HIGH COURT OF GUJARAT

CENTRAL BUREAU OF INVESTIGATION THROUGH MANOJ UTTARWAR S/O PRALHADRAO UTTARWAR
V/S
STATE OF GUJARAT & 4 OTHER(S)

Date of Decision: 14 June 2023

Citation: 2023 LawSuit(Guj) 1357

Hon'ble Judges: Gita Gopi

Case Type: Criminal Revision Application

Case No: 1175 of 2018, 1187 of 2018, 1177 of 2018, 1193 of 2018, 1191 of 2018, 1215 of 2018, 1188 of 2018, 1182 of 2018, 1218 of 2018, 1186 of 2018, 1184 of 2018, 1220 of 2018, 1192 of 2018, 1176 of 2018, 1208 of 2018, 1190 of 2018, 1211 of 2018, 1214 of 2018, 1212 of 2018, 1213 of 2018, 1210 of 2018, 1180 of 2018, 1183 of 2018, 1178 of 2018, 1209 of 2018, 1185 of 2018, 1219 of 2018, 1216 of 2018, 1189 of 2018, 1217 of 2018, 1340 of 2018, 1346 of 2018, 1339 of 2018, 803 of 2021, 898 of 2021, 807 of 2021, 802 of 2021, 796 of 2021

Subject: Criminal

Head Note:

Indian Penal Code, 1860 - Sections 420, 468, 471, 467 and 120-B - Code of Criminal Procedure, 1973 - Sections 227 and 197 - Evidence Act, 1872 - Section 94 - Essential Commodities Act, 1955 - Section 3 - Prevention of Corruption Act, 1988 - Sections 13 and 19 - Petroleum Act, 1934 - Sections 2 and 7 - Prima facie case - Determination - Held - Test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application - Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the

Court will be fully justified in framing a charge and proceeding with the trial - By and large however, if two views are equally possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused - Revision dismissed. [Paras 17 , 18 , 19 , 20 , 21 , 22]

Acts Referred:

Indian Penal Code, 1860 Sec 420, Sec 468, Sec 471, Sec 467, Sec 120B

Code Of Criminal Procedure, 1973 Sec 227, Sec 197

Evidence Act, 1872 Sec 94

Essential Commodities Act, 1955 Sec 3

Prevention Of Corruption Act, 1988 Sec 13(2), Sec 19, Sec 13, Sec 13(1)(d)

Petroleum Act, 1934 Sec 2(BB), Sec 2, Sec 7

Final Decision: Application dismissed

Advocates: Rc Kodekar, Maithili Mehta, Yogesh S Lakhani(Senior Advocate), Nandish Y Chudgar, Nidhi Prajapati, Bhadrish S Raju, Sairica S Raju, R C Kodekar, Rajesh K Kanani,Nanavati Associates, Shaishav S Pandit, Dhanesh R Patel, Darshan M Varandani

Reference Cases:

Cases Referred in (+): **18**

Judgement Text:-

Gita Gopi, J

[1] The Central Bureau of Investigation has challenged the orders passed by learned Special C.B.I. Judge, Ahmedabad, discharging the accused of the matters, where the C.B.I. had registered a case as FIR No.RC-12(A)/2000, at Gandhinagar on 23.05.2000 under sections 120B, 420, 467, 468 and 471 of Indian Penal Code and section 13(2) read with section 13(1)(d) of the Prevention of Corruption Act, 1988 (for short 'P.C. Act').

[2] The allegation against the officials of four public sector oil companies viz. IOCL, HPCL, BPCL and IBP, are that they sold the High Speed Diesel (for short 'HSD') to

various private industries of three States viz. Gujarat, Maharastra and Madhya Pradesh at concessional rates of sales tax as per applicable provisions of the State and Central Sales Tax Acts, without complying with the mandatory requisite permission from the Ministry of Petroleum & Natural Gas (for short 'MoP & NG).

2.1 The allegations are that, the private firms in collusion with the officials of the said oil companies sold the HSD in the open market contrary to the Government policy, the diversion thereof has caused huge revenue loss to the Government and wrongful gain to the concerned.

[3] Mr. R.C. Kodekar, learned standing counsel for the C.B.I. submitted that discharge order passed by the learned Special Judge is incorrect, illegal and not as per the provisions of law. Mr. Kodekar submitted that at the stage of framing of charge the court was not required to appreciate the evidence to conclude, whether the materials produced are sufficient or not, for convicting the accused, and only adequacy of material for framing of charge is expected, and, thus stated that the order is based on whim and fancies, as the learned trial Court Judge was making a roving inquiry, as if, Court was conducting a trial, and the Court has appraised the evidence, as if, the Court was passing order of acquittal.

3.1 Mr. Kodekar, learned standing counsel, submitted that the trial Court has wrongly appreciated the statement of P.W. - R.Ramakrishnan, while he has clearly stated in his statement given before C.B.I. that HSD was sold by oil companies without physical inspection or technical inspection, the statement reveals that, the HSD was diverted by the private companies for their own wrongful gain. Mr. Kodekar stated that the statement of prosecution witnesses, Shri K.L.N. Shastri, ED, IOC, Shri P.Sudarshnam, ED, IOC, Shri A.K. Dubey, (IAS) of MoP & NG, clarify the guidelines of the Ministry, which stipulates the requirement of Technical Evaluation Committee for sale of HSD, to such private firms for its use as raw materials.

3.2 Standing counsel Mr. Kodekar submitted that the Court committed error while noting about the issue of sanction for prosecution under section 197 Cr.P.C., submitting that no protection to the employees of public sector undertaking is provided under the said provisions. Mr. Kodekar, states that inference of commission of offence under section 13(1)(d) of the P.C. Act,

can be drawn with prima facie material to show recklessness or misconduct in discharge of duty, who have acted in the manner, unbecoming of a government servant, and has acted negligently by not following the prescribed conditions.

3.3 Mr. Kodekar, further stated that enough evidence was there against the public servants for the offence of conspiracy, cheating and abuse of official position, as they allowed diversion of the restricted material to open market to avail sales tax benefits, which has caused wrongful loss to the government exchequer. Mr. Kodekar stated that there is use of fake sales tax certificates, blanks C-Forms and there were no mandatory periodical checks/inspections of the private firms, where the allegation is that most of the private firms did not run to full capacity during the entire period and some were almost closed and some were not in existence at the relevant point of time; despite that HSD was sold to them regularly by four oil companies, and, that could not have been possible without criminal conspiracy and connivance between the officers of oil companies and private persons.

3.4 Referring to the statement of witnesses, Mr. Kodekar submitted that the MoP & NG had issued a policy for supply of HSD to the processing units for their use as raw material for production of specialty oil, and HSD is only supplied to the processing firms, subject to actual user conditions. Mr. Kodekar stated that at any cost, firms could not sell HSD in the open market, and as per the existing government policy, the HSD has to be supplied to the processing firms only on the recommendation of the Technical Evaluation Committee (TEC) constituted by MoP & NG, and final allocation is by the Ministry.

3.5 Mr. Kodekar referring to the procedure established for supply of HSD to the private entities by the public sector oil companies, submitted that the processing firm is required to make an application along with requisite documents for allocation of HSD quota to the MoP & NG for actual consumption. The Ministry thereafter on processing the application, is required to allot quota of the HSD to the processing firm; thus, the Ministry would sent a mandatory approval to the oil companies for allotment of HSD

quota to the processing unit, and such supply of HSD could not be beyond the quantum mentioned in the allotment letter by the Ministry. Mr. Kodekar, thus, stated that the processing firm is supposed to first approach the officials of the oil companies for supply of HSD as per the quota allotted by the Ministry and it becomes a preliminary and mandatory duty of the officials before supply of the HSD to the processing units to check the order for allotment of HSD quota by the Ministry; hence, Mr. Kodekar submitted that no supply of HSD could be made to the processing units, without the order of the Ministry.

3.6 Mr. Kodekar stated that Shri A.K. Dubey, IAS & Director (Supplies), MoP & NG, was examined by the CBI to prove the policy of the government for supply of HSD to the processing units, and Mr. Sharad Gupta, Mr. H.C. Khurana, Mr. Kuldip Singh, Mr. C.S. Mishra and Mr. K.L.N. Shastri, and other officials of MoP & NG, have also reiterated and reaffirmed the statement of Mr. A.K. Dubey regarding the established procedures and policy prescribed by the MoP & NG, and requirement of TEC for supply of HSD to processing units.

3.7 Mr. Kodekar, thus, stated that as per established procedure, a Field Officer of the concerned oil company is required to visit the factory of the processing unit for conducting physical inspection and also to verify the quota allotted by the government, and after inspecting the processing unit and checking the mandatory approval of quota, the Field Officer is required to submit verification report containing information regarding processing unit and the genuineness of requirement of the HSD; thereafter, the Divisional Office would verify the report submitted by the field officer and in case of any doubt, the superior officials can also conduct physical inspection of the unit for verification of the report submitted by the field officer. Mr. Kodekar submitted that the officers are required to ensure and check the approval of the Ministry for allotment of quota of HSD to the processing unit, and complying the mandatory formalities, the Divisional/Regional/Territorial Office, in turn, has to submit proposal for the supply of HSD to processing unit, to the superior officials of the respective oil companies and the allocation of the HSD to the processing unit is looked after by the marketing division consisting of officers as Manger and Dy. General Manager (Mktg.)

headed by General Manager. Mr. Kodekar stated that the superior officers are required to ensure the compliance of government mandatory policy and genuineness of requirement of HSD to the processing unit and subsequently, approve release of supplies; and consequently, the Divisional/Regional/territorial Office has to issue delivery orders/allocation letters of the HSD to the firms for further lifting from the supply location. Mr. Kodekar submitted that various senior officers of oil companies viz. The Director (Marketing), OICL, CGM, HPCL, GM, BPCL and EDs of IBP Co. have been examined, who all have reiterated and affirmed the said procedure; and, those have been cited as a relevant witnesses, along with charge-sheet.

3.8 Mr. Kodekar further submitted that as per policy of MoP & NG, the processing units are entitled to avail sales tax concession prescribed by the State and Central Government. The processing units can purchase the HSD on inter-state basis on payment of Central Sales Tax (CST) at the rate of 4%, against the applicable rate of sales tax in the concerned State; thereby, the processing units are exempted to pay the differential local sales tax and Central Sales Tax at the rate of 4%, after getting allotted quota by the Ministry for supply of HSD to the processing units on actual user conditions. Mr. Kodekar stated that for the purchase of HSD on intrastate basis, the processing units have to submit C-Form to the oil companies for availing the said concession in sales tax.

3.9 Mr. Kodekar, thus, further contended that the evidence with regard to the policy of MoP & NG, requirement of technical evaluation by the TEC etc., was evaluated, and there was unanimous opinion in respect of the criminal involvement of the officials of the oil companies of marketing division, private firm owners and those mediators who had purchased the Dos/allocation letters of HSD from the firm owners and further lifting HSD and diverted the same in the market; and thus, concluded that the essence of the offence is the supply of HSD to private parties without the mandatory permission of the MoP & NG, and the officers, at different levels, have failed to ensure the compliance of the policy, and have even failed to ensure the bonafide end-use of the HSD; and the responsibility of the oil company can be viewed only through the acts of its officials in making supplies of HSD to the accused

firms without observing the compliance of the policy. Mr. Kodekar stated that the irregularities in issuance of HSD has spread over several years, and the Oil Coordination Committee (OCC) has expressed the concern over the possibility of product being uplifted on inter-state basis, and then being dumped at the premises of retail outlets and customers, within the state, as brought out in the communication from OCC; and the need for cross-checking customers availing CST, in order to ensure avoidance of such situations in Gujarat, was accepted by all industry members.

3.10 Mr. Kodekar further stated that there are evidence of various private persons under section 164 Cr.P.C. in addition to the statement before the C.B.I., where they have stated about the illegal gratification paid to various officials of oil companies for HSD in the name of defunct and non-existing private firms, and without assessing the requirement, physical condition and bonafide end-use, had supplied HSD at concessional rate of sales tax, even to non-working and non-existing private firms. Mr. Kodekar submitted that the officials of oil companies accepted bogus/fake sales tax Form-C and other documents, such as applications of the non-existent private firms, lorry receipt of bogus transporters, where they have a obligatory duty to verify the genuineness of such documents.

3.11 Mr. Kodekar submitted that the trial Court has wrongly interpreted the circulars, which speaks about the mandatory requirements of following the policy guidelines. Mr. Kodekar, thus, stated that because of acts of officials of oil companies there has been huge revenue loss to the Government exchequer, and there has been wrongful gain to the private parties. Mr. Kodekar stated that the conspiracy and the complicity of every accused in the cases are prima facie considered by way of statement of the witnesses, and further stated that, the officials of oil companies have made false representations by wrongly certifying the existence of various firms, which were only on paper, where no activities were undertaken during the relevant period, and evidence on record shows that the officials of oil companies have created bogus documents in the form of delivery orders for HSD in the name of such non-existing firms.

3.12 Mr. Kodekar further submitted that in spite of ample evidence in the initial cases sent to the four oil companies for granting sanction for prosecution, the same was denied by all the four companies and a conscious decision was taken to launch the prosecution, as the denial of sanction would not dilute the commission of offence on the part of officials of oil companies; and stated that, law does not prohibit launching prosecution against the officials under IPC offences, where sanction has been denied and even against the retired officials under P.C. Act; while no protection can be granted to the officials of government companies or public sector undertakings.

3.13 Learned standing counsel Mr. Kodekar relied on the judgments of (i) Punjab State Warehousing Corporation Vs. Bhushan Chander And Anr., 2016 13 SCC 44 (ii) Mohd. Hadi Raja Vs. State of Bihar And Anr., 1998 5 SCC 91.

[4] Senior Advocate Mr. Y.S. Lakhani for the respondents stated that OCC was connected with the MoP & NG, in need of implementation of the guidelines, and submitted, that the Circular dated 02.01.1981 by the MoP & NG was addressed only to IOCL for utilization of HSD by Koyali Refinery for production of high value specialization items. Mr. Lakhani submitted that after about 7 years by a Circular dated 17.03.1988 of MoP & NG, in context with the Circular dated 02.01.1981 to IOCL, it was informed to all the companies regarding reconstitution of TEC on supply of feed-stock for the production of petroleum specialties. According to the said Circular, the TEC was to initially look into the supply of LSHF-HSD, LDO, and crude sludge for the manufacture of petroleum specialties with further direction that additional items would be assigned to the TEC as necessary, from time to time.

4.1 Further referring to the Circular dated 09.02.1994 of the MoP & NG, senior Advocate Mr. Lakhani submitted that the constitution of the TEC was in supersession of the Circular dated 17.03.1988, whereby too, the committee was reconstituted, whence TEC was entrusted to look into the supply of LSHF-HSD, LDO and crude sludge for the manufacture of petroleum specialties. Thereafter, in supersession of the said Circular dated 09.02.1994, Circular dated 23.05.1995 was issued by the Ministry to all the companies about the reconstitution of the TEC. Mr. Lakhani submitted that

TEC functioning was with respect to High Flash HSD, LDO Crude Sludge and feed-stocks to produce solvents in small and medium scale industries and make recommendations to the Ministry for decision. Mr. Lakhani stated that this Circular too, did not include HSD. Thereafter, the Circular dated 18.09.1996 was issued by the MoP & NG, which was in partial modification of Para-2 of the Circular dated 23.05.1995, and it was decided that the applications for grant of raw material as crude sludge, High Flash-HSD and LDO to produce solvents in small and medium scale industries will be received by the oil companies and referred to TEC for inspection of the applicant's plant to assess technical capability and statutory compliance etc. Mr. Lakhani stated that this Circular too, did not include HSD, and with further clarification, it was noted that TEC would send their inspection reports to the concerned oil companies with a copy to Adviser (R) to the Ministry for recommendations, if any, and the concerned oil company would await the recommendations of Adviser (R) to the Ministry upto two weeks from the receipt of the recommendation of the TEC, and the oil companies may implement the recommendations of the TEC in case objection, if any, by Adviser (R) is not received by TEC/oil companies within two weeks. Mr. Lakhani, thus, contended that this circular had made very clear that the inspection of TEC could not be in connection to HSD. Mr. Lakhani stated that C.B.I. has not recorded the statement of Adviser (R) of the Ministry to get the clarification of the Circular.

4.2 Senior Advocate Mr. Lakhani further submitted that by letter dated 27.03.2002 by the Government of India, MoP & NG, the TEC, which was constituted under the Circular dated 23.05.1995 and 18.09.1996, came to be dissolved with effect from 01.04.2002, and on dissolution of TEC by the said letter, Mr. Lakhani submitted that, all the companies were given liberty to make their own judgments about allocation of crude sludge, high Flash-HSD and LDO from the said date to put conditions to the best of their commercial prudence and business requirements.

4.3 Mr. Lakhani, senior advocate, thus, stated that the very case against all the accused are baseless since there was no reference to the requirement of TEC for the supply of HSD to processing units, nor there was any necessity of any recommendation of TEC for supply of HSD to the processing units.

4.4 Mr. Lakhani referring to the guidelines for release of petroleum products and lubricants to direct consumers submitted that, OCC on July, 1991, had prepared a Manual complied by the member of oil industries as an aid to the field staff, in advising new as well as existing customers about the modalities for obtaining supplies of Petroleum Products and lubricants directly from the oil companies, and it was made to understand that the users of the Manual were required to read guidelines in conjunction with the applicable Demand Management Guidelines as advised by the Department of P&NG from time to time. Mr. Lakhani submitted that the Standing Committee was constituted to ensure that the guidelines contained in the Manual are constantly reviewed and updated; thus, stated that till date no modification has been made in the Manual. Mr. Lakhani further stated that the very Manual makes difference between major products and other products, and submits that LSHF HSD finds mention under the heading "Other Products", while HSD is forming part of Major Products.

4.5 Mr. Lakhani further stated that the letter dated 02.12.2000 was issued by A.K. Dubey, Director to Government of India, MoP & NG confirming the understanding of the Ministry with reference to TEC evaluation for supply of HSD to processors, addressed to Chairman of all four Oil Companies, and the circular dated 02.01.1981 was issued prescribing for utilization of HSD from Koyali Refinery only, which was for production of high value speciality items for the processors, and the very letter dated 02.01.1981 was confined only to HSD from Koyali Refinery, where, as per Circular dated 02.01.1981, initial quantity of 500 tones of HSD was given to the processors for providing the know-how and facilities developed by them and the TEC set-up for the purpose, and the said circular further stipulates about confirmation to be obtained by the IOCL before release of HSD to the processors. Mr. Lakhani stated that the circular dated 02.12.2000 clarifies that during the period of 1981 to 1988, Low Sulphur High Flash-HSD produced at Koyali Refinery from Ankleshwar crude was being supplied to processors, manufacturing high value specialities for Defence (Navy), and it was found that during that period, as per information available, normal HSD was not being supplied to processors from Koyali Refinery. Mr. Lakhani, thus, stated that the Circular dated 02.01.1981 was restricted only to Koyali Refinery. Further pursuing the

said Circular, Mr. Lakhani, submitted that Mr. A.K. Dubey, Director to the Government of India, had referred to all the Circulars and had concluded that the circulars indicated, were applicable to the TEC for LSHF-HSD, HF-HSD, LDO and Crude Sludge; and, thus submitted that this very circular, which reads all the earlier circulars has concluded that the procedure to be adopted for an approval from TEC was not in connection with HSD, and the letter of A.K. Dubey, Director, Government of India, clearly proves that C.B.I. has filed the case against all the accused on a wrong assumption, which does not have its base on the circulars issued by the MoP & NG.

4.6 Senior Advocate Mr. Lakhani submitted that after the year 1996, there has been no other guidelines by the Government of India, and the allegations are pertaining to the year 1997-2000; the TEC stood dissolved vide effect from 01.04.2002, vide letter dated 27.03.2002, of the Ministry. Mr. Lakhani submitted that HSD was never a part of the guidelines and the government guidelines changed time to time, but there was no change in the Manual of the OCC.

4.7 Mr. Lakhani refers to the statement dated 31.10.2000 of Sales Tax Officer, Dilip Dixit and the questionnaires put to Mr. A.K. Dubey to state that no case has been made out against any of the accused, and submitted that statement recorded by the C.B.I. of A.K. Dubey is in contrast to the questionnaires. Mr. Lakhani referring to the statement of Sales Tax Officer stated that, on question regarding the tax applicability on HSD, he had clarified that there was no tax liability under the provisions of Bombay Sales Tax and HSD was tax free under the said Act, while HSD is a taxable commodity under the Bombay Sales of Motor Spirit Taxation Act, 1958 & Rules. Mr. Lakhani stated that sales tax officer in his statement has further clarified that private firms purchasing HSD either within the state or from outside state were supposed to file Sales Tax Returns showing their total purchase separately from within the state and outside the state, and the oil companies furnish the details of sale of HSD sold from within the state. Mr. Lakhani stated that the Officer has also given the statement about the process of issuance of C-Forms, and the officer has clarified that it is the primary responsibility of the sales tax officer to ensure that CForm is for genuine use and the product was utilized for declared purpose only, and has

also stated that there are no check-post in the State of Maharashtra, and no license are issued to private firms/processors/consumers purchasing HSD, while such license was issued to only petrol pump and crude oil company. For non-issuance of Motor Spirit License to the private firms, the officer has clarified that there is no concession facility in the sales tax under the Act, and no liability to pay to the Government of Maharashtra and so private firms are not issued license.

4.8 Senior Advocate Mr. Lakhani referring to the case, stated that no sanction has been granted for prosecution, and Central Vigilance Committee (for short 'C.V.C.') too has confirmed the non-issuance of sanction against the officers of the oil company, and, thus submitted that no charge can be framed against the accused, and the learned trial Court Judge has rightly discharged all of them.

[5] Senior Advocate Mr. J.M. Panchal for IOCL stated that the submission of the charge-sheet is baseless. It has been filed without even looking to the papers, overlooking the circulars, letters and documents of the Central Government, and the charge is totally under misconception and non-applicability of the mind by the C.B.I. Senior advocate Mr. Panchal submitted that filing of charge-sheet had very large repercussion in the business of company, as well as in the lives of the officers of the Company, who suffered social stigma and arrest, and few of them were suspended and some are still under suspension; nothing prima facie is remotely suggested, the only circular in connection with HSD is with Koyali Refinery. Senior Advocate Mr. Panchal submitted that C.B.I. Officers have failed to even understand that HSD is separate and different product, which could be easily understood by simple reading of the circulars.

5.1 Making reference to the definition under the Petroleum Act, 1934, Mr. Panchal, senior advocate stated that, there is a classification of the petroleum, and, the flash-point denigrates the class, HSD falls under section 2(bb) of the Petroleum Act for petroleum Class 'B', which means petroleum having a flash-point of twenty-three degrees centigrade and above but below sixty-five degrees centigrade, and, thus stated that under the Act itself different flash-points classify the product. Mr. Panchal stated that sections 7 of the Petroleum Act clarifies that no license is needed for transport and storage for limited quantity of petroleum class B or petroleum Class C, and

no license is needed for import, transport or storage of small quantities of petroleum Class A.

5.2 Senior Advocate Mr. Panchal for the Company questioned, how oil companies could be joined as an accused under section 120B of the IPC, where no act or omission of the Company has been attributed. Mr. Panchal contended that there is no pecuniary advantage to the IOCL, which itself is a government company, no sanction has been granted to prosecute any of the officers, such decision has been confirmed by the C.V.C., and referring to the order of the trial Court submitted that scope of revision is limited, confined to see the impropriety, illegality or perversity of the order.

[6] Mr. B.S. Raju, learned advocate submitted that HPCL and BPCL have not been made accused, while Koyali Refinery is connected only to IOCL. Mr. Raju stated that as per the marketing supply, it was none of the function of the Company to verify as to where the private tankers goes and gives the products to whom. Mr. Raju stated that few of the accused have been discharged and C.B.I. has not challenged the orders, where the charge-sheets have been originated from single F.I.R., and after the officer being discharged, any challenge for subsequent order would not survive under the principle of issue estoppel.

6.1 Advocate Mr. Raju stated that where there are no check-posts, there was no machinery to verify as to whether the product was sold in other states and there are no evidence that the tankers do not come to Gujarat, and submits that C-Forms are given by the sales tax authorities. There has been inordinate delay in filing of the charge-sheet, and partial discharge on the same F.I.R. for few of the officers whose orders have not been challenged by the C.B.I. Mr. Raju stated that there is no case of forgery of any documents, and, any decision taken by the officers would be in the course of the duty, which would be in accordance to the circulars of the Ministry, and when HPCL and BPCL are not made accused, Mr. Raju raised an issue as to how employees could be prosecuted under the Essential Commodities Act.

[7] Learned senior advocates Mr. J.M. Panchal, Mr. Lakhani and Advocate Mr. B.S.

Raju relied on the following judgments in support of their arguments:

(i) T.P. Gopallakrishnan Vs. State of Kerala,2022 SCCOnlineSC 1768;

(ii) Masud Khan Vs. State of Uttar Pradesh, 1974 3 SCC 469;

(iii) Captain Shankarrao Mohite Vs. Burjor D.Engineer, 1962 AIR(Bom) 198;

(iv) Sheila Sebestian Vs. R.Jawaharaj And Anr, 2018 7 SCC 581;

(v) Mohammed Ibrahim And Others Vs. State of Bihar And Anr., 2009 8 SCC 751;

(vi) Maksud Saiyed Vs. State of Gujarat And ors, 2008 5 SCC 668;

(vii) Suryalakshmi Cotton Mills Ltd. Vs. Rajvir Industries Ltd And Ors., 2008 13 SCC 678;

(viii) Chittaranjan Das Vs. State of Orissa, 2011 7 SCC 167;

(ix) Aneeta Hada Vs. Godfather Travels And Tours Pvt. Ltd., 2012 5 SCC 661;

(x) Sushil Sethi And Another Vs. State of Arunachal Pradesh And Others, 2020 3 SCC 240;

(xi) D.L. Rangotha Vs. State of Madhya Pradesh, 2015 12 SCC 733;

(xii) Judgment of Lucknow Bench of Allahabad High Court in case of S.M. Dutta And Ors. Vs. State of Uttar Pradesh And Anr.,2012 SCCOnlineAll 838;

(xiii) **S.M. Dutta And Ors. Vs. State of Uttar Pradesh And Anr.,** rendered in Special Leave to Appeal (Crl.) No.7085/2012;

(xiv) Vakil Prasad Singh Vs. State of Bihar, 2009 3 SCC 355;

(xv) Union of India Vs. Prafulla Kumar Samal, 1979 3 SCC 4;

(xvi) Century Spinning And Manufacturing C. Ltd. And Ors. Vs. State of Maharashtra, 1972 3 SCC 282;

(xvii) Sanjaysinh Ramrao Chavan Vs. Dattatray Gulabrao Phalke And Ors., 2015 3 SCC 123;

[8] In reply to the arguments, Mr. Kodekar, learned standing counsel for the C.B.I. submitted that the authority is with the department of Ministry. The OCC on 08.07.1991 had laid down the guidelines for the release of petroleum products and lubricants to the direct consumer and such guidelines has remained in force. Mr. Kodekar stated that meeting was held on 27.05.2000 of all the secretaries to discuss about the issues, where all the companies had raised the grievance about the raid conducted in their Company, and submitted that in the meeting oil marketing companies were required to confirm whether they had released or were releasing HSD to processors of which the approval had not been taken from MoP & NG, and it has been reaffirmed that the supply would be only after approval; and submitted that, the statement of R.Ramakrishnan clarifies that circulars were for all the oil companies.

[9] The C.B.I. registered the case on the basis of source information against unknown officials of four oil companies being IOCL, BPCL, HPCL and IBP, unknown officials of sales tax department and 13 private units of Gujarat. It was alleged in the FIR that unknown officials of the said Oil companies, unknown officials of Sales Tax Department and the owner of the private units of Gujarat in criminal conspiracy with each other and by abusing their official position caused huge revenue loss to the Government exchequer. The officials of the oil companies sold High Speed Diesel (HSD) to various private industries of Gujarat as well as of Gujarat, which were either non-existent or non-functional. The HSD was sold to these units at a concessional rate of sales tax as per provisions of State and Central Sales Tax Act.

9.1 The allegation is that during the period of 1997 to 2000, the eligible private industries could lift HSD from oil companies for their industrial use as raw material and for captive power generation. The private companies were required to justify their requirements of HSD to the oil companies as well as sales Tax Department to avail the concession in rate of sales tax. As per the case of C.B.I., the HSD so sold could only be used as raw material in the manufacture of taxable goods under the Gujarat Sales Tax Act and could not be used for any other purpose like processing material, consumable stores etc. While it was alleged that the HSD sold in the name of private companies were diverted in open market instead of using it for their declared use. It was alleged that HSD was sold in the market above the higher rate and because of the diversion, there has been huge revenue loss in the form of evasion of sale tax.

9.2 The C.B.I. has placed the case stating that, during the course of investigation commission of similar offences by 11 more units of Gujarat, 23 units of Madhya Pradesh and 12 units of Maharashtra came to light and searches were conducted at the office of four oil companies, sales tax offices and premises of the private industrial units. It has been contended by the C.B.I. that investigation revealed that HSD is an essential commodity under the Essential Commodity Act; its supply and distribution is controlled by the orders issued by MoP & NG under section 3 of the Essential Commodity Act.

9.3 The case of the C.B.I. is that, there was a laid down policy of the MoP&NG for making supply of petroleum products to the industrial units; the policy was to be complied by all the oil companies while making supplies of HSD to private firms/processors/consumers. As per C.B.I., the guidelines provide that the private companies could use HSD for the purpose of (a) Captive Power Generation or (b) using it as a raw material and may be allotted the required quota of HSD against concessional rates of sales tax; if the private company was to use HSD as raw material, necessary permission of MoP & NG was essentially required before the quota could be issued to the firm, and, if the private company was to use it for Captive Power Generation, recommendation of TEC of oil companies and State Electricity Board was required. C.B.I contends that as per norms prescribed, officials of

the oil companies should monitor supplies to ensure proper utilization of the HSD, so issued, to prevent abuse. The C.B.I. has put up the case that as per procedure, the private industries was to submit its request applications to the oil companies along with various essential documents such as the SSI Registration Certificate, Explosive Licence for handling and storage of explosive commodity, Pollution Control Board Certificate and Sales Tax Registration Certificate etc.; the concerned oil companies viz. HPCL and IOCL was required to conduct proper verification of the documents submitted by the firm and physical verification of the site of the factory; thereafter the application was to be forwarded along with documents to TEC for technical assessment of the requirement of HSD in capacity of plant.

9.4 As per the prosecution case, if the HSD was used as a raw material, then necessary permission of the MoP&NG was required before the quota could be issued and if the same was issued for captive power generation, recommendation of the TEC of oil companies and State Electricity Board was required.

[10] The learned C.B.I. Judge while discharging the accused by exercising power under section 227 of the Cr.P.C., after hearing the Advocates on record, had observed that C.B.I. had registered the case in the year 2000 for the offences allegedly committed from 1997 to 2000, and after 10 years, the Charge-sheet was filed in different cases based upon only one F.I.R. The learned Judge while observing the prosecution case has noted that it is against some unknown officers of the oil companies, sales tax department and owners of private units, alleged to have hatched conspiracy, abusing official positions and having caused wrongful loss to the government exchequer by selling HSD to various private industries of various states, which were either nonexistent or non-functional. The learned Judge referring to the charge-sheet has noted that TEC had issued various circulars for supply of HSD and the circular dated 2/6-1- 1981 applies only to Koyali Refinery, Vadodara, and at that time, this refinery was manufacturing LSHF-HSD (Low Sulphur High Flash - Diesel), which was meant for Navy. The learned Judge observed that the statement given to C.B.I. by R.Ramakrishnan, who is convener of TEC, on 09.06.2000, notes that the evaluation by TEC was only for LSHF-HSD; Mr. Ramakrishnan had also stated that the specification of both items LSHF-HSD and HSD are different and this circular does not refer to any other State or refinery other than Koyali. The learned Judge referring to the statement of

the convener of TEC found that the circular of 1981 will not apply to HSD. All the Circulars thereafter were applicable only for the sale of LSHF-HSD and High Flash-HSD, LDO and Crude sludge. The Circular of 1981 was issued only for Koyali Refinery, Vadodara. IOCL has five other refineries supplying HSD, and HPCL and BPCL also has refineries supplying HSD, and that supply not being restricted, therefore, the Circular of 1981 had become irrelevant.

[11] The Circular of Ministry of Petroleum, Chemicals and Fertilizers, dated 01.01.1981 is addressed to M/s. Indian Oil Corporation Ltd., and the subject of communication was utilization of HSD from Koyali Refinery for production of high value speciality items, and after a long consideration it was decided that the processors should be given an initial quantity of 500 tonnes of HSD for proving the know-how and facilities developed by them and the Technical Evaluation Committee was set-up for that purpose. It was communicated that before release of HSD to the processors, the confirmations were required to be obtained by IOCL to their satisfaction for those processing. It was laid down that, the unit was to be registered with the Director of Industries of state concerned in which their unit is located; their plant was to be completed in all respect and could go for production immediately on delivery of HSD; they should possess adequate technical know-how and facilities for the processing of HSD; all necessary laboratory testing formalities to be maintained for strict quality control and it was directed that HSD supplied to them will not be used for any other purpose except the production of specific items for which HSD has been released and the speciality produced would conform to the relevant prescribed specifications. It was also informed that they would have no objection for the periodical checking conducted by IOC to see that the qualities of HSD allocated to them are actually utilized by them for production of specific items mentioned in the application and as borne out by corresponding production and sales figures. It was also specified that they would not ask for further quantity of HSD till such time the evaluation and reporting of the TEC is completed and thereafter to the satisfaction of IOCL as to the genuine utilization of HSD released earlier. Further condition laid in the said circular was that, six months return of HSD released and products produced therefrom should be obtained from the processor and submitted to the Ministry.

[12] It has been argued by Senior Advocate Mr. Lakhani that TEC was entrusted with the task of reviewing the supply of feed-stock to the existing and new manufacturers of petroleum speciality and the committee was required to draw method and procedure with the assistance of oil companies and other agencies to ensure that the petroleum

specialities are used in bonafide manner and the TEC was required to look into the supply of LSHF-HSD, LDO and crude sludge for the manufacture of petroleum specialties. Mr. Lakhani submitted that vide Circular dated 17.03.1988, which has a reference of the letter dated 02.01.1981, which was in context of Koyali Refinery, the circular very clearly noted that additional items would be assigned to the TEC as necessary from time to time, thus, Mr. Lakhani stated that notification under the Circular dated 17.03.1988 was addressed to all the oil companies, while circular dated 02.01.1981 was only in respect to M/s. Indian Oil Corporation Ltd., when at that time the refinery was manufacturing Low Sulphur High Flash-Diesel (LSHF-HSD).

12.1 The Circular dated 17.03.1988 was addressed to all the companies with subject of constitution of Technical Evaluation Committee on supply of feed-stock for the production of petroleum specialities. The TEC was reconstituted with Director (Chemicals), Bureau of Indian Standards, New Delhi, a representative of IIP, a representative of IOC (R & D) and a representative of Department of Chemicals & Petro-chemicals, Drug Division. The term of the Committee was for a period of two years and the TEC was entrusted with the task of reviewing the supply of feed-stock to existing and new manufacturers of petroleum specialities, which included the technical evaluation of the manufacturing and laboratory facilities of the manufacturer and also the suitability of the feed-stock for the production of the said specialities. The committee was directed to draw-up methods and procedure for its working with appropriate help/assistance from oil companies and other concerned agencies to ensure that the feed-stock supplies of various manufacturers of petroleum specialities are used in bonafide manner. The function and duties of the Committee included physical inspection and evaluation of the plants, laboratory and technical competency of the manufacturers to produce the petroleum specialities; the quality, demand and acceptability of the petroleum speciality produced or planned to be produced; and the setting-up of systems and checks to ensure that the feedstock supplies are actually used for the purpose intended.

12.2 The said Circular dated 17.03.1988 specifies that TEC would initially look into the supply of LSHFHSD, LDO and Crude Sludge for the manufacture of petroleum specialities; no other items, except referred in the Circular, were assigned to the TEC.

12.3 Again by circular dated 09.02.1994 addressed to all oil companies, superseding the circular dated 17.03.1988, reconstituted the committee. Clause No.6 of the said Circular reads as under:

"The Technical Evaluation Committee would initially look into the supply of LSHF-HSD, LDO and crude sludge for the manufacture of petroleum specialities. Additional items would be assigned to the Technical Evaluation Committee as necessary from time to time."

12.4 Again by Circular dated 23.05.1995, addressed to all the oil companies, the Technical Evaluation Committee was reconstituted. The said circular reads as under:

> "To
>
> All the Oil Companies
>
> Subject:- Re-constitution of Technical Evaluation Committee on supply of feed stock for the production of petroleum specialities.
>
> Sir,
>
> In supersession of this Ministry's letter of even number dated 9.2.94 on the subject noted above, I am directed to convey the approval of the Government to the re-constitution of the said Committee till further orders, comprising of the following:-
>
> i)A representative from Indian Oil Corporation Convenor.
>
> ii)A representative from CHT, New Delhi.
>
> iii)A representative from Bureau ofIndian Standards (BIS), New Delhi.
>
> iv)A representative from OCC, New Delhi.
>
> 2.The scope of Technical Evaluation Committee would be:
>
> (a)To examine the technological capability of the

undertaking to process the allocated feedstock.

(b)To inspect the testing laboratory capabilities to evaluate the products quality.

(c)Products quality assurance system.

(d)Adequacy of safety & pollution control measures available in the factory and

(e)To evaluate the suitability of the products intended for end use industries/consumers.

The technical committee would look into all the industries processing High flash HSD, LDO, Crude Sludge and feedstocks to produce solvents in small & medium scale industries and make recommendations tothis Ministry for decision."

12.5 The Circular dated 17.03.1988 referred to LSHF-HSD, was again reiterated by Circular dated 09.02.1994; in the Circular dated 23.05.1995, Technical Evaluation Committee was directed to look into the industries processing High flash HSD, and in partial modification of the letter dated 23.05.1995, by a Circular dated 18.09.1996 to oil companies with respect to the subject of reconstitution of TEC on supply of feed-stock for the production of petroleum specialities, it was decided that the applications for grant of raw material as Crude Sludge, High Flash-HSD and LDO to produce solvents in small and medium scale industries would be received by the oil companies and referred to TEC for inspection of the applicant's plant to assess technical capability and statutory compliance etc. The said Circular further referred that, the TEC would send their inspection reports to the concerned oil companies with a copy to Adviser (R) in the Ministry for recommendations, if any, and the concerned oil company would await the recommendations of Adviser (R) of the Ministry upto two weeks from the receipt of the recommendations of the TEC; and the oil companies may implement the recommendations of the TEC, in case objection, if any, by Adviser (R) is not received by TEC/oil companies within two weeks.

12.6 By circular dated 27.03.2002, the Government of India, Ministry of Petroleum & Natural Gas, as reflected in the Circular dated 18.09.1996, the oil companies were informed about the dissolution of Technical Evaluation Committee, and it was communicated that the matter was reviewed by the

Ministry and after dismantling of the APM from 01.04.2002, the price of diesel also would be decontrolled, and, thus it was noted that under such circumstances, the specific objective and role of the Technical Evaluation Committee has lost its purpose and relevance, and the Technical Evaluation Committee therefore stood dissolved w.e.f. 01.04.2002. The said circular, thereafter further in the said communication gave liberty to all the oil companies to make their own judgments about allocation of crude sludge, high flashHSD and LDO from the said date and to put conditions, to the best of their commercial prudence and business requirements.

[13] The charge-sheet had been filed for the period between 1997 to 2000, alleging that private industries would lift HSD from oil companies for the industrial use as raw material and for captive power generation, and no necessary permission of the MoP & NG was obtained nor any recommendation of TEC, oil companies and State Electricity Board was taken

[14] The guidelines for release of petroleum product and lubricants to direct customers was issued on 08.07.1991 by Oil Coordination Committee. The Manual was complied by the members of the oil industries as an aid to the field staff in advising new as well as existing customers about the modalities for obtaining supplies to petroleum products and lubricants directly from the oil companies. The guidelines stated in the Manual pertained to the situation prior to the introduction of Demand Management dated 21.06.1990; with further clarification that the Demand Management Guidelines had not been incorporated as they would change from time to time depending upon product availability, and therefore it was clarified that users of the said Manual would therefore ensure that these guidelines were read in conjunction with the then applicable Demand Management Guidelines, as advised by the Deptt. of P & NG from time to time; and to ensure that the guidelines contained in the Manual were constantly reviewed and updated. The Manual refers to the Standing Committee constituted with the members as Director (MC&ES), OCC, Chief Consumer Manager, IOC, Chief Consumer Sales Manager, BPC, Chief Sales Manager (I&G), HPC and Asstt. General Manager (Mktd.), IBP.

14.1 The said Committee was required to review the validity of the guidelines once every year or earlier, if required, and ensure that changes were incorporated. It has been stated that since then, there has been no change in the guidelines nor any review was made.

14.2 The said guidelines refer to the major products and other products, where the Major Products are LPG, MS, Naphtha/NGL, ATF (JET A 1), SKO, HSD, LDO, FO/LSHS, Lubes, Greases, Specialities, Bitumen. While the Other Products are as Aviation Gasoline 100 LL, ATF K 60, Aviation Lubricants & Greases, Aromex, Benzene, Carbon Black Feedstock, Calcine Petroleum Coke, Food Grade Hexane, Iomex, JBO, JP 5, LABFS, LSHF HSD, Mineral Turpentine Oil, N Paraffin, Paraffin WAX, PP Feedstock, Raw Petroleum Coke, Slack WAX, Special Boiling Point Spirit, Toluene, Wash Oil, Water Methanol Mixture/45/55/0.

14.3 The HSD is put under the heading of Major Products, while LSHF HSD is under the heading of Other Products. Here, it requires specific mention that on 05.05.2000, Executive Directors (Sales) of Indian Oil Corporation Limited wrote a letter to the Additional Secretary to Govt. of India, MoP & NG, New Delhi, under the reference of subject, 'Release of Petroleum Products' referring to the meeting held at Delhi on 29.04.2000, wherein it has been written that as required, the industry paper on the procedure being adopted for release of various products, was sent to the Ministry, and accordingly for the regulated product HSD, the procedure adopted was referred to vide effect from 01.04.1998, the price of the deregulated product was fixed by the oil industries, while the price of the regulated product was fixed by MoP & NG. HSD being regulated product was noted, as under:

"HSD:- HSD is primarily a transport fuel used by Defence, Railway, State Transport Undertakings, goods carrying vehicles, earth moving equipment, DG sets, start-up fuel for boilers, etc. HSD is also processed by distillation for producing different boiling ranges which are used for manufacturing speciality products such as spray oil, white oil, industrial solvents, etc. The customer approaches the Oil Industry for release by placing an indent for supplies. The Oil Industry verifies the approval of Explosive Deptt. for storage of product. Also if the supplies are required on Inter State basis, the Oil Industry checks the Central Sales Tax Registration Certificate for assessing the customers' eligibility to receive supplies on Concessional Sales Tax."

14.4 In regard to the delivery of the product, the said letter contained as under:

"Subject to satisfying the above needs and based on Commercial understanding, a customer code number is allotted in respect of the customer. Thereafter, the Supply Point is authorized to release the product. The authorization is issued through a letter of a delivery order which indicates the details of customer code, indentor / consignee, period of supply, price of the product, validity of the delivery instructions, commercial terms, etc.

Oil Industry in certain cases is providing storage and dispensing facilities based on the laid down norms to the customers. These facilities are constructed by the Oil Industry to meet the requirement of criteria laid down by Explosives Deptt. after obtaining No-objection certificate from the local District Magistrate.

The large volume customers who have rail rake unloading facilities uplift supplies through Railway Tank wagons. The supplies are affected from locations having rail rake loading facilities, either within the state or outside the state as decided in the Supply Plan Meeting conducted by Oil Coordination Committee every month.

Bulk of the supplies within the state are on delivered basis wherein the Oil Industry delivers supplies at the customer's premises in their own / hired tank lorries. Small percentage of supplies are released ex Oil Industry storage points in customer's own / hired tank lorries. In case of delivered supplies the customer give delivery schedule based on which the Oil Industry delivers supplies. The transporter after delivering the product brings back the receipted copy of the challan duly acknowledged by the customer for having duly received the supply. In respect of ex storage supplies, the customer places an indent and takes supplies in his own / hired tank lorry duly authorizing a representative to receive supplies. For inter state supplies,

the concessional Sales Tax form is collected at the time of supply. After verification of the documents and the Commercial terms, the Supply Point releases the supply. The Supply Points obtains the signature of the Authorised representative for having received the quantity indicated in the Delivery Challan."

14.5 The said letter, thus, refers to the bulk supply within the State, which would be on delivered basis, wherein the Oil Industries deliver supplies at the customer's premises in their own / hired tank lorries, while small percentage of supplies are released ex Oil Industry storage points in customer's own / hired tank lorries. The transporter after delivering the product brings back the receipted copy of the challan duly acknowledged by the customer for having duly received the supply, while in case of ex-storage supplies, the customer places an indent and takes supplies in his own / hired tank lorry. In case of inter state supplies, the concessional Sales Tax form is collected at the time of supply. After verification of the documents and the Commercial terms, the Supply Point releases the supply, and the signature is obtained of the Authorised representative for having received the quantity indicated in the Delivery Challan. This whole process, as noted in the Manual does not insist for any report of the TEC. The Manual itself clarifies the process of self supply in bulk and in small percentage. In case of inter state supplies, the process of concessional sales tax form is to be followed and, the oil companies checks the central sales tax certificate for assessing the customer's eligibility to receive supplies on concessional sales tax.

[15] Here, the F.I.R. was registered on 23.05.2000, thereafter the letter dated 06.11.2000, signed by directors of four oil companies viz. IOC, BPC, HPC and IBP addressed to Additional Secretary, MoP & NG, Government of India, New Delhi, referred to all the earlier circulars dated 17.03.1988, 09.02.1994, 23.05.1995 and 18.09.1996, with regard to the constitution of TEC on supply of feed-stock specialities. It was clarified by the companies that in all the referred communications, the TEC was to look into the supply of LSHF-HSD/High Flash-HSD, LDO and Crude Sludge for the manufacture of petroleum specialities, and further noted as being conveyed that additional items would be assigned to the TEC as necessary from time to time, and that during the period from 1988 till the date of communication, no additional items were assigned other than the products mentioned therein. It was clarified that in 1981 for the

first time, the MoP & NG had issued instructions vide letter dated 2/6.1.1981 on instituting a procedure for utilization of HSD from Koyali Refinery for production of High Value Speciality items by processors. Thus, all the oil companies clarified that letter was confined to HSD from Koyali Refinery and all the subsequent communications from 1988 to 1996 required TEC, for supplying LSHF-HSD/High Flash-HSD, LDO and Crude Sludge to processors for the manufacture of petroleum specialities; and in supersession of the letter dated 17.03.1988, having considered all the previous instructions, superseded all earlier letters, to note that TEC was not required for supply of regular HSD. That the oil companies were following the directions contained in MoP & NG circulars issued between 1988 and 1996 with clear understanding that TEC evaluation is not required to be carried for supply of HSD as a feed-stock to processors for the manufacture of petroleum specialities and was confirmed only to LSHF-HSD, HF-HSD, LDO and Crude Oil Sludge.

[16] The learned Special Judge after having observed the documents and case authorities referred by the respective Advocates observed regarding the prosecution case in paragraph-19 as under:

> "19. Looking to the arguments as well as authorities relied upon by Learned advocates for both the sides it is clear that the FIR was registered in the year 2000 for the offence allegedly committed from 1997 to 2000. After 10 years the charge sheet was filed in different cases based upon only one FIR. The accused was charge sheeted for the offences punishable under section 120B, 420 of IPC and section 13(2) read with 13(1)(d) of the PC Act. The prosecution case is that some unknown officers and unknown officers of sales tax department and owners of private units in conspiracy with each other abused their officials position and caused wrongful loss to the government exchequer by selling HSD to various private industries of various states which were either nonexistent or non-functional. Looking to the charge sheet Technical Evaluation Committee (TEC) had issued various circulars for supply of HSD. The circular dtd. 2/6-1-1981 applies only to Koyali Refinery of Vadodara. At that time, this refinery was manufacturing LSHF-HSD (Low Sulphur High Flash - Diesel), which was meant for Navy. The statement given to CBI by R. Ramakrishnan, who is convener of TEC, on 9/6/2000, clearly stated that as per the policy circular, evaluation by TEC was only for LSHF-HSD. He also stated that the specification of both items does not refer to any other State or any other refinery, other than Koyali. So,

looking to the statement given by the convener of TEC, prima facie appears that the circular of 1981 will not to apply to HSD. After 1981, TEC had also issued circulars on 17/3/1988 and then after in 1994, 1995 and 1996. All the circulars state that the TEC would look into supply of LSHF-HSD, LDO Slug etc. and HSD was not within the purview of TEC as per the circulars. The MOP&NG's circular dated 2nd January, 1981 regarding scope of TEC was issued for release of diesel from Koyali Refinery, Vadodara to Indian Oil Corporation only and not other oil companies. The scope of circular is limited and not applicable to other oil companies as BPCL, HPCL AND IBP. Looking to all the circulars, the prosecution has not established that the circulars were issued for HSD, but all circulars were applicable only for sale of LSHF-HSD, HF-HSD, LDO, Crude Slug. The circular of 1981 was issued only for Koyali Refinery, Vadodara. IOC has five other refineries supplying HSD and HPCL, BPCL also have other refineries supplying HSD and that supply not being restricted, would make the circular of 1981 irrelevant. Four oil companies wrote a letter dated 6/11/2000 to Additional Secretary, MOP&NG, signed by four Directors of four oil companies. MOP&NG gave explanation on that letter dated 2/12/2000 stating that "Analysis of above circular reveals that TEC is required for LSHF-HSD, HF-HSD etc." This letter was important evidence in document, but in this case, the said letter was not produced by the CBI with list of document. In the letter dated 2/12/2000 addressed to the four Chairman of the oil companies it is stated that TEC is applicable to four products only and not applicable to regular HSD. Further, the circular of 1981 was issued for Koyali Refinery only and only for the Indian Oil Corporation for the material of LSHF-HSD, HF-HSD, LDO, Crude Slugs etc. This circular was not issued for any other oil company. There is no evidence to show that TEC had informed about this circular to all the oil companies. So, looking to the circulars of TEC, all circulars are not applicable for HSD. Therefore, it cannot be said that the applicants have not followed the instructions given in the said circulars issued by TEC."

16.1 The prosecution has also raised a case that there has been loss to the government exchequer and in criminal conspiracy with the officers of sales tax department, Form 'C' were forged. The learned Special Judge while dealing with the issue has observed in paragraph 20 as under:

"20. It is clear from the charge sheet papers that the Govt. exchequer has suffered huge loss because of sales tax evasion. But it appears that no complaint was filed by any officer from the sales tax department. It also appears from the charge sheet that no complaint was lodged for alleged forged/fake "C" form. Moreover, even if it is presumed that the said "C" forms were forged or fake, even then no staff members from the sales tax department has been arraigned as accused in the case. It has not come on record that any persons from the sales tax department has alleged that the "C" forms used for HSD were forged or fake. There is no evidence regarding forged document. It is true that blank "C" forms were submitted. But there is no allegations that the said "C" forms were bogus. Supposed that "C" forms were bogus, but then it is not the case of the prosecution that those "C" forms were forged and produced by the applicants accused. Generally the "C" form were produced by the purchaser. There is no evidence that the applicants were aware that the "C" forms were bogus. There is no allegation that the accused committed forgery or produced forged documents. The applicants accused have not used any "C" form but the private party has produced it at the time of delivery. Looking to the "C" form, no officer of oil companies can say that "C" forms were bogus. There is no allegation against the accused that HSD was sold at lower price. There is no evidence to show that oil company has suffered any financial loss because of such transaction. There is also no prima facie evidence to prove that the delivery of HSD was wrongly given. It appears that the applicants accused have sold HSD as per the price fixed by the Govt. It has also not come on record that if the purchasers had obtain any benefit, that was not due to mistake of the applicants accused. There is also no prima facie evidence to show that the applicants have got benefit or advantage out of loss caused to the Govt. exchequer. There is no prima facie evidence to show that HSD was not sold to factories. Further more, all the transactions were done by applicants accused as a party of their official duties."

[17] In the case of Mohd. Hadi Raja Vs. State of Bihar And Anr. (supra) referred by Standing Counsel Mr. Kodekar of C.B.I., a question of law arose as to whether the provisions of sanction under section 197 Code of Criminal Procedure, 1997 are applicable for prosecuting officers of the public sector undertakings and government companies when on account of deep and pervasive control of finance and

administration of such undertakings and government companies, they are held as State within the meaning of Article 12 of the Constitution of India. After careful consideration to the question of law and submissions, made by the respective counsels of the parties, it was observed that the protection under section 197 of the Code of Criminal Procedure lies in the public policy to ensure that official acts performed by a public servant do not lead to needless and vexatious prosecution of such public servant, and, it was further observed that, it is desirable to be left to the government to determine the question of expediency in prosecuting a public servant. However, it was noted that through the contrivance or mechanism of corporate structure, some of the public undertakings are performing the functions which are intended to be performed by the State, ex facie, such instrumentality or agency being a juridical person has or independent status and the action taken by them, however important the same may be in the interest of the State cannot be held to be an action taken by or on behalf of the Government as such within the meaning of Section 197 of the Cr.P.C.

17.1 Para 24 to 27 of Mohd. Hadi Raja Vs. State of Bihar And Anr. (supra), read as under:

"24. It is also to be indicated here that in 1973, the concept of instrumentality or agency of state was quite distinct. The interest of the State in such instrumentality or agency was well known. Even then, the legislature, in its wisdom, did not think it necessary to expressly include the officers of such instrumentality or the government company for affording protection by way of sanction under Section 197 Cr. P.C.

25. It will be appropriate to notice that whenever there was felt need to include other functionaries within the definition of 'public servant', they have been declared to be 'public servants' under several special and local acts. If the legislature had intended to include officers of instrumentality or agency for bringing such officers under the protective umbrella of Section 197 Cr. P. C. It would have done so expressly.

26. Therefore, it will not be just and proper to bring such persons within the ambit of Section 197 liberally construing the provisions of Section 197. Such exercise of liberal construction will not be confined to the permissible limit of interpretation of a statute by a court of law but will amount to legislation by

Court.

27. Therefore, in our considered opinion, the protection by way of sanction Section 197 of the Code of Criminal procedure is not applicable to the officers of Government Companies or the public undertakings even when such public undertakings are 'State ' within the meaning of Article 12 of the Constitution on account of deep and pervasive control of the government...."

17.1.1 In the case of Mohd. Hadi Raja Vs. State of Bihar And Anr. (supra), the Apex Court observed that the importance of the public undertaking should not be minimised. It is observed that the government's concern for the smooth functioning of such instrumentality or agency can be well appreciated but on the plain language of Section 197 of the Code of Criminal Procedure, the protection by way of sanction is not available to the officers of the public undertaking because being a juridical person and distinct legal entity such instrumentality stands on a different footing than the government departments.

17.2 Advocate Mr. Kodekar also relied on the case of Punjab State Warehousing Corporation Vs. Bhushan Chander And Anr. (supra), para-20 of the the same reads as under:

"20. A survey of the precedents makes it absolutely clear that there has to be reasonable connection between the omission or commission and the discharge of official duty or the act committed was under the colour of the office held by the official. If the acts omission or commission is totally alien to the discharge of the official duty, question of invoking Section 197 CrPC does not arise. We have already reproduced few passages from the impugned order from which it is discernible that to arrive at the said conclusion the learned Single Judge has placed reliance on the authority in B. Saha's (supra). The conclusion is based on the assumption that the allegation is that while being a public servant, the alleged criminal breach of trust was committed while he was in public service. Perhaps the learned Judge has kept in his mind some kind of concept relating to dereliction of duty. The issue was basically entrustment and missing of the entrusted

items. There is no dispute that the prosecution had to prove the case. But the public servant cannot put forth a plea that he was doing the whole act as a public servant. Therefore, it is extremely difficult to appreciate the reasoning of the High Court. As is noticeable he has observed that under normal circumstances the offences under Sections 467, 468 and 471 IPC may be of such nature that obtaining of sanction under Section 197 CrPC is not necessary but when the said offences are interlinked with an offence under Section 409 IPC sanction under Section 197 for launching the prosecution for the offence under Section 409 is a condition precedent. The approach and the analysis are absolutely fallacious. We are afraid, though the High Court has referred to all the relevant decisions in the field, yet, it has erroneously applied the principle in an absolute fallacious manner. No official can put forth a claim that breach of trust is connected with his official duty. Be it noted the three-Judge Bench in B. Saha (supra) has distinguished in Shreekantiah Ramayya Munipalli (supra) keeping in view the facts of the case. It had also treated the ratio in Amrik Singh (supra) to be confined to its own peculiar facts. The test to be applied, as has been stated by Chandrasekhara Aiyar, J. in the Constitution Bench in Matajog Dube (supra) which we have reproduced hereinbefore. The three-Judge Bench in B. Saha (supra) applied the test laid down in Gill's case wherein Lord Simonds has reiterated that the test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office."

17.3 Here, in the case on hand, the aspect of sanction by the authority concerned would bear not of much importance. The issue is whether C.B.I. had any case to even lodge a prosecution. Admittedly CVC too had not found any case against the accused to grant sanction.

[18] With reference to the letter dated 09.11.2000, Mr. K.L.N. Shastri, Executive Director (LNG), Indian Oil Corporation Ltd., New Delhi, submitted a note in the form of statement, with reference to release of HSD to processors, as required by C.B.I., stating that he had joined OCC on deputation in April 1996 and worked as Director (Marketing Coordination & Economic Studies) uptil 31st July, 2000. According to him, the OCC came into existence in the year 1975 vide a resolution of the government. He states that role and functions of OCC have been spelt out in the Resolution as well as in a separate

note, and the basic function of the OCC is to assist the MoP & NG for supply and distribution of petroleum products and is also doing the work of monitoring of production of petroleum products, movement supply logistics and various oil pool accounts. According to Mr. Shastri, OCC is the apex body of oil marketing and refining companies coordinating, monitoring and supervising the refining marketing and accounting activities/functions of all the oil companies such as IOC, HPCL, BPCL, IBP, CPCL (MRL) etc., thus, the constitution of the OCC as being the apex body of the oil marketing and refinery companies, had been expressed by him, and on being asked about the duties of the Director (MC&ES), OCC, Mr. Shastri stated that he was doing the work of formulation and circulation of policies and policy matters released either by the OCC or by the Ministry of P&NG in relation to marketing activities, and those were to be followed by the oil companies. According to Mr. Shastri necessary clarifications with regard to the policy matters for sale and supply of petroleum products were issued by the OCC from time to time.

18.1 On being asked about the supply of HSD to processors, Mr. Shastri states that there were various guidelines issued by MoP&NG and by the OCC, and such guidelines were issued with a a particular objective to ensure the end use of HSD sold to processors and consumers, and the guidelines include in the form of circulars, wherein Circular No.P-24013/5/80-SUP dated 2nd January, 1981 of the MoP&NG and guidelines dated 8th July, 1991 of OCC, too are referred by him.

18.2 Mr. Shastri has referred to the Circular dated 02.01.1981 addressed to IOCL with respect to the utilization of HSD from Koyali Refinery for the production of High Value Specialities items and the guidelines dated 08.07.1991 of OCC. He had also been asked regarding his clarification dated 23.08.1999 in respect to release of HSD to processors, and he had referred to a letter No.TEC/Circ. dated 04.08.1999 of Shri P.Sudarsnam, ED (Plng., P&S and BD), IOC, Ho. Mumbai to the Executive Director, OCC, regarding the release of HSD to processors. The said letter reads as under:

"Executive Director,
Oil Co-ordination Committee,
Scope Complex, 2nd floor,

Core-8, Lodhi Road,

NEW DELHI - 110 003.

Dear Sir,

SUB: RELEASE OF HSD TO PROCESSORS

This has reference to MOP&NG's letter no.P-21017/14/93-Dist dated 11.05.94, P-17011/16/93-Sup dated 23.5.95 and P-17011/15/93-Sup dated 18.9.96 on the above subject.

So far IOC has been releasing the supplies of HSD to the processing units as feed stock for the production of various speciality oils like Spray oil, White oil, Agarbathi oil, Textile oil, Honing oil, Antistatic oil etc. based on MOP&NG's approval after the assessment by the Technical Evaluation Committee (TEC).

Since effective 1.4.1998, the price of HSD is fixed on the basis of import parity, we are of the opinion that HSD may be released to the processors based on our Technical evaluation. However, the verification of utilisation reports etc. would continue as hitherto.

It is understood that OMCs are releasing HSD to the processors without allocation by MOP&NG.

In order to protect our market share, we also propose to meet the requirements of Processors in the same manner as other Marketing Companies. This is for kind information."

18.3 In reference to the said letter, Mr. Shastri put up a fax message dated 23.08.1999, which reads as under:

"RELEASE OF HSD TO PROCESSORS

Reference is made to your Letter No.TEC/ Circ. Dated 4.8.99 regarding release of HSD to Processors.

You are aware that HSD is a controlled product and its price continues to be fixed under administered pricing mechanism. There is no change in the guidelines for allocation of HSD to the processors HSD allocation to the

processors is approved by the MOP&NG based on the certification and recommendation of the TEC of the Oil Companies. As such, You are requested not to make HSD supplies to the processors without the Ministry's allocation / Linkage.

Regarding supply of HSD by the OMCs to the processors without MOP&NG's allocation. You are requested to provide us with specific details."

18.4 C.B.I. had asked for guidelines dated 08.07.1991 of OCC from K.Rajeswara Rao, Joint Director (MC&ES) of the Petroleum Planning & Analysis Cell, who had given the Fax of Shri Shastri and the letter of P.Sudarsnam. For the original copy of the guidelines it had been noted in para 3, which reads as under:

"3. As regards original copy of the guidelines for release of petroleum products and lubricants to direct consumers complied and circulated by OCC on 8.7.1991, it is stated that the Oil Coordination Committee (OCC) has been wound up effective 1.4.2002 and, however, efforts have been made to locate the original copy of the guidelines from the available records with PPAC but in vain. Hence the same cannot be furnished."

18.5 The compilation and circulation by OCC on 08.07.1991, of the Guidelines for Release of Petroleum Products and Lubricants to Direct Consumers have not been denied, which suggests that the same was in force and all oil companies were following the guidelines since 1991. The charge-sheet has been filed for period between 1997-2000. The guidelines of OCC dated 08.07.1991 had not found any change. Mr. Shastri had referred in his Fax message of no change in the guidelines for allocation of HSD to processors. According to him, HSD allocation to the processors is approved by the MoP&NG based on the certification and recommendation of the TEC of the Oil Companies. The guidelines referred and relied upon does not reflect any certification and recommendation of the TEC to the oil companies, and, when a clarification was sought by P.Sudarsnam by a letter dated 23.08.1999, Mr. Shastri states before the C.B.I. that there was no change in the allocation policy and requested P.Sudarsnam of IOC not to

make HSD supplies to the processors without the Ministry's allocation / Linkage, and, since clarification was sought by the E.D., IOC from OCC, reply was sent by OCC, which stated by Mr. Shastri, according to the existing guidelines available, the directions were to be followed by the oil companies necessarily, and according to him the clarification was in accordance with the existing guidelines of the Ministry, and, in the present case, to his clarification on behalf of OCC, Ministry did not issue any such amendment, which implies, concurrence of the MoP&NG on the particular issue, upon which the Oil Companies were required to act accordingly.

18.6 On being asked regarding the technical evaluation of the factories/processor units consuming HSD for production of speciality oils, Mr. Shastri stated that production involves processing activities through which some finished products were produced, which were altogether different in nature from HSD, and, therefore, according to him processing units were essentially required to have the requisite plant and machinery to process HSD of specific capacity for specific purpose(s), and only the Technical Officers can certify the nature and capacity of machinery and plant installed at the factory, and, therefore visit of Technical Officers was must, to see and verify the installation and working position including capacity and requirement of HSD for processing, and, hence, he sates that MoP&NG for this specific purpose constituted TEC for giving their recommendations justifying the requirement of HSD of the processors, and, thus Mr. Shastri notes that HSD was/is to be released on the recommendations of the TEC subject to approval of MoP&NG.

18.7 At the cost of repetition, it is required to be noted that TEC was dissolved with effect from 01.04.2002; the non-requirement of the TEC had been noted in the letter dated 27.03.2002.

18.8 The requirement of certification of Technical Officer and the recommendation of the TEC justifying the requirement of HSD was only in context of Koyali Refinery, gets specified in the Circular dated 02.01.1981. Before release of HSD to the processors, IOC was required to get the confirmation as reflected in the said Circular.

18.9 On 29th August, 1997, the letter by the General Manager (S) - V.K. Nayudu to DGM Ahmedabad, in reference to the letter dated 19th August, 1997, clarifies that the guidelines from MoP&NG with regard to the processors, who would like to uplift HSD had to make an application to IOCL and the same thereafter could be forwarded to TEC for consideration. Thus, the same is also in connection to IOCL and not for other oil companies. Almost all the communications for the various Private Ltd. Companies produced on the record of the case were by the Indian Oil Corporation Ltd. (IOCL) to the Ministry.

18.10 The letter of the OCC dated 04.12.1996 to the under Secretary MoP&NG, New Delhi, for the requirement of HSD/HF HSD/LSHF and NGL/Naphtha for M/s. Shaynoa Petrochem Ltd. for manufacture of speciality solvent and lubricants, reflects that the TEC was required to evaluate the requirement, and submit the recommendation to MoP&NG and based on the recommendation of the TEC, it was noted that, MoP&NG, may consider to release of HSD/HF-HSD/LSHF for processing use ex-Koyali refinery, while the supply of NGL ex-Hazira was ruled out, as the only possibility was of supplying Naphtha ex-Koyali refinery of IOC. It was further noted that since December, 1992, Naphtha import had been deccanalised and the same could be imported after obtaining special licence/approval from DGFT. The communication, on record, by the Ministry of MoP&NG shows of private companies lifting of HSD from M/s. Indian Oil Corporation Ltd. only.

18.11 The C.B.I. while filing the F.I.R. has failed to take a clarification from the authorized person of the Ministry as to why the Circular dated 02.01.1981 was only addressed to IOCL for the utilization of HSD from Koyali Refinery and not for any other oil companies. While the guidelines of the OCC does not refer to the requirement of TEC recommendation for uplifting HSD from any other oil companies. All the letters/circulars referred earlier hereinabove with the communication starting from 1988-1996 require TEC evaluation only for supplying LSHF-HSD/High Flash-HSD, LDO and Crude Sludge to processors for the manufacture of petroleum specialities. The communication never included the requirement of TEC for the supply of regular HSD. The Oil Companies viz. IOCL, HPCL, BPCL and IBP,

conveyed a understanding on 06.11.2000 to Shri Narad, Additional Secretary, MoP & NG, after the registration of the F.I.R., which itself clarifies the fact that all oil companies were functioning on the understanding that TEC evaluation for HSD was not required. All the companies were clear on the fact that in the year 1991, the MoP&NG had issued the instruction vide letter/circular dated 2/6.1.1981 for instituting a procedure for utilization of HSD from Koyali Refinery and not from any other refineries, and the Ministry had addressed by Circular dated 17.03.1988 to all the oil companies regarding the constitution of TEC on supply of feed-stock for the production of petroleum specialities, by making a reference to the Ministry's letter dated 02.01.1981, for reconstitution of the TEC; it was clarified that it would initially look into the supply of LSHF-HSD, LDO and Crude Sludge for the manufacture of petroleum specialities. There was no reference with regard to the supply of regular HSD.

18.12 The Circular further clarified that the additional items would be assigned to the TEC as necessary from time to time. While in all subsequent communications, HSD was never included in the duties of TEC. While observing the TEC by the Circular dated 27.03.2002, it was specifically noted by the under Secretary, Government of India that the matter was reviewed by the Ministry and on dismantling of the APM from 01.04.2002, in the circular, it was noted that the price of diesel would be also decontrolled, and under such circumstances, the specific objective and role of the TEC had lost its purpose and relevance, and were informed that the TEC stood dissolved with effect from 01.04.2002. The Oil Companies were made free to take their own judgment about the allocation of crude sludge, high flash-HSD and LDO from the said date and to put conditions, to the best of their commercial prudence and business requirements.

18.13 In view of this circular itself, there was no reason for the C.B.I. to file charge-sheet against any of the accused. None of the communications of the Ministry, except of 02.01.1981, for the utilization of HSD from Koyali Refinery, required any TEC recommendation for lifting of HSD from any other companies. The C.B.I. failed to take into account that the Ministry had never called for any clarification from any other company during the period

between 1997 - 2000 in connection with the alleged facts noted in the F.I.R., the officers, who were working in the company, would go by the understanding of the Circulars. It would have been the functioning of the Ministry to specify the requirement of TEC recommendation for supply of HSD from other oil companies to the processors. The oil companies all throughout had been following the directions contained in the MoP&NG circulars issued between the year 1988 to 1996, with clear understanding that TEC evaluation was not required to be carried out for supply of HSD as feedstock to processors for the manufacture of petroleum specialities.

[19] The statement of Shri Dilip Dixit Dy. Commissioner, Sales Tax (Enforcement), noted by the C.B.I. on 31.10.2000 would be of vital importance. According to Shri Dixit there was no tax liability for HSD under the provision of Bombay Sales Tax Act, and HSD was tax free. According to him HSD is taxable commodity under the provisions of the Bombay Sales of Motor Spirit Taxation Act, 1958, and for the concessional facility provided under the Act in respect of sales tax on purchase of HSD, it is stated that, concession was provided to Fisherman Cop. Societies and no other concession was provided under the Bombay Sales of MST Act/Rules to any other category of purchasers, and thus, has stated before the C.B.I. that registered dealers/firms or purchasers of outside state are provided the facility for purchase of HSD against C-form under the CST Act by paying a lesser rate of sales tax at the rate of 4% against the prevailing rate of 30% approximately in the State of Maharashtra, and there is no provision for giving concession to any purchaser as applicable in the State of Gujarat against form-2 or form-5 or any other form.

19.1 Shri Dilip Dixit further affirmed the fact that there is no provision of check post of Sales Tax Department in the state and no provision to check the vehicles carrying commercial goods between the two states, nor any records were maintained about the entries of such vehicles carrying HSD or any other taxable items at the borders of the state; but, within the state, the purchasers and sellers were supposed to file Sales Tax Returns under the provisions of the Bombay Sales of Motor Spirit Act, Bombay Sales Tax Act and the Central Sales Tax Act, and, therefore the registered private firms purchasing HSD either from within the state or from outside state, were supposed to file returns showing their total purchase separately from within the sate and outside the state, and thus, according to him, the oil companies

IBP, HPCL, BPCL & IOC were also supposed to file sales tax returns. Mr. Dixit stated that oil companies furnish the details of sale of HSD sold from within the state or outside the state against form-C, and purchasers outside Maharashtra purchased HSD from oil companies in Maharashtra against form-C on payment of CST at 4%, to be deposited with the sales tax authorities of Maharashtra.

19.2 According to Mr. Dixit at the time of processing of the application and scrutiny of the documents, it was ascertained that the firm exist at the place shown in the application, and, the aspect of manufacturing of goods and engagement in business activities etc. were verified later on, but initially the firm can get registered and start its business, and the firms on their request for the declared purpose were issued blank C-forms by the Sales Tax Officer of their jurisdiction. Mr. Dixit stated that the competent authority for registration certificate is the Sales Tax Officer of the registered branch, and the issuance of 'C' forms is by the assessing officer of their jurisdiction, and the officer in-charge of assessment of that particular case; the procedure for issuance of 'C' form would be that a new registered purchaser is issued 5 C-forms at the initial application subject to a bank guarantee for 37 months, and at the time of issuance of C-forms every next time, utilisation reports of the C-forms issued earlier is compulsorily obtained by the issuing authority, and the utilisation of C-forms is ensured in that form only and for the issuance of C-forms, basic formalities are to be observed and it is issued only to the registered purchasers under the CST Act.

19.3 Mr. Dilip Dixit in regard to misuse of facility of C-forms stated that only after satisfaction of the Sales Tax Officer about the proper use of C-forms issued earlier, the fresh C-forms are issued to the firms. Thus, according to him, periodic visits are made by the Sales Tax Officer of the factories who ensures that the product being purchased against 'C' form is utilised for the declared purpose, thereafter only, 'C' forms are issued. He has also referred to the loopholes of the 'C' forms and has raised apprehension of 'C' forms being utilised dishonestly from outside state, which he says could be established, if caught. Mr. Dixit stated that primary responsibility of the Sales Tax Officer of the particular case is to ensure that the C-form is issued for genuine purpose and the product is utilised for the declared purpose only.

[20] The learned Special Judge has not found any ground for invocation of the charge under section 420 of IPC, to satisfy that there should be a wrongful intention to cause some wrongful loss, and that, wrongful intention should be from the very inception. The learned Judge has observed that whatever representations made by purchaser was before the Sales Tax Department regarding inter-state sale, and the charge-sheet papers do not disclose that the applicants accused had made any representation or they were aware of any such representation. The learned Special Judge has not found from the record any false representation made by the accused, in reference to the charge of conspiracy, and, thus has concluded that there is no prima facie evidence to show that goods sold to any firm, were not taken by that very firm to the place outside the State from where they were sold; and found that there is no prima facie case of cheating made out by the prosecution.

20.1 For the charge under criminal conspiracy, the learned Special Judge has observed that the applicants are public servants, who have acted as per the circular issued by the Government, and the prosecution has not established any prima facie case or any illegal act done or any act which is legal, but has been shown by using illegal means; as per the prosecution case, there were large number of persons from different parts of country, unrelated to each other, unknown to each other therefore the learned trial Court concluded that there cannot be presumption that they would have entered into any criminal conspiracy. The learned Special Judge observed that as per the record, four oil companies are of Gujarat, Maharashtra and Madhya Pradesh and there is no evidence to show that the officers of the oil companies had gathered, or met sales tax officers or staff or purchasers with an intention to commit the alleged offence.

20.2 For the offence under the P.C. Act, the learned Special Judge found that there is no prima facie evidence to show that the applicants had accepted any gratification from any person as a motive or reward, and the applicants accused had followed all the instructions issued by the MoP & NG and acted in discharge of the duties; no sanction has been brought on record by the C.B.I., while sanction has been refused against the officers of the oil companies and against refusal C.B.I. had written to Central Vigilance Committee, but the said committee to confirm the order of non-issuance of

sanction against the officers of the oil companies and therefore, no summons were issued against those accused persons.

20.3 The learned Special Judge while discharging the accused had observed that the offence alleged to have been committed for the year 1997 to 2000, and F.I.R. was filed in the year 2000, and after a long period the chargesheet came to be filed in the year 2011, and before filing of the charge-sheet no sanction had been obtained by the prosecution under section 19 of the P.C. Act and section 197 of the Cr.P.C. Further observed that there is no prima facie evidence to show that the oil companies suffered any loss because of act or omission of the officers; there is neither evidence to show that HSD was sold by the applicants - accused at lower price, nor any evidence to show that the applicants - accused were aware that 'C' Forms were bogus, and it was not the case of the C.B.I that 'C' Forms used were bogus, nor any person from the Sales Tax Department had been arraigned as accused; there is no evidence of taking any bribe or monetary gains, there is no evidence that the accused had sold HSD to any unauthorised person or company. The learned Special Judge observed that according to the statement of R.Ramakrishnan, member of the TEC, the circular of the TEC was not applied to HSD and in the similar cases being No.5/2006, 131/2004 and 136/2004, the accused were discharged without any sanction, wherein too, no sanction under section 197 of the Cr.P.C. was obtained, and the orders of discharge have not been challenged by the C.B.I.

[21] The statement of the various authorities recorded by the C.B.I. cannot be read in accordance to their own interpretation, since section 94 of the Indian Evidence Act, 1872 clarifies that when language used in a document is plain in itself, and when it applies accurately to existing facts, evidence may not be given to show that it was not meant to apply to such facts. The circulars and the communications by MoP & NG and OCC guidelines, has to be read as communicated to oil companies; and further OCC guidelines would be of no relevance when government guidelines are in force.

21.1 The Petroleum Act, 1934 had come into force to consolidate and amend the law relating to the import, transport, storage, production, refining and blending of petroleum; that makes the provision with regard to

petroleum, classifying it into A, B and C giving the meaning according to the flash-point as noted in the definition. The Petroleum and Natural Gas Regulatory Board Act, 2006 makes establishment and incorporation of the Board by section 3, and the complaints and disputes are to be resolved by the Board.

21.2 The communication by the oil companies dated 06.11.2000 regarding the circulars of the MoP&NG reflects their understanding about those circulars of the Ministry. The officers of the Oil Companies were required to follow the circulars and as has been noted by the learned Special Judge, they have been consistently followed by all the oil companies and the circulars do not refer to, regular HSD.

21.3 The Petroleum and Natural Gas Regulatory Board Act, 2006 defines HSD under section 2(r) and section 2(zd) defines oil company, which read as under:

"**2(r):-** "high speed diesel" means any hydrocarbon oil (excluding mineral colza oil and turpentine substitute), which conforms to such specifications for use as fuel in compression ignition engines, as the Central Government may, in consultation with the Bureau of Indian Standards, notify from time to time.

2(zd):- "oil company" means a company registered under the Companies Act, 1956 (1 of 1956) and includes an association of persons, society or firm, by whatsoever name called or referred to, for carrying out an activity relating to petroleum, petroleum products and natural gas."

21.4 By the Circular, the Ministry had informed the oil companies regarding the dissolution of TEC and had explained under what circumstances the specific objective and role of the TEC has lost its purpose and relevance, and, thus TEC stood dissolved vide effect from 01.04.2002. The communication dated 27.03.2002 of the MoP&NG had given free hand to the oil companies to make their own judgment about the allocation of the crude

sludge, high Flash-HSD and LDO and to put conditions to the best of their commercial prudence and business requirement. Thus, in view of the circulars, the F.I.R. dated 23.05.2000 would have become irrelevant, since the oil companies were given free hand to make their own judgment.

21.5 The Petroleum Rules, 2002 came into force on 13.03.2002. A technical body being Oil Industry Safety Directorates Standards (OISD) had been formed for assisting the safety council constituted under the MoP&NG. The rules deals with restrictions of delivery and dispatch of petroleum in all classes A, B and C, the requirement of the licence for the import of petroleum, and the dispute with regard to the HSD would have to be resolved by the Board, which is governed by the Petroleum and Natural Gas Regulatory Board Act, 2006. The legal provision of the Petroleum Act and rules thereunder become relevant in this case, since chargesheet came to be filed on 25.03.2009.

21.6 The powers of the Special Judge under section 227 of the Cr.P.C. has been laid down in the judgment of Union of India Vs. Prafulla Kumar Samal (supra). The Hon'ble Apex Court held that in exercising the jurisdiction under section 227, the Special Judge, which under the present Code is a senior and experienced court cannot act merely as a post office or mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on, thus, observed that, this, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he has conducting a trial; while considering the question of framing charges under this section, he has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The Hon'ble Apex Court further observed that the test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application, and, where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. Further observed that, by and large however, if two views are equally

possible and the judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

[22] This Court finds that the Special Judge has not committed any error in discharging the accused. No sanction has been granted for prosecuting the officers of the oil companies. The assessment made by the Special Judge discharging the accused is consistent with the record.

[23] In view of the reasons given herein above, the orders passed by the learned Special Judge discharging the accused - respondents herein are just and correct, the findings are in accordance to the documents on record, the accused are rightly discharged, as there are no sufficient grounds for proceedings against them. Hence, all the present revision applications fail merits and are dismissed as rejected.