

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 02ND DAY OF JUNE, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.5297 OF 2023

BETWEEN:

MR. SURYA SAREEN
S/O LATE K.N.SAREEN
AGED ABOUT 76 YEARS
PRESENTLY RESIDING AT NO.15007
BOHLMAN ROAD, SARTOGA
CALIFORNIA
THE UNITED STATES OF AMERICA - 95070

... PETITIONER

(BY SRI SANDESH J.CHOUTA, SR. ADVOCATE A/W.,
SRI CHINMAY J.MIRJI, ADVOCATE)

AND:

THE CENTRAL BUREAU OF
INVESTIGATION
ANTI-CORRUPTION BRANCH
BENGALURU
NO.49, KHANIJA BHAVANA
RACE COURSE ROAD
BENGALURU – 560 001

REPRESENTED BY THE
ADDITIONAL DIRECTOR
GENERAL OF POLICE

ANTI-CORRUPTION BRANCH.

... RESPONDENT

(BY SRI RAHUL KRISHNA REDDY P., ADVOCATE FOR
SRI. P. PRASANNA KUMAR, SPL. PP)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ORDER DATED 07.01.2023, 05.06.2023 AND THE ENTIRE PROCEEDINGS IN SPL.C.NO.27/2023 PENDING BEFORE THE HON'BLE XXI ADDITIONAL CITY CIVIL AND SESSIONS JUDGE AND PRL. SPECIAL JUDGE FOR CBI CASES AT BENGALURU (CCH-4) AS AGAINST THE PETITIONER.

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

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/accused No.4 is before this Court calling in question orders dated 07-01-2023, 05-06-2023 and entire proceedings in Special Case No.27 of 2023 pending before the XXI Additional City Civil and Sessions Judge and Principal Special Judge for CBI Cases at Bangalore arising out of FIR No.RC0372020A0017 registered for offences under Sections 120B r/w 420 of the IPC and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Facts, in brief, adumbrated are as follows:-

The petitioner/accused No.4 is said to be the President and Chief Executive Officer of M/s AKON Inc., a Corporation incorporated under the laws of the State of California, United States of America. One Mr. Fred Brewer retires from the post of President of M/s AKON. It is then the petitioner becomes the President and CEO of M/s AKON. On 23-03-2007 Defence Avionics Research Establishment ('DARE') and Defence Research and Development Organization ('DRDO') notified a global tender for procurement of VO based radio frequency engines. M/s AKON Inc. emerges as the successful tenderer and was accordingly awarded the contract. A purchase order on 11-07-2007 was issued to M/s AKON Inc. in which the payment terms decided was that 90% to be paid through Line of Credit ('LoC') at State Bank of India upon delivery of generators and the final payment after approval. In terms of the purchase order, M/s AKON is said to have shipped 12 units on 19-02-2009, 12 units on 23-02-2009 and 11 units on 27-02-2009. On 04-03-2009 the first 24 units were received by DARE, DRDO and

the remaining 11 units were received on 11-03-2009. As on 11-03-2009, all the 35 units were shipped.

3. There appears to be some mischief played in the said shipping. The CBI was asked to step in and conduct a preliminary inquiry. The preliminary inquiry leads to several communications between the officer bearers of M/s AKON and other accused during the years 2009, 2010 and 2011. Communications also galore between M/s AKON and DARE, DRDO on the score that they were faulty machines. On 16-03-2012 a complaint is preferred to the Director (Vigilance) by DARE, DRDO highlighting irregularities in the procurement of VO based RF engines and also complained that balance payments made to M/s AKON were deliberately and erroneously done after the expiry of warranty period. After about 5 years of conduct of inquiry by the CBI, the Ministry of Defence, Government of India registers a complaint. The preliminary inquiry was again conducted by the CBI which revealed certain public servants and private persons involved in the entire episode. A crime, after three years of preliminary inquiry, comes to be registered by the CBI for the afore-quoted offences. The CBI

conducts investigation and after two years filed a charge sheet before the concerned Court against the petitioner and three others on 12-12-2022. The learned Special Judge takes cognizance of the offence against the petitioner and others on 07-01-2023 and issues summons on 05-06-2023. It is those orders that have driven the petitioner to this Court in the subject petition.

4. Heard Sri Sandesh J. Chouta, learned senior counsel appearing for the petitioner and Sri Rahul Krishna Reddy P, learned counsel for Sri P. Prasanna Kumar, learned Special Public Prosecutor for the respondent.

5. The learned counsel representing the petitioner would contend that there are no specific allegations against the petitioner in the charge sheet or specific overt acts attributed to him to satisfy the ingredients of the alleged offences. The primary ingredient for the offence of conspiracy should be meeting of minds. That meeting of minds has never happened in the case at hand and it is neither established while filing the charge sheet. It is his submission that statements of witnesses lack completeness as they fail to include

key statements to be taken of key personnel. There is gross delay in the investigation and filing of final report by the CBI, as it has taken three years for conduct of preliminary inquiry and two years for investigation to file a charge sheet. It is his submission that the complainant knew about irregularities way back in 2012 and no action was taken. Therefore, his emphatic submission is that the proceedings are hit by gross delay and that delay has vitiated the proceedings. It is his further submission that the petitioner is not the sole owner of M/s AKON and it is having multiple shareholders; it is an incorporated Corporation and therefore, the petitioner could not have been singled out for allegations, as the IPC does not provide for vicarious liability and holds individual liable for the offence if there is concrete evidence of his involvement. To buttress all these grounds, several judgments are relied upon by the learned counsel for the petitioner, which would all bear consideration *qua* their relevance in the course of the order.

6. Per contra, Sri Rahul Krishana Reddy P., appearing for Sri P Prasanna Kumar, learned Special Public Prosecutor for CBI would contend that conspiracy is an offence, which has to be

inferred based upon circumstances surrounding the case and there can be no direct evidence of conspiracy. The petitioner being the President of M/s AKON Inc has cheated DARE, DRDO. M/s AKON supplied all dummy goods on purchase order. Accused No.1 and Accused No.3 were aware of the fact that Radio Frequency Generators delivered by M/s AKON headed by the petitioner were never in a working condition. In such cases where equipment is for defence, delay would not vitiate the proceedings, for the reason that there has been continuous communication between the parties. It is only after complete preliminary inquiry conducted and report submitted, FIR comes to be registered on 29-12-2020. M/s AKON did not supply proper goods as per tender, instead supplied units with empty castings which did not contain any component inside and after payment was made to M/s AKON for the goods, the goods were returned in the pretext of upgrade without conducting any test. Investigation led to entire activity of the petitioner himself and therefore, he is charged of the offence. It is no law that every breach of contract is civil in nature and therefore, proceedings must be quashed.

7. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

8. The afore-narrated facts are not in dispute. The dates, link in the chain of events are all narrated hereinabove; they would not require any reiteration. The issue begins from a purchase order by DARE, DRDO for the purchase of VO based Radio Frequency Engines. After the purchase order was placed, on 12-03-2009 one PW-18 representative of Indian entity of M/s AKON addresses a communication seeking complete details of each RF Generator and receives a reply from one Manager of M/s AKON, USA that the document might get modified minutely when real results of testing is available which they are conducting now. This would *prima facie* demonstrate that M/s AKON was still conducting the test of machines. On 02-04-2009 accused No.1 finds that several units were not at all working. But she is said to have released the payment in favour of accused No.2. Certain complaint had emerged in the year 2012 pursuant to which, internal inquiry had

commenced. Based upon the said internal inquiry, information emerged that non-working dummy units had been supplied.

9. The CBI was then asked to step in and conduct a preliminary inquiry into the matter. The preliminary inquiry was conducted for about 3 years and the result of the preliminary inquiry is that complaint comes to be registered against several accused on 29-12-2020. The complaint reads as follows:

"To

Head of the Branch,
CBI, ACB, Bangalore.

Sub:-Preliminary Enquiry report-reg.

Sir,

A Preliminary Enquiry vide PE 2(A)/2020/CBI/ACB/Bangalore was registered by CBI, ACB, Bangalore on 05.08.2020 against Smt. Priya Suresh N. (S-1), the then Scientist-D, DARE, DRDO, Bangalore; M/s. AKON Inc. (S-2), USA and unknown public Servant(s) & private persons based on the Letter No. 10/DO(Vig)/2014 dated 22.05.2017 written by Shri Surya Prakash, Director (Vigilance), Ministry of Defence, Govt. of India, Sena Bhawan, "B" Wing, New Delhi requesting inquiry/investigation into irregularities in procurement of 35 Nos. of 'VCO based RF Generator' from M/s. AKON Inc., USA for a total cost of US \$ 1080450/-by DARE (Defence Avionics Research Establishment), Defence Research and Development Organization (DRDO), Bangalore. The letter enclosed a copy of the complaint dated 16.03.2012 preferred by Shri Poiyamani S., the then STA 'C', DARE, DRDO, Bangalore alleging the irregularities and copy of the relevant Inquiry Committee Report. The preliminary enquiry was conducted after

obtaining previous approval U/s. 17(A) of PC Act' 1988 (as amended in 2018) issued by Under Secretary, Ministry of Defence (Vigilance), Sena Bhawan, New Delhi vide Letter No. 10/DO(/vig.)/2014 dated 20.07.2020, and the enquiry in this case was entrusted to the undersigned.

2. It is submitted that a thorough enquiry was conducted by the undersigned into the irregularities into the procurement of 35 Nos. of 'VCO based RF Generator' from M/s. AKON Inc., USA by DARE (Defence Avionics Research Establishment), Defence Research and Development Organization (DRDO), Bangalore. The enquiry conducted by the undersigned revealed as under:-

2.1 During 2007, the RF Division, DARE, DRDO, Bangalore was given the task of making simulators for the operational testing of various Radar EW (Electronic Warfare) Systems before the same were handed over to the Indian Air Force. Meanwhile during the same period, the various Divisions/ Wings of DARE were working on various Radar EW projects and all the RF based support to these projects was provided by DARE's RF Division. For the lab testing of such Radar EWs, the RF Division decided to procure 35 Nos. of VCO Based RF Generators.

2.2 The Enquiry revealed that in due course after completing the Global Tendering Process, a Purchase Order No. DARE/FPD/VVLE/PO-02/2007-08 dated 11.07.2007 (later amended as DARE/FPD/EWSFA/PO-18/2007-08 dated 11.07.2007) was issued under the signatures of Shri K. S. Manjunatha, the then SSO-II (Senior Stores Officer-II), DARE, DRDO, Bangalore to M/s. AKON Inc., USA through Air Mail and Fax and the same was received and acknowledged by the vendor namely M/s. AKON Inc., USA. As per the said Purchase Order, 90% of net value was to be drawn against Letter of Credit on presentation of following documents through State Bank of India, St. Marks Road, Bangalore:-

- (i) Airway Bill
- (ii) Packing List

- (iii) Manufacturer's Guarantee/Warranty Certificate, if any
- (iv) Country of Origin Certificate
- (v) Material Test Certificate (if applicable)

2.3 The Enquiry revealed that, M/s. AKON Inc. USA shipped 12 Units (Sl. Nos. 1-12) on 19.02.2009, another 12 Units (Sl. Nos. 13-24) on 23.02.2009 and the remaining 11 Units (Sl. Nos. 25-35) of purported VCO Based RF Generators on 27.02.2009 and in due course the 24 Units (S/N. 1 to 24 bearing Model No. A25-MH217) pertaining to first two consignments were delivered by Mis, Balmer Lawrie to Stores, DARE, Bangalore on 04.03.2009. The remaining 11 Units (S/N. 25 to 35) were delivered on 11.03.2009. The average weight of 35 Nos. of purported VCO based RF Generators received at DARE on 04.03.2009 and 11.03.2009 was about 1 Kg as per the relevant Delivery Challans and respective Bills of Entries.

2.4 The Enquiry revealed that all the above said 35 Units of purported 0.5-18.0 GHz VCO Based RF Generators (Model No. A25-MH217), received at DARE, DRDO, Bangalore on 04.03.2009 and 11.03.2009, were inspected & accepted by Smt. Priya N. Suresh, the then Scientist 'D' & Head of RF Division by signing the respective Certificate Receipt Vouchers (CRV) and Internal Demand and Issue Vouchers (IDIV).

2.5 The Enquiry revealed that as per the Terms of the Purchase Order, 90% payment of net value viz. US \$ 333,396 (Rs. 1,72,78,248/-) against Import Bill number 0686109SS0036175, US \$ 305,613 (Rs. 1,58,33,046/-) against Import Bill number 0686109SS0036213 and US \$ 333,396 (Rs. 1,72,91,584/-) against Import Bill number 0686109SS0036189 was made to M/s. AKON Inc., USA by SBI, Overseas Branch, Bangalore on behalf of DARE against the LC No. 0686109IM0025088 on 02.03.2009, 03.03.2009 and 12.03.2009 respectively.

2.6 The enquiry also revealed that there were email communications among DARE officials Dr. U V. Revankar,

Director, Smt. Priya Suresh N., Scientist 'C' and Shri Rajeev R., Scientist 'C' and the officials/ representative of M/s AKON Inc. during the period from 03.03.2009 to 31.03.2009 regarding the drawings and other technical specifications. It is revealed that at the request of DARE, on 10.03.2009, Shri Pandurang Deshmukh, the local representative of M/s. AKON had sent an e-mail to Mr. John Stokes of M/s. AKON Inc., USA seeking complete details of each connector for VCO based RF Generator. Subsequently, on 12.03.2009, Shri Pandurang Deshmukh received a reply through e-mail on 12.03.2009 from Shri Avinash Ratra, Engineering Manager, M/s AKON Inc., USA forwarding an outline drawing & preliminary ATP document for VCO and stating that "the document might get modified very minutely when real results of our testing are available which we are doing now". The email was also forwarded to Smt. Priya Suresh. The said email communications clearly reveal that the technical personnel of M/s AKON Inc were only finalising the specifications and conducting the testing of the units even when the units were delivered at DARE in the said period as per the records.

2.7 The Enquiry clearly revealed that the 35 Units of purported 0.5-18.0 GHz VCO Based RF Generators (Model No. A25-MH217) shipped by the vendor M/s. AKON Inc., USA during February' 2009 and received at DARE on 04.03.2009 and 11.03.2009 were incomplete units/outer casings without electronic components inside. Smt. Priya Suresh N., Scientist 'C' and Divisional Head, RF Lab accepted these 35 Units of purported 0.5-18.0 GHz VCO Based RF Generators (Model No. A25-MH217) in to the stores on 04.03.2009 and 11.03.2009 by signing the Certificate Receipt Vouchers as Inspecting Officer even when she was having the knowledge through the emails from the representatives of M/s AKON that the said units were only at the development stage. As the Divisional Head, RF Lab, she did not conduct any functional testing of these units at the time of accepting the said units in the stores. The enquiry has clearly revealed that M/s. AKON Inc., USA had shipped incomplete units of 35 Nos. of 0.5-18.0 GHz VCO Based RF Generators (Model No. A25-MH217) in February 2009 with the intention to cheat

DARE and availed the payments fraudulently and Smt. Priya Suresh facilitated the same by accepting the above units without conducting any functional testing of these units even when she was having the knowledge from the emails of the representatives of M/s AKON Inc that the units were at the testing and development stage.

2.8 The Enquiry revealed that the Units bearing Sl. Nos. 1-12 were sent back for upgrade/ repair vide Material Gate Pass No. 827 dated 02.04.2009 and as per the approval taken vide ION No. DARE/RFD/ION/13 dated 25.03.2009. Similarly, the Units bearing Sl. Nos. 13-24 were sent back for upgrade/ repair vide Material gate Pass No. 832 dated 22.04.2009 and as per the approval taken against ION No. DARE/RFD/ION/26 dated 22.04.2009. The remaining 11 Units bearing Sl. Nos. 25 to 35 (which were received at DARE on 11.03.2009) remained idle unused and untested at RF Lab till July' 2011 and the same were returned for upgrade/ repair vide Material Gate Pass No. 611 dated 25.07.2011 and as per the approval taken vide I.O.N. No. DARE/RFD/gate Pass/12 dated 25.07.2011. It is revealed that vide the I.O.N. No. DARE/RFD/gate Pass/12 dated 25.07.2011, Smt. Priya Suresh N., the then Scientist 'D' cum Divisional Head of RF Division had reported to the then Director that the said 11 units were found "totally not working" and had sought his approval for the return of the said units to M/s. AKON Inc., USA (Vendor) for repair. Thus the enquiry clearly revealed that after facilitating M/s AKON Inc with payments against non-functional units, the said units were returned back to the vendor in the pretext of upgrade without conducting any functional testing or by stating or ascertaining the nature of the upgrade or its specifications.

2.9 It is revealed that out of all the 35 returned units, a total of 16 units (Sl. Nos. 1-15 & 35) were subsequently returned (2nd delivery at DARE) by AKON Inc. USA to DARE during different time periods (during 2010 to 2019). But, 6 items (Sl. Nos. 1-4, 6 & 9) out of above said 16 items, were once again returned by DARE to M/s AKON Inc. (during 2011) and out of these 6 items, as on date, only 3 items (Sl. Nos. 1-3) have been returned/re-delivered by M/s. AKON Inc to DARE (during 2011 & 2017). As such as on date only 13 items are currently held with DARE and remaining 22 items are still

lying with M/s. AKON Inc, USA. Though the average weight of the repaired/ upgraded (as claimed by the vendor) units is approx. 3.6-Kg, which is significantly higher than the average weight (1 Kg.) of the original dummy units supplied by the vendor, none of them is found functional or meeting the specifications of the relevant Purchase Order issued by DARE to M/s. AKON Inc., USA.

2.10 The Enquiry revealed that even after having the knowledge that 90% payment was already made to the vendor for the supply of the incomplete non-functional units and only 12 non-functional units were held with DARE and the remaining 23 units were still held by the vendor in USA, Smt. N. Priya Suresh, the then Scientist 'D' & Divisional Head, RF Lab recommended for the payment of balance amount to the vendor in USA i.e. M/s. AKON Inc., USA by falsely stating on the relevant Note-07 dated 31.01.2011/02.02.2011 that "**Units are working satisfactorily**". Later, as per the request of DARE, SBI, Overseas Branch, Bangalore made a payment of USD 54022.50 (Rs. 24,33,984) through wire transfer to the M/s. AKON Inc., USA on 22.3.2011. It is pertinent to mention that a few months after recommending and facilitating the payment of balance amount to the vendor in USA, Smt. N. Priya Suresh, the then Scientist 'D' & Divisional Head, RF Lab herself issued an I.O.N. No. DARE/RFD/gate Pass/12 dated 25.07.2011 reporting therein that the said 11 Units bearing Sl.Nos.25 to 35 were found "**totally not working**" and sought Director's approval for the return of the said units to M/s. AKON Inc., USA (Vendor) for repair.

2.11 The enquiry revealed that even though the subject VCO Based RF Generators (main component of VCO based Radar Threat Simulators) were not supplied by the vendor in USA, -as per the Demand made by RF Divisions a Supply/ Work Order for "Integration, Electrical cum Mechanical Assembly and Testing of VCO Based Radar Threat Simulator" at an estimated cost of Rs. 9.50 Lakhs, was awarded to M/s. AIDIN Technologies Pvt. Ltd.. Bangalore. Subsequently the manpower supplied by M/s. AIDIN Technologies Pvt. Ltd., Bangalore was utilized for some other job as no functional VCO Based RF Generator was supplied by the vendor. Instead

of modifying/ cancelling the Work Order, RF Division facilitated payment to M/s. AIDIN Technologies Pvt. Ltd., Bangalore on the basis of false IDIV for CRV Items and Job Completion Certificate- Cum- IDIV. The job for which the supply order was awarded to M/s. AIDIN Technologies Pvt. Ltd., Bangalore was not completed as the main component the Radar Threat Simulator i.e. VCO Based RF Generators were not supplied by the vendor M/s. AKON Inc., USA.

3 The enquiry has revealed that Smt Priya Suresh, the then Scientist 'C/ Scientist 'D' cum Divisional Head, RF Division, DARE, Bangalore was in conspiracy with M/s. AKON Inc. (A-2), USA represented by Shri Surya Sareen, President & CEO of M/s. AKON Inc., USA and other officials of DARE and in furtherance of the conspiracy, she had abused her official position by accepting the non-functional units supplied by M/s. AKON Inc., USA and by recommending balance payment to the firm. Hence it is requested to initiate legal action by registering a F.I.R. against the accused namely Smt. Priya Suresh N. (A-1), the then Scientist 'C/ Scientist 'D' cum Divisional Head, RF Division, DARE, Bangalore (Currently working as Scientist 'E') and M/s. AKON Inc. (A-2), USA represented by Shri Surya Sareen, President & CEO of M/s. AKON Inc., USA, unknown Officials of DARE and unknown private persons for commission of offences U/s. 120-B of IPC r/w 420 IPC and U/s. 13 (2) r/w Sec. 13 (1) (d) of PC Act, 1988. It is further recommended that the role of other concerned DARE officials may also be thoroughly looked into during the course of investigation.

Sd/-
29/12/2020
(Brajesh Kumar)
Dy. Supdt. of Police
CBI, ACB, Bangalore."

(Emphasis added)

This results in a crime being registered by the CBI for the afore-quoted offences. After formal registration of crime, the CBI filed a

charge sheet on 12-12-2022. The charge sheet is filed against several accused. The offences alleged are Section 120B and 420 of the IPC and Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. Accused were four in number, the 4th being the petitioner. The allegations in the charge sheet are vividly brought out by the CBI insofar as each of the accused. Certain paragraphs of the summary of charge sheet are necessary to be noticed. They read as follows:

"....

- 1.15. The investigation thus revealed that M/s. AKON Inc. USA had shipped 12 Units (Sl. Nos. 1-12) on 19.02.2009, another 12 Units (Sl. Nos. 13-24) on 23.02.2009 and the remaining 11 Units (Sl. Nos. 25-35) on 27.02.2009 and against the said shipments the vendor in, USA had raised Invoice Nos. 7828 dated 19.02.2009, 7830 dated 23.02.2009 and 7838 dated 27.02.2009 respectively in favour DARE, DRDO, Bangalore. The investigation further revealed that all the above said imports at Bengaluru International Airport were facilitated by M/s. Balmer & Lawrie, on behalf of DARE, DRDO, Bangalore and in due course the 24 Units (S/N. 1 to 24) of the purported 0.5-18.0 GHz VCO Based RF Generators (Model No. A25-MH217) pertaining to first two consignments were delivered by M/s. Balmer Lawrie to Stores, DARE, Bangalore on 04.03.2009 vide Delivery Challan Nos. 00094 & 00095 both dated 04.03.2009 whereas the remaining 11 Units (S/N. 25 to 35) were delivered on 11.03.2009 vide Delivery Challan No. 17298 dated 11.03.2009. It is further revealed that the average weight of 35 Nos. of purported VCO based RF Generators received at DARE on 04.03.2009 and 11.03.2009 was

about 1 Kg as per the above said Delivery Challans and respective Bills of Entries.

- 1.16 The investigation revealed that in pursuance of the conspiracy, all the above said 35 Units of purported 0.5-18.0 GHz VCO Based RF Generators (Model No. A25-MH217), received at DARE, DRDO, Bangalore on 04.03.2009 and 11.03.2009, were fraudulently recorded to be inspected & accepted by Smt. Priya N. Suresh (A-1), the then Scientist 'D' & Head of RF Division by signing the respective Certificate Receipt Vouchers (CRV) and Internal Demand and Issue Vouchers (IDIV) with the dishonest intention to allow payments to the A-2 company. As per the statements of the witnesses who were colleagues of A-1 and e-mail communications retrieved during investigation, it is clear that, both Smt Priya Suresh (A-1) and Dr. U.K. Revankar (A-3), were aware of the fact that the 35 units delivered by A-2 company in March, 2009 were not in working condition. The investigation revealed that the units received at DARE during the above period were empty casings and did not contain any component inside.**
- 1.17 The investigation revealed that as per terms of Purchase Order, 90% of net (invoice) value was to be paid to the supplier i.e. M/s. AKON Inc., USA (A-2) through Letter of Credit and as such meanwhile during January' 2009, in anticipation of shipment by the vendor in USA and arrival at DARE, Bangalore of the above said 35 Nos. of VCO based RF Generators, as per the request of DARE, the LC No. 0686109IM0025088 was issued by SBI, Overseas Branch, Bangalore for the beneficiary M/s. AKON Inc., USA (A-2). As per the said LC, documents viz. Air Consignment Note, Invoice, Packing List etc. were stipulated to be submitted by the supplier to SBI, Overseas Branch, Bangalore. Investigation revealed that as per the relevant Purchase Order No. DARE/FPD/VVLE/PO-02/2007-08 dated 11.07.2007 (later amended as DARE/FPD/EWSFA/PO-18/2007-08 dated 11.07.2007). 90% of net value was to be drawn**

against LC on presentation of specific documents that also included Manufacturer's Guarantee/Warranty Certificate, if any and Material Test Certificate (if applicable). However, while requesting for opening of the LC at SBI, DARE did not request for the stipulation of Manufacturer's Guarantee/ Warranty Certificate and Material Test Certificate as mandatory LC documents.

Date of Invoice	Commercial Invoice No.	Particulars	Sl. Nos. of Units	Amount (in USD)
19.02.2009	7828	0.5 18.0 GHz VCO Based RF Generators Model No. A25-MH217	Sl. Nos. 1 to 12 (12 Units)	3,33,396
23.02.2009	7830	0.5 18.0 GHz VCO Based RF Generators Model No. A25-MH217	Sl. Nos. 13 to 24 (12 Units)	3,33,396
27.02.2009	7838	0.5 18.0 GHz VCO Based RF Generators Model No. A25-MH217	Sl. Nos. 25 to 35 (11 Units)	3,05,613

- 1.18 The investigation revealed that against the above said Invoice No. 7828 dated 19.02.2009, pertaining to shipment of 12 Units of VCO Based RF Generators (Sl. Nos. 1-12), and other stipulated documents and as per the Terms of the Purchase Order, a "Debit Advice for Import Bill Payment" dated 02.03.2009 was issued by SBI, Overseas Branch, Bangalore to DARE, Bangalore which shows that the relevant Import Bill number 0686109SS0036175 for US \$ 333,396 (Rs. 1,72,78,248/-) was paid by SBI, Overseas Branch, Bangalore on behalf of DARE to M/s. AKON Inc., USA **(A-2)** against the said LC No. 06861091M0025088 on 02.03.2009. Similarly, against the above said Invoice No. 7830 dated 23.02.2009, pertaining to shipment of another 12 Units of VCO Based RF Generators (Sl. Nos. 13-24) and other stipulated documents, a sum of US \$ 333,396 (Rs. 1,72,91,584/-) was paid by SBI, Overseas Branch, Bangalore, on behalf of DARE, to M/s. AKON Inc., USA (A-

2) vide Import Bill number 0686109880036189 on 03.03.2009. Finally, against the Invoice No. 7838 dated 27.02.2009, pertaining to shipment of remaining 11 Units of VCO Based RF Generators (Sl. Nos. 25-35) and other stipulated documents, a sum of US \$ 305,613 (Rs. 1,58,33,046/-) was paid by SBI, Overseas Branch, Bangalore, on behalf of DARE, to M/s. AKON Inc., USA (**A-2**) vide import Bill number 0686109SS0036189 on 03.03.2009. Finally, against the Invoice No. 7838 dated 27.02.2009, pertaining to shipment of remaining 11 Units of VCO Based RF Generators (Sl. Nos. 25-35) and other stipulated documents, a sum of US \$ 305,613 (Rs. 1,58,33,046/-) was paid by SBI, Overseas Branch, Bangalore, on behalf of DARE, to M/s. AKON Inc., USA (**A-2**) vide Import Bill number 0686109SS0036213 on 12.03.2009. The timeline of initial shipments made by M/s. AKON Inc., USA (**A-2**), initial deliveries received by DARE, DRDO, Bangalore and the payments (90% as per terms of Purchase Order) made through LC against the respective supplies, in respect of above said 35 Nos. of VCO based RF respective Generators can be summarized as below:-:-

Units (VCO Based RF Generators)	Shipped by M/s. AKON On	Received at DARE on	Payment Made through LC on
Sl. Nos. 1-12 (12 Units)	19.02.2009	04.03.2009	02.03.2009
Sl. Nos.13-24 (12 Units)	23.02.2009	04.03.2009	03.03.2009
Bl. Nos.25-35 (11 Units)	27.02.2009	11.03.2009	12.03.2009

1.19 The investigation thus revealed that Smt Priya Suresh (A-1) and Dr. U.K. Revankar (A-3) facilitated the payments to the A-2 company in spite of having the knowledge that the units delivered at DARE were non-functional empty casings. All the above said 35 Units received at DARE, DRDO, Bangalore on 04.03.2009 and 11.03.2009, were fraudulently

shown to be inspected by Smt. Priya N. Suresh, the then Scientist 'D' & Head of RF Division and she accepted the same by signing the respective Certificate Receipt Vouchers (CRV) and Internal Demand and Issue Vouchers (IDIV).

- 1.20 The investigation revealed that after accepting the above said 35 non-functional units (24 Units on 04.03.2009 and 11 Units on 11.03.2009) and releasing the payments to the A-2 company, as a party of the conspiracy, Smt Priya Suresh (A-1), Head of RF Division after obtaining approval of the then Director, Dr. U.K. Revankar (A-3) returned the 24 Units (Sl. Nos. 1-24 received on 04.03.2009), out of the total 35 Units, to M/s. AKON Inc., USA (A-2) during March-April' 2009 itself in the pretext of repair/ upgrade without conducting any test on the said units. The Units bearing Sl. Nos. 1-12 were sent back for upgrade/repair vide Material Gate Pass No. 827 dated 02.04.2009 and as per the approval taken vide ION No. DARE/RFD/ION/13 dated 25.03.2009. Similarly, the Units bearing Sl. Nos. 13-24 were sent back for upgrade/ repair vide Material gate Pass No. 832 dated 22.04.2009 and as per the approval taken against ION No. DARE/RFD/ION/26 dated 22.04.2009. The dishonest intention of the accused was very evident in the above act as the units were returned in the pretext of upgrade /repair without conducting any test, without confirming the scope of update and without confirming the time schedule of upgrade and without obtaining Security deposit/ Bank Guarantee.
- 1.21 The investigation revealed that the remaining 11 Units bearing Sl. Nos. 25 to 35 (which were received at DARE on 11.03.2009) remained idle unused and untested at RF Lab till July' 2011 and the same were returned for upgrade/ repair vide Material Gate Pass No. 611 dated 25.07.2011 and as per the approval taken vide I.O.N. No. DARE/RFD/Gate Pass/12 dated 25.07.2011. It is revealed that vide the I.O.N. No. DARE/RFD/Gate Pass/12 dated 25.07.2011, Smt. Priya Suresh N. (A-1), the then

Scientist 'D' cum Divisional Head of RF Division had reported to the then Director that the said 11 units were found "**totally not working**" and had sought his approval for the return of the said units to M/s. AKON Inc., USA (**A-2**) (Vendor) for repair. Dr. U. K. Revankar (**A-3**), the then Director, after perusing the said I.O.N., had approved for the return of the said 11 units for repair against RMA No. 201154 as assigned by the vendor in USA and accordingly the units were sent to the vendor in USA for repair on 25.07.2011

....

- 1.30 **The investigation has further revealed that few months after recommending and facilitating the payment of balance amount to the vendor in USA, Smt. N. Priya Suresh (A-1), the then Scientist 'D' & Divisional Head, RF Lab herself issued an, I.O.N. No. DARE/RFD/gate Pass/12 dated 25.07.2011 reporting therein that the said 11 Units bearing Sl. Nos. 25 to 35 (which were received at DARE on 11.03.2009 and remained idle untested & unutilized till July' 2011 when they were returned to the vendor for repair/ update) were found "**totally not working**" and sought Director's approval for the return of the said units to M/s. AKON Inc., USA (A-2) (Vendor) for repair, which corroborates the criminal intent and related omissions/ commissions off the part of Smt. N. Priya Suresh (A-1), the then Scientist 'D' & Divisional Head of RF Lab in the procurement of subject 35 Nos. of VCO Based RF Generators.**
- 1.31 The investigation has thus revealed that M/s. AKON Inc. (**A-2**), represented by its President & CEO namely Shri Surya Sareen Prakash (**A-4**), in collusion with DR. UK Revankar (**A-3**), the then Director. DARE & Smt. N. Priya Suresh (**A-1**), the then Scientist 'C'/ Scientist 'D' & Divisional Head of RF Lab have conspired among themselves and delivered dummy non-functional VCO Based RF Generators to M/s. DARE and did not even supply a single repaired unit meeting specifications of the

subject Purchase Order even after a lapse of almost 13 years after the said delivery to DARE and thus cheated DARE to the tune of Rs. 5,28,36,862/- plus applicable interest thereon.

1.32 Hence, the charge-sheet is filed against

- (i) Smt. Priya Suresh N.. (A-1), the then Scientist 'C'/ Scientist 'D' cum Divisional Head, RF Division, DARE, Bangalore.**
- (ii) M/s. AKON Inc., USA (A-2) represented by Shri Surya Sareen (A-4). President & CEO of M/s. AKON Inc., USA (A-2) having its Head office-2135, Ringwood Ave., San Jose, CA 95131-1725, USA.**
- (iii) Dr. U.K. Ravenkar, the then Director, DARE (A-3)**
- (iv) Shri Surya Sareen (A-4), President & CEO of M/s. AKON Inc., USA (A-2)**

for commission of offences **U/s. 120-B of IPC r/w 420 IPC and U/s. 13 (2) r/w Sec. 13 (1) (d) of PC Act, 1988."**

(Emphasis added)

To arrive at the aforesaid findings in the charge sheet, statements of witnesses are recorded by the CBI. The statements of witnesses clearly pin down the petitioner for all the acts. The statement of one Pandurang Deshmukh is as follows:

"RC-17(A)/2020/CBI/ACB/BLR

Bangalore
Date: 06.04.2022

Statement of Shri Pandurang Deshmukh (DOB- 13.09.1969), S/o Shri Raghavendra Rao, General Manager (Business Development), M/s. AKON Electronics India Pvt. Ltd., No. 906, Raj Arcado, Mezzanine Floor, 5TH A Cross, 1ST Block, HRBR Layout, Kalyan Nagar, Bangalore-560043; Present and permanent resident of Flat No. 4131, Prestige Gulmohar Apartments, Horamavu Main Road, Horamavu, Bangalore-560043. PAN No.: AALPD9402C; Aadhaar No.: 2542-6030-6311; Ph.: 080-43728513 (Off.). 9741866611 (Mob.); E-mail ID-pdeshmukh @akonelectronics.com pandurang deshmukh@gmail.m.

I am as above. I was born and brought up in Gulbarga, Karnataka. I completed my B.Sc. from Government College, Gulbarga, Karnataka in the year 1990. I joined M/s. International Marketing and Services, Bangalore as Marketing Executive during 1991 and worked there in the same capacity till 1993. Thereafter, I worked in M/s. Merlinhawk Associates Pvt. Ltd., Bangalore as Marketing Executive/ manager (Marketing) from 1993 to 2000. From 2000 to 2003, I worked in M/s. Syratron Marketing Pvt. Ltd., Bangalore as General Manager (Marketing). Subsequently, I worked in M/s. Hitech Telecom Pvt. Ltd. as General Manager (Marketing) during the period from 2003 to 2006. Thereafter, I re-joined M/s. Syratron Marketing Pvt. Ltd., Bangalore as General Manager (Marketing) and worked there till 2009, I joined M/s. AKON Electronics India Pvt. Ltd. as General Manager (Business Development) during 2009 and since then till date I have been working in this company in the same position.

On being asked, I state that **M/s. AKON Electronics India Pvt. Ltd.** is a private limited company and its registered office is situated at 11-12, Vaishali 'A' Block, Community Centre, Paschim Vihar, Delhi-110063. The company was incorporated on 16.01.1985 and is registered with Registrar of Companies, Delhi. Shri Surya Sareen Parkash and Shri Sandeep Sareen are the promoter directors in this company, however, both of them are US citizens. Sri Sodhi Ram Sharma is the other (Indian) Director in M/s. AKON Electronics India Pvt. Ltd. M/s. AKON Electronics India Pvt. Ltd. is a wholly owned subsidiary of M/s. AKON Inc., USA **Shri Surya Sareen Parkash is the President**

& CEO of M/s. AKON Inc., USA as well as Managing Director of M/s. AKON Electronics India Pvt. Ltd.

I state that M/s. Akon Electronics India Pvt. Ltd. has been supplying Microwave components and Assemblies for defence and space applications for over 20 years. The company has certified lab spaces for manufacturing RF/Microwave Assemblies for space applications. The company is a leading supplier of Microwave products for Airborne, Ground, Ship-borne and Space applications in India. AEI-supplied hardware can be found in almost every major EW (Electronic Warfare) program in India. The company has been in the business of custom built design, manufacture, and supply of highly reliable, state-of-the-art Microwave components and sub-systems in the 0.5GHz to 18GHz frequency range. The company has contributed to major Defence and Space programs in India, like TEMPEST, Tarang, Samyukta, Sangraha, Varuna, Chandraayana and GSAT. The company is having its Design & Manufacturing Unit situated at Bahadurgarh, Haryana and Business Development Office (BDO) in Bangalore. The BDO of the company situated in Bangalore is headed by me.

On being asked, I state that M/s. AKON Inc., USA. was incorporated on 31-10-1980 at California, USA, with the address Head office- 2135, Ringwood Ave., San Jose, CA 95131-1725, USA, by Shri Surya Sareen, who is the President and CEO of this company. **This firm is in business for about 41 years and Shri Surya Sareen is the sole owner of this company and he is holding major shares of this company**, his son Shri Sandeep Sareen is director of this Company. Ms. Neha Sareen, D/o Shri Surya Sareen was working for about 2 years during 2008-09 after her completion of her education and leaving separately with her husband at US. On being also shown the profile of M/s. AKON Inc., USA collected from Dan and Bradstreet Information Services India Pvt Ltd. after going through the same I state that the details are 100% correct and **Shri Surya Sareen is the only independent owner of the M/s. AKON Inc., USA and he is the beneficiary of M/s. AKON Inc., USA and he is the beneficiary of the company.**

I further state that M/s. AKON Inc., has been a leading supplier of microwave products for airborne, ground, shipboard and space applications since 1980. I state that AKON-designed

hardware can be found in almost every major EW program in the free world. Leading defence contractors such as Lockheed Martin, Northrop Grumman, BAE Systems, Raytheon, DRS Systems, Naval Research Laboratory, Jet Propulsion Lab, Indian Air Force, Turkish Navy, to name just a few have chosen AKON as their supplier of choice for tuners, log components, frequency measurement modules, miniature switches and filters, frequency synthesizers, phase shifters, front-end receivers, up/down-converters as well as other microwave components and subsystems.

On being asked, I state that while working as General Manager (Business Development) in M/s. Akon Electronics India Pvt. Ltd., I have also been responsible for liaisoning with the Indian clients of our parent company M/s. AKON Inc., USA. On being asked, I state that **I, on behalf of M/s. AKON Inc., USA, have been liaisoning with Defence Avionics Research Establishment (DARE), Defence Research & Development Organization (DRDO), Bangalore in respect of various pending orders issued/awarded by DARE to M/s. AKON Inc., USA.**

On being shown and asked I state that these email printouts were seized from our office during search conducted on 2.1.2021. Further I state that the email dated 16.2.2009 was sent by me from my email id pdeshmukh@akonelectronics.com to inform Lynette Ovalle on the email id of Mr.SuryaSareen I.e., sps268@kol.com wherein I have informed the establishment of LC(Letter of credit) through SBI St.Marks road Bangalore.

On being shown and asked I state that email dated 18.2.2009 was sent by me from my email id pdeshmukh@akonelectronics.com to Mr.SuryaSareen on his email Id sps268@kol.com to inform that LC has already been established and requested Mr.SuryaSareen to arrange for the final outline and dimensions of the unit as requested by Dr.Revankar who had requested me over phone to arrange the outline and dimensions of the VCO based RF generators unit.

On being shown and asked I state that email dated 18.2.2009 is a reply email received by me from Blancachi

having email id bchi@akoninc.com stating that the LC has been received by AKON and the unit will be shipped in this week.

On being shown and asked I state that email dated 3.3.2009 is an email received by me from Rajeev Ramachandran having email id rajeevr@inbox.com in which he has stated that "Please let me know if the attached file on the VCO based RF generator has the latest pin out and mechanical details. I can start work on the housing and power supply accordingly

On being shown and asked I state that email dated 6.3.2009 is an email sent by me to Priyasuresh on her email id priya.suresh@hotmail.com with a copy marked to Dr. Revankar having email id revankaruk@hotmail.com stating "Please find attached final drawing for the VCO based RF generator"

On being shown and asked I state that email dated 15.3.2009 is an email sent by me to Mr.SuryaSareen on his email id sps268@kol.com with a copy marked to Mr.AvinashRatra on aratra@akoninc.com stating "Dr.Revankar spoke with me again this afternoon, he was quite unhappy to know that the specs and draft ATP sent by AKON is for old model YIG based generator and not for the VCO based RF generator, your intervention is required on this issue, kindly arrange for the latest specifications as per DARE tender and arrange for pin layout etc."

On being shown and asked I state that email dated 12.3.2009 is an email received by me from Avinash Ratra having email id aratra@akoninc.com stating that" Attached please find the outline and the preliminary ATP document for VCO. The document might get modified very minutely when real results of our testing is available which we are doing now. Also outline drawing talks about all pin configuration for frequency as well as attenuation bits. Please let me know in case u need anything else.

On being shown and asked I state that email dated 12.3.2009 is an email received by me from Rajeev Ramachandran from email id rajeevr@inbox.com in which he has stated "The specifications of the VCO based RF generator as implied in the ATP document that you have forwarded to me is significantly different from DARE tender specs. The specs seems

to be same as that of the YIG based RF generator M/s Akon had supplied kindly clarify the same. We would like complete specification sheet (including pin layout current consumption) for the VCO based RF generator as soon as possible, as the system specification are to be derived as per this."

On being shown and asked I state that email dated 24.3.2009 is an email sent by me to Neha Sareen daughter of Mr.SuryaSareen on her email id neha@akoninc.com and copy marked Mr.SuryaSareen on his email id sps268@kol.com to stating that "I did speak with Mr.Sareen last evening (USA time) and he has assured me that he will review the final spec, outline, pin configuration etc. and arrange for the details by email to me.

On being shown and asked I state that email dated 31.3.2009 is an email received by me from Neha Sareen from her email id neha@akoninc.com stating that " Here is the final specs, formal outline and block diagram for DARE.

On being shown and asked I state that email dated 31.3.2009 is an email sent by me to Priya Suresh on her email id priya.suresh@hotmail.com stating that "Please find attached details on VCO based RF generator.

On being shown and asked I state that email dated 17.4.2009 is an email sent by me to Priya Suresh on her email id priya.suresh@hotmail.com with a copy to Dr.Revankar on his email id revankaruk@hotmail.com stating that "We have sent the attached letter by FAX to your stores division" the contents of the FAX dated 16.4.2009 are as below:

RMA no. (Return Material Authorisation) 200937 has been issued for the 12 units (Sn no.13 to 24 shipped to DARE under purchase order No.DARE/FPD/EWSFA/PO-18/2007/08 on 19.2.2009 please send the units back to as soon as possible and we can turn these around quite rapidly upon repair and return of these units will be issuing RMA's in parallel for the next set of units shipped to DARE.

On being shown and asked I state that email dated 21.6.2011 is an email received by me from Rajeev Ramachandran having email id rajeevr@inbox.com stating that "VCO generators S.No.3,4 which were found to be malfunctioning are to be returned to Akon for repair. Also the VCO generator that was brought by Mr.Avinash Ratra i.e., S.No.5 is also malfunctioning in the 6 GHz to 9 GHz band after working normally for few days. There is no output in this band, while the generator is functioning normally at all other frequencies, please issue the RMA No. for these generators so that they can be sent back to Akon for repair.

On being shown and asked I state that email dated 28.6.2011 sent by Smt. Uma who was working as sales co-ordinator in Akon electronics Bangalore from her email id suma@akonelectronics.com to purchase department of DARE with a copy marked to Priya Suresh on her email id priya.suresh@hotmail.com and another copy marked Sri. Yadaiah on his email id yadaiah.g@rediffmail.com and another copy marked to me stating that "RMA letter for S.No. 384 for VCO based RF generator model no.A25-MH217.

On being shown and asked I state that email dated 28.6.2011 is an email received by me from Smt.Priya Suresh from her email id priya.suresh@hotmail.com with a copy marked to Rajeev and Dr. Revankar stating that "Of the 35 VCO based RF generators that were received at DARE, S/Ns 1 to 25 were sent back to AKON for repair while the other 10 units S/N 26 to 35 are with DARE and have to be sent to AKON for repair.

"Repair:- of the 25 units that were sent to AKON for repair we have received 6 units, S/Ns 1 to 6 after repair

- 1) S/N 01 and 02 were found to be malfunctioning and were resent back to AKON for repair
- 2) S/N 03, 04 and 05 are with DARE. While S/Ns 03 and 04 are totally not working. S/N 05 is malfunctioning in the 6 GHz to 9 GHz band. They are to be sent back to AKON for repair.
- 3) S/N 06 is working normally at this point of time.

Please provide the RMA numbers for all the modules which are to be sent back to M/s AKON

On being shown and asked I state that these are the second set of email printouts and FAX message printouts seized from CBI during search on 2.1.2021. Further I state that the email dated 21.4.2014 sent by me to Rajeev Ramachandran having email id rajeevr@inbox.com and copy marked to Sri. Yadaiahon his email id yadaiah.g@rediffmail.com and copies to Sri. Thangaraj, Dr.K.Maheswar Reddy on the email id's thangaraj_dare@yahoo.co.in and inkmaheswarreddy@rediffmail.com stating that "one more VCO is ready for demonstration with improved performance. Kindly let us know if Mr.Rathi (from Bahadurgarh) can visit DARE for joint testing of unit. He will bring the unit from Delhi for demo.

On being shown and asked I state that FAX message printout dated 10.11.2014 containing letter from DARE dated 5.11.2014 addressed to AKON SANJOSE CALIFORNIA 95131. Further I state that this letter was sent through FAX which is signed by Smt.Priya Suresh Scientish "D" in which she has informed that

1. Quantity 35 numbers VCO based RF generators were shipped by M/s AKON by end of February 2009. The units were sent back for upgrade in 03 consignments from March 2009 to July 2009. So far only 07 numbers VCO based RF generators have been returned back by M/s AKON.

2. As about 03 years passed from the last consignment sent you are requested to intimate the status of readiness of the remaining 28 units for despatch.

3. Also please forward the unit wise test reports which will be verified and cleared by DARE before despatch of these units.

4. An early reply is highly appreciated."

On being shown and asked I state that email dated 26.11.2014 sent by me to Sri. SuryaSareen on his email id sps268@kol.com with copies to Sri.S.C.Khanna on his email Id sck@akonelectronics.com, Sridhar Perepa on his email id sperepa@akoninc.com, Saheb Singh Rathi on his email id ssrathi@akonelectronics.com, Vikas Verma on his email id vverma@akonelectronics.com, Avinash Ratra on his email Id

aratra@akoninc.com stating that "Please find below the comments from Mr.Rathi also please find attached a copy of letter sent to DARE, We need to provide the spec we can meet and tentative delivery schedule for the balance RMA units."

On being shown and asked I state that FAX message printout dated 03.2.2015 containing letter from DARE dated 2.2.2015 addressed to M/s AKON Bangalore Further I state that this letter was sent through FAX which is signed by Smt.Priya Suresh Scientist "D" in which she has informed as mentioned below

"1. With reference to your letter dated 24.12.2014, it was confirmed from your side that you will be sending the achieved specs vis-à-vis DARE's specifications on or before 10th Jan 2015, so far there is no communication received since the matter is urgent a meeting is scheduled at DARE to discuss on this matter preferably on 06th February 2015 at 14:00 hrs

2. You are requested to attend the same"

On being shown and asked I state that email dated 27.02.2015 sent by me to Sri SuryaSareen on his email id sps268@kol.com copy marked to Sridhar Perepa on his email id sperepa@akoninc.com stating about the proceedings of meeting at DARE which is as below

"The meeting was held at DARE this afternoon as scheduled.

Dr.Reddy was chairing the meeting, other scientists present were Mrs.Mini Cherian/Sc G, Mr. Thangaraj/ Sc F and Mrs. Priya/ Sc D.

They patiently listened and went to the presentation document after the presentation only one line comment from Dr.Reddy was- DARE needs all the balance units which meet tender/PO specs, including mechanical dimensions at the earliest. As AKON had received the PO against Global Tender and any deviation in specs/outline will be viewed seriously.

All though I have proposed 3 months time to start 3-4 units/month after realisation of the first 2 units, meeting the

specs and outline. The committee's view is, total programme will be again 9-10 months from now which is not acceptable.

On being shown and asked I state that email dated 02.03.2015 sent by me to Meriam Medina on her email id mmedina@akoninc.com with copies marked to Sri. Amarnath Premisiri on his email id m Sridhar Perepa on his email id sperepa@ekoninc.com and Sri SuryaSareen on his email id sps268@kol.com stating that "Please find attached TWO documents as we could not get the original specs issued by DARE, which was prior to April 2007 where in AKON-Bangalore started the operations/office in early 2009.

1. Document in response to tender from DARE:- page 10 and 11 of the document has compliance table with DARE specs and our/ AKON comments.
2. Document after the contract: This is similar to PDR, AKON had submitted this document in November 2007 on receipt of PO/contract from DARE.

On being shown and asked I state that email dated 22.4.2015 sent by me to Sri SuryaSareen on his email id sps268@kol.com copy marked to Sri.SC Khanna on his email id sck@akonelectronics.com stating that "It is becoming difficult to get the appointment confirmation from DARE and I request you to speak with Mrs. Manjula, (Director DARE)

On being shown and asked I state that FAX message printout dated 12.3.2015 containing letter the letter dated 12.3.2015 addressed to M/s AKON INC, RINGWOOD AVE. SAN JOSE, CA, USA signed by Mr.D.S. Tilak SSO II DARE in which he has informed that:-

There has been an inordinate delay from your side returning back of the units after up-gradation. Only 7 out of 35 units have been returned and the performance of the same as reported by us earlier, is not confirming to the committed specifications. Further I state that this FAX message was received at AKON Electronics Bangalore office.

Further state that Sri. Tilak has informed that: in view of the above, as was intimated to your reps in the meeting, you

are hereby requested to return all the units presently held with you immediately without any further delay along with latest unit-wise test reports. You are also that the units being returned fully comply with our original specifications. Schedule for returning the same may please be intimated by return FAX.

On being shown and asked I state that Sri. Tilak SSO II DARE sent another Fax message as Reminder-I on 25.3.2015 and Reminder-II on 10.4.2015 requesting to send the remaining VCO based RF generators at the earliest as the same are required for DARE project activities.

On being shown and asked state that the letter dated 7.04.2015 from Mr.SuryaSareen President and CEO of AKON INC USA addressed to Ms. J.Manjula OS and Director of DARE Bangalore is a email printout received at Akon Electronics India Bangalore office. Further I state that the letter was written by Sri SuryaSareen for requesting an appointment and necessary security clearance to visit DARE Bangalore office.

On being shown and asked I state that email sent by me to Mr.SuryaSareen on his email id sareen@akoninc.com with copies marked to Sri.R.R.Raghavendra on his email id raghavendra.ranya@akonelectronics.com and to Sri Amarnath Premasiri on his email id apremasiri@akoninc.com stating that "Based on our request the appointment is fixed with Director DARE on Monday (2nd Nov 2015). We request for the update on the project as the scientists in DARE would be keen to start the discussion with this topic first. The subject mentioned in the email was VCO based RF generator.

On being shown and asked I state that email received by me on 28th June 2015 from Mr.SuryaSareen from his email Id sareen@akoninc.com stating that "BUSINESS CONFIDENTIAL Very serious problem. Did we order the main housing etc. We had promised to deliver VCO in three months. They end in July. Let us talk and attack the problem. Further I state that this email was addressed to Sri Amarnath Premasiri on his email id apremasiri@akoninc.com who was working as a Mechanical Engineer at AKON INC USA and a copy was marked to me.

On being shown and asked I state that email sent by me dated 16.8.2016 to Sri. Yadaiah on his email id

yadaiah.g@rediffmail.com with a copy marked to Sri K.Maheswar Reddy on his email id kmaheswarreddy@rediffmail.com stating that please find attached the VCO control details and the operating manual. We look forward for your valuable feedback after testing the unit as per operating manual.

On being shown and asked I state that email received by me dated 05.7.2016 from Sri.Yadaiah from his email id yadaiah@dare.drdo.in stating that "Please provide the following technical details of the VCO generator for verifying the controls and functionality of the module and also comparing the test results.

- a. Control details (Frequency words table, band selection, DCA Settings, other controls and modulation settings)
- b. Block diagram of the module."

On being shown and asked I state that email sent by me dated 29.9.2016 to Sri. Yadaiah on his email id yadaiah@dare.drdo.in with copies marked to Sri.K.Maheswar Reddy on his email id kmaheswarreddy@rediffmail.com and Sri. Thangaraj on his email id thangaraj_dare@yahoo.co.in stating that "Thank you for your below e-mail. Sorry for the delay in replying your e-mail. Please find attached the response to letter from MMD-DARE. Further I state that the above said email was sent as a reply to the email received by me on 22.9.2016 from Sri. Yadaiah from his email id yadaiah@dare.drdo.in stating that "Find DARE letter on VCO generator functionality in the attachment.

On being shown and asked I state that Letter dated 29.9.2016 was sent by me to Sri S. Ramanathan group director MMG DARE CV Raman Nagar Bangalore, in which I had informed Sri. S. Ramanathan of DARE regarding VCO based generator S/N 12 and that I was authorised to respond against the letter from DARE addressed to AKON INC USA and further informed DARE that the AKON company regrets to inform about the output intermittency in the unit, and that the unit was tested at AKON USA and the test data was shared with DARE prior to shipment, only after test data by DARE the unit was shipped.

On being shown and asked I state that email sent by me dated 16.10.2016 to Sri SuryaSareen on his email id sareen@ekoninc.com in which I had stated that "We have already issued RMA and requested DARE to ship the unit back to AKON-USA.

On being shown and asked I state that email sent by me dated 15.11.2016 to Sri. SuryaSareen on his email id sareen@akoninc.com with a copy marked to accounting person at AKON-USA Ms.Sylvia Van on her email id svan@akoninc.com in which I had stated that "Please find below details

VCO unit price as per DARE PO: \$ 30870 (100%)

\$27783 x 35=\$ 972405 (90% by LC)

\$3087 x 35=\$ 108045 (10% by wire transfer)

LD deducted 5% of the PO value (or 50% of warranty payment) \$ 108045/2 = \$54022.60

After deduction of LD DARE has released the warranty payment as well in the year 2011

On being shown and asked I state that email sent by me dated 26.5.2017 to Sri SuryaSareen on his email id sareen@akoninc.com with copies marked to Sridhar Perepa on his email id sperepa@akoninc.com and Smt. PreetiKotha on her email id pkotha@akoninc.com stating that "Spoke with Mr.Yadaiah, understand the testing procedure is more or less same since many years, test equipments of same make and model numbers may not be available but they have all the required/latest test equipments As per him the test jig is required to control the bits. Whatever test jig is being used for testing the VCO's prior to shipment from AKON, the same can be brought to DARE for testing. Or the internal details/ block diagram and components used needs to be shared with DARE for future testing of units.

On being shown and asked state that email sent by me dated 5.09.2017 to Sri SuryaSareen on his email id sareen@akoninc.com with copies marked to Avinash Ratra on his email Id aratra@akoninc.com and Sridhar Perepa on his

email Id sperepa@akoninc.com stating that VCO SN 13 (Shipped through Fed Ex Cargo) is received at DARE stores this afternoon. With these two units DARE has total 4 units for testing (SN 01,02,13 and 14)

On being shown and asked I state that email dated 02.1.2018 received by me as copy from Sri SuryaSareen on his email id sareen@akoninc.com actually sent to Sri VikasVerma on his email id vverma@akonelectronics.com stating that "Vikas, AEI team then: Please do the need full, I think AP sent you DOCS. Must be a simple issue as all units were checked by you all, and no output is coming in a specific path. Further I state that this email was sent to Sri. VikasVerma and copies were marked to Sri Amarnath Premasiri and me by Sri. SuryaSareen as I had sent an email dated 01.1.2018 addressed Sri. VikasVerma and marked copy to Sri.SuryaSareen regarding the visit of Mr.Rajesh an employee of DARE to AKON INDIA Bahadurgarh on 3.1.2018 with the Air India Flight Details.

On being shown and asked I state that email dated 20.12.2017 was sent by me to Sri. SuryaSareen on his email id sareen@akoninc.com and copies marked to Sri. Vikas Verma and Sridhar Perepa on their email id's as seen in this email stating that "we have spoken with Rajeev/Yadaiah at DARE. As per recent DRDO guidelines they can send the units with their person next week. Our team (at AEI) can attempt rectifying the units on receipt of drawings from AKON.

On being shown and asked I state that email dated 19.12.2017 was received by me from Sri.VikasVerma from his email id vverma@akonelectronics.com as a copy and addressed to Sri. SuryaSareen as seen in this email, also a copy has been marked to Sri Sridhar Perepa stating that "Today work at DARE is finished. Tomorrow I will be at office with Deshmukh, I need to book flights for either tomorrow or next day".

On being shown and asked I state that email **dated 9.1.2018** was received by me from Mr.Sagayaraju, stores officer, from email id mmg@dare.drdo.in and copy marked to Sri SuryaSareen on his email ID sareen@akoninc.com stating that "Please find attached a letter towards export of remaining RF generators to DARE kindly acknowledge receipt". Further I state that this email had an attachment having letter dated 08 JAN 2018 addressed to M/s AKON INC 2135 RINGWOOD AVE

SANJOSE, CA, USA. **This letter was sent to AKON by Group Captain Sri.RNB. Rao Group Director MMG DARE, to inform that, out of the 35 VCO based generators purchased by DARE from M/s AKON vide PO-18/2007-08, after all the 35 units were back loaded to your company between April 2009 to August 2011 for up gradation, so far only 12 units have been received after up-gradation and remaining 23 units are yet to be received even after a lapse of 08 years. This has resulted in adverse comments by higher authorities of DARE and repeated audit observations.**

On being shown and asked I state that the email dated 20.8.2018 is an email received by me from Air Commodore RNB Rao from email ID mmg@dare.drdo.in addressed to Sri. SuryaSareen on his email id sareen@akoninc.com and a copy marked to me on my email id pdeshmukh@akonelectronics.com stating that "PFA letter for your compliance please Best Regards" Further I state that this email had an attachment having a letter dated 20.8.2018 addressed to AKON INC, 2135 RINGWOOD AVE SANJOSE CA USA, from Air Commodore RNB Rao Group Director MMG-DARE in which Sri. RNB Rao had thanked AKON for their response and requested AKON to adhere to the proposed delivery schedule without any deviation and complete the delivery as promised.

On being shown and asked I state that the email dated 4.7.2019 is an email received by me from Group Captain S.Vinay Kumar from email idmmg@dare.drdo.in addressed to Sr. SuryaSareen on his email id sareen@akoninc.com and a copy marked to me on my email id pdeshmukh@akonelectronics.com stating that "Please find attached letter towards return of VCO based RF Generators, Kindly expedite. Further I state that this email had an attachment having letter dated 4.7.2019 addressed to AKON INC, 2135 RINGWOOD AVE SANJOSE CA USA, from Group Captain S.Vinay Kumar in which they have informed M/s AKON that in spite of repeated reminders it is regretted to state that once again AKON has failed to ship one unit as promised. **In spite of approaching AKON repeatedly explaining DARE's precarious position with the auditors AKON's response is not in favour of submission of Bank Guarantee for mentioned value till the shipment is completed. Further I**

state that the Group Captain in his letter had further explained that DARE is a Government Organisation under Ministry of Defence, the consignment held with AKON is the property of Government of India, AKON's continuous false promises may lead to intervention of both Governments to resolve the issue either through DRDO's technical advisor in USA or through Arbitration.

On being shown and asked I state that the email dated 21.1.2019 received by me from K.V.S.C Sastry scientist "F" officiating group director from email ID mmg@dare.drdo.in addressed to Sri SuryaSareen on his email id sareen@akoninc.com and a copy marked to me on my email id pdeshmukh@akonelectronics.com stating that "Please find attached letter herewith seeking bank guarantee. Kindly acknowledge receipt of this email and confirm your acceptance. Further I state that this email had an attachment having letter dated 21.1.2019 addressed to AKON INC, 2135 RINGWOOD AVE SANJOSE CA USA, from Air Commodore RNB Rao Group Director MMG DARE. In the said letter the Group director Sri RNB has expressed the concern that there is no update from AKON side till date regarding shipment details. DARE's auditors have suggested to obtain a bank guarantee for the equal value of the pending 23 VCO based RF generators held by AKON valid till shipment of all the units to DARE, he further requests to submit the bank guarantee for US\$ 71,0010/- (30870x23 Nos) so as to clear all audit issues and the same will be returned after receipt of all the items at DARE.

On being shown and asked I state that computer printout of letter dated 27.3.2019 addressed to the director DARE Bangalore with kind attention to Air Commodore RNB Rao GD MMG from Veronica Grandon sales support AKON INC, in which she has informed DARE that AKON INC is a small company (something similar to MSME in India) and cannot afford the Bank Guarantee which is nothing but depositing physical cash at the Bank, equivalent of BG value and informed that AKON INC USA has incurred huge loss in replacement of critical components while upgrading the VCO's and requested DARE not to insist on Bank guarantee. On being shown and asked I state that email dated 31.10.2017 addressed to Sri. SuryaSareen on his email id sareen@akoninc.com and a copies marked to Sri. VikasVerma, Avinash Ratra and Sridhar Perepa on their email

id's as seen in this email printout. This email had an attachment containing minutes of the meeting held at DARE with summary of testing of VCO based RF generators. I further state that the meeting was called to discuss testing parameters of VCO based RF generators S/n 13,14,1,2. In the said meeting myself, Sri. VikasVerma Senior Manager Manufacturing from AKON Electronics India Pvt Ltd, Bahdurgarh Manufacturing facility, Sridhar Perepa Head Designs AKON INC USA, Ms.PreetiKotha Project Manager participated the said technical experts conducted tests on the above mentioned S/n 13,14,1,2 VCO based generators in the presence of DARE officials namely Sri. YadiahGandamalla scientist "E", Rajeev scientist "E", Poiyamani Santosh Technical officer 'A'. **The testing of the said VCO units indicated that the generators were not working satisfactorily.**

Read over and admitted to be correct.

Before me

Sd/-
(R.Valavan)
DSP CBI ACB
Bangalore"

(Emphasis supplied)

Statement of one Vikas Verma reads as follows:

"RC-17(A)/2020/CB/ACB/BLR
05.04.2022

Bangalore/Date:

**Statement of Shri Vikas Verma (DOB- 21.12.1975),
S/o, Shri Rameshwar Dayal Verma, Additional General
Manager, M/s. AKON Electronics India Pvt. Ltd., No. 36,
Milestone Jakhoda Village, Bahadurgarh Haryana State
124527 R/o No.392 1ST Floor OMAXE city homes sector 15
Bahadurgarh Haryana 124507 Ph.: 01276297500 (Off.).
9996119205(Mob.); E-mail ID-
vverma@akonelectronics.com Ph. Rathi 9871858946**

I am as above.

On being asked I state that, I am a Diploma graduate in electronics and communication, I joined AKON Electronics India Pvt Ltd in the year 1996 as Junior Engineer in the production department. M/s. AKON Electronics India PVT Ltd has been involved in the manufacture of RF(Radio frequency and Microwave components) ISRO and our major customers are PSU's from the Defence sector and ISRO.

On being asked, I state that M/s. AKON Inc., USA. was incorporated on 31-10-1980 at California, USA, with the address Head office-2135, Ringwood Ave., San Jose, CA 95131-1725, USA, by Shri Surya Sareen, who is the President and CEO of this company. **This firm is in business for about 41 years and Shri Surya Sareen is the sole owner of this company and he is holding major shares of this company, his son Shri Sandeep Sareen is director of this Company. Ms. Neha Sareen, D/o Shri Surya Sareen was working for about 2 years during 2008-09 after her completion of her education and living separately with her husband at US. On being also shown the profile of M/s. AKON Inc., USA. collected from Dan and Bradstreet Information Services India Pvt Ltd. through after going through the same I state that the details are 100% correct and Shri Surya Sareen is the only independent owner of the M/s. AKON Inc., USA and he is the beneficiary of M/s. AKON Inc., USA.**

On being asked I state that since my appointment I state that **AKON Electronics INDIA business activities was controlled by Sri.Surya Sareen of AKON INC USA, Sri.Surya Sareen is also the Managing Director of the company AKON Electronics India PVT Ltd, He controls the administration of AKON India through managers in India.** Further I state that since 1997 Sri Sodhi Ram Sharma is also a director of the company has been co-ordinating with Sri. Surya Sareen and takes instructions from him regarding the business of M/s AKON Electronics India PVT Ltd. But due to old age Shri Sri. Sodhi Ram Sharma is not attending to office nowadays.

On being asked I state that M/s AKON India PVT Ltd is doing value addition work for various products supplied by M/s AKON INC USA, AKON India receives raw material required for manufacture of components from AKON USA, and then the components are assembled and the units are tested at our AKON Electronics India manufacturing and design facility at Bahadurgarh Haryana and sent back to USA

On being asked I state that we also participate in tenders invited from various Defence related PSU's and supply RF and Microwave components directly from AKON Electronics India Pvt. LTD. Our customers include SAC (Space Application centre) and DLRL Defence Electronics research Laboratory.

On being asked I state that in the year 2009 M/s AKON INC USA got the tender of supplying 35.nos of VCO based RF generators from DARE Bangalore. Further I state that I was not aware of this tender till 2014, in the year 2014 Sri.S.S. Rathi informed me during a discussion that AKON INC USA was supplying 35. nos of VCO based RF generators to DARE Bangalore and the modules on which we were working in 2014 was related to the above said supply, as our work involves working on modules i.e. (Assembling the components sent by AKON INC USA as per the drawings sent to AKON Electronics INDIA). Further I state that as the products manufactured at AKON Electronics INDIA are mostly supplied to defence related organisations the name of the product and the purpose for which it is procured is not known to us and also the information about the organisation to which it is supplied.

On being shown and asked I state that during the year 2014 I received a copy of email from email id pdeshmukh@akonelectornics.com in which Sri Deshmukh asked Sri Sahab Singh Rathi about his plan to visit Bangalore. Further I state that Sri Rathi had visited DARE Bangalore regarding testing of VCO based RF generators in 2014.

On being shown and asked I state that during the year 2017 on 3.11.2017 I received a copy of email from email id sareen@akoninc.com written to Ms. Preeti Kotha in which **Mr.Sareen is talking about the need of internal discussion on the subject ICD of VCO based RF generator.**

On being shown and asked I state that on 7.11.2017 I received a copy of email from email id pdeshmukh@akonelectornics.com written to Sri.Surya Sareen in which he is referring to a reminder email from Sri. Rajeev from DARE and also suggesting providing ICD details to DARE so that they may start the programming of automatic testing.

On being shown and asked I state that on 8.11.2017 I received a copy of email from Sri. Avinash Ratra from email id aratra@akoninc.com written to Sri Surya Sareen in which he is informing Ms. Preeti Kotah that he is going to put the documents regarding ICD details in public folder, he further requested her to print it and get it approved from Sri. Malkiat Bajwa

On being shown and asked I state that I sent an email to Sri. Surya Sareen on 19.12.2017 on his email id sareen@akoninc.com in which I had informed him that I am there in Bangalore for next day and offered to extend the stay. In reply to this email Sri Sareen suggested to contact Sridhar Perepa, after which I received another reply email from Sri. Sridhar Perepa in which I was requested to finalise the repair plan at Bahadurgarh with DARE. Further I state that in continuation of this email **Sri.Sareen replied to Sri.Sridhar's email asking me to confirm the receipt of Sridhar's email and suggested to take the units from DARE and bring the same to Bahadurgarh for repair.**

On being shown and asked I state that on 2.1.2018 Sri. Pandurang Deshmukh has sent an email to me in which he informed me about the flight details of Sri. Rajesh from DARE he requested me to arrange pickup from Airport and arrange for extension of stay if required.

On being asked I state that Sri. Rajesh had brought some VCO based RF generator units could be 2 or 3 which was tested for specifications and repaired and later handed over to Sri. Rajesh of DARE.

On being shown and asked I state that on 9.1.2018 I received an email from Sri. Deshmukh from email id pdeshmukh@akonelectornics.com in which he had forwarded a letter from DARE regarding RF generators. Further I state that

the letter was sent to **AKON INC USA to remind them regarding the supply of VCO based RF generators.**

On being shown and asked I state that during 2018 DARE Bangalore had informed AKON INC USA and AKON Electronics India Pvt Ltd about not receiving balance 23 units of VCO based generators

On being asked I state that the assembling work of RF and Microwave components that is done in our manufacturing facility at Bahadurgarh is sub assembly of components and the same is to be completed by assembling the other components required to complete the finished product.

On being asked I state that there has been a delay in supply of the VCO based RF generators, as the technology involved in the RF generator is very complex and as the product requires some improvements and components need to be upgraded, there might have been many issues connected with the upgradation and repairs due to which this delay has been caused.

Read over and accepted as correct."

If the summary of the charge sheet, paragraphs of which are quoted hereinabove, and the statements of witnesses, in their entirety, are noticed, the role of the petitioner is clearly brought out. The witness statements are in clear narration of what the petitioner has done. The witness statements are clear that the petitioner is the sole owner of M/s AKON, USA and his son Sandeep Sareen is Director of M/s AKON and the petitioner is the independent owner and beneficiary of M/s AKON; he controls M/s

AKON Electronics India Pvt. Ltd. and all the mail communications clearly point at the involvement of the petitioner. After filing of the charge sheet, the concerned Court takes cognizance of the offence on 07-01-2023. The order of taking cognizance runs into 12 pages and cognizance is taken after clear narration by the following order:

"ORDERS REGARDING TAKING COGNIZANCE"

Sri. R. Valavan (C.W.38), The Deputy Superintendent of Police, CBI/ ACB/ Bengaluru has submitted this charge sheet against accused No.1 to 4 alleging commission of offences punishable u/s.120-B r/w.420 of IPC and Section 13(2) R/w 13(1)(d) of PC Act 1988.

Consideration of the charge sheet and allied materials reveal that RC 17(A)/2020/CBI/ACB Bengaluru was registered by Central Bureau of Investigation, Anti Corruption Branch, Bengaluru on 29.12.2020 against Mrs. Priya Suresh N.(A-1). The then Scientist 'D', Defence Avionics research Establishment (DARE), Defence Research and Development Organization (DRDO), C.V.Raman Nagar, Bengaluru-560 093 and M/s. AKON Inc.(A-2), Head office- 2135, Ringwood Ave., San Jose, CA 95121, USA, on the basis of written complaint lodged by Shri Surya Prakash Director (Vigilance), Ministry of Defence, Govt. of India, Sena Bhawan, "B" Wing, New Delhi vide Letter No.10/DO(Vig)/2014 dated 22.05.2017 enclosing a Complaint dated 16.03.2012 preferred by Shri Poiyamani S., the then STA "C"

DARE, DRDO, Bengaluru and relevant Inquiry Committee Report, regarding irregularities in procurement of 35 Nos. of VO based RF Generator' from M/S.AKON Inc., USA (A-2) for a total cost of US 1080450/- by DARE (Defence Avionics Research Establishment), Defence Research and Development Organization (DRDO), Bengaluru and after obtaining Order/Authorization U/s.17(A) of PC Act' 1988 (as amended in 2018) issued by Under Secretary, Ministry of Defence

(Vigilance), Sena Bhawan, New Delhi vide Letter No.10/DO/Vig.)2014 dated 20.07.2020.

It is alleged that:

i) The RF Division, DARE, DRDO had placed a purchase order No. DARE/FPD/VVLE/PO-02/2007-08 dated 11.07.2007 (later amended as DARE/FPD/EWSFA/PO-18/2007-08 dated 11.07.2007 for the supply of 35 nos.of VCO based on RF generators with M/s.AKON In., USA **(A-2)** which was identified through a global tender. The said items were proposed for procurement in connection with the lab testing of simulators of various radar electronic warfare systems. As per the said purchase order, 90% of the net value was to be drawn against Letter of Credit on presentation of documents like Airway Bill, packing list, manufacturer warranty certificate, origin certificate, accuracy certificate by the vendor through Sate Bank of India, St.Marks Road, Bengaluru.

ii) M/s.AKON Inc.**(A-2)** in conspiracy with Smt.Priya Suresh N.(A-1). shipped 35 Nos. of incomplete units of VCO RF Generators in 3 consignments No the month of February, 2009 and availed 90% payment of net value viz.US \$ 333,396 (Rs.1,72,78,248/-) against import Bill Number 0686109SS0036175, US \$ 305,613 (Rs.1,58,33,046/-) against Import Bill Number 0686109SS0036213 and US \$ 333,396 (Rs.1,72,91,584/-) against Import Bill number 0686109SS0036189 through SBI, Overseas Branch, Bengaluru on behalf of DARE against the LC No.0686109IM0025088 on 02.03.2009, 03.03.2009 and 12.03.2009 respectively.

iii). In pursuance to the conspiracy, Smt.Priya Suresh N.**(A-1)**, the then Scientist 'D' and Divisional Head, RF Lab accepted these 35 Units of purported 0.5-18.0 GHz VCO Based RF Generators (Model No.A25-MH217) Into the stores on 04.03.2009 and 11.03.2009 by signing the Certificate Receipt Vouchers as Inspecting Officer even when she was having the knowledge through the emails from the representatives of M/s.AKON that the said units were only at the development stage. As the Divisional Head, RF Lab, she did not conduct any functional testing of these units at the time of accepting the said units in the stores.

iv). The incomplete units delivered at DARE were shipped back to M/s.AKON Inc. based on the recommendations of Smt.Priya suresh N.(A-1), on the pretext of upgrade, while there was no official record of the nature of upgrade/repair for which the units were shipped back to M/s.AKON Inc..the units bearing Sl.Nos.1 to 12 were sent back for upgrade/repair on 25.03.2009 whereas units bearing Sl.Nos.13 to 24 were sent back on 22.04.2009. While the 24 units of the first two consignments were sent back within weeks of the delivery a above, the remaining 11 units bearing Sl.Nos.25 to 35 received at DARE on 11.03.2009 remained idle/unused and untested at RF lab till July, 2011.

v). Even after having the knowledge that 90% payment was already made to the vendor for the supply of incomplete non functional units and only 12 non functional units were held with DARE and the remaining 23 units were still held by the vendor in USA, Smt.N.Priya Suresh (**A-1**), the then Scientist 'D' & Divisional Head, RF Lab recommended for the payment of balance amount to the vendor in USA i.e., M/s.AKON Inc., USA (**A-2**) by falsely stating on the, relevant Note-07 that "Units are working satisfactorily." Later, as per the request of DARE, SBI Overseas Branch, Bengaluru made a payment of USD 54022.50 (Rs.24,33,984/-) through wire transfer to the M/s.AKON Inc. USA (A-2) on 22.03.2011.

vi). A few months after recommending and facilitating the payment of balance amount to the vendor in USA, Smt.Priya Suresh N.(**A-1**), the then Scientist "D" & Divisional Head, RF Lab herself issued an I.O.N. No.DARE/RFD/Gate Pass/12 dated 25.07.2011 reporting therein that the said 11 Units bearing Sl.Nos.25 to 35 were found "totally not working" and sought Director's approval for the return of the said units to M/s.AKON Inc., USA (A-2) (Vendor) for repair.

vii). As on date, only 13 items are currently held with DARE and remaining 22 items are still lying with M/s.AKON Inc.USA. Though the average weight of the repaired/upgraded (as claimed by the vendor) units is approx. 3.6 Kg., which is significantly higher than the average weight (1 Kg.) of the original dummy units supplied by the vendor, none of them is found functional or meeting the specifications of the relevant purchase order issued by DARE to M/S.AKON Inc. USA (A-2)

viii). Smt.Priya Suresh N. (**A-1**), the then Scientist 'D' cum Divisional Head, RF Division, DARE, Bengaluru, along with unknown officials of DARE conspired with M/s.AKON Inc. (A-2), USA represented by Shri Surya Sareen (**A-4**), President & CEO of M/s.AKON Inc. USA (**A-2**) and in furtherance of the conspiracy, she had abused her official position by accepting the non-functional 35 units of VCO based RF generators supplied by M/s.AKON Inc., USA (**A-2**) and by recommending balance payment to the firm thereby cheating DARE and Government of India.

The chargesheet and allied materials further reveal Dr.U.K. Revankar (**A-3**), the then Director, DARE was also a part of the conspiracy along with Smt.Priya. N.Suresh and they were aware that the 35 units of purported 0.5-18.0 GHz VCO Based, RF Generators received at DARE from M/s.AKON Inc. USA (A-2) were all non functional units and not as per the specifications stipulated in the relevant Purchase order & Global Tender. They were also aware of the fact that the said non-functional units delivered to DARE were dummy items as the testing of the Unit was still going on in USA as claimed by the vendor itself before the said officials. In spite of the same, 90% payment was released to the firm.

The charge sheet and allied materials further reveal, CBI obtained prior permission under 17-A of Prevention of Corruption Act to conduct investigation into the role of Dr. U.K.Revankar (**A-3**), the then Director, DARE in the entire matter of procurement and payment. The same was conveyed by Shri. B.P.Pant, Under Secretary to Government of India, vide letter dated 02.06.2021 in the File No.10/DO(vig)/2014, Ministry of Defence, D(Vigilance), Room No.341-A, Sena Bhawan, New Delhi-110 011.

The charge sheet and allied materials further reveal even after having the knowledge that 90% payment was already made to the vendor for the supply of the incomplete non-functional units and only 12 non-functional units were held with DARE and the remaining 23 units were still held by the vendor in USA, Smt.Priya Suresh N.(A-1), the then Scientist 'D' & Divisional Head, RF Lab recommended for the payment of balance amount to the vendor in USA i.e., M/s.AKON Inc. USA

(A-2) by falsely stating or the relevant Note-07 dated 31.01.2011/02.02.2011 that "Units are working satisfactorily" and the same was approved by Dr.U.K. Revankar (A-3).

Prosecution papers clearly disclose to the fact that, IO has collected documents in respect of A1 to A4 with regard to criminal conspiracy with respect to supply of dummy non-functional VCO based RF Generators to M/S DARE and non supply of even a single repaired unit as per specifications of the purchase order and thereby cheating M/S DARE to the tune of Rs.5,28,36,862/-.

I.O has recorded the Statements of C.W.1 to C.W.24 and C.W. 30 to C.W.32, and collected 35 documents in order to bring home guilt against accused persons for committing the alleged offences with regard to criminal conspiracy to cheat M/S DARE to the tune of Rs.5,28,36,862/-

The Deputy Secretary (Vigilance), Ministry of Defence, Government of India, has accorded permission under Section 19(1)(c) of Prevention of Corruption Act, 1988 to proceed against A1 for initiation criminal proceedings.

Accused No.3 being a retired Government servant and the offence being committed prior to amendment of the Prevention of Corruption Act, it is opined by the I.O that no sanction is necessary.

Comprehensive reading of all the records and collected evidence makes it clear to show that prima-facie there is sufficient collection of evidence to attract the offences punishable u/s.120-B r/w.420 of IPC and Section 13(2) R/W 13(1)(d) of PC Act 1988 against Accused No.1 to 4 and Court is inclined to take cognizance U/Sec.191 Cr.P.C. for the offences punishable u/s.120-B r/w.420 of IPC and Section 13(2) R/w 13(1)(d) of PC Act 1988 against Accused No.1 to 4 Hence, the following:

ORDER

Cognizance is taken for the offences punishable u/s.120-B r/w.420 of IPC and Section

13(2) R/w 13(1)(d) of PC Act 1988 against Accused No.1 to 4.

Office is directed to register criminal case as Special Calender Case and issue summons to accused No.1 to 4.

Issue Summons to Accused No.1 to 4 returnable by 27.02.2023.

Sd/-
(K.L.ASHOK), 07/1/23
XXI Addl.City Civil & Sessions Judge &
Prl. Special Judge for CBI Cases,
Bangalore City."

A perusal at the order of taking cognizance and issuance of summons nowhere indicates that it suffers from non-application of mind. It does not reveal dearth of application of mind but it is abundance of application of mind. Therefore, this order by no stretch of imagination can be termed to be an order wanting reasons or application of mind. The preliminary submission of the learned counsel for the petitioner is that the order suffers from non-application of mind. The submission is noted only to be rejected and thus tumbles down the said contention. Even otherwise, the

Apex Court in a judgment reported in **PRAMILA DEVI v. STATE OF JHARKHAND**¹, has held as follows:

"....

ANALYSIS, REASONING AND CONCLUSION:

13. We have considered the matter in its entirety. Two basic issues arise for consideration.

14. *Firstly*, whether the Additional Judicial Commissioner while taking cognizance has to record detailed reasons for taking cognizance? *Secondly*, whether the FIR itself was instituted with *mala fide* intention and was liable to be quashed?

15. Coming to the first issue, we have no hesitation to record that the approach of the High Court was totally erroneous. Perusal of the Order taking cognizance dated 13.06.2019 discloses that the Additional Judicial Commissioner has stated that the '*case diary and case record*' have been perused, which disclosed a *prima facie* case made out under Sections 498(A), 406 and 420 of the IPC and Section 3 (1)(g) of the SC/ST Act against the accused including appellants. Further, we find the approach of the Additional Judicial Commissioner correct inasmuch as while taking cognizance, it firstly applied its mind to the materials before it to form an opinion as to whether any offence has been committed and thereafter went into the aspect of identifying the persons who appeared to have committed the offence. Accordingly, the process moves to the next stage; of issuance of summons or warrant, as the case may be, against such persons.

16. In the present case, we find that the Additional Judicial Commissioner has taken cognizance while recording a finding that - from a perusal of the case diary and case record, a *prima facie* case was made out against the accused, including the Appellants. In *Bhushan*

¹ 2025 SCC OnLine SC 886

Kumar v. State (NCT of Delhi), (2012) 5 SCC 424, this Court held that an order of the Magistrate taking cognizance cannot be faulted only because it was not a reasoned order; relevant paragraphs being as under:

'14. Time and again it has been stated by this Court that the summoning order under Section 204 of the Code requires no explicit reasons to be stated because it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith.

15. In *Kanti Bhadra Shah v. State of W.B.* [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] the following passage will be apposite in this context : (SCC p. 726, para 12)

"12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial."

(emphasis supplied)

16. In *Nagawwa v. Veeranna Shivalingappa Konjalgi* [(1976) 3 SCC 736 : 1976 SCC (Cri) 507] this Court held that it is not the province of the Magistrate to enter into a detailed discussion on the merits or demerits of the case. It was further held that in deciding whether a process should be issued, the Magistrate can take into consideration improbabilities appearing on the face of the

complaint or in the evidence led by the complainant in support of the allegations. The Magistrate has been given an undoubted discretion in the matter and the discretion has to be judicially exercised by him. It was further held that : (SCC p. 741, para 5)

"5. ... Once the Magistrate has exercised his discretion it is not for the High Court, or even this Court, to substitute its own discretion for that of the Magistrate or to examine the case on merits with a view to find out whether or not the allegations in the complaint, if proved, would ultimately end in conviction of the accused."

17. In Chief Controller of Imports & Exports v. Roshanlal Agarwal [(2003) 4 SCC 139 : 2003 SCC (Cri) 788] this Court, in para 9, held as under : (SCC pp. 145-46)

"9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. Mohan Meakins Ltd. [(2000) 3 SCC 745] and after noticing the law laid down in Kanti Bhadra Shah v. State of W.B. [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] it was held as follows: (U.P. Pollution case [(2000) 3 SCC 745], SCC p. 749, para 6)

'6. The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to the accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order.'"

18. In U.P. Pollution Control Board v. Bhupendra Kumar Modi [(2009) 2 SCC 147 : (2009) 1 SCC (Cri) 679] this Court, in para 23, held as under : (SCC p. 154)

"23. It is a settled legal position that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie

satisfied whether there are sufficient grounds for proceeding against the accused."

19. This being the settled legal position, the order passed by the Magistrate could not be faulted with only on the ground that the summoning order was not a reasoned order.'

(emphasis supplied)

17. The view in *Bhushan Kumar* (supra) was reiterated in *Mehmood Ul Rehman v. Khazir Mohammad Tunda*, (2015) 12 SCC 420 and *State of Gujarat v. Afroz Mohammed Hasanfatta*, (2019) 20 SCC 539. This Court in *Rakhi Mishra v. State of Bihar*, (2017) 16 SCC 772 restated the settled proposition of law enunciated in *Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424, as under:

'4. We have heard the learned counsel appearing for the parties. We are of the considered opinion that the High Court erred in allowing the application filed by Respondents 2, 4, 5, 6, 7, 8, 9 and 10 and quashing the criminal proceedings against them. A perusal of the FIR would clearly show that the appellant alleged cruelty against Respondents 2, 4, 5, 6, 7, 8, 9 and 10. This Court in *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] held as follows : (SCC p. 429, para 8)

"8. ... At the stage of cognizance and summoning the Magistrate is required to apply his judicial mind only with a view to take cognizance of the offence ... to find out whether a prima facie case has been made out for summoning the accused persons. At this stage, the learned Magistrate is not required to consider the defence version or materials or arguments nor is he required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not."

5. The order passed by the trial court taking cognizance against R-2 and R-4 to R-9 is in conformity with the law laid down in the above judgment. It is settled law that the power under Section 482 CrPC is exercised by the

High Court only in exceptional circumstances only when a prima facie case is not made out against the accused. The test applied by this Court for interference at the initial stage of a prosecution is whether the uncontroverted allegations prima facie establish a case.'

(emphasis supplied)

18. Coming to the second point which the Appellants canvassed before this Court viz. the background of lodging of the FIR to impress that the same is *mala fide*, an afterthought and at best, a civil dispute being tried to be settled through criminal proceedings by way of arm-twisting. On this point, need for a detailed discussion is obviated in view of our answer on the first point *supra* and the paragraphs *infra*.

19. Perusal of the entire gamut of the pleadings of the Appellants does not disclose any categorical statement to the effect that during investigation by the police, no evidence has emerged to warrant taking of cognizance, much less against the Appellants. The only averment which has been made is that the Trial Court had not recorded the *prima facie* material against the Appellants because it does not exist. This is too simplistic an argument and does not shift the burden from the Appellants of taking a categorical stand that no material whatsoever for taking cognizance is available in the police papers/case diary against the Appellants. Be it noted, the State has argued that sufficient material warranting cognizance has been unearthed during the course of investigation."

20. Here, the Court would pause to delve on what is the scope of the exercise of application of mind on the police papers/case diary for deciding as to whether to take cognizance or not - it has only to be seen whether there is material forthcoming to indicate commission of the offence(s) alleged. The concerned Court is not empowered to go into the veracity of the material at that time. That is why, the law provides for a trial where it is open to both the parties i.e., the prosecution as well as the defence to lead evidence(s) either to prove the materials which have come against the accused or to

disprove such findings. This Court *vide* Order dated 13.09.2024 directed the Appellants to file a translated copy of the chargesheet, as the State filed the chargesheet in Hindi along with an application seeking exemption from filing official translation (I.A. No. 198073/2024). As this Court [Coram : Sudhanshu Dhulia and Ahsanuddin Amanullah, JJ.] is well-conversant with Hindi, the language in which the chargesheet is and which has been brought on record, we have examined the same. However, the Appellants failed to comply with the specific direction issued on 13.09.2024. Be that as it may, we find that chargesheet mentions that on the basis of investigation, site inspection and statements of the complainant, the police has found the allegations true against all the accused including appellants.”

(Emphasis supplied)

The Apex Court holds that statements recorded clearly point at guilt of the appellant and further holds that merely because the order of taking cognizance suffers from non-application of mind, it does not vitiate the entire order. The surrounding circumstances and the order should be seen. What the Apex Court saw was the statement recorded and then the order of cognizance. In the case at hand, the order of cognizance bears complete reasons as to why the concerned Court is taking cognizance for the afore-quoted offences and issuing summons.

10. The next submission of the learned counsel for the petitioner is that the proceedings are vitiated on account of gross delay. In the normal circumstances this Court would have accepted the submission of the learned counsel for the petitioner that delay has vitiated the proceedings, if it was unexplained. The delay in the case at hand bears explanation. The statement quoted *supra* of both the key witnesses point at every year of communication and every year of conduct of preliminary inquiry. The case at hand is of a global tender and the successful tenderer allegedly cheated the DRDO. Therefore, there has been some delay in investigating an overseas allegation. In that light, delay in the case at hand, has not vitiated the proceedings, as it is trite law that mere delay would not vitiate the proceedings; it is only unexplained delay. The delay finds explanation in the case at hand and therefore, the said contention does not merit any acceptance. Therefore, the second submission of the learned counsel for the petitioner also tumbles down.

11. The third submission is that acts are all by the Company, M/s AKON and axe has fallen upon the petitioner. There can be no

vicarious liability in the offences under the IPC. Accused No.2, in the case at hand, is M/s AKON inc., USA, the Company is made an accused. Accused No.4 is the petitioner, the then President and CEO of M/s AKON Inc. USA. The role of the petitioner again is clearly brought out in the statements quoted *supra*. Therefore, the contention that the petitioner has been deliberately dragged and there can be no vicarious liability cannot be accepted. It is a matter of trial for the petitioner to come out clean.

12. The last submission that the issue in the *lis* relates to contract between DARE, DRDO and M/s AKON Inc and therefore criminal law could not have been set into motion in a purely civil dispute is a statement that cannot be accepted. It is trite law that a particular action can lead to two circumstances – one invoking civil remedy and the other criminal law to be set into motion. Not in all cases merely because civil remedy is sought in criminal proceedings it can be quashed. Not in all cases wherein the allegations in the criminal law has a civil flavour criminal proceeding can be quashed. It depends on a case to case basis and dependent upon facts obtaining in those cases. If the facts obtaining in a

particular case has both flavours of civil and criminal, such criminal proceedings cannot be quashed.

13. The case at hand is a classic illustration of *prima facie* offence of Sections 420 and 120B of the IPC against the petitioner and the entire issue revolves round a maze of facts, certain disputed and certain matters on record. Therefore, interference at this stage of the proceedings, would run foul of the judgment of the Apex Court in the case of **KAPTAN SINGH v. STATE OF UTTAR PRADESH**², wherein it is held as follows:

"....

9.1. At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 CrPC has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 CrPC quashed the criminal proceedings, by the time the investigating officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order [Radhey Shyam Gupta v. State of U.P.,

² (2021) 9 SCC 35

2020 SCC OnLine All 914] passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. **If the petition under Section 482 CrPC was at the stage of FIR in that case the allegations in the FIR/complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation.** Even at this stage also, as observed and held by this Court in a catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in *Dineshbhai Chandubhai Patel v. State of Gujarat*, (2018) 3 SCC 104 : (2018) 1 SCC (Cri) 683] in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the investigating agency nor can exercise the powers like an appellate court. It is further observed and held that that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. **At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the investigating authority at such stage to probe and then of the court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.**

9.2. In *Dhruvaram Murlidhar Sonar v. State of Maharashtra*, (2019) 18 SCC 191 : (2020) 3 SCC (Cri) 672] after considering the decisions of this Court in *Bhajan Lal v. State of Haryana*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , it is held by this

Court that exercise of powers under Section 482 CrPC to quash the proceedings is an exception and not a rule. **It is further observed that inherent jurisdiction under Section 482 CrPC though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 CrPC.** Similar view has been expressed by this Court in Arvind Khanna [CBI v. Arvind Khanna, (2019) 10 SCC 686 : (2020) 1 SCC (Cri) 94] , Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] and in XYZ [XYZ v. State of Gujarat, (2019) 10 SCC 337 : (2020) 1 SCC (Cri) 173] , referred to hereinabove.

9.3. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, we are of the opinion that the High Court has exceeded its jurisdiction in quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

10. The High Court has failed to appreciate and consider the fact that there are very serious triable issues/allegations which are required to be gone into and considered at the time of trial. The High Court has lost sight of crucial aspects which have emerged during the course of the investigation. The High Court has failed to appreciate and consider the fact that the document i.e. a joint notarised affidavit of Mamta Gupta Accused 2 and Munni Devi under which according to Accused 2 Ms Mamta Gupta, Rs 25 lakhs was paid and the possession was transferred to her itself is seriously disputed. It is required to be noted that in the registered agreement to sell dated 27-10-2010, the sale consideration is stated to be Rs 25 lakhs and with no reference to payment of Rs 25 lakhs to Ms Munni Devi and no reference to handing over the possession. However, in the joint notarised affidavit of the same date i.e. 27-10-2010 sale consideration is stated to be Rs 35 lakhs out of which Rs 25 lakhs is alleged to have been paid and there is a reference to transfer of possession to Accused 2. Whether Rs 25 lakhs has been paid or not the accused have to establish during the trial, because the accused are relying upon the said

document and payment of Rs 25 lakhs as mentioned in the joint notarised affidavit dated 27-10-2010. It is also required to be considered that the first agreement to sell in which Rs 25 lakhs is stated to be sale consideration and there is reference to the payment of Rs 10 lakhs by cheques. It is a registered document. The aforesaid are all triable issues/allegations which are required to be considered at the time of trial. The High Court has failed to notice and/or consider the material collected during the investigation.

11. Now so far as the finding recorded by the High Court that no case is made out for the offence under Section 406 IPC is concerned, it is to be noted that the High Court itself has noted that the joint notarised affidavit dated 27-10-2010 is seriously disputed, however as per the High Court the same is required to be considered in the civil proceedings. There the High Court has committed an error. Even the High Court has failed to notice that another FIR has been lodged against the accused for the offences under Sections 467, 468, 471 IPC with respect to the said alleged joint notarised affidavit. Even according to the accused the possession was handed over to them. However, when the payment of Rs 25 lakhs as mentioned in the joint notarised affidavit is seriously disputed and even one of the cheques out of 5 cheques each of Rs 2 lakhs was dishonoured and according to the accused they were handed over the possession (which is seriously disputed) it can be said to be entrustment of property. Therefore, at this stage to opine that no case is made out for the offence under Section 406 IPC is premature and the aforesaid aspect is to be considered during trial. It is also required to be noted that the first suit was filed by Munni Devi and thereafter subsequent suit came to be filed by the accused and that too for permanent injunction only. Nothing is on record that any suit for specific performance has been filed. Be that as it may, all the aforesaid aspects are required to be considered at the time of trial only.

12. Therefore, the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations as if the High Court was exercising the appellate jurisdiction and/or conducting the trial. The High Court has exceeded its jurisdiction in

quashing the criminal proceedings in exercise of powers under Section 482 CrPC.

13. Even the High Court has erred in observing that original complaint has no locus. The aforesaid observation is made on the premise that the complainant has not placed on record the power of attorney along with the counter filed before the High Court. However, when it is specifically stated in the FIR that Munni Devi has executed the power of attorney and thereafter the investigating officer has conducted the investigation and has recorded the statement of the complainant, accused and the independent witnesses, thereafter whether the complainant is having the power of attorney or not is to be considered during trial.

14. In view of the above and for the reasons stated above, the impugned judgment and order [Radhey Shyam Gupta v. State of U.P., 2020 SCC OnLine All 914] passed by the High Court quashing the criminal proceedings in exercise of powers under Section 482 CrPC is unsustainable and the same deserves to be quashed and set aside and is accordingly quashed and set aside. Now, the trial is to be conducted and proceeded further in accordance with law and on its own merits. It is made clear that the observations made by this Court in the present proceedings are to be treated to be confined to the proceedings under Section 482 CrPC only and the trial court to decide the case in accordance with law and on its own merits and on the basis of the evidence to be laid and without being influenced by any of the observations made by us hereinabove. The present appeal is accordingly allowed."

(Emphasis supplied)

14. Insofar as the judgments relied on by the learned counsel for the petitioner of the Apex Court or of this Court, there can be no qualm about the principles laid down in those cases, as they are laid down based upon facts obtaining in those cases. Therefore,

they are not applicable to the facts obtaining in the case at hand. In that light, I do not find any warrant to interfere with the impugned proceedings.

15. The petition lacking in merit stands **rejected**.

Sd/-
(M. NAGAPRASANNA)
JUDGE

bkp
CT:SS