

STATEMENT OF COMPLAINANT Dr.SUBRAMANIAN SWAMY
Complaint Case No. 01(A)/11 in Special Court
In Patiala House, New Delhi on January 21, 2012

I.SUBMISSION IN BRIEF

1. From the authenticated documents filed by me while deposing as a Complainant before Your Honour, it has become apparent that Mr. P. Chidambaram, the Finance Minister during 2007-08, and presently not an accused in this case, *prima facie* had committed the offences under the Prevention of Corruption Act (1988) and other criminal laws..
2. These offences are the very same offences for which Accused Mr. A. Raja in this case, stands charged by this Hon'ble Court in the case filed by the CBI in the same 2G scam as follows:

Charge-1: the Spectrum *licences* were issued in 2008, relatively at a very nominal price of 2001 [p.21-22 of the Charges].

Charge-2: Swan and Unitech, two of the licencees, were allowed to off load their shares to Etisalat and Telenor respectively even before roll-out, and who sold their shares at a price, tantamount to several times the entry fee they paid to the Government [p.32 of Charges], and thus earned huge pecuniary benefits without any public interest.

LOIs were issued first on 10/1/08 as per the Press Note [Ex CW 1/5]. Licences were later issued from 27.2.08 [Ex. CW 1/ 14, p.13].

3. I adopt these charges as framed and submit the evidence brought on record that, in collusion, conspiracy and consenting with Accused A. Raja, the said Mr. P. Chidambaram is *prima facie* guilty of committing these same two offences.
4. Hence, as provided for in Section 319 of the Cr.PC, and in the interest of justice, this Hon'ble Court may proceed against Mr. Chidambaram/s 319(2) of the Cr.PC and be tried together with Accused A. Raja as per law [AIR 1963 SC 1430].

II. ARGUMENTS

5. Your Honour may permit me to refer to the concept of *prima facie* as stated in Mozley and Whiteley's Law Dictionary [p.356] and Black's Dictionary
6. The submitted documents provide evidence which *prima facie* establish the following:

[1](a) Mr. Chidambaram, as Finance Minister and Mr. Raja as Minister for 5 empowered by the October 31, 2003 Cabinet decision to "discuss and finalise spectrum pricing formula.." [concisely summarised in Vol. IV Ex. CW 1/ 15 p. 15 para 2 r/w p.17 para 6].

(b) This is admitted by Mr. Chidambaram [Vol IV Ex. CW 1/22 p.92, at para 6, p.93 and p. 96], and further authenticated by the statement of the Prime Minister made in Rajya Sabha on 24.2.11 [Vol. I, p. 9-10; Ex. CW 1/9].

[2] (a) Licence price [TRAI recommendation Vol. IV, Ex. CW 1/15, p.16 para 4;], has three components, also admittedly [Ex. CW 1/22 at p.93, para 7]: (i) Entry fee charged when the LOIs were issued
(ii) price for the one-time Spectrum levied when the licence was given or when the spectrum was asked for, and
(iii) annual royalty charge on continued spectrum usage. .

(b) Accused Raja with Mr. Chidambaram arrived at a meeting of minds over the course of three joint meetings held 30.1.08, 29.5.08, and 12.6.08 [Vol. IV Ex. CW 1/23, para 2, p. 119].

(c) While there may not been Minutes kept, but Notes were circulated. The 30.1.08 meeting was followed by a Note [Ex. CW 1/16, at page 26, para 5].

In this meeting, Mr. Chidambaram made clear that he abides by the entry fee as determined by Raja at 2001 level of about Rs. 1650 crores, about which he knew at least since Nov 22, 2007 [Vol. IV, Ex. CW 1/15 p. 18-19 paras 8, 9, & 11 r/w FS's 160 Cr. PC statement on p.103-4] and made clear he regards it as "a closed chapter" [Vol. IV, Ex. CW 1/22 at p. 95 para 13] and will not "re-visit it" [Vol. IV, CW 1/16, p. 26, para. 5].

At that stage, he could have as C&AG Report [p.26-27] pointed out invoked Rule 4 read with Rule 7 of the Transaction of Business Rules framed under Article 77 of the Constitution to call for a Cabinet decision [Vol. IV, Ex. CW 1/11 p.89].

But instead he colluded and conspired to consent with Accused Raja determined to fix the entry fee at 2001 prices and provide free one time spectrum free.

(d) The meeting of 4.7.08 of the two Ministers to convey to the PM their having come to an agreement was followed up with a Note prepared by the Finance Secretary [Ex. CW 1/18 on p. 32 and 33], and the same Note with PMO notings at the margin [Vol. IV, Ex. CW 1/24 at p. 159 r/w 160-62].

(d) But the question of pricing one time spectrum and annual charge was still open [Vol. IV, CW 1/23 at p. 119 on p. 121, para 7 r/w p. 123 para 13, r/w p. 125 para 26, r/w p. 126 para 30 & 31, r/w p. 127 para 33. Item (v)].

(e) On the one-time spectrum charge, again despite officials' advice, Mr. Chidambaram sent Raja a letter with a "non-paper" dated April 21, 2008 wherein he agreed with Raja to give one-time spectrum free of cost [Vol. IV, CW 1/15, p.21-24, paras 13, 14, & 17]

(f) Thereafter the two Ministers after a meeting of minds, met the PM to apprise of their decision [see also Vol. IV Ex. CW 1/18, p.32] which the PM has confirmed.

[3] (a) Further, if at any stage, Mr. Chidambaram *had not a meeting of minds* and therefore had any difference with A. Raja, he could have not only invoked Rule 4 read with Rule 7 of the Transaction of Business Rules framed under Article 77 of the Constitution to call for a Cabinet decision. [Vol. IV, CW 1/11 p.89] but alternatively, even after licences had been issued, the UASL conditions could have been modified at any stage after issuance, in the public interest as per obligations agreed to in the licence itself [Vol. IV, Ex. CW 1/15, p. 24].

(b) Hence, prima facie, it can be held that on the Spectrum Licence price there was a willing meeting of minds and a joint decision of Accused [and now charged] Mr. Raja and Mr. P. Chidambaram to commit an offence, which is the first charge against Raja at present.

[4](a) That even as regards the second charge that has been framed, documents brought on record show that Accused A. Raja was not alone in deciding and permitting share dilution of more

than 60% of the paid up capital of certain companies, in particular Swan and Unitech, even before their roll out of services.

(b) Thus, it can be seen from the documents obtained from the file in CBI custody [Vol. IV p. 50-55, SI.No. 11 CW 1/ 19] that Mr. Raja recorded on the Ministry files that it was Mr. Chidambaram who had explained the *modus operandi* of doing so [Vol. IV p.133, Ex. CW 1/12].

(c) Prima facie, Mr. Chidambaram ought to have known that the TRAI had sent a communication in writing on May 23, 2008 to the DoT that the scope of merger ought to include any type of acquisition [Vol. IV, CW 1/19, p. 50-55, SI. No. 11, TRAI Recommendations, March 12, 2009, para 2.5.2 Chapter III].

(c) Mr. Raja along with Mr. Chidambaram also had met the Prime Minister on 4.11.08 to inform him of their joint decision on this matter [Vol. IV p. 128].

(d) Accused Raja, recorded the same in a letter dated 7.11.08 to the Prime Minister after issuing a Press Release and addressing a Press Conference confirming the joint decision on share dilution. The PM acknowledged this letter on 17.11.08.

(e) Thus, Mr. Raja and Mr. Chidambaram thereby enabled the two companies to earn a huge windfall pecuniary gain by entering into a joint venture with Etisalat and Telenor respectively.

Hence, prima facie, Mr. Chidambaram had conspired, colluded, and consented with Accused, Mr. A. Raja, to jointly act to commit the second offence of criminal misconduct u/s 13(1)(d) of the PCA .

[5](a) Mr. Chidambaram moreover, in a gross dereliction of his oath of office and thus breach of trust, failed to apprise Mr. Raja or the PM at any stage even after becoming Union Home Minister that the Home Ministry itself had found Etisalat and Telenor as not desirable companies from the national security angle [Vol.IV p. 134 verified at p. 145].

(b) The Hon'ble Supreme Court on the documents from the Home Ministry sources file by me, on 3/3/11, directed the Court Master to hand it over to the Senior Counsel for the respondent CBI [Vol. IV p.28, CW 1/17] but I have yet to receive a reply.

Hence, prima facie Mr. Chidambaram has additionally committed the offence of breach of trust of failing to uphold the oath of office as a Minister to protect the sovereignty and integrity of the nation.

III. CONCLUSION

7. Thus, arising out of the evidence led by me as Complainant and the authenticated documents filed in support, **I have made out a prima facie case of commission of offences** under the Prevention of Corruption by Mr. Chidambaram.
8. **Hence, it is imperative u/s 319 of the Cr. PC,** that this Hon'ble Court in the interest of justice, take this matter to its logical end by summoning Mr. Chidambaram as an accused in this case.