IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 66 of 2018
With
CRIMINAL MISC.APPLICATION (FOR VACATING INTERIM RELIEF) NO. 1 of 2020
In R/CRIMINAL REVISION APPLICATION NO. 66 of 2018

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PRADEEP NIRANKARNATH SHARMA
Versus
DIRECTORATE OF ENFORCEMENT & 1 other(s)

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Appearance in Criminal Revision Application No. 66 of 2018
MR HB CHAMPAVAT(6149) for the Applicant(s) No. 1
MR RJ GOSWAMI(1102) for the Applicant(s) No. 1
MR DEVANG VYAS(2794), Additional Solicitor General of India Assisted by Kshitij Amin, Central Government Standing Counsel for the Respondent(s) No. 1
MR MITESH AMIN, PP WITH MR. HIMANSHU K PATEL, APP for the Respondent(s) No. 2
Appearance in Criminal Misc. Application No. 1 of 2020 in Criminal Revision Application No. 66 of 2018
MR DEVANG VYAS(2794), Additional Solicitor General of India Assisted by Kshitij Amin, Central Government Standing Counsel for the Applicant (s) No. 1
MR HB CHAMPAVAT(6149) for the Respondent (s) No. 1
MR MITESH AMIN, PP WITH MR. HIMANSHU K PATEL, APP for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

Date : 14/03/2023

ORAL ORDER IN R/CRIMINAL REVISION APPLICATION NO. 66 OF 2018:

1. By way of present application, the applicant has requested to quash and set aside the judgment and order dated 08.01.2018 passed below Ex. 13 in PMLA Case No. 02 of 2016 by learned Sessions Judge and Designated Judge (PMLA) District Court Ahmedabad (Rural) arising out of

ECIR/-1/AZO/2012 (98 of 101) registered with Enforcement Directorate, Ahmedabad and further be pleased to discharge the applicant under Section 227 of the Code of Criminal Procedure from PMLA Case No. 02 of 2016 pending before the Hon'ble Sessions Judge and Designated Judge (PMLA) District Court, Ahmedabad (Rural).

2. Brief facts of the present case are as under:

2.1 The applicant has been arrested on 31.07.2016 in connection with the inquiry being registered by the respondent no. 1 herein being ECIR /01/AZO/2012 (98 to 101), subsequently after investigation the respondent no. 1 has filed complaint before th Hon'ble Sessions Judge and Designated Judge (PMLA), District court, Ahmedabad (Rural) being PMLA complaint no. 2/16 on 27.09.2016 for the offence under section 3 and under section 4 of the Prevention of the Money Laundering Act, 2002. That, in the present case the scheduled offence as per the case of the prosecution are

(i) I-CR.No.03/2010 registered with Rajkot Zone, CID Crime for offences under sections 7, 11, 13(1)(B), 13(2) of Prevention of corruption Act.

(ii) I-CR.No.09/2010 registered with Rajkot Zone, CID Crime for offences under sections 217, 409, 465, 467, 468, 471, 476, 120(B) of Indian Penal Code.

2.2 That, in both the case the charge sheet have been filed against the applicant before the concerned court and till date charges have not been framed that as far as scheduled offence being I-CR.No.03/2010 registered with Rajkot Zone, CID Crime is concerned, the applicant has been enlarged on anticipatory bail by this Hon'ble Court vide order dated 03.02.2022 in Criminal Misc. Application No. 2003/2011.

2.3 That, as far as scheduled offence being I-CR.No.09/2010 registered with Rajkot Zone, CID Crime is concerned, the petitioner is enlarged on regular bail by the Hon'ble Supreme court by order dated 13.12.2011 passed in Special Leave Petition (Crl.) No.7962/2011.

2.4 That, the applicant had filed an application for discharge under Section 227 of Criminal Procedure Code, 1973 vide Exh.13 on 09.11.2017. The said application came to be heard and after hearing both the sides, the said application came to be rejected by order dated 08.01.2018. Hence, as against this order, the applicant has approached this court by way of present application.

3. Heard learned advocates for the respective parties.

4. It was submitted by learned advocate for the applicant that in present case under PMLA, the Resp.no.1 has relied upon aforesaid two scheduled offence hence other offences cannot

be taken into consideration and as stated above since one of the offence is committed prior to act coming into the force, therefore the aforesaid offence cannot be considered. As far as the second offence is considered, there is not an iota of evidence of money laundering act or proceeds of crime, therefore offence under Sections 3 and 4 of the aforesaid Money Laundering Act is not made out. That, as far as the scheduled offences being I-C.R. no. 03/2010 registered with Rajkot Zone, CID Crime is concerned, as per the prosecution case the petitioner was responsible for causing loss to the public exchequer and revenue to the tune of Rs. 1,04,61,622/and loss of Stamp duty to the tune of Rs. 15,69,240/-, therefore this shows that loss is caused, but there is no evidence of regarding to show that the petitioner has received any amount from any source which would attract the provisions of Money Laundering Act by committing an offence and therefore also the aforesaid fact has been not at all considered by the learned Special Judge.

5. It was further submitted by learned advocate for the applicant that as per the other scheduled offence is concerned being I-C.R. No. 09/10 registered with Rajkot Zone, CID Crime, the allegations are similar and even the amount stated is also same and the offence of corruption is not charged and

therefore, both the aforesaid offence are identical and therefore, also this shows that the applicant cannot be held liable since the offence were committed prior to coming into force of the act. That, learned Special Court erred in not considering the relevant principle as far as discharge of the accused is concerned and as merely rejected the application as if it is the bail application therefore also, the impugned order is required to be quashed. That the applicant was arrested on 06.01.2010 in the scheduled offence and thereafter, the applicant was suspended on 08.01.2010 and pending suspension, the applicant attained the age of superannuation therefore now there is no question of the applicant to be in service and the age of the applicant is 63 years and therefore, the applicant is required to be discharged. Ultimately, it was submitted by learned advocate for the applicant to allow present application.

6. On the other side, Mr. Devang Vyas learned Additional Solicitor General of India assisted by Mr. Kshitij Amin Central Government Standing Counsel for the respondent no.1 as well as learned PP Mr. Mitesh Amin with Mr. Himanshu K. Patel, APP for the respondent no. 2 have strongly objected the submissions made by learned advocate for the applicant and submitted that there are sufficient material evidence and

grounds for proceeding against the applicant to believe that the applicant has been guilty of an offence punishable under the Act. That the reasons for such belief has been recorded in writing and the applicant was informed about the grounds of such arrest. While referring Section 3 of PMLA, he has submitted that this being special statute, the presumption is that the accused has prima facie committed an offence and onus is on the accused to discharge the said burden during the trial, and therefore, at this stage, when full fledged trial yet to begun the accused cannot be discharged. That, there is prima facie case against the applicant and there are reasons to believe that the applicant is prima facie guilty for the offence charged against him. The trial court has considered the relevant provisions of the Act and compared the same with the material collected by the Investigation Officer and prima facie found that crores of rupees have been transferred in the bank accounts of the wife and children of the applicant in USA by different modes and the same is supported by cogent evidence which are on record. When there are such material against the applicant, the burden to prove not guilty for having committed the schedule offence lie on the accused as per Section 24 of the Act. That, the role of the applicant is elaborately discussed in the offence and he is actively and directly indulged in the said

offence. Ultimately, learned Additional Solicitor General of India assisted by Central Government Standing Counsel for the respondent no.1 as well as learned PP with APP for the respondent no. 2 have requested to dismiss present application.

7. Having considered the submissions made by learned advocates for the respective parties, it appears that after filing of the charge sheet, the applicant approached the learned trial court requesting to discharge him from the offence but the said request has not been accepted by the learned trial court.

8. Before concluding the present application, first of all we may consider the legal provisions relating to discharge application.

8.1. In case of **Saranya vs. Bharathi and another reported in (2021) 8 SCC 583**, the Hon'ble Supreme Court, in paragraph nos.10 and 11, observed as under:

> "10. Before considering the rival submissions of the parties, few decisions of this Court on the principles which the High Court must keep in mind while exercising the jurisdiction under Section 482 .P.C./at the stage of framing of the charge while considering the discharge application are required to be referred to and considered.
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> 11. In the case of Deepak (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, it is observed and held that 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. It is observed and held that at that

stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not."

8.2 In case of **Gulam Hassan Baigh vs. Mahammad Maqbool Magrey & Ors., the Hon'ble Supreme Court**, arising out of SLP (Criminal) No.4599 of 2021, decided on 26th July, 2022, by the Larger Bench of the Hon'ble Apex Court, in paragraph nos.15 to 28, observed as under:

"**POSITION OF LAW**

15. Section 226 of the CrPC corresponds to subsection (1) of the old Section 286 with verbal changes owing to the abolition of the jury. Section 286 of the 1898 Code reads as under:

> "**286.**(1) In a case triable by jury, when the jurors have been in chosen or, in any other case, when the Judge is ready to hear the case, the prosecutor shall open his case by reading from the Indian Penal or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused.
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> (2) The prosecutor shall then examine his witnesses." Section 226 of the 1973 Code reads thus:
>
> > **"226. Opening case for prosecution.—** When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused."

Section 226 of the CrPC permits the prosecution to make the first impression regards a case, one which might be difficult to dispel. In not insisting upon its right under Section 226 of the CrPC, the prosecution would be doing itself a disfavour. If the accused is to contend that the case against him has not been explained owing to the noncompliance with Section 226 of the CrPC, the answer would be that the Section 173(2) of the CrPC report in the case

would give a fair idea thereof, and that the stage of framing of charges under Section 228 of the CrPC is reached after crossing the stage of Section 227 of the CrPC, which affords both the prosecution and accused a fair opportunity to put forward their rival contentions.

16. Section 227 of the CrPC reads thus:

> **"227. Discharge.—**
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> If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

17. Section 228 of the CrPC reads thus:

> **"228. Framing of charge.**
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> (1) If, after such consideration and hearing as aforesaid,the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -
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> (a) is not exclusively triable by the Court of Session, he may frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;
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> (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.
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> (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

18. The purpose of framing a charge is to intimate to the accused the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial. [See: decision of a Four Judge Bench of this Court in **V.C. Shukla v. State through C.B.I.** reported in1980 Supp SCC 92: 1980 SCC (Cri) 695).

19. The case may be a sessions case, a warrant case, or a summons case, the point is that a prima facie case must be made out before a charge can be framed. Basically, there are three pairs of sections in the CrPC. Those are Sections 227 and 228 relating to the sessions trial; Section 239 and 240 relatable to trial of

warrant cases, and Sections 245(1) and (2) with respect to trial of summons case.

20. Section 226 of the CrPC, over a period of time has gone, in oblivion. Our understanding of the provision of Section 226 of the CrPC is that before the Court proceeds to frame the charge against the accused, the Public Prosecutor owes a duty to give a fair idea to the Court as regards the case of the prosecution.

21. This Court in the case of **Union of India v. Prafulla Kumar Samal and another,** (1979) 3 SCC 4, considered the scope of enquiry a judge is required to make while considering the question of framing of charges. After an exhaustive survey of the case law on the point, this Court, in paragraph 10 of the judgment, laid down the following principles :

> "(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
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> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.
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> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
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> (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

22. There are several other judgments of this Court delineating the scope of Court's powers in respect of the framing of charges in a criminal case, one of those being **Dipakbhai Jagdishchandra Patel V. State of Gujarat,** (2019) 16 SCC 547, wherein the law relating to the framing of charge and discharge is discussed elaborately in paragraphs 15 and 23 resply and the same are reproduced as under:

"15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:

> "4…..Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and initial stage of the trial the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial…. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which

will have to be made will be one under Section 228 and not under Section 227."

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

23. In **Sajjan Kumar v. CBI** [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged there from have been taken note of in para 21 as under: (SCC pp. 376-77)

"21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court dis close grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of

the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to dis charge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

24. The exposition of law on the subject has been further considered by this Court in **State v. S. Selvi**, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710, followed in **Vikram Johar v. State of Uttar Pradesh**, (2019) 14 SCC 207 : 2019 SCC OnLine SC 609 : (2019) 6 Scale 794.

25. In the case **of Asim Shariff v. National Investigation Agency**, (2019) 7 SCC 148, this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. We quote the relevant observations as under:

"18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted

power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, 3 2018(13) SCC 455 4 2019(6) SCALE 794 the trial Judge will be justified in discharging him. **It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."** (emphasis supplied)

26. In the case of **State of Karnataka v. M.R. Hiremath**, reported in (2019) 7 SCC 515, this Court held as under:

"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

> "29. … At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. (See : **Bhawna Bai v. Ghanshyam**, (2020) 2 SCC 217).

28. In **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, this Court observed in paragraph 30 that the Legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". There is an inbuilt element of presumption. It referred to its judgement rendered in the case of **State of Maharashtra v. Som Nath Thapa and others,** (1996) 4 SCC 659, and to the meaning of the word "presume", placing reliance upon Blacks' Law Dictionary, where it was defined to mean "to believe or accept upon probable evidence"; "to take as true until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, incriminating material and evidences put to the accused in terms of Section 313 of the Code, and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the Court forming its final opinion and delivering its judgement....." (emphasis supplied)"

8.3. In case of **Manendra Prasad Tiwari, vs. Amit Kumar Tiwari & another**, in Criminal Appeal No.1210 of 2022, decided on 12th August, 2022 by the Division Bench of the Hon'ble Apex Court, in paragraph nos.21 to 27, observed as under:

"21. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 rad with Section 401 of the CrPC seeking for the quashing of charge framed against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once that trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing for a charge before the entire probabilities evidence has come on record should not be entert10 sans exceptional cases. (see **State of Delhi v. Gyan Devi,** (2000) 8 SCC 239).

22. The scope of interfere and exercise of jurisdiction under Section 397 of CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage,w hen charge had been framed, is also well settled. At the stage of framing of charge, the court is concerned not with the proof of all 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 the 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 Code of Criminal Procedure.

23. Section 397 CrPC 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 or the perversity which has crept in the proceeding.

24. It is useful to refer to judgment of this Court in **Amit Kapoor and Ramesh Chander**, (2012) 9 SCC 460, where the scope of Section 397 CrPC has been succinctly considered and explained para 12 and 13 resply are as follows:

> "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 scrutinize 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.
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> 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 the Cr.P.C.

25. The Court in para-27 has recorded its conclusion and laid down the principles to be considered for the exercise of jurisdiction under Section 397 particularly in the context of quashing of charge framed under Section 228 CrPC. Paras 27, 27(1) (2) (3) (9), (12) resply are extracted as follows:

> "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 :

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

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.

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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.

26. This Court in the case of **Chitresh Kumar Chopra v. State (Government of NCT of Delhi),** reported in (2009) 16 SCC 605, observed in para 25 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. (See: Niranjan Singh Karam Singh Punjabi & Ors. Vs. Jitendra Bhimraj Bijja & Ors5).
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> 27. In **State of Maharashtra v. Som Nath Thapa**, (1996) 4 SCC 659, a three-Judge Bench of ths Court explained the meaning of the word "presume". Referring to the dictionary meanings of the said word, the Court observed thus:
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> > "32. ….. 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 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."

9. While rejecting the discharge application of the applicant, learned trial court has specifically observed that on the basis of prima facie investigation made by ED, it appears that the applicant is prima facie involved in Hawala ie., illegal transfer of money from nation to foreign countries. Prima facie there is sufficient material, which warrants this court to arrive at prima facie inferences that applicant is involved in such serious case wherein discretion is not required to be exercised. The learned trial court has further observed that as per Section 24 burden shifted upon the accused to show that proceeds of

crime are untainted property and the applicant has prima facie miserably failed to discharge his burden under Section 24. It was further observed that there is serious allegations against the applicant so far as Hawala chapter is concerned wherein the Hawala entries via Dubai (UAE), crores of rupees have been credited in the accounts of wife of the applicant as well as his children in USA and the wife of the applicant was made partner in a firm to the extent of 30% by investment of only RS. 1 lakh and getting crores of rupees from India as well as UAE. It was further observed by learned trial court while rejecting the discharge application of the applicant that there is strong prima facie case upon the applicant and there appears materials sufficient for the purpose of trial and therefore, this is not fit case to exercise discretion under Section 227 of Code of Criminal Procedure.

10. It appears from the record that at this stage, on the basis of the charge sheet and documents produced with it, court should have to take decision. The defence taken and evidences produced by the accused should not be considered at this stage. At the present stage, it is to see that whether prima facie offence is there against the accused or not and evaluation of evidence produced by the accused and evaluation of the evidence should not be considered at this stage.

11. Thus, considering the aforesaid discussion, the impugned order does not suffer from any illegality, irregularity or impropriety and present revision is liable to be dismissed and accordingly, stands rejected. Rule stands discharged. Interim relief, if any, granted earlier stands vacated.

Trial court is directed to conclude the trial within a period of six months preferably on day to day basis.

ORDER BELOW CR.MA NO. 1 OF 2020 IN CRIMINAL REVISION APPLICATION NO. 66 OF 2018:

In view of the order passed in the main matter ie., Criminal Revision Application No. 66 of 2018, present application does not survive and accordingly, stands disposed of.

(SAMIR J. DAVE,J)

FURTHER ORDER:

After pronouncement of aforesaid order, learned advocate for the applicant has requested to extend the Interim relief granted earlier but while considering the facts and circumstances of the case, request made by learned advocate for the applicant stands rejected.

(SAMIR J. DAVE,J)

K. S. DARJI