

IN THE COURT OF THE XXIII ADDL.CITY CIVIL & SESSIONS JUDGE &
SPECIAL JUDGE (P.C. Act) BENGALURU (C.C.H.No.24)

DATED THIS THE 25th DAY OF JANUARY, 2022

PRESENT

LAKSHMINARAYANA BHAT. K,
XXIII ADDITIONAL CITY CIVIL AND SESSIONS JUDGE
SPECIAL JUDGE,
BENGALURU URBAN DISTRICT, BENGALURU

P.C.R.No. 28/2020

and

P.C.R.No. 29/2020

Common
Complainant :

India Awake for Transparency,
24 Desika Road, Mylapore,
Chennai - 600 004.
rep. by P.Sadanand Goud

(By Sri R.Subramanian, Adv.)

V/s

Common
Accused :

1. Azim Hasham Premji,
Survey No.75, 133, 135/1, 136/1
No.574 Doddakannelli village,
Sarjapur Road,
Bengaluru-560 035.

2. Mrs.Yaseem Azim Premji,
Survey No.574, Doddakannelli
village, Sarjapur Road,
Bengaluru-560 035.

3. Pagalthivarthi Srinivasan,
No.524, 16th Cross,

Indira Nagar II Stage,
Bengaluru-560 038.

4. M/s.Azim Premji Trust
represented by its Trustee
Azim Premji Trustee Company
Pvt.Ltd.,
No.134 Next to WIPRO Corporate
Office,
Doddakannelli, Sarjapur Road,
Bengaluru - 560 035.

COMMON ORDER

The complainant India Awake for Transparency represented by its volunteer by name P. Sadanand Goud has filed two complaints against the common accused No.1 to 4 for the offences punishable under Sections 13(1)(d) of The Prevention of Corruption Act (in short the 'PC Act') and Sections 409 and 120B read with section 34 of the Indian Penal Code (in short the 'IPC').

2. The short facts leading to the present two complaints are as follows:

2(a) Accused No.1 to 3 were the directors in common of 3 companies namely i)Vidya Investment and Trading Company Pvt.Ltd. (Vidya), Regal Investment and Trading Company Private Limited (Regal) and Napean Trading and Investment Company Private Limited (Napean) and hereinafter these companies are

referred as the '3 companies'. According to the complainant, the aforesaid 3 companies were formed in the year 1974 and at that time, the 1st accused and his mother were the directors. Thereafter the 1st accused and his wife, the 2nd accused became the directors. The 3rd accused became the director of the Company in the year 2009.

2(b). It is stated that the accused No.1 to 3 were the directors of the said Companies in a fiduciary capacity and they were the agents of the said companies. The aforesaid 3 companies were registered under the provisions of the Companies Act 1956 and none of the aforesaid companies are in existence as on the date of filing of the complaint and they were dissolved by the orders passed by the Hon'ble High Court of Karnataka on account of the merger proposed by the accused. The transaction underlying the merger approval is under prosecution in Spl. CC No. 69/20 on the file of this court.

2(c) It is stated that accused No.4 is a private discretionary Trust and trustee of the said trust is M/s.Azim Premji Trustee company private limited. The said trustee is a company wholly owned by the 1st accused and only accused No.1 and his wife

are its directors. The 4th accused is neither a charitable trust nor a public trust.

2(d). It is submitted that from 1980, the shareholding of the 3 companies has been such that each of the 3 companies is owned 50% by the other 2 companies. The complainant has stated that three partnership firms namely Hasham Traders, Pazim Traders and Zash Traders, in each of which the 3 companies were in effect 35% stake holders. There was no person other than the 3 companies who were an equity shareholder and hence no other person is entitled to any of the equity capital and had any equity interest. Accused No.1 to 4 are not the equity shareholders of 3 companies. It is submitted that if all the three companies were simultaneously to be wound up, there would be no claimant for the combined assets of the companies as there was no equity share holder for any of the companies outside themselves. Hence if all the 3 companies are taken together, they have no owner and the assets of the 3 companies were rendered bona vacantia and vested in the Union of India as per Article 296 of the Constitution.

2(e). The specific case of the complainant is that, the accused No.1 to 3 taking advantage of their position as directors of the 3 companies conspired together and in the month of February 2013 had effected transfer of 29.5527 crores of equity shares of Wipro Ltd. by gift in the above referred three partnership firms of then value of Rs.12,281 crores and the value as on the date of complaint is shown as 16,590 crores to the 4th accused trust without any consideration. It is alleged that by this transaction of gift of assets value of Rs.5,807 crores, being the 35% share of Rs.16,590 crores being the value of the share of the 3 companies, in such removal of the assets of public property was vested for free with the 4th accused by accused No.1 to.3.

2(f). The facts of the case as alleged in P.C. No.29/2020 are identical with the allegations made in PC No.28/2020. As per the facts of this complaint the accused had jointly acted in December 2010 to remove 21.3 crores equity share of Wipro Limited held by 3 companies worth Rs. 9260.18 crores as on the date of removal and worth Rs. 12061.91 crores as on the date of complaint and transferred the same to the 4th accused trust. .

2(g). According to the complainant, the 3 companies had net assets of worth Rs.51,549 crores and the said assets are wholly the assets of Union of India. The assets of the three companies of worth Rs. 51,549 crores vested with the 4th accused, a trust owned by Azim Premji Trustee company private Ltd. controlled by accused No.1 and 2 without any consideration on account of the offence committed by the accused in the year 2010, 2013 and 2014. It is alleged that 3 companies had since 1980 been owner-less.

2(h). It is submitted that accused No.4 trust is owned by private trust controlled by accused No.1 and 2, and by fraud vested with Rs.9260 crores and Rs.12,281 crores of assets of the 3 companies and thereby the accused have committed the offence of criminal breach of trust punishable under Section 409 of IPC and criminal misconduct under Section 13(1)(d) of the PC Act.

3. These two complaints were filed on 22-06-2020. After hearing the counsel for the complainant at length, this court as per order dated 28-8-2020 posted the matter for recording the

sworn statement. Sworn statement of the complainant was recorded on 23-9-2020. After considering the facts of the case in the complaint, and sworn statement, this court is required to consider whether at this stage there are sufficient materials to proceed against the accused for the alleged offences.

4(a). It is well settled principle of law in catena of cases that the Court at this stage of the proceeding has to satisfy itself on the averments made in the complaint taken on its face value, whether they make out a case for the alleged offences and required to issue summons to the accused under Section 204 of Cr.P.C. The complaint allegations show that the 3 companies namely Vidya, Napean and Regal are managed by accused No.1 to 3 as its directors and they are neither directly nor indirectly had any shares in the 3 companies. The shares of the aforesaid 3 companies were held in such a fashion that each of the companies owned 50% of the other 2 companies and there was no person other than 3 companies themselves who were shareholders in each other.

4(b) It is alleged by the complainant that the total assets of the 3 companies is worth Rs.51,549 crores. The basic tenet of Company law is that company is a legal entity and artificial person capable of holding property in its name and can become the owner of yet another company. The aforesaid 3 companies were group of companies and they were managed by common directors accused No.1 to 3 and had interlocked share holding. The status of accused No.1 to 3 in the company as non share holder directors and therefore they are bound to discharge their duty in fiduciary capacity with no interest in the ownership or control of the 3 companies.

4(c). It is argued on behalf of the complainant that, if the 3 companies were chosen to be liquidated, the entire surplus assets of the 3 companies would vest on the Union of India as there would be no claimant to the liquidation surplus of the companies in view of the provisions of the Companies Act mandating that unclaimed liquidation proceeds would vest on the Union of India under Article 296 of the Constitution. Therefore, no part of any profit, dividend or surplus of the 3 companies would vest on the accused No.1 to 3 nor on any

person connected with them. The assets of the three companies when taken together, by piercing the device of the corporate veil chosen to be employed, were ownerless and hence the assets of the companies would vest in Union of India as escheat assets.

4(d). It is submitted on behalf of the complainant that accused No.1 to 3 have created accused No.4 trust as a private discretionary trust on 21.4.2010 wholly owned by accused No.1 and 2 who are its directors. It is argued that immediately after creating accused No.4 trust, the shares of Wipro Ltd. was gifted in December-2010 from the 3 companies worth Rs.9,260 crores the subject matter of the complaint in PC No.29/2020. In PC 28/20 there is allegation of gift of Rs.12,281 crores of Wipro Ltd. shares in the month of February-2013 from 3 partnership firms in which 3 companies were 35% stakeholders. It is submitted that the offence alleged against the accused was committed prior to coming into force of the amendment to the PC Act with effect from 26.7.2018. The complainant further alleged that the offences committed by the accused fall under criminal breach of

trust, criminal conspiracy, punishable under Section 409 and 120B of IPC and section 13(1)d) of the P.C. Act.

5. In case of company, the principles that apply to consider concept of ownership is that the equity shareholders are the owners and if there is liquidation, the persons who are entitled for the surplus available after discharge of all the claims are considered to be owners of the Company. In the case on hand, if all the 3 companies are liquidated simultaneously, there would be no claimant for the surplus and hence the same will be appropriated to the State exchequer under Article 296 of the Constitution.

INDIAN LEGAL NEWS

6. As per section 2(b) of the PC Act, public duty means a duty in the discharge of which the State, the public or the community at large has an interest. It is submitted on behalf of the complainant that accused No.1 to 3 were discharging the public duties as directors of the 3 companies. As per Explanation to Section 2(b) of the PC Act, the State includes an authority, or a body owned or controlled or aided by the

Government or a Government company as defined in section 617 of the Companies Act 1956.

7. As per section 2(c)(viii) of the PC Act, the public servant means any person who holds an office by virtue of which he is authorized or required to perform any public duty. In the above circumstances, the complainant has submitted that these two cases fall under the definition of Section 2(b), 2(c)(iii)(viii)(ix) of the PC Act. According to the complainant, the 3 companies were promoted in 1974, owned by the accused No.1 and his mother till 1980 and they ceased to be shareholders of the 3 companies in 1980. As per the peculiar facts of the case, there were 3 companies co-owned by each other and when taken together they are ownerless. The 3 companies had common management and similar asset holding shares of Wipro Limited and in a subsidiary and in partnership firms. It is alleged that in the year 1980, accused No.1 and his mother transferred their shares of the said 3 companies and from that date 3 companies have been owned by other 2 companies with 50% of share. If the 3 companies were taken together there were no

shareholders at all and hence there is no owner to those companies.

8. The learned Advocate appearing for the complainant has relied upon the decision of the Apex Court reported in 2014 (14) SCC 420 in Manish Trivedi Vs. State of Rajasthan. In the said judgment the Apex Court held that the present PC Act envisages widening of the scope of the definition of the expression 'public servant' and any person who holds an office by virtue of which he is authorised or required to perform any public duty, to be a public servant. In the judgment reported in 2020 SCC Online SC 412 in the case of State of Gujarat Vs. Mansukhbhai in para 34 the Apex Court held that under Section 2(c) of the PC Act, the emphasis is not on the position held by an individual, rather, it is on the public duty performed by him and thereby given a general definition of public servant. In the judgment reported in (2016) 3 SCC 788 in the case of CBI vs. Ramesh Gelli, the Apex court held that Chairman of a private Bank was considered as a public servant. For the aforesaid reasons the complainant has submitted that the case fall under

the ambit of public servant and the accused were performing public duty. The above referred ratio laid down in the decisions are applicable to the facts of the case.

9. As per the allegations made in PC No.28/2020, the quantity of shares gifted by the 3 companies were decided in common and each of the 3 companies gifted such number of shares so that the balance shares held by each of the 3 companies after the gift was an identical 187666 shares as reflected in the accounts of 3 companies as on 31.3.2011. It is further stated in similar form the gifts made by each of the 3 partnership firm in February-2013 and committed the offence in PCR No.29/2020 was identical in quantity 98509000 shares in each of the 3 companies were transferred.

10(a). In the light of the submissions made, in pursuance of the orders passed by this Court dt.27-01-2020 in PCR No.2/2018, 3/2018 and 4/2018, the case was registered against the present accused No.1 to 3 as Special C.C.No.69/2020. Aggrieved by the said order, the present accused and others have preferred

Criminal Petition No.1634/2020 clubbed with 1729/2020, 1496/2020, 1499/2020 and 1500/2020 before the Hon'ble High Court of Karnataka at Bengaluru. The facts of the case on hand and the facts in the above referred private complaints were almost similar. As per the order dated 15.5.2020, the Hon'ble High Court was pleased to dismiss the petition filed by the accused under Section 482 of Cr.P.C and accordingly confirmed the order passed by this court.

10(b). In the said order the Hon'ble High court observed that as on the date of amalgamation of 3 companies, the equity shareholdings with the 3 Transferor Companies were interlinked/cross held by each of the Companies which means that the ownership of the assets exclusively vested with the 3 companies and not with accused No.1 to 3. Accused No.1 to 3 were representing the Transferor Companies as Directors and not as owners and the 4th accused Company is wholly owned and controlled by private Trust formed by accused No.1 and 2 and accused No.1 to 3 are the only Directors of accused No.4 company.

10(c). In the above referred order, the Hon'ble High court further held that the 3 financially robust Companies of which accused No.1 to 3 were the directors have been absorbed/consolidated with accused No.4, a loss making Company, through the process of amalgamation, as a result, huge assets held by the 3 Transfer Companies have been transferred to accused No.4 Company without making payment of any consideration and the device or mechanism, the ownership and control of the assets of the 3 companies have been effectively taken over by accused No.1 to 3. and the facts clearly fall within the mischief of Section 409 of IPC.

10(d). In the said order, the Hon'ble High Court further observed that a shareholder is separate from the Company and accused No.1 to 3 were neither the owners nor the shareholders of 3 companies and it is necessary to find out the persons and the purpose behind setting up such a corporate vehicle on the guise of amalgamation. The entire transaction was improper and it is the act of breach of the obligation cast under law on accused No.1 to 3 and they have taken facade of corporate entity has been used to circumvent a statute to achieve or

perpetuate monopoly over the assets of an incorporated Company, it is for the Court to tear the web of legal entity by piercing the corporate veil.

10(e). The Hon'ble High Court also made observation that the entire transaction was contrived to get hold of the valuable assets of the Transferor Companies camouflaged as amalgamation. But for this amalgamation, in the event of winding up of the Transferor Companies, its assets would have been taken over by its legitimate shareholders and in their absence, the same would have been appropriated by the Union as bona vacantia. Since the allegations proceed on the basis that in order to take over the assets of the Transferor Companies, accused Nos.1 to 3 have misused their fiduciary position as agents of the Company and have acted in breach of trust and consequently managed to enrich themselves in collusion by transferring the assets to accused No4, which was wholly owned by the Private Trust controlled by accused No.1 and 2. The Hon'ble High court finally held that on the facts alleged in the complaints prima-facie attract the ingredients of the offences under section 409 read with section 34 and section

120B of IPC entailing prosecution of the petitioners for the above offence.

11. It is alleged that accused No.1 to 3 as the directors of the 3 companies discharging the public duty and thereby they have committed the offence of criminal misconduct as public servants under the PC Act and criminal breach of trust under the IPC. It is submitted that as on the date of filing of the complaint and taking of cognizance, accused No.1 to 3 were ceased to be the public servants. Therefore, the sanction under Section 19 of the PC Act is not required for proceeding against them. Moreover, accused No.1 to 3 are not covered under the provisions of Section 19(1)(a) (b) or 19(1)(c) of the PC Act who were not appointed as public servants and even no person is competent to remove them. Section 197 of Cr.P.C. is not applicable to the offence under Section 409, and 120B read with 34 of IPC. As on the date of commission of the offence, Section 13(1)(d) was in existence and the accused have to be prosecuted for such offence continues as the said liability arose before amendment to the PC Act came into force with effect

from 26.7.2018. It is submitted that the complainant has filed an application before the Hon'ble High Court of Karnataka for recall of merger sanction passed by the said Court.

12. The complainant has also filed an affidavit in support of the allegations made in the complaint. He has produced documents such as copy of the board resolution dated 1.7.2015, financial statement of the companies as on 31.3.2010, 31.3.2011 and 31.3.2013, copy of the trust deed, copy of the record of Bombay stock exchange in respect of the gifts effected in 2013, financial statement of accused No.4 trust, annual returns for the year 2011-13 etc. At this stage the above referred documents are prima-facie sufficient to proceed against the accused for the alleged offences.

13. It is well settled law that while issuing the process, satisfaction of the of this court should be confined to the issue as to whether prima-facie case is made out against the accused. At this stage this court is not required to satisfy itself to the sufficiency of evidence to frame charge or to secure conviction

of the accused. From the materials placed on record and sworn statement of the complainant and complaint allegations at this stage this court finds that the complainant has made out a prima-facie case against the accused No.1 to 4. The accused No1 to 3 as directors of the three companies were entrusted with the property/assets of those companies. They were having dominion over the property have dishonestly misappropriated and converted to their use by transferring the assets to the 4th accused trust in pursuance of criminal conspiracy. The complaint allegations disclose the elements of criminal misconduct. At this stage, this court is not required to ascertain the veracity of the allegations made in the complaint. It is made out from the materials placed on record that the accused No.1 to 3 were performing the public duty and therefore they are public servants. There are sufficient materials to proceed against the accused in both the complaints for the offence punishable under section 13(1)(d) of the PC Act and Sections 409 and 120B read with section 34 of the Indian Penal Code. Therefore this court proceeds to pass the following

: ORDER :

Acting under 204 of Cr.P.C. office is hereby directed to register two separate Special cases against the accused No.1 to 4 in PC 28/20 and PC 29/20 for the offences punishable under Section 13(1)(d) read with section 13(2) of The Prevention Corruption Act and Sections 409 and 120B read with section 34 of the Indian Penal Code.

The complainant is directed to file list of witness if any within 7 days from the date of this order.

The original order shall be kept in PC No. 28/20 and the copy shall form part of the record in PC No. 29/20.

(Dictated to the judgment writer, transcribed and computerized by him, corrected, pronounced and signed by me in the open Court on this the 25th day of January, 2022.)

(LAKSHMINARAYANA BHAT K)
XXIII Addl.City Civil & Sessions Judge
& Special Judge (PCA), Bengaluru.

Orders pronounced in the open Court vide separate orders. The final order portion reads as under:

ORDER

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The original order shall be kept in PC No. 28/20 and the copy shall form part of the record in PC No. 29/20.

Issue summons to accused No. 1 to 4 returnable by 28-02-2022.

(LAKSHMINARAYANA BHAT K.),
XXIII Addl.City Civil & Sessions Judge
& Special Judge (PCA), Bengaluru.

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Bar
and
Bench

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