

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD

Criminal Petition No.102 OF 2020

Between:

Smt.Sujatha Kancharla

... Petitioner

And

The State of Telangana,
Through ACB-CIU, Hyderabad
Rep. by its Special Public Prosecutor,
High Court for the State of Telangana.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.04.2023
Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
- 2 Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
- 3 Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**
+ CRL.P. No. 102 of 2020

% Dated 28.04.2023

Smt.Sujatha Kancharla ... Petitioner

And

\$ The State of Telangana,
Through ACB-CIU, Hyderabad
Rep. by its Special Public Prosecutor,
High Court for the State of Telangana. ... Respondent

! **Counsel for the Petitioner:** Sri N.Naveen Kumar

^ **Counsel for the Respondent:** Sri V.Ravi Kiran Rao

Spl. Public Prosecutor

> **HEAD NOTE:**

? **Cases referred**

¹ 1992 (Supp(1) Supreme Court Cases 335

² 2021 SCC OnLine SC 315

³ (2016) 6 SCC 310

⁴ (2021) 3 SCC 751

⁵ (2022) 4 SCC 549

⁶ (2020) 10 SCC 200

⁷ 2021 OnLine SC 1208

⁸ 2023 SCC OnLine SC 90

⁹ (2012) 1 SCC 520

¹⁰ (2009) 11 SCC 203

¹¹ (1996) 8 SCC 164

¹² (2017) 2 SCC 779

¹³ (1999) 3 SCC 259

¹⁴ (2004) 6 SCC 522

¹⁵ (2018) 3 SCC 104

¹⁶ 2022 CrI.L.J 342

¹⁷ (2013) 7 SCC 439

¹⁸ 1996 (4) SCC 659

¹⁹ (2001) 7 SCC 596

²⁰ (2000) 2 SCC 57

²¹ (2009) 11 SCC 737

²² AIR 1998 SC 128

²³ (1977) 4 SCC 551

²⁴ 2016 SCC OnLine SC 905

²⁵ (2006) 7 SCC 296

²⁶ (2009) 1 SCC 516

²⁷ 2003 CrLJ 4801

²⁸ (1980) 2 SCC 665

²⁹ 1999 (5) SCC 253

³⁰ (2005) 10 SCC 228

³¹ 2000 (3) SCC 269

³² (2003) 3 SCC 11

³³ (2015) 8 SCC 293

³⁴ (2022) 7 Supreme Court Cases 124

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.102 OF 2020****ORDER:**

1. The Anti Corruption Bureau has registered present crime vide FIR No.13/RCO-CIU/ACB/2019, dated 30.12.2019.
2. According to the FIR, the Director General Vigilance and Enforcement, sent an alert Note to the Government vide No.05(C.No.1391/V&E/D2/2015& C.No.1601/V&E/D1/2017, dated 06.04.2018 about the irregularities and corrupt activities in the office of Joint Director, Medical, Hyderabad. On the basis of said alert Note, the Director, IMS constituted a Committee on 02.03.2019 and it was found that there were financial discrepancies under the Joint Director, Medical Hyderabad and also the Joint Director, Medical, Warangal. Thereafter, the Government asked ACB to take up the issue and enquire. During the enquiry, the ACB found that A3 who is the Director had issued purchase orders for Lab Kits and Reagents to a tune of Rs.110,63,06,215/- for the financial year 2017-18 and the purchase orders were found to be issued

to in favour of M/s.Legend Enterprises, a shell company of M/s.Omni Medi and M/s.Avantor Performance Materials Private Limited, which occupied most of the purchase order.

3. A1, who is the proprietor of M/s.Omni Medi, according to the preliminary investigation, was the kingpin of three business concerns mentioned above. A3 purchased the Lab Kits and Reagents from M/s. Legend Enterprises of which A4 was the proprietor. M/s.Legend Enterprises transacted crores of business with Director, IMS, supplied products of M/s.Hemocue at exorbitant rates than the prevailing market rates. Enquiry further revealed that A1, proprietor of M/s.Omni Medi, A4, proprietor of M/s.Legend Enterprises colluded with the public servants for supplying M/s.Hemocue products. M/s.Omni Health Care of which, A7 is the proprietor was purchasing the products from M/s.Hemocue. However, the said products which were supplied to M/s.Omni Health Care of A7 by M/S Hemocue, the same products were supplied by M/s.Legend Enterprises of A4, to Director IMS. In fact, M/s. Legend Enterprises is a fake/shell company of A1.

Further, it was found that the purchase of material was contrary to the guidelines of the department and exorbitant rates were paid. A3, who is the Director, IMS colluded with A1, A2 and A4 and several irregularities which are illegal were found to have been committed. Though, there was no requirement of Lab kits, purchases were made at exorbitant rates without following the procedure of open tenders. There was heavy transfer of money from A4's firm to A1's firm. Briefly on the said findings during preliminary enquiries on the basis of alert note by government and the consequent committee findings the FIR was registered.

4. In the FIR, the role of this petitioner is narrated as follows:

“She is the proprietor of M/s. Omni Health Care and assisted Sri K.Srihari Babu @ Babji for wrongful gain for herself and Sri K.Srihari Babu@ Babji.”

5. After preliminary investigation and registration of FIR, the ACB effected arrest of A1, A2 and others. In the remand report of A1 and A2 dated 01.01.2020, it was reaffirmed that M/s.Legend Enterprises, M/s.Omni Medi and M/s.Avantor

Performance Materials Private Limited, occupied the major share of supplies to DIMS and all of them were being run by A1. A4 had submitted a fake letter that M/s.Legend Enterprises were authorized to distribute M/s.Hemocue products. The said letter of authorization was given by T.Venkatesh (A2), who was the Area Manager of M/s.Hemocue. For the reason of such fake authorization, A1 had the advantage of getting purchase orders to M/s.Legend Enterprises from A3- Director of IMS.

6. It is the further case that the Lab kits and reagents manufactured by M/s.Hemocue were supplied to M/s.Omni Health Care but not to A4/M/s. Legend Enterprises. Several transactions were reflected in the remand report done by A1 and A2 regarding transfers from M/s.Legend Enterprises to M/s.Omni Medi. In the said remand report, it is specifically mentioned that a letter was issued to the Director, IMS by T.Venkatesh (A2), the Area Manager of M/s.Hemocue stating that M/s.Legend Enterprises is authorized to quote, collect and purchase and transact business and any other activity for the establishment of business. It was further mentioned that

no company or firm other than the M/s. Legend Enterprises is authorized to enter into contracts, make supplies in respect of M/s.Hemocue products. The said T.Venkatesh (A2) was not authorized to issue such letter and in conspiracy with other A1 and A4 issued such letter on the basis of which M/S Hemocue products were supplied by A4.

7. Writ Petition No.11072 of 2019 was filed by M/s. Legend Enterprises and it was mentioned that M/s. Legend Enterprise is authorized representative of M/s. Hemocue and A2/T.Venkatesh has given the said authorization letter.

8. At page 20 of the remand report, the petitioner is shown as A7. However, no role is attributed to her.

9. Sri N.Naveen Kumar, learned counsel appearing for the petitioner would submit that, according to the FIR and remand report, no role is attributed to this petitioner except stating that this petitioner, who is the wife of A1 had colluded with A3 and she was also responsible for the transactions. Petitioner is no way concerned with any of the transactions *inter se* M/s.Legend Enterprises and Director, IMS.

10. Learned counsel further submits that A4 is the proprietor of M/s.BluNile Enterprises and also M/s. Legend Enterprises. They were supplying Hemocue products to Director, IMS since 2010. The rate contract was fixed in the year 2011 itself for purchase from M/s.BluNile Enterprise and M/s. Legend Enterprises. The supplies were made from 16.12.2010 till termination of the contract on 17.07.2019.

11. He further submits that M/s.Hemocue lab kits were supplied to M/s. Legend Enterprises even prior to A3 taking charge as the Director of IMS. Apart from the products being sold to A1's firm, M/s.Omni Health Care products were also sold to 136 other customers/ entities all over India. Since there are no allegations against the petitioner either in the Alert Note dated 06.04.2018 of the Director General, Vigilance and Enforcement Department or the Committee or during preliminary investigation and the consequent FIR nor the remand report of the other accused, as such, the proceedings against the petitioner/A7 have to be quashed.

12. Learned counsel relied on the judgments reported in the case of **State of Haryana v. Bhajan Lal**¹ and **Neeharika Infrastructure Private Limited v. State of Maharashtra**² to substantiate that FIR can be quashed if the allegations made in the complaint did not prima facie make out any of the offences. He also relied on the judgment in the case of **Ramesh Rajagopal v. Devi Polymers (P) Ltd.**,³ **Archana Rana v. State of Uttar Pradesh**⁴ and **Shafiya Khan v. State of U.P**⁵ in which it is held that if the allegations are taken at their face value and accepted in its entirety, if no offence is made out, the High Court shall under Section 482 of Cr.P.C quash such proceedings. In the judgment reported in the case of **Gurcharan Singh v. State of Punjab**⁶, wherein the Hon'ble Supreme Court held that abetment would be made out if there

¹ 1992 (Supp(1) Supreme Court Cases 335

² 2021 SCC OnLine SC 315

³ (2016) 6 SCC 310

⁴ (2021) 3 SCC 751

⁵ (2022) 4 SCC 549

⁶ (2020) 10 SCC 200

is an instigation by a person by an act or omission or commission.

13. In **State by S.P v. Uttamchand Bohra**⁷, the Hon'ble Supreme Court held as follows:

“31. The material to implicate someone as a conspirator acting in concert with a public servant, alleged to have committed misconduct, under the PCA, or amassed assets disproportionate to a public servant's known sources of income, thus, has to be on firm ground. In the present case, only two circumstances - the custody of the sale deed (of the property allegedly belonging to A-1) and the fact that it was witnessed by Uttamchand's employee - are alleged against the respondent. These are wholly insufficient to raise a reasonable suspicion, or make out a prima case against him, for conspiracy.”

14. In **Usha Chakraborty and another v. State of West Bengal and another**⁸, the Hon'ble Supreme Court quashed the FIR wherein the petitioner was mulcted with criminal liability under Section 120-B of IPC. It was also held as follows:

“Offence punishable under Section 420 IPC.

To constitute the said offence there must be deception i.e., the accused must have deceived someone; that by such deception the accused must induce a person (i) to deliver any property; or (ii) to

⁷ 2021 OnLine SC 1208

⁸ 2023 SCC OnLine SC 90

make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly. The offence punishable under Section 120-B IPC to constitute criminal conspiracy, there must be agreement between two or more persons. The agreement should be to do or cause to be done some illegal act, or some act which is not illegal, by illegal means, provided that where the agreement is other than one to commit an offence, the prosecution must further prove; or (iv) that some act besides the agreement was done by or more of the parties in pursuance of it.”

15. Learned counsel also relied on the judgment reported in the case of **Anita Malhotra v. Apparel Export Promotion Council and others**⁹, wherein the Hon’ble Supreme Court held that if a document is beyond suspicion or doubt, placed by the accused and if it is considered that the accusation against her cannot stand, in such a matter, in order to prevent injustice or abuse of process, it is incumbent on the High Court to look into those document/documents which have a bearing on the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under Section 482 of the Code.

⁹ (2012) 1 SCC 520

16. In **Chunduru Siva Ram Krishna and another v. Peddi Ravindra Babu and another**¹⁰, wherein the Hon'ble Supreme Court held as follows:

“35. No specific role is ascribed to any of the aforesaid persons except for stating that the huge quantities of paddy were diverted by Accused 1 and made to disappear with the active assistance of Accused 2 to Accused 9. Without ascribing any specific role to any one of them the aforesaid allegation appears to us to be very bald and vague. Similarly the allegations made against Accused 2 and Accused 3 that they had helped their father in purchasing some property is also very vague as no specific role is ascribed to them.

36. In our considered opinion, no useful purpose would be served by allowing the prosecution against the aforesaid accused persons (the appellants herein). There is no concrete and direct allegation against all these persons ascribing any definite role to each one of them in the offence alleged. The statements shown to us as allegations amounting to prima facie evidence against them, according to us, are very bald and vague statements on the basis of which no case could be made out.”

17. On the other hand, Sri Ravi Kiran Rao, learned Senior Counsel and Special Public Prosecutor for ACB submits that the case is at the stage of investigation and all the transactions are still being investigated into in respect of the accused. The petitioner is the wife of A1 and it is A1 who has floated M/s.Legend Enterprises, which is a shell company of A1. In fact, this petitioner was assisting A1 in his business. The petitioner was not authorized by M/s.Hemocue for selling

¹⁰ (2009) 11 SCC 203

the products to M/s.Legend Enterprises, however the said products were supplied to the Director, IMS by A4. From the said transaction, it is apparent that this petitioner was co-conspirator in the process of cheating. During the course of investigation, it was found that this petitioner was hand in glove with A1. In fact, the transactions of M/s.Legend Enterprises were done at the instance of A1. M/s.Legend Enterprises had transferred amounts to M/s.Omni Enterprises of which A1 is the proprietor to an extent of Rs.53,75,17,500/- The amounts which were transferred to the account of the company of this petitioner is as follows:

“1) On 29.9.2017 an amount of Rs.1,25,00,000/- and on 13.10.2017 an amount of Rs.62,50,000/- invested in IIFL Special opportunities fund series 4 by Petitioner Smt.K.Sujatha from her HDFC A/c.No.50100183289709.

2) On 7-12-2017 Rs.62,50,000/- transferred to Sujatha IIFL special opportunity fund series.

3) On 1-1-2018 an amount of Rs.48,462/- on 1-1-2018 an amount of Rs.11,91,447/- on 11-1-2018 an amount of Rs.3,09,304/- and on 22-1-2018 an amount of Rs.30,930/- invested in Vivekam Financial Services

Private Limited from the Petitioner/Accused No.7 Smt.K.Sujatha in HDFC A/c No.50100183289709.

4) On 9-5-2019 fixed deposit of Rs.2,00,00,000/- booked by the Petitioner/Accused No.7 Smt.K.Sujatha in HDFC A/c.No.641000139459 in which Rs.60,00,000/- received from the amounts received by Legend enterprises from PAO for the year 2017-2018.”

18. Learned Senior counsel would further submit that in one of the batches wherein one of the product WBC cuvettes which were purchased for Rs.11,800/- from Hemocue by this petitioner, the same were supplied at the rate of Rs.36,800/- by M/s. Legend Enterprises to DIMS. The petitioner/A7, being the sole proprietrix of M/s.Omni Health Care is liable for the transactions done by the company with other companies including M/s.Legend Enterprises who had supplied the medical products to the Director, IMS. In the said circumstances, when the case is still under investigation, the proceedings cannot be quashed.

19. In support of his contentions, he relied on the judgment of Hon'ble Supreme Court in the case of **State of Bihar v.**

Rajendra Agrawalla¹¹ and **State of Telangana v. Habib Abdullah Jeelani and others**¹² and argued that the power under Section 482 of Cr.P.C should be exercised very sparingly and very cautiously and only when the Court comes to conclusion that there has been an abuse of process of the Court. The Court cannot sift evidence or appreciate evidence to come to a conclusion that no *prima facie* case is made out. He also relied on the judgment in the case of **Rajesh Bajaj v. State NCT of Delhi**¹³ in which the Hon'ble Supreme Court held that many a cheating would be committed in the course of commercial or money transaction and the High Court should not have a hyper-technical approach to find out whether the ingredients of any penal provisions are made out or not.

20. He also relied on the judgment in the case of **State of A.P v. Golconda Linga Swamy and another**¹⁴ and argued

¹¹ (1996) 8 SCC 164

¹² (2017) 2 SCC 779

¹³ (1999) 3 SCC 259

¹⁴ (2004) 6 SCC 522

that the Hon'ble Supreme Court has found that in a case of circumstantial evidence, the charges should be framed and accused should undergo trial since the alleged offences are crimes against the society. Only in exceptional circumstances, the Court can interfere under Section 482 of Cr.P.C and quash the proceedings. In the said judgment the Hon'ble Supreme Court found that though the FIR is not intended to be encyclopedia of facts but the same must disclose commission of an offence.

21. In **Dineshbhai Candhubhai Patel v. State of Gujarat and others**¹⁵, the Hon'ble Apex Court held that in order to examine as to whether factual contents of FIR disclose any prima facie cognizable offences or not, High Court cannot act like an investigating agency and nor can exercise powers like an appellate court.

22. In **Jitul Jentilal Kotecha v. State of Gujarat**¹⁶, the Hon'ble Supreme Court held on facts that quashing of FIR

¹⁵ (2018 3 SCC 104

¹⁶ 2022 CrI.L.J 342

cannot be resorted to if *prima facie* case is made out on the reading of the complaint. In **Y.S.Jagan Mohan Reddy v. Central Bureau of Investigation**¹⁷, the Hon'ble Supreme Court held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. The Hon'ble Supreme Court was dealing with bail application of the petitioner.

23. In **State of Maha Rashtra and others v. Som Nath Thappa and others**¹⁸, the Hon'ble Supreme Court while dealing with Bombay Bomb Blast cases, held that when there were series of acts, it is not necessary that each of the conspirators must know what the other conspirators would

¹⁷ (2013) 7 SCC 439

¹⁸ 1996 (4) SCC 659

do. Similar view was expressed in the case of **Firozuddin Basheeruddin v. State of Kerala**¹⁹.

24. In **State of M.P. v. S.B.Joohari and others**²⁰, the Hon'ble Supreme Court held that at the time of framing charge, appreciating materials produced by the prosecution is wholly unacceptable and the High Court cannot decide whether the accused is guilty or not in the proceedings under Section 482 of Cr.P.C.

25. In **R.Venkatakrisnan v. Central Bureau of Investigation**²¹ the Hon'ble Supreme Court held that criminal conspiracy can only be proved on the basis of circumstantial evidence or by necessary implication and direct evidence may not be available in certain cases. Concluding his arguments, the learned senior counsel submitted that this is not a fit case where proceedings can be quashed.

¹⁹ (2001) 7 SCC 596

²⁰ (2000) 2 SCC 57

²¹ (2009) 11 SCC 737

26. The Hon'ble Supreme Court in the case of **Pepsi Food Ltd., v. Special Judicial Magistrate**²² while deciding the parameters of quashing of FIR, held that though there are no limits to the powers under Section 482 of Cr.P.C or under Article 226 of the Constitution of India, more care and caution should be exercised for invoking the inherent powers.

27. In **Madhulimaye v. State of Maharashtra**²³ , the Hon'ble Supreme Court held that when there is miscarriage of justice or abuse of the process of the Court or required statutory procedure not been complied with or the order passed or sentence imposed requires correction, High Court can exercise inherent powers.

28. In **Prabhu Chawla v. State of Rajasthan**²⁴, it was held that Section 482 of Cr.P.C begins with a non-obstante clause to state that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to make such

²² AIR 1998 SC 128

²³ (1977) 4 SCC 551

²⁴ 2016 SCC OnLine SC 905

orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court.

29. In **Popular Muthaiah v. State rep. by Inspector of Police**²⁵, the Hon'ble Supreme Court held that powers have to be exercised *ex debito justitiae*, to do real and substantial justice in the *lis* for which alone the power exists inherently. It was further held that inherent power has its roots in necessity and its breadth is coextensive with the necessity.

30. In **R.Kalyani v. Janak C.Mehta**²⁶, the Hon'ble Supreme Court held that invoking the inherent power is in discharge of paramount duties by the High Court. It needs to see that a person apparently is not subjected to persecution and humiliation on the basis of wholly untenable compliant/report.

31. The Hon'ble Supreme Court in **Ram Narain Poply v. CBI**²⁷ held that the elements of criminal conspiracy are: a) an object to be accomplished, (b) a plan or scheme embodying

²⁵ (2006) 7 SCC 296

²⁶ (2009 1 SCC 516

²⁷ 2003 CrLJ 4801

means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons to co-operate for the accomplishment of the object by the means embodied in the agreement or by way of effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and encouragement and supports which co-conspirators give to one another and if left to individual effort, which would be impossible.

32. In **V.C.Shukla v. State (Delhi Administration.)**²⁸, the Hon'ble Supreme Court held that there must be direct or circumstantial evidence to show that there was an agreement between two or more persons to commit an offence.

33. In **State v. Nalini**²⁹, the Hon'ble Supreme Court held that to infer conspiracy there should be a reasonable ground to believe that the conspirators have conspired. If the said condition is fulfilled, then, anything done or said by one of the

²⁸ (1980) 2 SCC 665

²⁹ 1999 (5) SCC 253

conspirators becomes substantive evidence against the other. It was further held that the few bits here and there would not suffice and agreement can only be inferred from solid facts and circumstances.

34. To prove an offence under Section 420 of IPC, the essential ingredients are practice of deception to induce a person and thereby the induced person delivers property. In **Anil Mahajan v. Bhor Industries Limited**³⁰ and **Medchal Chemicals & Pharma (P) Limited v. Biological E. Ltd.**,³¹ the Hon'ble Supreme Court held that to constitute an offence of cheating, a fraudulent or dishonest intention must be shown to exist from the inception of the transaction and failure to keep up promise at a subsequent stage will not attract an offence of cheating.

35. In **Ajay Mitra v. State Madhya Pradesh and others**³², the Hon'ble Supreme Court held that *mens rea* should be present for inducing the person so deceived and consequent

³⁰ (2005) 10 SCC 228

³¹ 2000 (3) SCC 269

³² (2003)3 SCC 11

delivery of property is essential to constitute an offence of cheating.

36. In **Vesa Holdings (P) Ltd., v. State of Kerala**³³ and **Vijay Kumar Ghai and others v. State of West Bengal**³⁴, the Hon'ble Supreme Court held that when there is no intention to cheat from the inception of transaction, FIR can be quashed. On facts when none of the ingredients were made out, FIR was quashed.

37. Coming to the present facts of the case, the petitioner is the proprietrix of M/s.Omni Health Care. She had an agreement with M/s.Hemocue for purchase of its products. The case of the ACB is that she had entered into conspiracy with her husband/A1 and A4 who supplied several products including M/s.Hemocue products at higher rate to Director, IMS in collusion with the Director, IMS and other public servants.

³³ (2015 8 SCC 293

³⁴ (2022) 7 Supreme Court Cases 124

38. Except stating that this petitioner was assisting A1 in business not even a single incident is narrated wherein the petitioner had dealt with anyone in the office of Director, IMS in any manner whatsoever. Further, nothing is on record after four years of investigation to state that the petitioner was in any manner involved with the transactions in between A1's firm or A4's firm with Director, IMS except stating that this petitioner was assisting her husband A1.

39. It is alleged that M/s.Hemocue product which was sold to this petitioner was supplied through M/s.Legend Enterprises of A4. For the said reason of a single incident of product which was supplied to this petitioner was in turn supplied by M/s. Legend Enterprises would not be sufficient to infer criminal conspiracy. It is not disputed by ACB that M/s.BluNyle Enterprises and M/s.Legend Enterprises of which A4 is the proprietor was supplying medical products from 2010 to 2019 including M/S Hemocue products. Even prior to A3 taking charge as Director of IMS, the rate for WBC Cuvettes was fixed by the predecessor of A3 in favour of A4's firm M/s.Blue Nyle and M/s. Legend Enterprises.

40. As stated above the petitioner is arrayed as accused and being investigated only for the reason of WBC Cuvettes which were purchased by M/s.Omni Health Care for Rs.11,800/- at one instance from M/S Hemocue, were supplied by M/s.Legend Enterprises to Director, IMS at the rate of Rs.36,800/-. It is an admitted fact that A4 was supplying products of M/S Hemocue for 10 years to Director, IMS.

41. A2 is the Regional Manager in M/s.Hemocue company in India. He is arrayed as accused for issuing a fake authorization letter in favour of M/s. Legend Enterprises stating that M/s. Legend Enterprises was authorized to enter into contract and make supplies in respect of business of M/s.Hemocue. A2 as Area sales Manager was not authorized to give such authorization.

42. If the petitioner who was admittedly authorized by M/S Hemocue to supply its products was a co-conspirator, the necessity of obtaining a fabricated authorization letter showing that M/s.Legend Enterprises was authorized to sell M/s.Hemocue products in India would not arise. The

products would have been sold from her firm M/s.Omni Health Care to Director, IMS. However, in the present case, it is alleged that A1 and A4 in collusion with A2 had obtained authorization from A2 for selling the products of M/s.Hemocue. The said circumstances clearly indicates and rules out the petitioner's role as a co-conspirator.

43. During the course of investigation, suspicion and assumptions can form basis to continue investigation. However, such suspicion and assumptions should be on the basis of circumstantial evidence or such direct evidence that comes to the knowledge of the Investigating Officer during the course of investigation.

44. In the absence of any such evidence to form basis to prosecute the petitioner, only for the reason of this petitioner being the wife of A1, who is allegedly the kingpin according to the ACB in the whole transactions with DIMS, criminal proceedings cannot be permitted to continue.

45. The alleged amounts which have been transferred to the account of the petitioner and in turn invested by her cannot be made basis to state that this petitioner has

committed cheating. It is not the case that the money transferred is not towards her sale transactions. The four transactions extracted at para 17 of this judgment, which the ACB claims as suspicious, the first three are amongst transfer for the purpose of investment. The 4th transaction was money transferred from A4's firm M/s. Legend Enterprises. Admittedly, petitioner's firm had supplied WBC cuvettes according to the counter in August, 2017. The money was received from M/s. Legend Enterprises after the said supplies during the year 2017-2018. There is nothing suspicious in the transactions. Product was sold to M/s. Legend Enterprises and money paid to the petitioner's firm.

46. Admittedly, no role is attributed to the petitioner in the FIR except stating that she has assisted A1 who is her husband and in the remand report of A1 and A2, the role played by this petitioner is kept blank. It is vaguely stated that this petitioner was assisting her husband without attributing any specific role.

47. The evidence on record would disclose that the ACB is specifically stating that for supply of product of M/s. Hemocue,

the services of A2, who is the Regional Manager was taken and a fabricated letter authorizing A4's firm M/s. Legend Enterprises firm was handed over to Director, IMS. The said act rules out any conspiracy theory of petitioner playing a part. Such fabrication of letter to enable A4 to supply products of Hemocue to DIMS makes the conspiracy theory highly improbable. There is not even a single transaction that was done by this petitioner with DIMS or any evidence to remotely suggest that she has in any manner dealt with Director, IMS or any other employee. None of the ingredients of any of the penal provisions of Prevention of Corruption Act are made out.

48. According to ACB, the petitioner is liable under section 420 r/w 120-B of IPC. The Hon'ble Supreme Court in **Ram Narayan Poply's** case (supra) held that to hold a person as a co-conspirator such person should have co-operated for accomplishment of the object by effective means. The essence of a criminal conspiracy is the unlawful combination and encouragement and supports which co-conspirators give to one another and if left to individual effort, which would be impossible. There is nothing to infer cooperation by this

petitioner in any manner in order to either gain wrongfully or cause any wrongful loss to the Director, IMS.

49. For the foregoing discussion, this is a fit case to quash the proceedings against the petitioner in FIR No.13/RCO-CIU/ACB/2019 and accordingly quashed.

50. Criminal Petition is allowed. Consequently, miscellaneous petitions, if any, pending shall stand closed.

K.SURENDER, J

Date: 28.04.2023

Note: LR copy to be marked.

B/o.kvs