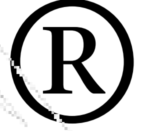
WWW.LIVELAW.IN



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF AUGUST, 2019

BEFORE

THE HON'BLE MR.JUSTICE B.A.PATIL

CRIMINAL REVISION PETITION NO.831/2013
c/w.
CRIMINAL REVISION PETITION NO.838/2013

IN CRIMINAL REVISION PETITION NO.831/2013:

BETWEEN :

1. A.M R.Veeraiah
   S/o Kotrabasaiah
   Age: Major
   Principal,
   Sarvodaya College of Law,
   Dr. Modi Hospital Road
   Bengaluru-560 010.

2. K.Narasimhappa
   S/o S.krishnappa
   Age: Major, Administrator,
   Sarvodaya College of Law,
   Dr. Modi Hospital Road
   Bengaluru-560 010.

... Petitioners

(By Sri P.N.Hegde, Advocate)

AND :

The Central Bureau of Investigation
by the Station House Officer

WWW.LIVELAW.IN

CBI/ACB, Ganganagar,
Bengaluru-560 032.

... Respondent

(By Sri P.Prasanna Kumar, Special Public Prosecutor)

This Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C praying to set aside the "Common Orders on Application of Accused Nos.1, 3 and 4 file under Section 227 of Cr.P.C and application filed by Accused No.2 under Section 239 of Cr.P.C", dated 14.08.2013 passed by the Court of the XLVII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru (CCH-48) in Special C.C.No.10 of 2012 deciding to frame charge.

IN CRIMINAL REVISION PETITION NO.838/2013:

BETWEEN :

Ramesh Prabhu
S/o G.S.Ramdoss
R/at No.2/393/2, Vivekanadar Street,
Tiruvotriyur, Chennai-600 019.

... Petitioner

(By Sri R.Muralidharan, Advocate)

AND :

State by CBI/ACB/Blr,
Represented by State Public Prosecutor,
High Court Building, Bengaluru-560 001.

... Respondent

(By Sri P.Prasanna Kumar, Special Public Prosecutor)

This Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C praying to set aside the "Common Orders on Application of Accused Nos.1, 3 and 4 filed under Section 227 of Cr.P.C and Application filed by

WWW.LIVELAW.IN

Accused No.2 under Section 239 of Cr.P.C", dated 14.08.2013 passed by the Court of the XLVII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bengaluru (CCH-48) in Special C.C.No.10 of 2012 deciding to frame charge.

These Criminal Revision Petitions having been heard and reserved on 20.08.2019 coming on for pronouncement of orders this day, the Court made the following:-

O R D E R

Since the question of law and facts to be determined are identical in both these cases, I have taken up them for consideration together and disposed of by this common order.

2. Criminal Revision Petition No.831/2013 is preferred by accused Nos.3 and 4, whereas Criminal Revision Petition No.838/2013 is preferred by accused No.2 challenging the order passed by the XLVII Additional City Civil and Sessions and Special Judge for CBI Cases, Bengaluru, in Spl.CC.No.10/2012, dated 14.8.2013 whereunder the application under Section 227 of Cr.P.C. filed by the petitioners came to be dismissed..

WWW.LIVELAW.IN

3. I have heard Sri P.N.Hegde for accused Nos.3 and 4-petitioners in Criminal Revision Petition No.831/2013; Sri R.Muralidharan, learned counsel for accused No.2-petitioner in Criminal Revision Petition No.838/2013; and Sri P.Prasannakumar, learned Special PP for respondent-CBI.

4. The case of the prosecution in brief is that accused No.1-R.Dhanpal Raj is a practicing advocate at Chennai. He was selected as a Vice Chairman of Bar Council of India for a period of two years from 17.4.2010. But as on the date of filing of the charge sheet he was not holding any post. Accused No.2-G.R.Ramesh Prabhu is a businessman who hails from Chennai and he was a former student of M/s.Sarvodaya Law College, Bengaluru and he is also a friend and close associate of accused No.1. They were also working for a political party. Accused No.3-A.M.R.Veeraiah is the Principal and accused No.4-K Narasimhhappa is an Administrative Officer of M/s.Sarvodaya Law College

WWW.LIVELAW.IN

respectively. Accused No.4 was entrusted with the administration of the college including the staff, maintenance of the building, purchase of library books and other auxiliaries and he was also dealing with the financial aspects of the college. It is further case of the prosecution that in the meeting of Bar Council of India on 22.8.2010, a resolution was passed imposing a *'Moratorium on all the inspections of the Centres of Legal Education by the Bar Council of India'*. After the said resolution no inspection was conducted up to October 2010. On 19.10.2010, accused No.1 issued an order by modification with a *mala fide* intention by using his official position directing the Secretary of Bar Council of India to start fixing the inspection of the colleges on the direction of the Chairman/Vice Chairman with immediate effect, whereunder Pending Constitution of Expert Committee, the Inspection Committee shall consist of two or more members of Bar Council of India and Bar Council of India local member of the State and Chairman

WWW.LIVELAW.IN

of Bar Council of India or his representative. However, TA and DA, etc. in respect of Chairman or his representative and experts are to be decided in the General Council. Through the said office order, Secretary was directed to start fixing the inspection of colleges on the direction of the Chairman/Vice Chairman with immediate effect. It is further alleged that accused No.1 fraudulently induced the Secretary of Bar Council of India and got issued the office order falsely representing that he had discussed the matter with the then Chairman of Bar Council of India and it is issued with his approval. He also informed another signatory to the office order Sri Rajendra Singh Rana that he had discussed the issue with the Chairman of Bar Council of India and in that light he put him on a wrong direction and induced him to sign the office order. Though he has not discussed the issue with the Chairman, he has got approved the process of resumption of inspection. Even the said office order was not brought to the notice of the Chairman or it was not

WWW.LIVELAW.IN

rectified. It is further alleged that there was no procedure for nomination of the inspection committee. Accused No.1 issued instructions to the Secretary as to who should be the members of the inspection team. On the basis of instruction of accused No.1, Secretary issued notices to four law colleges, including M/s.Sarvodaya Law College, Bengaluru on 14.12.2010 intimating the date of inspection as 18/19.12.2010 consisting of inspection team of accused No.1, Hementhkumar J.Patel, Sri C.M.Jagadeesh and other members of the inspection team and copy was also served on the other members with a note prepared by the office and the report of the previous inspection. It is further alleged that between October, 2010 and December 2010, accused No.1 with criminal conspiracy with accused No.2 and other accused persons i.e., accused Nos.3 and 4 committed various illegal acts and accused No.1 through accused No.2 demanded illegal gratification of Rs.5 Lakhs and it was allegedly reduced to Rs.4 Lakhs to give authorization of

WWW.LIVELAW.IN

granting renewal of law course in the said law college. It is further alleged that out of the said amount, an amount of Rs.50,000/- was received by accused No.1 from accused No.3 in the college and he was also demanding the payment of remaining amount and was also threatening that he will give an adverse report against the college for its closure. On 19.12.2010 at Hotel Woodlands, accused No.1 accepted Rs.1,50,000/- from accused No.4. It is further alleged that M/s.Sarvodaya Law College through accused Nos.3 and 4 as per the demand of accused No.1 borne out the expenses of his travel by car from Chennai to Bengaluru and stay at Hotel Woodlands and the expenses of travel through flight from Bengaluru to Chennai thereby it is alleged that accused persons have committed the offences punishable under Section 120B of IPC and Sections 7, 8, 11, 12, 13(2) r/w. Section 13(1)(d) of Prevention of Corruption Act ('Act' for short).

WWW.LIVELAW.IN

5. It is the submission of the learned counsel for accused No.2-petitioner in Criminal Revision Petition No.838/2013 that the respondent-CBI had no jurisdiction to register the case as accused No.2 is not a public servant. It is his further submission that it is not within the knowledge of accused No.2 about accused No.1 receiving any gratification and it is accused No.1 who received the illegal gratification and it is accused Nos.3 and 4 who are the beneficiaries. The only provision which attracts as against accused No.2 is that he is a conspirator, but there is no evidence to show about the conspiracy of accused No.2 with other accused persons. No overt acts are alleged as against accused No.2. It is his further submission that accused No.2 being the former student of the college in question was present on the unfortunate day and he is nothing to do with the transactions between accused Nos.3 and 4. Though the prosecution has cited 55 witnesses, three witnesses speak about the conspiracy of accused No.2 and their

WWW.LIVELAW.IN

statement also does not indicate any knowledge or conspiracy. There is no direct or indirect evidence as against accused No.2. It is his further submission that the respondent-CBI has not given any attention to the investigation to consider the explanation given by accused No.2 that he has not received any pecuniary or non-pecuniary benefit. It is only because accused No.1 is his friend, he accompanied with him. When he is not a beneficiary or he has not received anything, only on the basis of weak evidence the trial cannot be proceeded as against accused No.2.

6. It is his further submission that there are serious irregularities in collection of voice samples by the Investigating Officer, who has collected the voice samples of the same conversation by intercepting in the conversation by saying that he has to speak only his role and the same has been recorded. It is his further submission that the trial Court has rightly appreciated the arguments, but without proper application of mind, it

WWW.LIVELAW.IN

has come to a wrong conclusion and dismissed the application. It is his further submission that the material collected by the prosecution does not show any complicity of accused No.2 even remotely in commission of any of the offences and even there is nothing to show that he facilitated the said conspiracy and obtained any pecuniary benefit. It is his further submission that accused No.2 being the former student was in Hospitality Committee of the college and he was only interested in getting his college recognized and telephonic conversion does not show that accused No.2 has conspired with other accused persons. It is his further submission that the Court has to scrutinize the evidence meticulously to come to the conclusion and if there is no *prima facie* material, the accused can be discharged. It is his further submission that the CBI has not provided opportunity at pre-trial stage by recording the evidence of limited witnesses to come to the conclusion that there is material or no material as against the accused No.2. On these

WWW.LIVELAW.IN

grounds, he prayed to allow the petition filed by accused No.2 by setting aside the impugned order and discharge accused No.2.

7. It is the submission of the learned counsel for accused Nos.3 and 4-petitioners in Criminal Revision Petition No.831/2013 that no complaint has been registered by anybody. CBI has initiated the proceedings by registering the case *suo moto*. It is his further submission that accused No.2 was a middleman and he demanded the amount from accused No.3. But there is no material to connect accused Nos.3 and 4 to show that there is conspiracy. It is his further submission that there is no recovery of any amount and even the said amount was not voluntarily paid. It is his further submission that there is no demand for any gratification. Whatever the amount which has been given and the facilities which have been made only because of threat given by accused No.1 that he will not continue the recognition of the college. When there is no demand,

WWW.LIVELAW.IN

then under such circumstances, the provisions of the Act are not applicable. It is his further submission that there is no meeting of mind to show that there is any conspiracy. It is his further submission that constitution of team itself is illegal. Under such circumstances, question of accused Nos.3 and 4 doing official favour does not arise. It is his further submission that the evidence produced does not give any suspicion and if there is no strong suspicion, then under such circumstances, accused Nos.3 and 4 are entitled for discharge. It is his further submission that Section 12 of the Act speaks about the abetment, but abetment has not been defined under the Act. For the purpose of definition, the Court has to shelter under Section 107 of IPC. The said definition is exhaustive definition. In order to call it as 'abetment' when a person does any acts mentioned in its clauses and if he aids or assists or conspires, then the prosecution is said to have made out a case. In the instant case, no such material has been

WWW.LIVELAW.IN

placed on record and no points having been made to frame the charge against the accused Nos.3 and 4 under the provisions of the said Sections. In order to substantiate his contention, he relied upon a decision of the Hon'ble Apex Court in the case of ***Central Bureau of Investigation Vs. V.C.Shukla & others, reported (1998) 3 SCC 410***.

8. It is his further submission that while considering the application under Section 227 or 239 of Cr.P.C. the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court must be considered and the Hon'ble Apex Court has laid down the principles. In that light, he relied upon a decision of the Hon'ble Apex Court in the case of ***Union of India Vs. Prafulla Kumar Samal and Another***, reported in ***(1979)3 SCC 4.*** It is his further submission that the provisions of Sections 227 and 228 of Cr.P.C. have been inserted and introduced to avoid waste of public time when a *prima facie* case was not disclosed

WWW.LIVELAW.IN

and to save the accused from avoidable harassment and expenditure. The material produced does not substantiate the case of the prosecution to convict the accused. In that light, he relied upon the decision in the case of ***P.Vijayan Vs. State of Kerala and Another,*** reported in ***(2010)2 SCC 398***. It is his further submission that once the case has been presented and on the basis of the said material, the prosecution has to establish the *prima facie* case which would justify its case, but at the same time interest of the accused must also be kept in perspective lest, on the basis of flippant or vague or vindictive accusations, bereft of probative evidence, the ordeals of the trial have to be needlessly suffered and endured. Without considering the said aspect, the Court cannot proceed. In order to substantiate the said contention, he relied upon a decision in the case of ***L.Krishna Reddy Vs. State by Station House Officer and Others,*** reported in ***(2014) 14 SCC 401***.

WWW.LIVELAW.IN

9. The learned Special PP vehemently argued and contended that the scope of the revision petition before this Court is limited. As per Section 19(3)(c) of the Act, there is a specific bar to file a revision petition under Section 397(2) of Cr.P.C. or even under Section 482 of Cr.P.C. Order of framing charge is not purely an interlocutory order, but the Hon'ble Apex Court has in the case of ***Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation,*** reported in ***(2018) 16 SCC 299*** has held that the power of the Court to interfere with the order of framing of charge and to grant stay is to be exercised only in an exceptional situation, that too in a rarest of rare case only to correct a patent error of jurisdictional power and not to re-appreciate the matter. Except that, this Court is not having any power to entertain the revision petition. Therefore, he submits that on this sole ground, the petitions are liable to be dismissed. He further submitted that none of the

WWW.LIVELAW.IN

grounds urged by the petitioners is with reference of jurisdiction or there is no correction patently found in the order. In that light, he prays to dismiss the petitions. He also relied upon the decision in the case of ***Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and others,*** reported in ***AIR 1955 SC 233***.

10. It is his alternative submission that accused No.1 along with other accused persons conspired together and they have committed the alleged crime. It is accused No.1 through accused No.2 demanded the illegal gratification and the same has been paid by accused Nos.3 and 4. The said fact itself is sufficient to frame the charge. It is his further submission that the charge sheet material clearly goes to show that already an amount of Rs.50,000/- has been paid on 19.12.2010. It is his further submission with regard to the contention of the learned counsel for accused Nos.3 and 4 that under the duress or threat the continuation of the college is not going to be made, under such circumstances, the

WWW.LIVELAW.IN

payment will not attract the provisions of the Act is concerned, is not acceptable since already Rs.50,000/- has been paid as per demand of accused No.2. It is his further submission that nowhere in the Act mandates that recovery has to be made, but what is to be proved by the prosecution is only demand and acceptance. It is his further submission that there was an agreement between accused Nos.1 to 4 to do illegal act which is not legal by illegal means. In order to bring the accused for the charge of conspiracy, the knowledge about the indulgence in either an illegal act or a legal act by illegal means is necessary. The prosecution has not established that a particular unlawful use was intended when ultimate offence consists of chain of actions, it is not necessary to establish that each conspirator has knowledge of what collaborator would do. In order to substantiate his contention, he relied upon the decision in the case of ***State through Central Bureau of Investigation Vs. Dr.Anup Kumar, Srivastava,***

WWW.LIVELAW.IN

reported in ***(2017) 15 SCC 560***. It is his further submission that there were telephonic calls between accused Nos.1 and 2 to show that they have conspired with each other and there were so many documents seized from the possession of accused No.2 pertaining to the college. Hence, the evidence of call details is conclusive in nature and at this juncture, it cannot be held that there is no *prima facie* case as against the petitioners-accused. In order to substantiate his contention, he relied upon the decision in the case of ***Prashant Bharti Vs. State (NCT of Delhi)*** reported in ***(2013)9 SCC 293***. It is his further submission that the trial Court after considering the material on record has rightly come to the conclusion that there is ample material and has rightly dismissed the discharge application. On these grounds, he prayed to dismiss the petitions.

11. In reply to the aforesaid arguments, the learned counsel appearing for accused No.2-petitioner in Criminal

WWW.LIVELAW.IN

Petition No.838/2013 submitted that there is no re-appreciation of the evidence, objectively he wants to appraise that there are no overt acts in so far as accused No.2 is concerned and accused No.2 was not aware about the conspiracy entered into between accused Nos.1, 3 and 4. It is his further submission that the documents recovered from the possession of accused No.2 do not implicate accused No.2 since he has attended the examination on the previous day and he was also a member of the hospitality committee of the college. As accused No.2 was acquainted with accused No.1, he called accused No.1 and not for any other transactions. On these grounds, he rebutted the arguments of the learned Special PP.

12. It is the submission of the learned counsel for accused Nos.3 and 4 that there are no records for having paid Rs.50,000/- in the first instance. The inspection conducted has been videographed and nowhere it shows such transactions. It is his further submission that other

WWW.LIVELAW.IN

law colleges also hosted and borne out the expenses, but why this college alone has been victimized by adopting double yardstick, is not noticed. Accused Nos.3 and 4 are the employees who have followed the instructions of the management. They have challenged the error of jurisdiction. In that light, he relied upon the decision in the case of ***Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation*** (cited *supra*) is not applicable to the facts of the present case. On these grounds, he prayed to allow the petitions.

13. I have carefully and cautiously gone through the submissions made by the learned counsel appearing for the parties and perused the records, including the statement of the witnesses made available by the learned counsel appearing for the parties.

14. As per the case of the prosecution accused No.1 was elected as Vice Chairman of the Bar Council of India

WWW.LIVELAW.IN

for a period of two years; accused No.2 is a former student and close associate of accused No.1 and he was in Hospitality Committee of the college; accused No.3 is the Principal and accused No.4 is an Administrative Officer of M/s.Sarvodaya Law College, Bengaluru. The said fact is not in dispute. It is also not in dispute that the Bar Council of India up to 2010 has conducted the inspection and thereafter no inspection has been held. It is further alleged that accused No.1 fraudulently induced the Secretary of Bar Council of India and directed to fix the inspection dates though there was no procedure. It is further alleged that accused No.1 through accused No.2 demanded illegal gratification and it is accused Nos.3 and 4 for the purpose of getting renewal of law college made arrangements for stay of accused No.1, air tickets and other expenses and accused No.1 accepted an amount of Rs.50,000/- from accused No.3 and also demanded an amount of Rs.1,50,.000/- as an additional gratification.

WWW.LIVELAW.IN

15. Though several grounds have been urged during the course of arguments, the main ground urged by the Special PP is that the order passed by the trial Court is an interlocutory order and the same is not liable to be interfered with under Section 397(2) or even under Section 482 of Cr.P.C. as there is a bar under Section 19(3)(c) of the Act. For the purpose of brevity, I quote Section 19(3)(c) of the Act, which reads as under:-

"19. Previous sanction necessary for prosecution-

(1) xxx xxx xxx xxx xxx

(a) xxx xxx xxx
(b) xxx xxx xxx
(c) xxx xxx xxx

(2) xxx xxx xxx xxx xxx

(3) Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974) –

(a) xxx xxx xxx
(b) xxx xxx xxx
(c) no court shall stay the proceedings under this Act on any other ground and no

WWW.LIVELAW.IN

court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings."

16. In support of his arguments, the learned Special PP has also relied upon the decision in the case of ***Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation***, (cited *supra),* wherein at paragraphs-27 and 37 it has been observed as under:-

"paragraph-27. Thus, even though in dealing with different situations, seemingly conflicting observations may have been made while holding that the order framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) or even under Section 482 Cr.P.C., the principle laid down in Madhu Limaye still holds the field. Order framing charge may not be held to be purely an interlocutory order and can in a given situation be interfered with under Section 397(2) CrPC or 482 CrPC or Article

WWW.LIVELAW.IN

227 of the Constitution which is a constitutional provision but the power of the High Court to interfere with an order framing charge and to grant stay is to be exercised only in an exceptional situation".

"Paragraph-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 lable of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the sad 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

WWW.LIVELAW.IN

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 Court 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."

WWW.LIVELAW.IN

17. Though it is contended by the learned counsel appearing for the petitioners-accused that this Court by exercising the power under Article 227 of Constitution of India, can exercise its jurisdiction and entertain the criminal revision petition and there is no bar under Section 397(2) or Section 482 of Cr.P.C., as could be seen from the decision in ***Asian Resurfacing of Road Agency Private Limited and Another Vs. Central Bureau of Investigation***, (cited *supra)* the Hon'ble Apex Court in paragraph27, has observed that the order of framing charge was interlocutory order and was not liable to be interfered with under Section 397(2) of Cr.P.C. in view of the principle laid down in the case of ***Madhu Limaye Vs. State of Maharashtra – (1977) 4 SCC 551***. In the same paragraph, it has been further observed that to grant stay is to be exercised only in an exceptional situation. In the same decision at paragraph-37, it has been further observed that order of framing charge is not purely an interlocutory order or a

WWW.LIVELAW.IN

final order and the jurisdiction of the High Court is not barred irrespective of the lable of a petition, be it under Section 397 or 482 of Cr.P.C. or under Article 227 of Constitution of India. However, certain limitations are imposed while exercising the jurisdiction by keeping in view the legislative policy to ensure expeditious disposal and there should not be any manner of hampering of the cases and in that light it has given certain guidelines that 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 re-appreciate the matter. Now this is the present law declared by a Larger Bench of the Hon'ble Apex Court .

18. Be that as it may, even it is well settled proposition of law that special enactment excludes the general law. Prevention of Corruption Act is a special enactment made to have speedy and expeditious trial. The same has been laid down in the above said two decisions of the Hon'ble Apex Court. Now-a-days if a

WWW.LIVELAW.IN

case is registered under the Act, it will be protracted for a long period on one or the other grounds only with an intention to drag on the proceedings. If it is encouraged the witnesses will forget the proceedings after long gap and there will be many contradictions and omissions and ultimately it goes to the benefit of the accused. In that light, the very purpose of Section 19(3)(c) of the Act defeats. It is the duty of the Courts to adhere to the law of the land and to implement its object and purpose. In that light also, the present petitions are not maintainable.

19. Keeping in view of the aforesaid provision of law as well as the law laid down by the Hon'ble Apex Court if the arguments advanced by the learned counsel appearing for the petitioners-accused are considered, they have not seriously contended any patent error of jurisdiction and no other circumstances of rarest of rare case has been shown. In that light and the clear provision of law, the order of the trial Court rejecting the

WWW.LIVELAW.IN

application and decided to frame the charge is considered to be an order on interlocutory application and hence, revision does not lie except where correction of patent error of jurisdiction is pointed out.

20. In the case of ***Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and others,*** (cited supra), at paragraph-21, it has been observed by the Hon'ble Apex Court as under:-

> *"21.Then the question is whether there are proper grounds for the issue of certiorari in the present case. There was considerable argument before us as to the character and scope of the writ of certiorari and the conditions under which it could be issued. The question has been considered by this Court in Parry & Co. v. Commercial Employees' Association, Madras, Veerappa Pillai v. Raman and Raman Ltd., Ibrahim Aboobaker v. Custodian General and quite recently in T.C.Basappa v. T.Nagappa. On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of*

WWW.LIVELAW.IN

jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy, if a superior court were to rehear the case on the evidence, and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute. (4) The further question on which there has been some controversy is whether a writ can be issued, when the decision of the inferior Court or Tribunal is erroneous in

WWW.LIVELAW.IN

law. This question came up for consideration in Rex vs. Northumberland Compensation Appeal Tribunal Ex parte Shaw and it was held that when a tribunal made a "speaking order" and the reasons given in that order in support of the decision were bad in law, certiorari could be granted. It was pointed out by Lord Goddard, C.J. that had always been understood to be the true scope of the power. Walsall Overseers v. London and North Western Ry. Co. and Rex v. Nat Bell Liquors Ld., were quoted in support of this view. In Walsall Overseers v. London and North Western Ry.Co. Lord Cairns, L.C. observed as follows:

"If there was upon the face of the order of the court of quarter sessions anything which showed that order was erroneous, the court of Queen's Bench might be asked to have the order brought into it, and to look at the order, and view it upon the face of it, and if the court found error upon the face of it, to put an end to its existence by quashing it."

In Rex v. Nat Bell Liquors Ld. Lord Sumner said:

WWW.LIVELAW.IN

"That supervision goes to two points; one is the area of the inferior jurisdiction and the qualifications and conditions of its exercise; the other is the observance of the law in the course of its exercise."

The decision in Rex v. Northumberland Compensation Appeal Tribunal Ex parte Shaw was taken in appeal, and was affirmed by the court of appeal in Rex v. Northumberland Compensation Appeal Tribunal; Ex parte Shaw. In laying down that an error of law was a ground for granting certiorari, the leaned Judges emphasized that it must be apparent on the face of the record. Denning, L.J. who stated the power in broad and general terms observed:

"It will have been seen that throughout all the cases there is one governing rule: certiorari is only available to quash a decision for error of law if the error appears on the face of the record."

The position was thus summed up by Morris, L.J.

WWW.LIVELAW.IN

"It is plain that certiorari will not issue as the cloak of an appeal in disguise. It does not lie in order to bring an order or decision for rehearing of the issue raised in the proceedings. It exists to correct error of law where revealed on the face of an order or decision, or irregularity, or absence of, or excess of, jurisdiction where shown".

In Veerappa Pillai v. Raman & Raman Ltd., it was observed by this Court that under Article 226 the writ should be issued "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record". In T.C.Basappa v. T.Nagappa the law was thus stated:

"An error in the decision or determination itself may also be amenable to a writ of 'certiorari' but it must be a manifest error apparent on the face of the proceedings, e.g., when it is based on clear ignorance or disregard of the

WWW.LIVELAW.IN

provisions of law. In other words, it is a patent error which can be corrected by 'certiorari' but not a mere wrong decision".

21. Be that as it may, even it is the contention of the learned counsel appearing for the petitioners-accused that there was no demand and the said amount has been transferred only under duress or threat that if the amount is not paid, there will not be any renewal of the course. Though the learned counsel appearing for the accused have relied upon various decisions of the Hon'ble Apex Court, keeping in view the ratio and the broad principles which have been laid down by the Hon'ble Apex Court that while considering the question of framing of charge, the trial Court has undoubted power to shift and weigh the evidence for a limited purpose for finding out as to whether there is a *prima facie* case has been made out against the accused or not. The test to determine a *prima facie* case would naturally depend upon the facts of the each case and no straight jacket

WWW.LIVELAW.IN

formula or universal law can be made in this behalf. It is well settled proposition of law of the Hon'ble Apex Court in the ***Union of India Vs. Prafulla Kumar Samal and Another*** (cited *supra*), where the material placed before the Court disclosed grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing the charge and proceeding with the trial. It is further observed that if two views are equally possible and if it gives rise some suspicion, but not a grave suspicion against the accused, then the Court can discharge the accused. At paragraph-10 of the said decision, it has been observed as under:-

> *"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
>
> *(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*

WWW.LIVELAW.IN

facie case against the accused has been made out:

(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.

(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.

(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 mouth-piece of the prosecution, but has to consider the broad

WWW.LIVELAW.IN

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. Keeping in view the principle laid down in the above decision, if the factual matrix is looked into, it is the contention of the learned counsel for accused Nos.3 and 4 that only because of duress and threat they have given the amount and made the arrangements. But the question as to whether there was a duress or threat by accused No.1 is a matter which has to be considered and appreciated only with reference to the evidence *prima facie* by looking into the charge sheet material. It cannot be said that the amount has been paid due to duress or threat by accused No.1.

WWW.LIVELAW.IN

23. Even it is the contention of accused No.2 that he is a former student and he was a member of Hospitality Committee and he had come to attend the examination. The said facts are to be considered with reference to call details and other material on record. The records reveal that some material pertaining to the college have been seized from the possession of accused No.2. Whether he conspired with accused No.1 is a matter which has to be considered and appreciated only at the time of adducing evidence by the prosecution. While considering the said aspect, the object behind the conspiracy has to be seen along with ultimate aim of conspiracy, coupled with the intent of unlawful use being made which can be inferred from the knowledge itself and when the offence itself is consisting of a chain of actions it is not necessary to establish that each of conspirator has knowledge of what collaborator would do. This proposition of law has been laid down in the case of ***State through Central Bureau of Investigation Vs.***

WWW.LIVELAW.IN

Dr.Anup Kumar, Srivastava (cited *supra*), wherein at paragraphs-25 to 30, it has been observed as under:-

"25. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the

WWW.LIVELAW.IN

accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions.

26. Similarly, the law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. For a charge of conspiracy means knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use.

WWW.LIVELAW.IN

Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do.

27. At this stage, it would be appropriate to quote a decision of this Court in CBI v. K. Narayana Rao wherein it was held as under: (SCC p. 530, para 24)

> *"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to*

WWW.LIVELAW.IN

prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."

28. Further, what constitutes illegal gratification is a question of law; whether on the evidence that crime has been committed is a question of fact. If, therefore, the

WWW.LIVELAW.IN

evidence regarding the demand and acceptance of a bribe leaves room for doubt and does not displace wholly, the presumption of innocence, the charge cannot be said to have been established.

29. In P. Satyanarayana Murthy v. State of A.P., this Court has held as under:(SCC p.159 paras 22-23)

> *"22. In a recent enunciation by this Court to discern the imperative prerequisites of Sections 7 and 13 of the Act, it has been underlined in B. Jayaraj in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under Section 7 as well as Sections 13(1)(d)(i) and (ii) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or*

WWW.LIVELAW.IN

pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the Act. Qua Section 20 of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under Section 7 and not to those under Sections 13(1)(d)(i) and (ii) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under Section 20 of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under Sections 7 and

WWW.LIVELAW.IN

13(1)(d)(i) and (ii) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under Section 7 or 13 of the Act would not entail his conviction thereunder."

Hence, the proof of demand has been held to be an indispensable essentiality and of permeating mandate for an offence under Sections 7 and 13 of the PC Act which is absent in the case at hand.

30. It was contended by learned counsel for the appellant-State that the High Court exceeded its jurisdiction while quashing the

WWW.LIVELAW.IN

order of charge passed by the Special Court, CBI Cases. The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code 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. The court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either

WWW.LIVELAW.IN

discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case."

24. The specific allegation made as against accused No.2 is that he conspired with accused No.1 and informed accused Nos.3 and 4 for the purpose making arrangements and payment of the amount. Though it is contended by the learned counsel for accused No.2 that the charge is based on speculation and not on any material, when the question of framing a charge arises,

WWW.LIVELAW.IN

the Court is required to see *prima facie* evidence. In a case of conspiracy there will be no direct evidence and it has to be proved by the circumstantial evidence. In order to see the circumstances, the prosecution has to lead the evidence. If evidence is required, then under such circumstances, the Court is justified in framing the charge.

25. In so far as accused Nos.3 and 4 are concerned, the records indicate that they have drawn the amount and they have made the facilities. Even it is the specific case of the prosecution that an amount of Rs.50,000/- has been paid to accused No.1. On going through the said records and the statements of the witnesses, if the trial Court has come to the conclusion that there is sufficient ground to initiate proceedings as against the accused persons, then it can proceed to frame the charge. In *catena* of decisions, the Hon'ble Apex Court has made it clear that on scrutiny of the entire charge sheet material, even if it is accepted as correct, or the

WWW.LIVELAW.IN

statements made by the witnesses are considered to be true, the accused persons cannot be convicted on such material and no case has been made out as against the accused, then under such circumstances, the Court can discharge the accused. But on perusal of the entire charge sheet material and as per the arguments of learned counsel appearing for the petitioners-accused who have elaborately taken me through the records and the various decisions, that is a matter which has to be considered only at the time of trial. The trial Court after scrupulously scrutinizing the prosecution material has been satisfied to come to the conclusion that there is sufficient material to proceed against the accused persons and on the basis of the same, it has rejected the application filed by the accused. In that light, I am of the considered opinion that this case is not a rarest of the rare case and there is no patent error of jurisdiction. The order of the trial Court is neither perverse nor illegal.

WWW.LIVELAW.IN

In that light it needs to be confirmed and accordingly the same is confirmed

However, petitioners–accused Nos.2, 3 and 4 are at liberty to urge all the grounds urged before this Court, during the course of trial. The observations made during the course of this order shall not be in any way influenced by the trial Court while disposing of the case independently on merits and in accordance with law.

With the aforesaid observations, the petitions are ***dismissed***.

In view of disposal of the petitions, I.A.1/2019 is disposed of as it does not survive for consideration.

Since the matter is of the year 2012, the trial Court is directed to dispose of the matter as expeditiously as possible, but not later than the outer limit of eight months from the date of receipt of a copy of this order.

Sd/-
JUDGE

*ck/-