

Reserved on 18th October, 2023

Delivered on 2nd November, 2023

In Chamber

Case :- CRIMINAL REVISION No. - 4600 of 2023

Revisionist :- Shiv Shankar Soni

Opposite Party :- State of U.P. and Another

Counsel for Revisionist :- Bipin Kumar Tripathi

Counsel for Opposite Party :- G.A.,Manoj Kumar

Hon'ble Shiv Shanker Prasad,J.

1. This criminal revision under Section 397/401 Cr.P.C. has been filed by the revisionist with a prayer to quash the judgment and order dated 5th December, 2022 passed by the Additional Sessions Judge/F.T.C.-I (Crime Against Women), Gorakhpur in Special Case No. 2133 of 2022 (State of U.P. Vs. Shiv Shankar Soni), arising out of Case Crime No. 410 of 2022, 323, 504, 376 and 313 I.P.C., Police Station-Cantt. District-Gorakhpur, whereby the charges under Sections 376, 313, 323 and 504 I.P.C. have been framed against the accused-revisionist and also the prayer made on behalf of the revisionist before the trial judge for discharge has not been considered.

2. I have heard Mr. Bipin Kumar Tripathi, learned counsel for the revisionist, Mr. Manoj Kumar, learned counsel for opposite party no.2 and Mr. Ratnesh Kumar Singh, learned A.G.A. for the State.

Case of the Revisionist

3. Victim/informant/opposite party no.2 is a married lady and has developed physical relationship with the revisionist for a long period of four years with her own free will and without any pressure. The marriage of the victim/ informant was solemnized on 27.5.2015 with one Jay Singh and from the aforesaid wedlock, two children; (1) Ansh Singh (2) Shreyansh Singh were born, as is evident from the statements of Ramdaras Singh (real uncle of

informant) and Smt. Babita devi (real sister of the victim informant) recorded under Section 161 Cr.P.C. As per the own statement of the informant/victim recorded under section 164 Cr.P.C., after one year of her marriage, her husband Jay Singh used to quarrel with her in intoxicating state due to which the relation between the wife and husband i.e. informant and her husband became strained and incompatible. However it transpires from the statement of the informant/victim recorded under Section 161 Cr.P.C. that after two years of marriage, her husband Jay Singh went Abroad (OMAN) and thereafter the victim/ informant without divorcing her husband legally, had established physical relationship with the accused-revisionist on her own free will. Admittedly, the victim/ informant had remained in a consensual physical relationship with the revisionist for about 4 years without getting herself divorced with her husband Jay Singh and as such she had well within her knowledge that she could not marry the revisionist without divorce, as such the allegation made by the informant/victim against the revisionist that he had established physical relationship with her on the promise to marry her has no legs to stand. Such relationship comes within the definition of extra-marital relationship with the consent of both the parties and not within the ambit of offence under Section 376 I.P.C. Further allegation of the victim against the revisionist that from the physical relationship of the victim with the revisionist, a boy, namely, Shreyansh was born, also does not arise, as from the birth certificate issued by C.H.C. Kaptanganj the date of birth of Shreyansh Singh is 10.11.2019 showing parentage/father's name as Jay Singh, as such the said allegation has only been made to launch malicious criminal prosecution against the revisionist and just to blackmail and exploit him as he is a railway government servant having unmarried status.

4. So far as the allegation made by the victim in the F.I.R. that on 22.4.2022 the revisionist assaulted in the stomach of the victim which caused miscarriage of her unborn child is concerned,

it is the case of the revisionist that the USG and Ultrasonography reports of the victim dated 17th April, 2022 and 1st April, 2022 disclose that there was no any kind of miscarriage of unborn child. In case the revisionist has persuaded to abort the unborn child of the victim, then there should have been any kind of prompt complaint against him before registration of the FIR. From the evidence collected by the Investigating Officer through the statements of Ramdaras Singh and Smt. Babita Devi (real sister of the victim) recorded under Section 161 Cr.P.C. there was dispute of money transaction between the victim and the revisionist and for such payment of money an altercation and quarrel took place between them which resulted in strained relations between them also and consequently, the malicious criminal prosecution has been launched by the victim/ informant. The real fact is that since the husband of the victim/ informant was residing abroad (OMAN) and from the aforesaid wedlock two boys, namely, Shreyansh and Ansh were born and after departing of her husband to abroad, she has established extra marital relationship with the revisionist on her own free will and due to family and society pressure, she herself decided to abort the pregnancy conceived by her and now she is developing the things just to make out the case and she often used to come to the rental accommodation of the revisionist with undue demand of huge amount to settle the matter.

The case of the victim/informant

5. In the year 2018 the revisionist acquainted with the opposite party no.2 and on 29.01.2019 when opposite party no.2 was waiting for train at the Gorakhpur Railway Station, revisionist, who was working as Ticket Collector met her and took her to Retiring Room of the Station, where he committed rape upon her forcefully and thereafter on the promise to marry her as also on blackmailing, he committed rape upon her time and again and he also forced her to abort her pregnancy.

6. After registration of the first information report against the revisionist, the Investigating Officer proceeded with the investigation and after collecting the relevant evidence and materials, submitted the charge sheet under Section 323, 504, 376, 313 I.P.C. against the revisionist on 11.09.2022 upon which concerned Magistrate took cognizance of offence and summoned the revisionist for facing the trial vide order dated 23.09.2022. Thereafter the case has been committed to the Court of Sessions, where the charges have been framed against the revisionist under Section 323, 504, 376, 313 I.P.C. vide order impugned dated 05.12.2022. It is against this order that the present criminal revision has been filed by the revisionist.

7. Submission of the learned counsel for the revisionist

(I) From the perusal of entire material available in the case diary, no offence under 323, 504, 376, 313 I.P.C., is made out against the revisionist.

(II) The trial court in a very routine and casual manner framed the charges against the revisionist while passing the impugned order without evaluating the material collected by the Investigating Officer during the course of investigation.

(III) The revisionist was arrested on 26.7.2022 pursuant to the present criminal case during his custody the Investigating Officer concluded the investigation by filing charge-sheet dated 11.9.2022 and the learned Magistrate has taken cognizance vide order dated 23.9.2022 and further the trial court framed the charges on 5.12.2022 and the revisionist was through out remained in custody and he was granted bail pursuant to order dated 14.12.2022 and therefore at no point of time, he has been provided any opportunity of seeking legal remedy against the cognizance order as well as the order of framing charge and as such the entire criminal prosecution is bad in the eye of law.

(IV) The victim/informant herself was a married and grown-up lady and without divorcing her husband Jay Singh as per the law, claimed to have established extra-marital relationship with the

revisionist on her own free will and now for want of money from the revisionist, she has initiated the present malicious criminal prosecution in the shape of denial of promise to marry and therefore the entire prosecution story appears to be malafide and prima-facie no offence against the revisionist is made out.

(V) So far as the screen shot of communication on Whatsapp between the victim and the revisionist, which is part of the case diary is concerned, it is submitted by the learned counsel for the revisionist that such electronic evidence cannot be admissible as per Section 65 (B) (4) Indian Evidence Act as also in view of the latest judgment of the Hon'ble Supreme court in the case of **Ravindra Singh alias Kakku Versus State of Punjab** reported in (2022) (live law (SC) 461.

(VI) In the totality of facts and circumstances, it is a case of consensual physical relation with the revisionist of a married lady who already had two children born from the wedlock of her marriage with Jai Singh and belatedly after 4 to 5 years the victim/ informant came with the malicious criminal prosecution just to blackmail and exploit the revisionist, who is a public servant. The victim/ informant at every stage of her statements i.e. Statements recorded under Sections 161 and 164 Cr.P.C., she has taken contradictory stand, whereas in her second statement recorded under Section 161 Cr.P.C., she has admitted the factum of dispute between applicant and her in respect of money transaction.

(VII) In the totality of facts and circumstances, in absence of legal divorce being taken from her earlier husband, the alleged promise of revisionist to marry her does not arise. Since it is a case of extra-marital relationship between two adult and mature parties, no offence under Section 376 I.P.C. is made out against the revisionist. Maximum, on the face value of allegation, it is a case of live-in consensual relation between married lady and the revisionist and therefore no offence under Sections-323, 504,

376, 313 I.P.C., is made out against the revisionist. The court below / learned Magistrate as well as trial court has arbitrarily taken the cognizance and framed the charges against the revisionist while passing the impugned order without affording opportunity of hearing to the revisionist for seeking his discharge.

(VIII) Since the revisionist is a public servant posted as Assistant Supervisor in I.R.C.T.C. Railways CPSE, Central Government, the criminal prosecution against public servant is barred by Section 197 Cr.P.C.

In support of his case qua the consensual physical relations on the pretext of promise to marry, learned counsel for the revisionist has referred to the following judgments of the Apex Court:

- (a) **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra** reported in *2019 (1) JIC-784 (SC)*;
- (b) **Tilakraj Vs. State of Himanchal Pradesh** reported in *(2016) 2 SCC (Crl.) 247*;
- (c) **Maheshwar Tigga Vs. State of Jharkhand** reported in *2020 (0) Supreme (SC) 561*;
- (d) **Shambhu Kharwar Vs. State of U.P. & Others** reported in *MANU/SC/1011/2022*; and
- (e) **Naim Ahmad Vs. State of NCT of Delhi** reported in *2023 (Live Law) SC 66*.

On the cumulative strength of the aforesaid submissions, learned counsel for the revisionist submits that the impugned order is arbitrary, illegal and bad in the eye of law and as such liable to be set aside in the facts and circumstances of the present case in the interest of justice.

8. On the other-hand, the learned counsel for opposite party no.2 and the learned A.G.A. for the State have disputed the submissions made by the learned counsel for the revisionist by

contending that there is no illegality or infirmity in the order passed by the trial judge framing charges against the revisionist.

9. Learned A.G.A. and the learned counsel for opposite party no.2 then submits that the material/evidence on record against the revisionist was found to be more than prima facie to show that the revisionist indulged actively in the commission of alleged offence. The trial judge, while passing the impugned order, has taken all the precautions and did not hurriedly frame the charges against the revisionist. While framing charges against the revisionist the trial Judge has followed all the precautions and guidelines as framed by the Apex Court in its various judgments.

10. The learned A.G.A. and the learned counsel for opposite party no.2 contend that there is ample material on record collected during the investigation against the revisionist which goes to show that he was actively involved in the commission of the alleged offence i.e. rape of the victim etc. The trial Judge has rightly considered the entire material collected during the course of investigation and thereafter has recorded its finding that there was more than prima facie case against the revisionist for framing of charges against him.

11. **Apart from the above, learned counsel for opposite party no.2 has submitted as follows:**

(i) It is an admitted position that vide order dated 05.12.2022, charges have been framed against revisionist and once charges have been framed, plea of discharge becomes infructuous. Discharge can be claimed only prior to the framing of charge. Once charges have been framed, Court has no jurisdiction to discharge an accused. After framing of charge, Court can either convict or acquit an accused, but cannot discharge him/her.

(ii) Under the order impugned, on the basis of grave suspicion as also on the basis of sufficient material/evidence on record.

(iii) The present case arises out of proceedings of Sessions Trial and consequently, the discharge could be claimed by revisionist

under Section 227 Cr.P.C. Section 227 Cr.P.C. contemplates that court shall discharge an accused provided there is no sufficient ground for proceeding against the accused. The term "sufficient ground" has been explained by Hon'ble Supreme Court in case of **Yogesh Joshi Vs. State of Maharashtra** reported in *AIR 2008 Supreme Court 2971*.

(iv). Subsequently, the ambit and scope of Section 227 Cr.P.C. as well as parameters regarding exercise of jurisdiction under Section 227 Cr.P.C. came to be considered by a three Judges Bench of Supreme Court in **Tarun Jit Tejpal Vs. State of Goa and Another**, reported in *2019 SCC Online SC 1053*. In a Sessions Trial, charges are framed under Section 228 Cr.P.C. Parameters regarding exercise of jurisdiction under Section 228 Cr. P. C. has now been considered by a three Judges Bench of Hon'ble Apex Court in **Bhawna Bai Vs. Ghanshyam and others**, reported in *2020 (2) SCC, 217*.

(v) On the basis of aforesaid laws as settled by the Apex Court, it is submitted that regarding exercise of jurisdiction under Section 227 Cr.P.C., this Hon'ble Court examine as to whether after charges have been framed the issue relating to discharge of an accused can be considered by court or not. This issue is no longer res-integra and stands concluded by the judgment of Hon'ble Supreme Court in case of **Ratilal Bhanji Mithani Vs. State of Maharashtra and others** reported in *(1979) 2 SCC 179*, which has been followed in the cases of **Bharat Parikh Vs. C.B.I. and another** reported in *(2008) 10 SCC 109*; **State through C.B.I. New Delhi Vs. Jitendra Kumar Singh** reported in *(2014) 11 SCC, 724* and **Hardeep Singh Vs. State of Punjab**, reported in *(2014) 3 SCC, 92*.

On the cumulative strength of the aforesaid, learned counsel for opposite party no.2 submits that considering the facts and circumstances of the case stated above, it is expedient in the interest of justice that this Hon'ble Court may graciously be pleased to reject/dismiss the present Criminal Revision in exercise of powers under Under Section 397/401 of Cr.P.C..

12. This Court has considered the submissions made by the learned counsel for the parties and gone through the records of the present criminal revision specifically the order impugned.

13. It is no doubt true that the discharge can be claimed under Section 227 Cr.P.C., which reads as follows:

"227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

14. The term "sufficient ground" has been explained by the Apex Court in the case of **Yogesh Joshi (Supra)**. For ready reference relevant paragraph nos. 13, 14 and 15 are being extracted herein-below:

"13. Before adverting to the rival submissions, we may briefly notice the scope and ambit of powers of the Trial Judge under Section 227 of the Code.

14. Chapter XVIII of the Code lays down the procedure for trial before the Court of Sessions, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the Court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.

15. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the Section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material 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 a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave

suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, makes a conviction reasonably possible. [See: State of Bihar Vs. Ramesh Singh and Prafulla Kumar Samal (supra)]"

15. The scope and ambit of Section 227 Cr.P.C. has been considered by the Apex Court in the case of **Tarun Jit Tejpal (Supra)**, relevant paragraph nos. 27, 28, 29, 30, 31, 32 whereof are being extracted here-under:

" 27. Now, so far as the prayer of the appellant to discharge him and the submissions made by Shri Vikas Singh, learned Senior Advocate on merits are concerned, the law on the scope at the stage of Section 227/228 CrPC is required to be considered.

28. In the case of N. Suresh Rajan (Supra) this Court had an occasion to consider in detail the scope of the proceedings at the stage of framing of the charge under Section 227/228 CrPC. After considering earlier decisions of this Court on the point thereafter in paragraph 29 to 31 this Court has observed and held as under:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

30. Reference in this connection can be made to a recent decision of this Court in *Sheoraj Singh Ahlawat v. State of U.P.* [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52] , in which, after analysing various decisions on the point, this Court endorsed the following view taken in *Onkar Nath Mishra v. State (NCT of Delhi)* [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (*Sheoraj Singh Ahlawat case* [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52] , SCC p. 482, para 15)

"15. '11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.' (*Onkar Nath case* [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] , SCC p. 565, para 11)" (emphasis in original)

31. Now reverting to the decisions of this Court in *Sajjan Kumar* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] and *Dilawar Balu Kurane* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused:

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons

to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction".

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S. Nayak v. A.R. Antulay [(1986) 2 SCC 716 : 1986 SCC (Cri) 256] . The same reads as follows: (SCC pp. 755 56, para 43)

"43. ... Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of 'prima facie' case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

29. In the subsequent decision in the case of S. Selvi (Supra) this Court has summarised the principles while framing of the charge at the stage of Section 227/228 of the CrPC. This Court has observed and held in paragraph 6 and 7 as under:

"6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , Sajjan Kumar v. CBI[Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power

*to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, **the court will be fully justified in framing the charge**; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.*

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376, 77, para 21)

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

(ii) Where the materials placed before the court 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 disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

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

30. In the case of Mauvin Godinho (Supra) this Court had an occasion to consider how to determine prima facie case while framing the charge under Section 227/228 of the CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 of the CrPC 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.

31. At this stage the decision of this Court in the case of Stree Atyachar Virodhi Parishad (Supra) is also required to be referred to. In that aforesaid decision this Court had an occasion to consider the scope of enquiry at the stage of deciding the matter under Section 227/228 of the CrPC. In paragraphs 11 to 14 observations of this Court in the aforesaid decision are as under :

"11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides:

"227. Discharge.--If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject matter of consideration by this Court. In State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257] , Untwalia, J., while explaining the scope of the said sections observed: [SCR p. 259 : SCC pp. 41 42 : SCC (Cri) pp. 535 36, para 4]

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously Judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for

the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.

13. In Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] , Fazal Ali, J., summarised some of the principles: [SCR pp. 234 35 : SCC p. 9 : SCC (Cri) pp. 613 14, para 10]"

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out.

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

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

14. These two decisions do not lay down different principles. Prafulla Kumar case [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri)

533 : (1978) 1 SCR 257] . In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

32. Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Section 227/228 if the CrPC, we are of the opinion that the submissions made by the learned Counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned Counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned Counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for."

16. Having noted the law regarding exercise of jurisdiction under Section 227 Cr.P.C., this Court is further required to examine as to whether after charges have been framed the issue relating to discharge of an accused can be considered by court or not. Aforesaid issue is no longer res-integra and stands concluded by the judgement of Supreme Court in **Ratilal Bhanji Mithani Vs. State of Maharashtra and others** reported in (1979) 2 SCC 179, paragraph 28, which has been followed in **Bharat Parikh Vs. C.B.I. and another** reported in (2008) 10 SCC 109, paragraph 16, **State through C.B.I. New Delhi Vs. Jitendra Kumar Singh** reported in (2014) 11 SCC, 724, paragraph 40, **Hardeep**

Singh Vs. State of Punjab, reported in (2014) 3 SCC, 92, paragraph 31.

17. It is thus apparent that once charges have been framed, the issue of discharge becomes redundant, as Courts have no jurisdiction to allow discharge after charges having been framed. After charges have been framed, Court can either convict or acquit an accused. Admittedly, in the present case, charges have been framed, vide order dated 5th December, 2022. Resultantly, this Court now cannot examine the veracity of order dated 5th December, 2022, whereby discharge of the revisionist made by his counsel before the court below has not been considered.

18. This leads to the last question to be considered by this Court i.e. the veracity of the order dated 5th December, 2022, whereby charges have been framed against applicant/revisionist.

19. In a Sessions Trial, charges are framed under Section 228 Cr. P. C. Parameters regarding exercise of jurisdiction under Section 228 Cr. P. C. has now been considered by a three Judges Bench of Apex Court in *Bhawna Bai Vs. Ghanshyam and others*, reported in 2020 (2) SCC, 217, wherein Court has held as follows in paragraphs 15 and 16.

"15. Considering the scope of Sections 227 and 228 Crl.P.C., in Amit Kapoor v. Ramesh Chander and another (2012) 9 SCC 460, the Supreme Court held as under:-

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of

the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

.....
19. *At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in State of Bihar v. Ramesh Singh (1977) 4 SCC 39: (SCC pp. 41-42, para 4) "4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which -- ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction.*

Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if

there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

16. After referring to Amit Kapoor, in Dinesh Tiwari v. State of Uttar Pradesh and another (2014) 13 SCC 137, the Supreme Court held that for framing charge under Section 228 CrI.P.C., the judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence."

20. Admittedly, discharge claimed by applicant/revisionist has been refused by Court below, vide order dated 5th December, 2022. Criminal Revision preferred by applicant/revisionist cannot be considered now as charges have already been framed. Thus by necessary implication, this Court now cannot examine the veracity of the framing of charge order dated 5th December, 2022.

21. Apart from above, when framing of charge order is examined in the light of ambit and scope of Section 228 Cr. P. C. as defined by Apex Court in aforementioned judgement, this Court is of

considered opinion that at this stage, it cannot be said that no offence under Sections 323, 504, 376 and 313 I.P.C. is made out against applicant/revisionist.

22. All the submissions made by the learned counsel for the revisionist that (a) after framing of charge, his prayer for discharge can be considered by the trial court, (b) the prima facie case for the offence under Sections 323, 504, 376 and 313 is not made out against the revisionist on the ground that the victim/opposite party no.2, who is a married lady having two children, without getting herself divorced from her husband has established physical relationship with the revisionist on her own free will for a long period, (c) the revisionist has not been afforded any opportunity to lead any evidence in support of his case and (d) electronic evidence like screen shot of Whatsapp communication between the revisionist and the victim is not admissible as per Section 65 (B) (4) of the Indian Evidence Act as also in view of the judgment of the Apex Court in the case of **Ravindra Singh @ Kakku (Supra)** have been discussed by the Apex Court in its latest judgment in the case of **State of Gujarat VS. Dilipsinh Kishorsinh Rao** reported in 2023 SCC OnLine SC 1294 and the Apex Court in following paragraphs has opined that such submissions cannot be considered by the High Court either in revisional jurisdiction under Section 397 Cr.P.C. or in extraordinary jurisdiction under Section 482 Cr.P.C.:

“7.It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material.

The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the

purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the chargesheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 of the Cr.P.C. is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu Vs. N. Suresh Rajan And Others (2014) 11 SCC 709 adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge.

It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value

of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction.

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

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case.

It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

13. The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. It would be apposite to refer to the judgment of this court in Amit Kapoor Vs. Ramesh Chandra (2012) 9 SCC 460 where scope of Section 397 has been considered and succinctly explained as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of

any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law.

If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie.

Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

14. This Court in the aforesaid judgement has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr.P.C. is sought for as under:

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles.

At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the

Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

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

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

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

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

15. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge.

16. In the teeth of the above analysis of law when the impugned order of the High Court is perused, it would not detain us for too long to brush aside the contentions raised by the respondent-accused for reasons more than one.

Firstly, the charge-sheet has been filed after taking into consideration the written submissions filed by the accused before the Investigating Authority which included the documentary evidences tendered by the respondent accused.

Secondly, the statement of friends and acquaintances from whom loans of large amounts had been borrowed by the accused which had been relied upon by the accused to stave off the prosecution in his written submissions filed before the Investigating Authority and which material had persuaded the High Court to accept the same on its evaluation to be true, is nothing but short of accepting the same as defence evidence

and examining the truthfulness of its contents even before trial could be commenced or held.

Thirdly, the High Court has proceeded to examine the pros and cons of defense by weighing the defence-evidence and probabilities of the conclusion that may ultimately be arrived at, as the basis for exercising the revisional jurisdiction which was impermissible.

Fourthly, the purported loans said to have been obtained by the respondent accused from his mother, brother and father are all question of facts which requires adjudication and this could be done only during trial and the explanation relating to borrowing of large sums raises a reasonable suspicion, which has been termed by the Investigating Agency as strong material to file the charge sheet and based on such material the sanctioning authority also recorded its satisfaction under sanction order dated: 05.03.2015 to prosecute the respondent-accused. Hence, raising reasonable suspicion cannot be held or construed at the primary stage for discharging the accused.

17. The plea or the defence when requiring to be proved during course of trial is itself sufficient for framing the charge. In the instant case, the learned Trial Judge has noticed that explanation provided by the respondent accused pertaining to purchase of shop No.7 of Suman City Complex of plot No.19, Sector-11 from the loan borrowed and paid by the respondent was outside the check period and hence the explanation provided by respondent is a mere eye wash.

This is an issue which has to be thrashed out during the course of the trial and at the stage of framing the charge mini trial cannot be held. That apart the explanation offered by the respondent accused with regard to buying of Maruti Wagon-R car, Activa scooter, purchase of house etc., according to the prosecution are all the subject matter of trial or it is in the nature of defence which will have to be evaluated after trial.

18. In the afore-stated circumstances we are of the considered view that High Court had committed a serious error in interfering with the well-reasoned order passed by the trial court. Hence, the impugned judgment dated 11.01.2018 passed in Criminal Revision Application No.387 of 2016 setting aside the trial court order dated 13.04.2016 requires to be set aside and accordingly it is set aside and appeal is allowed.”

23. On the evaluation and deeper scrutiny of the submissions made by the learned counsel for the parties, the case laws cited and quoted above as also the records of the present criminal

revision, this Court does not find any good ground to interfere with the order impugned.

24. As a result, the present Criminal Revision filed by applicant/revisionist are liable to be dismissed.

25. It is, accordingly, **dismissed**.

26. There shall be no orders as to cost.

(Shiv Shanker Prasad, J.)

Order Date :- 02.11.2023

Sushil/-