

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 16TH DAY OF DECEMBER 2015

BEFORE

THE HON'BLE MRS.JUSTICE RATHNAKALA

WRIT PETITION NOS.53378-53383 OF 2014 (GM-RES)

BETWEEN:

1. SRI SATISH KRISHNA SAIL
S/O LATE KRISHNA SAIL
AGED ABOUT 46 YEARS
MANAGING DIRECTOR
M/S SHREE MALLIKARJUNA
SHIPPING PVT. LTD., (SMSPL)
R/O "MOHAN", NH-17,
CHITTAKULA, SADASHIVGAD,
KARWAR
UTTARA KANNADA DISTRICT
KARNATAKA
(NOW IN JUDICIAL CUSTODY IN
BANGALORE PRISON)
2. M/S SHREE MALLIKARJUNA
SHIPPING PVT. LTD. (SMSPL)
MARCES BUILDING,
OPP: KADAMBA BUS STAND
MUNDAVEL, VASCO-DAGAMA,
GOA - 403 802.

REPRESENTED BY
SRI SATISH KRISHNA SAIL

...PETITIONERS

(BY SRI MURTHY D. NAIK, ADV.)

AND:

1. THE CENTRAL BUREAU OF
INVESTIGATION
ANTI-CORRUPTION BRANCH

BELLARY ROAD, GANGANAGAR,
BANGALORE – 560 032.

REPRESENTED BY
INSPECTOR OF POLICE

...RESPONDENT

IN W.P. NO.53380/2014 (GM-RES)

2. M/S. SHRI LAL MAHAL LIMITED
A COMPANY REGISTERED UNDER
THE COMPANIES ACT,
HAVING ITS REGISTERED OFFICE AT
NO.B-16, BHAGAWANDAS NAGAR,
NEW DELHI – 110 026.
3. SRI SUSHIL KUMAR VALECHA
AGED ABOUT 66 YEARS
SON OF LATE K.C.VALECHA
DIRECTOR, M/S SHRI LAL MAHAL LIMITED
NO.B-16, BHAGAWANDAS NAGAR
NEW DELHI – 110 026. ... RESPONDENTS

(BY SRI ASIM MALIK, ADV. FOR
M/S JADHAV LAW ASSOCIATES, ADVS. FOR R1;
SRI DILJIT SINGH FOR
SRI S.RAJENDRA, ADV. FOR R2 & R3)

THESE WRIT PETITIONS ARE FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO QUASH SPECIAL C.C. NOS.11/2014, 15/2014, 54/2014, 53/2014, 37/2014 AND 38/2014 THE CHARGE SHEETS AND ORDER SHEETS OF WHICH ARE PRODUCED AT ANN-F AND ANN-R PENDING ON THE FILE OF THE 32ND ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND SPECIAL JUDGE FOR CBI CASES, BANGALORE.

THESE WRIT PETITIONS COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Succinctly stated, first petitioner is the Managing Director of the second petitioner/Company, which is engaged in the business of exporting iron ore, Manganese ore and other bulk cargo. The Government of Karnataka, as a matter of policy, in the year 1997 leased out plots of land at Belekeri Port to private Companies to develop the Port for their business purpose. The second petitioner is one of such Companies. Accordingly, the said Company was exporting iron ore from Belekeri Port from 2004. On 15.3.2010, the Section Forester Ankola registered a case in his Forest FIR No.17/2009-10 under the Forest Act and Rules. The iron ore stored in the Port area was seized under a mahazar and was handed over to the Port Conservator, Belekeri in the same position as-is where-is. Subsequently, a complaint came to be filed by the Assistant Conservator of Forests, Ankola on 7.6.2010 that out of 8 lakhs metric tons of iron ore that was handed over to the Port Conservator under the mahazar in Forest FIR No.17/2009-10, a major portion is missing approximately to an extent of 6 lakhs metric tons of iron ore

being stolen. A case was registered by the Ankola Police in their FIR No.189/2010 on 8.6.2010 in respect of the offence under Section 406 of IPC against the Port Conservator. The investigation was taken over by C.I.D., Bangalore. Charge sheet was filed arraying the petitioners as accused before the jurisdictional J.M.F.C. at Ankola. In the meantime, on a public interest litigation filed by an N.G.O., the Hon'ble Supreme Court of India vide order dated 7.9.2012 handed over further investigation of the case to C.B.I. The investigation conducted by the C.I.D., Karnataka, in respect of Crime No.189/2010 was ordered to be stayed. The C.I.D. Karnataka was directed to hand over all the records to C.B.I. Pursuant to the said order of the Apex Court, the CBI registered five F.I.Rs. viz., R.C.Nos.13(A)/2012 to 17(A)/2012 on 13.9.2012. R.C.Nos.13(A)/2012 to 16(A)/2012 pertained to illegal mining/illegal extraction of iron ore in Bellary and Hospet area. R.C.No.17(A)/2012 was nothing but on the same allegation as at F.I.R.No.189/2010 pertaining to theft of iron ore. Matter was investigated by C.B.I. and separate charge sheets are filed before the 32nd Additional City Civil

and Sessions Judge and Special Judge for CBI, Bangalore. Petitioner is arrayed as accused in all the six cases. On the basis of the quantity of cargo that was purchased from respective Traders/Mine owners in respect of R.C.No.16(A)/2012, charge sheet is filed before the Special Judge/46th Additional City Civil and Sessions Judge. The petitioner No.1 is arrayed as accused No.1 in the said case. In Special C.C.No.11/2014, the petitioners are arrayed as accused Nos.2 and 3; in C.C.No.15/2014, as accused Nos.4 and 5; in C.C.No.54/2014 as accused Nos.5 and 6; in C.C.No.53/2014 as accused Nos.4 and 5; in C.C.No.37/2014 as accused Nos.4 and 5 and in C.C.No.38/2014 as accused Nos 5 and 6.

2. These Writ Petitions are filed seeking following reliefs:

a) Issue a writ of certiorari, or any other order or direction in the nature of certiorari quashing Special C.C.Nos.11/2014, 15/2014, 54/2014, 53/2014, 37/2014 and 38/2014 the charge sheets and order sheets of which are produced at Annexures-F to Annexure-R pending on the file of the 32nd Addl. City Civil and sessions Judge and Special Judge for CBI cases, Bangalore (CCH-34).

(b) Issue a writ of mandamus or an order or direction in the nature of mandamus directing the respondent to treat the charge sheets filed in Special CC Nos.11/2014, 15/2014, 54/2014, 53/2014, 37/2014 and 38/2014 at Annexures-F, H, K, M, O and Q respectively as supplementary charge sheets filed in Special C.C. 105/2013 on the file of 46th Addl. City Civil and Sessions Judge and Special Judge for CBI cases at Bangalore (CCH-47) at Annexure-D.

(c) Pass any other order or direction as this Hon'ble Court deems it just and proper in the facts and circumstances of the case, to meet the ends of justice".

3. Two of the accused persons of Spl.C.C.No.54/2014 M/s.Shri Lal Mahal Limited and its Director Sri.Sushil Kumar Valecha have come on record as respondent Nos.2 and 3 with the permission of this Court. They are the accused Nos.2 and 4 in Special C.C.No.54/2014.

4. Sri.Murthy D.Naik, learned Counsel appearing for the petitioners after arguing for some time submits that, he has sought for two reliefs i.e., quashing six charge sheets in Special C.C.Nos.11, 15, 54, 53, 37 and 38/2014 and further for a mandatory direction to treat the charge sheets filed in the above case as supplementary charge sheet of Special

C.C.No.105/2013. But now he is not pressing the second relief of direction in the nature of Mandamus and that the appropriate relief may be framed. The bone of his contention is, a charge sheet filed without the basis of a distinct F.I.R. is not legal, hence in the six cases, charge sheets are liable to be quashed. All the six charge sheets are filed on investigation in respect of R.C.No.17(A)/2012, though multiple F.I.Rs. were filed consequent upon the direction of the Apex Court dated 7.9.2012.

5. Sri.Asim Malik, learned Counsel appearing for respondent No.1/C.B.I. submits that, there is no irregularity or illegality in filing multiple charge sheets on the basis of a single F.I.R., as observed by this Court in ***Ideya Vendan R. and Others -vs- Additional Chief Secretary and Others*** (W.P.No.7246/2013). The offence committed by the petitioners are distinct from one another and that is how it necessitated the prosecution to file separate charge sheet in respect of the distinct offence. The Apex Court in W.P.(C) No.562/2009 has expressly prohibited any authority or Court to entertain any challenge to the C.B.I.'s investigation of the

case(s). The wife of petitioner No.1 herein had approached this Court in Criminal Petition No.2809/2014 and other connected matters seeking very same relief. This Court dismissed all the petitions in view of the gag order of the Apex Court. Since the prayer sought in this petition also pertains to the investigation of the cases and formation of opinion as provided under Section 173 of Cr.P.C., and the order of the Coordinate Bench since squarely applicable to the current case, petition cannot be entertained.

6. Sri.Diljit Singh, learned Counsel appearing for respondent Nos.2 and 3 submits that, *prima facie* it is a vexatious petition impeding speedy trial of the case. The present petition is nothing but a *denova* challenge to the order of the Coordinate Bench of this Court in Criminal Petition Nos.2809/2014 and connected matters, which has attained finality. After the order of the Hon'ble Apex Court in W.P.(C) No.562/2009 dated 7.9.2012, R.C.No.16(A)/2012 was registered on 13.9.2012 and R.C.No.17(A)/2012 was registered on 13.9.2012. In this petition, the petitioners are challenging the registration of FIRs, but after two years of

completion of the investigation, which is untenable. Right to challenge the investigation before any other Court was specifically out stayed by the Apex Court.

7. In view of second relief not being pressed, what remains for consideration is, quashing of all the six charge sheets filed as against them, which amounts to challenge to the investigation which the Apex Court has expressly barred vide order dated 7.9.2012 in W.P.(C) No.562/2009 that, *“it is made clear that no authority or Court shall entertain any challenge to the CBI’s investigation of the case(s) as directed by this Court.”* However, oral argument advanced for the petitioners is that, the charge sheets in five cases may be treated as additional charge sheets in the first case i.e., C.C.No.11/2014. The entire case is split into six parts on the basis of the transactions that took place on different dates, the witnesses are almost same in each case and the nature of evidence will be the same. Since all the incidents have occurred during the common course of business transaction, if he is tried in different cases, it would amount to double jeopardy, in the event of anything going wrong against him.

Though number of authorities are cited by learned Counsel for the petitioner having regard to the narrow sphere of this petition, I feel that it is not the proper stage to refer those authorities.

8. The petitioners do not dispute the contention of the respondents that one Smt.Kalpana Sail, who filed Criminal Petition No.2809/2014 and connected matters is the wife of first petitioner herein. She is accused No.5 in Special C.C.No.54/2014. She had approached this Court seeking quashing of the proceedings of the said case. On the attention being drawn to the order of the Apex Court dated 7.9.2012 supra, the Coordinate Bench of this Court dismissed the petition. That order having not been challenged, the petitioners cannot claim to distinguish their case from that of fourth accused of Special C.C.No.37/2014. As regards the grievance about registering two FIRs and filing multiple charge sheets, the judgment of this Court quoted supra in ***Ideya Vendan's*** case, covers the controversy. Assuming for a while that the prayer now retained by the petitioner for quashing the charge sheets is allowed, what is the

consequence? Again the Investigating Agency has to conduct *denova* investigation, which is not permissible as per the judgment of the Apex Court in ***Ashok Kumar Todi -vs- Kishwar Jahan and Others*** reported in **(2011) 3 SCC 758** wherein it was held that, once a FIR was registered lawfully and investigation had been conducted leading to filing of charge sheet before competent court of law for trial of the accused persons, no direction to start investigation afresh after a time gap is permissible. Interestingly, the Apex Court in the matter of ***Y.S.Jagan Mohan Reddy -vs- Central Bureau of Investigation, Anti-Corruption Branch*** reported in **(2013) 7 SCC 450** (*though it pertains to statutory bail of the accused*), even after observing filing of multiple charge sheets on the basis of a single FIR, was convinced by the contention of the CBI that the matter under investigation related to conspiracies distinctly involving several independent entities, they were distinct conspiracies. Hence, that by itself would explain that filing of separate charge sheets depending upon the facts and circumstances of the case is not alien to Criminal Jurisprudence.

In view of the above, there is no valid ground to invoke the jurisdiction of this Court under Section 482 of Cr.P.C. to intervene with the criminal proceedings of the Special Courts.

These Writ Petitions are dismissed.

**Sd/-
JUDGE**

KNM/-