

2016 (0) AIJEL-HC 236539

GUJARAT HIGH COURT

Hon'ble Judges:S.G.Shah, J.

Vijaysinh Madhavdas Ashar Versus State Of Gujarat

CRIMINAL REVISION APPLICATION No. 725 of 2015 ; *J.Date :- OCTOBER 7, 2016

- [INDIAN PENAL CODE, 1860](#) Section - [258](#), [259](#), [260](#), [261](#), [262](#), [465](#), [468](#), [471](#), [474](#), [120B](#), [34](#), [144](#)

Cases Referred To :

1. Ajoy Kumar Ghose V. State Of Jharkhand And Anr., AIR 2009 SC 2282
2. Budhu Ram V. State Of Rajasthan, Supreme Court-Criminal Appeal No. 229 of 1960
3. [Iqbal Singh Marwah And Anr. V. Meenakshi Marwah & Anr., 2005 2 GLH 413 : 2005 \(9\) GHJ 73 : 2005 CrLJ 2161 : 2005 \(4\) SCC 370 : 2005 \(3\) Scale 93](#)
4. [K C Saxena V. Virbhadrasinghji K. Gohel, 1985 0 GLH 289 : 1985 \(1\) GLR 517 : 1984 AIJEL HC 205822](#)
5. K.V. R Iyyangar, Petitioner V. State Of A.P. And Another, 1988 0 CRLJ 1536
6. Nakul Kohli V. State Of Delhi, Cri. M. C. 2029:2010
7. Niranjana Singh Karam Singh Punjabi, Advocate Vs. Jitender Bhimraj Bijja, AIR 1990 SC 1962
8. Om Wati Vs. State 2005 Sc 359: State Of Orissa Vs. Debendra Nath Padhi, AIR 2001 SC 1507
9. Soma Chakravarty V. State, AIR 2007 SC 2149
10. State Of Himachal Pradesh Vs. Krishan Lal Pradhan, AIR 1987 SC 773
11. State Of Maharashtra V/s. Som Nath Thapa, 1996 4 SCC 695
12. State Of Maharashtra Vs. Priya Sharan Maharaj, 1997 4 SCC 393
13. State Of Mp Vs. Mohan Lal Soni, AIR 2000 SC 2583
14. State Of U.P. V/s. Udai Narayan, AIR 1999 SC 3845
15. Supdt. And Remembrance O F Legal Affairs, West Bengal Vs. Anil Kumar Bhunja, AIR 1980 SC 52
16. Sushil Kumar And Other V. State Of Haryana, AIR 1988 SC 419

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JUDGMENT :-

1 Rule. Learned advocate Mr. Vivek N Mapara waives service of notice of rule for respondent no. 2 and learned APP Mr. K.P. Raval waives service of notice of rule for respondent no. 1 State.

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2 Heard learned Senior Advocate Mr. K S Nanavati appearing for Nanavati Associates for the applicants, learned advocate Mr. Vivek N. Mapara for the respondent No. 2 and learned APP Mr. K P Raval for the respondent No. 1 State being a formal party.

3 I have also perused the record which runs in almost 300 pages and includes relevant documents to decide present application.

4 The petitioners herein are accused whereas respondent no. 2 is original complainant in Criminal Case No. 40 of 2008 before the Court of Chief Judicial Magistrate at Jamnagar. Such complaint is filed under Sections 258, 259, 260, 261, 262, 465, 468, 471, 474, 120B, 34, and 144 of the Indian Penal Code. The sum and substance of the complaint is to the effect that the petitioners herein had fabricated and forged an agreement dated 21st May, 2007 alleged to be signed by respondent no. 2- the complainant herein. The agreement in question is related to the disputed property between the parties and for the purpose of selling entire share in the property in favor of the petitioners herein for a consideration of Rs. 60 lakhs, subject to the outcome of First Appeal No. 1313 of 1985, which is pending for consideration before this High Court. It is contended by the petitioners herein that during the dispute regarding partitions of family properties between the petitioners and the respondent no.2 with other co-parceners, the group including respondent no. 2 herein had a desire to dispose of the said property in order to generate funds and therefore when petitioner nos. 1 to 5 herein and husband of petitioner no. 6 and father of petitioner nos. 7 to 8 herein were interested in buying the remaining share of the property which was in their possession since long, negotiations had taken place between the two groups which culminated into an agreement and then it was put on stamp paper of Rs. 100/-, copy of which is produced at Annexure E of the petition. The history and details of the dispute and properties between the parties has been well described in para. 2.1 to 2.7 of the petition and therefore at present we are not concerned with the details of the property but are concerned with the genuineness of the agreement dated 21st May, 2007. Therefore, those details are not reproduced herein.

5 It seems that the complainant is quite clear that no such agreement has ever been executed by him and thereby such agreement is a forged document. He has filed Criminal Inquiry No. 40 of 2008 contending that copy of such document dated 21st May, 2007 is filed in the Court, so as to get the possession and ownership of the ancestral joint property, by the present petitioner. The complaint shows that the value of such joint property namely "Laxmi Bhuvan" in the city of Jamnagar is about Rs. 82,62,000/-. The complainant has disclosed the details in the complaint that how and why such document is forged and therefore, why petitioners have committed the offence as alleged in such complaint. It is categorically stated in such complaint that the stamp paper in question which bears Sr. no. H001023 was never available in the market for use on the day of execution of such agreement i.e. 19th May, 2007, when stamp paper was sold by its vendor and on 21st May, 2007 when it was alleged to be executed by the complainant. As per the confirmation of District Treasury such stamp was released from treasury in favor of the stamp vendor Dhirajlal D Joshi only on 24th January, 2008. Thereby, it is alleged that before stamp was available with the stamp vendor for selling to the users, it can never be used for executing any agreement and thereby on 19th May, 2007 and on 21st May, 2007, when stamp paper in question, upon which agreement is typed and endorsed, was not available and therefore it cannot be executed at all. In other words, it is categorically alleged that the stamp paper has been created only after 24th January, 2008, when it was available with the vendor for sale but endorsed back dated on 21st May, 2007 and similarly the signature of the complainant is forged on such document.

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6 Said complaint is supported by Affidavit and statement of complainant recorded before the Chief Judicial Magistrate but, after perusal of relevant documents and statement of the complainant on oath before it by a reasoned speaking order, the Court has directed to issue summons upon the petitioners under Sections 465, 468, 471, 474, 120B, 34 and 114 of the IPC. Therefore, when the Chief Judicial Magistrate has passed the order dated 28th April, 2011 to issue summons, prima facie it becomes clear that he has applied his mind when summons is not issued under Sections 258,259,260,261,262, though complaint is disclosing such Sections.

7 It seems that after issuing such summons, the Trial Court has recorded pre-charge evidence since case was proceeded under Section 202 of the Code of Criminal Procedure as summons case and after recording such evidence and after hearing both the sides, the Trial Court has; by impugned order dated 9th October, 2015; ordered to frame charges against the petitioners only under Section 426, 468, 471, 474, 120B, 34 and 114 of the IPC.

8 Being aggrieved by the said order of framing charge, by the impugned order dated 9th October, 2015, present petitioners have preferred this revision wherein my predecessor has on 11th January, 2016, stayed the operation of the impugned order which is in force till date.

9 It seems that after initial order dated 28th April, 2011 the Trial Court has assigned a regular Criminal Case No. 1989 of 2011 to the Criminal Inquiry No. 40 of 2008 and therefore impugned order is in Criminal Case no. 1989 of 2011.

10 The sum and substance of the submissions of the petitioners herein is to be considered with reference to the dispute on hand only as the dispute and issue at present is quite limited that whether complaint as such can be continued and charge can be framed against the petitioners in such complaint or not when the alleged forged document is part of the Court proceedings, because it is contended by the petitioner-accused that the document in question is produced in Civil litigation and therefore, if at all it is forged document, then private complaint is not maintainable because of bar to entertain such complaint as per provisions of Section 195 of the Code of Criminal Procedure.

11 It is undisputed fact that the copy of the document in question is produced in a Civil litigation between the parties and such dispute is pending before the High Court in First Appeal. However, though both the sides tried to explain in detail about the property in question and several disputes between the parties, I do not intend to recall all such factual details in detail for the simple reason that such details, issue and disputes are sub-judice in civil litigation and more particularly those details of civil dispute regarding entitlement, right and share of any of the litigant in any property is not relevant and material to decide present controversy.

12 It is undisputed fact that the present controversy is only with reference to the genuineness of the document dated 21st May, 2007 and right of the respondent no. 2-the complainant to file such private complaint directly before the competent Court without any express order to that effect by the Civil Court where such disputed document is filed.

13 It is also undisputed fact that copy of document in question is filed on record of the civil proceeding by the present petitioners.

14 If we peruse the copy of the documents which is produced at Annexure E , it transpires that it is drafted in the form of an agreement as if it is entered into between the present petitioners with one Ajitsingh Madhavdas who is now no more i.e. expedite on one part as the petitioner who has got such agreement executed by the respondent no. 2-complainant as Power of Attorney holder of

- (1) Ramesh Morarji, Ashwin Morarji, Hiraben Moraraji and Kusum Chandrakumar as legal heirs of Morarji Ravji.
- (2) Hansaben Parshotam, Rupali and Kunjal as legal heirs of Parshottam Ratan Singh.
- (3) Jayaben Vasant, Damayantiben and Kirit as legal heirs of VasANJI Ravji.
- (4) Manjulaben Karsandas as legal heirs of Karsandas Ravji
- (5) Sunitaben Chabiben as legal heirs of Chabiben Ravji and
- (6) Kanan Ajay as legal heirs of Pratapsingh Ravji.

The text of the document reads to the effect that the executor i.e. present respondent no. 2- the complainant has executed such agreement in favor of the present petitioner on behalf of all other legal heirs of Ravjibhai as their Power of Attorney holder, that whatever share the executors have in the property in question; being "Lakshmi Bhuvan" in Jamnagar city bearing City Survey No. H/4/348/349 and for partition of such property, Special Civil Suit No. 54 of 1974 was filed and First Appeal No. 1313 of 1985 is pending before the Gujarat High Court; is to be sold by the executor in favor of the present petitioner for Rs. 60,00,000/- and that executor have not entered into any gift, lease, sale or rental agreement of any disputed portion of the property in question and they are not supposed to enter into any such transaction herein after. It is further endorsed that such transaction is to be completed within two months from the date of decision in First Appeal No. 1313 of 1985 and regular register sale deed is to be executed by the respondent. However, one surprising endorsement is there in such agreement in as much as though, agreement is in favor of the petitioners, the endorsement is to the effect that it is executed by free will and by understanding the same and by reading the same and after thoughtful consideration and, it is endorsed to be binding on all heirs of the executor but though the agreement is in favor of the present petitioner, and the original of it is to be kept with the executor and not the beneficiary of the agreement i.e. present petitioner. It is quite clear and obvious that when any document is executed in favor of any individual person then original copy of such document is required and to be kept by the beneficiary and not by the executor. As against such requirement which is otherwise followed universally, it is endorsed in such agreement that original is to be kept with its executor though the contents of the agreement is in favor of the present petitioner. Such agreement is simply shown and signed in the name of the respondent no. 2 without the signature of any witness or any other, person therefore prima facie it seems that whoever has drafted and created such document has tried to create a liability upon the respondent no.2- complainant to see that original document may not be produced on record because it could not be objected by the complainant but in that case liability may be on the complainant as executor of the document to produce its original.

15 The record also shows that in fact on 5th February, 2008, the executor; with his co - parciners for whom it is alleged that he has signed the disputed agreement; has in fact entered into a registered sale transaction of their share in the suit property in favor of Milan Gordhandas Nanda, Harish Keshavji Nanda and Dipak Keshavji Nanda. The copy of such registered sale deed is also produced on record which is signed by respondent no. 2 as power of attorney holder of other co-parciners with him and sale deed also discloses the sale price being paid by purchasers through different cheques to different persons who are concerned with such property and who are shown as executor of agreement dated 21st May, 2007. It is therefore contended by the petitioners that since respondent-complainant has committed the breach of the agreement dated 21st May, 2007, they have produced its copy before the Court but otherwise original agreement is possessed by the complainant and therefore no such complaint can be filed.

16 In support of their submissions learned Senior Counsel for the petitioners has referred several information from the record and relied upon few decisions. However, the fact remains that though petitioners herein have obtained an opinion from handwriting expert and though they have challenged initially order dated 5th April, 2008, in Criminal Inquiry No. 40 of 2008 in Special Criminal Application No. 914 of 2008 by judgment and order dated 31st March, 2009, the coordinate bench of this High Court has dismissed such petition and allowed to continue the inquiry under Section 202 of the Code of Criminal Procedure.

17 far as genuineness of the document is concerned the learned advocate for respondent no. 2-complainant has relied upon several depositions recorded during the inquiry under Section 202 of the Code of Criminal Procedure. The details of which are summarized as under.

17.1. In His deposition the complainant has categorically stated on oath that the document under question i.e. agreement dated 21.05.2007 does not bear his signature and that he has never signed such original documents. He has been cross examined by the advocate for the present petitioner but they could not rebut the evidence and therefore prima facie it is to be believed that the document does bear the signature of the complainant.

17.2. Bharat Nanalal Rathod the stamp-vendor has stated on oath in his deposition during the inquiry under Section 202 that he has referred the person who was seeking the stamp paper of Rs. 100/- of back date to one Dhirubhai, one another stamp vendor who is dealing with such old stamp papers but he does not confirm the name of the person stating that it was before couple of years. However, he confirms that one Indrasinh Madhavdas has come to him for the purpose. It is undisputed fact that Indrasinh Madhavdas is the petitioner no. 2 herein and accused before the Trial Court. The witness also confirms that he had managed to contact Indrasinh with Dhirubhai, and Dhirubhai has supplied the stamp as per requirement of Indrasinh. He also confirms that Indrasinh has asked him about back dated stamps. This part of evidence confirms the contentions in the complaint and when petitioner could not rebut such evidence even after cross-examining the witness then there is no reason to believe at such interim stage.

17.3. Rajendra Mohanbhai Tank is an employee of Special Treasury office who is dealing with such non-judicial stamp papers, he confirms in his deposition that all such non-judicial stamp-papers are coming from the office of Superintendent of Stamps, Ahmedabad and whenever stamp papers are issued by such office it is being

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noted in the register. He has brought the register of such noting from which he deposed that the stamp-paper bearing Sr. No H001023 is allotted to vendor only on 23rd August, 2008 and he produced the relevant page no. 46 of such register after attesting which is produced at Exhibit 119. It is quite clear that the stamp number is the same which is used for the alleged execution of agreement dated 21st may, 2007. The petitioner herein could not rebut his evidence though the witness was cross examined, in as much as, only two questions were put to the witness which are practically material i.e. (1) the register does not have the handwriting of the witness and that (2) he has not disclosed such fact to the police. However the fact remains that when the government record is produced from the office person and when it is a record which is kept during regular activity of the government office then there is no reason to disbelieve the same. The relevant document regarding such allotment of stamp paper is also available on record.

17.4. Rajnikant Devasibhai Deputy Mamlatdar of Mamlatdar Office at Lalpur, has also confirmed in his deposition that D.B. Joshi is a stamp vendor working under his office and he has to deposit the account of stamps in the office of the witness. However, he is not personally aware about the stamp in dispute and therefore he could not confirm that the stamp in question was sold to whom. Evidence of this witness is not much material but it is corroborative and supportive to other evidence to complete the chain of sequence and facts.

17.5. Therefore, all above evidence is practically confirming prima facie evidence regarding non-genuineness of the documents in question. In view of the facts, when there is prima facie dispute regarding authenticity of the agreement in question the Trial Court is right in issuing process against the petitioner-accused and also right in passing the impugned order confirming that the petitioner should be charged as aforesaid.

18 It is also undisputed fact that such document is to be used for settling the Civil dispute but it is not used for deciding the Civil dispute between the parties and practically it is not created during the judicial proceedings pending before any Court and therefore there is no need of prior sanction under Section 195 of the Code. There is no bar or ban on the aggrieved person to file such complaint on his own and thereby there is no restriction on the Court to proceed further in such complaint, subject to prima facie evidence disclosing commission of offence by the accused to proceed against such accused in accordance with law. In view of such facts and other details, regarding dispute between the parties with reference to the property in question, are not much material.

19 Learned Senior counsel for the petitioner has referred the core ingredient of Sections 465, 468, 471, 474, 120B, 34 and 114 so as to impress that there is no ingredient of any such offence that might have been committed by any of the petitioners either in the complaint or in the evidence and therefore framing of charge is not proper. However the fact remains that the Trial Court has proceeded further in detailed inquiry under Section 202 and therefore at the time of framing charge what is material is only prima facie evidence and not the full fledged evidence to confirm the guilt of any particular person. It is evident from record that prima facie evidence confirms that offence has been committed and it is settled legal position that if any document is forged then primary aspect would be the persons in whose favor the document is so forged. It is also undisputed fact that the document in question is otherwise in favor of the present petitioner and therefore there is reason to believe that petitioners have

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forged the same. In addition to such legal presumption, there is prima facie evidence by a witness confirming the name of atleast petitioner no. 2, who had approached the witness to purchase the back dated stamp. It is also clear from record that when complainant had sold their share of the property by registered sale deed, the petitioners have purposely created such documents so as to pressurize the complainant, to settle the dispute in their favor.

20 In support of his submissions learned Counsel for the petitioners has relied upon following decisions:-

(1) Ajoy Kumar Ghose v. State of Jharkhand and Anr. Reported in AIR 2009 Supreme Court 2282 wherein learned Counsel has read over para 13 to 18 emphasizing that the Magistrate can discharge the accused even when the accused appears in pursuance of the summons or the warrant and even before the evidence laid under Section 244 of Cr.PC. However, though Hon ble Supreme Court has at length explained the procedure to be followed in such summons triable case, there is no issue regarding any such procedural activity by the Trial Court and therefore only because High Court has observed that Trial Court cannot straightaway proceed to frame charge under Section 246(1) of the Code, the fact remains that High Court has stated that charge cannot be framed without any evidence having been taken and therefore such charge can be framed only after prima facie evidence is recorded. However, there is no such situation at hand because in the present case the magistrate has already recorded the evidence of all the relevant witnesses before passing the impugned order to frame charge. Therefore this judgment would not help the petitioner.

2. Sushil Kumar and other v. State of Haryana reported in AIR 1988 SC 419 wherein High Court was dealing with the provisions of Section 195 of the Indian Penal Code wherein it is held that when original forged partnership deed was not produced in Court, bar under Section 195 of the Code would not apply. Therefore this judgment would also not help the petitioner in any manner.

3. K.V. R Iyyengar, Petitioner v. State of A.P. And another reported in 1988 CRI. L.J. 1536 wherein also the Andhra Pradesh High Court has held that when Xerox copy of the document in question is allowed before another Court, private complaint under Section 468, 471, 120(b), etc., of IPC is not barred since provisions of Section 195 of the Code would not be applicable. Therefore this judgment would also not help the petitioner in any manner.

21 As against that the learned Advocate Mr. Mapara for the respondent no. 2 has relied upon following judgments:-

1. Iqbal Singh Marwah and anr. v. Meenakshi Marwah & anr. Reported in 2005(2) GLH 413 Supreme Court wherein Supreme Court has clarified that bar under Section 195 of the Code arises only when the document is forged after it is produced or given in evidence in proceedings before the Court. Thereby if forgery is committed with records and proceedings of the Court then and only then Section 195 would be applicable and not otherwise.

2. Budhu Ram v. State of Rajasthan Supreme Court- Criminal Appeal No. 229 of 1960 wherein with reference to Section 471 of the Code the Supreme Court has held

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that even if photocopy of forged document is used then provisions of Section 471 would be attracted but Section does not confirm that such use can only occur when the original is produced.

3. Nakul Kohli v. State of Delhi Cri. M. C. 2029/2010 (DELHI HIGH COURT) wherein Delhi High Court has held that when photocopy is used as primary and prima facie evidence, the same would be primary evidence for the purpose of the Trial and whether document is admissible by way of primary evidence or secondary evidence is not required to be considered at the stage of framing of charges. The law is well settled that at the stage of framing of charge only a strong suspicion of the accused having committed the said offence is sufficient.

4. 1985 GLH 289 (Gujarat High Court) K C Saxena v. Virbhadrasinghji K. Gohel where in it is stated that at the stage of framing of the charge the Magistrate is not required to meticulously appreciate the evidence. He is not required to consider the probable defence. He has to consider whether prima facie case is made out or not. He is not required to appreciate the evidence in detail. If there is material on record which prima facie indicates that accused had committed offence, the Magistrate is entitled to form an opinion that there is ground for presuming that the accused has committed an offence and to frame the charge.

22 If we peruse the settled legal position so far as right to get discharge is concerned, it becomes clear that at the time of considering the application for discharge, Court has not to scrutinize the availability of entire evidence so as to arrive at any particular findings regarding commission of offence by the accused, more particularly to confirm that there is every possibility of conviction of accused. What is required to be considered is to the limited extent to find out, whether there is prima-facie evidence against the accused to believe that he has committed any offence as alleged in the charge-sheet. If prima-facie evidence is available against the accused then there cannot be an order of discharge.

23 It is to be considered that for framing of charge, the Court is required to form an opinion that there is ground for presuming that the accused has committed an offence. Considering above discussion, it is certain that offence has been committed. Then accused has to face the trial. If prosecution fails to prove the charge, he may be acquitted, but there cannot be order of discharge on presumption that there will be no evidence or no reason for conviction.

24 In view of above facts and circumstances there is no substance in the revision petition since there is no irregularity or illegality in any manner whatsoever by the Trial Court in passing the impugned order to arrive at such conclusion I have perused the entire record and relied upon the following decisions:-

(1) AIR 1980 S.C. 52: Supdt. And Remembrance of Legal Affairs, West Bengal vs. Anil Kumar Bhunja The law regarding discharging the accused u/s.227 of Cr. P. C. is now well settled as decided by the Full Bench of the Apex Court in that the standard test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of S.277 or S.228 At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charges against the accused in respect of the commission of that offence.

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(2) AIR 1990 S.C. 1962 = (1990) 4 SCC 76 : Niranjana Singh Karam Singh Punjabi, Advocate vs. Jitender Bhimraj Bijja -

Wherein, the Full Bench of the Apex Court has held that consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there exists sufficient grounds for proceeding with the trial against the accused and with furtherance sufficient ground to proceed, charge shall be framed and that at that such stage, the trial Court has not to marshal the documents produced before it as it would do on the conclusion of evidence for deciding the charge.

24.1. The Apex Court considered the scope of S.227 and opined that Court is not expected to make a roving inquiry into the pros and cons of the issue and weigh the evidence as if a trial is conducted. Accused can be discharged only when there is no prima facie ground to sustain the charge. What is required is the sufficiency of ground to sustain the charge. What is required is the sufficiency of ground for proceeding against the accused and not whether materials on record are sufficient for conviction.

24.2. After considering the provisions of Ss. 227 and 228 of Cr. P. C, Court posed a question whether at the stage of framing the charge, trial Court should marshal the materials on the record of the case as he would do on the conclusion of the trial? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal with a view to decide the reliability thereof.

24.3. It is well settled that at the stage of framing charge the Court is not expected to go deep into the probative value of the material on record. If on the basis of materials on record the Court could come to the conclusion that the accused would have committed the offence, the Court is obliged to frame the charge and proceed to the trial.

(3) AIR 2001 S.C. 1507: Om Wati vs. State - In it is observed that accused cannot be discharged on hypothesis, imagination and farfetched reasons.

(4) AIR 1997 S.C. 2041: State of Maharashtra vs. Priya Sharan Maharaj - It is held that at the stage of framing the charge, the Court has to consider the material with a view to find out if there is ground for presuming that accused has committed an offence or that there is no sufficient ground for proceeding against him and not for the charges by arriving at the conclusion that it is not likely to lead to a conviction.

(5) AIR 2000 SC 665 = 2000 SCC(2) 57 : State of MP vs. SB Johari - It was held that, the Court at the stage of S.227 and S.228 is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. Only prima facie case is to be looked into. The charge can be quashed if the evidence which the prosecutor proposes to prove the guilt of the accused, even if fully accepted, it cannot show that accused committed that particular offence. Thus it is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the

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conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial.

(6) 2005 SC 359: State of Orissa vs. Debendra Nath Padhi - The Apex Court has held that, it is seen from S.227 of the Code that in a case triable before the Court of Session, if the Court on consideration of the record of the case and the documents submitted therewith and after hearing the submission of the prosecution and the accused if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording reasons for doing so. This Section nowhere contemplates an opportunity being given to the accused person to produce evidence in defence at that stage. The section is quite clear that whatever consideration that has to be made by the Court, will have to be based on the record of the case and documents submitted therewith, and after hearing the submissions of the accused and the prosecution. If after doing so, the Court comes to the conclusion that there is a ground for presuming that the accused has committed an offence, then the Court shall frame charge u/s.228 of the Code, otherwise it shall discharge the accused under S.227 of the Code. It is further held that: It is clear that all that the Court has to do at the time of framing a charge is to consider the question of sufficiency of ground for proceeding against the accused on a general consideration of the materials placed before it by the investigating agency. There is no requirement in law that the Court at that stage should either given an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage.

(7) (1997) 4 SCC 393 = 1997 AIR SCW 1833 : State of Maharashtra vs. Priya Sharan Maharaj - Referring to the case of Niranjana Singh Karam Singh Punjabi (supra) held that 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 there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, 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 and even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out that whether there is any ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

(8) AIR 2000 SC 2583: State of MP vs. Mohan Lal Soni - The Court while referring to several previous decisions, held that the crystallized judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. It is further held that, each case depends upon its particular facts and circumstances and sometime even a remote link between the activities of an accused and the facts of the case may justify a reasonable inference warranting a

judicial finding that there is ground for presuming that an accused has committed the offence or at least to presume that the question of his being directly or indirectly involved in the commission of such offence is not to be ruled out.

(9) (1996) 4 SCC 695 = 1996 AIR SCW 1977: State of Maharashtra V/s. Som Nath Thapa - A three-Judge Bench of Hon'ble Supreme Court has held that, if on the basis of materials on record a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of 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.

(10) AIR 1999 SC 3845 = 1999 AIR SCW 3921: State of U.P. V/s. Udai Narayan - The Apex Court has specifically determined in its decision reported in while dealing with the issue regarding discharge of accused from the charges under the Prevention of Corruption Act, 1988 that scanning and scrutinizing the evidence and materials produced by the prosecution is not permitted at the time of deciding the prayer for discharge and that positive conclusion on material record should be avoided as it may affect the trial.

(11) AIR 1987 SC 773: State Of Himachal Pradesh Vs. Krishan Lal Pradhan - The Apex Court has held that for scrutiny within the limits of S. 239, Cr.P.C., all that is required at the stage of framing of charges is to see whether a prima facie case regarding the commission of certain offences is made out. The question whether the charges will eventually stand proved or not can be determined only after evidence is recorded in the case, which cannot be decided on merits without giving the prosecution an opportunity to adduce evidence against the accused.

(12) AIR 2007 SC 2149 = 2007 AIR SCW 3683 Soma Chakravarty v. State - It is held as under: "It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of 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. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial."

25 Thus, the law on the subject is now well-settled that while considering the discharge application, the Court is required to evaluate the material and documents on record for limited purpose i.e. to find out that whether facts emerged from such material even if taken on their face value, is enough and disclosing the existence of all the ingredients to constitute the alleged offences. The Court may, for this limited purpose, sift the evidence as it cannot be expected at such initial stage to accept all that the prosecution story as gospel truth even if it is opposed to commonsense or the broad probabilities of the case. Therefore, at the stage of

framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

26 In view of the above facts and circumstances the Criminal Revision Application is dismissed.

27 Rule is discharged.

28 Learned advocate for the petitioners prays to stay the operation of this order and continue the interim relief granted earlier for further eight weeks. however, the operation of this order is stayed for four weeks with continuation of interim relief granted earlier.