

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JUNE, 2023

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.3371 OF 2023

C/W

CRIMINAL PETITION No.3314 OF 2023

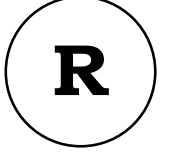
IN CRIMINAL PETITION No.3371 OF 2023

BETWEEN:

1 . SRI KAILASH S. RAJ

2 . SRI VINAY S. RAJ,

3 . SRI CHETAN MARLECHA,



... PETITIONERS

(BY SRI SANDESH J.CHOUTA, SR.ADVOCATE A/W
SRI BHARATH KUMAR V., ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
THROUGH STATION HOUSE OFFICER,
KARNATAKA LOKAYUKTA
BANGALORE CITY DIVISION,
M.S.BUILDING,
BENGALURU - 560001
REPRESENTED THROUGH
THE LEARNED SPECIAL PUBLIC PROSECUTOR,
HON'BLE HIGH COURT OF KARNATAKA,
BENGALURU - 560 001.
- 2 . INSPECTOR OF POLICE,
KARNATAKA LOKAYUKTA
BANGALORE CITY DIVISION,
M.S.BUILDING,
BENGALURU - 560 001.

... RESPONDENTS

(BY SRI B.B.PATIL, SPL.PP FOR THE RESPONDENTS)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.15/2023 ALONG WITH INFORMATION DATED 04.03.2023 REGISTERED WITH THE RESPONDENT NO.1 KARNATAKA LOKAYUKTA, BENGALURU CITY DIVISION POLICE STATION, BENGALURU AND CURRENTLY PENDING ON THE FILE OF THE HONBLE XXIII ADDITIONAL CITY

CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-24) AS CRIME NO.15/2023 WHEREIN THE PETITIONER HEREIN ARE SHOWN AS ACCUSED THROUGH THEIR DESIGNATION FOR THE ALLEGED OFFENCE U/S.7(b),7-A, 8, 9 AN 10 OF THE PREVENT OF CORRUPTION ACT (ANNEXURE A AND A1).

IN CRIMINAL PETITION No.3314 OF 2023

BETWEEN:

1 . SRI ALBERT NICOLAS,
[REDACTED]

2 . SRI GANGADHAR

... PETITIONERS

(BY SRI BHARATH KUMAR V., ADVOCATE (VIDEO
CONFERENCING / PHYSICAL HEARING))

AND:

1 . STATE OF KARNATAKA
THROUGH STATION HOUSE OFFICER,

KARNATAKA LOKAYUKTA
BANGALORE CITY DIVISION,
M.S.BUILDING,
BENGALURU – 560 001
REPRESENTED THROUGH
THE LEARNED SPECIAL PUBLIC PROSECUTOR
HON'BLE HIGH COURT OF KARNATAKA
BENGALURU – 560 001.

- 2 . INSPECTOR OF POLICE
KARNATAKA LOKAYUKTA
BANGALORE CITY DIVISION,
M.S. BUILDING,
BENGALURU – 560 001.

... RESPONDENTS

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THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.15/2023 ALONG WITH INFORMATION DATED 04.03.2023 REGISTERED WITH THE RESPONDENT NO.1 KARNATAKA LOKAYUKTA, BENGALURU CITY DIVISION POLICE STATION, BENGALURU AND CURRENTLY PENDING ON THE FILE OF THE HON'BLE XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH-24) AS CRIME NO.15/2023 WHEREIN THE PETITIONER HEREIN ARE SHOWN AS ACCUSED NO.2 AND 3 FOR THE ALLEGED OFFENCE U/S.7(b), 7-A, 8, 9 AN 10 OF THE PREVENT OF CORRUPTION ACT (ANNEXURE A AND A1).

THESE CRIMINAL PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 20.06.2023, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Both these petitions call in question registration of crime in Crime No.15 of 2023 for offences punishable under Sections 7(b), 7A, 8, 9 & 10 of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act' for short) and pending before the XXIII Additional City Civil and Sessions Judge and Special Court under Prevention of Corruption Act, Bengaluru. Criminal Petition No.3314 of 2023 is preferred by accused Nos. 2 and 3 – one Albert Nicolas and Gangadhar. Criminal Petition No.3371 of 2023 is preferred by one Kailash S.Raj, Vinay S.Raj and Chetan Marlecha who are depicted to be owners of M/s Karnataka Aromas Company and are arrayed as accused No.5 in the aforesaid crime.

2. *Shorn* of unnecessary details, the facts in brief as borne out from the pleadings are as follows:

Before embarking upon consideration of the case of the petitioners, a little walk through the facts of the case is necessary. One Maadal Virupaksha, at the relevant point in time, was the Chairman of Karnataka Soaps and Detergents Limited, a

Government owned Company. One Prashanth Kumar M.V. is the son of Maadal Virupaksha who is arrayed as accused No.1. The petitioners in these petitions are the other accused. The Karnataka Soaps and Detergents Limited notified a tender for Chemical oil supply for the year 2023. The tender was notified in January 2023. There were two participants in the said tender – one M/s Chemixil Corporation and the other M/s M.S. Delicia Chemicals. Participation in the said tender by the two leads to certain negotiations with accused No.1, son of the Chairman of the Karnataka Soaps and Detergents Private limited. Alleging demand of money, complainant's representative of M/s Chemixil Corporation, one of the tenderer, registers a complaint before the Lokayukta on 02-03-2023. The allegation in the crime is of demand of ₹81/- lakhs by accused No.1 for a smooth sailing of payment of bills pursuant to tender for supply of oil. Therefore, the tender is for supply of material and the assurance is that the bills would be cleared after the supply of material.

3. The gist of the complaint is that accused No.1 calls the complainant at his personal office in Crescent Road and negotiates

with the price that is to be paid as alleged bribe for clearance of the bills in future. It is alleged that initially a sum of ₹60/- lakhs had been demanded from the hands of the first informant to ensure that tenders are accepted and the amount released in their favour without any interference. It is further alleged that accused No.1 agreed to receive a sum of ₹33/- lakhs and ₹48/- lakhs on two different dates which was on a consensus. It is also averred in the complaint that against the said assurance a particular quote was to be given by the first informant at ₹815/- per kg. for supply of 5100 kgs. of Guiacwood oil and the other participant in the tender would quote at ₹4,349/- per kg. for the supply of 29520 kgs. of Musk to the Karnataka Soaps and Detergent.

4. The further allegation is that the competitor had quoted the price according to what accused No.1 had informed them, to submit their bids and the bids were submitted and scrutinized in terms of what was assured. Accused No.1 called the first informant to pay ₹81/- lakhs and the informant meets accused No.1 on 08-02-2023 at 5.10 p.m. and agrees to make good the amount of ₹81/- lakhs. The complaint narrates that at that point in time itself,

the conversation is recorded in his smart watch and the conversation was that accused No.1 wanted to receive the amount on behalf of the Chairman Maadal Virupaksha. The complaint further alleges that accused No.1 repeatedly called the informant to meet him in his personal office as he had not yet made good the amount.

5. It is then the first informant approaches the Lokayukta on 02-03-2023 by registering the impugned complaint. Based upon the impugned complaint, a crime comes to be registered in Crime No.13 of 2023 initially for offences punishable under Sections 7(a), 7(b), 7A, 8, 9 and 10 of the Act and a pre-trap mahazar was drawn. The first informant was asked to bring the amount of ₹40/- lakhs in cash to the personal office of accused No.1 and hand it over to accused No.1 as was demanded by him. At that point in time, the Lokayukta Police conduct a raid at the personal office of accused No.1, arrayed Maadal Virupaksha as accused No.1 and his son as accused No.2 in Crime No.13 of 2023.

6. During the conduct of raid/search, it appears that accused one Albert Nicolas and Gangadhar who are petitioners in Criminal Petition No.3314 of 2023 were sitting with two bags in the lobby of personal office of Sri M.V. Prashanth Kumar, son of Maadal Virupaksha. When the bags were searched ₹45/- lakhs cash in each bag was found. When explanation was sought by the Police as to the ownership of the amount, satisfactory explanation was not given. It is, therefore, those two were taken into custody and then arrayed them as accused 5 and 6 in Crime No.13 of 2023.

7. Subsequent to the aforesaid incidents, a separate FIR comes to be registered against five people in Crime No.15 of 2023. Accused No.1 in the said crime is M.V. Prashanth Kumar son of Maadal Virupaksha, Albert Nicolas, accused No.2, C.H.Gangadhar, accused No.3 and one Deepak Jadhav accused No.4 and the petitioners in Criminal Petition No.3371 of 2023 partners of the Company viz., Karnataka Aromas Company. They were not arrayed as accused by name but by their designation. The allegation in Crime No.15 of 2023 is for offences punishable under Sections 7(b), 7A, 8, 9 and 10 of the Act. Section 7(b) and 7A are laid in Crime

No.15 of 2023 on the score that accused No.1 Mr. M.V. Prashanth Kumar is an employee of the Public Works Department of the Government and is presently working as Finance Adviser and Chief Controller of Accounts in BWSSB. Therefore, he is a public servant. The other allegations under Sections 8, 9 and 10 are against the Company and the officials of the Company. Registration of crime against the Company and officials of the Company is what drives the petitioners to this Court in these petitions.

8. Heard Sri Sandesh J.Chouta, learned senior counsel appearing for the petitioners in CrI.P.No.3371 of 2023; Sri V. Bharath Kumar, learned counsel appearing for the petitioners in Cr.P.No.3314 of 2023 and Sri B.B. Patil, Special Public Prosecutor for the respondents in both the cases.

9. The learned senior counsel representing the petitioners in CrI.P.No.3371 of 2023 would vehemently contend that the petitioners are not even named in the FIR. It is by their designation being partners of a Company, they are arrayed as accused. Therefore, they are not aware either they are accused No.5 or accused No.6. The only allegation that the petitioners are dragged

in is that accused Nos. 2, 3 and 4 are employees of accused No.5, the Company. He would contend that at best the offences that can be laid against the petitioners, as they are not public servants, are the ones punishable under Sections 8, 9 and 10 of the Act. It is, therefore, those provisions of law are added in the FIR. He would further contend that the Amendment Act of 2018 to the Act introduced proviso which clearly depicts that if the bribe giver is compelled to give bribe in the circumstances beyond his control, he should report it to the agency within one week. His submission is that even before one week could lapse, the crime is registered and the petitioners are made accused. Therefore, the petitioners who are owners of the Company cannot be seen to be dragged into the web of crime for the money belonging to accused No.4. He would submit that any further proceedings continued against the petitioners would become an abuse of the process of law and therefore, it is to be quashed.

10. The learned counsel appearing for the petitioners in CrI.P.No.3314 of 2023 while adopting the submissions of the learned senior counsel would submit that accused 2 and 3 are the

persons working in the cadre of Assistant Managers in the Company. They were sitting in the personal office of accused No.1 on behalf of accused No.4, who is an official in a higher rank in the Company, who wanted to establish his own distributorship and the money belonged to accused No.4. He has given his first statement before the concerned that the money belongs to him. He seeks quashment of proceedings.

11. On the other hand, the learned Special Public Prosecutor Sri B.B.Patil, appearing for the respondents would vehemently refute the submissions to contend that the petitioners have rushed to the Court immediately after registration of the FIR. The investigation is still on and has produced papers of investigation that has taken place till now, to demonstrate clear demand and acceptance on the part of accused No.1. Insofar as petitioners in CrI.P.No.3371 of 2023 are concerned they are alleged for offences punishable under Sections 8, 9 and 10. He would submit that whatsapp chats that are a part of investigation clearly point at offences against the petitioners as well. He would, therefore, contend that further proceedings should be permitted to be

continued and this Court should not interfere in the impugned proceedings at this stage.

12. The learned senior counsel joining issue, would seek to emphasize on the proviso, that the proviso to the section makes it a crime only after one week and not earlier to that and the petitioners could have explained the compelling circumstances and before that the crime ought not to have been registered against the petitioners. He would seek quashment of the crime so registered against the petitioners.

13. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record, including the investigation papers produced at the time of arguments.

14. The afore-narrated facts or the contents of the complaint so registered by the first informant, are all a matter of record and therefore, they would not require any reiteration. Accused No.1 is a public servant, is not before the Court. Therefore, consideration of offences under Sections 7(b) and 7A are not the scope of the

present petition. The submission of the learned senior counsel is that the offences against the petitioners at best can be *qua* Sections 8, 9 and 10 of the Act. Therefore, the said provisions *qua* the contents of the complaint and the FIR require consideration. The Prevention of Corruption Act comes to be amended and the amendment was notified on 26-07-2018. Certain provisions were added and post the amendment the Prevention of Corruption Act insofar as it pertains to Sections 7 to 10 runs as follows:

"7. Offence relating to public servant being bribed.—Any public servant who,—

- (a) *obtains or accepts or attempts to obtain from any person, an undue advantage, with the intention to perform or cause performance of public duty improperly or dishonestly or to forbear or cause forbearance to perform such duty either by himself or by another public servant; or*
- (b) *obtains or accepts or attempts to obtain, an undue advantage from any person as a reward for the improper or dishonest performance of a public duty or for forbearing to perform such duty either by himself or another public servant; or*
- (c) *performs or induces another public servant to perform improperly or dishonestly a public duty or to forbear performance of such duty in anticipation of or in consequence of accepting an undue advantage from any person,*

shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation 1.—For the purpose of this section, the obtaining, accepting, or the attempting to obtain an undue advantage shall itself constitute an offence even if the performance of a public duty by public servant, is not or has not been improper.

Illustration.—A public servant, 'S' asks a person, 'P' to give him an amount of five thousand rupees to process his routine ration card application on time. 'S' is guilty of an offence under this section.

Explanation 2.—For the purpose of this section,—

- (i) the expressions "obtains" or "accepts" or "attempts to obtain" shall cover cases where a person being a public servant, obtains or "accepts" or attempts to obtain, any undue advantage for himself or for another person, by abusing his position as a public servant or by using his personal influence over another public servant; or by any other corrupt or illegal means;*
- (ii) it shall be immaterial whether such person being a public servant obtains or accepts, or attempts to obtain the undue advantage directly or through a third party.]*

7-A. Taking undue advantage to influence public servant by corrupt or illegal means or by exercise of personal influence.—Whoever accepts or obtains or attempts to obtain from another person for himself or for any other person any undue advantage as a motive or reward to induce a public servant, by corrupt or illegal means or by exercise of his personal influence to perform or to cause performance of a public duty improperly or dishonestly or to forbear or to cause to forbear such public duty by such public servant or by another public servant, shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

8. Offence relating to bribing of a public servant.—
(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—

- (i) to induce a public servant to perform improperly a public duty; or**
- (ii) to reward such public servant for the improper performance of public duty;**

shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration.—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating

agency in its investigation of the offence alleged against the later.

9. Offence relating to bribing a public servant by a commercial organisation.—(1) Where an offence under this Act has been committed by a commercial organisation, such organisation shall be punishable with fine, if any person associated with such commercial organisation gives or promises to give any undue advantage to a public servant intending—

- (a) to obtain or retain business for such commercial organisation; or**
- (b) to obtain or retain an advantage in the conduct of business for such commercial organisation:**

Provided that it shall be a defence for the commercial organisation to prove that it had in place adequate procedures in compliance of such guidelines as may be prescribed to prevent persons associated with it from undertaking such conduct.

(2) For the purposes of this section, a person is said to give or promise to give any undue advantage to a public servant, if he is alleged to have committed the offence under Section 8, whether or not such person has been prosecuted for such offence.

(3) For the purposes of Section 8 and this section,—
(a) "commercial organisation" means—

- (i) a body which is incorporated in India and which carries on a business, whether in India or outside India;**
- (ii) any other body which is incorporated outside India and which carries on a business, or part of a business, in any part of India;**
- (iii) a partnership firm or any association of persons formed in India and which carries on**

***a business whether in India or outside India;
or***

(iv) any other partnership or association of persons which is formed outside India and which carries on a business, or part of a business, in any part of India;

(b) "business" includes a trade or profession or providing service;

(c) a person is said to be associated with the commercial organisation, if such person performs services for or on behalf of the commercial organisation irrespective of any promise to give or giving of any undue advantage which constitutes an offence under sub-section (1).

Explanation 1.—The capacity in which the person performs services for or on behalf of the commercial organisation shall not matter irrespective of whether such person is employee or agent or subsidiary of such commercial organisation.

Explanation 2.—Whether or not the person is a person who performs services for or on behalf of the commercial organisation is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between such person and the commercial organisation.

Explanation 3.—If the person is an employee of the commercial organisation, it shall be presumed unless the contrary is proved that such person is a person who has performed services for or on behalf of the commercial organisation.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offence under Sections 7-A, 8 and this section shall be cognizable.

(5) The Central Government shall, in consultation with the concerned stakeholders including departments and with a view to preventing persons associated with commercial organisations from bribing any person, being a public servant, prescribe such guidelines as may be considered necessary which can be put in place for compliance by such organisations.

10. Person in charge of commercial organisation to be guilty of offence.—Where an offence under Section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Explanation.—For the purposes of this section, “director”, in relation to a firm means a partner in the firm.”

(Emphasis supplied)

Section 7 deals with offence relating to public servant being bribed. The explanations indicate that whoever obtains, accepts or attempts to obtain would cover cases where a person being a public servant obtains to himself or any other person by abusing his official position. This would not be applicable to the petitioners in this case. It is at best be laid against accused No.1 who is a public servant. Section 7A again deals with a public servant. Therefore,

Sections 7(b) and 7A of the Act would not be applicable to the facts of the case. Sections 8, 9 and 10 are what would become applicable to the facts of the case. Section 8 deals with offence relating to bribing of a public servant. It meets out punishment to a person who gives or promises to give an undue advantage to any person by inducing a public servant to perform an improper duty or to reward a public servant for improper performance of public duty.

15. In terms of the facts narrated hereinabove, the issue in the *lis* forms a *story* in a *story*. The demand or acceptance of the amount of bribe concerning the first informant is clearly brought out as it concerns the issue of tender between the two companies. That forms the issue in Crime No.13 of 2023 and that is not the issue in the *lis*. The issue in the present *lis* is concerning Crime No.15 of 2023. As observed hereinabove, this is a *picture* in a *picture*. Accused Nos. 2 and 3 in the case at hand were caught at the time when the search was conducted in connection with Crime No.13 of 2023. They were admittedly caught holding two bags of cash of ₹45/- lakhs each and were sitting in the personal office of accused No.1, son of the Chairman of Karnataka Soaps and

Detergents Limited and they are the office bearers of Karnataka Aromas Company, a commercial organization. The question is why were they sitting in the personal office of accused No.1, a public servant and why were they sitting with bags containing cash of ₹45/- lakhs each waiting to see accused No.1 in his personal office, would become a matter of investigation. At the time they were questioned and bags seized, their answers were that they were office bearers of accused No.5/company and wanting to meet accused No.1. They were not aware of any other fact. It is, therefore, allegations under Sections 8, 9 and 10 are laid against all the accused in the case at hand. Sections 8, 9 and 10 of the Act (supra) would become applicable to accused Nos. 1 to 5 in connection with accused No.1, a public servant. Therefore, it would *prima facie* fall within Section 8(1)(ii) to reward a public servant for improper public duty. Section 9 deals with offence relating to bribing a public servant by a commercial organization. The accused in these petitions are office bearers of Karnataka Aromas Company, a commercial organization and they are alleged of wanting to bribe accused No.1, son of the Chairman Mr. Maadal Virupaksha on behalf of whom the accused has allegedly demanded the aforesaid

amount. Therefore, a commercial organization was wanting to bribe a public servant.

16. The offence against the office bearers of M/s Karnataka Aromas Company is, therefore, met. Section 10 deals with person in-charge of commercial organization to be guilty of offence. The section mandates that where an offence under Section 9 is committed by a commercial organization, the person/s who are in-charge would also be guilty of the offence. Accused No.5 who are depicted as office bearers are the persons in-charge of the Company. Therefore, ingredients of Sections 8, 9 and 10 are *prima facie* met in the case at hand.

17. In the teeth of the aforesaid facts what become necessary is conduct of investigation in the least as the alleged episode clearly fits into the offences punishable under Sections 8, 9 and 10 in connection with a public servant and, therefore, the offences under Section 7. It is for the petitioners to come out clean in the investigation as money is found in the personal office of accused No.1. There is no satisfactory explanation. It is the contention of the learned senior counsel for the petitioners that accused No.4 has

claimed ownership of the cash. If accused No.4 has admitted and claimed ownership of the cash and has given a statement to the Police to that effect, the said statement is also required to be tested before a Court of law in evidence. Therefore, the ownership claimed by accused No.4 would not mean that registration of crime against other accused should be quashed. They are all a matter of evidence.

18. To test the submission of the learned senior counsel a pointed query was made with regard to the salary of accused 2, 3 and 4. The learned senior counsel, on instructions, would submit that accused 2 and 3 who were holding the cash of ₹90/- lakhs and sitting in the lobby of the personal office of accused No.1 are in the cadre of Assistant Managers and their salary is ₹50,000/- per month. Therefore, it cannot be said that the amount belongs to them. They are only employees of the Company. Accused No.4 who claims ownership over the amount is in a little higher cadre and his salary is said to be ₹1,50,000/- per month. Even then the justification of ownership of ₹90/- lakhs will have to be before a Court of law, as the matter is still at the stage of investigation. The

submission of the learned senior counsel is that in terms of the proviso, if the accused are not in a position to explain the compelling circumstances within one week from the date of search, it would then become a crime under Section 8 of the Act cannot be considered at this juncture as they are all a matter of investigation. Any finding rendered on the said submission would prejudice the case of the petitioners in the investigation or further proceedings.

19. The learned Special Public Prosecutor for the respondents/Lokayukta Sri. B.B.Patil has placed on record the documents of investigation. There are plethora of whatsapp chats between accused No.1 and the other accused, the narration of which will seriously prejudice the case of the accused No.1 and could be that of the petitioners. Therefore, I refrain from referring to them, at this stage, as they are a matter of investigation or trial, as the case would be.

20. *Prima facie*, if the story narrated by the learned senior counsel is accepted, it would be accepting a screenplay of a **potboiler** without letting investigation to be conducted into such ingredients, as the story, within a story twined is interesting to

listen, it is a ***katha sangama*** but, if on the story the petitioners are left of the hook, the very object behind the amendment and substituting Sections 8, 9 and 10 would be rendered redundant. ***It is high time the menace of corruption is plugged and nipped in the bud by making the bribe giver susceptible for such prosecution, like the bribe taker.***

21. It is in public domain, to notice that India is a signatory to the United Nations Convention against corruption (UNCAC). Articles 5 to 14 of the said Convention deal with prosecution for corruption. It would mandate that corrupt can be prosecuted after the fact but first and foremost it requires prevention. Therefore, the entire chapter was dedicated to prevention with measures directed at both public and private sector. It is based upon these articles arrived at the convention, certain measures were sought to be taken to arrest corruption. One such step by the Parliament was amendment that comes about on 26-07-2018 to the Prevention of Corruption Act, ***making the giver and the taker stand on the same pedestal of prosecution.***

22. It is beyond any cavil of doubt that corruption has percolated to every nook and corner of public life in the country and has become an issue in all walks of life posing a grave danger to the concept of constitutional governance. Corruption emerges in various hues and forms and it is therefore, unfathomable. Reference being made to a paragraph of the judgment of the Apex Court in the case of **STATE OF GUJARAT v. MANSUKHBHAI KANJIBHAI SHAH**¹ in the circumstances would become apposite. The Apex Court observes as follows:

"60. Zero tolerance towards corruption should be the top-notch priority for ensuring system based and policy driven, transparent and responsive governance. Corruption cannot be annihilated but strategically be dwindled by reducing monopoly and enabling transparency in decision-making. However, fortification of social and moral fabric must be an integral component of long-term policy for nation building to accomplish corruption free society."

(Emphasis supplied)

The observation of the Apex Court is germane to this case as well, as the entire facts narrated hereinabove are shrouded with corruption, on all the fours of the facts. In the teeth of the

¹ (2020)20 SCC 360

aforesaid facts, reference is being made to the writer and philosopher of the USA, Ayn Rand, who on corruption would say;

"When the law no longer protects you from the corrupt, but protects the corrupt from you, you know the nation is doomed."

(Emphasis supplied)

It is therefore not the stage to spread a protective umbrella of law to the petitioners.

23. Wherefore, for all the aforesaid reasons, finding no merit in the petitions, the petitions stand rejected.

Pending applications, if any, would also stand disposed, as a consequence.

**Sd/-
JUDGE**

bkp