

Reportable

IN THE SUPREME COURT OF INDIA
 CRIMINAL APPELLATE JURISDICTION
 CRIMINAL APPEAL NO. 1356 OF 2004

Union of India & Ors.

..... Appellants

Versus

Ramesh Gandhi

... Respondent

J U D G E M E N T

Chelameswar, J.

1. This appeal arises out of a judgment of the High Court of Calcutta dated 23rd November, 2001 in Writ Petition No. 352/2001. The appellants herein were the respondents in the above-mentioned Writ Petition.

2. An FIR came to be registered on 15th November, 2000 in the Delhi Special Police Establishment, Ranchi Branch in Crime No. RC 13(A)/2000 (R) under Section 120B read with Section 420 IPC and

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Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against nine accused of whom the first accused was the Coal Controller at the relevant point of time. The next five accused were the officers of Central Coalfields Limited (hereinafter 'CCL' for short), which is a subsidiary of Coal India Limited (hereinafter 'CIL', for short). Accused No.9 is a Private Limited Company (hereinafter 'private company', for short) and accused Nos. 7 and 8 are the members of the said private company.

3. The sole respondent, Mr. Ramesh Gandhi, is one of the members of the above-mentioned private company and shown to be the seventh accused in the above-mentioned FIR. He filed writ petition No.

352/2001 on the file of the Calcutta High Court praying that the

above-mentioned FIR be quashed.

By the judgment under appeal, the

Calcutta High Court allowed the writ petition quashing the FIR.

4. The substance of the accusation in the FIR is that all the accused entered into a criminal conspiracy to confer an illegal and unjust benefit on the above-mentioned private company. In the process, the accused, "intentionally and dishonestly" suppressed certain relevant and crucial facts (in the various cases filed before the Calcutta High Court and also this Court to which the accused were parties), which resulted in orders being passed both by this Court as well as by the High Court favourable to the private company.

5. FIR reads as follows:

"DELHI SPECIAL POLICE ESTABLISHMENT, RANCHI BRANCH

FIRST INFORMATION REPORT

Crime No.RC 13(A)/2000(R), Date and time of Report :
15.11.2000 at 1700 Hrs.

Place of occurrence with State : Calcutta (West Bengal),
Ranchi (Jharkhand)

Date and time of occurrence : 1990-91 to 2000

Name of complainant or informant with address : Through
Source

Offence : U/s. 120B r/w 420 IPC and Sec. 13(2) r/w 13(1)
(d) of PC Act, 1988.

Name and address of the accused : (1) Shri P.N. Tiwary,
the then Coal Controller, Calcutta (retd.)

(2) Shri R.P. Srivastava, the then G.M. Sales, CCL,
Ranchi (retd.)

(3) Shri S.K. Srivastava, G.M. (Sales), CCL, Ranchi

(4) Shri B. Akla, CMD, CCL, Ranchi

(5) Shri K.M. Singh, the then G.M., Argada Area, CCL

(6) Shri Sudarshan Singh, the then Area Sales Officer
Argada Area, CCL, presently Superintending Engineer
(E&M), N.K. Area, CCL

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(7) Shri Ramesh Gandhi, Prop. M/s. Continental

Transport Constn. Corpn., (CTCC), Dhanbad (Pvt).

(8) Shri Mahesh Gandhi of M/s. CTCC, Dhanbad (Pvt.)

(9) M/s. Continental Transport Construction Corpn.
(CTCC), Dhanbad (Pvt.)

Action taken : Regular case registered and
investigation taken up.

Investigation Officer: Shri A. Prasad, DSP, CBI, SPE,
Ranchi

INFORMATION

A reliable information has been received to the effect that Shri P.N. Tiwary, the then Coal Controller (since ret'd.), Calcutta, Shri R.P. Srivastava, the then G.M. (Sales), CCL, Ranchi (since ret'd.), Shri S.K. Srivastava, the then GM.(Sales), CCL, Ranchi, Shri B. Akla, the then Chief of Marketing, Coal India Limited, Calcutta, Director (Technical) and (Projects and Planning), CCL and presently Chairman-cum-Managing Director, Central Coalfields Ltd. (CCL), Ranchi, Shri K.M. Singh, the then G.M., Argada Area, CCL, Shri Sudarshan Singh, the then Area Sales Officer, Argada Area, CCL (presently Superintending Engineer (E&M), N.K. Area, CCL, Shri Ramesh Gandhi of M/s. Continental Transport Construction Corpn., Dhanbad and Shri Mahesh Gandhi of M/s. Continental Transport Construction Corpn., Dhanbad entered into a criminal conspiracy among themselves and in furtherance of the said conspiracy the accused public servants abused their respective official positions, in as much as that they helped the private firm namely M/s. CTCC by way of illegally and unauthorisedly transferring different grades of coal/slurry to the private firm (CTCC) and also by way of intentionally and dishonestly suppressing relevant facts before the Hon'ble Courts and thereby helped M/s. CTCC in getting favourable orders for release of

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steam coal which was meant to be supplied only to the actual users and not to the traders like M/s. CTCC. As a result of the aforesaid overt acts of the accused public servants as mentioned above, M/s. CTCC, illegally obtained the supply of the Steam Coal at a cheaper rate applicable to the actual users, even after the lapse of the period stipulated by the Hon'ble Supreme Court, causing wrongful loss to the tune of Rs.90,00,000/- approximately to the CCL.

It has been alleged that Coal India Limited (CIL), Calcutta vide NIT (Notice Inviting Tender) dated 9/15-1-91 offered sale of existing stock of following categories of coal under "BULK SALE SCHEME" on as is where is basis.

- (i) Slurry
- (ii) Dirty Slurry
- (iii) Middlings
- (iv) Rejects

It was also stipulated vide item no.23 of

the terms and conditions of the NIT that in case of failure on the part of the buyer to lift 90% of the quantity within 90 days of allocation, security deposit and the Bank Guarantee would be liable to be forfeited by the Company.

In response to the aforesaid NIT, M/s. CTCC, offered to buy following quantity/quality of coal at the prescribed rate. M/s. CTCC was allotted the entire quantity w.e.f. 25.7.91 which was to be lifted within 90 days after depositing the cost in advance.

Name of Product	Quantity offered by M/s. CTCC	Price
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Slurry 'D'	Grade 179000 MT	Rs.37756/- per MT
Dirty Slurry Grade 'F'	45000 MT	Rs.238.50 per MT
Middlings 'F'	Grade 90000 M T	Rs.238.50 per MT
Rejects	50000 MT	Rs. 178.00 per MT

It is further alleged that M/s. CTCC deposited the cost only for 1500 MTs of Middlings Grade 'F' and 13276 MT of Slurry Grade 'D' against the offered quantity as mentioned in the foregoing para. M/s. CTCC had lifted this quantity of 1500 MT only and was thus to be penalised by way of forfeiture of security/invoking of Bank Guarantee as per terms and conditions of the NIT. However, the concerned accused public servants in pursuance to a criminal conspiracy, had shown favours to M/s. CTCC by not taking action subsequently as above.

In furtherance of the conspiracy, M/s. CTCC requested the CIL in April 1993 to transfer the remaining quantity of 88500 MT of Middlings Grade 'F' to Dirty Slurry Grade 'F' and the same was approved on 28.5.93 in complete violation of terms and conditions of the NIT.

Accused Ramesh Gandhi of M/s. CTCC in accordance with Shri P.N. Tiwary, the then Coal Controller, Calcutta and the accused officials of the CCL/CIL submitted a representation to accused Shri P.N. Tiwary requesting transfer of the left over quantity of 165724 MT of Slurry Grade 'D' to Dirty Slurry Grade 'F'. Shri P.N. Tiwari, in his capacity as Coal Controller, was supposed to allow the transfer of grade of coal after following due procedure, but he, in utter violation of the terms and condition of the NIT, approved the same and intimated to the CMD, CCL, Ranchi, accordingly.

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It is further alleged that the Coal India Limited, Calcutta floated another NIT under "LIBERALISED SALES SCHEME II (LSS-II)", with same terms and conditions as of Bulk Sale Scheme, and M/s. CTCC offered to purchase, under this scheme, following quantities of coal from the collieries mentioned against each.

	Grade of Coal	Quantity lifted	Colliery
(i)	Steam Coal Grade 'B'	1.35 MT	Lakhs Urimari
(i)	Steam Coal Washery Grade 'D'	1.75 MT	Lakhs Jarangdih

It is further alleged that M/s. CTCC was allotted 32,000 MT of Steam Coal Grade 'B' from URIMARI Colliery and 5750 MT of Washery Grade 'D' Coal from Jarangdih Colliery vide letter dated 7.4.93 and 21.4.93 respectively of Coal India Limited, Calcutta. As against the aforesaid allotted quantity M/s. CTCC deposited the amount equal only to the value of 3000 MT each and lifted the same from the respective sources.

In pursuance of criminal conspiracy M/s. CTCC further requested the then General Manager, Argada Area, CCL, Shri K.M. Singh, vide letter dated 7.4.94 to allot Steam Coal from Sirka, Religara and Giddi 'C' Collieries (All high demand collieries), in lieu of left over quantity of Slurry Grade 'D' (165724 MT), Middlings Grade 'F' (88500 MT) and Dirty Slurry Grade 'F' (45000 MT) of the previous scheme, i.e. Bulk Sale Scheme.

Steam Coal of the aforesaid three sources namely Sirka, Religara and Giddi 'C' was to be allotted, as per the policy of the CIL/CCL, exclusively to the industrial consumers (Actual users) and not to the traders like M/s. CTCC at all, during the relevant period. Also, the rate of Steam Coal applicable to the industrial Consumers (Actual users) was approximately Rs.200/- per MT less than the rate fixed for the traders

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and M/s. CTCC being the traders, was not authorised to get the Steam Coal at the rate which was applicable to the industrial consumers (actual users).

Following the receipt of letter dated 7.4.94 of M/s. CTCC, accused Shri K.M. Singh, the then General Manager, Argada Area, CCL, in pursuance to the criminal conspiracy falsely intimated the Sales and Marketing Divisions of CCL, Ranchi, on 8.4.94 to the effect that Argada Area was having a huge stock of Steam Coal and that he was ready to supply the same to M/s. CTCC.

It is further alleged that accused Shri K.M. Singh, the then General Manager, Argada Area, CCL also was not competent to entertain such a matter as it was the concern of General Manager (Sales and Marketing), CCL, Ranchi.

Simultaneously, accused Ramesh Gandhi of M/s. CTCC approached accused P.N. Tiwary, the then Coal Controller, as well, on the same issue, who in turn, in criminal conspiracy with M/s. CTCC and accused public servants wrote a letter dated 12.4.94 to the CMD, CCL, Ranchi, inter alia, directing him to accede to the request of M/s. CTCC, without ascertaining from the CCL, Ranchi, the stock position and the past conduct of M/s. CTCC of not remitting the cost of entire offered quantity of coal in question against both the aforesaid schemes namely 'Bulk Sale' and 'LSS-II' within the stipulated period as prescribed and also the fact that M/s. CTCC was

not authorised to get the Steam Coal which was meant for Industrial Units (Actual Users).

Even before the aforesaid letter dated 12.4.94 of accused P.N. Tiwary, was received in the office of the CMD, CCL, Ranchi, accused Ramesh Gandhi of M/s. CTCC moved to the Hon'ble High Court, Calcutta by suppressing the relevant facts of the matter and secured an order dated 18.4.94 vide which CMD, CCL, Ranchi was directed to comply with the directions of the Coal Controller issued vide letter dated 12.4.94. The accused public servants of CIL/CCL also did not place the correct

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facts before the Hon'ble High Court, Calcutta in the matter.

It is further alleged that it was obligatory on the part of accused R.P. Shrivastava, the then General Manager (Sales), CCL, Ranchi, and Shri Akla, the then Chief of Marketing, CIL, Calcutta to safeguard the interest of the company by way of approaching the Coal Controller to modify his order issued vide letter dated 12.4.94 according to the terms and conditions of the NITs in question and also to recommend to move the Division Bench of Hon'ble High Court Calcutta for modification of the order dated 18.4.94 on following points.

(i) M/s. CTCC did not fulfil the terms and conditions of NITs in question and thus the penalty was to be imposed on them;

(ii) Steam Coal of the aforesaid collieries was not meant for traders like M/s. CTCC.

(iii) Traders, if allotted Steam Coal, were to pay @ Rs.200/- approximately (per MT) more than the rate allowed to the Industrial Consumers (Actual users).

However, they, in pursuance to the criminal conspiracy, simply recommended challenging the authority of the Coal Controller for issuing direction vide letter dated 12.4.94, in the Hon'ble High Court, Calcutta since the Coal Controller was authorised to issue such letters, the Hon'ble High Court, Calcutta vide order dated 6.4.95 dismissed the Revision Petition filed by the CIL with direction to implement the order dated 12.4.94 of the Coal Controller.

M/s. CTCC, however, did not deposit the value of the Coal to be lifted again, on some pretext or the other as they were not in a position to sale such a huge quantity of coal at monopolistic price, those days, since the buyers were getting coal directly from the Coal India Limited and other sources. Also neither

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the accused Shri B. Akla, the then Chief of Marketing CIL nor Shri R.P. Shrivastava, the then General Manager (Sales and Marketing), CCL, Ranchi asked M/s. CTCC to deposit the coal value and to lift the coal.

Two SLPs vide no. 2004 and 2005 of 1997 were, however, filed in the Hon'ble Supreme Court after a lapse of more than two years by the CIL./CCL challenging the order dated 6.4.95 of the Division Bench of the Hon'ble High Court, Calcutta.

At this stage also, the actual facts relating to the failure on the part of M/s. CTCC in lifting the coal after depositing the coal value in advance within the stipulated period as per terms and conditions of the NITs, were not brought to the notice of the Hon'ble Supreme Court and simply the authority of the Coal Controller was challenged.

The Hon'ble Supreme Court after hearing both the accused parties, dismissed both the SLPs on 18.3.97 with an observation that the Coal Controller had got the jurisdiction to pass such orders.

On receipt of the orders of the Hon'ble Supreme Court, it was rightly commented upon by an officer of Sales and Marketing Department of the CCL, Ranchi on 5.4.97 to the effect that merely challenging authority of the Coal Controller had not served any purpose. He opined that all the relevant points regarding failure on the part of M/s. CTCC should be raised by preferring an appeal against the impugned order. Accused Shri B. Akla by that time had joined as Director (Projects and Planning) CCL, Ranchi and had perused the aforesaid noting on 5.4.97 itself, but he had returned the file on 16.4.97 without any comment with an advice to discuss the matter with the Panel Advocate of CCL/CIL.

On 22.4.98, a modification petition was filed in the Hon'ble Supreme Court on behalf of CCL/CIL, mentioning therein the difficulties in implementing the orders dated 12.4.94 fo the Coal Controller, Calcutta. In this petition also, there was no mention about the

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facts that M/s. CTCC had not deposited the value of the entire quantity of coal and had not lifted the same within the stipulated period. The fact that Steam Coal of the collieries in question was meant specially for the industrial units/Actual users and if sold to the traders was to be costlier by Rs.200/- per MT approximately was also not mentioned in the said modification petition.

M/s. CTCC also filed a contempt petition simultaneously in the Hon'ble Supreme Court against the then CMD, CCL, Ranchi and others in the matter. Hearing of both the petitions was fixed on 9.5.97 and the Hon'ble Supreme Court issued a show cause notice to the concerned officers of CCL. Hearing on the modification petition as mentioned above could not be taken up.

As per the commitment of the CCL, the Hon'ble Supreme Court vide its order dated 14.7.97, directed the CCL to complete the supply of the entire quantity of coal allotted to M/s. CTCC within 20 months positively at the rate of 10,000 MT per month and at the modified price fixed by the CIL w.e.f. 1.4.97.

On receipt of the aforesaid order, the Dealing Officer of the Sales and Marketing Division of CCL, Ranchi, initiated a proposal suggesting that penalty as per terms and conditions of NIT of "Bulk Sale" and "LSS-II" Schemes should be decided in case M/s. CTCC to notify truck wise allotment on a weekly basis, to ensure timely placement of trucks by the party and to maintain a record to assess the quantity lifted by them within a particular period of time.

It was also decided/recommended during a

meeting held jointly by the Director (Finance), CCL, Ranchi, C.G.M., Argada Area, CCL, Sales Officer, Argada Area, CCL, CGM (Sales and Marketing Division), CCL, Ranchi etc. to impose a penalty on M/s. CTCC in case failed to lift 10,000 MT of coal per month as per the orders of the Hon'ble Supreme Court. When this note, duly recommended by the Committee was put up to the accused Shri B. Akla, the then director (Technical) and (Projects and Planning), CCL, Ranchi, he observed in favour of the

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party to the effect that the party shall have to be made to forego the unlifted quantity after "the stipulated period, and it will in itself, be sufficient and recovery/penalising for unlifted quantity may not be required".

This observation of accused Shri B. Akla, which was not in accordance with the recommendation of General Manager (Sales) and the Committee members, including the Director (Finance) shows that he was promoting the interests of M/s. CTCC rather than that of CCL, Ranchi.

Thereafter, on 20.9.97, a meeting was held which was attended to by Shri B. Akla, Director (Technical) and (P&P), Shri A.K. Mitra, Director (Finance), R.R. Menon, G.M.(Sales and Marketing), CCL and Ramesh Gandhi of M/s. CTCC and it was mutually agreed upon that M/s. CTCC would submit a Bank Guarantee at the rate of Rs.30/- per MT for the unlifted quantity of coal, which could not be lifted due to the failure on the part of M/s. CTCC and to allow twenty months time for lifting the entire quantity as per the direction of the Hon'ble Supreme Court. This period was to be calculated from the actual date of commencement of lifting or 1st November, 1997, whichever was earlier. It was also specified that M/s. CTCC would pay @ Rs.896/- per MT for the Steam Coal Grade 'B' at the notified rate w.e.f. 1.4.97.

As per the aforesaid decision M/s. CTCC was to lift the entire quantity of coal by June 1999, but against 2.8 lakh MT of Steam Coal, M/s. CTCC lifted only about 30000 MT of coal from the aforesaid three collieries upto June 1999 and thus the remaining quantity of 2.5 lakhs MT of coal was not to be allowed to be lifted by M/s. CTCC. However, in violation of the Supreme Court's order M/s. CTCC was allowed by Shri R.P. Shrivastava, the then General Manager (Sales), CCL, Ranchi to lift another 15000 MT of Steam Coal between June 1999 to October 1999. As per the direction of Hon'ble Supreme Court, the lifting of Coal was to commence from November 1997 but it was delayed by M/s. CTCC in connivance with the officers of CCL, on one

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pretext or the other upto March 1998, till the peak season started. This was obviously with a view to avoid the lean season.

It is also alleged that Shri Sudarshan Singh the then Area Sales Officer, Argada Area, CCL, was made the nodal officer responsible for regulating supplies of coal to M/s. CTCC and its reconciliation but he intentionally did not make any reconciliation and did not adhere to the norms of NIT/direction of the Hon'ble Supreme Court. Shri Sudarshan Singh also went to the extent of issuing a letter/certificate favouring the party mentioning therein that due to the non-availability

of Coal in the Area, the supplies could not be made to M/s. CTCC. This was done with a view to helping the party in the matter of lifting coal even after the expiry of the stipulated period of 20 months.

After the expiry of 20 months, accused Shri S.K. Shrivastava the then General Manager (Sales), CCL, Ranchi and Shri Mahesh Gandhi of M/s. CTCC entered into an unwarranted agreement (MOU) on 23.3.2000, vide which M/s. CTCC would be allowed to lift coal according to its own will as no time frame was fixed for lifting the same. M/s. CTCC was also given a chance for lifting coal from Bokaro, Barkakana, Sayal and Dhuri Area, in addition to the aforesaid areas was in high demand and was fetching the highest premium. In the MOU, no provision was kept for imposing any penalty for failure on the part of M/s. CTCC in lifting of Coal. This was done with a view of allow M/s. CTCC to lift coal during premium months.

The rate at which M/s. CTCC allowed to lift the coal was applicable to the industrial consumers/ actual users and not to the traders like M/s. CTCC. The rate applicable to the trader was Rs.200/- (approximately per MT) more.

After the expiry of stipulated period of 20 months, M/s. CTCC was allowed by the accused public servants of CCL to lift extra quantity of 45000 MT of steam coal, at the rate applicable to the actual users

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and thereby CCL Ranchi was put to a wrongful loss to the tune of Rs.90 lakhs (Rs. Ninty Lakhs) approximately.

The aforesaid acts of commissions and omissions on the part of S/Shri P.N. Tiwary, the then Coal Controller, Calcutta (retired), R.P. Shrivastava, the then General Manager (Sales), CCL, Ranchi (retd.), S.K. Srivastava, G.M. (Sales) CCL, Ranchi, B. Akla, CMD, CCL, Ranchi, K.M. Singh, the then G.M. Argada Area, CCL, Sudarshan Singh, the then Area Sales Officer, Argada Area, presently superintending engineer (E&M), NK Area, CCL, Ramesh Gandhi of M/s. Continental Transport Construction Corporation (CTCC) Dhanbad (Pvt.) reveal that the public servants and the private persons alongwith their firm, as mentioned above, entered into a criminal conspiracy and in pursuance of the same violated the terms and conditions of the NITs issued in respect of sale of coal under "Bulk Sale" and "LSS-II" Schemes, wilfully suppressed relevant facts before the Hon'ble High Court, Calcutta and Hon'ble Supreme Court of India and subsequently in violation of Hon'ble Supreme Court's order allowed the private party namely M/s. CTCC to lift an additional quantity of 45000 MT of coal at the rate applicable to the industrial consumers/actual users and thereby caused huge wrongful loss to the tune of Rs.90 lakhs approximately to the CCL, Ranchi and corresponding wrongful gain to the private party and themselves. Shri P.N. Tiwary, the then Coal Controller, Calcutta also connived with the private party and accused public servants by fraudulently and dishonestly issuing directions to the CMD, CCL, Ranchi in favour of the private party.

This prima facie disclose the commission of offences u/s. 120(B) r/w 420 IPC and Sec. 13(2) r/w sec. 13(1)(d) of P.C. Act, 1988.

This R.C. is therefore registered and investigation is taken up.

Sd/- 15.11.2000

[A. PRASAD]

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Dy. Supt. Of Police,
CBI/SPE/Ranchi,
Investigating Officer
Dated 15.11.2000"

6. According to the FIR, the various acts and omissions narrated therein of the accused caused a huge wrongful loss of approximately rupees ninety lakhs to the CCL and a corresponding wrongful gain to the private company.

7. This case has a long and chequered history. It all started with two advertisements issued by CIL in January, 1991 and September, 1991 published in the 'Statesman' newspaper inviting offers for purchase of various grades of coal under two schemes propounded by it named as 'Bulk Sale Scheme' and 'Liberalised Sale Scheme-II'. [It is unfortunate that copies of the above advertisements are not placed on record]

8. What transpired subsequently is described in detail by this Court in judgment dated 18th March, 1997 in Civil Appeal Nos.2004-2005/1997 reported in (1997) 9 SCC 258. Both Coal India Ltd. and

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the private company were parties to the above-mentioned appeals.

In paras 5 to 7, this Court recorded as follows:

"5. In Civil Appeal arising out of Special Leave Petition No. 25983 of 1995 we are concerned with the sale of coal under the Liberalised Sales Scheme-II (for short 'LSS-II') framed by CIL in August 1992 in pursuance of Notifications dated July 24, 1967 and June 4, 1992. In September 1992 CIL published an advertisement in the 'Statesmen' inviting offers for purchase in respect of coal offered for sale under LSS-II. In the said advertisement the quantity and quality of coal that was being offered in the various collieries belonging to the subsidiaries of CIL were specified. Among the collieries mentioned in the advertisement were Urimari and Jarangdih collieries of CCL. In respect of Urimari Colliery 1.35 lac tonnes of Grade-B Steam Coal was offered and in respect of Jarangdih Colliery 1.75 lac

tonnes of Grade W-III Steam Coal was offered. In response to the said advertisement M/s. Continental Transport and Construction Corporation, respondent No. 1 in both the appeals (hereinafter referred to as 'the petitioners'), sent a letter dated September 16, 1992 to the General Manager (Sales), CCL, offering to purchase 1.35 lac tonnes of Grade-B Steam Coal from Urimari Colliery and 1.75 lac tonnes of Grade W-III Steam Coal from Jarangdih Colliery. By allotment letter dated April 7, 1993, CCL allotted to the petitioners 32,400 MT Grade-B Steam Coal from Urimari Colliery in Sayal area in response to the offer made by the petitioners on September 16, 1992. By another allotment letter dated April 20/21, 1993, CCL allotted to the petitioners 50,750 MT Grade W-III Steam Coal from Jarangdih Colliery. The validity of the said allotments was up to March 31, 1994, but the period of the said allotments was extended. The case of the petitioners is that Steam Coal at Urimari and Jarangdih Collieries was not matching to the declared Grade-B and W-III respectively and was of lower grades. Sirka Colliery falling in Argada area also belongs to CCL. The petitioners, having come to know that sufficient stocks of Grade-B Steam

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Coal was available for disposal at Sirka Colliery, wrote a letter dated April 7, 1994 to the General Manager (Argada area) of CCL, wherein it was mentioned that 32,400 MT of Grade-B Steam Coal from Urimari Colliery and 50,750 MT of Grade W-III Steam Coal from Jarangdih Colliery was allotted to them vide allotment letters dated April 7, 1993 and April 20/21, 1993 respectively and that on account of non-availability of Grade-B Steam Coal at Urimari Colliery and Grade W-III grade steam coal at Jarangdih Colliery it would not be possible for them to lift the required quantity of coal. In the said letter it was also stated that the petitioners had learnt that Sirka Colliery had huge stocks of Grade-B Steam Coal to the tune of 4.16 lakh MT and that he (General Manger) was willing to accept the diversion of orders of other areas booked under LSS-II to the tune of 2.00 lakhs MT in addition to other pending commitments and orders/proposed deliveries to others including the petitioners. By the said letter the petitioners expressed their willingness to accept equivalent quantities of Grade-B Steam Coal from Sirka Colliery in case the General Manager was willing to accept the transfer of allotment for Steam Coal of Urimari and Jarangdih Collieries. The General Manager was requested to accept the proposal of the petitioners at his level and intimate to the General Manager (Sales)/CCL Headquarters for obtaining the formal approval in this regard. After receiving the said letter the General Manager (A), Sirka, sent a communication dated April 8, 1994 to the General Manager (S&M), CCL, wherein he enclosed a copy of the aforementioned letter of the petitioners dated April 7, 1994 and, after referring to his wireless message dated April 1, 1994, he stated that in view of the stock position of 4.16 lakhs MT of coal at Sirka Colliery it has been confirmed that in order to liquidate stocks such orders of steam coal, if diverted from other areas, could be accepted. On April 9, 1994 the petitioners submitted a representation to the Coal Controller for transfer of allotments of steam coal from Urimari and Jarangdih Collieries allotted by CCL/Headquarters under LSS-II from these collieries to Sirka Colliery of Argada area. In the said representation the petitioners mentioned that quality of

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coal being produced at Urimari Colliery was equivalent to Grade-D coal and at Jarangdih Colliery also the quality of coal being produced was equivalent to Grade W-IV. It was stated that at Sirka Colliery of Argada area there were huge stocks of Grade-B Steam Coal to the tune of 4.10 lakhs MT and it was pointed out that the General Manager (Argada area) of CCL, in his letter dated April 8, 1994, had recommended the request of the petitioners for diversion of allotments to Sirka Colliery for favourable consideration and approval of the General Manager (Sales)/CCL. A copy of the said letter of the General Manager, Argada Area, Sirka dated April 8, 1994 was also submitted along with the representation. By the said representation the petitioners requested the Coal Controller to issue a direction to the coal company for transfer of allotments of Steam Coal from Urimari and Jarangdih Collieries to Sirka Colliery for release of equivalent quantity of Steam Coal from Sirka Colliery. On the said representation the Coal Controller, on April 12, 1994, sent a communication to the Chairman-cum-Managing Director, CCL, Ranchi referring to the letter dated April 7, 1994 submitted by the petitioners to the General Manager, Argada area as well as the letter dated April 8, 1994 from the General Manager, Argada addressed to the General Manager (Sales)/CCL wherein he had recommended for acceptance of the transfer in order to liquidate huge stocks of coal at Sirka Colliery. In the said letter the Coal Controller has stated :

Having noted the entire circumstances and facts of the case and the availability of steam coal at Sirka you are advised to forthwith give effect to the transfer of these allotments of steam coal from Urimari/Jarangdih collieries to Sirka Colliery for delivery of equivalent quantity of steam coal Grade B to the party as requested for by them and recommended by the concerned area, at the earliest.

6. Civil Appeal arising out of S.L.P. (Civil) No. 26366 of 1995 relates to sale of washery products on the basis of the Notification dated July 24, 1967, before amendment introduced therein by Notification dated June

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4, 1992. On January 17, 1991 and advertisement was published in the 'Statesman' inviting offers for bulk purchase of rejects, Middlings, Slurry and Dirty Slurry in various washeries of CCL including the Gidi Washery. In response to the said advertisement, the petitioners, on March 2, 1991, submitted offers for purchase of 1,79,000 MT Slurry, 90,000 MT Middlings and 90,000 MT Dirty Slurry. By letters dated May 11/14, 1991 CIL accepted the offer of the petitioners and agreed to supply to the petitioners 1,79,000 MT Slurry Grade-D, 90,000 MT Middlings Grade-F and 45,000 MT Dirty Slurry Grade-F from Gidi Washery. Subsequently by letter dated May 28, 1992 CCL approved the transfer of 88,500 MT of Grade-F Middlings allotted to the petitioners to equivalent quantity of Grade-F Dirty Slurry to be delivered from Gidi Washery. By letter dated September 18, 1993, the General Manager (Argada area) of CCL refused to accede to the request of the petitioners to allow delivery of Grade-D also with Grade-F Dirty Slurry and reiterated that in order to avoid possible malpractices of lifting of Slurry against orders of Dirty Slurry, lifting of both the products concurrently was not possible. On September 20, 1993, the petitioners

submitted a representation to the Coal Controller requesting him to direct CCL to transfer their allotment of 1,65,724 MT of Slurry Grade-D to equivalent quantity of Dirty slurry Grade-F which was abundantly available at the Gidi Washery. On January 31, 1994 the Coal Controller gave a direction to the Chairman-cum-Managing Director, CCL, Ranchi, to transfer 1,65,724 MT of Grade-D Slurry to equivalent quantity of Grade-F Slurry in Gidi Washery. Since the direction of the Coal Controller was not implemented by CCL, the petitioners moved the Calcutta High Court by filing a Writ Petition and the High Court, by order dated February 10, 1994, directed the appellants to act in terms of Coal Controller's letter dated January 31, 1994. Thereupon by letter dated February 28, 1994, CCL confirmed the transfer of 1,65,724 MT of Grade-D Slurry to Grade-F Slurry of Gidi Washery. The case of the petitioners is that with effect from April 1, 1994, CCL changed the grade of Dirty Slurry of Gidi Washery from Grade-F to Grade-E for the year 1994-95 and increased its price by about Rs. 85 per

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MT. The petitioners submitted a representation to the Coal Controller on April 2, 1994 in that regard. On April 7, 1994, the petitioners wrote a letter to the General Manager (Argada area) of CCL, wherein they stated that in view of the difficulties mentioned in the said letter, it would not be possible for them to lift the Dirty Slurry allotted to them from Gidi Washery and they sought transfer of their allotments of Dirty Slurry to Steam Coal from Sirka/Gidi-C/Religara collieries. By his letter dated April 8, 1994 addressed to the General Manager (S&M), CCL, the General Manager (Argada area), forwarded the said letter of the petitioners for favourable consideration. On April 9, 1994 the petitioners submitted a representation to the Coal Controller requesting him to transfer of then-allotted quantity of Dirty Slurry remaining to be booked and lifted against allotment and the entire quantity of recent allotment of 1,65,724 MT of Dirty Slurry for release of equivalent quantity of Steam Coal by road from Sirka/Gidi-C/Religara collieries. The Coal Controller, sent a communication dated April 12, 1994 to the Chairman-cum-Managing Director, CCL, wherein, after taking note of the representation dated April 7, 1994 submitted by the petitioners to the General Manager (Argada area) and the letter from the General Manager, Argada area to the General Manager (Sales)/CCL dated April 8, 1994, he stated :

Having noted the entire circumstances and facts and the availability of the coal at Sirka/Religara/Gidi-C desired to be lifted by the party, you are advised to forthwith effect to the transfer of allotments of Dirty Slurry and in the party letter dated 2.4.94 and 9.4.94 for release of equivalent quantity of steam coal from Sirka/Religara/Gidi-C collieries as requested for by them and recommended by the concerned area, at the earliest.

7. Since the directions contained in both the communications of the Coal Controller dated April 12, 1994 addressed to the Chairman-cum-Managing Director of CCL were not being implemented by CCL, the petitioners on April 18, 1994, filed two Writ Petitions (Matters

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Nos. 940-941 of 1994) in the Calcutta High Court. Both the Writ Petitions were disposed of by a learned single

Judge (Mitra J.) by order dated April 18, 1994 whereby the Chairman-cum-Managing Director of CCL was directed to act in terms of the communications dated April 12, 1994 sent by the Coal Controller within a fortnight from the date. This order was passed by the learned single Judge without issuing notice to the appellants and by directing that a copy of the Writ Petition be served upon Mrs. A. Quraishi, Advocate as she generally appears on behalf of the Chairman-cum-Managing Director of CCL and the Chairman-cum-Managing Director of CCL 'was directed to regularise her appointment in the matter. The said order of the learned single Judge was, however, set aside in appeal by the Division Bench of the High Court by order June 6, 1994 and the matter was remitted for reconsideration on merits. Thereafter, the matter was considered by Samaresh Banerjee J. who, after issuing notice to the parties, by his judgment dated April 6, 1995, allowed both the Writ Petitions filed by the petitioners and directed the appellants herein, who were respondents in the Writ Petitions, to implement the orders of the Coal Controller dated April 12, 1994 forthwith. Letters Patent Appeals filed by the appellants against the said judgment of the learned single Judge have been dismissed by the Division Bench of the High Court (K.C. Agarwal CJ. and Tarun Chatterjee J.) by the impugned judgment dated October 31, 1995. Hence these appeals. "

It can be seen from the above-extract that the private company entered into two contracts with CIL pursuant to two Notice Inviting Tenders (NITs). Subsequently, the private company sought variation of the original terms of the contracts in so far as they relate to the quality of coal and also the collieries from which the coal could be secured. The same was directed to be given by the Coal

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Controller (one of the accused) by his communications dated 12.04.1994. Complaining that the CIL and its officers were not honouring the directions given by the Coal Controller, the private company approached the Calcutta High Court by filing two writ petitions, i.e. W.P. Nos. 940 and 941 of 1994. The brief history of the said writ petitions is taken note of by this Court in para 7 of the judgment dated 18th March, 1997, extracted above. Eventually, both the writ petitions were allowed by the judgment of the Calcutta High Court dated 6th April, 1995 and the same was confirmed by the Division Bench in Letters Patent Appeals by a judgment dated 31st October, 1995. Aggrieved by the same, CIL approached this Court by the above-mentioned Civil Appeal Nos. 2004-2005 of 1997. Both the appeals were dismissed.

9. The matter did not end there. Complaining that the Coal India Ltd. and its officers failed to comply with the judgment of this Court dated 18th March, 1997 in the above-mentioned Civil Appeal Nos. 2004-2005 of 1997, the private company filed contempt petitions Nos. 261-262 of 1997. The said contempt petitions were disposed of by an order dated 14th July, 1997 by this Court. The operative portion of the said order is as follows:-

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"We, however, find that in the contempt petitions the prayer of the applicants is that they may be supplied coal at the notified price fixed by the Coal India Ltd. and made effective for sale of coal with effect from April 1, 1997. Having regard to the said prayer made by the applicants themselves in the contempt petitions, we consider it just and appropriate in the interest of justice to direct that the supplies of the coal that are to be made by the respondents as per the directions of the Coal Controller during the period of next 20 months shall be made at Rs.896/- per metric tonne, the notified price fixed by the Coal India Ltd. with effect from April 1, 1977. It is made clear that the respondents are not restricted to supply coal at the rate of 10000 metric tonne per month and that if there is availability of larger quantity of coal the respondents can supply quantity in excess of 10000 metric tonne per month so as to reduce the period of 20 months for the supply but in no event the said period shall be extended. Since the supplies are to be made at the rate of 10000 metric tonne per month, it will be permissible for the applicants to furnish rotating bank guarantee for 10000 metric tonne of coal per month. It is also made clear that the price at which the supply of coal is to be made as directed above, shall be for the entire quantity of coal to be supplied by the respondents and there shall be no variation in the said price. The contempt petitions as well as the interlocutory applications Nos.5-6 are disposed of accordingly."

10. Subsequently, it appears that CIL did, in fact, supply coal to the private company allegedly not only in compliance with the directions of this Court in its order dated 14th March but also in excess of the legal obligations imposed by the orders of this Court.

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11. It is in the above-mentioned background, the FIR, which is the subject matter of the dispute in the instant appeal, came to be registered on 15th November 2000.

12. The crux of the FIR is that though the supplies by the Coal India Ltd. are pursuant to the directions issued by the Calcutta

High Court confirmed and reinforced by the judgment dated 18.3.97 and order dated 14.7.97 of this Court referred to above, such directions from the courts are consequences of the failure on the part of the various accused (mentioned in the FIR) to bring the relevant and crucial facts which in law disentitle the private company from getting any relief either from this Court or from the Calcutta High Court. According to the FIR, the private company failed to comply with the twin obligations arising under the two contracts referred to earlier, i.e. lifting of the coal contracted to be purchased by it in accordance with the schedule agreed upon and making the payment of money towards the sale price of the coal in terms of the schedule of the payment agreed upon. The substance of the FIR is that the failure to bring the above mentioned crucial facts to the notice of the Courts (both the Calcutta High Court and this Court), is deliberate and due to a conspiracy between all the accused of which the respondent is one.

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13. By the judgment under appeal, the said FIR was quashed. The only reason given is that the supply of coal to the private company had been made in terms of a decision given by the Calcutta High Court as approved by this Court at a price fixed by this Court. Therefore, no Magistrate can examine the allegation that such a supply of coal resulted in an unjust pecuniary advantage to the private company. The operative portion of the judgment reads as under:

"It was contended that the object of the First Information Report and the investigation thereon was to unearth criminal misconduct conducted by the accused public servants to obtain for CTCC wrongful pecuniary advantage by corrupt or illegal means or by abusing their position as public servants or while holding office as public servants and accordingly offences said to have been committed includes those mentioned in Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The alleged wrongful pecuniary advantage is obtaining of supply of coal at a less price. As aforesaid supply of coal had been obtained in terms of a decision given by this Court and approved by the Supreme Court and at the price fixed by the Supreme Court, no magistrate, therefore, in the circumstances can

decide that any unjust pecuniary advantage was made available to CTCC by any of the accused public servants.

For the reasons aforesaid I quash the First Information Report impugned in this writ petition, all investigations made pursuant to the said First Information Report and restrain Central Bureau of

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Investigation from carrying on any further investigation on the basis of the said First Information Report."

14. Hence, this appeal.

15. Learned Additional Solicitor General, Shri P.P. Malhotra,

appearing for the appellant very vehemently submitted that: the only issue considered and decided by the Calcutta High Court and

confirmed by this Court was whether the Coal Controller had the

necessary legal authority to direct (by his two letters dated

12.4.1994) the variation of the terms of the two contracts entered

into by the private company and this Court did find that the Coal

Controller had the requisite legal authority to direct such

variation. The mere existence of authority in the Coal Controller

to order variation in the terms of the contracts does not by itself

mean that the authority had been exercised legally and validly.

The Coal Controller failed to take note of the fact that the private

company had already committed a breach of its contractual

obligations to CIL. Having regard to the breach of the contract

committed by the private company, the Coal Controller should not

have exercised his authority in favour of such a defaulting

purchaser. In other words, the Coal Controller did not take all the

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relevant factors before exercising his authority to grant variation

in the terms of the contracts between the private company and the

Coal India Ltd. Shri Malhotra further submitted that even in the

legal proceedings before the Calcutta High Court and this Court,

these factors were not brought to the notice of the Courts by any

one of the accused. It is argued that if only the fact that the private company had already defaulted in its obligations arising out of the two contracts entered into by it with the CIL had been brought to the notice of the Courts, Courts would not have intervened in favour of the private company. The gravamen of the charge in the FIR in issue is that the failure to bring such crucial facts, which were most crucial for adjudicating the rights and obligations of the private company and CIL, to the notice of the Courts is the consequence of a criminal conspiracy by all the accused to enable the private company to derive an unjust and illegal benefit at the cost of CIL. Shri Malhotra, therefore, submitted that the judgment under appeal clearly failed to consider this aspect and, therefore, unsustainable in law.

16. On the other hand, Shri Gopal Subramaniam, learned senior counsel appearing for the respondent submitted that the judgment under appeal does not call for any interference as the conclusion arrived at by the judgment under appeal is a logical corollary to the earlier judgment in Civil Appeal Nos. 2004-2005 of 1997 and order in Contempt Petitions Nos. 261-262 of 1997 of this Court.

17. From the tenor of the impugned FIR, we understand the charge against the accused to be as follows:

(a) The private company committed breach of contractual obligations arising under the two contracts entered into by it with CIL.

(b) The officers of the CIL and CCL (shown accused in the FIR) are obliged in law (as per the terms of the contract) to take penal action against the private company for such breach of the contractual obligations.

(c) The above-mentioned officers/accused failed to take any such penal action.

(d) On the other hand, when the private company approached the courts seeking the enforcement of the directions of Coal Controller, all the accused deliberately suppressed the fact that private company had committed a breach of its contractual obligations, thereby enabling the private company to obtain favourable order.

(e) The suppression of the crucial fact that the private company committed breach of its contractual obligations was deliberate and intentional on the part of all the accused.

(f) Such suppression is a consequence of a criminal conspiracy between all the accused to enable the private company to secure an illegal monetary gain by manipulating the judicial process.

18. We have meticulously examined the judgment of this Court dated 18.3.1997. The entire controversy in the said judgment revolved only around the authority of the Coal Controller to issue the various directions such as were given by him on 12.04.1994. On an examination of the relevant provisions of law, this Court no doubt held that the Coal Controller was legally competent to issue the said directions. That the private company had already committed breach of contractual obligations arising under the two contracts was not at issue. There is no discussion in that regard in the said judgment.

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19. Whether the private company failed to comply with the legal obligations arising out of the contracts entered into by it with the Coal India or its subsidiaries, depends on the proof of the facts allegedly constituting the acts or omissions amounting to the breach of the contracts on the part of the private company. To arrive at

any conclusion on the above question, it requires a detailed examination of the relevant material. The fact that the supplies of coal were made to the private company pursuant to the orders of the Calcutta High Court and confirmed by this Court by itself does not rule out the possibility of a crime having been committed. It is well known that decisions are rendered by courts on the basis of the facts pleaded before them and the issues arising out of those pleaded facts. As we have already pointed out, the only issue projected on the basis of the facts placed before Calcutta High Court and this Court is the competence of the Coal Controller to give directions which in substance amounted to variation of the terms of the contracts to which the private company and Coal India Ltd. are parties. This court in Civil Appeal Nos.2004-2005 of 1997 declared that the Coal Controller had the requisite legal authority to give such directions but did not examine any other issue.

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20. The exact terms and conditions subject to which the CIL accepted the offer of private company are not available on record in the instant case. But it appears from the FIR (which is the subject matter of dispute) that the private company is required to lift the entire quantity of coal it agreed to purchase within a period of 90 days from the date of allotment. It also appears from the FIR, that the private company is obliged to make the payments of the price in a specified manner and schedule and also make a security deposit, the exact nature of which is not mentioned either in FIR or in the petition or in the judgment under appeal. We are, therefore, to make a conjuncture that deposit of money is some kind of a guarantee for the performance of the contract on the part of the private company.

21. Coming to the judgment under appeal, as it is already noticed that the High Court quashed the FIR only on the ground that the supply of coal had been obtained in terms of a decision given by the Calcutta High Court and approved by this Court and for the said reason no magistrate can, therefore, decide whether any unjust pecuniary advantage was made available to the private company. For

coming to such a conclusion, the learned Judge made an 'elaborate examination' of the Indian legal system. But, in our opinion, the entire enquiry proceeded on a wrong premise that no examination, as

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to how a judgment of a superior Court came into existence, is permissible in the system of law which we follow.

22. This Court on more than one occasion held that fraud vitiates everything including judicial acts. In S.P. Chengal Varaya Naidu (Dead) By Lrs. Vs. Jagannath (Dead) By Lrs. & Ors., (1994) 1 SCC 1, this Court observed as follows in para 1:-

1. "Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and honest in the eyes of law. Such a judgment/decree - by the first court or by the highest court - has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."

23. Again in A.V. Papayya Sastry and Ors. Vs. Government of A.P. and Ors., AIR 2007 SC 1546, this Court

reviewed the law on this position and reiterated the principle. In paras 38 and 39 it was held as follows:

38. The matter can be looked at from a different angle as well. Suppose, a case is decided by a competent Court of Law after hearing the parties and an order is passed in favour of the applicant/plaintiff which is upheld by all the courts including the final Court. Let us also think of a case where this Court does not dismiss Special Leave Petition but after granting leave decides the appeal

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finally by recording reasons. Such order can truly be said to be a judgment to which Article 141 of the Constitution applies. Likewise, the doctrine of merger also gets attracted. All orders passed by the courts/authorities below, therefore, merge in the judgment of this Court and after such judgment, it is not open to any party to the judgment to approach any court or authority to review, recall or reconsider the order.

39. The above principle, however, is subject to exception of fraud. Once it is established that the order was obtained by a successful party by practising or playing fraud, it is vitiated. Such order cannot be held legal, valid or in consonance with law. It is non-existent and non est and cannot be allowed to stand. This is the fundamental principle of law and needs no further

elaboration. Therefore, it has been said that a judgment, decree or order obtained by fraud has to be treated as nullity, whether by the court of first instance or by the final court. And it has to be treated as non est by every Court, superior or inferior.

[emphasis supplied]

If a judgment obtained by playing fraud on the Court is a nullity and is to be treated as non est by every Court superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the Court by not disclosing the necessary facts relevant for the adjudication of the controversy before the Court is impermissible.

From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief

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resulting from such fraud has larger dimension affecting the larger public interest.

Therefore, the conclusion reached by the judgment under appeal that no Court can examine the correctness of the contents of the impugned FIR, is unsustainable and without any basis in law. The very complaint in the FIR is that the judgment of the Calcutta High Court, as affirmed by this Court, is a consequence of a deliberate and dishonest suppression of the relevant facts necessary for adjudicating the rights and obligations of the parties to the said litigation

24. Coming to the question as to what amounts for securing a judgment by playing fraud in the Court- In Chengal Varaya Naidu (supra), this Court categorically held that the non-disclosure of all the necessary facts tantamounts to playing fraud on the Courts. At para 6 of the said judgment, it was held as follows:

".....If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

25. The allegation in the FIR is that the various accused deliberately withheld/suppressed the fact that the private company,
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by the time it approached the Calcutta High Court in writ petition Nos.940 and 941 of 1994, had already committed breach of its obligations arising of the contracts from out of which the entire litigation arose. A fact which is greatly relevant in deciding the entitlement of the private company to seek various reliefs such as the ones sought by it before the Calcutta High Court. It is further specific allegation in the FIR such a non-disclosure/suppression of the crucial fact was wilful and deliberate pursuant to a conspiracy between all the accused to secure an illegal and wrongful monetary gain to the private company. Therefore, in our opinion the Judgment under appeal cannot be sustained.

26. Coming to the question of the scope of the jurisdiction to quash an FIR, either in the exercise of statutory jurisdiction under Section 482 of Cr.P.C. or under Article 226 of the Constitution of India, the law is well settled and this Court in a catena of decisions laid down clear principles and indicated parameters which justify the quashing of an FIR. We do not propose to catalogue all the cases where the issue was examined but notice only two of them and indicate the consistent principles laid down by this Court in this regard.

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27. In R.P. Kapur Vs. State of Punjab, AIR 1960 SC 866, this Court at para 6 held:

".....It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction. However, we may indicate some categories of cases where the inherent jurisdiction can and should be exercised for quashing the proceedings. There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings

against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where the allegations in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged is disclosed or not. In such cases it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person. A third category

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of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under s. 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court under s. 561-A in the matter of quashing criminal proceedings,"

28. In State of Haryana and others Vs. Ch. Bhajan Lal and others AIR 1992 SC 604, this Court after reviewing large number of cases on the question of the quashing the FIR held at paras 108 and 109 as follows:

"108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extra-ordinary power under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we give the following

categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or

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where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

109. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice."

29. Tested from the point of view of the law laid down in the

above mentioned judgments, the impugned FIR does not merit interference, as it is not a case of even the respondent (writ petitioners) that the FIR is required to be quashed on any one of the grounds legally recognised by this Court to be sufficient ground for quashing an FIR.

30. For all the above reasons, we are of the opinion that the judgment under appeal cannot be sustained and the same is required

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to be set aside and we, accordingly, set aside the same. stands allowed.

The appeal

.....J

(P. Sathasivam)

J.

.....
(J. Chelameswar)

New Delhi;

Dated: 14th November, 2011.

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ITEM NO. 1-B
(For Judgment)

COURT No.5

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO.1356/2004

UNION OF INDIA & ORS.

Versus

.. Appellant(s)

.. Respondent(s)

RAMESH GANDHI

DATE : 14/11/2011

This APPEAL was called
on for pronouncement of judgment today.

For Appellant(s)

Ms. P. Parmeswaran, Adv.

For Respondent(s)
& intervenor

Mr. Yunus Malik, Adv.
Mr.Ravi Kishore, Adv.
Mr.Prashant Chaudhary, Adv.

Hon'ble Mr. Justice J. Chelameswar pronounced the judgment of the Bench comprising Hon'ble Mr. Justice P. Sathasivam and His Lordship.

The appeal is allowed.

[Usha Bhardwaj]
Court Master

[Savita Sainani]
Court Master

[Signed reportable judgment is placed on the file]