06.1989 have been made accused but, on the other hand, those who were one way or the other connected with the decision, viz., Shri J.R. Malhotra and Sh. R.D. Nanhoria have not been proceeded at all. We fail to understand on what basis such a discrimination was made.

50. In Soma Chakravarty (supra), whereupon strong reliance has been placed by Sh. Tulsi, this Court opined:

"23. In a case of this nature, the learned Special Judge also should have considered the question having regard to the "doctrine of parity" in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completely exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the departmental proceeding also faced same charges including the charge of being a party to the larger conspiracy."

135. **Arguments by Accused No. 2 Vijay Darda and Accused No. 3 Devendra Darda**: On behalf of Accused No. 2 Vijay Darda and Accused No. 3 Devendra Darda, arguments were addressed by Ld. Counsel Sh. Mudit Jain on 24.04.2024, 01.05.2024 and 02.05.2024.

136. It is argued on behalf of these two accused that since no favour has been shown by Ranjit Sinha either to Vijay Darda or to Devendra Darda, there is nothing to show the allegation of conspiracy against them. They have heavily relied on order on charge dated 23.07.2019 passed by Ld. Predecessor of this Court, in which Vijay Darda was charged u/s 9 of PC Act, 1988. They have submitted that this is the charge for which Ranjit Sinha had approved prosecution of Vijay Darda. They have submitted that the Ld. Predecessor of this Court has been considering the charge-

sheets carefully and have been actively differing with the charge-sheets/closure reports filed by CBI and have been directing further investigations but in respect of Vijay Darda, the Ld. Court did not deem it a fit case for charge u/s 13(2) r/w 13(1)(d) of PC Act 1988. He submitted that at the time of order on charge, Ranjit Sinha was no more the Director of CBI.

137. Reliance is placed on a judgment of the Hon'ble High Court of Kerala at Ernakulam titled as **P. Sunil Kumar vs. State of Kerala**, Crl. MC No. 8758 of 2019 (D) dated 09.04.2021. In this judgment, it is held that:

> "25. The question is, can a public servant, who acts as quasi-judicial authority under a statute, be held criminally liable under the P.C. Act for passing a wrong or illegal order. Annexure-VI order was passed by the petitioner in revenue proceedings. Assuming that it was an illegal or wrong order or an example of arbitrary exercise of jurisdiction, can criminal proceedings be initiated against him for such quasi-judicial adjudication?.
>
> 26. Dishonest intention on the part of the public servant cannot be presumed for the reason that he has passed a quasi-judicial order in favour of one of the parties to the proceedings. There must be some reasonable and satisfactory material to proceed against the officer. There is absolutely no allegation against the petitioner that he deliberately committed any misconduct for extraneous considerations. No material disclosing such act on his part has been unearthed during the investigation conducted for more than six years. If the petitioner has passed a wrong order, it could be corrected by the appellate or revisional authority. Criminal proceedings cannot be initiated against a public servant under the P.C.Act merely for passing a wrong order, without any material to demonstrate that such order was deliberately passed by him for extraneous considerations or on oblique motives. There shall be legally admissible materials collected during the investigation to demonstrate such oblique motives or extraneous considerations. The investigating officer has got no case that any such material has been collected during the investigation of the case.
>
> 27. Every error committed by a quasi-judicial authority, however gross it may be, should not be attributed to improper motives. The appellate and revisional forums have been provided on the pre-supposition that persons may go wrong in decision making, on facts as well as law. Even when the contest is between the Government and a private person, a quasi-judicial

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authority entrusted with the task of decision making should feel fearless to give honest opinion while acting judicially. Even if there was possibility on a given set of facts to arrive at a different conclusion, it is no ground to indict a public servant for misconduct for taking one view. If a faulty order of a quasi-judicial authority is taken as a ground for initiating criminal proceedings, the officer will be in constant fear of passing an order which is not favourable to the Government. Then he would not be able to act independently or fearlessly. Merely because the order is wrong, it does not warrant initiation of criminal proceedings against the public servant, unless he was actuated by extraneous considerations or oblique motives. The remedy for errors committed by a quasi-judicial authority is appeal or revision to the forum or authority provided under the statute for that purpose. It is in public interest that a public servant acting as quasi-judicial authority should be in a position to discharge his functions with independence and without fear of consequences. The general rule applicable in the case of the issuance of a wrong order is that it is liable to be corrected in appeal or revision. A public servant acting as quasi-judicial authority may become criminally liable for obtaining personal gains. But, when he is acting judicially, even if he commits an error and passes an erroneous order, he would be protected from legal action. His accountability in respect of the orders passed by him is ensured by provisions for appeal and revision.

28. What matters is not the end result of the adjudication. What is of relevance, in attributing criminal misconduct on the part of a public servant who has acted as a quasi-judicial authority, is whether he had been swayed by extraneous considerations while conducting the process. The sanctity of decision-making process should not be confused with the ultimate conclusion reached by the authority. Erroneous exercise of judicial power, without anything more, would not amount to criminal misconduct. If the statutory authorities who exercise quasi-judicial powers feel that they cannot honestly and fearlessly deal with matters that come before them, then it would not be conducive to the rule of law. They must be free to express their mind in the matter of appreciation of the evidence before them. Unless there are clear allegations of misconduct or extraneous influences or gratification of any kind, criminal proceedings cannot be initiated merely on the basis that a wrong order has been passed by the public servant or merely on the ground that the order is incorrect. Such decisions cannot ipso facto result in prosecution, unless the mental element of dishonesty, to cause advantage of an unwarranted variety to another is apparent.

29. If a public servant, acting as a quasi-judicial authority under a statute passes an order and if such order is in favour of a person other than the Government, any pecuniary advantage obtained by such person by virtue of such order, cannot be the basis for prosecution of the public servant under the PC Act, unless there is an allegation that he was actuated by extraneous considerations or oblique motives in passing the order.

> 30. A bare perusal of Section 13(1)(d)(ii) of the P.C.Act would reveal that a public servant can be prosecuted under that provision, only if he has abused his position as public servant and obtained for himself or for any other person any valuable thing or pecuniary advantage. There is absolutely no whisper in Annexure-I F.I.R that the petitioner obtained any valuable thing or pecuniary advantage by abusing his position as public servant. As noticed earlier, by virtue of the quasi-judicial order passed by a public servant, if a party to the proceedings before the public servant had obtained any pecuniary advantage, it cannot be found that it was obtained by him as result of abuse of the official position of the public servant. The legislative intent is not to punish a public servant for any erroneous decision; but to punish him for corruption. Thus, to fall within the four corners of sub-clause (ii) of clause (d) of sub-Section (1) of Section 13 of the P.C Act, the decision/conduct of the public servant must be dishonest amounting to corruption. Mens rea, the intention and/or knowledge of wrong doing, is an essential condition of the offence of criminal misconduct under Section 13(1)(d)(ii) of the P.C.Act. The presumption under Section 20 of the P.C Act does not apply to the offence under Section 13(1)(d)(ii) of that Act.
>
> 31. “Abuse” means misuse i.e. using the official position for something for which it is not intended (See M. Narayanan Nambiar v. State of Kerala: AIR 1963 SC 1116). An honest though erroneous exercise of power or an indecision is not an abuse of power (See Tarlochan Dev Sharma v. State of Punjab: AIR 2001 SC 2524).
>
> 32. Dishonest intention is the gist of the offence under Section 13(1)(d) of the P.C.Act. Mere conduct and action of a public servant, without dishonest intention but contrary to departmental norms, does not amount to criminal misconduct (See Jaffer Sharief v. State: AIR 2013 SC 48).
>
> 33. Therefore, even if it is accepted that the petitioner had passed Annexure-VI order without perusing the previous records or properly ascertaining the factual position of the matter, his act does not attract the offence under Section 13(1)(d)(ii) of the P.C.Act.”

138. **Arguments by Accused No. 4 Santosh Kumar Bagrodia**: On behalf of Accused No. 4 Santosh Kumar Bagrodia, arguments were addressed by Ld. Sr. Advocate Sh. N. Hariharan on 16.05.2024 and 09.08.2024.

139. The main thrust of the arguments was discharge of Accused No. 4 Santosh Kumar Bagrodia by the Ld. Predecessor of this Court. It was

submitted that the discharge of the said accused has proven his innocence and goes against the allegation of criminal conspiracy made against him in the charge-sheet.

140. Reliance was placed on **K.R. Purushothaman vs. State of Kerala,** (2005) 12 SCC 631 (Para 13-14: For criminal conspiracy to be established on the basis of circumstantial evidence, the circumstances must form a chain of events from which the only irresistible conclusion about the guilt of the accused can be safely drawn and no other hypothesis against the guilt is possible.), **Parveen vs. State of Haryana,** 2021 SCC Online SC 1184 (Para 12-In the absence of evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, offence of conspiracy cannot be established.), **Ram Sharan Chaturvedi vs. State of M.P.,** (2022 SCC Online SC 1080 (Para 23-26: Agreement between co-conspirators has to be necessarily established. Prosecution cannot rely on bits of pieces here and there.), **Saju vs. State of Kerala,** (2001) 1 SCC 378 (Para 13-Motive alone is not sufficient for proving conspiracy. Para-14: Mere meeting cannot be the basis of concluding conspiracy), **Subramanian Swamy vs. A. Raja,** (2012) 9 SCC 257 (Para 63-A wrong judgement or an inaccurate or incorrect approach or management by itself, even after due deliberations, by itself cannot be said to be a product of criminal conspiracy), **Balwant Rai vs. State of U.P. & Anr.,** 2016: AHC:75635 (Para 17-21: Nobody can direct an IO to form a particular opinion. Opinion does not come in the scope of Section 218, IPC), **Dipti Bhardwaj vs. State of Haryana,** Cr. Appeal No. 676 of 2006, **P. Ramanathan Aiyar, The Law Lexicon (Fifth Edition)** ("Valuable" signifies for it to be valued. "Value of a thing," means the quantity of

some other thing or things in general, which it can exchange for), **Black's Law Dictionary (11th Edition)** ("Valuable": Worth a good price, having financial market value), **Subhash Parbat Sonvane vs. State of Gujarat,** (2002) 5 SCC 86 (Para-6-8: For offence under Section 13 (1) (d), the word "obtains" requires that there has to be evidence of effort on part of receiver to receive the benefit), **Neeraj Dutta vs. NCT of Delhi,** (2023) 4 SCC 731 (Para-7: Relies on view taken in Subhash Parbat Sonvane. Para-11: In case of obtainment, the initiative vests in the person who receives and, in that context, a demand or request from him will be a primary requisite for an offence under Section 5 (1) (d) PC Act, 1947-13 (1) (d) PC Act, 1988. Para-73: It is trite law that in cases dependent on circumstantial evidence, the inference of guilt can be made if all the incriminating facts and circumstances are incompatible with the innocence of the accused or any other reasonable hypothesis than that of his guilt) and **Dilawar Balu Kurane vs. State of Maharashtra,** (2002) 2 SCC 135 (Para-12: By and large, if two views are equally possible and the judges satisfied that the evidence produced before him by giving rise to some suspicion, but not grave suspicion against the accused, he will be fully justified to discharge the accused). A copy of order on charge passed in CBI vs. Manoj Kumar Jayaswal & Ors. (M/s AMR Iron and Steel Pvt. Limited) in CC No. 3162019, RC No. 219 2012 E 0009, CBI/EOU-IV/New Delhi was also placed on record on behalf of Accused No. 4.

141. **Rebuttal by CBI**: Rebuttal arguments were addressed by Sh. A.P. Singh, Ld. DLA for CBI on 23.09.2024. The main thrust during rebuttal

arguments was that subsequent acquittal or discharge has no effect on the offence committed u/s 218 of IPC.

142. Reliance is placed on **Shadakshari vs. State of Karnataka and Anr.**, Crl. Appeal No. 256/2024 dated 17.01.2024 where it is held by the Hon'ble Supreme Court that Section 197 CrPC does not extend its protective cover to every act or omission of a public servant while in service. It is restricted to only those acts or omissions which are done by public servants in the discharge of official duties.

143. Reliance is also placed on **Choudhury Parveen Sultana vs. State of West Bengal and Anr.,** SLP Crl. No. 2864 of 2007 dated 07.01.2009 where it is held by the Hon'ble Supreme Court that all acts done by a public servant in the purported discharge of his official duties cannot as a matter of course be brought under the protective umbrella of Section 197 CrPC. On the other hand, there can be cases of misuse and/or abuse of powers vested in a public servant which can never be said to be a part of the official duties required to be performed by him.

144. Reliance is placed on **Moti Ram vs. Emperor,** 1923 SCC Online Lah 74. In this case it is held that for the purpose of a charge under Section 218, Penal Code, 1860, the actual guilt or otherwise of the alleged offender is immaterial. It is quite sufficient that the commission of a cognizable offence has been brought to the notice of the accused officially and that in order to screen the offenders, he prepared the record in a manner which he knew to be incorrect.

145. Reliance is also placed on **Anverkhan Mahamadkhan vs. Emperor,** 1921 SCC Online Bom 126 where it is held that Section 218, Penal Code 1860

is much wider and embraces cases other than those in which a principal offender is screened. But even as to such cases, the criminal intent is expressed in the following words: "with intent thereby to save, or knowing it to be likely that he will thereby save, any person, from legal punishment." These words, we think, also imply that an offence has been committed. The gist of the Section is the stifling of truth and the perversion of the course of justice in cases where an offence has been committed. It is not necessary even to prove the intention to screen any particular person. It is sufficient that he knows it to be likely that justice will not be executed and that someone will escape punishment for the offence.

146. Reliance is placed on **Kodali Purnachandra Rao and Anr. vs. Public Prosecutor, Andhra Pradesh,** (1975) 2 SCC 570 where the Appellant No.2 was convicted for the offence under Section 218 IPC as he framed the record of investigation of the cause of death of the victim in a manner which he knew to be incorrect with the intention to save the true offender from legal punishment. He had prepared the false and forged records with the fraudulent and dishonest intention of misleading his superior officers and inducing them to do or omit to do anything which they would not do or omit if they were not so deceived or induced.

147. Reliance is also placed on para 58 and 59 of the judgment in the case of **State of Madhya Pradesh vs. Sheetla Sahai & Ors.,** SLP (Crl.) No. 4130 of 2006 dated 04.08.2009 where the Hon'ble Supreme Court has held that:

> "58. There cannot be any doubt whatsoever that the tests for the purpose of framing of charge and the one for recording a judgment of conviction are different.

A distinction must be borne in mind that whereas at the time of framing of the charge, the court may take into consideration the fact as to whether the accused might have committed the offence or not; at the time of recording a judgment of conviction, the prosecution is required to prove beyond reasonable doubt that the accused has committed the offence.

59. In this case, the probative value of the materials on record has not been gone into. The materials brought on record have been accepted as true at this stage. It is true that at this stage even a defence of an accused cannot be considered. But, we are unable to persuade ourselves to agree with the submission of Sh. Tulsi that where the entire materials collected during investigation have been placed before the court as part of the chargesheet, the court at the time of framing of the charge could only look to those materials whereupon the prosecution intended to rely upon and ignore the others which are in favour of the accused. The question as to whether the court should proceed on the basis as to whether the materials brought on record even if given face value and taken to be correct in their entirety disclose commission of an offence or not must be determined having regard to the entirety of materials brought on record by the prosecution and not on a part of it. If such a construction is made, Sub-Section (5) of Section 173 of the Code of Criminal Procedure shall become meaningless.

The prosecution, having regard to the right of an accused to have a fair investigation, fair inquiry and fair trial as adumbrated under Article 21 of the Constitution of India, cannot at any stage be deprived of taking advantage of the materials which the prosecution itself has placed on record. If upon perusal of the entire materials on record, the court arrives at an opinion that two views are possible, charges can be framed, but if only one and one view is possible to be taken, the court shall not put the accused to harassment by asking him to face a trial.

{See State of Maharashtra and Others v. Som Nath Thapa and Others [(1996) 4 SCC 659]}."

148. **Queries before the Court**: The queries before this court for passing order on charge in this case are:

(1) The first query is that isn't the role of the then Additional Director, CBI similar to the role of the then Additional Legal Advisor K. Sudhakar in as much as the former had initially recommended prosecution of all the three public servants twice on 04.02.2014 and on 25.03.2014 but on 09.06.2014, despite filing of draft further investigation report by the

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Investigating Officer proposing prosecution of all the three public servants, he adopted views of Senior PP and ALA and recommended closure of case against all the three public servants. However, this query will only have academic value in view of the subsequent queries.

(2) (i) Part (i) of the second query is whether a person, say 'A' (Santosh Kumar Bagrodia) who is innocent and has not committed any offence, and hence absent actus reus as well as *mens rea*, can he enter into a criminal conspiracy with a public servant 'B' (Ranjit Sinha), to exonerate him i.e., 'A' (Santosh Kumar Bagrodia) from prosecution?

(2) (ii) Part (ii) of the second query is whether a public servant 'B' (Ranjit Sinha) can be charged for the offence of criminal misconduct for not charge sheeting 'A' (Santosh Kumar Bagrodia) even though the court having jurisdiction to try 'A' (Santosh Kumar Bagrodia) has also discharged 'A' (Santosh Kumar Bagrodia) on merits of the case (and that too, after having initially summoned 'A' (Santosh Kumar Bagrodia) though not charge sheeted by CBI, by over ruling the opinion of the investigating agency/CBI not to prosecute him and the said order having attained finality)?

(3) The third query is whether a public servant 'B' (Ranjit Sinha) having recommended prosecution of private person (Vijay Darda) u/s 9 of P.C. Act, instead of under Section 13 (1) (d) read with 13 (2) of the PC Act, 1988 can be charged for the offence of criminal misconduct for recommending prosecution of private person (Vijay Darda) for milder offence even though the court after hearing the parties has also passed order framing of charge u/s 9 of P.C. Act only and that order is accepted by the investigating agency by not filing any SLP against that order?

(4) The fourth query is whether the opinion of ALA K. Sudhakar will fall in the category of record or other writing worthy of saving Santosh Bagrodia, Vijay Darda and Devendra Darda from legal punishment.

149. **Order in respect of role of Santosh Bagrodia**: During the relevant time, Santosh Bagrodia was the Minister of State (Coal) and late Dr Manmohan Singh, the then Prime Minister was the Minister of Coal. H.C. Gupta was the Secretary Coal.

150. The Screening Committee in its 36th meeting held on 03.07.2008 had recommended allocation of Bander coal block jointly in favour of M/s. AMR, M/s. Century Textiles Industries Ltd and M/s. JK Cement Ltd.

151. Allegations against M/s AMR, one of its Directors Manoj Kumar Jayaswal, Vijay Darda, Devender Darda (both of Lokmat Group), H.C. Gupta are that they conspired to cheat MoC, GoI and by misrepresentations got recommended the said coal block in favour of M/s AMR.

152. However, in this recommendation, Santosh Bagrodia had no role.

153. When the recommendations of the 36th Screening Committee were put up before the Prime Minister as Minister of Coal for approval, the same were approved by him with the following observations: -

> "(c) The allotment to the proposed allocatees shall be subject to Ministry of Coal satisfying itself that in case of allocatees who have been allotted coal blocks earlier, there has been no undue delay in development of those blocks by them. After due enquiry, in case, Ministry of Coal is satisfied that any of the proposed allocatees have been responsible for undue delay in development of blocks allotted to them earlier, the matter regarding the proposed present allocation be referred back to the Minister of Coal for orders."

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154. Initially, one Sh. Sewak Paul, Assistant in CA 1 Section of MoC had recorded in the note that though M/s. AMR has not been allocated any coal block but the performance of the Jayaswal group to which the company belongs has not been satisfactory, as regard the coal blocks earlier allotted to it. He was of the view that the company may be advised to expedite the progress to enable the Ministry to decide allocation of the proposed coal blocks.

155. Secretary Coal H.C. Gupta proposed that a meeting be called with the applicant companies who have been recommended for allocation of coal blocks at the level of Minister of State (Coal) and with the consent of MoS (Coal), such a meeting was chaired by Santosh Bagrodia on 18.09.2008.

156. On behalf of M/s. AMR, during this meeting, it was informed that the said company is not a part of Jayaswal group. The AR of the company was directed to give in writing the ownership pattern of the company (main shareholders) as well as commitment made about developing the coal blocks along with the specific milestone with the timeline for each milestone within seven days.

157. M/s. AMR vide letter dated 22.09.2008, informed MoS (Coal) that it is not associated with Jayaswal group. The company did not provide any other information as was asked for in the meeting held by MoS (Coal).

158. The letter of M/s. AMR was now dealt with by one L.S. Janoti, Section Officer, CA-I, Section, Ministry of Coal and he recorded in the note dated 25.11.2008 that the company M/s. AMR has informed that it is not

associated with Jayaswal group so it can be taken that no coal block has been earlier allotted to M/s. AMR.

159. When the file reached before Secretary Coal HC Gupta, he observed that in view of the assurance given by the allocatee, the letter of allotment of coal block may be issued.

160. The file was thereafter put up before MoS, Coal, who forwarded the same to the Prime Minister as Minister of Coal without making any observations regarding information earlier sought for from the company.

161. The file was thereafter processed in the PMO on the basis of the noting received from MoC. However, the file was returned back to MoC at the level of Principal Secretary to PM with the observation that as the allotment is already approved at the level of PM so he need not be bothered.

162. Accordingly, the offer/option letter dated 23.12.2008 qua Bander Coal Block was issued jointly to M/s. AMR, M/s. Century Textile and Industries Ltd and M/s JK Cement.

163. The three joint allocatee companies thereafter entered into a joint venture agreement so as to mine the coal block so allotted to them and submitted the agreement to MoC.

164. After further processing of said agreement, the final letter of allotment of Bander Coal Block in favour of the three joint allocatee companies was issued by MoC.

165. After completion of investigation in AMR case, closure report was filed by CBI against public servants including Santosh Bagrodia.

166. However, the learned predecessor of this court vide order dated 21.07.2015 took cognizance of the offence of criminal conspiracy and criminal misconduct against public servants (L.S. Janoti, H.C. Gupta, Santosh Bagrodia) also and summoned them for facing trial in this case.

167. At the stage of charge, after hearing the learned counsels for the parties at length, a detailed order (177 pages) was passed on 23.07.2019 and L.S. Janoti and Santosh Bagrodia were discharged.

168. The reason recorded in the order of charge for discharging Santosh Bagrodia was that the Prime Minister had only directed that the allotment to the proposed allocatees would be subject to MoC satisfying itself that in case of allocatees who have been allotted coal blocks earlier, there has been no undue delay in development of those coal blocks by them.

169. However, it was pursuant to a note dated 18.08.08 made by Shri Santosh Paul, Assistant, CA-I Section, MoC that an enquiry as regard the coal blocks earlier allotted to the group/associate companies of allocatee companies started in MoC.

170. In fact, the enquiry which was to be made by MoC was only as regard the development of coal blocks, if earlier allotted to the allocatee companies and not as regard the coal blocks, if earlier allotted to the group/associate companies.

171. It was noted that it was not the case of the prosecution that M/s. AMR was allotted any coal block earlier.

172. The learned predecessor of this court recorded in the order on charge that once MoC had started enquiring about the past performance of the group or associates of the allocatee companies qua the development of coal

blocks, if earlier allotted to them, then it ought to have pursued it to its logical conclusion, but since the same was not part of the mandate given by Prime Minister as Minister of Coal, so the issuance of offer/option letter or the final allocation letter cannot be held to be violative of the said directions in any manner.

173. It was held that when the enquiry regarding coal blocks earlier allocated to equity holders of M/s. AMR was not mandated or directed by Prime Minister as Minister of Coal, qua the said aspect of MoC satisfying itself about the development of coal blocks, if allotted earlier to the allocatee companies, it would not be appropriate to frame charges for the offence of criminal misconduct or for the offence of criminal conspiracy against any of the three accused public servants. Since no other role was assigned to LS Janoti or Santosh Bagrodia, they were discharged of the offence of criminal misconduct as well as offence of criminal conspiracy.

174. In this background, this court is called upon to decide whether Santosh Bagrodia can be charged in the case in hand for the offence of criminal conspiracy under section 120 B read with 218 of IPC read with 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988?

175. At this stage, it is important to note that the prayer in IA No. 13 of 2014 filed by Common Cause was to investigate the abuse of authority committed by the CBI Director in order to scuttle inquiries, investigations and prosecutions being carried out by the CBI in coal block allocation cases and other important cases.

176. The Hon'ble Supreme Court in its order dated 14.05.2015 had also recorded that meeting of Ranjit Sinha with the accused persons in the

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Coal Block Allocation case without the investigating officer being present, is enough to persuade the court that some further inquiry is necessary to ensure that the investigations have been fair in the coal block allocation cases where Ranjit Sinha has had one or more meetings with one or more accused persons.

177. In the order dated 07.09.2015 also it was recorded by the Hon'ble Supreme Court that the inquiry shall be for the purpose of ascertaining whether the investigations conducted by the Central Bureau of Investigation have been influenced in any manner by Ranjit Sinha in respect of the accused in the coal block allocation cases.

178. Yet again, in order dated 23.01.2017, the Hon'ble Supreme Court while appointing Special Investigation Team led by the Director, CBI along with two officers of CBI to be nominated by the Director had directed that the SIT would conduct investigation into the abuse of authority prima facie committed by Ranjit Sinha with a view to scuttle enquiries, investigations and prosecutions being carried out by CBI in coal block allocation cases.

179. The Hon'ble Supreme Court had also made it clear that it has not expressed any opinion on the merits of the allegations made by the petitioner or made any comment on the contents of the report prepared by Sh. M.L. Sharma and his team except to say that a prima facie case has definitely been made out for investigation into the abuse of authority by Ranjit Sinha in terms of the report.

180. Therefore, the prayer in the application filed by Common Cause and the directions of the Hon'ble Supreme Court in its several orders were that

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investigation is required to be made into the abuse of authority by Ranjit Sinha with a view to scuttle enquiries, investigations and prosecutions being carried out by CBI in coal block allocation cases.

181. For deciding to charge or discharge Santosh Bagrodia, this court has to see whether Ranjit Sinha had abused his authority with a view to scuttle investigations being carried out by CBI in M/s AMR case to save Santosh Bagrodia from prosecution in that case?

182. This case is the third trial by fire for Santosh Bagrodia.

183. The first ordeal by trial for him was during investigation by CBI.

184. In the first round, only the Senior PP of CBI had given the opinion that there is no prosecutable case against him. Everyone else, uptil the Additional Director, CBI was of the opinion that Santosh Bagrodia be chargesheeted for criminal conspiracy for cheating Ministry of Coal.

185. In the second round, ALA of CBI, K. Sudhakar joined with the Senior PP for opining that no case is made out against Santosh Bagrodia. In the third round, when the draft supplementary report by the IO opining prosecution of Santosh Bagrodia was considered in CBI, now the Additional Director, CBI also joined the Senior PP and ALA K. Sudhakar in opining that no prosecutable case is made out against Santosh Bagrodia.

186. Ranjit Sinha, Director CBI being the competent authority to take the final decision approved the noting up before him by the Additional Director in which it was opined that no case is made out against Santosh Bagrodia.

187. When the supplementary report of CBI concluding no triable case is made out against Santosh Bagrodia was in the court, the learned predecessor of this court was not satisfied with that report and vide order

dated 21.07.2015, took cognizance of the offence of criminal conspiracy and summoned all the three public servants including Shri Santosh Bagrodia.

188. Thus begin the second trial by fire for Santosh Bagrodia.

189. As noted in earlier paragraphs, Santosh Bagrodia was discharged vide order dated 23.07.2019.

190. The discharge was on merits of the case and not for some technical defect in the chargesheet (such as want of sanction etc.).

191. It appears that CBI accepted the discharge of Santosh Bagrodia as there is no submission of filing/pendency of any proceedings challenging the order of discharge before the Hon'ble Supreme Court.

192. Not only this, the proceedings challenging summoning order initiated by Santosh Bagrodia before Hon'ble Supreme Court were also withdrawn by him after he was discharged in the case.

193. Present chargesheet is the third trial by fire for Santosh Bagrodia. The allegations against him are that he entered into a criminal conspiracy for the commission of offence under section 218 IPC and section 13 (2) read with section 13 (1) (d) of Prevention of Corruption Act, 1988 along with Ranjit Sinha and K. Sudhakar ALA of CBI.

194. As noted earlier, the directions of the Hon'ble Supreme Court were to conduct investigation into the abuse of authority by Ranjit Sinha to scuttle enquiries, investigations and prosecutions be carried out by CBI in coal block allocation cases.

195. Whether Ranjit Sinha scuttled investigation in the case of M/s. AMR by approving the opinion of Additional Director not to prosecute Santosh Bagrodia?

196. In the opinion of this court, the answer is No because investigation could have been scuttled only in the case of a guilty person and not in the case of an innocent one.

197. The order on charge dated 23.07.2019 discharging Santosh Bagrodia shows that Santosh Bagrodia had been an innocent person all along.

198. His discharge carries greater weight because initially he was summoned by the court in the case of M/s. AMR, though he was exonerated in the supplementary report filed by CBI.

199. However, the court after hearing learned counsels for all the parties passed a detailed order discharging Santosh Bagrodia.

200. That order has attained finality not because challenge to the same was repelled but because the said order never came to be challenged by CBI.

201. When an investigating agency exonerates an innocent person, there cannot be any allegation against competent authority of such agency of scuttling investigation.

202. The fact that (i) Ranjit Sinha met Santosh Bagrodia 46 times at his residence (in the absence of investigating officer) when the investigation report of the investigating officer in the case of M/s. AMR was under consideration in CBI; (ii) Ranjit Sinha made 25 calls to Santosh Bagrodia and received 12 calls from Santosh Bagrodia; (iii) despite unanimous opinion of all concerned in CBI (except lone voice of a Senior PP), Ranjit Sinha sought opinion of Shri Amarendra Sharan, Learned Senior

Advocate appearing on behalf of CBI before the Hon'ble Supreme Court; (iv) after receiving the opinion of Shri Amarendra Sharan again sought the opinion of ALA of CBI, K.Sudhakar; (v) K. Sudhakar changed his opinion and suggested filing of no case against Santosh Bagrodia; (vi) Ranjit Sinha directed further investigation regarding role of public servants; (vii) IO filed supplementary chargesheet opining of prosecution of Santosh Bagrodia and again opinion of ALA Sh. K. Sudhakar differed with the opinion of IO and other senior officers of CBI and he reiterated exoneration of Santosh Bagrodia; (viii) this opinion came to be accepted by the Additional Director of CBI; (ix) it resulted in approval by Ranjit Sinha for filing a closure report against Santosh Bagrodia; (x) disagreement of this court with the closure report of CBI closing the case against Santosh Bagrodia and summoning Santosh Bagrodia for the offence of criminal conspiracy and criminal misconduct would have been ideal for this court to form an opinion in this case that there is a grave suspicion that Santosh Bagrodia conspired with Ranjit Sinha and K. Sudhakar for his exoneration in this case.

203. However, the difficulty in the case is that the present chargesheet stops at the stage when Ranjit Sinha approved the noting put up by Additional Director not to chargesheet Santosh Bagrodia.

204. The chargesheet does not take into account the events which took place in this court after the filing of the supplementary chargesheet opining closure of case against Santosh Bagrodia in this court.

205. Santosh Bagrodia was summoned by this court in the case of M/s. AMR by disagreeing with the opinion of CBI not to chargesheet him. However, after considering the lengthy arguments of the learned counsels for the

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parties addressed before this court, Santosh Bagrodia was discharged vide a detailed order by this court. That order has attained finality in the absence of any challenge to the same. These facts are not mentioned in the chargesheet and in the opinion of this court, these facts are important for deciding whether Santosh Bagrodia is to be charged for the offence of criminal conspiracy with Ranjit Sinha and K. Sudhakar, ALA, CBI for his exoneration in the case.

206. At this stage, after discussing the facts of the case in detail the second query noted earlier whether a person, say 'A' (Santosh Kumar Bagrodia) who is innocent and has not committed any offence, and hence absent actus rea as well as *mens rea*, can he enter into a criminal conspiracy with a public servant 'B' (Ranjit Sinha), to exonerate him i.e., 'A' (Santosh Kumar Bagrodia) from prosecution is to be certainly answered in negative.

207. Discharge of Santosh Bagrodia in AMR case has brought a sea change.

208. In the facts and circumstances of this case, a large number of meetings by an innocent person under investigation by CBI with the Director of CBI (in the absence of investigating officer of the case) and a large number of telephonic conversations between the two are not circumstances of suspicion leave aside grave suspicion for framing charge of criminal conspiracy because the person under investigation had been an innocent person all along without any actus-reus or mens-rea. He was innocent all along. He did not become innocent the day he was discharged. The order of discharge merely declared him innocent.

209. When K. Sudhakar, ALA CBI gave his second opinion that no case is made out against Santosh Bagrodia which was contrary to his earlier opinion, he did not frame incorrect record or writing with intent to save Santosh Bagrodia from punishment because the order on charge dated 23.07.2019 discharging Santosh Bagrodia has proven that Santosh Bagrodia could not have been punished being an innocent person.

210. When the Additional Director, CBI gave his third opinion that no case is made out against Santosh Bagrodia which was contrary to his earlier two opinions, he did not frame incorrect record or writing with intent to save Santosh Bagrodia from punishment because the order on charge dated 23.07.2019 discharging Santosh Bagrodia has proven that Santosh Bagrodia could not have been punished being an innocent person.

211. The most important fact for the purposes of order on charge in respect of Santosh Bagrodia is that he stands discharged. That order was never challenged. That order is not taken into consideration while filing the present chargesheet.

212. When the ML Sharma committee gave its report, it was not having the benefit of order dated 23.07.2019 passed by this court discharging Santosh Bagrodia. Order of discharge was passed in the year 2019 and the report was submitted by ML Sharma committee much earlier in the year 2016. This court is of the opinion that in case the said committee had the benefit of order of discharge, which has now attained finality, its conclusion would have been different.

213. For these reasons, this court finds that there is no material on record to have grave suspicion for framing the charge of criminal misconduct under

section 120 B read with 218 IPC read with section 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988.

214. The query whether a public servant 'B' (Ranjit Sinha) can be charged for the offence of criminal misconduct for not chargesheeting 'A' (Santosh Kumar Bagrodia) even though the court having jurisdiction to try 'A' (Santosh Kumar Bagrodia) has also discharged 'A' (Santosh Kumar Bagrodia) on merits of the case [and that too, after having initially summoned 'A' (santosh Kumar Bagrodia) though not chargesheeted by CBI, by overruling the opinion of the investigating agency/CBI not to prosecute him and the said order having attained finality] is answered in negative.

215. Santosh Bagrodia is therefore discharged.

216. **Order in respect of role of Vijay Darda and Devender Darda:** In RC No. 9, which is CBI versus M/s. AMR and others, allegations against Vijay Darda are that he being a Member of Parliament Rajya Sabha wrote several letters to the Prime Minister who was Minister of Coal, requesting allocation of a coal block to M/s. AMR and in these letters several misrepresentations were made.

217. Devender Darda had attended the screening committee meeting and had submitted the feedback form which contained several misrepresentations which led to allocation of Bander coal block in favour of M/s. AMR jointly with two other companies.

218. It is on record that Vijay Darda, Member of Parliament (RS) visited the residence of Ranjit Sinha thrice and his son Devender Darda visited the

residence of Ranjit Sinha on twelve occasions. Vijay Darda called telephonically Ranjit Sinha five times.

219. The IO of the case recommended chargesheeting Devender Darda under section 420 of IPC as well as for Section 120 B read with Section 218 IPC read with Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988. The Senior PP recommended prosecution of Devender Darda under Section 120 B read with 420 IPC. The SP, DIG, ALA Sh. K. Sudhakar, JD and Additional Director concurred with the opinion of investigating officer for prosecuting Devender Darda under section 420 of IPC as well as for criminal conspiracy under section 120 B read with section 218 IPC read with 13 (2) read with 13 (1) (d) of Prevention of Corruption Act, 1988.

220. Ranjit Sinha sought the opinion of Shri Amarendra Sharan, Learned Senior Advocate who was representing CBI before the Hon’ble Supreme Court in coal block cases. The reasons for seeking opinion of Shri Amarendra Sharan are noted in earlier paragraphs of this order. Shri Amarendra Sharan responded that he has already given his opinion on 05.03.2014 in RC 11 of 2012 as to the effect of allocation, concepts of wrongful gain and wrongful loss vis-à-vis misrepresentation/ concealment of facts and scope and ambit of section 13 (1) (d) PC Act. He submitted that views in this regard differ at various places, which is now required to be reconsidered taking into account his opinion dated 05.03.2014.

221. When the opinion of Shri Amarendra Sharan was considered by the Director, CBI he directed that the case may again be looked into by ALA

authorised by the Hon'ble Supreme Court for giving his opinion based on merit of the case and observations made by the learned special counsel.

222. Now, ALA K. Sudhakar gave his opinion that no criminal case has been made out against the MoS (Coal), Secretary and other public servants. Consequently, this would also be applicable to the private parties is no conspiracy has been established.

223. The HoZ, AD, CBI reiterated their opinion even earlier. The Director, CBI overruled the opinion of ALA K. Sudhakar and recommended prosecution of Devender Darda under section 120 B, 420 IPC.

224. Therefore, so far as Devender Darda is concerned, his meetings with Ranjit Sinha made no difference to the outcome of case against him and he was recommended to be prosecuted for the offences recommended from IO of the case till the Additional Director, CBI.

225. Ranjit Sinha did not abuse his authority to scuttle the case against Devender Darda. Had there been a criminal conspiracy, as alleged in the chargesheet the Director, CBI would have followed the opinion of ALA, K.Sudhakar and would have exonerated Devender Darda. Filing of the chargesheet against Devender Darda under section 120 B read with 420 IPC shows that Ranjit Sinha showed no favour to Devender Darda.

226. Insofar as Vijay Darda is concerned, in the first round, everyone, except Senior PP, recommended prosecution of Vijay Darda for criminal misconduct under section 13 (2) read with section 13 (1) (d) of the Prevention of Corruption Act, 1988.

227. However, after the opinion of Shri Amarendra Sharan was received, Ranjit Sinha had requested ALA K. Sudhakar to give his opinion, when

K. Sudhakar opined to exonerate him. However, HoZ, Additional Director agreed with the recommendations of the investigating officer. Ranjit Sinha did not agree with the opinion of ALA K. Sudhakar and did not approve exoneration of Vijay Darda. He recommended prosecution of Vijay Darda under Section 9 of PC Act.

228. Had there been a criminal conspiracy, as alleged in the chargesheet the Director, CBI would have followed the opinion of ALA, K.Sudhakar and would have exonerated Vijay Darda.

229. The opinion of ML Sharma committee as well as allegation in present chargesheet are that Ranjit Sinha diluted the case against Vijay Darda by invoking section 9 of PC Act which is a milder offence in comparison to section 13 of the said Act.

230. But the order on charge dated 23.07.2019 has shown that the appropriate charge against Vijay Darda is the charge under section 9 of PC Act and not under section 13 of PC Act.

231. CBI has accepted the charge framed against Vijay Darda under Section 9 of PC Act as it did not challenge order dated 23.07.2019. Therefore, it cannot be said that Ranjit Sinha diluted the case against Vijay Darda by invoking Section 9 of the PC Act. Ranjit Sinha did not abuse his authority by directing prosecution of Vijay Darda under section 9 of the PC Act.

232. The case of CBI would have been ideally made out if the court had framed charge against Vijay Darda under Section 13 (2) read with Section 13 (1) (d) of Prevention of Corruption Act, 1988. Then it would have been an ideal case of chargesheeting Vijay Darda for milder offence by Ranjit Sinha but in view of order on charged dated 23.07.2019

charging Vijay Darda for offence u/s 9 of P.C. Act and CBI having accepted that charge, now it cannot be said that Ranjit Sinha proposed milder charge against Vijay Darda.

233. The fact that Ranjit Sinha did not accept the opinion of ALA K.Sudhakar to exonerate private persons shows that the chain necessary to prove conspiracy has broken down.

234. The fact that Ranjit Sinha did not dilute the charge against Vijay Darda shows that he showed no favour to Vijay Darda and recommended appropriately framing the charge against Vijay Darda under section 9 of PC Act.

235. It also shows there was no conspiracy to abuse the authority by Ranjit Sinha to scuttle the investigations against Vijay Darda and Devender Darda.

236. As noted earlier, neither Devender Darda nor Vijay Darda could get any relief by meeting Ranjit Sinha, therefore, this court finds that there is no material to frame the charge of criminal conspiracy against Devender Darda and Vijay Darda under section 120 B read with section 218 IPC read with Section 13 (2) read with Section 13 (1) (d) of PC Act.

237. The query whether a public servant 'B' (Ranjit Sinha) having recommended prosecution of private person (Vijay Darda) u/s 9 of P.C. Act, instead of under Section 13 (1) (d) read with 13 (2) of the PC Act, 1988 can be charged for the offence of criminal misconduct for recommending prosecution of private person (Vijay Darda) for milder offence even though the court after hearing the parties has also passed order framing of charge u/s 9 of P.C. Act only and that order is accepted

by the investigating agency by not filing any SLP against that order is answered in negative.

238. Therefore, A-2 Vijay Darda and A-3 Devender Darda are discharged.

239. **Order in respect of role of A-1 K. Sudhakar:** Unlike the case of Ranjit Sinha, there is no allegation that K. Sudhakar met Vijay Darda or Devendra Darda or Santosh Bagrodia.

240. Unlike the case of Ranjit Sinha, there is no allegation that K. Sudhakar had telephonic conversation with Vijay Darda or Devendra Darda or Santosh Bagrodia.

241. He is sought to be prosecuted for changing his opinion. Whereas earlier he had suggested prosecution of all the private accused and public servants but later on he opined that no criminal case has been made out against the MoS (Coal), Secretary and other public servants. Consequently, this could also be applicable to the private parties as no conspiracy has been established.

242. Ranjit Sinha, Director, CBI did not act upon the opinion of K. Sudhakar and directed prosecution of private accused for the offence u/s 120B, 420 IPC so far as Manoj Jayaswal, Vijay Darda, Devendra Darda and M/s AMR Iron and Steel Pvt. Limited are concerned and for the offence of Section 9 of P.C. Act so far as Vijay Darda is concerned.

243. Had there been a conspiracy, as alleged, amongst K. Sudhakar, Ranjit Sinha, Devendra Darda and Vijay Darda, then Ranjit Sinha would have acted upon the opinion of K. Sudhakar and being the competent authority in CBI would have directed filing of closure report against private accused.

244. The fact that Ranjit Sinha did not act upon the opinion of K. Sudhakar shows there was no conspiracy. It breaks down the allegations of criminal conspiracy alleged in the chargesheet.

245. The second opinion of K. Sudhakar differing from his earlier opinion can be dealt with in two parts.

246. In the first part, the opinion given regarding Santosh Bagrodia can be taken up for consideration.

247. Whereas, K. Sudhakar differed from his earlier opinion in respect of Santosh Bagrodia but the Additional Director of CBI also differed with not one but two earlier opinions given by him in respect of Santosh Bagrodia. The Additional Director had twice given his opinion that Santosh Bagrodia be prosecuted but in the third opinion he agreed with the opinion of ALA K. Sudhakar in suggesting that there is no prosecutable case against Santosh Bagrodia.

248. Neither ALA K. Sudhakar nor the Additional Director, CBI made a mistake in giving opinion in favour of Santosh Bagrodia because the subsequent facts have now shown that the learned Special Judge dealing with AMR case initially disagreed with the closure report filed by CBI in respect of Santosh Bagrodia and summoned him also to face the trial but later on, after hearing at length the learned Counsels for the parties, passed a detailed order on charge discharging the said accused Santosh Bagrodia.

249. CBI never challenged order of the learned Special Judge discharging Santosh Bagrodia. That order has become final now.

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250. Today, in the light of order discharging Santosh Bagrodia and that too on merits of the case and not for any technical reason, CBI cannot allege that ALA K. Sudhakar or for that matter their Additional Director gave a false opinion to save Santosh Bagrodia from legal punishment.

251. As noted above, the chargesheet has stopped at the stage when Ranjit Sinha, Director, CBI approved closure report against Santosh Bagrodia.

252. The chargesheet did not take into account that Santosh Bagrodia was summoned by a learned Special Judge disagreeing with its closure report but again discharged him on merits of the case.

253. Now with the discharge of Santosh Bagrodia, it cannot be said that ALA K. Sudhakar or for that matter Additional Director of CBI had given a incorrect opinion with the intention to save Santosh Bagrodia from legal punishment.

254. So far as second part of the opinion given by K. Sudhakar is concerned where he opined that no criminal case has been made out against the MoS (Coal), Secretary and other public servants and he opined that consequently this would also be applicable to the private parties as no conspiracy has been established is concerned, it can be said with certainty that at present, this is incorrect opinion (unless Vijay Darda and Devendra Darda are acquitted on merits in the case) because the court has found grave suspicion against private parties and has framed charge against them for various offences.

255. However, in the absence of any evidence of any meeting or telephonic conversation between K. Sudhakar and Devendra Darda and Vijay Darda,

it is difficult to allege that K. Sudhakar was co-conspirator with Devendra Darda and Vijay Darda.

256. The intention to save them from legal punishment cannot be alleged because there is no other circumstantial evidence evidencing such intention.

257. The allegation of conspiracy has broken down.

258. Ranjit Sinha did not act upon advice of K. Sudhakar, ALA and did not approve closure report in respect of Vijay Darda and Devendra Darda. He recommended prosecution of Devendra Darda for the offences proposed by IO of the case and prosecution of Vijay Darda u/s 9 of P.C. Act which has also been the case with the learned Special Judge who has also charged Vijay Darda u/s 9 of P.C. Act.

259. It is equally important to note that the opinion of ALA K. Sudhakar was not the final word in CBI. His opinion was subject to the decision of competent authority i.e. Director, CBI. The opinion rendered by K. Sudhakar at the first occasion as well as the second opinion both were available for the comments of senior CBI officers and finally the Director of CBI. The opinion had not attained finality to become record or writing capable of saving the accused from legal punishment.

260. This is borne by the facts in this case also.

261. The Director of CBI Ranjit Sinha did not act upon the opinion of K. Sudhakar and directed prosecution of Vijay Darda and Devendra Darda. Therefore, the opinion of K. Sudhakar simpliciter was incapable of saving any accused from legal punishment since it was not the final word of CBI.

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262. Even the final word of CBI i.e. the decision to chargesheet or not any accused is not the final word as it is subject to legal scrutiny by the concerned court which can differ with its opinion and order further investigation/can summon the accused on the basis of material on record though not chargesheeted by Investigating Agency and can refuse cognizance for accused chargesheeted by the Investigating Agency.

263. Therefore, the opinion of K. Sudhakar by itself being subject to the scrutiny by competent authority of CBI as well as scrutiny by the court concerned was incapable of saving Vijay Darda or Devendra Darda from any legal punishment.

264. Therefore, neither K. Sudhakar can be charged for the offence u/s 120B r/w 218 of IPC r/w 13(2) r/w 13(1)(d) of P.C. Act, 1988 nor with substantive offence u/s 218 of IPC nor u/s 15 & 13(2) r/w 13(1)(d) of P.C. Act, 1988. He is therefore discharged.

265. **Conclusion:** All the accused are discharged.

Announced in the open Court
on 07.04.2025

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(ARUN BHARDWAJ)
Special Judge (PC Act) (CBI),
Coal Block Cases-01,
RADC, New Delhi