FIR no. 185/09

PS Chanakya Puri

26.06.2014

Present: Ld. APP for the State.

Accused Amarjeet Kaur in person along with counsel.

File is taken up today on an application for plea bargaining has been moved on behalf of the accused Amarjeet Kaur.

In view of this, let the matter be sent before the Ld. CMM, Patiala House Courts today itself at 2.30 pm for appropriate orders. Accused Amarjeet Kaur is directed to appear in person before the Ld. CMM today itself after lunch. Ahlmad is directed to send the complete file before the Ld. CMM, Patiala House Courts today itself after lunch.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

IN THE COURT OF METROPOLITIAN MAGISTRATE-02,
PATIALA HOUSE COURTS, NEW DELHI.

FIR no. 451/14

PS: Vasant Kunj North

Date: 26.06.2014

This is an application for release of the vehicle bearing no. HR-55G 2348 on superdari.

Present: Ld. APP for the State.
Applicant Vinod Kumar in person along with counsel.

Reply of IO filed. He has no objection if the vehicle is released to the rightful owner.

In view of the report filed by the IO and the averments in the application, the same is allowed subject to the applicant furnishing a superdginama for a sum of Rs. 4,00,000/- to the satisfaction of the IO and subject to following conditions:

1. The IO shall verify the identity documents furnished by the registered owner as well as his ownership documents and retain copies of the same.
2. The registered owner shall produce the vehicle as and when ordered by the court.
3. The registered owner shall not change the colour of the vehicle.
4. The registered owner shall not sell the vehicle or create any third party interest over the same without the permission of the court.
5. The IO shall prepare a detailed panchnama of the vehicle aforementioned.
6. IO shall take photographs of the vehicle and make it part of the record.
7. IO shall verify the insurance of vehicle before releasing on superdaginama.

Application is accordingly, disposed off.

Copy of this order be given dasti to the applicant.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

FIR no. 134/14

PS Chanakya Puri

St. Vs. Gauravdeep Singh

U/s. 420/468/471/120B IPC

26.06.2014

Present: Ld. APP for the State.

Ld. Counsel for the accused Gauravdeep Singh.

The Ld. Counsel for the accused moved an application U/s 437 Cr. P.C. for grant of bail on behalf of the accused Gauravdeep Singh.

I have heard the Ld. Counsel for the accused and Ld. APP for the State on this application.

In view of the contents mentioned in the application, the accused Gauravdeep Singh is admitted to court bail on furnishing personal bond in the sum of Rs. 30,000/- with one local surety in the like amount and the subject to the condition that the accused shall not leave the country without the prior permission of this court. Further subject to the condition that he shall not involve himself in offences of a similar nature during the period of his release on bail and in case of breach of this condition, his bail in this case shall be cancelled. IO shall seize the passport of the accused and shall retain the same on record. Copy of this order be sent to the SHO for intimation.

(GOMATI MANOCHA)

MM-02/New Delhi.

26.06.2014

IN THE COURT OF METROPOLITIAN MAGISTRATE-02,
PATIALA HOUSE COURTS, NEW DELHI.

FIR no. 420/14

PS: Vasant Kunj North

Date: 26.06.2014

This is an application for release of the vehicle bearing no. HR-55-T1604 on superdari.

Present: Ld. APP for the State.

Applicant/AR Karambir in person.

Reply of IO filed. He has no objection if the vehicle is released to the rightful owner.

In view of the report filed by the IO and the averments in the application, the same is allowed subject to the applicant/AR furnishing a superdginama for a sum of Rs. 6,50,000/- to the satisfaction of the IO and subject to following conditions:

1. The IO shall verify the authorization documents furnished by the AR as well as ownership documents of the registered owner and retain copies of the same.
2. The AR/registered owner shall produce the vehicle as and when ordered by the court.
3. The AR/registered owner shall not change the colour of the vehicle.
4. The AR/registered owner shall not sell the vehicle or create any third party interest over the same without the permission of the court.
5. The IO shall prepare a detailed panchnama of the vehicle aforementioned.
6. IO shall take photographs of the vehicle and make it part of the record.
7. IO shall verify the insurance of vehicle before releasing on superdaginama.

Application is accordingly, disposed off.

Copy of this order be given dasti to the applicant/AR.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

CC No. 172/14
Quantum Outdoors Vs. M/s Real Media Solutions Pvt/ Ltd.

CW1 Statement of complainant: Sh. Tanuj Dewan aged about 31 years, Proprietor of Ms. Quantum Outdoors.

On SA

I am the complainant in the present matter. I tender my evidence by way of affidavit Ex CW1/A, bearing my signatures at point A & B. I rely upon documents i.e. invoices are Ex. CW-1/1 to 1/16, cheque in question Ex. CW-1/17 and Ex. CW1/18, cheque returned memo Ex. CW-1/19 to Ex. CW-1/21, legal notice IS Ex. CW-1/22, registered receipt is Ex. CW-1/23 to Ex. CW-1/28, AD card is Ex. CW-1/29 to 31, returned envelope Ex. CW-1/32 and Ex. CW-1/33. Copy of signatory detail Ex. CW-1/34.

In addition to the above, I also submit the following information as under :-

a. Name of all the accused; M/s Real Media Solutions Pvt/ Ltd., Pankaj Goswami, Yuvraj Agarwal, Dharamvir Singh.

b. Particulars of the dishonoured cheque/cheques;

- Person/Company in whose favour the cheque/cheques were issued
  Quantum Outdoors
- Drawer of the cheque/cheques — Pankaj Goswami and Yuvraj Agarwal
- Date of issuance of cheque/cheques — 30.01.2014 and 29.03.2014
- Name of the drawer banks, its location — Axis Bank Ltd., Mumbai.
- Name of the drawee bank, its location — HDFC Bank, Karnal
- Cheque No./Nos. — 234957 and 234954
- Signatory of the cheque/cheques — Pankaj Goswami and Yuvraj Agarwal

c. Reasons due to which the cheque/cheques were dishonoured;
payment stopped by the drawer

d. Name and Designation of the persons sought to be vicariously liable for the commission of the offence by the accused Company and their exact role as to how and in what manner they were responsible for the commission of the alleged offence;

M/s Real Media Solutions Pvt/ Ltd., Pankaj Goswami, Yuvraj Agarwal, Dharamvir Singh.

e. Particulars of the legal notice and status of its service; dated 10.05.2014, duly served.

f. Particulars of reply to the legal notice, if any. Not replied.

It is further submitted that the information submitted above is true and correct.

R.O. & A.C. **(GOMATI MANOCHA)**
MM-02/NDD/PHC/26.06.2014

CW1 Statement of complainant: Sh. Tanuj Dewan aged about 31 years, Proprietor of Ms. Quantum Outdoors.

On SA

I close my pre-summoning evidence.

R.O. & A.C. **(GOMATI MANOCHA)**
MM-02/NDD/PHC
26.06.2014

CC No. 173/1/14
Ashok Verma Vs. M/s Harsha AssociatesLtd

26.06.2014

CW1 Statement of complainant: Sh. Ashok Verma S/o Sh. Ved Prakash Verma R/o 159, Bulstrode Avenue, Hounslow, TW 3AE, England, UK.

On SA

I am the complainant in the present matter. I tender my evidence by way of affidavit Ex CW1/A, bearing my signatures at point A & B. I rely upon documents i.e. compromised agreement dated 25.11.2011 Ex. CW-1/1 (COLLY.)(OSR), cheque in question Ex. CW-1/2, cheque returned memo Ex. CW-1/3, legal notice dated 12.05.2014 Ex. CW-1/4, receipts of speed post Ex. CW-1/5 to 1/8, delivery report is Ex. CW-1/9 to 12.

In addition to the above, I also submit the following information as under :-

a. Name of all the accused; M/s Harsha AssociatesLtd, Sumit Kathuria, Harish Kathuria and Ravi Kathuria.

b. Particulars of the dishonoured cheque/cheques;

- Person/Company in whose favour the cheque/cheques were issued Ashok Verma
- Drawer of the cheque/cheques — authorized signatory Sumit Kathuria
- Date of issuance of cheque/cheques — 15.04.2014
- Name of the drawer banks, its location — Kotak Mahindra, Yojana Vihar, delhi
- Name of the drawee bank, its location — ICICI Bank, C.P.
- Cheque No./Nos. — 000803
- Signatory of the cheque/cheques — Sumit Kathuria (authorized signatory on behalf of accused no. 1)

c. Reasons due to which the cheque/cheques were dishonoured; payment stopped.

d. Name and Designation of the persons sought to be vicariously liable for the commission of the offence by the accused Company and their exact role as to how and in what manner they were responsible for the commission of the alleged offence;

M/s Harsha AssociatesLtd, Sumit Kathuria, Harish Kathuria and Ravi Kathuria.

e. Particulars of the legal notice and status of its service; dated 12.05.2014, duly served
f. Particulars of reply to the legal notice, if any. Not replied

It is further submitted that the information submitted above is true and correct.

R.O. & A.C.

(GOMATI MANOCHA)
MM-02/NDD/PHC
26.06.2014

CW1 Statement of complainant: Sh. Ashok Verma S/o Sh. Ved Prakash Verma R/o 159, Bulstrode Avenue, Hounslow, TW 3AE, England, UK.

On SA

I close my pre-summoning evidence.

R.O. & A.C.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

FIR no. 224/13

PS Vasant Kunj North

26.06.2014

Present: Ld. APP for the State.

None for the accused.

File received back as the matter has been settled in plea bargaining proceedings.

In view of this, personal bonds and surety bonds are cancelled. Surety is discharged. Endorsement, if any, be cancelled. Documents, if any, be returned as per rules.

File be consigned to the record room after necessary compliance.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

FIR no. 4/14

PS Chanakya Puri

26.06.2014

Fresh challan filed today.

It be checked and registered.

Present: Ld. APP for the State.

Accused Vikram Beniwal in person.

IO in person.

Heard. File perused. From the material on record prima-facie case is made out against the accused. I take the cognizance.

Copies supplied the accused. An application for plea bargaining has been moved on behalf of the accused Vikram Beniwal.

In view of this, let the matter be sent before the Ld. CMM, Patiala House Courts 03.07.2014 for appropriate orders. Accused is directed to appear in person before the Ld. CMM on the date fixed. Ahlmad is directed to send the complete file before the Ld. CMM, Patiala House Courts on or before the next date of hearing.

(GOMATI MANOCHA)

MM-02/New Delhi.

26.06.2014

FIR no. 41/14

PS Vasant Kunj North

26.06.2014

Present: Ld. APP for the State.

Accused Mohd. Bashir produced from JC.

Accused Mohd. Dulal is absent.

Issue NBW against the accused Mohd. Dulal and notice to his surety for 03.07.2014.

(GOMATI MANOCHA)

MM-02/New Delhi.

26.06.2014

CC no. 172/1/14

26.06.2014

Fresh complaint received by way of assignment. It be checked and registered.

Present: Complainant in person along with counsel.

Evidence by way of affidavit of CW-1 tendered.

Put up for consideration on the point of summoning on 26.08.2014.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

CC no. 173/1/14

26.06.2014

Fresh complaint received by way of assignment. It be checked and registered.

Present: Complainant in person along with counsel.

Evidence by way of affidavit of CW-1 tendered.

Put up for consideration on the point of summoning on 28.08.2014.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

IN THE COURT OF METROPOLITIAN MAGISTRATE-02,
PATIALA HOUSE COURTS, NEW DELHI.

State Vs. Hemant Kumar & Ors.
FIR no. 418/14
PS: Vasant Kunj North

Date: 26.06.2014

This is an application for release of the motorcycle bearing no. DL-4SBQ-0002 on superdari.

Present: Ld. APP for the State.
Applicant Gaurav Sehrwat in person along with counsel.

Reply of IO filed. He has no objection if the vehicle is released to the rightful owner.

In view of the report filed by the IO and the averments in the application, the same is allowed subject to the applicant furnishing a superdginama for a sum of Rs. 40,000/- to the satisfaction of the IO and subject to following conditions:

1. The IO shall verify the identity documents furnished by the registered owner as well as his ownership documents and retain copies of the same.
2. The registered owner shall produce the vehicle as and when ordered by the court.
3. The registered owner shall not change the colour of the vehicle.
4. The registered owner shall not sell the vehicle or create any third party interest over the same without the permission of the court.
5. The IO shall prepare a detailed panchnama of the vehicle aforementioned.
6. IO shall take photographs of the vehicle and make it part of the record.
7. IO shall verify the insurance of vehicle before releasing on superdaginama.

Application is accordingly, disposed off.

Copy of this order be given dasti to the applicant.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

FIR no. 530/07

PS Vasant Kunj North

26.06.2014

Present: Ld. APP for the state.
Accused/applicant Kulbhushan Gupta in person with counsel.

The accused/applicant has moved an application seeking no objection for re-applying for his passport as previous passport has expired.

Heard.

In view of the contents mentioned in the application, this Court has no objection in case the applicant is re-issued passport by the competent authority as per their rules.

However, it is made clear that this order shall not be construed as any direction to the competent authority for issuance of passport and the same should be granted only on satisfaction of other conditions and as per rules.

Application is accordingly disposed off. Copy of this order be given dasti.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

FIR no. 31/13

PS Vasant Kunj North

26.06.2014

Present: Ld. APP for the State.
Complainant is absent.
IO in person.

Issue summons to the complainant for 08.12.2014. Summons be given dasti to the IO for service.

(GOMATI MANOCHA)
MM-02/New Delhi.
26.06.2014

IN THE COURT OF MS. GOMATI MANOCHA, LD. METROPOLITAN MAGISTRATE, PATIALA HOUSE COURTS, NEW DELHI

CC No. 09/1/13

DR. SUBRAMANIAN SWAMY VS. Mrs. SONIA GANDHI AND ORS.

ORDER

26th June, 2014

THE COMPLAINT

The present complaint has been filed u/s 403, 406, 420 read with section 120B of the Indian Penal Code (hereinafter referred to as the I.P.C.) The subject matter of this complaint are various offences including fraud, cheating, criminal misappropriation and criminal breach of trust allegedly committed by the accused persons against The Congress Party and The Associated Journals Ltd.

THE COMPLAINANT

This complaint has been filed by Dr. Subramanian Swamy. The complainant is the president of The Janta Party. He has been a Member of Parliament five times and has also held the position of Union Cabinet Minister for Commerce, and of Law and Justice; and has also held Cabinet Rank position as Chairman of the Commission on Labour Standards and International Trade. He has also held several other eminent positions and has been leading a crusade against corruption.

THE ACCUSED PERSONS

The following persons have been arrayed as accused in the present complaint:

Accused No.-1: Sonia Gandhi (President, AICC)

Accused No.-2: Rahul Gandhi (Vice- President, AICC)

A ccused No.-3: Motilal Vora (Treasurer, AICC)

Accused No. -4: Oscar Fernandes (General Secretary, AICC)

Accused No. -5: Suman Dubey

A ccused No. -6: Sam Pitroda

Accused No. -7: Young Indian

FACTS

The facts of the present complaint are briefly as under:

1. The Associated Journals Limited (hereafter AJL) was the publisher of National Herald Newspaper, which newspaper was founded under the chairmanship of Sh. Jawahar Lal Nehru.

2. The AJL was formally closed and printing of National Herald, Navjivan and Qaumi Awaz was terminated and thus ceased in 2008. The AJL was at that time under a huge unpaid debt of Rs. 90 Crores.

3. On 23.11.10 Young Indian Company (herein after referred to as YI) was incorporated with just Rs. 5 Lacs as paid up capital u/s 25 of the Companies Act in which Ms. Sonia Gandhi and her son Rahul Gandhi owned 38% each of the shares issued i.e. 76% together.

4. In December, 2010, the Board of Directors of YI formally passed a resolution to 'Own' the outstanding debt of AJL that had arisen after AJL admittedly obtained an unsecured zero interest loan from the Congress Party for an equivalent amount to liquidate the said debt. The Congress Party President is Ms. Sonia Gandhi, the then General secretary was Mr. Rahul Gandhi, now Vice President of the Congress Party, the party Treasurer is Sh. Moti Lal Vohra, who besides being the share holder/Director of YI was also the CMD of AJL.

5. The AJL held a meeting of its board and after coming to its bogus conclusion that it could not from its assets discharge the debt, resolved without reference to and approval of their shareholders, that in lieu of YI owning its debt and for a further consideration of Rs. 50 Lacs from YI, the entire share equity be transferred to YI. Thus AJL became a wholly owned company of YI.

6. The President of the Congress Party along with other party office bearers namely

Rahul Gandhi, Moti Lal Vohra and Oscar Fernandes who together owned 100% of the equity of the YI, wrote off the loan obtained from the party as irrecoverable.

7. Thus, by mere payment of Rs, 50 Lacs by YI, the company acquired the complete ownership of AJL. From the balance sheet of AJL it is evident that it has real estate assets of atleast Rs. 2000 crores, including a mutli storied building in the prime area of New Delhi on Bahadur Shah Zafar Marg. The AJL has real estate in Lucknow, Bhopal, Indore, Mumbai, Panchkula, Patna and other places. A conservative estimate of real estate worth is placed at Rs. 5000 Crores, all provided originally by various Central and state Governments after 1947 for facilitating newspaper printing and publishing.

8. Having taken possession of the vast real estate earlier belonging to the AJL, the YI declared that according to its objective submitted for obtaining registration u/s 25 of the Companies Act, 1956, it will not engage in publishing any newspaper including the National Herald.

9. The National Herald House, a prime property in New Delhi has been opened for commercial renting and according to the estimates, YI already receives atleast Rs. 60 Lacs per month as rent on the space made available.

ALLEGED MODUS OPERANDI

1. On 23.11.2010, Sonia Gandhi (accused No. 1) and Rahul Gandhi (accused No. 2) came together with the other accused and hatched a criminal conspiracy and formed a company (Young Indian). Accused No. 1 & 2 controlled 76% of the shares of Young Indian and together with Accused No. 3 & 4, who were their loyalists, they owned 100% of the shares.

2. The very next month, December 2010, the accused 1 & 2 along with the other accused conspired and got assigned to themselves the debt of Rs. 90.25 crores owed to the Congress Party by AJL . This could be done as the funds of the Congress Party are entrusted to and were controlled by accused No.1 to 3 as President, Vice-President and Treasurer of the Congress Party. The assignment of debt was made for a paltry consideration of Rs. 50 lacs by false representation that AJL had no net worth and is unable to re-pay that debt to the Congress Party, when infact AJL had huge real estate worth thousands of crores and relatively very little liabilities.

3. Thus, by just paying Rs. 50 lacs, YI company obtained the right to recover Rs 90.25 crores from AJL. Thus, Accused No. 1 to 4 cheated, committed criminal breach of trust and criminally misappropriated the funds of the Congress Party to the tune of Rs. 89.75 Crores (equal to Rs. 90.25 crores minus Rs 50 lacs).

4. Finally, on 26.2.2011, accused no. 3 (who was director in AJL since 2002 and who by 2006 had become Chairman of AJL and who by 2010 had become Chairman and Managing Director of AJL) and accused No.5 (made a director of AJL on 21.12.2010) and accused No.6 (made director of AJL on 17.06.2010) passed resolutions to convert the loan of Rs. 90.25 crores (that had been assigned to Young Indian) into almost all its equity shares thereby vesting in Young Indian control and indirect ownership of around 99% of AJL and also its real estate worth thousands of crores of rupees. Thereby, the accused committed breach of trust against Congress Party as well as AJL and it's shareholders. The properties of shareholders of AJL and the rights which ought to have accrued to the Congress Party was dishonestly misappropriated by the accused by conversion of the loan of Rs. 90.25 Crores into equity in favour of YI. It is in this manner that the shareholders of AJL and the Congress Party were cheated.

ALLEGED WRONGFUL GAIN/ LOSS – HOW CAUSED?

It is alleged by the complainant that the AJL owned real estate worth more than Rs. 2000 Crores in its balance sheet. Informal estimates put this value at Rs. 5000 Crores. Against this, AJL owed an amount of just over Rs. 90 Crores to the Congress Party for zero interest unsecured loans. Besides this, it had very little other liability. The balance of real estate of AJL left over even after paying of the Rs. 90 crores plus loan due to the Congress Party, actually belongs to AJL's thousand plus shareholders. Big and small shareholders of AJL had contributed approximately Rs. 89 Lacs to AJL's capital at different times when the Rupee was valued more than 100 times its present value. If AJL's shares or real estate had been sold by bid and auction and the proceeds distributed to them, hundreds of shareholders would have received back sums equivalent to several thousand times the amount invested by them originally. Also, the Congress Party would have got back the loan with interest from the year 2008. This is because of the huge appreciation in the value of real estate owned by the AJL . But in the present scenario, not only the Congress party did not get back the loan advanced by it to AJL but the control over the 2000 crores worth of assets also got transferred to

YI whose 76% of shareholding vests with accused No. 1 & 2 ie. Smt. Sonia Gandhi and Sh. Rahul Gandhi and the remaining shareholding of 24% vests in accused No. 3 & 4 ie. Sh. Moti Lal Vohra and Sh. Oscar Fernandes.

EVIDENCE

The following witnesses were examined by the complainant in his pre-summoning evidence:

1. **Dr. Subramanian Swamy, the complainant, appeared as CW1.** He reiterated the contents of the complaint. He further deposed that the accused no. 1 to 4 as Senior Office Bearers of Congress Party used their position to provide an unsecured zero interest of loan of Rs. 90 Crores. The AJL thereafter held a meeting of their Board and without reference to the Shareholders resolved that in lieu of Young India, owning the debt and for a further consideration of Rs. 50 Lakhs, the entire share equity of AJL would be transferred to Young India. Thus, AJL became a wholly owned company of Young India.

Accused no. 1 as the President of the Congress Party alongwith accused no. 2, 3 & 4 thereafter, held a meeting of the Congress Party and decided to write off the loan from the Party as irrecoverable by falsely holding that the Net Worth of the Company is negative.

Thus, having possession of vast Real Estate, the Young Indian declared through accused no. 2 that Young Indian will not engage in publishing a newspaper including National Herald as it was against the declared objectives submitted for obtaining the registration under Section 25 of the Companies Act.

The Memorandum of Association of the AJL bars the Company from entering into any transaction which is not for furthering its objective to publish newspapers.

He also stated that the National Herald House is a prime property in Bahadur Shah Zafar Marg and was given by the Government for the purpose of publishing a newspaper at concessional rates. However, the Young Indian now owner of the National Herald House has opened this property for commercial renting such as to Multinational Companies and to the Ministry of External Affairs for its Passport Seva Kendra on rent. He therefore alleged that offences of Fraud, cheating, misappropriation, criminal breach of trust etc. was committed with the meeting of minds.

CW1 also relied upon various documents filed with the complaint.

2. **R. Venkatesh appeared as CW2.** He deposed that he is a practicing chartered accountant and has vast experience on various matters relating to the accounts, company law, auditing and other commercial activities. His profile is Ex. CW-2/A (colly.) He has downloaded the balance sheet of M/s Associated Journals Limited from MCA 21 Web site (the official website of the Ministry of Corporate Affairs Govt. of India) by paying the necessary fees. The receipt of payment is Ex. CW-2/B (colly.) . He deposed that it is mandatory for companies to file their balance sheet with the Registrar of Companies which hosts these details in the MCA 21 Website under the provisions of section 220 of the Companies Act. The same is Ex. CW-2/C (colly.). On the perusal of the balance sheet of The Associated Journals Ltd. marked as mark A (colly.), he came to know that the Congress Party (All Indian Congress Committee) has lent a sum of Rs. 90 crores approximately to the said company. As per the extract of the resolution of AJL " the chairman informed the board that the company plans to issue shares to Young Indian, a company incorporated under the provisions of section 25 of the Companies Act, 1956 in consideration of the extinguishment of the loan amount upto Rs. 90,21,68,980/- (rupees Ninety Crores Twenty One Lakhs Sixty Eight Thousand Nine Hundred Eighty only) due to Young Indian, under a loan facility availed by the company from the "All India Congress Committee" which facility and all other benefits there under was subsequently transferred by "All India Congress Committee" in favour of "Young Indian".

From the above statement forming part of the documents filed with the Registrar of Companies, it is very clear that the Congress Party has lent a sum of approximately Rs. 90 Crores. Secondly, on the perusal of the balance sheet and the related documents filed with the Registrar of Companies, he did not find any evidence of the Congress Party having made any efforts to recover the said loan. It is pertinent to note that the loan was made to a body corporate which has admittedly certain assets. The usual commercial practices in such case is to file winding up petition or take up alternate legal remedy through the manner known to law. Strangely he did not find any such attempts by the Congress Party to recover the said loan. It is also important to note that the congress party having lent this money could have very well written it off in its books subject to the provisions of the Representation of People Act, 1951 and the Income Tax Act. He obtained a copy of the income tax returns filed by the Congress Party which is Ex. CW-2/D. In the instant case, while the Congress Party has written off the loan (implying that it rescinds the right to recover this money), the beneficiary of this grand write off is not the borrower but yet another entity namely Young Indian, which has been allotted shares aggregating to Rs. 90 Crores in M/s Associated Journal Ltd. Also that under the provisions of Representation of People Act no loans can be made by any political party.

He reiterated the entire scheme of things as under:

Step 1: Congress Party makes a loan of approximately Rs. 90 Crores to Associated Journal.

Step 2: Congress Party writes off the loan in its books without taking any steps to recover the said loan.

Step 3: In consideration of writing off the loan, an ingenious arrangement is entered between Congress Party (lender), Associated Journals (the borrower) and entirely new entity namely Young Indian (beneficiary) wherein Associated Journals allots 90216898 shares of Rs. 10 /- each aggregating to Rs. 90,21,68,898/- (rupees Ninety Crores Twenty One Lakhs Sixty Eight Thousand Eight Hundred Ninety Eighty only).

Step 4: The beneficiary, Young Indian has recorded the allotment of these shares in its books and is reflected in schedule 4 of its balance sheet dated 31.03.2012.

The fact that Young Indian is a beneficiary and has obtained these shares through devious method is reflected by the fact that these shares do not have any value in its books. The balance sheet of Young India are marked as Mark B (colly.) Simply put, this is a property acquired illegally and without consideration. As no consideration was paid by Young Indian these shares allotted to it is explained in the notes to accounts under schedule 7 of Young Indian Ltd. as hereunder:

"in pursuit of its objects the company acquired loan owed of Rs. 90,21,68,980/- by the Associated Journals Limited (the said company), presently engaged in achieving a recast of its activities so as to have its main object congruent to the main object of the company, for a consideration of Rs. 50 Lakhs. As a part of restructuring exercise of the said company the said loan was converted in to 90216898 ordinary shares of Rs. 10/- each fully paid. Since said acquisition is treated as application on the objects of the company (and accordingly treated in the financial statement of the company) the same has not been reflected as an investment in shares. Besides even if the shares were to be treated as an asset (investment) having regard to the fact that the net worth of the said company is negative, recognizances the entire cost as diminution in value would result in an equivalent charge to the income and expenditure account".

From the above documents submitted it is very clear that the intention to lend money by Congress Party to Associated Journal Ltd. (which has huge land bank and immovable properties) was with an ulterior motive of grabbing management control. It is strange that the beneficiary of the loan write off was not M/s Associated Journal Ltd but as third party which was a stranger to the original loan contract but nevertheless whose Board is controlled by the office bearers of the Congress Party indicating a conspiracy. This conspiracy manifests when Rs. 90 Crores worth of shares are allotted by M/s Associated Journal Ltd to M/s Young India.

He stated that the money lent by congress party grossly violates the Representation of People's Act, 1951 and that the reasons for making the loan obviously had a sinister motive borne by the subsequent developments.

Having made the loan and not recovering the same, the next step in the conspiracy includes serious dimension of criminal breach of trust. After all every party worker has made this donation not for the Congress Party and its officer bearers in particular to recklessly squander such donation and enrich themselves.

The third leg of the conspiracy gets completed when it is seen that the beneficiary of the loan write off in the books of the Congress Party is not borrower but a completely different body corporate whose management and share holding is vested in the hands of Mrs. Sonia Gandhi, Mr. Rahul Gandhi, Mr. Motilal Vora and Mr. Oscar Fernandes. . Post acquisition of shares aggregating to Rs. 90 Crores in Associated Journal Ltd., Young India in effect owns 99% of the entire paid up capital in M/s. Associated Journal Ltd. thereby controlling not only the immovable property owned by M/s. Associated Journal Ltd but also the resultant income to M/s. Associated Journal Ltd. M/s Associated Journal Ltd is now a subsidiary of M/s Young India under the

Companies Act. Given the facts and circumstances of the case,he prayed that a prima facie case of criminal conspiracy, breach of trust and cheating and various other offences under the IPC is made out.

3. **Sh. Gulab Chand UDC from Office of Registrar of Companies, NCT of Delhi and Haryana appeared as CW3** and deposed that as per the record available with the MCA portal which is maintained by the Registrar of Companies, NCT of Delhi and Haryana, at present the followings are the directors of M/s The AJL and as on 26.02.2011 are:

a) Mr. Motilal Vora, who is the Managing Director of M/s The AJL was appointed on 22.03.2002.

b) Oscar Fernandes, who was appointed as Director of M/s The AJL on 17.06.2010.

c) Suman Dubey, who was appointed as Director of M/s The AJL on 21.12.2010.

d) Satyan Gangaram Pitroda @ Sam Pitroda, who was appointed as Director of M/s The AJL on 21.12.2010.

The certified copies of list of directors of M/s The AJL is Ex. CW-3/A.

` He deposed that as per the record available with the MCA portal which is maintained by the Registrar of Companies, NCT of Delhi and Haryana, at present the followings are the directors of M/s Young Indian and as on 26.02.2011 were:

a) Suman Dubey, who was appointed as Director of M/s Young Indian on 23.11.2010.

b) Satyan Gangaram Pitroda @ Sam Pitroda, who was appointed as Director of M/s Young Indian on 23.11.2010.

c) Rahul Gandhi, who was appointed as Director of M/s Young Indian on 13.12.2010.

d) Sonia Gandhi, who was appointed as Director of M/s Young India on 22.01.2011.

e) Motilal Vora , who was appointed as Director of M/s Young India on 22.01.2011.

f) Oscar Fernandes, who was appointed as Director of M/s Young India on

22.01.2011.

A certified copy containing this information is Ex. CW-3/B

He deposed that as per Schedule 7 para 3 (I) Key Management Personnel (KMP)-Managing Committee Members and Founder Members from Form 23 AC i.e. balance sheet for the year ending 31.03.2012, the key management personnel of M/s Young Indian is Ex. CW-3/C are:

1. Sonia Gandhi
2. Rahul Gandhi
3. Motilal Vora
4. Suman Dubey
5. Satyan G. Pitroda
6. Oscar Fernandes

He stated that apart from Mr. Rahul Gandhi and Ms. Sonia Gandhi, the Directors and Key management personnel of M/s Young Indian were also on the board of Directors of M/s The AJL. Mr. Motilal Vora was the Managing Director of M/s The AJL when the allotment of the equity shares to M/s Young Indian was made on 26.02.2011 and he was also the Director of M/s Young India on 26.02.2011 (extract of the Resolution no. 3 Allotment of Shares passed by the Board of Directors of The Associated Journals Limited in their Board Meeting held on 26.02.2011) The same is attached with Form 2, certified copy of which is Ex. CW-3/D.

He further deposed that as per the record available with the MCA portal which is maintained by the Registrar of Companies, NCT of Delhi and Haryana, the list of share holders given in form 20B i.e. the Annual return with attachment for the year 2012 of M/s Young Indian is as under:

Name of the Person	Address	No. of Shares
Mrs. Sonia Gandhi	10, Janpath, New Delhi-11	1900

Mr. Rahul Gandhi	12, Tuglak Lane, New Delhi-01	1900
Mr. Moti Lal Vora	33, Lodhi Estate, New Delhi-11	600
Mr. Oscar Fernandes	8, Pandit Pant Marg, New Delhi-01	600
TOTAL		5000

The certified copy of the same is Ex. CW-3/E. A revised copy of Form 20B i.e. Annual returns of Ms. Young Indian for the year 2012 is Ex. CW-3/F.

Thereafter an application for leading additional evidence was moved stating that the additional evidence sought to be led is crucial to this case. The application was allowed and J. Gopikrishnan and the complainant Dr. Subramanium Swamy led evidence.

4. **CW4 – Sh. J. Gopikrishnan** deposed that on seeing the documents of The Young Indian and The Associated Journals Ltd., he wrote an email to Sh. Rahul Gandhi on 08.10.2012 at his official Email Id i.e. office@rahulgandhi.in. His query was to him regarding the objective of the newly floated company Young Indian in which Mr. Rahul Gandhi and his mother Smt. Sonia Gandhi, were directors having share holding of 38% each. His main query was- "Are they planning to start a newspaper?" He received a reply via email on his email account i.e. jgopikrishnan@yahoo.com on 09.10.2012 that "Young India is a company registered and holding a license under Section 25 of the Companies Act, 1956. As a Section 25 company, Young Indian, is a not-for-profit company and does not have commercial operations. The activities of the company are in the public domain. Anyone who chooses to can inspect the Objects of the Company. The company has no intention of starting any newspaper". The said email is Ex CW-4/A.

Thereafter, the complainant Dr. Subramanian Swamy deposed that he had filed an RTI application with the Election Commission of India (reply to which is Ex. CW-1/A) seeking to know whether under section 29 of the Representation of People's Act, 1951, it is permitted for a political party to receive donations and funds subject to section 13A of Income Tax Act, and whether there is any provision in the IT Act for investing the funds of party in equity, debentures or any other commercial activities. A further query was also raised that whether the Election Commission is proposing that the Parliament enacts an amendment to the Act to bar or to permit such commercial activities. He received the reply to these queries that there is no provision in the Representation of the People's Act, 1951, providing for investing the funds of the political party in equity, debentures or in any other commercial activity and that the Commission had not made any proposal for amendment to the Act to bar/ permit such commercial activity by political parties. He also filed the Constitution of the Congress Party. The same is a public document which is available on the official website of the Congress Party. The same is Ex. CW-1/B. Despite no such provision for giving loan, the Congress party leadership extended a loan to revive the commercial activities of The AJL. This is also against the Article XIX & XX of the Constitution where there is no provision for the party to extend any loan. So not only the Representation of People's Act has been violated even the party Constitution and article XIX & XX thereof defining the powers of the treasurer specifically excludes the party from extending loan for any purpose.

He stated that by becoming the Directors of YI, the accused persons have unduly enriched themselves as the properties of the AJL have been given on rent. He deposed that YI is a sham company and is acting as a special purpose vehicle for acquiring control over Rs. 2000 Crores worth of assets of The AJL. Also the directors are deriving all the emoluments/ benefits as directors of a Private Ltd. Company which is not carrying on any business/commercial activity and has a authorized capital of just Rs. 5 Lacs. Thus, all the emoluments/benefits being derived by the accused from YI have in effect originated from the assets of The AJL. He stated that the principal object for which AJL was formed was to publish newspapers. The purpose/objects of YI as mentioned in the Memorandum of Association of the Company is nowhere connected to publication of the newspapers nor any intention has been expressed by its directors to start/ continue publication of newspapers. Thus, the objects of both the companies are not congruent to each other. He relied upon the Memorandum of Association and Articles of Association of AJL and Memorandum of Association and Articles of Association of YI. The same are Ex. CW-1/C to Ex. CW-1/F. He also filed the extracts of resolution dated 26.02.2011 and 12.08.2011. The same are Ex. CW-1/G (colly.).

Thereafter, the Pre- summoning evidence was closed and arguments were heard on the point of summoning. The record was perused.

COURT'S FINDINGS

At the outset, it is important to specify the ambit, scope, meaning and import of this order- **The test of *prima-facie* case.**

Section 204 Cr.P.C says that if in the opinion of the Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be -

a) a summons case, he shall issue his summons for the attendance of the accused, or

b) a warrant -case, he may issue a warrant, or , if he thinks fit, a summons for causing the accused to be brought or to appear at a certain time before such Magistrate or(if he has no jurisdiction himself) some other Magistrate having jurisdiction.

Thus, at this stage this court has to be only satisfied whether "there are sufficient/ reasonable grounds for proceeding in the matter" i.e. The court on the cursory perusal of the complaint and the evidence without weighing the evidence meticulously has to see whether there is *prima facie* evidence in support of the charges. The test in not whether there will be conviction but whether a *prima facie* case has been made out or not.

Now the foremost question that comes up for deliberation is whether the complainant whose interest/ rights have not been directly affected/ violated can institute the present complaint. "It is well recognized principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision."(*A.R. Antulay vs. Ramdas Sriniwas Nayak and Anr.* relied). In view of the above there is no doubt that the complainant is completely eligible to institute and pursue the present complaint.

Now the question arises what offences if any, have been committed and whether the ingredients of the offences alleged have been satisfied. The complainant has alleged the commission of offences u/s 403, 406, 420 read with section 120 B of the IPC. Let us examine the ingredients of each offence one by one and see whether the facts of the present case prima facie establish the commission thereof.

Section 405 I.P.C - Criminal Breach of Trust

The following ingredients are absolutely necessary to attract the operation of this section:-

(i) the accused must be entrusted with property or dominion over property;

(ii) the person so entrusted must-

(a) dishonestly misappropriate or convert to his own use that property; or

(b) dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation of -

(i) any direction of law prescribing the mode in which such trust is to be discharged; or

(ii) any legal contract made touching the discharge of such trust.

"Entrusted" - Meaning of. - Entrustment is an essential element of the offence defined in Section 405, Indian Penal Code. In common parlance, it embraces all cases in which a thing is handed over by one person to another for specific purpose. Entrustment need not be express; it may be implied. In the first place, then, there must be a trust connected with the use of property. A trust is defined to be "*an obligation annexed to the ownership of property and arising out of confidence reposed in and accepted by the owner or declared and accepted by him, for the benefit of other, or of another and the owner".(Indian Trust Act, 1882) "Entrusted* is not necessarily a term of law. It may have different implications in different contexts.

The word "*entrusted"* used in this section is not a legal term which has a definite precise meaning attached to it. It is an ordinary word, a word in common use. The words "*in any manner"* in the opening line of the section would appear to indicate that the Legislature did not intend that any narrow or technical meaning should be attached to the expression "*entrusted". State v. Jage Ra,* AIR 1951 Punj 103; *Satyendra Nath Mukherji,* ILR 1947 Cal 97.

A trust implies confidence placed by one man in another. It implies necessarily that the confidence was freely given and that there is a true consent.

In the instant case, the accused persons namely Ms. Sonia Gandhi, Mr. Rahul Gandhi, Sh . Moti lal Vohra, Sh. Oscar Fernandes were the key office bearers of the Congress Party. They were infact trustees of the funds belonging to the congress party. The funds of the Congress Party were not the personal property of these accused persons. The funds entrusted to them by the party were to be utilized to advance the purposes for which the Congress Party was formed. As per the reply to the RTI application filed by the complainant and also as per the constitution of the Congress Party itself, these funds could not have been advanced in the form of a interest free loan to a Public Ltd. Co namely the AJL as there is no provision in The Representation of People's Act or The Constitution of the Congress Party permitting grant of any such loan to a Public Ltd. Co. engaged in commercial activities. Further, the act of the accused persons in not recovering the said loan from AJL but in writing it off and transferring the loan facility to Young Indian for a paltry sum of Rs. 50 lacs clearly establishes that the trust has not been properly discharged.

Further, the accused Moti Lal Vohra was the director, Chairman and Managing director of the Board of Directors of AJL and was controlling the affairs of AJL as a fiduciary of the share holders and of the company. He fraudulently misrepresented that AJL had no net worth and is unable to repay the debt to the Congress Party, when as per the complainant, the AJL had huge real estate worth thousands of Crores and very little liabilities. Accused No. 3 along with Accused 5 & 6 passed resolutions to convert the loan of Rs. 90.25 crores (that had been assigned to Young India (accused No.7) into almost all its equity shares, thereby vesting in Young Indian (accused No.7) control and indirect ownership of around 99% of real estate worth thousands of crores of rupees. This gains special relevance in view of the fact that the accused Motilal Vora, along with the other accused, is a director in YI as well. The accused clearly acted against the interests of the company as the debt of approx. Rs. 90 crores could have easily been paid off by selling/ mortgaging some of the assets belonging to the company instead of allegedly falsely showing the net worth of AJL in the negative. Thus, the accused, *prima facie*, appear to have committed criminal breach of trust on the existing share holders of AJL as well as against the company.

Section 420 I.P.C - Cheating and Dishonestly Inducing Delivery of Property.

To prove this offence, it is first necessary to establish the ingredients of section 415 I.P.C i.e. Cheating.

Section 415 I.P.C -The ingredients required to constitute the offence of cheating are-

i) There should be fraudulent or dishonest inducement of a person by deceiving him;

ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) The person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

iii) In cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In the instant case, by the publication of objects of the Indian National Congress through the official website or otherwise, the Congress party induced public persons to contribute to the said party by way of donations/ membership fees /funds etc. The party also got exemption from tax as it was formed with the objective of advancement of the process of democracy. However, the office bearers of the Congress party by advancing an interest free loan to a Public Ltd. Company (AJL) which is a company involved in a commercial activity, infact appear to have defrauded the large No. of persons who contributed by way of donations/fees etc. to the Congress party as the money extended as loan was never given for the said purpose and neither the tax benefits were given for any such purpose. They appear to have cheated the state exchequer as well by claiming tax exemptions by showcasing the objectives for which the donations, etc. were sought by the congress from the people and diverting those funds to commercial purposes.

<u>Section 403 I.P.C: Dishonest Misappropriation Of Property</u>-

Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years or with fine, or with both.

The meaning of the term “dishonestly” is contained in section 24 of the Indian Penal Code. It says whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.

Further, “wrongful gain” and “wrongful loss” is defined in section 23 I.P.C . “Wrongful gain” is a gain by unlawful means of property to which person gaining is not legally entitled. While “ wrongful loss” is the loss by unlawful means of property to which the person losing it is legally entitled.

The aforesaid accused persons not only committed criminal breach of trust, but accused No. 1 to 6 formed Young Indian Company to acquire control over the Assets of AJL. YI, as per EX CW4/A is not involved in any business activity. Thus, the rent/ revenue generated by the properties belonging to AJL is being dishonestly misappropriated by the directors of YI and who enjoy absolute control over the properties of AJL. Thus, in effect the assets of the AJL are virtually filling the personal kitties of the directors of YI who have themselves not substantially invested in the AJL. Though YI is an incorporated company and so is a legal entity. But in reality, however, the business of the legal person is always carried on by, and for the benefit of, some individuals. There are situations where the court will and should lift the veil of incorporation in order to examine the “realities” which lie behind. Where a company has been formed to advance an allegedly illegal or fraudulent purpose the courts should refuse to uphold the separate existence of the company.

In this case a new company (YI) was created to own AJL. YI had a authorized share capital of Rs 5 lacs only and no assets of its own except those transferred to it by the AJL and with no business or income of its own except receiving revenue from the immovable properties of AJL. These facts speak for themselves. There cannot be direct evidence that the second company was formed for whatever purpose. An obvious purpose that it served and which stares

one in the face is to effect control over the assets of AJL by the few who are the shareholders of YI causing 'wrongful gain' to the accused persons, including Accused No. 7 (YI). Thus, this appears to be a clear case of dishonest misappropriation of property by the share-holders of YI namely accused No. 1 to 4.

Even otherwise, for the offence of Dishonest misappropriation of property, the other aspect of 'wrongful loss' cannot be lost sight of and has to be construed independently of whatever wrongful gain has accrued to the accused persons. This assumes importance as it may be later on pleaded that YI is a company formed u/s 25 of the Companies Act and that the Directors are not drawing any salary/ benefits etc. The misappropriation or conversion to own use of Assets of AJL is apparent from the evidence on record and in order to term it 'dishonest' it is sufficient to say that such conversion caused 'wrongful loss' to the share holders of AJL, without even going into what was gained by the accused persons. It is clear that the original share holders of AJL would have benefited tremendously had the assets of the company been used to get rid of the loan liability and these could have been used even to revive the company. Thus, conversion of debt and transfer of almost entire equity of AJL to YI has not only caused wrongful loss to the share-holders of AJL, but to AJL itself, which is a public limited company, having a separate legal entity governed by the objectives of the company and perfectly capable of being a victim of such an offence in itself.

Section 120A I.P.C: Criminal Conspiracy-

Now, to establish the offence of criminal conspiracy, it is essential that the following ingredients are satisfied.

1) There must be an agreement between the persons who are alleged to conspire; and

2) that the agreement should be

a) for doing an illegal act

b) for doing by illegal means an act which may not itself be illegal.

The proviso to section 120A carves out an exception in favour of agreement to commit offence which is punishable *per se* without proof of an overt result of conspiracy or any overt act in pursuance of the agreement.

A criminal conspiracy can be proved either by direct of circumstantial evidence. The only requirement is that there should be meeting of minds resulting in an ultimate decision taken by the conspirators regarding the commission of the offence.

In the instant case, the chain of circumstances appears to give rise to a conclusive or irresistible inference of an agreement between the accused persons to commit the offences as alleged in a pre-planned manner. Though the language in the documents is shrouded in ambiguity but it is not difficult to understand that the control over public money/ assets appear to have been cleverly transferred to the hands of the few by creating a company(YI) for this purpose.

From the complaint and the evidence led so far it appears that YI was infact created as a sham or a cloak to convert public money to personal use or as a special purpose vehicle for acquiring control over Rs. 2000 crores worth of assets of The AJL and since all the accused persons have allegedly acted in consortium with each other to achieve the said nefarious purpose/ design, there are sufficient grounds for proceeding against all of them. It goes without saying that guilt of an accused is determined after trial when the burden of proof is discharged beyond reasonable doubt. This is only the stage of summoning of the accused. When the accused persons appear before the court they shall be at liberty to refute the allegations of the complainant, cross-examine the complainant's witnesses and to lead evidence in their defence. However, as the complainant has established a *prima facie* case against the accused u/s 403, 406 and 420 read with section 120B I.P.C hence, let the accused No 1 to 6 namely Mrs. Sonia Gandhi, Mr. Rahul Gandhi, Sh. Moti Lal Vohra, Sh. Oscar Fernandes, Sh. Suman Dubey and Mr. Sam Pitroda be summoned for 7.08.2014. Let the accused No.7(Young Indian) be summoned through it's authorized representative for the same date. PF be filed within a week. Be listed on 7.08.2014. Copy of this order be given dasti.

Announced in the	*(GOMATI MANOCHA)*
Open Court on 26.06.2014	*M.M.-02/ New Delhi District*