* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 17th December, 2021**
Pronounced on: 17th January, 2022

\+ **CRL. M.C. 3118/2012**

JATINDER PAL SINGH ..... Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate with Mr. H. S. Bhullar and Mr. Shikhar Sharma, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION ..... Respondent

Through: Mr. Rajesh Kumar, SPP for CBI with Ms. Mishika Pandita, Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

[VIA VIDEO CONFERENCING]

CHANDRA DHARI SINGH, J.

1. The Petitioner has approached this Court by way of the instant petition under Sections 397 and 401 read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as "Code") for setting aside the order of the Court below dated 1st June 2012, whereby common charges had been framed against the accused including Jatinder Pal Singh (hereinafter referred to as "Petitioner") and the consequential order dated 4th June 2012 framing individual charges against the Petitioner in the case

titled as "CBI v. Ketan Desai and Others" pending before Special Judge CBI-5, Patiala House Courts, New Delhi.

FACTUAL MATRIX

2. Before adverting to the submissions made by the learned counsels for parties, it is essential to highlight the factual background of the instant matter which is stated hereunder:

i) The impugned proceedings have arisen from the First Information Report registered by the CBI vide Case bearing No. RC 02(A)/2010/CBI/ACU-IX/New Delhi on 22nd April 2010, under Sections 7/8/11/13(2) read with Section 13(l)(d) of Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act") and Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"), on the allegations that Dr. Ketan Desai, President of the erstwhile Medical Council of India (hereinafter referred to as "MCI"), entered into a criminal conspiracy with the Petitioner, Dr. Sukhvinder Singh and others with the object to show favor *qua* recognition of the courses and grant of permission pertaining to Gian Sagar Medical College and Hospital, Patiala (hereinafter referred to as the "GSMCH") as mandated by the Indian Medical Council Act, 1956 and the relevant MCI Regulation and Rules for admission into 4th year of the MBBS course for the academic session 2011-2012.

ii) The prosecution's version is that on the basis of reliable and specific information, CBI Special Unit, New Delhi had placed the

mobile phones under telephonic surveillance during the period when MCI received the application for renewal of permission from GSMCH, Patiala for admission into 4th Batch of the MBBS course. The investigation further revealed that criminal conspiracy to obtain favors in the form of recommendation for permission for admission into fourth year batch for MBBS course began after deficiencies were pointed out during first inspection of GSMCH, Patiala. Accordingly, the aforementioned FIR was registered against the accused persons on the allegations as aforesaid.

iii) Subsequently, on 22nd April 2010 recovery was made wherein Dr. Kamaljeet Singh was intercepted while allegedly delivering a sum of Rs. 2 crores, as illegal gratification for the aforementioned purpose, at the residence of the Petitioner by the income tax authorities and liquor bottles were seized by the police authorities.

iv) Upon the completion of the investigation, the Final Report under Section 173 of the Code was filed on 16th September 2011 under Sections 7/8/12/13(2) and 13(1)(d) of the PC Act along with Section 120-B of the IPC in the Court of Special Judge for CBI Cases, Patiala House Courts, New Delhi.

v) Trial Court took cognizance of the same on 10th October 2011. The copies of the documents relied upon were supplied to the accused persons including the Petitioner. After hearing the arguments on charge, the Trial Court on 1st June 2012 passed a

common order on charge under Sections 7/8/12/13(2) and 13(1)(d) of the PC Act along with Section 120B of the IPC as well as an individual order on charge on 4th June 2012 against the petitioner under Section 12 of the PC Act.

vi) Aggrieved by the aforementioned orders, the Petitioner has approached this Court, under Sections 397/401 read with Section 482 of the Code, praying for setting aside the impugned orders.

3. A Co-ordinate Bench of this Court in Crl. Rev. P. 493/2012, vide its Order dated 5th September 2012, in view of the law laid down by the Division Bench of this Court in ***Anur Kumar Jain v. Central Bureau of Investigation*, 178 (2011) DLT 501 (DB)**, held that the revision is not maintainable. The High Court accordingly directed the revision petition to be treated only under Section 482 of Code and accordingly the Registry was directed to register this petition as Crl. M.C.

4. During the pendency of the instant petition, the Petitioner had approached the Hon'ble Supreme Court, challenging the orders passed by the Trial Court and the High Court wherein, the Hon'ble Supreme Court in SLP (Crl.) No. 9475 of 2012 (which later became Criminal Appeal No. 1385 of 2013), vide its order dated 2nd January 2013, was pleased to stay the proceedings.

5. The said Criminal Appeal No. 1385 of 2013 of the present Petitioner was clubbed with a bunch of matters challenging the same question of law under the title "Asian Resurfacing Road Agency Pvt Ltd. v. CBI" which was subsequently decided by the Hon'ble Supreme Court

holding *inter alia* that the order framing charge is neither purely an interlocutory order nor a final order and hence, the jurisdiction of the High Court is not barred irrespective of the label of the petition, be it under Section 397 or 482 of the Code or Article 227 of the Constitution of India.

SUBMISSIONS

6. Mr. Sudhir Nandrajog, learned senior counsel appearing on behalf of the Petitioner has primarily advanced five-pronged arguments which form the crux of the case for the Petitioner:

a. *Firstly,* the senior counsel contented that as per the relevant MCI Regulation and Rules of 1999, there was no requirement of an auditorium to be constructed at GSMCH, Patiala at the stage of admission of the fourth-year batch of MBBS course and there was no concealment about the fact that an auditorium was under construction and the same was disclosed by the college and confirmed by the inspecting team. Therefore, the allegation of the Respondent that the Petitioner was acting as conduit between Dr. Sukhwinder Singh and Dr. Kamaljeet Singh and the Public Servant, Dr. Ketan Desai, President of erstwhile MCI reaches no logical conclusion as the auditorium allegedly with respect to which the bribe was to be given was not even a requirement in respect of admission

b. *Secondly,* the senior counsel submitted that the manner in which the alleged telephonic conversation was intercepted and

recorded by the concerned authorities is *prima facie* illegal and no reliance can be placed on them because of the fact that they were obtained illegally. To buttress this argument, learned senior counsel has extensively relied upon a Bombay High Court's judgment in ***Vinit Kumar v. Central Bureau of Investigation,* 2019 SCC Online Bom 3155**. He also argued that in the intercepted conversations, the Court Below has based its conclusions on the basis of conjectures and surmises since there was no categorical mention of the petitioner and further, there was no reason for them to converse in code words. He also argued that the Compact Disc on which the alleged intercepted phone calls were recorded was neither sent to CFSL nor was it used as a relied upon evidence. Thus, it was argued that the same could not have been admissible under Section 65-B of the Evidence Act, 1872.

c. *Thirdly*, he also laid considerable emphasis on the seizure memo's Item No. 50 regarding the alleged recovery of bribe amounting to two crores. It is the case of the Petitioner that the entry has been squeezed in the memo in order to incriminate the Petitioner notwithstanding the fact that the amount of Rs. 2,17,75,000/- was well accounted for as it formed the part of the advance received by the Petitioner towards sale of his land situated at Village Maghrauli Khadar, Dospur Pargana Dadri, District Faridabad. He also submitted that the same fact has been corroborated by the witnesses who were involved in the above transaction, as well as the source of money was explained before

the Income Tax Authorities along with the evidence. Further, he submitted that the Respondent has failed to produce any evidence to establish the money trail or establish any connection with the seized money and the allegations made in the chargesheet.

d. *Fourthly,* senior counsel submitted that the main accused. Dr. Ketan Desai, was already discharged by this Hon'ble Court vide its order dated 12.02.2018. The Respondent has failed to even establish involvement of any Public Servant in alleged conspiracy therefore, any prosecution/investigation under the PC Act is thus void *ab initio*.

e. *Fifthly,* it was also submitted that the chargesheet was filed in violation to the CBI Manual (Crime) since the approval of the CBI director was not sought before filing the charge sheet. Thus, the proceedings have no validity in the eyes of law. To buttress the argument, reliance was placed on the judgment passed by the co-ordinate bench of this Hon'ble Court in the case of ***Ripun Bora v. State*, 2011 SCC OnLine Del 5235.**

f. *Lastly,* it was argued that the testimony of the co-accused could not have been relied upon. He submitted that Section 19 (l) (a) of the Prevention of Corruption Act, 1988 makes it mandatory to commence and continue prosecution only after sanction form the competent authority has been obtained, as held by the Hon'ble Supreme Court in ***State of Goa v. Babu Thomas,* (2005) 8 SCC 130** according to which valid sanction is a condition precedent for

prosecuting any public servant under the PC Act. It was submitted that in absence of such sanction, Dr. Suresh C. Shah could not have been made an accused. If he could not have been made an accused, then there is no question of him being made an approver. Hence the evidence tendered by Dr. Suresh C. Shah is vitiated a nullity in the eyes of the law and could never have been pressed into service against the Petitioner, much less be made the sole fulcrum of framing of charges against the Petitioner.

7. *Per contra*, Mr. Rajesh Kumar, learned SPP appearing on behalf of the Respondent/CBI made the following submission to counter the substantive arguments made by the Petitioner:

i) *Firstly*, he submitted that the arguments made by the Petitioner are not appropriate to be argued at the current stage, where only charges have been framed based on the probability of commission of offense. He argued that the said arguments can be considered at the stage of final arguments but not at the stage where the order on charges needs to be set aside.

ii) *Secondly*, he argued that the evidence of the approver has been taken by following the procedure under the Code. The arguments raised by the petitioner have been dealt with by the Court below in its order on charge. It was also submitted that the approver i.e., Dr. Shah has also inculpated himself with regard to his confession. Thus, it is wholly wrong on the part of the

petitioner to contend that the approver has not incriminated himself.

iii) *Lastly*, it was argued that the circumstances and the evidence recovered during the investigation indicate towards the guilt of the petitioner. Thus, there was no gross illegality in the order of the Trial Court warranting the interference of this Court under its revisional jurisdiction.

8. The rival submissions now fall for consideration before this Court.

ANALYSIS & FINDINGS

9. This Court has heard the learned counsels for parties at length, given thoughtful consideration to the submissions made and has also perused the material on record.

10. Before adverting to the analysis of the arguments made and case laws cited by the parties, to appreciate the case at hand, it is pertinent to refer to the law laid down by judgments in this context along with a perusal of the statutory provisions of the Code as well as the PC Act and Evidence Act.

11. Under the provisions of the Code, specifically Sections 397 and 401, High Court has its power to exercise its Revisional Jurisdiction in furtherance of any proceeding before any inferior Criminal Court.

(i) Section 397 of the Code reads as under:

"397. Calling for records to exercise powers of revision.- (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation. - All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.

(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

(ii) Section 401 of the Code, which specifically deals with the power of revision of the High Court, reads as follows:

"401. High Court's powers of revision. — (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a court of

appeal by Sections 386, 389, 390 and 391 or on a Court of Session by Section 307 and, when the Judges composing the court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by Section 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

The High Court while exercising its revisional jurisdiction must apprise itself of the question of correctness, legality and propriety of order of the subordinate Court. A bare reading of the provision suggests that the Court is required to analyze the findings, sentence or order passed by the subordinate Court, against which the Petitioner is seeking relief before the Courts concerned.

12. It is also pertinent to refer to the provisions of the PC Act under which the Petitioner is implicated in the instant case. The provisions are reproduced hereunder:

(i) Section 8 that deals with offence relating to bribery to a public servant reads as under:

> *"**8. Offence relating to bribing of a public servant**. —*
>
> *(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—*
>
> *(i) to induce a public servant to perform improperly a public duty; or*
>
> *(ii) to reward such public servant for the improper performance of public duty,*
>
> *shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:*
>
> *Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:*
>
> *Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:*
>
> *Provided also that when the offence under this section has been committed by commercial organization, such commercial organization shall be punishable with fine.*

It is settled law that the aforesaid provision under Section 8 applies to a private person, if he induces a public servant to do an act by corrupt or illegal means.

(ii) Section 12 that deals with punishment for abetment of offences, reads as under:

> ***12. Punishment for abetment of offences*** *- Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall not be less than three years, but which may extend to seven years and shall also be liable to fine."*

13. The word abetment has not been defined in the PC Act but by virtue of Section 28 of the PC Act, it is permissible to look into the definition of abetment as appearing under Section 107 of the IPC. Section 107 of IPC reads as under:

> *"107. Abetment of a thing. - A person abets the doing of a thing, who-*
>
> *First. - Instigates any person to do that thing; or*
>
> *Secondly. - Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or*
>
> *Thirdly. - Intentionally aids, by any act or illegal omission, the doing of that thing."*

Thus, as per Section 107 of the IPC, an offence of abetment takes place in one of the three ways namely: (i) by instigation, (ii) by engaging in conspiracy for doing that thing and if an act or illegal omission takes place pursuant of that conspiracy; and (iii) by intentional aiding.

14. A person is said to 'instigate' another to an act when he actively suggests or stimulates him to act by any means or language, direct or indirect, whether it takes the form of express solicitation, or of hints, insinuation or encouragement. The word 'instigate' means to goad or urge forward or to provoke, incite, encourage or urge to do an act. A mere intention or preparation to instigate is neither instigation nor abetment. The offence is complete as soon as the abettor has incited another to commit a crime, whether the latter consents or not or whether, having consented, he commits the crime or not. It depends upon the intention of the person who abets and not upon the act which is actually done by the person whom he abets.

15. The offence of abetment is also committed by 'engaging in a conspiracy for doing of a thing' and only if act or illegal omission takes place pursuant to such a conspiracy. In order to constitute an offence of abetment by conspiracy, there must be a combination of two or more persons in the conspiracy and an act or illegal omission must take place in pursuance of that conspiracy and in order to doing of that thing.

16. Lastly, the offence of abetment may also be committed by 'intentional aid'. A person abets by aiding when by act done either prior to, or at the time of the commission of an act he intends to facilitate and

does in fact facilitate the commission thereof (explanation (2) to Section 107 of the IPC). In order to constitute abetment by aiding within the meaning of Section 107 of the IPC, the abettor must be shown to have intentionally aided the commission of crime. Further, the aid given must be with the intention to facilitate the commission of the crime. However, mere giving of aid will not make the act of abetment an offence, if the person who gave the aid did not know that an offence was being committed or contemplated. The intention should be to aid an offence or to facilitate the commission of crime.

17. It is also pertinent to refer to Section 120B of the Indian Penal Code, 1860. The provision reads as under:

> ***120B. Punishment of criminal conspiracy***
>
> *(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.*
>
> *(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."*

18. The evidence in the offence of criminal conspiracy is usually to be implied and inferred from the facts of each case and is a complicated exercise since conspiracy often pertains to a common design planned in

the mind of an individual. It is settled law that direct proof of common intention is rarely available, and therefore, such intention is to be inferred from the proven facts/circumstances of the case.

(i) Section 10 of the Evidence Act, 1872 states as under:

"Things said or done by the conspirator in reference to common design where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by anyone of them, is a relevant fact as against each of person believed to so conspiracy as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."

(ii) Section 65B of the Evidence Act, 1872 reads as under:

65B. Admissibility of electronic records. —

(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: —

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the

relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

19. While considering the electronic records as evidence and the scope of Section 65B of the Evidence Act, the Hon'ble Supreme Court in its decision reported in ***Anvar P.V. v. P.K. Basheer,* (2014) 10 SCC 473**, has observed as follows:

"15. Under Section 65-B (4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

> *(a) There must be a certificate which identifies the electronic record containing the statement;*
>
> *(b) The certificate must describe the manner in which the electronic record was produced;*
>
> *(c) The certificate must furnish the particulars of the device involved in the production of that record;*
>
> *(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and*
>
> *(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence.

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22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under Section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by Sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as stated by this Court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] , does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

20. Section 5 of the Indian Telegraph Act, 1885 (hereinafter referred to as the "Telegraph Act") deals with the power of the Government to take

possession of licensed telegraphs and to order interception of messages. The relevant provision being sub-section (2) of Section 5 is reproduced hereunder:

> *"5. Power for Government to take possession of licensed telegraphs and to order interception of messages. -*
>
> *(1) xxx*
>
> *(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with Foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order:*
>
> *Provided that the press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section."*

A bare reading of the above provision shows that for the purpose of making an order for interception of message in exercise of powers under

Sub-section (2) of Section 5 of the Telegraph Act, the occurrence of any public emergency or the existence of a public safety interest are the *sine qua non*.

Revisional Jurisdiction and Framing of Charge

21. A preliminary question *qua* jurisdiction that often arises and was raised in the instant matter at an early stage, while an order framing charges against the accused is challenged before a Court sitting in its Revisional Jurisdiction, is – whether the impugned order framing charges is an interlocutory order and hence, does it attract the bar of Section 397(2) of the Code, ousting the powers of revision in relation to interlocutory orders. The question has been settled by a catena of judgments of the Hon'ble Supreme Court. A basic analysis of few landmark judgments pertaining thereto has been made hereunder.

22. The Hon'ble Supreme Court in the case of ***Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation*** **(2018) 16 SCC 299** has held that an order framing charge can be interfered under the revisional jurisdiction. The Hon'ble Court held as under:

> *"37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be*

entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e., the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced."

23. While discussing the same question, the Hon'ble Supreme Court recently in ***Sanjay Kumar Rai v. State of Uttar Pradesh &Anr.*** **2021 SCC Online SC 367** reiterated the aforementioned ruling as well as the original position of law as laid down in ***Madhu Limaye v. State of Maharashtra,*** **(1977) 4 SCC 551** in this context, and has held that:

"16. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither

interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its aforestated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands-off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law."

24. Thus, the issue is well-settled and the controversy *qua* revisional jurisdiction is set to rest with the actual position of law being that the order of framing charge or that of discharge is neither interlocutory nor final and hence, do not attract the bar of Section 397 (2) of the Code. The High Court is thus competent to entertain a revision petition against such orders.

Framing of Charges & Order on Charge

25. The Hon'ble Bombay High Court in the case of ***Samadhan Baburao Khakare v. State of Maharashtra***, **1995 SCC OnLine Bom 72**

has highlighted the objective and importance of Charge in criminal trial in the following words:

> *"11. The whole purpose and object of framing charges is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offence with which the accused is convicted is not brought out in the charge then the charge is not only defective but illegal. It is no doubt that when the accused is charged with a major offence, he can be convicted of a minor offence. It is true that what is major offence and what is minor offence is not defined. The gravity of offence must depend upon the severity of the punishment that can be inflicted, but the major and the minor offences must be cognate offences which have the main ingredients in common, and a man charged with one offence which is entirely of a different nature from the offence which is proved to have been committed by him, cannot in the absence of a proper charge be convicted of that offence, merely on the ground that the facts proved constitute a minor offence. For example, a man charged with an offence of murder cannot be convicted for forgery or misappropriation of funds, or such offences which do not constitute offences against person, the reason being that the accused had no opportunity in such a case to make defence, which may have been open to him, if he had been charged with the offence for which he is to be convicted."*

26. The Hon'ble Supreme Court has succinctly analyzed its previous decisions with respect to framing of charge in ***State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659** and has laid down the following test for framing of charges:

"30. In Antulay case [R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716: 1986 SCC (Cri) 256] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of 'prima facie' case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

31. Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean 'to believe or accept upon probable evidence'. In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means 'to take as proved until evidence to the contrary is forthcoming', Stroud's Legal Dictionary has quoted in this context a certain judgment according to which 'A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged.' In Law Lexicon by P. Ramanatha Aiyar the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the

accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

Thus, the court concerned with the framing of charges has to merely see whether the commission of offense can be a possibility from the evidence on record or not.

27. It is also required to be noted that the charge does not render a conclusive finding with respect to guilt or innocence of the accused. The charge is merely an indication to the accused about the offense for which he is being tried for. In this regard, it is essential to take note of the ruling of the Hon'ble Supreme Court in ***Esher Singh v. State of A.P.*****, (2004) 11 SCC 585,** where the Hon'ble Court observed:

"20. Section 2(b) of the Code of Criminal Procedure, 1973 (in short "the Code") defines "charge" as follows:

'2. (b) 'charge' includes any head of charge when the charge contains more heads than one;'

The Code does not define what a charge is. It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. A charge is formulated after inquiry as distinguished from the

popular meaning of the word as implying inculpation of a person for an alleged offence as used in Section 224 IPC."

28. The Hon'ble Supreme Court in ***Main Pal v. State of Haryana,* (2010) 10 SCC 130** observed as follows:

> *"17. (i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged."*

Thus, what can be seen from the above extract is the fact that the object of framing of charge is to make the accused aware about the defense that is required to bring in through evidence and witnesses.

29. The Hon'ble Supreme Court in the case of ***Santosh Kumari v. State of J&K,* (2011) 9 SCC 234** has comprehensively dealt with the question and purpose of framing of charges as under:

> *"18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by*

a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. [AIR 1956 SC 116 : 1956 Cri LJ 291 : (1955) 2 SCR 1140] SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable."

Scope of Revisional Jurisdiction – *qua* Order on Charge

30. The Hon'ble Supreme Court in ***Rajbir Singh* v. *State of U.P.*, (2006) 4 SCC 51** noted that in accordance with Section 227 while considering the discharge of an accused the High Court must ascertain whether there is "sufficient ground for proceeding against the accused" or there is ground for "presuming" that the offence has been committed. The Hon'ble Court held as under:

"9. In Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715: 1989 SCC (Cri) 285], the Court while examining the scope of Section 227 held as under:

'14. ... Section 227 itself contains enough guidelines as to the scope of inquiry for the purpose of discharging an accused. It provides that 'the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused'. The 'ground' in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate inquiry in sifting

and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record, if generally accepted, would reasonably connect the accused with the crime.'

10. The High Court did not at all apply the relevant test, namely, whether there is sufficient ground for proceeding against the accused or whether there is ground for presuming that the accused has committed an offence. If the answer is in the affirmative an order of discharge cannot be passed and the accused has to face the trial. The High Court after merely observing that "as the firing was aimed at the other persons and accidentally the deceased Pooja Balmiki was passing through that way and she was hit" and further observing that "the applicant neither intended to kill the deceased nor was she aimed at because of the reason that she was a Scheduled Caste" set aside the order by which the charges had been framed against Respondent 2. There can be no manner of doubt that the provisions of Section 301 IPC have been completely ignored and the relevant criteria for judging the validity of the order passed by the learned Special Judge directing framing of charges have not been applied. The impugned order is, therefore, clearly erroneous in law and is liable to be set aside."

31. Additionally, at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. The Hon'ble Supreme Court held in the case of ***Chitresh Kumar Chopra* v. *State (NCT of Delhi),* (2009) 16 SCC 605** as under:

"25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the

facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

32. In ***Amit Kapoor* v. *Ramesh Chander* (2012) 9 SCC 460**, the Hon'ble Supreme Court has elucidated on the revisional power of the Court under Section 397:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

> *13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under CrPC."*

33. The Hon'ble Supreme Court in the same case has also enunciated a set of principles which the High Courts must keep in mind while exercising their jurisdiction under the provision:

> *"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*
>
> ***

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

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27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

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27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is

even broadly satisfied, the court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

34. In the case of ***State of Rajasthan* v. *Fatehkaran Mehdu* (2017) 3 SCC 198**, the Hon'ble Supreme Court has elucidated on the scope of the interference permissible under Section 397 with regard to the framing of a charge.

"26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure."

35. The aforementioned judgments have been upheld by the Hon'ble Supreme Court in the case of ***State of M.P. v. Deepak*, (2019) 13 SCC 62**. The Hon'ble Court reiterated the same in their findings for deciding

the scope and extent of revisional jurisdiction while considering the question of Charge.

36. Recently, in the case of ***State of Rajasthan v. Ashok Kumar Kashyap*, 2021 SCC OnLine SC 314**, the Hon'ble Supreme Court held that the evaluation of evidence on merits is not permissible at the stage of considering the application for discharge and the same is beyond the scope of revisional jurisdiction of the High Courts. While discharging the accused, the High Court had gone into the merits of the case and had considered whether on the basis of the material on record, the accused was likely to be convicted or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. The Bench held as under:

> *"26. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Code While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out*

and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application."

37. Thus, the position of law that emerges from the above is that at the stage of discharge/framing of charge, the Judge is merely required to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused, or in other words, is a prima facie case made out against the accused.

38. In light of the aforesaid, it is well settled that under the provisions of Section 397/401 of Code, the Revisional Court has to consider the correctness, legality or propriety of any finding *inter se* an order and as to the regularity of the proceedings of any inferior court.

39. It is also established that while considering the legality, propriety or correctness of a finding or a conclusion, normally the Revisional Court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

Section 482 of the Code

40. In the instant case, the Petitioner has *inter alia* also invoked the inherent jurisdiction of this Court. Hence, it is pertinent to refer to the Section 482 of the Code, which reads as under:

> *482. Saving of inherent powers of High Court. – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*

The bare language of the provision unambiguously states that the inherent powers of the High Court are meant to be exercised (i) to give effect to any order under the Code; (ii) to prevent abuse of the process of any Court; or (iii) to secure the ends of justice.

41. The aforementioned provision has been referred, analyzed and interpreted in a catena of judgments of the Hon'ble Supreme Court, a few of which are referred to in the following paragraphs.

42. In the case of ***Kaptan Singh v. State of U.P.*** **(2021) 9 SCC 35**, the Hon'ble Supreme Court has held that:

"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 Code has quashed the criminal proceedings for the offences under Sections 147, 148, 149,406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Code 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 and386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order 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 Code 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 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 the case of Dineshbhai Chandubhai Patel [(2018) 3 SCC 104] 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 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 the case of Dhruvaram Murlidhar Sonar [(2019 18 SCC 191] after considering the decisions of this Court in Bhajan Lal [1992 Supp (1) SCC 335], it is held by this Court that exercise of powers under Section 482 Code to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Code though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in 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 Code Similar view has been expressed by this Court in the case of Arvind Khanna [(2019) 10 SCC 686], Managipet [(2019) 19 SCC 87] and in the case of XYZ [(2019) 10 SCC 337], referred to hereinabove."

43. In ***Jitul Jentilal Kotecha v. State of Gujarat and Others,*** **2021 SCC OnLine SC 1045**, the Hon'ble Supreme Court has recently held that:

"27. It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in Jugesh Sehgal v. Shamsher Singh Gogi, this Court has held that, '[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.' In Simrikhia v. Dolley Mukherjee, this Court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362 of the CrPC, observed that the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held:

> *'5. ...Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.'*

31. Recently, in Mahendra KC v. State of Karnataka, this Court has reiterated the well settled test to be applied by the High Court for exercise of its powers under Section 482 for quashing an FIR:

> *'16...the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity*

of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of trial."

44. On 11th December 2021, the Hon'ble Supreme Court while deciding the case of ***State of Odisha v. Pratima Mohanty*** **(Criminal Appeal Nos. 1455-1456 of 2021)** has comprehensively dealt with the powers and extent of the jurisdiction of the High Court while deciding a petition under Section 482 of the Code. The Hon'ble Supreme Court has held as under:

"6. ... As held by this Court in the case of State of Haryana and Ors. vs Ch. Bhajan Lal and Ors. AIR 1992 SC 604, the powers under Section 482 Cr.P.C. could be exercised either to prevent an abuse of process of any court and/or otherwise to secure the ends of justice. In the said decision this Court had carved out the exceptions to the general rule that normally in exercise of powers under Section 482 Code the criminal proceedings/FIR should not be quashed. Exceptions to the above general rule are carved out in para 102 in Bhajan Lal (supra) which reads as under:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration

wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

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6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section482 Code when after a thorough investigation the chargesheet has been filed. At the stage of discharge and/or

> *considering the application under Section 482 Code the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducing the mini-trial. As held by this Court the powers under Section482 Code is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."*

45. The position of law that is well-settled, in light of the aforementioned judgments, is that quashing should be an exception and the Section 482 jurisdiction for the same should be exercised sparingly, with circumspection and in rarest of the rare cases. Further, while examining an FIR for quashing, the court cannot (a) enter into the merits of the case, (b) embark upon a roving enquiry or (c) conduct a trial as to the reliability or genuineness of allegations made in the FIR, nor (d) it has to see the probability of conviction on the basis of evidence on record – what is required is to be seen that whether there has been an abuse of process or interests of justice requires the proceedings to be quashed.

46. It is also settled that although the test at the time of framing of charges is not that of the satisfaction of possibility and probability of accused having committed the offence and not of the proof of his culpability beyond reasonable doubt, yet while framing the evidence some material must still be available so as to appeal to the judicial conscience on which a *prima facie* case is established against the accused.

Speedy Trial

47. The Constitution Bench judgment of the Hon'ble Supreme Court in ***Abdul Rehman Antulay v. R.S. Nayak*** **(1992) 1 SCC 225** has laid down the detailed guidelines with respect to speedy trial and observed as under:

"86. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

> *(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;*
>
> *(b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and*

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on —

what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker [33 L Ed 2d 101] "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same idea has been stated by White, J. in U.S. v. Ewell [15 L Ed 2d 627] in the following words:

> *'... the Sixth Amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.'*

However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a

given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in USA, the relevance of demand rule has been substantially watered down in Barker [33 L Ed 2d 101] and other succeeding cases.

(8) Ultimately, the court has to balance and weigh the several relevant factors — 'balancing test' or 'balancing process' — and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order — including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded — as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the

> *complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time-limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of right to speedy trial.*
>
> *(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."*

48. It is also pertinent to point out that these guidelines have subsequently been upheld by a seven-judge bench of the Hon'ble Supreme Court in ***P. Ramachandra Rao v. State of Karnataka*** **(2002) 4 SCC 578.** These guidelines were further applied by the Hon'ble Supreme Court in the subsequent decision of ***Pankaj Kumar v. State of Maharashtra*** **(2008) 16 SCC 117,** wherein the court laid down the following test with regard to the application of the guidelines:

> *"23. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it*

may deem just and equitable including fixation of time for the conclusion of trial."

49. In the instant case, the trial has been pending for about ten years, since the institution of the case in the year 2011, thus, rendering the process itself as a punishment and thereby prejudicing the petitioner. Another important aspect that needs to be considered is that the main accused has already been discharged by the Coordinate Bench of this Hon'ble Court vide its order dated 12th February, 2018.

50. For proper adjudication of the case, it is also pertinent to refer to the relevant paragraph of the impugned order dated 1st June 2012, which is stated hereunder:

"135. Therefore, I am of the opinion that the conversation of accused J.E Singh with Accused Sukhvinder Singh and accused Ketan Desai read together will point out that when accused J.E Singh is talking about confirmation of the plan which ultimately lead to delivery and recovery of Rs. 2 crores, the chain of events is disclosed through the conversation discussed above. A perusal of phone calls between accused J.E Singh and accused Sukhivinder Singh make it clear that when accused J.E Singh tells accused Sukhivinder Singh that he must tell a fixed date as otherwise it causes him embarrassment, and that after conforming the date he asks accused Sukhivinder Singh whether he should tell Dr. Sahab. These conversations which ultimately lead to recovery of Rs. 2 crores from the residence of accused J.E Singh give rise to grave suspicion that accused J.E Singh had taken this illegal gratification for further payment to accused Ketan Desai for recommending renewal for admission of 4th batch ignoring the deficiency of an auditorium having

capacity of 500. The recommendation was made on 05.04.2010 to the concerned Health Ministry however, the same was signed by the Health Minister on 21.04.2010. Therefore, the entire circumstances give rise to grave suspicion against accused J.R Singh. I am of the opinion that prima facie charge u/s. 120 B IPG r/w Section 7, 8, 12 and 13(1)(d) r/w 13(2), and individual charge under Section 8 of Prevention of Corruption Act, 1988 is made out against him.

51. Relevant paragraphs of the impugned order dated 4th June 2012 are reproduced hereunder:

"I, Swarana Kanta Sharma, Special Judge, CBI-05, Patiala House Courts, New Delhi do herewith charge you accused:

Sh. Jatinder Pal Singh, S/o Sh. Sampuran Singh Giani, R/o D-6/13, Vasant Vihar, New Delhi as under: -

That you while acting as a middle man between Dr. Ketan Desai and Gian Sagar Medical College & Hospital, Patiala was contacted by your co-accused Dr. Sukhvinder Singh, Vice Chairman, Gian Sagar Educational & Charitable Trust, Mohali, Punjab and discussed the issue of recognition of the courses and grant of permission pertaining to Gian Sagar Medical College & Hospital Patiala as mandated by MCI Act & Regulations for the admission and you accepted illegal gratification of Rs. Two crores from Dr. Kamaljeet Singh as a motive or reward for inducing Dr. Ketan Desai by corrupt or illegal means to favour Gain Sagar Medical College & Hospital and thereby you committed an offence u/s 8 of Prevention of Corruption Act 1988 and within my cognizance.

And I hereby direct that you be tried on the aforesaid charge by this court."

52. It was vehemently argued by the learned counsel for Petitioner that the aforesaid charges were framed against the petitioner without any legally admissible evidence. Therefore, in such a case, allowing the prosecution to proceed further on charges impugned in the petition shall only be a wastage of precious time and resources of the entire criminal justice machinery and would amount to an abuse of process of the Court, and, therefore, in order to secure the ends of justice, the proceedings *qua* the petitioner should be quashed.

53. In the instant case, the material brought against the petitioner is the audio recording of conversation between the accused Sukhwinder Singh and the Petitioner, as well as the accused Ketan Desai and the Petitioner. As per the Petitioner, the alleged illegally intercepted telephonic recordings contained in the charge-sheet and all material collected on the basis of such alleged illegally intercepted telephonic recordings ought to be set at naught. It is the case of petitioner that it is settled law that if the foundation is removed, the structure falls and that the legal maxim *"sub lato fundamento cadit opus"* squarely applies in the instant case.

54. It has also been vehemently argued by the learned counsel appearing on behalf of petitioner that the Court below has not taken into consideration of the fact that the mandatory requirements laid down by law for placing the reliance on such audio conversations have not been fulfilled by the Investigating Authority. It is argued that illegal tapping of telephone conversation being a violation of the right to privacy is now accepted and reinforced as a fundamental right protected under Article 21 of the Constitution of India, by a nine Judge Constitution Bench decision

in ***K.S. Puttaswamy v. Union of India,*** **(2017) 10 SCC 1**, by overruling the earlier Constitution Bench judgments including ***M.P. Sharma v. Satish Chandra,*** **AIR 1954 SC 300**, which did not consider right to privacy as a fundamental right. It has now been held by the Constitution Bench in ***K.S. Puttaswamy*** **(Supra)** that the right to privacy is protected by the Constitution as an intrinsic part of the right to life and personal liberty under Article 21 of the Constitution of India and as a part of the freedom guaranteed by Part-III of the Constitution of India.

55. In the case of ***People's Union for Civil Liberties v. Union of India,*** **(1997) 1 SCC 301** (hereinafter referred to as "PUCL"), a two Judge Bench of the Hon'ble Supreme Court had held that:

> *"18. The right to privacy - by itself - has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone-conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract Article 21 of the Constitution of India unless it is permitted under the procedure established by law.*

***

28. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said Section. "Occurrence of any public emergency" or "in the interest of public safety" are the sine qua non for the application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said Section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. The expression "public safety" means the state or condition of freedom from danger or risk for the people at large. When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires. Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.

29. The first step under Section 5(2) of the Act, therefore, is the occurrence of any public emergency of the existence of a public safety interest. Thereafter the competent authority under Section 5(2) of the Act

is empowered to pass an order of interception after recording its satisfaction that it is necessary or expedient so to do in the interest of (i) sovereignty and integrity of India, (ii) the security of the State, (iii) friendly relations with foreign States, (iv) public order or (v) for preventing incitement to the commission of an offence. When any of the five situations mentioned above to the satisfaction of the competent authority require then the said authority may pass the order for interception of messages by recording reasons in writing for doing so."

56. After the judgment in ***PUCL* (Supra)** and before the judgment in ***K. S. Puttaswamy* (Supra)**, Rules were framed by the Central Government. Relevant Rules introduced by G.S.R. 193(4) dated 1st March 2007 (w.e.f. 12th March 2007) read as follows:

*"**419. Interception or monitoring of telephone messages**- (1) It shall be lawful for the Telegraph Authority to monitor or intercept a message or messages transmitted through telephone, for the purpose of verification of any violation of these rule or for the maintenance of the equipment.*

***419-A**...*

***

(2) Any order issued by the competent authority under sub-rule (1) shall contain reasons for such direction and a copy of such order shall be forwarded to the concerned Review Committee within a period of seven working days.

***

(16) The Central Government and the State Government, as the case may be, shall constitute a

Review Committee. The Review Committee to be constituted by the Central Government shall consist of the following, namely:

a) Cabinet Secretary — Chairman

b) Secretary to the Government of India In-charge, Legal Affairs - Member

c) Secretary to the Government of India, Department of Telecommunications — Member

The Review Committee to be constituted by a State Government shall consist of the following, namely:

a) Chief Secretary — Chairman

b) Secretary Law/Legal Remembrance In-charge, Legal Affairs — Member

c) Secretary to the State Government (other than the Home Secretary) — Member

(17) The Review Committee shall meet at least once in two months and record its findings whether the directions issued under sub-rule (1) are in accordance with the provisions of sub-section (2) of Section 5 of the said Act. When the Review Committee is of the opinion that the directions are not in accordance with the provisions referred to above it may set aside the directions and orders for destruction of the copies of the intercepted message or class of messages.

(18) Records pertaining to such directions for interception and of intercepted messages shall be destroyed by the relevant competent authority and the authorized security and Law Enforcement Agencies every six months unless these are, or likely to be, required for functional requirements."

57. As per Rule 419A of the Rules framed under the Telegraph Act, the order of the Home Secretary granting permission to intercept telephonic conversations is to be forwarded to the Review Committee within seven days of passing the order, for the purpose of being reviewed by the Committee. This Court does not find any material on record to establish that any review of the order of the Home Secretary was conducted in compliance of the aforesaid rules framed under the Telegraph Act. Therefore, this Court is convinced that the Special Judge while passing the impugned orders has totally ignored the provisions of the aforesaid rules.

58. This Court is of the view that as per Section 5 (2) of the Telegraph Act, an order for interception can be issued on either the occurrence of any public emergency or in the interest of the public safety as per the law laid down by the Hon'ble Supreme Court in the case of ***PUCL*** **(Supra)**. After the perusal of the records, this Court is satisfied that in peculiar facts of the instant case, the mandatory requirements laid down by law for placing reliance on such audio conversations, have not been fulfilled. It is an admitted position that Rule 419(A)(17) which provides for destruction of intercepted message also adopt the said directions. The court below while passing the impugned orders has also ignored the settled legal positions and directions of the Hon'ble Supreme Court.

59. It is also relevant to add here that if the directions of the Hon'ble Supreme Court in ***PUCL*** **(Supra)** which are now re-enforced and approved by the Hon'ble Supreme Court in ***K.S. Puttaswamy*** **(Supra)** as also the mandatory rules in regard to the illegally intercepted

messages/audio conversations pursuant to an order having no sanction of law, are permitted, it would lead to manifest arbitrariness and would promote the scant regard to the procedure and fundamental rights of the citizens, and law laid down by the Hon'ble Supreme Court.

60. It is also argued that Court below has ignored the fact that there was no illegality in the grant of permission to GSMCH as per the relevant Medical Council of India Regulations and Rules of 1999 (hereinafter "MCI Regulations"). There was no requirement of an auditorium for at the stage of admission of the 4th Batch of MBBS. The auditorium was required at the time of admission in 5th year of MBBS course, whereas the recommendation in question was granted for the admission in 4th year of MBBS course. If the auditorium was not required as per the MCI Regulations, then as per the allegation of the CBI that the petitioner was acting as a conduit between Dr. Sukhwinder Singh, Dr. Kamaljeet Singh and Dr. Ketan Desai, the erstwhile President of MCI, reaches no logical conclusion since the alleged bribe was to be given *qua* the requirement of auditorium for the 4th Batch of MBBS course.

61. The documents of the Ministry of Health & Family Welfare in reference to Union Heath Minister's note and subsequent orders of the department and the reports of the inspection team have also been ignored by the Court below while passing the impugned orders. As per these documents, the Union Health Minister had circulated one note on 25th April 2010, wherein taking into consideration the FIR filed by Respondent/CBI and subsequent developments, he directed the department that a three-member fact-finding team may immediately be

constituted by the Union Health Ministry to inspect the college and submit a report within a week. On 26th April 2010, a three-member committee of following members was constituted by the Ministry of Health, Government of India. The said committee of the Union Health Ministry had conducted the inspection on 29th April, 2010 and had submitted its report on 3rd May, 2010 to the Ministry of Health, Govt. of India. In conclusion the committee in its reports had stated as under:

> *"In conclusion, the inquiry committee is of the view that the recommendations made by the Executive Committee of the MCI at its meeting on 5.4.2010 to grant permission for admission of 100 students in the year 2010-11 for the 4 batch of MBBS students at the Gian Sagar Medical College & Hospital, Patiala was justified on the basis of the report of the council Inspectors and the compliance report of the Principal. The observations made in the first report have been rectified. Further, the existing facilitates and faculty at Gian Sagar Medical College & Hospital appear more than adequate to conduct undergraduate medical teaching. However, there is scope for improvement of clinical and laboratory services within the existing infrastructure."*

62. On 15th May 2010, the MCI was superseded by way of an amendment in the MCI Act and replaced by Boards of Governors of seven persons. As per this amendment, the Board of Governors were to carry out the function as a Council. The Board of Governors had also conducted the inspection on 16th-17th June, 2010. In this inspection report as well, it is stated that the auditorium is not available and is required at the time of admission of 5th batch of MBBS students. The Board of Governors also after considering the said report had decided to grant the

permission to admit the 4th Batch of 100 MBBS students in said college for the academic year 2010-11 and accordingly, the permission letter was issued on 12th July, 2010. These facts and documents were placed on record before the Court below by the petitioner, but the same have not been considered while passing the impugned orders.

63. In the case of ***Nitya Dharmananda @K. Lenin and Anr. v. Gopal Sheelum Reddy*, (2018) 2 SCC 93**, the Hon'ble Supreme Court has held as under:

> *"8. Thus, it is clear that while ordinarily the Court has to proceed on the basis of material produced with the charge-sheet for dealing with the issue of charge but if the court is satisfied that there is material of sterling quality which has been withheld by the investigator/prosecutor, the court is not debarred from summoning or relying upon the same even if such document is not a part of the charge-sheet. It does not mean that the defence has a right to invoke Section 91 CrPC dehors the satisfaction of the court, at the stage of charge."*

In view of the above, the Court could have summoned or relied upon the relevant documents notwithstanding the fact that they were not a part of the charge-sheet. However, the order of charge not having allowed additional documents apart from the charge-sheet does not follow the law laid down in the judgment.

64. It has also been argued by the learned counsel appearing on behalf of the petitioner that the amount seized in the house of the petitioner was duly explained and accounted for. The said amount was the part of the

advance received by petitioner towards sale of the land situated at Village Maghrauli Khadar, Dospur Pargana Dadri, District Faridabad. It is also argued that the said facts have been corroborated by the witnesses who were involved in the above transaction. The source of money was also explained before the Income Tax Authorities along with the evidence. Learned counsel appearing on behalf of respondent/CBI has failed to produce any evidence to establish the money trail or establish any connection with the seized money and the allegations made in the chargesheet except the intercepted telephonic conversations between the accused Sukhwinder Singh and the petitioner, as well as the accused Ketan Desai and the petitioner.

65. This Court is of the view that the intercepted telephonic conversations are insufficient to fulfil the requirement of Section 107 IPC so as to establish a *prima facie* case that the petitioner committed the offence of abetment as specified under Section 12 of PC Act and other offences as alleged in the chargesheet.

66. It is vehemently argued by the learned counsel appearing on behalf of petitioner that before filing the chargesheet against the petitioner, no prior approval of Director, CBI has been obtained by the Investigating Officer. The chargesheet in the case was filed without prior approval or sanction of the Director of CBI as mandated by the CBI Manual (Crime). It is submitted that in the absence of prior approval by the Director, the chargesheet could not have been filed and the proceedings before the Learned Special Judge were *void ab initio* and without the jurisdiction.

67. On the query made by this Court, learned counsel appearing on behalf of respondent/CBI has not been able to reply that whether prior direction/approval of Director has been obtained by the CBI as per the CBI Manual (Crime) and he had prayed for some time to file written submissions, after obtaining instructions from the department. But the same has not been filed by the learned counsel appearing on behalf of respondent/CBI.

68. The Court below while passing the impugned order had also not considered the fact whether the prior approval of the Director, CBI has been obtained as mandated by the CBI Manual (Crime), as well as ignored the judgment passed by the Coordinate Bench of this Court in ***Ripun Bora v. State*, (Supra)**. The Court has held as under:

> *"39. It has been vehemently argued by the counsel for petitioner that the trap had been conducted without the authority of any CBI Director and thus, the trap is illegal. It has been further argued that the complainant Sh. A.B. Gupta has himself acted as an entrapper or the investigating officer and himself organized the entire trap which is in violation of law. The counsel has placed reliance upon Annexure 6-A of the CBI Manual to aver that a PE/RC can be registered against present and former Ministers of Central/State governments only by a CBI Director and only a CBI director has the power to take decision as regards the verification of source information/ complaint against such Ministers. However, in the present case the CBI Director was kept in dark and the trap laid down against the petitioner was not under the authority of any CBI Director. I find force in the argument advanced by the counsel for petitioner. Para 8.5 of the CBI Manual deals with the*

complaints for which no verification is required but para 8.6 of the Manual deals with complaints where verification should be taken up. Furthermore, para 8.8 of the CBI Manual categorically states that a complaint received against a Minister or former Minister of Union Government must be put up to the Director, CBI for appropriate orders. However, in the present case, there was no authorization by the CBI Director to lay a trap against the petitioner nor was any verification conducted. In fact, a perusal of the complaint makes it evident that while 7 copies of the complaint were forwarded to different officials of the CBI; no copy was forwarded to the Director who is the official empowered to deal with complaint against Ministers. The relevant paras are reproduced as under:

> ***'Complaints in which Verification should be taken up***
>
> *8.6 The following categories of complaints may be considered fit for verification:*
>
> *i. Complaints pertaining to the subject-matters which fall within the purview of CBI either received from official channels or from well-established and recognized public organizations or from individuals who are known and who can be traced and examined.*
>
> *ii. Complaints containing specific and definite allegations involving corruption or serious misconduct against public servants etc., falling within the ambit of CBI, which can be verified.*

8.7 If any complaint against a Minister or former Minister of the Union Government, or the Union Territory is received in any Branch, it should be put up to the Director, CBI, for appropriate orders. The relevant file of the Branch should remain in the personal custody of SP concerned. In case the complaints are received against members of lower judiciary these may be forwarded to the Registrar of the High Court concerned and the complaints received against members of higher judiciary may be forwarded to Registrar General of Supreme Court through the Joint Director (Policy).'

40. As regards the contention of the counsel for petitioner that a second FIR should have been registered for the incident that occurred on 03.06.2008, I do not find any force in the aforesaid contention in the light of the law laid by the apex Court in TT Anthony v. State of Kerala reported at (2001) 6 SCC 181 wherein it has been held that there cannot be a second FIR on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences.

41. Thus, in the light of the observations made above, the chargesheet RC AC 12008 A0004 and the proceedings emanating therefrom are hereby quashed as I am of the view that the proceedings have been initiated against the petitioner in utter abuse of the process of law and the quashing thereof would secure the ends of justice."

69. It is also argued by the learned counsel appearing on behalf of petitioner that the Court below has also failed to take into consideration

while passing the impugned orders that sanction was not taken from the competent authority in respect of the approval of Dr. Suresh C. Shah. Therefore, the cognizance taken by the Court below is bad in law.

70. As per Section 19(l)(a) of the PC Act, it is mandatory to commence prosecution only after sanction from the competent authority has been obtained. In absence of such sanction, Dr. Suresh C. Shah could not have been made an accused. If he could not have been made an accused, it follows, as a natural corollary that he could not have been made an approver. If he could not be made an approver, then the evidence tendered by Dr. Suresh C. Shah is vitiated a nullity in the eyes of the law.

71. In the case of ***State of Goa v. Babu Thomas,*** **(Supra)**, the Hon'ble Supreme Court has held as under:

> *"12. As already noticed, the sanction order is not a mere irregularity, error or omission. The first sanction order dated 2-1-1995 was issued by an authority that was not a competent authority to have issued such order under the Rules. The second sanction order dated 7-9-1997 was also issued by an authority, which was not competent to issue the same under the relevant rules, apart from the fact that the same was issued retrospectively w.e.f. 14-9-1994, which is bad. The cognizance was taken by the Special Judge on 29-5-1995. Therefore, when the Special Judge took cognizance on 29-5-1995, there was no sanction order under the law authorising him to take cognizance. This is a fundamental error which invalidates the cognizance as without jurisdiction."*

72. In the case of ***State of Karnataka v. C. Nagarajswamy*****, (2005) 8 SCC 370**, the Hon'ble Supreme Court has held as under:

"14. Ordinarily, the question as to whether a proper sanction has been accorded for prosecution of the accused persons or not is a matter which should he dealt with at the stage of taking cognizance. But in a case of this nature where a question is raised as to whether the authority granting the sanction was competent therefor or not, at the stage of final arguments after trial, the same may have to be considered having regard to the terms and conditions of service of the accused for the purpose of determination as to who could remove him from service.

15. Grant of proper sanction by a competent authority is a sine qua non for taking cognizance of the offence. It is desirable that the question as regard sanction may be determined at an early stage. [See Ashok Sahu Vs. Gokul Saikia and Another, 1990 (Supp) SCC41 and Birendra K. Singh Vs. State of Bihar, (2000) 8 SCCC 498; JT 2000 (8) SC 248]

16. But, even if a cognizance of the offence is taken erroneously and the same comes to the court's notice at a later stage a finding to that effect is permissible. Even such a plea can be taken for the first time before an appellate court. [See B. Saha and Others Vs.M.S. Kochar, (1979) 4 SCC 177, para 13 and K. Kalimuthu Vs. State by DSP, (2005) 4 SCC 512)."

73. Thus, the principle that clearly emerges from the aforesaid discussion is that the sanction is a condition precedent for the prosecution of public servants under Section 19(1)(a) of the PC Act. Due to lack of sanction and hence, the lack of jurisdiction caused thereby, the evidence of Dr. Suresh C. Shah, who was made the sole witness of framing of charge against the petitioner is vitiated and the same is *non-est* in the eyes

of law. However, the Court below has failed to consider the said fact while passing the impugned orders.

CONCLUSION

74. The entire controversy has arisen out of an alleged bribery made for allowing the admissions into the 4th Batch of MBBS of the GSMCH, Patiala by bypassing the alleged deficiencies in the process. The Petitioner is accused of having acted as a middleman in the alleged bribery. However, no direct or indirect evidence implicating the petitioner is available on record that can be legally relied on to proceed with the matter. The evidence collected and produced by the investigation agency before the Court below is fraught with illegalities and no sufficient cause is made to proceed with the case *qua* the petitioner for the reasons as detailed hereunder:

i) The main basis of the matter for which the bribe was allegedly given i.e., the auditorium was not actually required to be constructed as a condition precedent for conducting admissions of the 4th batch of MBBS course. The factum has been verified by the appropriate authorities at various stages as stated above, hence there is no rationale of committing the alleged offence of giving of bribe.

ii) Further, the Approver on the basis of whose statement petitioner has been made an accused, was impleaded in the case without sanction from the appropriate authorities and his statement is thus inadmissible.

iii) Nothing as alleged in the recorded conversation intercepted by the investigating agency forms direct basis or has any connection whatsoever with the need for bribery, nor is there any rationale for offering of the alleged bribe. The recovery made has also been explained and accounted for by the Petitioner with evidence as being a part of the advance received by the Petitioner in lieu of sale of his village land.

iv) Tape records of the calls intercepted in the instant case are not admissible since the due procedure for such interception as mandated by the Telegraph Act and the Rules framed thereunder has not been followed. Further, even the same has not been verified in the FSL report. No further witness/evidence to implicate the petitioner is on record.

v) Additionally, the public servant who is alleged to have been involved in the said transaction has already been discharged and cannot, therefore, be prosecuted under the PC Act.

Thus, in an offence alleging conspiracy, where the main conspirator has been discharged and in the absence of evidence implicating the petitioner as a co-conspirator alleged to be a middle-man, there is no point in continuing with the case and keep the entire criminal justice machinery running endlessly especially in light of the fact that the criminal proceedings had been initiated ten years back and has stayed pending ever since.

75. It is also a settled law that when the allegations against an accused do not constitute an offence, even if such allegations are presumed to be true, a Court can exercise its powers under Section 482 of the Code to quash the impugned criminal proceedings. However, in doing so, the Court must not undertake a 'mini-trial' or roving enquiry.

76. Judged by that standard, upon a perusal of the contentions raised as well as the record, specifically – the evidence, the chargesheet as well as the orders on charge, this Court is of the view that it is necessary to intervene by exercising the revisional and inherent jurisdiction vested in this Court to avoid travesty of justice and abuse of process of the court, because:

(a) The most relevant piece of evidence relied upon by the prosecution, i.e., the copy of the voice-recording of the telephonic conversation allegedly involving the petitioner, is not even admissible in light of the judgment of the Hon'ble Supreme Court in the case of ***Anvar P.V. (Supra)***, the same ratio was followed by this Court in its judgment dated 20th November, 2014 in ***Ankur Chawla v. CBI*, Crl. M. C. No. 2455/2012**, and it was held that:

> *"16. To test the correctness of the aforesaid observations of the Trial Court, it has to be kept in mind that any electronic record is admissible in evidence only when it is in accordance with the procedure prescribed under Section 65B of the Evidence Act, 1872…."*
>
> ***

"18. Since audio and video CDs in question are clearly inadmissible in evidence, therefore, Trial Court has erroneously relied upon them to conclude that a strong suspicion arises regarding petitioners criminally conspiring with co-accused to commit the offence in question. Thus, there is no material on the basis of which, it can be reasonable said that there is strong suspicion of the complicity of the petitioners in commission of the offence in question. In the considered opinion of this Court, a prime-facie case is not made out against petitioners and so they cannot be put on trial with the aid of Section 12 of the Prevention of Corruption Act or by resort to Section 120(B) of IPC."

b) The *ratio decidendi* of ***Anvar P.V. (Supra)*** pertaining to Section 65B of the Evidence Act, was recently reiterated by the Hon'ble Supreme Court in ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal,*** **2020 (7) SCC 1**. The Hon'ble Supreme Court therein has held as under:

"73.1. Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473: (2015) 1 SCC (Civ) 27: (2015) 1 SCC (Cri) 24: (2015) 1 SCC (L&S) 108], as clarified by us hereinabove, is the law declared by this Court on Section 65-B of the Evidence Act. The judgment in Tomaso Bruno [Tomaso Bruno v. State of U.P., (2015) 7 SCC 178: (2015) 3 SCC (Cri) 54], being per incuriam, does not lay down the law correctly. Also, the judgment in Shafhi Mohammad [Shafhi Mohammad v. State of H.P., (2018) 2 SCC 801: (2018) 2 SCC 807: (2018) 2 SCC (Civ) 346: (2018) 2 SCC (Civ) 351: (2018) 1 SCC (Cri) 860: (2018) 1 SCC (Cri) 865] and the judgment dated 3-4-2018 reported as Shafhi Mohd. v. State of H.P. [Shafhi Mohd. v. State of H.P., (2018) 5 SCC 311: (2018) 2

SCC (Cri) 704], do not lay down the law correctly and are therefore overruled.

73.2. The clarification referred to above is that the required certificate under Section 65-B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the device concerned, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or network to the court, then the only means of providing information contained in such electronic record can be in accordance with Section 65-B(1), together with the requisite certificate under Section 65-B(4). The last sentence in para 24 in Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] which reads as "... if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act ..." is thus clarified; it is to be read without the words "under Section 62 of the Evidence Act,...". With this clarification, the law stated in para 24 of Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108] does not need to be revisited."

77. Even otherwise, the prosecution has till date not advanced anything *qua* the genuineness of the voice recording involving the petitioner. In the absence of a forensic analysis and report (or for that matter, any other certifying instrument) pertaining to the authenticity of the voice recording in question, it is not unreasonable to conclude that the prosecution's case

at trial would be materially impacted. In the case of ***Nilesh Dinkar Paradkar v. State of Maharashtra,*** **2011 (4) SCC 143**, the Hon'ble Supreme Court has held as follows:

> *"31. In our opinion, the evidence of voice identification is at best suspect, if not, wholly unreliable. Accurate voice identification is much more difficult than visual identification. It is prone to such extensive and sophisticated tampering, doctoring and editing that the reality can be completely replaced by fiction. Therefore, the courts have to be extremely cautious in basing a conviction purely on the evidence of voice identification. This Court, in a number of judgments emphasised the importance of the precautions, which are necessary to be taken in placing any reliance on the evidence of voice identification.*
>
> *32 [Ed.: Para 32 corrected vide Official Corrigendum No. F.3/Ed.B.J./18/2011 dated 5-4-2011.]. In Ziyauddin Burhanuddin Bukhari v. Brijmohan Ramdass Mehra [(1976) 2 SCC 17] this Court made following observations: (SCC p. 26, para 19)*
>
> *'19. We think that the High Court was quite right in holding that the tape-records of speeches were 'documents', as defined by Section 3 of the Evidence Act, which stood on no different footing than photographs, and that they were admissible in evidence on satisfying the following conditions:*
>
> *(a) The voice of the person alleged to be speaking must be duly identified by the maker of the record or by others who know it.*
>
> *(b) Accuracy of what was actually recorded had to be proved by the maker of the record and satisfactory evidence, direct or circumstantial, had*

to be there so as to rule out possibilities of tampering with the record.

(c) The subject-matter recorded had to be shown to be relevant according to rules of relevancy found in the Evidence Act.'"

78. Apart from the aforesaid, in this case, the public servant who was said to be involved in the alleged transaction has already been discharged and is not being tried for any offence under the PC Act. That leaves only the private individual i.e., the petitioner/alleged middleman to face trial for charges under Section 12 of the PC Act, read with Section 120B of the IPC, and that too without any material in the charge-sheet that the Petitioner either instigated the public servant or entered into a conspiracy with the public servant and/or the bribe giver. As such, the facts and circumstances of the present case fall within the scope of the third category set out in Section 107 of the IPC. Therefore, permitting the trial to continue would be untenable in light of the judgment of the Hon'ble Supreme Court in ***CBI v. V.C. Shukla,*** **(1998) 3 SCC 410,** which similarly dealt with accused who had acted as middlemen, holding that:

"47. Even if we are to accept the above contentions of Mr Altaf Ahmed the entries, (which are "statements" as held by this Court in Bhogilal Chunilal [AIR 1959 SC 356: 1959 Supp (1) SCR 310] and hereinafter will be so referred to), being "admissions" — and not "confession" — cannot be used as against Shri Advani or Shri Shukla. However, as against the Jains the statements may be proved as admissions under Section 18 read with Section 21 of the Act provided, they relate to "any fact in issue or relevant fact". Needless to say, what will be "facts in issue" or "relevant facts" in a criminal trial will depend upon,

and will be delineated by, the nature of accusations made or charges levelled against the person indicted. In the two cases with which we are concerned in these appeals, the gravamen of the charges which were framed against the Jains in one of them (quoted earlier) and were to be framed in the other pursuant to the order of the trial court (quoted earlier) is that they entered into two separate agreements : one with Shri Shukla and the other with Shri Advani, in terms of which they were to make certain payments to them as a gratification other than legal remuneration as a motive or reward for getting their favour while they were "public servants" and in pursuance of the said agreements payments were actually made to them. Thereby the Jains committed the offence of conspiracy under Section 120-B of the Penal Code, 1860; and under Section 12 of the Prevention of Corruption Act, 1988 (Prevention of Corruption Act for short), in that, they abetted the commission of offences under Section 7 of the Act by Shri Shukla and Shri Advani.

***

49. Thus said we may now turn our attention to Section 12 of the Prevention of Corruption Act. That section reads as under:

> *"12. Punishment for abetment of offences defined in Section 7 or 11.—Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine."*

50. Undoubtedly for a person to be guilty thereunder it is not necessary that the offences mentioned therein

should have been committed pursuant to the abetment. Since "abetment" has not been defined under the Prevention of Corruption Act we may profitably refer to its exhaustive definition in Section 107 of the Penal Code, 1860. As per that section a person abets the doing of a thing when he does any of the acts mentioned in the following three clauses:

> *(i) instigates any person to do that thing, or*
>
> *(ii) engages with one or more other person or persons in any conspiracy for the doing of that thing ..., or*
>
> *(iii) intentionally aids, by any act or illegal omission, the doing of that thing.*

So far as the first two clauses are concerned it is not necessary that the offence instigated should have been committed. For understanding the scope of the word "aid" in the third clause it would be advantageous to see Explanation 2 in Section 107 IPC which reads thus:

> *"Explanation 2. —Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."*

It is thus clear that under the third clause that when a person abets by aiding, the act so aided should have been committed in order to make such aiding an offence. In other words, unlike the first two clauses the third clause applies to a case where the offence is committed.

51. Since in the instant case the prosecution intended to prove the abetment of the Jains by aiding (and not

by any act falling under the first two clauses adverted to above) and since we have earlier found that no prima facie case has been made out against Shri Advani and Shri Shukla of their having committed the offence under Section 7 of the Prevention of Corruption Act, the question of the Jains' committing the offence under Section 12 — and, for that matter, their admission in respect thereof — does not arise. Incidentally, we may mention that the abetment by conspiracy would not also arise here in view of our earlier discussion.

79. That apart, this Court in ***Sanjeev Saxena v. State (NCT of Delhi),*** **2015 SCC Online Del 9564**, has opined as follows:

"16. It is an admitted case of prosecution that the trail of money is not established despite best efforts to find out its source. Trial court has also reached a conclusion in this regard that the efforts to trace money trail has failed and the principal offender who attempted to bribe BJP MPs could not be brought on record. Therefore, the only evidence against the petitioner is the audio/video recording showing him and one person in yellow shirt delivering rupees one crore to the three BJP MPs. However, in my opinion, this evidence in itself is insufficient to fulfill the requirement of Section 107 IPC so as to establish a prima facie case that the petitioner committed the offence of abetment as specified under Section 12 of PC Act.

17. It is not the case of the prosecution that the petitioner engaged/conspired with persons other than the co-accused to commit the offence of conspiracy. Since, the co-accused persons have already been discharged and the trial court has already held that no evidence of conspiracy is made out even against the petitioner, under such circumstances, the offence

of abetment by engaging in conspiracy is not prima facie established against the petitioner."

80. Lastly, the charge-sheet against the petitioner is underpinned by the allegation of abetment under Section 12 of the PC Act without there being any admissible evidence of the demand or offer of bribe. Needless to state, such a trial would be an exercise in futility, more so because there are judicial precedents to the effect that a demand of illegal gratification is imperative for punishment (for abetment as an offence) under Section 12 of the PC Act. In fact, the judgment of the Hon'ble Supreme Court in ***State of Punjab v. Madan Mohan Lal Verma,*** **(2013) 14 SCC 153**, which reads as under, is applicable here:

> *"11. The law on the issue is well settled that demand of illegal gratification is sine qua non for constituting an offence under the 1988 Act. Mere recovery of tainted money is not sufficient to convict the accused when substantive evidence in the case is not reliable, unless there is evidence to prove payment of bribe or to show that the money was taken voluntarily as a bribe. Mere receipt of the amount by the accused is not sufficient to fasten guilt, in the absence of any evidence with regard to demand and acceptance of the amount as illegal gratification. Hence, the burden rests on the accused to displace the statutory presumption raised under Section 20 of the 1988 Act, by bringing on record evidence, either direct or circumstantial, to establish with reasonable probability, that the money was accepted by him, other than as a motive or reward as referred to in Section 7 of the 1988 Act. While invoking the provisions of Section 20 of the Act, the court is required to consider the explanation offered by the accused, if any, only on the touchstone of*

preponderance of probability and not on the touchstone of proof beyond all reasonable doubt. However, before the accused is called upon to explain how the amount in question was found in his possession, the foundational facts must be established by the prosecution. The complainant is an interested and partisan witness concerned with the success of the trap and his evidence must be tested in the same way as that of any other interested witness. In a proper case, the court may look for independent corroboration before convicting the accused person. (Vide Ram Prakash Arora v. State of Punjab [(1972) 3 SCC 652 : 1972 SCC (Cri) 696 : AIR 1973 SC 498] , T. Subramanian v. State of T.N. [(2006) 1 SCC 401 : (2006) 1 SCC (Cri) 401] , State of Kerala v. C.P. Rao [(2011) 6 SCC 450 : (2011) 2 SCC (Cri) 1010 : (2011) 2 SCC (L&S) 714] and Mukut Bihari v. State of Rajasthan [(2012) 11 SCC 642 :(2013) 1 SCC (Cri) 1089 : (2013) 1 SCC (L&S) 136].)"

81. Therefore, in light of the facts of the case along with the material on record, and since there is no substance in the accusation levelled nor any admissible evidence is on record incriminating the petitioner, the petitioner is entitled to relief under Section 482 of the Code.

82. In view of these facts and circumstances, as well as the provisions of law, their application to the case at hand and the analysis made, this Court is inclined to allow the instant petition.

83. For the reasons recorded above, this Court allows the instant petition as prayed for. The impugned orders dated 1st June 2012 and 4th June 2012 passed by Learned Special Judge, (CBI-05), New Delhi whereby charges have been framed *qua* the Petitioner, are hereby set aside.

84. Accordingly, the petition and pending applications stand disposed of.

85. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

January 17, 2022
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