

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

+ **W.P.(CRL) 781/2013 & CrI.M.A.7844/2013**

% ***Judgment dated 21.3.2014***

SHIV NARAIN SINGH SIDHU Petitioner

Through: Mr.Maninder Singh, Sr. Advocate with
Mr.Ashutosh Lohia, Ms.Payal Chandra
and Ms.Richa Narang, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr.P.K. Sharma, S.C. for CBI and Mr.A.K.
Singh and Mr.Bakul Jain, Adv. for CBI.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J (ORAL)

1. By the present petition, petitioner seeks quashing of the order on charge dated 7.11.2012 framed by the Special Judge in RC No.DIA-2007-A-0050 on 17.1.2013 under Section 120B IPC read with Sections 420/467/468/471 IPC and Sections 13 (2) read with Section 13 (1) (b) of the Prevention of Corruption Act. It is contended that the petitioner has retired as Director (ADMIN), Delhi Urban Shelter Improvement Board, Govt. of NCT of Delhi on 28.2.2013. All throughout his service career, the petitioner has performed his duties with utmost sincerity and devotion. Except for the present case, he has had an unblemished service record, and has been falsely implicated in the present case.
2. The allegations of the CBI which have been culled out by the petitioner in the petition read as under:
 - “4.a. The present case was registered on a complaint of Inspector D.K. Thakur, the then I.O. of case RC.No.34(A)/2007-DLI being

already investigated by the CBI qua the same subject matter (of irregular allotment of plots of J.J. Dwellers). It was alleged by the I.O. that during the period 2007, the petitioner was posted and was working in the Slum & JJ Department of Municipal Corporation of Delhi wherein he entered into a criminal conspiracy with one Shri Ashok Malhotra and Shri Ashok Jain, in furtherance of which, fake/ forged documents such as ration cards and other identity cards were prepared and used in the name of fake and fictitious persons for allotment of Plots under the resettlement scheme of Slum & J.J. Department of MCD.

b. It was further alleged that the officials of the MCD by abusing their official powers and positions in conspiracy with said Shri Ashok Malhotra and Shri Ashok Jain, cheated the Municipal Corporation of Delhi and dishonestly allotted 12 nos. of plots in the names of fake and fictitious persons at J-Block, Sector-16, Rohini Resettlement Scheme of the Municipal Corporation of Delhi.

5. Investigation was conducted and the chargesheet/ challan under section 173 of the Code of Criminal Procedure was filed before the Ld. Trial Court and on compliance of the provisions of section 207 Cr.P.C. the matter was fixed for arguments on charge.

6. That after hearing arguments on charge on behalf of all the accused persons including the present petitioner, the Ld. Trial Court was pleased to pass a detailed (combined) order on charge vide order dated 07.11.2012 wherein charges were ordered to be framed *inter alia* against the petitioner for the offences punishable under

Section 120-B IPC R/w Section 420/467/468/471 IPC & Section 13(2) R/w Section 13(1)(d) of the P.C. Act.

7. That the relevant portion from the above stated order on charge dated 07.11.2012 is reproduced herein:

“..... As such, prima facie all the accused are liable to be charged for offences u/s 120-B IPC r/w Section 420/467/468/471 IPC & 13(2) r/w 13(1) (d) of PC Act, and 420 IPC r/w Section 120-B IPC. Accused public servants, namely S.N.S. Sidhu, Philip Topo, Atul Vashisht (part A – page 51).....

and Ashok substantive offences u/s 467/468 and 471 IPC are concerned, the same are not disclosed against accused Ashok Jain as also admitted by Ld. PP for CBI and as there is no evidence to show that accused Ashok Jain fabricated the documents. However, all the remaining accused are also liable to be charged u/s 467/468/471 r/w 120-B IPC.”

3. Learned senior counsel for the petitioner submits that the impugned order is liable to be set aside as the same is bad in law and the same has been passed without adhering to the concept of law and principles of natural justice. It is contended that none of the witnesses examined under section 164 Cr.P.C. have stated anything against the present petitioner and further the documents that are being relied upon by the prosecution do not point towards any involvement of the petitioner herein.
4. Learned senior counsel for the petitioner next contends that there is not a single allegation or evidence in respect of cheating, fraud, misuse of

official position or conspiracy against the petitioner. Another submission made by learned senior counsel for the petitioner is that even if the allegations contained in the charge-sheet are taken on their face value, nothing has been placed on record by the prosecution to connect the petitioner with the case. It is thus contended that the petitioner has been implicated in the present case merely on the basis of conjectures and surmises; and there is no evidence which has been collected or exists against the petitioner.

5. It is also the case of the petitioner that the petitioner had acted in good faith in due discharge of his official functions and he merely counter-signed the draw slips in case of manual draws which could have been held even in the absence of the petitioner, as per the office order dated 7.8.2006. Counsel submits that petitioner was well within his right to have authorized conducting of a manual draw, which was permissible as per the office order dated 7.8.2006 and the mandatory quorum fixed for conducting such a draw was minimum 2 members of the Draw Committee, which finds mention in the aforesaid office order.
6. It is further submitted that issuance of alleged provisional “identification slip” and that too on temporary basis and subject to final verification of all the documents showing the eligibility of the J.J. Dweller by concerned departments would not by any stretch of imagination amount to allotment of plots. There has been no allotment and no possession letters in respect of the 12 plots.
7. It is further submitted that the prosecution has placed strong reliance on a statement recorded under Section 164 Cr.P.C. of one Sh.R.S. Sandhu in R.C.No.25A and one Sh.Mohan Lal whereas Sh.R.S. Sandhu and Sh.Mohan Lal are not accused in the said FIR. It is submitted that the said statement under section 164 Cr.P.C. cannot be used against the

petitioner and moreover cannot be used as the sole piece of evidence to frame a charge against the petitioner.

8. Learned senior counsel also relies on the guidelines/duties of the petitioner which have been described in reply to RTI application and the petitioner as Director (SUR) was not required to check and verify the names of the joint survey list. The petitioner was the head of the department and as per the prescribed hierarchy in the office manual, the supervisory authority was with Assistant Director and the controlling and supervisory officer was the Deputy Director (SUR). It is strenuously urged before this court that the petitioner had no specific role to play in the draw of allotment of plots; the names and the list were prepared by the field staff in a joint survey and were forwarded to the office of SUR. Thereafter the list was processed by the staff as per the hierarchy, which went through the proper chain and the only role ascribed to the petitioner is that he counter-signed the draw list/ draw parchi in the end. Nothing has been brought on record to show any wrongful loss to the Government or wrongful gain to the petitioner, as no allotment of land was made in the present case.
9. It is also the case of the petitioner that the trial court has failed to consider the material documents on record and has wrongly come to the conclusion against the petitioner.
10. Learned senior counsel for the petitioner has also submitted that in proceedings under Section 482 Cr.P.C. the powers of the High Court are wide and vast to ensure that there is no travesty of justice. Counsel further submits that the material which cannot be looked into by the trial Court in defence of the petitioner can be looked into by the High Court, as per the law laid down by the Apex Court.
11. Reliance is placed on **Rajiv Thapar & Ors. Vs. Madan Lal Kapoor** 2013

(1) SCALE 665 and more particularly paragraphs 16 to 23, which read as under:

“16. Dissatisfied with the order dated 7.8.1999 passed by the Additional Sessions Judge, Delhi, Madan Lal Kapoor (the respondent-complainant) filed a Criminal Revision Petition (bearing no. 42 of 2000) in the High Court. The aforesaid Criminal Revision Petition was dismissed in default on 11.8.2005. The order dated 11.8.2005 was assailed through a Special Leave Petition (bearing no. SLP (Crl.) no. 3303 of 2006) before this Court. The aforesaid Special Leave Petition was allowed by this Court on 31.8.2007. The matter was remanded back to the High Court for adjudication on merits. It is thereupon, that the High Court passed the impugned order dated 8.5.2008, setting aside the order dated 7.8.1999 passed by the Additional Sessions Judge, Delhi. The instant order dated 8.5.2008 is the subject matter of challenge in the present appeal.

17. A perusal of the order of the High Court would reveal that the Additional Sessions Judge, Delhi, had primarily relied on certain observations made in the judgment rendered by this Court in Satish Mehra Vs. Delhi Administration, (1996) 9 SCC 766:-

“15. But when the Judge is fairly certain that there is no prospect of the case ending in conviction the valuable time of the Court should not be wasted for holding a trial only for the purpose of formally completing the procedure to pronounce the conclusion on a future date. We are mindful that most of the Sessions Courts in India are under heavy pressure of work-load. If the Sessions Judge is almost certain that the trial would only be an exercise in futility or a sheer waste of time it is advisable to truncate or snip the proceedings at the stage of Section 227 of the Code itself”

Madan Lal Kapoor (the respondent-complainant), before the High Court, had relied upon the judgment in State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568, to contend that the

judgment relied upon by the Additional Sessions Judge, Delhi, having been overruled, had resulted in an erroneous conclusion. For the same proposition, reliance was placed on the judgment of this Court in Suresh Kumar Tekriwal Vs. State of Jharkhand, (2005) 12 SCC 278. On behalf of the complainant, reliance was also placed on the decision in State of Maharashtra Vs. Som Nath Thapa, (1996) 4 SCC 659, to contend, that only the material placed on record by the prosecution, could be gone into at the time of framing charges. And if, on the basis of the said material, the commission of the alleged offence was prima facie made out, the charge(s) was/were to be framed. At the stage of framing of charges, it was submitted, that the requirement was not to determine the sufficiency (or otherwise) of evidence to record a conviction. For this, reliance was placed on State of M.P. Vs. Mohanlal Soni (2000) 6 SCC 338, wherein this Court had concluded, that the requirement was a satisfaction, that a prima facie case was made out. On behalf of Madan Lal Kapoor, reliance was also placed on State of A.P. Vs. Golconda Linga Swamy (2004) 6 SCC 522, to contend that at this stage, meticulous examination of the evidence was not called for.

18. As against the submission advanced on behalf of Madan Lal Kapoor (the respondent-complainant), the appellants/accused contended, that the Court was justified in considering the material on the record of the case, and on the basis thereof, to arrive at a just and reasonable conclusion. In this behalf, it was averred that the post-mortem report, the report of the Central Forensic Science Laboratory, the inquest proceedings recorded by the SDM, Delhi, and the letters addressed by the family members of the complainant (duly noticed in the inquest proceedings), were a part of the record of the case, and as such, were to be taken into consideration while passing the orders contemplated under Sections 227 and 228 of the Cr.P.C. The submission advanced on behalf of Madan Lal Kapoor (the respondent- complainant) before the High Court, was accepted. The High Court arrived at the conclusion, that the Additional Sessions Judge, Delhi had erroneously placed reliance on the decision rendered by this Court in Satish Mehra Vs. Delhi Administration (supra), which had already been overruled by the

judgment rendered by a larger Bench in State of Orissa Vs. Debendra Nath Padhi (supra).

19. While considering the contention advanced on behalf of the appellants/accused, the High Court concluded, that the material/documents/record which the complainant was placing reliance on, did not fall within the ambit and scope of the term “record of the case” contained in Section 227 of the Cr.P.C. According to the High Court, the record of the case referred to in Section 227 of the Cr.P.C. was only such record, documents and articles which, on consideration by the Magistrate, are sent to the Court of Sessions, consequent upon passing an order of commitment. The material and documents relied upon by the appellants/accused in the present controversy would, therefore, not fall within the zone of consideration at the hands of the Court of Session under Section 227 of the Cr.P.C. Accordingly, the submissions advanced at the behest of the appellants/accused were declined. For the aforesaid reasons, the High Court accepted the Criminal Revision Petition filed by Madan Lal Kapoor (the respondent-complainant). The order dated 7.8.1999 passed by the Additional Sessions Judge, Delhi was accordingly quashed. The parties were accordingly directed to participate in the further proceedings before the Court of Sessions.

20. We have considered the submissions advanced at the behest of the rival parties. We are of the view, that in the facts and circumstances of this case, the High Court had before it an exhaustive and detailed order passed by the Additional Sessions Judge, Delhi, it ought to, therefore, have examined the controversy, while keeping in mind the inherent power vested in it under Section 482 of the Cr.P.C. specially because the Additional Sessions Judge in his order dated 7.8.1999, had concluded, on the basis of the material relied upon by the accused, that no case was made out against the accused. This according to learned counsel, was permissible in view of the inherent jurisdiction vested in the High Court under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. is being extracted hereunder:-

“482. Saving of inherent power of High Court

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

The discretion vested in a High Court under Section 482 of the Cr.P.C. can be exercised suo-moto to prevent the abuse of process of a court, and/or to secure the ends of justice. This Court had an occasion to examine the matter in *State of Orissa Vs. Debendra Nath Padhi*, (supra) (incidentally the said judgment was heavily relied upon by the learned counsel for the respondent-complainant), wherein it was held thus:-

“29. Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal's* case.”

(emphasis is ours)

Recently, this Court again had an occasion to examine the ambit and scope of Section 482 of the Cr.P.C. in *Rukmini Narvekar Vs. Vijaya Satardekar & Ors.*, (2008) 14 SCC 1, wherein in the main order it was observed, that the width of the powers of the High Court under Section 482 of the Cr.P.C. and under Article 226 of the Constitution of India, was unlimited. In the instant judgment, this Court held that the High Court could make such orders as may be necessary to prevent abuse of the process of any court, or otherwise to secure the ends of justice. In a concurring separate order passed in the same case, it was additionally observed, that

under Section 482 of the Cr.P.C., the High Court was free to consider even material, that may be produced on behalf of the accused, to arrive at a decision whether the charge as framed could be maintained. The aforesaid parameters shall be kept in mind while we examine whether the High Court ought to have exercised its inherent jurisdiction under Section 482 of the Cr.P.C. in the facts and circumstances of this case.

21. The High Court, in exercise of its jurisdiction under Section 482 of the Cr.P.C., must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused is. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so, because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed, by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position, that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, *prima facie* evidencing the truthfulness of the allegations levelled, trial must be held.

22. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 of the Cr.P.C., if it chooses to quash the initiation of the prosecution against an accused, at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same

parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 of the Cr.P.C., at the stages referred to hereinabove, would have far reaching consequences, inasmuch as, it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 of the Cr.P.C. the High Court has to be fully satisfied, that the material produced by the accused is such, that would lead to the conclusion, that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such, as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such, as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such, as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 of the Cr.P.C. to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

- (i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

- (ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.
- (iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?
- (iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

- 12. It is also submitted that the aforesaid judgment was followed in a recent judgment by the Supreme Court of India in the case of **Prashant Bharti Vs. State (NCT of Delhi)** reported at (2013) 9 SCC 293.
- 13. Learned senior counsel appearing for the petitioner submits that it would be highly unsafe to frame a charge against the petitioner on the basis of statements recorded of two persons who are not accused in the present FIR and further the petitioner would never be able to cross-examine the said persons. Learned senior counsel for the petitioner has placed reliance

on *Peoples Union for Civil Liberties (Delhi) Vs. Central Bureau of Investigation & Ors.* reported at volume 66 (1997) DLT page 748 and more particularly paragraphs 37, 38, 39, which are reproduced below:

“37. In *Selvan S. Rathinapandian & others Vs. State* represented by the Inspector of Police,. Kulasekaranpattinam reported as 1996(4) Crimes 186, Madras High Court had to deal with a situation where it had to. opine whether it will be safe to frame charge solely upon confession made by one of the co-accused during investigation and the answer was in the negative. A reading of this ruling and various other rulings such as *R.P.KapurVs. State of Punjab* and *Pragasam Vs. State* by Inspector of Police reported as 1994 M.L.J.(Crl) 101 shows that after analysing the position the Judges had opined that "conviction based on confession of co-accused alone is illegal." Such confession can be used only for lending re-assurance of other substantive evidence.

38. In the present case, except, for Mr. Nandey's statement no other material was brought to my notice which could form substantive legal evidence, on the basis whereof a charge could be framed. Therefore, in the matter of criminal prosecution, even the admissibility of such confession of deceased co-accused is extremely doubtful apart from its poor and very weak nature of evidence and for that reason, charge could not be framed on the basis of that alone. The same question came up before Bombay High Court in the case of *Rashid G.Parkar Vs. State of Maharashtra* reported as 1982 (Vol. 85) Bom. L.R.35. There also the court had held that the confessional statements of even the living co-accused alone exclusively in the absence of other evidence cannot constitute any substantial evidence to frame the charge against the accused. The court relying upon the case of *Hari Charan Kurmi (supra)* carved out the following three principles:-

- (i) confessional statement of the co-accused is weaker type of evidence;
- (ii) it may or may not be taken into consideration;
- (iii) it alone exclusively cannot be the basis of conviction of the accused;

39 The result of the aforesaid discussion is that not framing the charge on the basis of sole confessional statement of a deceased co-accused who by virtue of his death cannot be tried jointly with other accused, in the absence of any legal substantive evidence independent of such confession is not wrong and cannot be found fault with.”

14. Reliance is also placed on *Rashid Gafoor Parkar Vs. State of Maharashtra* 1983 (85) BOMLR 35 and more particularly paragraphs 15 and 25, which read as under:

“15. Ratio of this judgment lays down three principles: (1) Confessional statement of the co-accused is weaker type of evidence; (2) it may or may not be taken into consideration; (3) it alone exclusively cannot be the basis of conviction of the accused. Bearing in mind these principles, enunciated by the Supreme Court, it was contended by the learned Advocate for the petitioners that statements relied on by the learned Magistrate in this case cannot constitute the basis for framing charge. It is undisputed in this case that the statements of the petitioners were not relied on by the prosecution. The only statements exclusively made available for proof of the statements of the co-accused are contained in confession. Even if provisions of Section 30 as interpreted by the Supreme Court are to be applied, the argument of the learned Advocate for the petitioners is well founded. The learned Advocate for the petitioners further contended that the evidence which is to be taken into consideration by the Court at the time of framing of charge must be of such character that if it remains unrefuted, it must form the basis of conviction. The learned Advocate for the petitioners contended that if these statements are taken into consideration and admitted at this stage as evidence, in view of the infirmity attached to these statements, they cannot constitute substantial piece of evidence at all. If they are not substantial piece of evidence, they cannot be relied on to frame the charge on that ground also, these statements should not be accepted by the Court.

25. The only submission which now remains to be examined is relating to Section 30 of the Evidence Act. If ratio of the Supreme Court judgment in Haricharan Kurmi's case (supra) is taken into consideration, it is quite clear that statements of the co-accused cannot be utilised for the purpose of conclusion or inference to hold that prima facie case is made out by the contents of such evidence. The statement of the co-accused is not substantial piece of evidence, and by reason of the infirmity and the limited scope, it is not possible to utilise the statements as direct evidence, it is impossible to say that they can be available for the prosecution as some kind of evidence for framing charge. In this case, it is undisputed that there is no other evidence except these statements. In the absence of any other evidence, statements of the co-accused will only supply some material for consideration of the evidence. This material is weak, because, it is the discretion of the Court to accept or to reject it. It is not obligatory on the Court to accept the same. It is well settled that findings have to be considered separately in the light of the proof of charge. In the case before the Supreme Court, the Supreme Court was dealing with case where the High Court had committed error substantially on this point. There the High Court considered the confessional statement as basis of its findings and then turned to other evidence. It was this course which was adopted by the High Court, which was criticised by the Supreme Court and it was held that proper principle which should be applied is that first evidence excluding confessional statements must be considered and if the other evidence adduced against the accused persons is found satisfactory, then it is the confessional statements which may be taken into consideration. If this limited character of the confessional statements is taken into consideration, it is difficult to accept the contention that confessional statements can form the basis for framing charge against the petitioners, framing of charge is also based on the consideration of material and evidence which is produced at the time of framing charge. If it is an obligation of the Court to consider the material at the time of framing charge, meaning of the word 'evidence' must be given substantial evidence alone. It is main evidence which itself must be of some substantial character. I

am not entirely satisfied with the basic requirements of the provisions of Section 3 of the Evidence Act, when section says that the Court while framing charge will consider evidence which means that such evidence which cannot be of subsidiary character. Evidence of weaker type cannot be said to be basis even at the time of framing charge. In this view of the matter, I am unable to accept the reasoning of the learned Magistrate, where he has relied upon Section 30 to accept confessional statements as sufficient to frame the charge. It was contended by the learned Advocate for the petitioners that the officer, who recorded the statements was not called and, therefore, statements cannot be accepted as proved. This point has no substance at all, at this stage because the record shows that prosecution has made an attempt to call the original statements and if the prosecution could not for any reason, secure the original statements, it is not proper to call the officer, to prove the certified copies, as the certified copies were accepted on record and no objection was raised to their production, I do not think that this can affect the proof of these statements in this case. Therefore, the contention that the certified copies should not have been accepted and should not have been allowed to be produced without examining the officer, is rejected.”

15. Learned senior counsel for the petitioner also submits that except R.S. Sandhu, who in his statement recorded under section 164 Cr.P.C. had named the petitioner as one of the persons who used to visit the house of Ashok Malhotra, not a single document has been placed on record, which would show that the petitioner had any role to play in the preparation of the list or allotment of plots, as has been alleged.
16. Learned senior counsel next submits that the signatures sought to be relied upon by the prosecution are not disputed, as being the head of the institution, managing the draw, he was to append his signatures and not that he was responsible in either preparation of the list or verifying the list.

17. Counsel for the CBI submits that at the stage of framing of charge the court is not required/obligated to give a detailed reasoning and in support of this proposition he has relied upon *Sajjan Kumar Vs. Central Bureau of Investigation* (2010) 9 SCC 368 and more particularly paragraphs 21 and 24 which are reproduced below:

“21. On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges under Section 227 of the Cr.P.C. 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 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.

(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 discloses 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 discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

24. At the stage of framing of charge under Section 228 of the Cr.P.C. or while considering the discharge petition filed under Section 227, it is not for the Magistrate or a Judge concerned to analyse all the materials including pros and cons, reliability or acceptability etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and free to take a decision one way or the other.”

18. Counsel for the CBI further submits that the trial court while considering the documents and also the statement which was recorded, rightly reached the conclusion and framed the charge against the petitioner. Counsel for the CBI also submits that response to the RTI query cannot be looked into, in view of the judgment of the Supreme Court in the case **State of Orissa Vs. Debendra Nath Padhi** reported at (2005) 1 SCC page 568 and more particularly paragraphs 27 and 28, which read as under:

“27. In so far as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt inherent limitations as to the stage or point of time of its exercise, commensurately with the nature of proceedings as also the compulsions of necessity and desirability, to fulfill the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by accused the necessity and desirability would have to be seen by the Court in the context of the purpose - investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.”

19. Mr.Sharma, learned standing counsel for the CBI has further placed strong reliance on the statement recorded under Section 164 Cr.P.C. of one Ravinder Singh Sandhu, S/o.Gurbaj Singh Sandhu, R/o.11, Hakikat Nagar, Kingsway Camp, Delhi. While relying upon the aforesaid statement, counsel for the CBI submits that Ravinder Singh Sandhu has stated that he used to visit the residence of Mr.Ashok Malhotra to give him account on day-to-day basis, due to which he came close to him and

also started doing his small house-hold work, such as bringing grocery items from the market. Ravinder Singh Sandhu has also stated that various people used to visit the residence of Mr.Malhotra, including some MCD officials, such as S.N.S. Sidhu, Sumer Chand Garg, Atul Vashisht, Vijayan, Philip Toppo. Sh.Ashok Malhotra used to deal in allotment of plots in re-settlement scheme (shifting of slums). It has also been deposed by Ravinder Singh Sandhu that during this period, he noticed that above mentioned officials used to bring the plans of the area where plots were to be distributed to Mr.Malhotra and Mr.Malhotra used to mark the plots in which he would be interested, so that the officials may get the allotment of those plots in his favour by manipulating the draw. It was also stated by Mr.Ravinder Singh Sandhu that Mr.Malhotra used to select the corner and main road plots and MCD official used to mark those plots for allotment. Sh.S.C. Garg, Atul Vashisht and Sh.S.N.S. Sidhu used to visit Mr.Malhotra's residence very often, though Mr.Topo used to come there very rarely.

20. Mr.Sharma, counsel for the CBI submits that this statement read along with the statement of Sh.Mohan Lal @ Mone, s/o.Sh.Maluk Chand, R/o.B-62, Nehru Vihar, Delhi, leave no room for doubt that the petitioner was part of the conspiracy in this matter.
21. In support of his submission that the confession statements can be read against the co-accused, Mr.Sharma has placed reliance on **State of Gujarat Vs. Mohammed Atik and Ors.** (1998) 4 SCC 351 and more particularly paragraphs 5 and 6, which are reproduced below:

“5. It is clear from the above section that a confessional statement recorded in accordance with the requirements contained in the Section becomes admissible in spite of the ban contained in Section [25](#) of the Evidence Act or Section [162](#) of the CrPC. The requirements stipulated in Section [15\(1\)](#) of the TADA for

admissibility of a confession made to a police officer are (1) The confession should have **been** made to a police officer not lower in rank than a Superintendent of Police (2) it should have been recorded by said police officer (3) the trial should be against the maker of confession (4) such trial must be for an offence under TADA or the Rules thereunder. If the above requirements are satisfied the confession becomes admissible in evidence and it is immaterial whether the confession was recorded in one particular case or in a different case.

6. When there is no statutory inhibition for using such confession on the premise that it was not recorded during the investigation of the particular offence which is under trial there is no need or reason for the Court to introduce a further fetter against the admissibility of the confessional statement. It often happens that a confessor would disclose very many acts and events including different facets of his involvement in the preparation attempt and commission of crimes including the acts of his co-participants therein. But to expel every other incriminating disclosures than those under investigation of a particular crime from the ambit of admissibility is not mandated by any provision of law.”

22. In response to this submission of Mr.Sharma, learned senior counsel for the petitioner submits that firstly the statement of Mr.Ravinder Singh Sandhu and Mr.Mohan Lal cannot be relied upon as they are not co-accused with the petitioner in the said FIR where the statement under Section 164 Cr.P.C has been recorded; secondly, this statement of Mr.Ravinder Singh Sandhu is a general statement; and assuming there is anything incriminating in this statement, the same cannot be relied upon as the petitioner would have no opportunity to cross-examine this witness.
23. It is also submitted by learned senior counsel for the petitioner that a statement under Section 164 Cr.P.C. recorded in the proceedings arising out of another FIR, cannot form basis to implicate the petitioner in another matter and that too in different FIR. In support of his submission,

learned senior counsel for the petitioner further submits that as far as the above said statement is concerned, it is a very weak form of evidence, which is evident from the fact that the second statement relied upon by the respondent is of Mohan Lal, who has not named the petitioner, but named Ravinder Singh Sandhu. Learned senior counsel submits that the entire statement does not refer to the petitioner even once. It firstly refers to one Sandhu, Director, DDA, (who was a Director in the DDA at the relevant time) and in the latter half of page 1 of the statement he refers to Sandhu, who is none other than Ravinder Singh Sandhu, whose statement is relied upon by the respondent [Ravinder Singh Sandhu, s/o.Gurbaj Singh Sandhu, r/o.11, Hakikat Nagar, Kingsway Camp, Delhi.

24. Learned senior counsel for the petitioner submits that on a careful reading of this statement it would become clear that the statement of Mohan Lal pertains to the conspiracy hatched between Ashok Malhotra and Ravinder Singh Sandhu, as he has even mentioned his address which would really clinch the issue, whereas Mr.Sharma, counsel for the CBI submits that Mr.Sandhu, director DDA referred to is none other than the petitioner.
25. I have heard counsel for the parties and considered their rival submissions and given my thoughtful consideration to the matter. It is the case of the petitioner that the order dated 7.11.2012 by which charge was framed against the petitioner is liable to be quashed on the ground that there is no material or evidence on record in respect of cheating, fraud, misuse of official position or conspiracy against the petitioner. Even if the allegations contained in the charge-sheet are taken on their face value, nothing has been placed on record by the prosecution to connect the petitioner with the case. The petitioner acted in good faith in due discharge of his official functions. There was no irregularity in conducting of manual draw, which is permissible as per office order dated

7.8.2006. The High Court is well within its right in proceeding under Section 482 Cr.P.C. to look into all material of sterling and impeccable quality in favour of the petitioner and to avoid miscarriage of justice and abuse of the process of the court. The statement recorded under section 164 Cr.P.C. in another FIR in which the petitioner is not an accused and the statements so made are of very weak form of evidence, on the basis of which a charge cannot be framed; and even otherwise the statement of Mohan Lal is irrelevant, as he refers to Mr.Ravinder Singh Sandhu, S/o.Gurbaj Singh Sandhu, R/o.11, Hakikat Nagar, Kingsway Camp, Delhi and not the petitioner, who is Shiv Narain Singh Sidhu. The judgment relied upon by the respondent in the case of *State of Gujarat Vs. Mohammed Atik (Supra)*, with regard to reliance on a confession made to the Police, is not applicable as the aforesaid case refers to a case under TADA.

26. Mr.Sharma, counsel for the CBI has argued that at the stage of framing of charge court is not required to give detailed reasons and the material placed on record by the petitioner cannot be looked into, in view of the case of *State of Orissa Vs. Debendra Nath Padhi* reported in (2005) 1 SCC 568. Strong reliance is placed on the statement recorded under Section 164 Cr.P.C. of Mr.Ravinder Singh Sandhu and Mr.Mohan Lal. Reliance is placed on *State of Gujarat Vs. Mohammed Atik (Supra)*.
27. Learned senior counsel for the petitioner has argued that the petitioner was the Head of the Department and the duty of the director (SUR) was to see that the draw is computerized or manual and is held in a proper and impartial manner and proper procedure is adopted. It is also submitted that the petitioner was not required to check and verify the names, parentage, name in joint survey list and ration card and other documents and thus the petitioner has been falsely implicated in the case.

28. Learned senior counsel for the petitioner has canvassed hard before the court that the reply dated 17.1.2013 which has been received from the Delhi Urban Shelter Improvement Board with regard to the duties of the director, should be considered by the High Court to satisfy its judicial conscience that the petitioner, who was the director was nowhere required to check and verify the names, parentage, name in joint survey list and ration card and other documents, which were to be carried out by the subordinate staff. In the case of **Rajiv Thapar (Supra)**, the Apex Court has in detail discussed the parameters to be considered by the Court in proceedings under Section 482 Cr.P.C. with regard to documents and material relied upon by the accused. It has been held that the material relied upon by the accused should be sound, reasonable and indisputable. The material should be sufficient to reject and overrule the factual assertions made in the complaint; that the material relied upon has not been refuted by the prosecution or the complainant; and lastly proceeding with trial would result in an abuse of the process of the court and would not serve the ends of justice. The only material which is sought to be relied upon by the petitioner is a reply received under the Right to Information Act with regard to the role of the Director. The reply dated 17.1.2013 reads as under:

“DELHI URBAN SHELTER IMPROVEMENT BOARD
GOVT. OF NCT OF DELHI
(Rehabilitation Branch)

No.:48/D.D.(Rehab.)-II/DUSIB/2012

Dated 17/1/2013

To,

Sh.S.N.S. Sidhu
H.No.510, Janpratinidhi Apartment,
Sector -28, Gurgaon.

Sub: Reply of I.D. No.863/DD (Rehab.)/DUSIB/2013
dt.01.01.2013

After going through the record of SUR Section there are no guidelines/ duties of Director (SUR) and member of draw committee. However, as per practice the reply is as under:

1. xxxxxxxxxxxxxxxx
 2. During the period from June, 2004 to September, 2007, the Draw Committee was required to conduct the draw of lots approved by competent authority in respect of eligible JJ dwellers as per policy. The role of Director (SUR) was to see that the draw is (computerized or manual, as the case may be) held in a proper and impartial / justified manner. He had to see that the proper procedure is adopted in holding the draw by the draw committee.
 3. During the period from June, 2004 to September, 2007, the Director (SUR) was not required to check and verify the names, parentage, name in joint survey list, ration cards and other documents / records etc. of the JJ dwellers, placed before the draw committee for draw of lots for allotment of plots. The member of the committee is to satisfy that the name of eligible JJ dwellers and number of plots for draw of lots have been forwarded by SUR Section after approval of competent authority.”
29. The reply which has been received only outlines the role of the director to the extent that he is not required to check and verify the names, parentage, name in joint survey list and ration card and other documents of the J.J. dwellers. The objective of relying on this reply by the petitioner is to show that it cannot be attributed to a person of a rank of director that he is required to look into the basic issue of eligibility.
30. Since the document is not a self-serving document, keeping in view the decision of **Rajiv Thapar & Ors. Vs. Madan Lal (Supra)**, I am of the

view that in proceedings under Section 482 Cr.P.C. this court would be well within its right to consider this document for the limited purpose for which it is being relied upon.

31. The second submission of learned senior counsel for the petitioner is that the statements of Mr.Ravinder Singh Sandhu and Mr.Mohan Lal cannot be looked into as both these persons are not accused in the present FIR and they would not be available for cross-examination. Even otherwise their statements would be a weak nature of evidence and also the statements do not point towards the guilt of the petitioner. I have examined the statements so made. As far as the statement of Mr.Mohan Lal is concerned, reading of the statement would show that Mr.Mohan Lal has referred to Mr.Ravinder Singh Sandhu, S/o.Gurbaj Singh Sandhu, R/o.11, Hakikat Nagar, Kingsway Camp, Delhi and not the present petitioner, who is Shiv Narain Singh Sidhu.
32. Mr.Mohan Lal has stated in his statement “.....Various officers of DDA and Municipal Corporation of Delhi used to visit the house of Ashok Malhotra such as Atul Vashisht, Sumer Chand, V.Jain, Mr.Sandhu, Director DDA, Mr.Gaur, Mr.A.K. Mishra, Mr.S.K. Sharma, J.E., Shyam Babu, Mr.Mangal.....” “..... Mr.Sandhu used to deal in all these property matters in collusion with Ashok Malhotra and he used to keep all the documents at his residence i.e. House No.11, Hakikat Nagar.....”
33. A plain reading of the statement would show that Mr.Sandhu referred to by Mr.Mohan Lal is Mr.Ravinder Singh Sandhu, S/o.Gurbaj Singh Sandhu, R/o.11, Hakikat Nagar, Kingsway Camp, Delhi, whose address and parentage is clear from the statement which has also been placed on record of Ravinder Singh Sandhu. Thus, the statement of Mr.Mohan Lal, read with the statement of Mr.Ravinder Singh Sandhu, which are basis of the entire case of the prosecution can be of no benefit to the prosecution.

Even otherwise, Mr.Ravinder Singh Sandhu and Mr.Mohan Lal are not named in the FIR registered against the petitioner. The petitioner would have no right to cross-examine these two persons and in view of the law laid down in the case of Peoples Union for Civil Liberties (Supra) and Rashid Gafoor Parkar (Supra), I am of the view that it would be highly unsafe to rely on these statements and in the absence of any other evidence these two statements cannot constitute any substantial evidence to frame charge against the petitioner herein.

34. The case of State of Gujarat Vs. Mohammed Atik (Supra) would show that this judgment pertains to a case under TADA and a differentiation has been made that in cases under TADA a confession made to the police can be relied upon by the prosecution, by virtue of section 15(1) of TADA which removes the bar of Section 162 Cr.P.C. and Section 25 of the Evidence Act, regarding admissibility of such a statement.
35. Reading of the paragraph 5 of the above said judgment makes it clear that the Apex Court was conscious of the fact that they were dealing with the matter of TADA and thus it was observed that a confessional statement recorded in accordance with the requirements contained in the section becomes admissible, in spite of the bar contained in section 25 of the Evidence Act or section 162 of the Code of Criminal Procedure. Paragraph 7 of the judgment State of Gujarat Vs. Mohammed Atik (Supra) is reproduced below:

“7. We have, therefore, absolutely no doubt that a confession, if usable under Section 15 of the TADA, would not become unusable merely because the case is different or the crime is different. If the confession covers that different crime it would be a relevant item of evidence in the case in which that crime is under trial and it would then become admissible in the case.”

36. It is submitted that reading of the abovesaid would also make it clear that the intention of the Supreme Court and the observations in this judgment are strictly with respect to cases under TADA.
37. It may also be noticed that it is the case of the CBI that the petitioner was responsible for allowing allotment through manual *parchi* and that he was responsible for draws which were held and the allotments which were made. It is contended that keeping this aspect in mind and reading the statements made under Section 164 by Mr.Ravinder Singh Sandhu and Mr.Mohan Lal would leave no room for doubt with regard to the role played by the petitioner.
38. Reply to the RTI would show that petitioner being the head of the institution was nowhere concerned with verification of the names appearing in the Joint Survey List which was prepared by the Field Staff and forwarded by the other officers in the hierarchy. Moreover, the manual draw was held strictly in accordance with the rules and guidelines issued in this regard from time to time.
39. Learned senior counsel for the petitioner has relied upon page 9 of the impugned order dated 7.11.2012, wherein it has been noted that on 5.7.2006 co-accused, Philip Toppo, who was the then Deputy Director took approval for conducting the draw manually by *parchi* system from Sh.R.M.Pillai, the then Additional Commissioner and then the draw was accordingly conducted. Reliance is also placed on the office order dated 7.8.2006 which refers to the order dated 7.7.2006 wherein it has been stated that in cases of less than 50 dwellers in number, draw can be held manually. Office order dated 7.8.2006 is reproduced below:

**“SLUM & JJ DEPARTMENT
MUNICIPAL CORPORATION OF DELHI**

OFFICE ORDER

Additional Commissioner (S&JJ) vide his orders dt.07/07/06 on file titled “Some basic issues related to Relocation Policy” has been pleased to accord his approval to conduct draw of plots on manual basis through Parchi System for 50 dwellers or less than 50 dwellers in numbers. The draw of plots for more than 50 dwellers would be done through computer only. The members of the Draw Committee are as follows:

1. Director(SUR)
2. Deputy Director (SUR)
3. Assistant Director (SUR)
4. Concerned Dealing Assistant

The aforesaid committee is formed to conduct draw on manual basis (Parchi System). To complete quorum for conducting draw presence of any of two members as aforesaid is required.

(PHILLIP TOPPO)
DEPUTY DIRECTOR (SUR)”

40. It is clarified by learned senior counsel for the petitioner that being the Director, the petitioner had merely counter-signed the slips and not signed on the slips by way of verification.
41. The trial Court while framing the charges has categorically observed that it is well settled that documents relied upon by the accused persons are not to be considered at the stage of framing of charges and they are required to be produced in defence. But this Court is not handicapped, having regard to the observations made by the Apex Court in the recent decision in *Rajiv Thapar (Supra)* wherein it has been categorically held that in the facts and circumstances of a given case and more particularly to prevent the abuse of process of the Court and to secure ends of justice

and in proceedings under Section 482, the High Court can look into such documents.

42. It may be clarified that in this case the documents looked into by this Court are not self-serving documents of the petitioner and they are the official documents received in response to RTI query from the department, which ascribed the role of the Director and also taking into consideration that conducting a manual draw was not ingenuity of the petitioner, but was as per the circular of 2006 and further permission to conduct manual draw was neither given by the petitioner nor at his behest, but was granted by Sh.R.M.Pillai, Addl. Commissioner MCD (S&JJ) as observed earlier, at the request of Mr.Philip Toppo and in line with the circular of the department itself. Thus it cannot be said that the petitioner conducted the manual draw or was involved in the policy for conducting the manual draw. Being the Director, as per the reply received to the RTI query, petitioner was not involved in verification of the documents received from the dwellers. The statement of Mohan Lal, does not name the petitioner and in fact it names Mr.Sandhu, who in another case had already given his statement. Thus in my view to frame charges against the petitioner solely on the statement of Ravinder Singh Sandhu would not be safe. Accordingly, the impugned order on charge dated 7.11.2012 and charge dated 17.01.2013, qua petitioner are quashed.
43. Writ petition and the application stand disposed of.

(G.S.SISTANI)
JUDGE

MARCH 21, 2014 //ssn //