IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Crl. Rev. Petn. No. 19 of 2017

MDS Nordon Inc., 447 March Road, Ottawa, Ontario, K2KIX8, Canada represented by Power of Attorney holder, Vinay Prakash Singh, s/o (L) Sh. J.P. Singh of F-1 Deepali Apt., B-Block, Ramprastha Colony, Ghaziabad-201011.

… ***Petitioner***

-Versus-

1. Central Bureau of Investigation, represented by its Superintendent of Police, Anti-Corruption Branch, Imphal, Manipur.

… Respondent

2. Dr. Lallukham Fimate, S/o (L) H.L. Ngura of Langol near Sija Hospital, Imphal, P.O & P.S. Lamphel, Imphal District, Manipur.
3. Dr. Thoudem Tomcha Singh, S/o (L) Th. Kulladhaja Singh of Khabam Lamkhai, Imphal, Manipur, P.O. Mantripukhri and P.S. Heingang, Imphal East District, Manipur.
4. Dr. Sinam Sekharjit Singh, S/o S. Digendra Singh of Singjamei Chaingamathak Pishum Leikai, Imphal, Manipur, P.O. Imphal P.S. Singjamei, Imphal West District.
5. Shahid Hussain S/o Muhmmad Hussain, 101 Golden Sands Compound King Abdul Aziz Road Jubali Saudi Arabia-31961.
6. Kirloskar Technologies Pvt. Ltd, M-26, Sector II, Noida, UP201301/B-58, Defence Colony, 1st Floor, Bishma Pitamah Marg, New Delhi, represented by its P.O.A holder, Himansu Sharma s/o Sh. Kamal Kumar Sharma of 77/10, Barh Mohalla, Old Faridabad, Haryana 121001.

… Proforma Respondents

- AND –

IN THE MATTER OF: -

(Special Trial Case No. 12 of 2017 of the Special Judge (PC) Act, Imphal West)

Central Bureau of Investigation, represented by its Superintendent of Police, Anti-Corruption Branch, Imphal, Manipur.

…Complainant

-Versus -

1. Dr. Lallukham Fimate, S/o (L) H.L. Ngura of Langol near Shija Hospital, Imphal, P.O & P.S. Lamphel, Imphal District, Manipur.
2. Dr. Thoudem Tomcha Singh, S/o (L) Th. Kulladhaja Singh of Khabam Lamkhai, Imphal, Manipur, P.O. Mantripukhri and P.S. Heingang, Imphal East District, Manipur.
3. Dr. Sinam Sekharjit Singh, S/o (L) S. Digendra Singh of Singjamei Chaingamathak Pishum Leikai, Imphal, Manipur, P.O. Imphal P.S. Singjamei, Imphal West District.
4. Shahid Hussain S/o Muhmmad Hussain, 101 Golden Sands Compound King Abdul Aziz Road Jubali Saudi Arabia-31961.
5. Kirloskar Technologies Pvt. Ltd, M-26, Sector-II, Noida, UP-201301/B-58, Defence Colony, 1™ Floor, Bishma Pitamah Marg, New Delhi, represented by its P.O.A holder, Himansu Sharma s/o Sh. Kamal Kumar Sharma of 77/10, Barh Mohalla, Old Faridabad, Haryana 121001.
6. MDS Nordon Inc., 447 March Road, Ottawa, Ontario, K2KIX8, Canada represented by P.O.A holder, Vinay Prakash Singh, s/o (L) Sh. J.P. Singh of F-1 Deepali Apt., B- Block, Ramprastha Colony, Ghaziabad - 201011.

... Accused

B E F O R E

HON'BLE MR. JUSTICE AHANTHEM BIMOL SINGH

For the petitioner	::	Mr. Amit Kumar, Sr. Advocate asstd. by Mr. Tanmay Arora, Advocate, Mr. L. Sanamacha, Advocate, Ms. Anindita Barman, Advocate
For the respondents	::	Mr. W. Darakishwor, Sr. Panel Counsel
Date of hearing	::	**23-07-2025**
Date of judgment & order	::	**03-10-2025**

JUDGMENT & ORDER

[1] Heard Mr. Amit Kumar, learned senior counsel assisted by Mr. Tanmay Arora, Advocate, Mr. L. Sanamacha, learned counsel, Ms. Anindita Barman, learned counsel appearing for the petitioner and Mr. W. Darakishwor, learned senior panel counsel appearing for the respondent No. 1. None appeared for the proforma respondents Nos. 2 to 6

The present petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 ("CrPC"), seeking to set aside the judgment and order dated 08-09-2017 passed by the Special Judge (PC) Act, Imphal West, in Special Trial (PC) Case No. 12 of 2016 ("Trial Court"), whereby the Trial Court dismissed the application for discharge filed by the petitioner and passed a separate order on the same date whereby charges were framed against the Petitioner (i.e., Accused No. 6) under Section 420 of the IPC.

[2] The brief facts which culminates in filing of the present revision petition are that in 2006, the Ministry of Health & Family Welfare, Government of India, issued a grant of Rs. 5 crores to RIMS for establishment of a Regional Cancer Centre. The said grant was for civil work (construction of a building) as well as for the procurement of Telecobalt machine with all essential accessories. Out of the said grant of Rs. 5 crores, 1.5 crores was earmarked for construction of building and Rs. 3.5 crore was allocated for the purchase of the said equipment.

[3] The Director of Regional Institute of Medical Sciences (RIMS), Shri L. Fimate, through a publication in newspaper dated 08-03-2007 invited Sealed Tenders for supply of telecobalt machine and interested parties were required to submit their respective bids on or before 15-03-2007. Altogether five parties, including the petitioner, submitted their tender forms along with proforma invoice with price and specification. The Tender Opening Committee opened the five sealed cover tenders on 23-03-2007 and the tender quotation of the petitioner submitted by Kirloskar (Accused No. 5), which is an agent of the petitioner company, was unanimously accepted since the other four tenders lacked three essential features i.e. Isocentric at 100 cm, 250 RMM output source and collision detection device. As far as the rates quoted are concerned, three firms quoted the rates ranging from Rs. 2,98,40,000/- to Rs. 3,05,15,000/- while M/s Panacea quoted Rs.

1,59,00,000/- and the petitioner's agent M/s Kirloskar quoted Rs. 2,47,00.000/- (exclusive of taxes).

[4] After going through the tender process, the Purchase Advisory Board decided to procure equipment of the petitioner company as it fulfils all the specifications of the tender and its reputation as a brand. Thereafter, the RIMS awarded the said tender for supply of telecobalt unit to the petitioner company by issuing supply order dated 24-09-2007. As per the terms and conditions agreed between the parties, RIMS made an initial payment of 90 percent of the value of the telecobalt unit at the time of successful negotiation and the remaining 10 percent was to be paid upon installation. The payment terms of the proforma invoice dated 08-03-2007 provides that in case installation of equipment gets delayed for reasons beyond control of the petitioner company, then the payment should be released to the petitioner company within 30 days of handing over the telecobalt unit in working condition.

[5] It is on record that the civil work for construction of the building could not be completed on scheduled due to reasons best known to RIMS. In addition, as per the guidelines of Atomic Energy Regulatory Board "AERB", adequate number of staff and uninterrupted power supply was also needed for commissioning and functioning of the telecobalt unit and the same was to be arranged by RIMS, which could not be done in time. Therefore, the agent of the petitioner was unable to

install the machine at that point of time and the equipment was finally installed on 25-09-2011. Thereafter, by a letter dated 26-09-2011, the agent of the petitioner requested RIMS to release the balance 10 percent payment against the supply of the telecobalt unit and further undertook to commission the unit satisfactory after procurement of power supply and telecobalt source after getting necessary clearance/ No-Objection Certificate from AERB, as required by RIMS. Pursuant to the said request and the undertaking, RIMS released the balance payment to the petitioner company.

[6] Nearly five years later, it was brought to the attention of the petitioner company that due to certain alleged irregularities in the procurement of telecobalt unit, the CBI, respondent No. 1 herein, had registered and FIR being FIR No. RC 5(A)/2014-IMP u/s 120-B & 420 read with Section 13(2) & Section 13(1)(d) of the Prevention of Corruption Act against only two officials of RIMS, viz. Dr. L. Fimate, the then Director, RIMS, Imphal (as Accused No. 1) and Dr. Th. Tomcha Singh, Head of Department (Radiotherapy), RIMS (as Accused No. 2). In the said FIR, the petitioner company was not arrayed as an accused.

[7] The respondent No. 1, i.e., CBI, submitted its Charge-Sheet on 11-04-2016 wherein only Accused Nos. 1 to 5 were charged under Section 120B read with Section 420 IPC and under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. In the

said Charge-Sheet, the petitioner company was arrayed as Accused No. 6, and no Charge-Sheet had been filed against the petitioner company under any provision of the IPC or PC Act. Except for the allegation that conduct of the petitioner company constitutes an offence punishable under Section 420 of the IPC, nothing has been alleged or even remotely brought on record so as to suspect that any act has been done by the petitioner constituting an offence under Section 420 of the IPC. Having been aggrieved, the petitioner company filed an application on 27-03-2017 to discharge the petitioner from criminal proceedings initiated against it on the ground that there is no case against the petitioner company. However, by the impugned judgement and order dated 08-09-2017 passed in Special Trial (PC) Case No. 12 of 2016, the Trial Court dismissed the discharge application filed by the petitioner company and charges under Section 420 of the IPC were framed against the petitioner company. Feeling aggrieved, the petitioner company filed the present revision petition with the prayer for setting aside the impugned judgement and order dated 08-09-2017 passed by the Trial Court in Special Trial (PC) Case No. 12 of 2016 and to discharge the petitioner from the said criminal proceedings.

[8] Mr Amit Kumar, learned Senior counsel appearing for the petitioner submitted that the petitioner is a foreign company duly incorporated under the laws of Canada and has more than 50 years of

experience in manufacturing and supplying telecobalt machines all over the world and that more than 90% of telecobalt machines available in India have been manufactured and supplied by the petitioner company. It has been submitted that the petitioner company had supplied the machines to many prominent hospitals such as AIIMS, Delhi, PGI, Chandigarh, etc.

The learned counsel further submitted that M/s. Kirloskar Technologies Pvt. Ltd. is the Indian agent of the petitioner company and the tender bid was submitted through the said Indian agent. It has been submitted that the selection of the petitioner's machine was made by the Purchase Advisory Board (PAB) comprising experts from AIIMs and RIMS after due evaluation and for reasons that it met all the technical specifications which were advertised in the tender notice. It has the maximum number of machines supplied in the country. RIMS is already using a similar machine supplied by the petitioner and it has all the features of patient safety which were critical to a life-saving machine while all the other machines submitted by the four other bidders did not meet the required specification advertised in the tender notice.

[9] The learned senior counsel raised the following five grounds in assailing the impugned judgment and order passed by the trial court:-

(a) In the entire charge-sheet, there is no material whatsoever to even prima facie shows that the ingredients of offence under

Section 420 of the Indian Penal Code, 1860, have been made out against the petitioner (Accused No. 6.).

(b) No offence of cheating under Section 420 IPC can be attributed to the petitioner company in the absence of any allegations or materials against the Directors or Key Managerial Personnel of the Company.

(c) There is no allegation or charge against the petitioner company (Accused No. 6) under Section 120-B of the IPC that it conspires with any of the remaining accused persons to commit the offence of cheating.

(d) Total absence of prima facie materials to establish grave suspicion against the petitioner (Accused No. 6).

(e) The decision of the coordinate bench of this court discharging Accused No. 1 from the Trial Court proceedings ought to be taken into consideration in deciding the present case.

[10] Elaborating the above grounds, it has been submitted by the learned senior counsel appearing for the petitioner as under:-

(a-1) The petitioner, a globally recognized manufacturer of telecobalt machines, had no direct dealings with Accused Nos. 1, 2 and 3 apart from the submission of a single proforma invoice through its Indian agent, M/s Kirloskar Technologies

Pvt. Ltd. The selection of the petitioner's machine was made by the Purchase Advisory Board (PAB), comprising experts from AIIMS and RIMS, after due evaluation of all the tenders submitted by five bidders and on the findings that only the petitioner's machine met all the technical specifications advertised in the tender notice while the four other bids did not met the required technical specifications. It has been submitted that the charge-sheet itself reveals that the machine of Panacea Medical Technology Pvt. Ltd., who submitted the lowest bid, did not met the essential technical requirements of the tender. Consequently, it was not even eligible for the bid, rendering any comparison with the petitioner's bid baseless. As the machine of Panacea Medical Technology Pvt. Ltd. being technically non-compliant, the price quoted by the said company cannot be used as a benchmark to allege that the petitioner quoted a higher price and that such a comparison is not only misleading but also irrelevant in the context of a disqualified bid. The learned senior counsel further submitted that even assuming, without admitting, that the price quoted by the petitioner was higher than the other bidders, no offence under Section 420 IPC is made out as there is no allegation in the charge-sheet, let alone, evidence of any dishonest

intention or inducement on the part of the petitioner, both of which are essential ingredients of the offence of cheating. It has been strenuously submitted on behalf of the petitioner that what clearly emerges from the charge-sheet is that the machine supplied by the petitioner was the only one meeting the tender specifications outlined in the tender notice dated 01-03-2007 and that there is complete absence of any material in the charge-sheet indicating that the petitioner made any inducement to any person which is fraudulent, dishonest, or otherwise to prove the offence of cheating. It has been submitted that to prove an offence of cheating one must establish that there was an inducement since inception, the inducement was fraudulent or dishonest and mens rea existed at the time of such inducement. In support of his submission, the learned senior counsel cited the following case laws:-

(i) **(2018) 14 SCC-233 "Samir Sahay Vs. State of Uttar Pradesh & anr."** wherein it has been held as under:-

"16. Before we proceed further to examine the contentions of the learned counsel for the parties, it is necessary to notice the ingredients for establishing a charge under Section 420 IPC. Section 415 IPC defines "cheating" which is to the following effect:

> ***"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission***

causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat"."

"17. Section 420 IPC is with regard to the cheating and dishonestly inducing delivery of property which is to the following effect:

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

"18. According to Section 415 IPC, the inducement must be fraudulent and dishonest which depends upon the intention of the accused at the time of inducement. This Court had occasion to consider Sections 415 and 420 IPC in Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar. This Court after noticing the provisions of Sections 415 and 420 IPC stated the following in paras 14 and 15: (SCC pp. 176-77)

"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

"19. Again in Dalip Kaur v. Jagnar Singh, this Court noticed the ingredients of Section 420 IPC. In paras 9 to 11 the following was stated: (SCC pp. 699-700)

"9. The ingredients of Section 420 of the Penal Code are:

'(i) Deception of any persons;

(ii) Fraudulently or dishonestly inducing any person to deliver any property; or

(iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.'

"10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P."

"11. There cannot furthermore be any doubt that the High Court would exercise its inherent jurisdiction only when one or the other propositions of law, as laid down in R. Kalyani v. Janak C. Mehta [R. Kalyani v. Janak C. Mehta is attracted, which are as under: (SCC p. 523, para 15)

(1) The High Court ordinarily would not exercise its inherent jurisdiction to quash a criminal proceeding and, in particular, a first information report unless the allegations contained therein, even if given face value and taken to be correct in their entirety, disclosed no cognizable offence.

(2) For the said purpose the Court, save and except in very exceptional circumstances, would not look to any document relied upon by the defence.

(3) Such a power should be exercised very sparingly. If the allegations made in the FIR disclose commission of an offence, the Court shall not go beyond the same and pass an order in favour of the accused to hold absence of any mens rea or actus reus.

(4) If the allegation discloses a civil dispute, the same by itself may not be a ground to hold that the criminal proceedings should not be allowed to continue."

"20. Applying the ratio laid down by this Court as noted above, it is clear that ingredients of Section 420 IPC are not made out in the present case, either from the first information report or from any other material. From the first information report as extracted above only allegation made against the appellant was that he accompanied his father Major P.C. Sahay (Retd.) when he assured that the money of the applicants will not be lost and it shall be the responsibility of his father (late P.C. Sahay). The following allegations made in the first information report need to be specially noticed:

"Along with him his son Samir Sahay, Advocate who was already acquainted with the applicant also accompanied his father. Major P.C. Sahay gave the abovesaid assurance, and the applicant and his wife Smt Uma Devi deposited rupees one lakh with Major P.C. Sahay in this regard and he gave the receipt of the same to the applicant of which the applicant is enclosing the photocopy. Like this Major P.C. Sahay (retired) has got deposited total amount of Rs 86,000 from me and my wife. But after some days it came to be known that the said Company has run away along with the lakhs of rupees of the depositors after closing its office."

(ii) (2024) 10 SCC-690 "Delhi Race Club (1940) Limited & ors. Vs. State of Uttar Pradesh & anr." wherein it has been held as under:–

"36. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:

In order to constitute a criminal breach of trust (Section 406 IPC)

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:

(i) Any direction of law prescribing the method in which the trust is discharged; or

(ii) Legal contract touching the discharge of trust (see: S.W. Palanitkar)

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are:

(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab [Harmanpreet Singh Ahluwalia v. State of Punjab.)"

"37. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception."

(b-1) It has been submitted on behalf of the petitioner that the company alone, in absence of any allegations against its Directors or those who are controlling the affairs of the company, cannot be made an accuse for an offence of cheating inasmuch as, cheating involves mental element i.e., mens rea and that there is a legal bar to proceed against the company for the offence of cheating in absence of material to show that the Directors or the controlling mind and will of the company had intention to cheat and/ or fraudulently and dishonestly to induce someone. In the charge-sheet, the prosecution mindlessly charged the petitioner through its Chief Operating Officer, Scott Macintosh and presently through Best Theatronics of Canada and its Director Andrei Criesianu and through its Indian Agent M/s Kirloskar Technologies Private

Limited under Section 420 of the IPC. However, by an order dated 08-09-2017, the Trial Court, without any application of mine, framed charges against M/s JMDS Nordon, Canada, through its authorized representative, Vinay Prakash Singh, s/o (L) Sh. J.P. Singh, F-1, Deepali Apt, B-Block, Ramprastha Colony, Ghaziabad- 201011.

(b-2) It has been submitted by the learned senior counsel that the question of mens rea cannot be attributed to a juristic person and to establish a case of cheating against the juristic person, the prosecution ought to have established mens rea on the alter ego of the company i.e., the personal group of persons that guide the business of the company and whose actions would be imputed to the company. It has also been submitted that in terms of the law laid down by the Hon'ble Supreme Court, charges ought to have been framed against the individuals responsible for the alleged actions and that the IPC does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence. The learned senior counsel further submitted that in the absence of any provisions laid down under the statute, a Director/ employee of a company cannot be held to be vicariously liable for an offence committed by the company itself.

In support of his contentions, the learned senior counsel cited the following case laws:-

(i) **(2024) SCC OnLine SC 2995 "HDFC Bank Ltd. Vs. State Bank of Bihar & ors."** wherein it has been held as under:-

> ***"20. For bringing out the offence under the ambit of section 420 of the Penal Code, 1860, the first information report must disclose the following ingredients:***
>
> ***(a) That the appellant-bank had induced anyone since inception;***
>
> ***(b) That the said inducement was fraudulent or dishonest; and***
>
> ***(c) That mens rea existed at the time of such inducement."***
>
> ***"21. The appellant-bank is a juristic person and as such, a question of mens rea does not arise. However, even reading the first information report and the complaint at their face value, there is nothing to show that the appellant-bank or its staff members had dishonestly induced someone deceived to deliver any property to any person, and that the mens rea existed at the time of such inducement. As such, the ingredients to attract the offence under section 420 of the Penal Code, 1860 would not be available."***

(ii) **(2015) 4 SCC 609 "Sunil Bharti Mittal Vs. Central Bureau of Investigation"** wherein it has been held as under:-

> ***"39. In Iridium India , the aforesaid question fell directly for consideration, namely, whether a company could be prosecuted for an offence which requires mens rea and discussed this aspect at length, taking note of the law that prevails in America and England on this issue. For our benefit, we will reproduce paras 59-64 herein: (SCC pp. 98-100)***
>
> ***"59. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the 'alter ego' of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation.***

"60. It may be appropriate at this stage to notice the observations made by MacNaghten, J. in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd. : (KB p. 156)

> *A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming an intention—indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate."*

"61. The principle has been reiterated by Lord Denning in Bolton (H.L.)(Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd. in the following words: (QB p. 172)

> *A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd. (AC at pp. 713 & 714). So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the Directors or the managers will render the company themselves guilty."*

"62. The aforesaid principle has been firmly established in England since the decision of the House of Lords in Tesco Supermarkets Ltd. v. Nattrass. In stating the principle of corporate liability for criminal offences, Lord Reid made the following statement of law: (AC p. 170 E-G)

> *'I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."*

"63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of 'alter ego' of the company."

"64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in Standard Chartered Bank v. Directorate of Enforcement. On a detailed consideration of the entire

body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para 6)

'6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents.'"

"40. It is abundantly clear from the above that the principle which is laid down is to the effect that the criminal intent of the "alter ego" of the company, that is the personal group of persons that guide the business of the company, would be imputed to the company/corporation. The legal proposition that is laid down in the aforesaid judgment in Iridium India case is that if the person or group of persons who control the affairs of the company commit an offence with a criminal intent, their criminality can be imputed to the company as well as they are "alter ego" of the company.

(iii) Circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person

"42. No doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so."

"43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."

"44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any

statutory provision to this effect. One such example is Section 141 of the Negotiable Instruments Act, 1881. In Aneeta Hada , the Court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, Section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming fiction. Here also, the principle of "alter ego", was applied only in one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body corporate and not the vice versa. Otherwise, there has to be a specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company."

(iii) (**2008) 5 SCC 662 "S.K. Alagh Vs. State of Uttar Pradesh & ors."** wherein it has been held as under:-

"16. The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence."

"19. As, admittedly, drafts were drawn in the name of the Company, even if the appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself. (See Sabitha Ramamurthy v. R.B.S. Channabasavaradhya [(2006) 10 SCC 581: (2007) 1 SCC (Cri) 621] .)"

(c-1) It has been submitted on behalf of the petitioner that the prosecution has not alleged any criminal conspiracy against the petitioner (Accused No. 6) in the charge-sheet nor has any charge under Section 120-B IPC been framed against the petitioner. According to the learned senior counsel, this omission is not incidental but a clear acknowledgement that no

material exists to support such a charge. The learner senior counsel submitted that in the absence of any allegation of conspiracy, it is legally inconceivable that the petitioner (Accused No. 6), a juristic person, could engage in fraudulent or dishonest inducement and that cheating under Section 420 IPC inherently requires a mental element, i.e., mens rea, which must be demonstrated through specific acts or intent of natural persons controlling the company.

(d-1) It has been submitted on behalf of the petitioner that the prosecution has miserably failed to establish even prima facie suspicion against Accused No. 6 and that the charges along with its documents are not sufficient to create even a prima facie suspicion against the petitioner. It has also been submitted that there is no material whatsoever to create even a strong suspicion in the mind of the court that the petitioner (Accused No. 6) has committed the offence of cheating and as such, the impugned judgment and order rendered by the Trial Court is not sustainable in view of the settled legal principle of law laid down by the Hon'ble Supreme Court. In support of his contentions, the learned senior counsel relied on the following case laws:-

(i) (1979) 3 SCC 4 "Union of India Vs. Prafulla Kumar Samal & anr." wherein it has been held as under:-

"7. Section 227 of the Code runs thus:

> ***"If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."***
>
> ***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 his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. 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."***

"8. The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar v. Ramesh Singh where Untwalia, J., speaking for the Court observed as follows:

> ***"Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the***

accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."

This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Sessions Judge in order to frame a charge against the accused. Even under the Code of 1898 this Court has held that a committing Magistrate had ample powers to weigh the evidence for the limited purpose of finding out whether or not a case of commitment to the Sessions Judge has been made out."

"9. In the case of K.P. Raghavan v. M.H. Abbas this Court observed as follows:

"No doubt a Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session."

To the same effect is the later decision of this Court in the case of Almohan Das v. State of West Bengal where Shah, J., speaking for the Court observed as follows:

"A Magistrate holding an enquiry is not intended to act merely as a recording machine. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is his duty to discharge the accused: if there is some evidence on which a conviction may reasonably be based, he must commit the case."

In the aforesaid case this Court was considering the scope and ambit of Section 209 of the Code of 1898."

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

(ii) (2019) 16 SCC 547 "Dipakbhai Jagdishchandra Patel Vs. State of Gujarat & anr." wherein it has been held as under:-

"Law relating to framing of charge and discharge

"15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows: (SCC pp. 41-42, para 4)

"4. … Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the

initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. … If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

"16. In Union of India v. Prafulla Kumar Samal, after survey of case law, this is what the Court has laid down: (SCC p. 9, para 10)

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

"17. It is the case of the State that the appellant had knowledge that the notes were counterfeit and fake notes and was in conscious possession of the fake notes for 15 days. For framing charges, what is required is prima facie satisfaction. Offence relating to counterfeit notes is a grave offence and not to be viewed lightly."

"18. In the statement by the first accused, he has stated that he had come to Ahmedabad 15 days earlier. At that time, he had told the appellant that the fake notes are to be sold at cheap price and at present he may keep those notes with him. He further states that he had brought these notes from the residence of the appellant and that he had been caught while he was selling the notes at cheap price."

"19. In the first statement given by the appellant dated 11-4-1996 relied upon by the State, the appellant is credited with knowledge of the fact that the bag containing counterfeit notes was left by the first accused at the appellant's residence and they were to be sold at cheap price and it was kept at his residence for some days."

"20. Subsequently, his statement was again recorded on 10-7-1996. Therein, he inter alia states that the first accused told him that the bag contains files relating to land deals and it contained valuables."

"21. In further questioning on 30-8-1996, he inter alia states that because of his acquaintance with Ravi, he became acquainted with the first accused and that he had left the bag at his residence saying that the bag contained important documents."

"22. These are the materials, in short, which were relied on by the State to sustain the order framing the charge against the appellant. That is to say, the statements given by the appellant under Section 161 and the statement also given by the co-accused."

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to

be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

(iii) (2022) 9 SCC 577 "Kanchan Kumar Vs. State of Bihar" wherein it has been held as under:-

"17. The first objection pertains to the inclusion of an amount of Rs 55,000, recorded as the balance amount in the appellant's bank account during the check period, and accordingly counted as an expenditure in the charge-sheet. However, the bank passbook filed by the appellant, which was available to the investigating officer and the Special Judge (Vigilance), evidently records a balance amount of only Rs 11,998 during the check period. The difference in the figures was not explained by the prosecution. Accordingly, the Special Judge (Vigilance) and the High Court failed to reconcile such a simple and straightforward inconsistency in the prosecution's evidence. We are of the opinion that only an amount of Rs 11,998, recorded in the appellant's bank passbook during the check period as the balance amount, is validly admissible as expenditure under this head."

"18. The second objection relates to the inclusion of an amount of Rs 53,467 as expenditure towards repayment of the loan from BSFC. However, the amount repaid towards loan instalments was already deducted from the appellant's gross salary, and the deducted figure was recorded as the total disposable income with the appellant during the check period. Hence, the loan repayment cannot be separately counted as an expenditure yet again. This is a glaring mistake. The Special Judge (Vigilance) as well as the High Court did not consider this objection on the ground that a roving inquiry is not permissible at the stage of discharge."

"19. The third objection relates to the inclusion of Rs 1,58,562 as the value of the articles found during a search conducted in the appellant's house on 21-2-2000, twelve years after the check period of 1974 to 1988. There is nothing to indicate, even prima facie, that these articles found during the search in the year 2000 were acquired during the check period. In the absence of any material to link these articles as having been acquired during the check period, it is impermissible to include their value in the expenditure. We are therefore of the opinion that the appellant's objection about inclusion of this amount in the list of expenditure is fully justified. Unfortunately, even this objection, which did not require much scrutiny of the material on record, was not considered by the Special Judge (Vigilance) or the High Court."

"21. The conclusions that we have drawn are based on materials placed before us, which are part of the case record. This is the same record that was available with the Special Judge (Vigilance) when the application under Section 227CrPC was taken up. Despite that, the Special Judge (Vigilance) dismissed the discharge application on the simple ground that a roving inquiry is not permitted at the stage of discharge. What we have undertaken is not a roving inquiry, but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge (Vigilance) was bound to conduct a similar inquiry for coming to a conclusion that a prima facie case is made out for the appellant to stand trial. Unfortunately, the High Court committed the same mistake as that of the Special Judge (Vigilance)."

"23. For the reasons stated above, we allow the criminal appeal arising out of SLP (Crl) No. 9601 of 2016, and set aside the judgment and order of the High Court of Patna in Kanchan Kumar v. State of Bihar [Kanchan Kumar v. State of Bihar, 2016 SCC OnLine Pat 10208] dated 5-10-2016, and that of the Court of Special Judge (Vigilance), Patna in Special Case No. 09 of 2000, dated 28-3-2016, and discharge the appellant."

(e-1) It has been submitted by the learned senior counsel that the unequivocal findings of a coordinate bench of this Court in Criminal Revision Petition No. 19 of 2017, wherein Accused No. 1 was discharged from criminal proceedings, are directly relevant and binding. It has been submitted that in the said judgment & order rendered by a coordinate bench of this court,

it has been held that the CBI itself admitted that there is nothing which has been received or taken by the first accused in the whole transaction and that as there is no allegation that Theatronics Equinox 100 SAD of M/s MDS Nordon was purchased at a price higher than the market rate, there is no issue of wrongful gain by the petitioner or wrongful loss by RIMS, etc. Taken all together, these findings conclusively established that the essential ingredients of the offence of cheating, including dishonest inducement, wrongful gain and mens rea are entirely absent in the present case. The learned senior counsel submitted that the case of the petitioner (Accused No. 6) stands on even a stronger legal footing than that of the Accused No. 1. The learned senior counsel further submitted that it is a settled principle of law that a company cannot be prosecuted for offence involving mens rea in the absence of specific allegations against its Directors or those who are in control of its affairs. In the present case, the admitted position is that there is no mental element, no dishonest or fraudulent intent attributed to any Director or Officer of the petitioner company and as such, this creates a clear legal bar to proceed against the company for offence of cheating under Section 420 IPC.

(e-2) It has been submitted on behalf of the petitioner that it is a well-settled principle of law that the decision of a coordinate bench is binding on subsequent benches deciding the same or similar issues, unless the latter bench is of the considered view that the matter warrants reconsideration by a larger bench. Mere pendency of the Special Leave to Appeal (Cril.) No. 10109 of 2023 before the Hon'ble Supreme Court against the judgment and order passed by the coordinate bench of this court does not dilute the binding nature of the coordinate bench's findings, especially in the absence of any stay of the judgment and that the prosecution remains bound by the conclusion drawn therein. Accordingly, there exists no compelling reason for this court to depart from the view already taken by the coordinate bench of this court. It has been submitted that the case of the petitioner stands on an entirely independent and stronger footing, both factually and legally, and deserves to be considered on its own merit. In support of his contentions, the learned senior counsel cited the following case laws:-

(i) **(2010) 13 SCC 336 "Sant Lal Gupta & ors. Vs. Modern Cooperative Group Housing Society Ltd. & ors."** wherein it has been held as under:-

"17. A coordinate Bench cannot comment upon the discretion exercised or judgment rendered by another coordinate Bench of the same court. The rule of precedent is binding for the reason that there is a desire to secure uniformity and certainty in law. Thus, in judicial administration precedents which enunciate the rules of law form the foundation of the administration of justice under our system. Therefore, it has always been insisted that the decision of a coordinate Bench must be followed. (Vide Tribhovandas Purshottamdas Thakkar v. Ratilal Motilal Patel , Sub-Committee of Judicial Accountability v. Union of India and State of Tripura v. Tripura Bar Assn."

(ii) (2003) 5 SCC 480 "Rajasthan Public Service Commission & anr. Vs. Harish Kumar Purohit & ors." wherein it has been held as under:-

"12. Before parting with the case we would like to point out one disturbing feature which has been brought to our notice. On 13-12-2001 a Division Bench dismissed an application containing identical prayers. Even before the ink was dry on the judgment, by the impugned judgment, another Division Bench took a diametrically opposite view. It is not that the earlier decision was not brought to the notice of the subsequent Division Bench hearing the subsequent applications. In fact, a reference has been made by the submissions made by the Commission where this decision was highlighted. Unfortunately, the Division Bench hearing the subsequent applications did not even refer to the conclusions arrived at by the earlier Division Bench. The earlier decision of the Division Bench is binding on a Bench of coordinate strength. If the Bench hearing matters subsequently entertains any doubt about the correctness of the earlier decision, the only course open to it is to refer the matter to a larger Bench."

"13. The position was highlighted by this Court in a three-Judge Bench decision in State of Tripura v. Tripura Bar Assn. in the following words : (SCC p. 639, para 4)

> ***"4. We are of the view that the Division Bench of the High Court which has delivered the impugned judgment being a coordinate Bench could not have taken a view different from that taken by the earlier Division Bench of the High Court in the case of Durgadas Purkayastha v. Hon'ble Gauhati High Court. If the latter Bench wanted to take a view different than that taken by the earlier Bench, the proper course for them would have been to refer the matter to a larger Bench. We have perused the reasons given by the learned Judges for not***

referring the matter to a larger Bench. We are not satisfied that the said reasons justified their deciding the matter and not referring it to the larger Bench. In the circumstances, we are unable to uphold the impugned judgment of the High Court insofar as it relates to the matter of inter se seniority of the Judicial Officers impleaded as respondents in the writ petition. The impugned judgment of the High Court insofar as it relates to the matter of seniority of the respondent Judicial Officers is set aside. The appeals are disposed of accordingly. No costs."

"14. In the instant case, the position is still worse. The latter Bench did not even indicate as to why it was not following the earlier Bench judgment though brought to its notice. Judicial propriety and decorum warranted such a course indicated above to be adopted."

(iii) (2024) 3 SCC 224 "Mary Pushpam Vs. Relvi Curusumary & ors." wherein it has been held as under:-

"19. The doctrine of merger is a common law doctrine that is rooted in the idea of maintenance of the decorum of hierarchy of courts and tribunals. The doctrine is based on the simple reasoning that there cannot be, at the same time, more than one operative order governing the same subject-matter. The same was aptly summed up by this Court when it described the said doctrine in Kunhayammed v. State of Kerala : (SCC p. 383, para 44)

"44. … (i) Where an appeal or revision is provided against an order passed by a court, tribunal or any other authority before superior forum and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges in the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of the law."

"20. The legal position on coordinate Benches has further been elaborated by this Court in State of Punjab v. Devans Modern Breweries Ltd. : (SCC p. 157, paras 339-340)

"339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench.

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"340. In Halsbury's Laws of England (4th Edn.), Vol. 26 at pp. 297-98, para 578, it is stated:

'A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow.' "

[11] Mr. W. Darakishwor, learned senior panel counsel appearing for the respondent No. 1 (CBI) submitted that there was collision between the RIMS officials and the petitioner company through its Indian agent, i.e., Kirloskar Theratronics. It has been submitted that Dr. Th. Tomcha Singh, Professor and Head of Department of Radiotherapy, RIMS, Imphal (Accused No. 2) proposed for purchase of telecobalt machine and submitted the requisite technical specifications under a letter dated 29-12-2006. Thereafter, the said Accused No. 2 again resubmitted the revised technical specifications for the proposed telecobalt machine under a letter dated 09-02-2007 with a note that the equipment with specified features is available with M.S. Kirloskar Theratronics only (Indian Agent of the petitioner company). It has been submitted that the subsequent technical specifications were nothing but a general features of telecobalt equipment manufactured by the petitioner company and that those specifications were incorporated in the tender notice and as such, the tender specifications were tailor-made only to suit the petitioner company.

[12] The learned senior panel counsel appearing for the CBI submitted that all the formalities for purchase of equipment were completed hurriedly by violating the provisions of General Financial

Rules (GFR) even though there was no exigency for procuring the machine and even when no room for keeping the said machine was even ready. It has also been submitted by the learned senior panel counsel that all the tender formalities were completed by M/s Kirloskar Theratronics (Accused No. 5), which was an authorized agent of the petitioner company, and that the sealed tender quotation on behalf of the petitioner company was submitted to RIMS by self-courier as managed by Mr. Shahid Hussain (Accused No. 4), which was the then Regional Manager of M/s Kirloskar Theratronics (P) Ltd. in the bidding process of the tender by visiting RIMS, Imphal.

[13] It has also been submitted on behalf of the CBI that copies of tender notice with enclosures for supply of telecobalt machine dated 01-03-2007 was sent to the Indian agent of the petitioner company by a staff of RIMS on the instruction of the then Director, RIMS (Accused No. 1) by courier against the instruction of the tender notice. It has been submitted that the Accused No. 1, through the said dealing Assistant of RIMS, violated the relevant provisions of the GFR when the NIT was issued for supply of telecobalt machine to RIMS in order to favour M/s Kirloskar Theratronics (Accused No. 5).

[14] Mr. W. Darakishwor, learned senior panel counsel appearing for the CBI submitted that after quotation of the tender, the total of five companies viz., (i) M/s Alliance Biomedica Pvt. Ltd., Chennai, (ii) M/s

Syscop Impex Pvt. Ltd., Kolkata, (iii) M/s Mehta Agencies Ltd., Kolkata, (iv) M/s Panacea Medical Technologies Pvt. Ltd. and (v) M/s MDS Nordon, Canada, submitted their tender bids and all of them offered the required machine by quoting different amounts. It has also been submitted that M/s Panacea Private Limited proposed to supply the telecobalt machine quoting a price of Rs. 1.59 crore inclusive of all taxes, almost 1 crore less than the quoted amount of Rs. 2.47 crores by the petitioner company excluding taxes. The learned senior panel counsel further submitted that when M/s Panacea Medical Technologies Pvt. Ltd, informed the Director, RIMS (Accused No. 1) that their machine complies all the requisite technical specifications, the Accused No. 1 wrote letters to various authorities including BARC in between May and June, 2007 to inquire about the technical compatibility of the machine to be supplied by the said M/s Panacea Medical Technologies Pvt. Ltd. The Associate Director, Division of Remote Handling & Robotics, Bhabha Atomic Research Centre (BARC) categorically stated that it is possible to implement Isocentric at 800 cm, the unit has 250 RMM output source and collision detection device was available, the Accused No. 1 made no further correspondence in that regard and issued the supply order in favour of the petitioner company for supply of the said telecobalt machine by ignoring the low price quoted by the M/s Panacea Medical Technologies Pvt. Ltd. representing BARC.

[15] The learned senior panel counsel appearing for the CBI also submitted that Mr. Shahid Hussain, the then Regional Manager and DGM (Sales) of Kirloskar Technologies Pvt. Ltd., was camping in Imphal and had visited four times and was instrumental in securing the tender in favour of the petitioner company. The learned counsel further submitted that M/s Kirloskar Technologies Pvt. Ltd. (Accused No. 5) had benefited from the award of the tender to the petitioner company (Accused No. 6) by way of commission from the petitioner company.

[16] It has been submitted on behalf of the CBI that Dr. S. Sekharjit Singh (Accused No. 3) with full knowledge of the equipment lying idle without installation and commissioning for a long period in RIMS requested the Director, RIMS to issue a certificate for release of the remaining 10% payment by certifying that the unit was installed and commissioned as per LC Payment Clause and advising the United Bank of India to make payment of 10% from the Letter of Credit (LC) Account on the basis of the endorsement made by the Accused No. 2 without physically checking whether the machine was installed properly or not thereby favouring the petitioner company by abusing his official position. It has also been submitted that on a joint check conducted in the room of Radiotherapy, RIMS where the telecobalt machine was placed, it was found that the machine was installed physically but yet to be commissioned and as such, in making payment of the remaining 10%

before the full installation of the machine, the accused officials of RIMS have abused their official position in order to favour the petitioner company.

[17] The learned senior counsel submitted that the petitioner company has the requisite mens rea from the very inception of the transaction and that the conduct of its authorized Indian agent clearly reflects a deliberate and conscious act done with full intent and knowledge of the petitioner company. It has been submitted that in a corporate criminal liability, the intent and actions of the authorized agents are attributable to the company. Therefore, the mala fide intention was invented in the petitioner company's action right from the beginning making it liable for attracting offence under Section 420 of the IPC. The learned counsel submitted that the pre-planned nature of the act, the concealment of true facts and the subsequent benefits derived by the petitioner company demonstrated that this was not a mere omission or error but a deliberate act with fraudulent knowledge which attracted Section 420 of the IPC. Thus, there is prima facie case made out against the petitioner company that the petitioner company might have committed the offence under Section 420 IPC which is enough to frame charge against it.

[18] It has been strenuously submitted by the learned senior panel counsel that RIMS was allegedly misled into purchasing the machine

worth Rs. 1 crore more than the alternate telecobalt machine with same specifications manufactured by M/s Panacea Limited and that the petitioner company paid a commission of Rs. 67,81,866/- to its Indian Agent (Accused No. 5) implying collision and resulting in wrongful gain. It has also been submitted that RIMS was induced to accept an overpriced machine based on manipulated tactics by passing more economically and equally capable product. Thus, there is element of deception and involvement of selection of costly machine which suggests their dishonest intention attracting offence under Section 420 of the IPC.

[19] The learned senior panel counsel appearing for the CBI submitted that the learned Special Judge rejected the petition of the petitioner company file under Section 227 of the CrPC and framed charge against the Accused No. 2 after observation of facts on records minutely with considered view that there was sufficient prima facie or grave suspicion of the conspiracy hatched between Accused No. 1 and Accused No. 3, who have misused their official position as public servant in favouring Accused No. 4, Accused No. 5 and Accused No. 6 in the award of tender of telecobalt machine, i.e., Theratron Equinox 100 SAD manufactured by Accused No. 6 costing Rs. 2,34,38,437/- over the Indian machine Bhabhatron-II manufactured by M/s Panacea Technologies and costing Rs. 1 crore less and in the process of helping

Accused No. 5 getting a commission of Rs. 67,81,866/- for supply of a machine that is still lying idle and yet to be functional in RIMS thereby depriving the facilities to be provided to the cancer patient for medical treatment.

[20] The learned counsel for the CBI cited the following case laws.

I. Charge can be framed against the accused when there is prima facie grave suspicion from the material on record from the charge-sheet.

(i) (1977) 4 SCC 39 "State of Bihar Vs. Ramesh Singh" wherein it has been held as under:-

"2. When the case was opened in the Court of the Third Additional Sessions Judge at Motihari m Sessions Trial 66 of 1975 by the Additional Public Prosecutor in accordance with Section 226 of the Code, a plea was raised on behalf of the respondent that there was not any sufficient ground for proceeding with the trial against him and he should be dis- charged in accordance with Section 227. The Additional Sessions Judge accepted the plea and discharged the accused by his order dated April 30, 1975. The State of Bihar — the appellant in this appeal, went in revision before the Patna High Court to assail the order aforesaid of the Sessions Court. The High Court by its order dated February 18, 1976 dismissed the revision. Hence this appeal."

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the

accused has committed an offence which— … (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. It the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

"5. In Nirmaljit Singh Hoon v. State of West Bengal — Shelat, J. delivering the judgment on behalf of the majority of the Court referred at p. 79 of the report to the earlier decisions of this Court in Chandra Deo Singh v. Prokash Chandra Bose — where this Court was held to have laid down with reference to the similar provisions contained in Sections 202 and 203 of the Code of Criminal Procedure, 1898 "that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate forum at the appropriate stage and issue of a process could not be refused". Illustratively, Shelat, J., further added "Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case".

(ii) (2024) SCC OnLine SC 3805 "State of Orissa Vs. Pratima Behera" wherein it has been held as under:-

"4. The respondent and her husband Sh. Anil Kumar Sethi, thereupon moved applications for discharge under Section 239, Cr. P.C., before the learned Special Judge (Vigilance), Balasore. As noted earlier, it is the dismissal of the said petition that led to the filing of the Criminal Revision before the High Court and ultimately leading to impugned judgment. Evidently, the Trial Court found that there is a potential prima facie case against the appellant and her husband and the same could not be interfered with at the nascent stage. The High Court, as per the impugned judgment, held that there is no clinching material to show that the appellant abetted her husband or made any conspiracy or instigation for the alleged acquisition of disproportionate assets. After allowing the Revision Petition qua the respondent, the High Court observed and held that the impugned judgment should not influence the mind of the learned Trial Court in adjudicating the trial qua the co-accused Anil Kumar Sethi in accordance with law. It is in the said circumstances that the captioned Appeal has been preferred."

"9. Before considering the rival contentions on merits in order to consider the sustainability or otherwise of the impugned judgment, we think it only appropriate to consider certain relevant position of law in relation to certain aspects involved in the case on hand. We will firstly consider the scope of Section 239, Cr. P.C. In the decision in R.S. Nayak v. A.R. Antulay, this Court held that

the obligation to discharge the accused under Section 239 arises only when the Magistrate considers the charge against the accused to be groundless. In the decisions in State of Delhi v. Gyan Devi, this Court held thus:—

> ***"7. In the backdrop of the factual position discussed above, the question formulated earlier arises for our consideration. The legal position is well settled that at the stage of framing of charge the Trial Court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 CrPC seeking for the quashing of charge framed against them the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the Trial Court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases."***

II. Quashing of FIR/ framing of charge under Section 482 of CrPC has to be exercised sparingly with caution in rare of the rarest cases.

(i) (2002) 3 SCC 89 "State of Karnataka Vs. M. Devendrappa & anr." wherein it has been held as under:-

> ***"9. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie***

decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. (See : Janata Dal v. H.S. Chowdhary, and Raghubir Saran (Dr) v. State of Bihar. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. (See : Dhanalakshmi v. R. Prasanna Kumar, State of Bihar v. P.P. Sharma, Rupan Deol Bajaj v. Kanwar Pal Singh Gill, State of Kerala v. O.C. Kuttan, State of U.P. v. O.P. Sharma, Rashmi Kumar v. Mahesh Kumar Bhada, Satvinder Kaur v. State (Govt. of NCT of Delhi) and Rajesh Bajaj v. State NCT of Delhi.)"

(ii) (2020) 3 SCC 317 "Rajeev Kourav Vs. Baisahab & ors."

wherein it has been held as under –

"8. It is no more res integra that exercise of power under Section 482 CrPC to quash a criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding."

(iii) (2021) 11 SCC 191 "State of Rajasthan Vs. Ashok Kumar Kashyap" wherein it has been held as under:-

"11. While considering the legality of the impugned judgment and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.

"11.1. In P. Vijayan, this Court had an occasion to consider Section 227 CrPC What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that 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. It is observed that in other words, the sufficiency of grounds 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. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, 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."

III. Company can be prosecuted for commission of offence under Section 420 of IPC.

(i) (2005) 4 SCC 530 "Standard Chartered Bank & ors. Vs. Directorate of Enforcement & ors." wherein it has been held as under:-

"6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents."

(ii) (2011) 1 SCC 74 "Iridium India Telecom Limited Vs. Motorola Incorporated & ors." wherein it has been held as under:-

"65. This Court also rejected the submission that a company could avoid criminal prosecution in cases where custodial sentence is mandatory. Upon examination of the entire issue, it is observed as follows: (Standard Chartered Bank case, SCC pp. 548-50, paras 27-28 & 30-32)

"30. As the company cannot be sentenced to imprisonment, the court has to resort to punishment of imposition of fine which is also a prescribed punishment. As per the scheme of various enactments and also the Penal Code, mandatory custodial sentence is prescribed for graver offences. If the appellants' plea is accepted, no company or corporate bodies could be prosecuted for the graver offences whereas they could be prosecuted for minor offences as the sentence prescribed therein is custodial sentence or fine."

...

"31. As the company cannot be sentenced to imprisonment, the court cannot impose that punishment, but when imprisonment and fine is the prescribed punishment the court can impose the punishment of fine which could be enforced against the company. Such a discretion is to be

read into the section so far as the juristic person is concerned. Of course, the court cannot exercise the same discretion as regards a natural person. Then the court would not be passing the sentence in accordance with law. As regards company, the court can always impose a sentence of fine and the sentence of imprisonment can be ignored as it is impossible to be carried out in respect of a company. This appears to be the intention of the legislature and we find no difficulty in construing the statute in such a way. We do not think that there is a blanket immunity for any company from any prosecution for serious offences merely because the prosecution would ultimately entail a sentence of mandatory imprisonment. The corporate bodies, such as a firm or company undertake a series of activities that affect the life, liberty and property of the citizens. Large-scale financial irregularities are done by various corporations. The corporate vehicle now occupies such a large portion of the industrial, commercial and sociological sectors that amenability of the corporation to a criminal law is essential to have a peaceful society with stable economy."

"32. We hold that there is no immunity to the companies from prosecution merely because the prosecution is in respect of offences for which the punishment prescribed is mandatory imprisonment (sic and fine). We overrule the views expressed by the majority in Velliappa Textiles Ltd. on this point and answer the reference accordingly. Various other contentions have been urged in all appeals, including this appeal, they be posted for hearing before an appropriate Bench."

"66. These observations leave no manner of doubt that a company/corporation cannot escape liability for a criminal offence merely because the punishment prescribed is that of imprisonment and fine. We are of the considered opinion that in view of the aforesaid judgment of this Court, the conclusion reached by the High Court that the respondent could not have the necessary mens rea is clearly erroneous."

"67. The next important question which needs to be examined is as to whether the averments made in the complaint if taken on their face value would not prima facie disclose the ingredients for the offence of cheating as defined under Section 415 IPC. The aforesaid section is as under:

"415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to

consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation.—A dishonest concealment of facts is a deception within the meaning of the section."

"78. In our opinion, the High Court clearly exceeded its jurisdiction in quashing the criminal proceeding in the peculiar facts and circumstances of this case. The High Court noticed that while exercising jurisdiction under Section 482 CrPC "the complaint in its entirety will have to be examined on the basis of the allegations made therein. But the High Court has no authority or jurisdiction to go into the matter or examine its correctness. The allegations in the complaint will have to be accepted on the face of it and the truth or falsity cannot be entered into by the Court at this stage". Having said so, the High Court proceeded to do exactly the opposite."

(iii) (2015) 4 SCC 609 "Sunil Bharti Mittal Vs. CBI" wherein it has been held as under:-

"39. In Iridium India, the aforesaid question fell directly for consideration, namely, whether a company could be prosecuted for an offence which requires mens rea and discussed this aspect at length, taking note of the law that prevails in America and England on this issue. For our benefit, we will reproduce paras 59-64 herein: (SCC pp. 98-100)

"59. The courts in England have emphatically rejected the notion that a body corporate could not commit a criminal offence which was an outcome of an act of will needing a particular state of mind. The aforesaid notion has been rejected by adopting the doctrine of attribution and imputation. In other words, the criminal intent of the 'alter ego' of the company/body corporate i.e. the person or group of persons that guide the business of the company, would be imputed to the corporation."

"60. It may be appropriate at this stage to notice the observations made by MacNaghten, J. in Director of Public Prosecutions v. Kent and Sussex Contractors Ltd.

A body corporate is a "person" to whom, amongst the various attributes it may have, there should be imputed the attribute of a mind capable of knowing and forming

an intention—indeed it is much too late in the day to suggest the contrary. It can only know or form an intention through its human agents, but circumstances may be such that the knowledge of the agent must be imputed to the body corporate. Counsel for the respondents says that, although a body corporate may be capable of having an intention, it is not capable of having a criminal intention. In this particular case the intention was the intention to deceive. If, as in this case, the responsible agent of a body corporate puts forward a document knowing it to be false and intending that it should deceive, I apprehend, according to the authorities that Viscount Caldecote, L.C.J., has cited, his knowledge and intention must be imputed to the body corporate.

"61. The principle has been reiterated by Lord Denning in Bolton (H.L.)(Engg.) Co. Ltd. v. T.J. Graham & Sons Ltd. in the following words: (QB p. 172)

A company may in many ways be likened to a human body. They have a brain and a nerve centre which controls what they do. They also have hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are Directors and managers who represent the directing mind and will of the company, and control what they do. The state of mind of these managers is the state of mind of the company and is treated by the law as such. So you will find that in cases where the law requires personal fault as a condition of liability in tort, the fault of the manager will be the personal fault of the company. That is made clear in Lord Haldane's speech in Lennard's Carrying Co. Ltd. v. Asiatic Petroleum Co. Ltd.. So also in the criminal law, in cases where the law requires a guilty mind as a condition of a criminal offence, the guilty mind of the Directors or the managers will render the company themselves guilty."

"62. The aforesaid principle has been firmly established in England since the decision of the House of Lords in Tesco Supermarkets Ltd. v. Nattrass. In stating the principle of corporate liability for criminal offences, Lord Reid made the following statement of law : (AC p. 170 E-G)

'I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A

living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these : it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability.'

"63. From the above it becomes evident that a corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those requiring mens rea. The criminal liability of a corporation would arise when an offence is committed in relation to the business of the corporation by a person or body of persons in control of its affairs. In such circumstances, it would be necessary to ascertain that the degree and control of the person or body of persons is so intense that a corporation may be said to think and act through the person or the body of persons. The position of law on this issue in Canada is almost the same. Mens rea is attributed to corporations on the principle of 'alter ego' of the company."

"64. So far as India is concerned, the legal position has been clearly stated by the Constitution Bench judgment of this Court in Standard Chartered Bank v. Directorate of Enforcement. On a detailed consideration of the entire body of case laws in this country as well as other jurisdictions, it has been observed as follows: (SCC p. 541, para 6)

'6. There is no dispute that a company is liable to be prosecuted and punished for criminal offences. Although there are earlier authorities to the effect that corporations cannot commit a crime, the generally accepted modern rule is that except for such crimes as a corporation is held

incapable of committing by reason of the fact that they involve personal malicious intent, a corporation may be subject to indictment or other criminal process, although the criminal act is committed through its agents."

[21] I have heard the rival submissions advanced by the learned counsel appearing for the parties at length and also carefully examined the materials available on record. I have also carefully gone through the entire charge-sheet submitted by the CBI and also carefully perused the impugned judgment and order dated 08-09-2017 passed by the Special Judge, Imphal West in Special Trial (PC) Case No. 12 of 2016.

In the present case, it is an undisputed fact and on record that in response to the NIT issued by RIMS, altogether five bidders, including the petitioner company, submitted their tender forms along with proforma invoice with prices and specifications. It is also an undisputed fact that the Accused No. 5, which is the Indian agent of the petitioner company submitted the tender form on the petitioner's behalf and that none of the Directors or Key Managerial Personnel of the company was involved in the tender process representing the petitioner company. It is also an undisputed fact and on record that the Tender Opening Committee unanimously accepted the tender quotation submitted by the Indian agent of the petitioner company (Accused No. 5) as the other four tenders did not met the specifications notified under the NIT, specifically as they lack three essential features, i.e., Isocentric at 100 cm, 250 RMM output source and collision detection device. Faced with such

undisputed facts, this court cannot find any fault in the action of either the Tender Opening Committee or on the part of the concerned authorities of RIMS in accepting the tender bids submitted on behalf of the petitioner company and in not accepting the remaining four bids submitted by the four other bidders even though they quoted lower price of the machine than the price quoted on behalf of the petitioner company.

The contentions on behalf of the prosecution that the specifications of the telecobalt machine as notified in the NIT was a tailor-made in order to favour the petitioner company remains just a mere allegation in the absence of any material to support such allegation. On examination of the entire charge-sheet submitted by the CBI, no material is found on record to support such allegation and to prima facie establish grave suspicion against the petitioner company. In my considered view, in the total absence of prima facie materials to establish grave suspicion against the petitioner, framing of charges for committing offence of cheating as provided under Section 420 IPC is unwarranted and unjust.

[22] It is quite true that M/s Panacea Medical Technologies Private Limited quoted a lower price than the petitioner company and proposed to supply the telecobalt machine at a much lower price, however, it is found on record that the telecobalt machine proposed to be supplied by M/s Panacea Private Limited did not met the technical specifications notified in the NIT more particularly, three essential features, viz.,

Isocentric at 100 cm, 250 RMM output source and collision detection device. In this regard, the then Director, RIMS (Accused No. 1) wrote letters to various authorities including Bhabha Atomic Research Centre (BARC) to inquire about the technical compatibility of the machine to be supplied by M/s Panacea Medical Technologies Private Limited and only after verifying the fact that the telecobalt machine to be supplied by M/s Panacea Medical Technologies Private Limited are yet to be met the technical specifications or lacks the said technical specifications, the supply order was issued in favour of the petitioner company. In such a situation and given the undisputed facts and materials available on record, this court cannot agree with the submission made on behalf of the CBI that there is prima facie material or strong suspicion of the petitioner company committing the offence of cheating as provided under Section 420 of the IPC.

[23] This court is also satisfied that the petitioner company had not done any act of deception or dishonest inducement leading to wrongful gain or had mens rea to cheat from the very outset. Given the fact that the petitioner company had already supplied the said telecobalt machines all over the world including to many renowned medical institutions in India and especially when there is no allegation that the petitioner company quoted a much higher price for the said machine than the price it had already fixed earlier, this court cannot agree with the

submission made on behalf of the CBI that the petitioner company deceived with dishonest inducement leading to wrongful gain and that it had committed any act of cheating.

[24] A plain reading of the charge-sheet reveals that there is a complete absence of any material indicating that the petitioner company or the personal group of persons that guide the business of the company made any inducement, fraudulent, dishonest or otherwise to any person resulting in wrongful gain to the petitioner company or loss to RIMS. The entire foundation of the alleged "prime facie" or "grave suspicion" against the Accused No. 6 is raised on a vague and unsubstantiated claim that some fraudulent or dishonest act was committed even before the tender process began. However, a thorough examination of the charge-sheet and accompanying documents reveals not a single instance of any inducement, fraudulent, dishonest or otherwise by the Accused No. 6 and in the absence of any specific act of inducement, the very basis for invoking Section 420 IPC collapses. In fact, in the entire charge-sheet, there is no material whatsoever to even prime facie shows that the ingredients of offence under Section 420 of the IPC have been made out against Accused No. 6. The prosecution's attempt to proceed against Accused No. 6 is not only speculative but also contrary to the settled principles of law, which requires clear, cogent and credible material to justify the framing of charges.

[25] Considering the materials available on record, this court finds force and merit in the submission made on behalf of the petitioner company and this court also respectfully agrees with the principle of law laid down by the Hon'ble Supreme Court of India in the abovementioned judgments cited by the learned senior counsel appearing for the petitioner. This court also respectfully agrees with the unequivocal findings of the coordinate bench of this court in Cri. Rev. Petn. No. 19 of 2017 that as there is no allegation that Theratron Equinox 100 SAD of the petitioner company was purchased at a higher price than the market rate and that there is no issue of wrongful gain by the petitioner or wrongful loss by RIMS and the said findings are directly relevant in the present case and binding to this court. In my considered view, the said findings strike at the very foundation of the allegation under Section 420 of the IPC which requires proof of dishonest inducement resulting in wrongful gain or loss thereby negating any element of personal benefit or dishonest intention. These findings conclusively establish that the essential ingredients of the offences of cheating, including dishonest inducement, wrongful gain and mens rea are entirely absent in the present case.

[26] This court also finds force and merit in the submission made on behalf of the petitioner that in the absence of any allegations against its Director or those who are controlling the affairs of the company, the

company alone cannot be made an accused for an offence of cheating inasmuch as cheating involves mental element, i.e., mens rea. This view is strongly supported by principles of law laid down by the Hon'ble Apex Court in the cases of **"HDFC Bank Limited Vs. State of Bihar" (supra), Sunil Bharti Mittal" (supra) and Iridium India Telecom Limited" (supra).**

In the case of "Sunil Bharti Mittal" (supra), both the principle of law laid down by the Hon'ble Apex Court in the cases of "Standard Chartered Bank" (supra) and "Iridium India Telecom Limited" (supra) were considered by the Hon'ble Apex Court at paras. 37 to 40 and explained the principle of law which has been laid down in the above two judgments to the effect that the criminal intent of the "alter ego" of the company that is the personal group of persons that guide the business or control the affairs of the company would be imputed to the company.

In the present case, M/s Kirloskar Technologies Private Ltd. (Accused No. 5) is merely an agent of the petitioner company for marketing the telecobalt machine manufactured by the petitioner company in India and as such, the Accused No. 5 cannot be included within the definition of the persons or group of persons who control the affairs of the company. By no stress of imagination, it can be said that the Accused No. 5 represent the directing mind and will of the petitioner

company and the Accused No. 5's state of mind and will cannot be said to be the state of mind and will of the company.

[27] For the findings and reasons stated hereinabove, I am of the considered view that there is no sufficient ground for trying the Accused No. 6 in the instant criminal case. Accordingly, the present petition is allowed by setting aside the impugned judgment and order dated 08-09-2017 passed by the Special Judge (PC) Act, Imphal West in Special Trial (PC) Case No. 12 of 2016 and the petitioner will stands discharged.

In view of the facts and circumstances of the present case, there will be no order as to cost.

JUDGE

FR / NFR

Devananda