

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL REVISION CASE No.693 of 2022

ORDER:

Challenge in this Criminal Revision Case is the order that is rendered by the Court of Principal Special Judge for CBI Cases, Hyderabad, in Crl.M.P.No.47 of 2021 in C.C.No.1 of 2012, dated 17.10.2022.

2. The revision petitioner, who is arrayed as accused No.6 in the Calendar Case in question, moved an application for discharge and the same was dismissed by the trial Court through the impugned order. Aggrieved by the same, the petitioner is before this Court.

3. Heard the submission of Sri K.Raghavacharyulu, learned counsel for the revision petitioner as well as the learned Special Public Prosecutor for CBI.

4. A perusal of record and upon hearing the submissions made by the respective parties, what could be perceived is that the petitioner was not figured as accused in the charge sheet initially. However, a supplementary charge sheet was filed by the CBI projecting the culpability

of the petitioner and alleging that she was found to have committed the offences punishable under Section 120-B r/w 409 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

5. The facts of the case in nut-shell, as could be perceived through the contents of the supplementary charge sheet, are that a case was registered by the C.B.I., ACB, Hyderabad, *vide* Crime No.RC 17(A)/2009-CBI/Hyd on 07.12.2009 for the offences punishable under Sections 120-B, 409, 420, 379, 411, 427 and 447 IPC, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, Section 26 of Indian Forest Act, 1927, Section 21 r/w 4(1) and Sections 4(1)(A) and Section 23 of Mines and Minerals (Development and Regulation) Act, 1957, to investigate the boundary related disputes and illegal mining by M/s Obulapuram Mining Company Private Limited (hereinafter referred to as “M/s OMCPL” for brevity) and M/s Bellary Iron Ores Private Limited (hereinafter be referred to as “M/s BIOPL” for brevity) in Bellary Reserve Forest of Anantapur District of Andhra Pradesh.

6. On the Writ Appeal filed by C.B.I. *vide* Writ Appeal No.532 of 2010, a Division Bench of the High Court of Andhra Pradesh by order dated 16.12.2010, while vacating the order of stay, ordered the C.B.I. to limit the investigation only to the illegal mining activity and not to probe into the boundary disputes till the same is decided by the Committee constituted under the orders of Hon'ble Supreme Court of India. Thus, the investigation was limited to the allegations of illegal mining activity.

7. M/s OMCPL, who is arrayed as accused No.4, was granted three leases on areas of 25.98 Ha, 39.50 Ha and 68.50 Ha. Likewise, M/s BIOPL was granted a lease of 27.12 Ha. M/s OMCPL in its lease area of 68.50 Ha in Antargangamma konda area, shifted the permanent boundary pillars of Station No.8 to western direction for about 40 meters and constructed a permanent pillar in order to criminally encroach upon the said un-allotted area for commission of illegal mining. Similarly, permanent pillar of Station No.10 was also mischievously removed. Illegal roads were formed for transportation of ore to join Station No.7 instead of Station No.8. Likewise, illegal roads

were formed near Station No.1 in the reserve forest area outside the lease area over a distance of 2.95 kms. M/s OMCPL (Accused No.4) at their site of 68.50 Ha area, dispatched 29.32 lakh Metric tons of iron ore. However, from the physical appearance of the site, it appears that not even 40% of the aforesaid quantity could have been extracted from the said area. It is also an allegation that near the lease areas of 39.50 Ha and 25.98 Ha, there has been illegal dumping of iron ore in the adjacent reserve forest area.

8. It is also alleged that there is improper fixation of location of mining area in criminal conspiracy with unknown public servants by M/s OMCPL (accused No.4) at its site of 25.98 Ha and that it has encroached into the adjacent mining leases. It is further alleged that M/s BIOPL has shown dispatch of iron ore from its lease area whereas no active mining activity was found in the said mining area. It is also alleged that M/s BIOPL on its lease area of 27.12 Ha has utilised 1.8 Ha of reserve forest area outside the leasing boundary for dumping the overburden/mining waste without approval and thereby,

committed criminal trespass causing wrongful loss to the Government.

9. Sugamma Devi temple located in the reserve forest near their mining leases was destroyed by the accused with an intention to carry out illegal mining in that area as the said area is having rich iron ore content.

10. Investigation in respect of accused Nos.1 to 5 was completed and hence, a charge sheet was filed against them. Later, the investigating agency filed a memo under Section 173(8) Cr.P.C. for further investigation. After completion of investigation in respect of the petitioner, a supplementary charge sheet is filed showing her as accused No.6.

11. The petitioner while working as Secretary, Industries and Commerce Department, during 17.5.2006 and 10.10.2009 entered into criminal conspiracy with other accused and in furtherance of the conspiracy, abused her official position as public servant and granted two mining leases by issuing two Government Orders, *vide* G.O.Ms.Nos.151 and 152, Industries and Commerce (M-III) Department, dated 18.6.2007, to accused No.4, who is

represented by accused Nos.1 and 2, and thereby, facilitated the accused-lessees to cheat the Government. The petitioner being a public servant committed criminal breach of trust by facilitating the lessees to cheat the Government.

12. As per the investigation done, the deceased-accused No.5 who was the then Assistant Director, Mines and Geology, Anantapur, had issued open ended notification for re-grant of lease area of 231 acres (93 Ha). In response to the said notification, accused Nos.1, 2 and 4 entered into criminal conspiracy with the deceased-accused No.5 and applied for mining lease. They flouted a firm in the name and style of M/s Vinayaka Mining Company. M/s Vinayaka Mining Company also applied for the lease area. Subsequently, other applications were also received by the Office of Assistant Director, Mines and Geology, Anantapur. The deceased-accused No.5 recommended the application of M/s OMCPL (accused No.4) for an area of 68.50 Ha and that of A.P. Mineral Development Corporation for an area of 25 Ha. The then Director of Mines and Geology, Hyderabad, (accused No.3) initiated a

note on 02.11.2005 and recommended the case of M/s OMCPL, while comparing it with M/s Vinayaka Mining Company, as the only applicant which has filed its application on the same day as that of M/s OMCPL. The other applications were not considered in contravention of the provisions laid down in the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "MM (D&R) Act, 1957"). Basing on the recommendations of accused No.3, Sri P.Kripanandam, the then Secretary, Industries and Commerce Department, Government of Andhra Pradesh, (accused No.8) approved provisionally pending other clearances that M/s OMCPL be considered for the said mining lease. Investigation revealed that accused No.3 wrote to Forest Department for clearances for M/s OMCPL. Later M/s OMCPL submitted the mining plans prepared by one M/s Geo Environmental Labs, which included the report of quality of iron ore in it. Investigation further revealed that the said report was concocted by the representative of M/s Geo Environmental Labs at the behest of accused No.1. On 09.01.2007, accused No.3 sent a note along with the approved mining

plan to the petitioner, who was the then Secretary of Industries and Commerce Department.

13. Investigation also revealed that the petitioner being a public servant, as Secretary, Industries and Commerce Department, Government of Andhra Pradesh, has entered into criminal conspiracy with accused Nos.1 to 3 and others in facilitating them to cheat the Government by resorting to abuse of official powers in sanctioning the iron ore mining leases to M/s OMCPL violating all the Rules and procedures prescribed in the MM (D&R) Act, 1957 and the Mineral Concession Rules, 1960. On 18.01.2007, the petitioner wrote a letter vide letter No.491/M.III(1)2007-1 to the Secretary, Department of Mines, Government of India. In the said letter also, a comparison was made only between M/s OMCPL and M/s Vinayaka Mining Company on the pretext that those applications were received on the same day and all the other applications received subsequently are proposed to be rejected. Government of India, Ministry of Mines, New Delhi, wrote a letter vide letter No.5/14-2007-MIV-New Delhi, dated 30.3.2007, requesting the State Government to consider all the

applications as simultaneous applications and to furnish comparative chart on merits in respect of all the applicants for the area (including those who have been treated as premature) and to send a copy of reasoned orders for rejecting the applications of remaining applicants after evaluating all the 30 applications in terms of the criteria laid down in Section 11(3) of MM (D&R) Act, 1957. On 21.4.2007, the petitioner wrote to the Government of India insisting for issuance of prior approval under Section 5(1) of MM (D&R) Act, 1957 and assured that all the pre-requisite formalities would be taken care. In the said letter, the petitioner also mentioned that M/s OMCPL will utilise the iron ore for consumption in the ensuing integrated steel plant proposed to be put up by it. Government of India *vide* letter dated 25.5.2007, conveyed the approval of Central Government to grant mining lease of iron ore over an area of 68.50 Ha in favour of M/s OMCPL for a period of 20 years, as recommended by the Government of Andhra Pradesh, with a condition that before allowing the grant, the State Government may ensure the compliance of the amended Acts and Rules including Forest (Conservation) Act, 1980, and the Environmental notification, dated

27.01.1994. On receipt of the said letter from the Government of India, the petitioner immediately issued show cause notices to various applicants on 31.5.2007 (which were dispatched on 02.6.2007), wherein the applicants were directed to show cause within 15 days from the date of the show cause notice as to why their applications shall not be rejected on the ground of date of receipt of their applications and the relative merits. The petitioner, even before the replies to the show cause notices were received in some cases, and ignoring the request of the applicants for extension of time in some cases, in furtherance of the criminal conspiracy with other accused refused the other applications on the ground that they are not supported by any rationale and summarily rejected the other representations on 18.6.2007 without giving an opportunity of being heard and thereby, the petitioner has shown undue favour to M/s OMCPL and on the same day, Government Order *vide* G.O.Ms.No.151 was issued granting mining lease to M/s OMCPL. The petitioner wantonly did not mention in the said G.O. that iron ore excavated will be utilised for “captive purpose”. Whereas in the rejection letter, dated 18.6.2007, issued to

M/s Sathavahana Ispat Limited, it was clearly mentioned that M/s OMCPL was proved to be a prudential entrepreneur with foresight which was already holding the mining lease and applied for additional areas in view of their intention to establish a captive plant. Though M/s Satavahana Ispat Limited was established in 1992, it did not acquire even single mining lease for iron ore for captive purpose. Investigation revealed that the petitioner on the same day i.e., on 18.6.2007 issued another G.O., *vide* G.O.Ms.No.152 sanctioning mining lease of iron ore to an extent of 39.481 Ha in Survey No.I/P of Obulapuram Village, Anantapur District in favour of M/s OMCPL. In the said G.O., there was no mention about the captive mining. Whereas the application of M/s Gimpex Private Limited was got rejected by invoking the reason “captive mining”. Taking undue advantage of the absence of captive mining clause in the said G.O., M/s OMCPL has started excavating iron ore from the said area, exported the same and made huge gains. The petitioner was instrumental in promulgating the G.Os. in connivance with other accused by abusing her official position as a public servant.

14. The intention of the petitioner is that at any cost the mining leases have to be granted in favour of M/s OMCPL. In respect of the alleged G.Os. issued, *vide* G.O.Ms.Nos.151 and 152, the note sheet was approved on 18.6.2007 by the petitioner, her staff as well as the Minister in-charge of mining, which shows that the primary cause for deciding the grant of lease in favour of M/s OMCPL was that it were to utilize the iron ore for captive consumption. The petitioner being the then Secretary, Industries and Commerce Department, is responsible to ensure the correctness of the G.Os issued by the said department. The petitioner in furtherance of the criminal conspiracy and by abusing her official position has issued the said G.Os., without mentioning the rider “captive mining” intentionally and thereby, facilitated accused Nos.1 and 2 of M/s OMCPL to excavate and sell the iron ore in the local market and overseas and to cover up the illegal mining carried out by them in Karnataka resulting in undue pecuniary gain to M/s OMCPL. Had the alleged G.Os. been issued with a rider “captive mining”, thereby restricting the utilization of iron ore mined only for consumption in the proposed steel plant to be set up by M/s OMCPL, the

impetus would have been to develop the steel plant and to conserve the iron ore till that time and use it for the production of steel in the steel plant. However, in view of the deliberate exclusion of rider “captive mining” in the said G.O., M/s OMCPL indulged in indiscriminate exploitation of iron ore illegally.

15. The petitioner, after the issues of illegal mining were being debated and challenged in the courts of law, having been consciously aware of the implications in the said G.Os., did not evince any interest to rectify the G.Os issued by her. This clearly establishes the complicity of the petitioner in commission of offence and existence of nexus between her and other accused beneficiaries. Further, on the instructions of the petitioner, an official correspondence was given to the Director of M/s OMCPL and the brother-in-law of accused No.3.

16. It further came to light that one Sri M.Rakesh Babu, who is the brother-in-law of the petitioner, has acquired many properties during the years 2005-2009 and his financial resources did not commensurate with the value of the properties acquired by him. Evidence in that regard is

being collected and is being separately analysed. Further, the investigation on the aspect of monetary benefits obtained by the petitioner for the favour shown by her to the other accused is in progress and further, report, if any, would be submitted. Thus, the petitioner thereby committed offences punishable under Section 120-B r/w 409 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

17. The petitioner moved an application *vide* Crl.M.P.No.47 of 2021 in C.C.No.1 of 2012 before the trial Court seeking to discharge her. The said application was dismissed through order dated 17.10.2022 and aggrieved by the same, the petitioner is before this Court.

18. Thus, the point that arises for consideration is

Whether the revision petitioner who is accused of committing the offences punishable under Section 120-B r/w 409 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, is entitled for discharge.

19. Making his rigorous submission, the learned counsel for the petitioner arguing in respect of the merits of the

case, contended that the learned judge of the trial Court failed to appreciate the availability of notification, the window period during which the applications seeking grant of mining lease are to be submitted, the document verification done by the Assistant Director of Mines and Geology and the report submitted, the precise area fixed and the nomenclature of the villages. Learned counsel contended that the impugned order rendered by the trial Court itself, which runs to 102 pages, reveals the fear on part of the learned judge to entertain the application filed by the petitioner for discharge. Learned counsel submitted that the case being sensitive in nature, judiciary never came forward to do justice to the accused. Learned counsel also contended that the learned judge of the trial Court made a mountain out of a molehill by catching hold of the description made in G.O.Ms.Nos.151 and 152. He contended that all the relevant considerations were ignored. Learned counsel for the petitioner proceeding further with his submission, laid much stress upon the definition of the term “offence” as enunciated under Section 2(n) Cr.P.C and argued in respect of the alleged acts of the petitioner. He stated that no offence is committed by the

petitioner even if the contents of the voluminous charge sheets are taken into consideration.

20. Learned counsel further submitted that the allegation that is levelled against the petitioner is that she intentionally omitted the word “captive mining” in the G.Os issued and thereby, facilitated M/s OMCPL to do illegal mining. Learned counsel contends that the Hon’ble Apex Court in the cases between ***Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka***¹, ***Tata Iron & Steel Co. Ltd. Vs. Union of India & Another***² and ***Indian Charge Chrome Ltd. & Another Vs. Union of India***³ has categorically held that restrictive clause such as “captive mining” is not feasible and the same cannot be in the interest of mineral development. Learned counsel also submitted that though the word “captive mining” was incorporated in MM(D&R) Act, 2015, the same was deleted by the MM(D&R) Amendment Act, 2021.

21. Learned counsel also stated that the Central Government in its approval for grant of mining lease, dated

¹ (2010) 13 SCC 1

² (1996) 9 SCC 709

³ (2006) 12 SCC 331

25.05.2007, did not encourage any restrictive clause of captive mining and had the Central Government incorporated such rider in the sanction letter and had the petitioner deleted the said word “captive mining” intentionally, then the same amounts to omitting, but nothing as such happened in the present case. Learned counsel also stated that the substantive offence charged against the petitioner is illegal mining and thus, the order rendered by the trial Court is contrary to the contents of the charge sheets filed. Learned counsel also stated that the learned judge of the trial Court conducted roving enquiry at the stage of discharge and went beyond the contents of the charge sheets laid. Learned counsel submitted that the impugned order rendered by the learned judge of the trial Court, which runs to 102 pages, is nothing but a judgment without evidence which is impermissible in law. Learned counsel also stated that there is no nexus, complicity and accomplishment and in the absence of those ingredients, a charge cannot be framed against the petitioner. By stating so, learned counsel seeks for discharge of the petitioner by allowing

the Criminal Revision Case and thereby, setting aside the impugned order.

22. The contrary submission made by the learned Special Public Prosecutor for CBI is that after thorough investigation, the supplementary charge sheet is laid against the petitioner and in case, the petitioner is put on trial, her participation in the commission of offences would come to light and therefore, the petitioner cannot be discharged. Learned Special Public Prosecutor also stated that during the tenure of the petitioner, the aforesaid controversial G.Os were issued and thus, the whole responsibility for issuance of the said G.Os should be borne by the petitioner. Learned Special Public Prosecutor also contended that had the petitioner restrained herself from issuing the alleged G.Os, the prime accused would not have proceeded with illegal mining. Learned Special Public Prosecutor also stated that though initially, charge sheet was filed against five accused, as the involvement of the petitioner, who was the then Secretary, Industries and Commerce Department, Government of Andhra Pradesh, was found, she was subsequently charge sheeted and

supplementary charge sheet was filed to that effect. By submitting thus, learned Special Public Prosecutor seeks to dismiss the Criminal Revision Case.

23. In the case on hand, by the submissions made by of the learned counsel for the petitioner as well as learned Special Public Prosecutor, it is clear that there are three charge sheets and one supplementary charge sheet. In the first charge sheet, accusation is made against five persons. In the supplementary charge sheet, the petitioner is added as accused No.6. Through the second charge sheet, another accused i.e., accused No.7 is added. Likewise, through the third charge sheet, two other accused i.e., accused Nos.8 and 9 were added.

24. The matrix of the case, the allegations that are levelled against the petitioner and the role played by her through all the charge sheets, more particularly which is filed exclusively in respect of the petitioner i.e., the supplementary charge sheet, if narrated point-wise, is as under:-

(i) The petitioner who is a civil servant joined Industries and Commerce Department as Secretary on 17.5.2006.

(ii) The petitioner without following the established procedure, reiterated the justification made earlier regarding comparison of M/s OMCPL and M/s Vinayaka Mining Company and thereby, extended undue favour/pecuniary advantage towards accused Nos.1, 2 and 4 by abusing her official position.

(iii) The petitioner recommended through letter dated 18.01.2007 to the Secretary, Government of India, Department of Mines, New Delhi, the case of M/s OMCPL for grant of mining lease and to convey prior approval.

(iv) The petitioner directed her staff to hand over the letter dated 18.01.2007 to the brother-in-law of accused No.3, which *prima facie* shows that she was in league with the other accused.

(v) When the Under Secretary to Government of India, Ministry of Mines, responded to the said letter on 30.3.2007 and informed the State Government that since the area is a notified area, all applications in respect of the said area are required to be considered as simultaneous applications, the petitioner responded to the said letter by addressing another letter dated 21.4.2007 to the Secretary,

Government of India, Department of Mines, New Delhi, in which she took a stand that the Government of Andhra Pradesh was justified in considering only two applicants.

(vi) The petitioner claimed that M/s OMCPL was considered as meritorious in terms of experience and financial capability and that they are going to set up a steel plant. She also claimed that reasoned orders rejecting other mining lease applications would be sent to the ministry later. A copy of the said letter was also handed over to the brother-in-law of accused No.3.

(vii) On 18.6.2007, the petitioner approved the final decision wherein she gave final priority to M/s OMCPL over other applicants.

(viii) In the note prepared, the petitioner also mentioned that M/s OMCPL will be setting up an integrated steel plant.

(ix) The note submitted was immediately approved by one and all including the then Minister of Mines on 18.6.2007 and G.O.Ms.No.151 was issued on the same day

conveying the decision of the Government of Andhra Pradesh granting mining lease to M/s OMCPL.

(x) The petitioner in league with other accused intentionally avoided to incorporate the term “captive mining” in the said G.O.

(xi) The petitioner intentionally did not send any reasoned order to the Government of India indicating the reasons for rejection of other applicants.

(xii) The petitioner in furtherance of criminal conspiracy with accused Nos.1 and 2 has taken undue interest and insisted to accord approval for the proposal and thereby, abused her official position.

(xiii) The petitioner in furtherance of the criminal conspiracy allowed a different area to be given on lease than that is mentioned in the notification.

(xiv) The petitioner adopted the same procedure in reference to mining lease of M/s OMCPL with regard to 39.50 Ha.

(xv) She avoided to include the rider “captive mining” in furtherance of criminal conspiracy.

(xvi) The petitioner in the capacity of Secretary, Industries and Commerce Department, which has dominion over mining leases in the State, failed to carry out the prescribed procedure established under MM (D&R) Act, 1957 and the Mineral Concession Rules, 1960.

25. The petitioner was charge sheeted for the offences punishable under Section 120-B r/w 409 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Thus, primarily it is to be seen whether the case facts attracts those provisions or not.

26. Section 409 IPC makes a public servant or a banker or a merchant or an agent liable for punishment, who having been entrusted with property or with any dominion over the property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent commits criminal breach of trust in respect of that property.

27. The term “criminal breach of trust” is defined under Section 405 IPC. The same reads as under:-

“Criminal breach of trust:-Whoever, being in any manner entrusted with property, or with any

dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "Criminal breach of trust".

28. Therefore, it is incumbent on part of the prosecuting agency to *prima facie* show that there is entrustment of any property or any dominion over the property to the petitioner and that, she has dishonestly misappropriated or converted to her own use that property or that she dishonestly used or disposed of that property in violation of any direction of law prescribed.

29. The whole case of the prosecution is that the petitioner committed the offences while working as Secretary, Industries and Commerce Department. However, no where it is mentioned that the petitioner is entrusted with the alleged areas of mining and that she had exclusive dominion over the said mining areas. It is not in dispute that the mining areas covers both Andhra Pradesh and

Karnataka States. The submission of the learned counsel for the petitioner in this regard is that the areas at present fall within the territorial jurisdiction of the state of Karnataka. Without entering into that aspect, by the material produced by the prosecuting agency itself, it is clear that much water had flown before the petitioner has taken charge as Secretary, Industries and Commerce Department, Government of Andhra Pradesh. The allegation against the petitioner is that she has committed criminal breach of trust in pursuance of criminal conspiracy with other accused.

30. Section 120-A IPC defines what “criminal conspiracy” is and Section 120-B IPC prescribes punishment for criminal conspiracy.

31. As rightly pointed out by the learned counsel for the petitioner, not even a single line statement is present in the entire material produced by the prosecuting agency that the petitioner at any time has contacted either accused No.1 or accused No.2 or any of the representatives of accused No.4. The prosecuting agency alleges that the petitioner has handed over the copies of correspondence to accused No.4

and brother-in-law of accused No.3. However, no where the date on which they were handed over and at least the place are mentioned in the charge sheets.

32. The supplementary charge sheet reveals as if the petitioner has played a prominent role in issuance of the alleged G.Os. The material placed before this Court by the investigating agency itself, through a memo, reveals that the alleged role, if any, played by the petitioner is very minimal and issuance of the alleged G.Os is in consequence of the earlier correspondence and the decisions taken. There is sufficient material on record to show that the alleged G.Os., *vide* G.O.Ms.Nos.151 and 152 are in consequence of the decisions taken earlier. The discussion that would go further reveals the said fact.

33. The correspondence that went on and the decisions taken are tabulated and is filed through a memo by the C.B.I. before this Court. The ingredients of the said memo are as under:-

Sl.No	Points on which information is sought for	Information/remarks of the Investigating Agency (CBI)
1.	Date on which an open ended notification for re-grant of lease for 231 acres was issued	12.07.2004 – page – 20 – last para of first charge sheet

2.	Date on which an application was moved for mining and for grant lease	28.08.2004 – page – 21 second para of first charge sheet
3.	Date on which the firm by name and style M/s Vinayaka Mining Company was flouted	23-08-2004 – page – 23 – first para of first charge sheet
4.	Date on which M/s Vinayaka Mining company applied for lease area	28-08-2004 – page – 21 – second para of first charge sheet
5.	Date on which other applications were received by the Office of Assistant Director, Mines and Geology, Anantapur	23 application after 05-10-2004 onwards and five prior to this date – page 21 – third para of first charge sheet
6.	Date on which Accused No.5 (late Sri Rao Linga Reddy) recommended the application of accused No.4 (M/s OMCPL) for an area of 68.50 Ha	21-10-2005 – page 22 – second para of first charge sheet.
7.	Date on which accused No.5 recommended the application of M/s AP Mineral Development Corporation for an area of 25 Ha	21-10-2005 – page 23 – last para of first charge sheet.
8.	Date on which the other applications were not considered, which is in contravention to provisions laid down in Mines and Minerals (Development and Regulation) Act, 1957	21-10-2005 – pages 22 and 23 of first charge sheet.
9.	Date on which Shri Kripandandam, the Then Secretary, Industries And Commerce, Government of Andhra Pradesh, approved provisionally pending other clearances that M/s OMCPL be considered for mining	07/08 – 11- 2005 – last para in page 27 and first para in 28 of first charge sheet
10.	Date on which Accused No.3 wrote for clearance for M/s OMCPL (A-4)	23-12-2005 – last para of page 28 of first charge sheet (Seeking clearance from Forest Department for A-4)
11.	Date on which M/s OMCPL	May, 2006 – last para of

	submitted the mining plans prepared by M/s Geo Environmental labs which included the report of quality of iron ore.	page 29 of first charge sheet
12.	Date on which applications were received, which were subsequently rejected basing on the date of receipt of the applications and the relative merits.	Four applications i.e. on 16-12-2022, 15-11-2003, 29-03-2004 & 21-05-2004, (before issue of notification on 12-07-2004) and 26 applications 04-08- 2004 (APMDC) on 28-08-2004 (OMC and Vinayaka), 05-10-004, 12-10- 2004, 27-10-2004,06-11-2004, 08-11-2004, 18-11-2004, 19-11-2004, 03-01-2005, 15-01-2005, 08-02-2004, 18-02- 2005, 11-05-2005, 13-06-2005, 05-07- 2005, 10-08-2005, 17-08-2005, 25-08-2005, 19-09-2005 and 22-09-2005)
13.	Date on which the applicants moved for extension of time in some cases, which were refused by the Petitioner	On 18-06-2007 by SJK Steel Plant Ltd. and on 19-06-2007 by M/s PH Minerals, with reference to Show Cause Notices dt.31.05.2007.

34. Thus, by the above information furnished by the investigating agency itself, it is clear that open ended notification for grant of lease for 231 acres was issued in the year 2004, by which time the petitioner was not in the Department of Industries and Commerce. The applications for grant of mining lease were also moved in the year 2004, by which time the petitioner was not in the Department of

Industries and Commerce. M/s Vinayaka Mining Company was flouted in the year 2004, by which time the petitioner was not in the Department of Industries and Commerce. The said M/s Vinayaka mining Company applied for lease area in the year 2004, by which time the petitioner was not in the Department of Industries and Commerce. The other 23 applications were received in the year 2004 itself, by which time the petitioner was not in the Department of Industries and Commerce. Accused No.5 recommended the application of M/s OMCPL for an area of 68.50 Ha in the year 2005, by which time the petitioner was not in the Department of Industries and Commerce. Accused No.5 recommended the application of M/s Andhra Pradesh Mineral Development Corporation for an area of 25 Ha in the year 2005, by which time the petitioner was not in the Department of Industries and Commerce. The other applications were not considered in contravention of the provisions of MM (D&R) Act, 1957 in the year 2005, by which time the petitioner was not in the Department of Industries and Commerce. Sri Kripanandan (accused No.8), who was the then Secretary, Industries and Commerce Department, Government of Andhra Pradesh, approved

provisionally that M/s OMCPL be considered for mining in the year 2005 itself, by which time the petitioner was not in the Department of Industries and Commerce. Accused No.3 wrote for clearance for M/s OMCPL in the year 2005, by which time the petitioner was not in the Department of Industries and Commerce.

35. Thus, the above facts reveals justification in the submissions made by the learned counsel for the petitioner that having regard to the previous correspondence and the material available at the Department, the petitioner had approved the notes and paved way for issuance of the alleged G.Os. That does not mean that the petitioner has got criminal conspiracy with the other accused and she is solely responsible for the issuance of the alleged G.Os.

36. Coming to the alleged controversial G.Os., i.e., G.O.Ms.Nos.151 and 152, a bare perusal of the said G.Os., reveals justification in the submission made by the learned counsel for the petitioner.

37. G.O.Ms.No.151, Industries and Commerce (M-III) Department, dated 18.6.2007 was issued basing on Government Memo No.18322/M.III(1)/2005, dated

10.11.2005. The said reference is made in the G.O. itself. A perusal of the said memo reveals that it was issued by Sri B.Kripanandam (accused No.8), Secretary to Government. The decision taken through the said memo, as could be perceived through paras 4 and 5 of the said memo, is as under:-

“4.After careful examination of the matter, the Government has provisionally proposed to grant Mining Lease for Iron Ore over an extent of 68.52 Hectares in Sy.No.1 &2 of Antargangamma konda of Siddapuram and Malapanagudi Villages of Kalyana Durga Reserve Forest, D-Hicelal Mandal, Anantapur District in favour M/s Obulapuram Mining Company Private Limited for a period of 20 years, as per MM(D&R) Act, 1957 and the rules made thereunder and subject to prior approval of Government of India under Section 5 of MM(D&R) Act, 1957 and also subject to obtaining the Forest Clearance and submission of Approved Mining Plan under Rule 22 (4) of MC Rules, 1960 within 6 months from the date of receipt of this Memo by the applicant company. The remaining area of M/s Obulapuram Mining Company (P) Ltd is not considered, as the same is considered in favour of M/s A.P Mineral Development Corporation Limited. However, it is also made clear that even this provisional grant subject to outcome of

Revision filed by M/s Sathavahana Ispat Nigam Limited before Government of India.

5. M/s Obulapuram Mining Company (P) Limited are therefore requested to submit the mining plan approved by the Indian Bureau of Mines for the subject area referred to in para-4 above within a period of 6 months from the date of receipt of this memo through the Director of Mines & Geology, for consideration of their Mining Lease application. If they fail to submit the same it will be presumed that they have no interest in their ML application and further action will be taken based on the material available with the government. They are also requested to get forest clearance for the above areas and submit both Approved Mining Plan and forest clearance for further consideration of Mining Lease grants after following the due procedure.”

38. Thus, the Government has provisionally proposed to grant mining lease for iron ore to an extent of 68.52 Ha in favour of M/s OMCPL through the said memo. It is not the version of the prosecuting agency that the petitioner had played any role in issuance of the said memo. Undoubtedly, the said memo formed basis for all the subsequent correspondence and the outcome of G.O.Ms.No.151.

Therefore, it would be wholly undesirable to tag the said G.O. to the acts of the petitioner.

39. In the same manner, G.O.Ms.No.152, Industries and Commerce (M-III) Department, was issued basing on Govt Memo No.11031/M.III(1)/2005-I, dated 08.11.2005. The said memo was also issued by Sri B.Kripanandam (accused No.8), Secretary to Government. Through the said memo, it is clear that the Government provisionally proposed to grant mining lease of iron ore over an extent of 10.437 Ha and also 29.044 Ha in favour of M/s OMCPL subject to the conditions laid therein. The operative portion of the said memo is as under:-

“The Government, have provisionally proposed to grant ML for Iron Ore over an extent of 10.437 Hectares and also 29.044 Hectares against their ML applications dt: 02-11-04 and 08-02-05 respectively In Sy.No.1/P, Obulapuram (V), D.Hirehal (M), Ananthapur District in favour of M/s Obulapuram Mining Company Private Limited subject to submission of AMP and also subject to approval of GO1 under sections 5 & 11(5) of MM(D&R)Act, 1957 and also request the Environment Forest Science and Technology Department to process the application 1st and

2nd cited above keeping in view the instructions issued vide reference 4th cited.”

40. At that time, the petitioner was not in the department and therefore, it is clear that the petitioner has nothing to do with the things transpired at that time. Thus, when the petitioner was not even in the department or at any place around the affairs by the date of open ended notification, by the date of receiving the applications, by the date of flouting of M/s Vinayaka Mining Company, by the date on which the said company applied for lease, by the date of receipt of other applications, by the date of recommendation of accused No.5 in favour of accused No.4, by the date on which other applications were held not considered, by the date on which Sri B.Kripanandam (accused No.8), the then Secretary, Industries and Commerce, Government of Andhra Pradesh, approved provisionally M/s OMCPL for mining and by the date accused No.3 wrote for clearance for M/s OMCPL, this Court is of the view that it would be unjust to hold that the petitioner had conspired with the other accused and the said G.Os are the outcome of the said conspiracy.

41. No correspondence whatsoever either direct or through phones or through any other means by the petitioner with any other accused is placed on record by the investigating agency. Hence, a charge for the said offence i.e., the offence punishable under Section 120-B r/w 409 IPC cannot be framed. Admittedly, to frame a charge, there should be some basis. By bare allegations without at least *prima facie* material pointing out against the petitioner, charge cannot be framed against her and trial of the case cannot be proceeded with.

42. Coming to the other provision of law invoked, the allegation of the prosecution is that the petitioner has committed the offences punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

43. Section 13 of the Prevention of Corruption Act, 1988, makes criminal misconduct by a public servant a punishable offence. In what circumstances a public servant is said to commit the offence of criminal misconduct is narrated in the said provision itself.

44. To connect the petitioner with the said misconduct, the prosecution has to show that the petitioner is

habitually accepting or obtaining or agreeing or accepting or attempting to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward. Nowhere in the charge sheet, it is mentioned that the petitioner at any time either accepted or obtained or agreed to accept or attempted to obtain either for herself or for any other person any gratification other than legal remuneration. Also, it is not shown that the petitioner has received or attempted to receive any valuable thing without consideration to perform any official favour. Also, it is not shown that the petitioner has dishonestly or fraudulently misappropriated or converted for her own use any property which is entrusted to her. It is also not shown that the petitioner has obtained for herself or for any other person any valuable thing or pecuniary advantage or abused her official position for obtaining herself or for any other person any valuable thing or pecuniary advantage. Also, it is not shown that the petitioner has pecuniary resources or property which she could not satisfactorily account for. Though it is indicated in the charge sheet that one B.Rakesh Babu, brother-in-law of the petitioner, had acquired many properties during

the relevant period, the prosecuting agency mentioned that evidence in that regard is being collected and the report, if any, would be submitted. However, no such report appears to have been filed. Even the learned Special Public Prosecutor did not state during his entire submission that such a report was forwarded to the Court concerned. What pecuniary advantage the petitioner has obtained or other advantage she has received for performing those acts from any of the accused is not even remotely stated in the charge sheet. Therefore, a charge in that regard cannot be framed.

45. When the order of the trial Court is gone through, the trial Court having placed all the contents of the charge sheets, four in number, and the gist of voluminous documents produced, has concluded that because of such voluminous material, the petitioner can be charged of the offences alleged. That observation in the opinion of this Court is wholly undesirable. For making a specific charge, there should be specific allegation against the petitioner. Omnibus allegations, how voluminous they may be, cannot form basis to frame charge.

46. In the case on hand, by all the material that is brought on record and upon hearing the enlightened submissions made by learned counsel for the petitioner and learned Special Public Prosecutor for CBI, what could be perceived by this Court is that the petitioner while dealing with the subject matter has not taken care to meticulously peruse the earlier correspondence and the things transpired, and the petitioner thus was not diligent, thereby paving way for issuance of the alleged G.Os. However, as earlier indicated, Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, does not attract. Same is the case with Section 120-B r/w 409 IPC. In none of the charge sheets, it is indicated that the petitioner at any time either directly or indirectly agreed with any of the accused to do or cause to be done any illegal act or an act which is not legal by illegal means. No such agreement or meeting of minds is found in the charge sheets. Therefore, this Court holds that the impugned order is bereft of valid reasons and hence, the same is liable to be set aside.

47. Resultantly, this Criminal Revision Case is allowed. The order that is rendered by the Court of Principal Special

Judge for C.B.I. Cases, Hyderabad in Crl.M.P.No.47 of 2021 in C.C.No.1 of 2012, dated 17.10.2022, is hereby set aside. There are no grounds for framing the charges against the petitioner for the offences punishable under Section 120-B r/w 409 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. Therefore, the petitioner shall be discharged of the said offences.

48. However, the trial Court to verify whether any other provisions of law attracts. In case charge(s) can be framed for any other offence(s), charge(s) to that effect may be framed and the trial proceedings may go on. Baring that, this order becomes final.

49. As a sequel, miscellaneous applications, if any, pending, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

08.11.2022
dr