

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 1877 OF 2018

1. Mrs. Dharmi Athreya Swaminathan
Age: 69 years, Occupation: Business
Residing at: C 201, Eden III,
Hiranandani Gardens, Powai,
Mumbai 400 079
2. Mrs. Kavita Vaidyanathan
Age: 41 years,
Residing at: 302, Vigyan,
3rd Floor, Sector – 17, Vashi,
New Mumbai
3. Rashmin Panachan Shah
Age: 56 years, Occupation: Business
Having Office at: 9, Trimurti,
Ashok Nagar, Cross Road No.2,
Kandivali (E), Mumbai.
4. Mrs. Bhagyalata Ravindra Panchal
Age: 47 years, Occupation: Business
Residing at: 1, Yoga Yog Saddan,
Ramwadi, Jogeshwari Vikhroli Link Road,
Jogeshwari (E), Mumbai – 400 060

... Petitioners

V/s.

1. The State of Maharashtra,
At the instance of
Jogeshwari Police Station, Mumbai.
2. Lachman Staramdas Pardasani,
Age: 70 Years, Occupation: Business
Indian Inhabitant
Residing at: 302, Nisarg Society,
Nargis Dutt Marg, Mumbai 50.

... Respondents

Mr. Siddhesh Bhole a/w Ms. Shreya Agarwal i/by Mr. Abdullah Katlariwala for the Petitioners.

Mrs. Sangita Phad, A.P.P. for Respondent -State.

Ms. Mallika Ingale for the Respondent No.2.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 17th JULY 2026

PRONOUNCED ON : 15th OCTOBER 2026

JUDGMENT: -

1) By the present Petition, filed under Article 227 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973 (for short 'CrPC')/now 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the Petitioners seek to quash and set aside the Order dated 13th March 2018 passed by Additional Sessions Judge, Dindoshi, Mumbai whereby the Petitioner's Revision Applications were dismissed. The Petitioners also seek discharge of the Petitioners from Criminal Case No. 783/PW/2012 pending before the Additional Chief Metropolitan Magistrate, 10th Court, Andheri.

2) Heard, Mr. Siddhesh Bhole for the Petitioners, Mrs. Sangita Phad, A.P.P. for Respondent and Ms. Mallika Ingale for Respondent No.2.

3) Briefly stated the Prosecution case as alleged is as under:

3.1) The Complainant/Respondent No.2 and Accused No.1 i.e. V. Swaminathan were partners in M/s. Fabdecon Engineers. They decided to start a new company by the name of M/s. Akay Organic Limited. That, Respondent No.2 was busy in managing the business of Akay Organics Pvt

Ltd. Mr. V. Swaminathan/Accused No.1 was looking after the business and affairs of M/s. Fabdecon Engineers. The Accused No.1 took undue advantage of his having control and dominion over the assets including knowhow, designs data etc. of M/s. Fabdecon Engineers and fraudulently misappropriated the same for his personal use, benefit and profit. The Accused Nos. 2 to 7 abetted the Accused No.1 in the said plan/conspiracy by starting various front companies. The front companies were used to divert the orders/profits, etc.

3.2) That, Accused No.6 i.e. Ms. Bhagyalata Ravindra Panchal was the proprietor of M/s. Deman Engineers. Accused No.2 Ms. Dharmi Swaminathan was proprietor of M/s. Traxit Engineers. The Accused No. 1 diverted Orders received by M/s. Fabdecon Engineers to the front companies and transferred profits to their personal accounts opened in the name of proprietary firm. That, Accused No.1 subsequently resigned as partner from M/s. Fabdecon Engineers and became the CEO of M/s. Traxit Engineers Private Limited.

3.3) That, the Prosecution case is of diversion of recurring Orders of M/s. Fabdecon Engineers to M/s. Deman Engineers and M/s. Traxit Engineers. That, documents also show diversion of funds, which were earned as profits, by executing the diverted Orders in the aforesaid manner from the above mentioned front companies. The funds were diverted to Accused No.1 who in turn transferred the funds to the accounts of M/s. Deman Engineers. That, funds were diverted to the account of M/s. Dharmik Associates started in the

name of Accused No.3. Funds were diverted to Chroma Industries without corresponding invoices etc. There are various documents and record which show complicity of the co-accused in abetting Accused No.1 in committing the offence of fraudulent misappropriation of the assets.

4) Mr. Siddhesh Bhole, learned Advocate appearing for the Petitioners submits that: -

4.1) The Respondent No.2 and Accused No.1 were partners in M/s. Fabdecon Engineers since 1979. Original Accused No.4 Ravindra Panchal was the senior draftsman with the said firm and he resigned on 12th July 1997. On 8th July 1999, the Petitioner No.2 Savita Swaminathan the daughter of Accused No.1 along with Accused No.4 Ravindra Panchal incorporated with M/s. Traxit Engineers Pvt. Ltd. Based on the allegation that, the orders meant for M/s. Fabdecon Engineers were diverted by the Accused, complaint application came to be filed under Section 156(3) of the Code of Criminal Procedure before the ACMM, 16th Ballard Pier Court. Investigation was directed through the Yellow Gate Police Station.

4.2) By Order dated 16th December 2002, the ACMM, 16th Ballard Pier Court, returned the complaint under Section 201 of the CrPC after accepting the report from the Yellow Gate Police Station. This was on the ground that, the alleged offences had not been committed within its jurisdiction. Thereafter, Respondent No.2 preferred the above complaint and by order dated 20th August 2002, the ACMM, Andheri Court directed the MIDC, Police

Station to investigate the complaint in which a 'C' Summary Report was filed on 14th June 2004. The Respondent No.2 preferred a Protest Petition against the 'C' Summary Report.

4.3) On 5th February 2005, the ACMM Andheri Court after considering the Protest Petition filed by Respondent No.2 directed the Jogeshwari Police Station i.e. the Police Station distinct from MIDC Police Station who had conducted the earlier investigation to "conduct a reinvestigation" into the same complaint. Pursuant to the said reinvestigation, the Jogeshwari Police Station filed a chargesheet on 12th April 2012 under Sections 403, 406, 409, 420, 468 read with Section 34 of the IPC against the Petitioners and the other Accused.

4.4) After filing of the chargesheet, the Petitioner filed an Application for discharge under Section 239 of the CrPC which was rejected by Order dated 28th July 2016 against which the Petitioners preferred the Criminal Revision Applications.

4.5) The Magistrate had no jurisdiction or authority to direct a reinvestigation or fresh investigation. The Order dated 5th February 2005, directing reinvestigation of the complaint is untenable. It is a settled law that, the Magistrate has no power to direct reinvestigation or fresh investigation. The Sessions Judge erred in holding that the use of the word 'reinvestigation' in the order ought to be read down and construed as an order for further investigation under Section 173(8) of the CrPC. That, in effect the Magistrate

in fact transferred the investigation to a unconnected/different Police Station and directed a reinvestigation.

4.6) The Order dated 5th February 2005 directing reinvestigation is without jurisdiction. Therefore, the entire subsequent proceedings including filing of the charge-sheet which is founded upon the order dated 5th February 2005 is vitiated. The Order dated 5th February 2005 clearly orders the reinvestigation which is not permissible.

4.7) Reliance was placed on the Judgment of the *Vinay Tyagi Vs. Irshad Ali alias Deepak and Ors.*, reported in (2013) 5 SCC 762, *Hemant Dayalal Bhatt Vs. State of Maharashtra and Anr.* Passed in Criminal Application No. 460 of 2013, *Infrastructure Leasing & Financial Services Ltd. Vs. The State of Maharashtra & Anr.*, reported in 2016 SCC OnLine Bom 10579 and *Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujrat & Anr.* Reported in (2019) 17 SCC 1.

4.8) No role has been assigned to Petitioner No.3. The Petitioner No.3 has already been discharged from offence under Section 403, 406, 409, 468 read with 34 of the IPC. The only relation/connection of the Petitioner No.3 with the transaction is that he allegedly functions as a trade/marketing representative of Accused No.7 and is a director of M/s. Traxit Pvt. Ltd. That, there is no specific overt act or dishonest inducement which is attributable to the Petitioner No.3.

4.9) No role has been attributed to the Petitioner Nos. 1 and 2, who

are the wife and daughter of the original Accused No.1. Petitioner No.1 is a housewife and never an employee, partner or officer of M/s. Fabdecon Engineers. The only connection of Petitioner No.1 as alleged in the chargesheet is that she is the wife of Accused No.1 and a majority shareholder in M/s. Traxit Industries Pvt. Ltd. That, no act of negotiation, inducement or execution of any diverted order is attributed to Petitioner No.1. Petitioner No.1 has been discharged from Sections 403, 406, 409, 468 read with 34 of the IPC.

4.10) Petitioner No.2 is discharged under Section 403, 406 and 409 read with 34 of the IPC. That, charging Petitioner No.2 with an offence under Section 468 of the IPC relying on certain letter which is said to bear her signature is totally unfounded and untenable. The Order notes that, the language and contents of those letters are of Accused No.1. That, a Director signing correspondence drafted by or at the instance of another does not by itself establish mens rea of forgery under Section 463 of the IPC i.e. making a false document with intent to cause damage or injury or support a false claim or commit or facilitate commission of a fraud. None of the ingredients of forgery under Section 463 of IPC are made out.

5) Ms. Mallika Ingale, the learned Advocate for the Respondent submitted that:

5.1) There is enough material on record which prima facie indicates that, orders of M/s. Fabdecon Engineers have been diverted by Accused

including the Petitioners. The profits have been diverted to personal accounts or accounts of proprietary concerns and have been misappropriated.

5.2) Accused No.1 had dominance over all the assets including technical knowhow, designs of products, bank accounts and clients list of M/s. Fabdecon Engineers. The information was available with the Accused No.1 in trust. The same has been fraudulently and dishonestly misappropriated and used for personal benefit and profit with the help, assistance and abetment of Accused Nos. 2 to 7.

5.3) The documents gathered by the Investigating Officers clearly make out a case against the Accused and show their involvement in abetting Accused No.1 in the offences as alleged. There is a clear flow of diversion of orders and funds. The statements of various employees have been recorded which would corroborate, support and make out the offences as alleged against the Accused.

5.4) The Petitioners did not choose to challenge the Order dated 5th February 2005. The Petitioners accepted the chargesheet and choose to file a discharge application. The scope and ambit of consideration and appreciation of the facts is very restricted and limited. While considering an application under Section 239 of the CrPC, the Court primarily only considers the police report under Section 173 and documents therewith.

6) Mrs. Sangita Phad, learned APP for the State, adopted the arguments advanced by Ms. Mallika Ingale, learned advocate for the

Respondent No.2.

7) Perused the entire record. The allegation of Respondent No.2 is that, Respondent No.2 and Accused No.1 were partners in M/s. Fabdecon Engineers and also started a new company known by the name of M/s. Akay Organics Pvt. Ltd. It is the case of Respondent No.2 that, he was busy in managing the business of Akay Organics Pvt. Ltd and Accused No.1 was looking after the business, day to day administration and affairs of M/s. Fabdecon Engineers. The case of the prosecution is that, Accused No.1 took undue advantage of the said fact and allegedly diverted orders and fraudulently diverted/misappropriated profits, the knowhow, design data and misused his control and dominion over M/s. Fabdecon Engineers for his personal use and benefit. It is alleged that, Accused No.1 in furtherance of the plan was abetted by Accused Nos. 2 to 7 by starting various front companies i.e. M/s. Deman Engineers, M/s. Traxit Engineers, M/s. Sona Industries, and M/s. Dharmic Associates which were used to implement the plan i.e. divert orders and resultant profits. It is the case of the prosecution that, the Accused diverted orders received by M/s. Fabdecon Engineers to the front company and executed the same through the front companies with the aid and assistance of Accused Nos. 2 to 7. The profits generated from such diversion of orders was transferred to personal accounts opened in name of proprietary firms and eventually to the Accused No.1. Subsequently, Accused No.1 resigned as partner from M/s. Fabdecon Engineers and became CEO of M/s.

Traxit Engineers.

8) Perusal of the chargesheet would indicate that, the Investigating Officer has gathered various documents and material in respect of the diversion of the recurring orders of M/s. Fabdecon Engineers and documents indicating diversion of profit, etc. The documents placed on record include a list showing the clientele of M/s. Fabdecon Engineers and showing diversion of recurring orders of M/s. Fabdecon Engineers received from the said clients to M/s. Deman Engineers (of which Accused No.6 is the proprietor) and M/s. Traxit Engineers (company started in the name of Accused Nos. 2, 3, 5 and 7). There are documents on record showing diversion of funds. The Accused No. 1 to 3 are related. Accused Nos. 2 is the wife of Accused No.1. The Accused No.3 is the daughter of Accused No.1. Accused No.4 was the senior draftsman of M/s. Fabdecon Engineers, who resigned in the year 1997 and also assisted Accused No.1 by actively participating in execution of the orders diverted to the front companies M/s. Deman Engineers and M/s. Traxit Engineers. Accused No.6 is the wife of Accused No.4. The prosecution also relies on certain correspondence between the Accused and document signed by the Accused which allegedly support the allegations of the Prosecution. There is a flow chart on record indicating diversion of orders and funds. There are also on record statements of Manish Gaur (employee of Indo Hydrolics), statement of Tanaji Pagade (employee of J K Industrial) and statement of K. Joseph (employee of M/s. Fabdecon Engineers which the prosecution relies on to

support their case.

9) The flow chart, on record depicts the diversion of Orders from clients of M/s. Fabdecon Engineers and also the diversion of the funds which were generated from diverted Orders. M/s. Fabdecon Engineers was a partnership firm of Accused No. 1 and Respondent No. 2/Complainant and was established in the year 1979. M/s. Fabdecon Engineers appears to have a substantial clientele base. Amongst the clients of M/s. Fabdecon Engineers, there were some clients who allegedly had a personal rapport with the Accused. Some of such clients are alleged to be M/s. Plasticemix Inds. Ltd., M/s. Voltas Ltd., M/s. Sudershan Chemical Inds. Ltd., M/s. Indian Friction Matl. Engg. Co., M/s. Cardinal Cosmetic Pvt. Ltd., M/s. Pidilite Industries Ltd., and M/s. August Neuhoff Tranxit Wire Lubrications Germany Promising Client. It appears that the said companies were clients of M/s. Fabdecon Engineers for a period ranging between 1983 and 2000. The recurring Orders of the said companies from April 1997 appear to have been diverted to M/s. Deman Engineers, a front firm/company established in 1997, the proprietor of which was original Accused No. 6/ Petitioner No. 4 herein. It further appears that, the company by the name of August Neuhoff Tranxit Wire Lubrications Germany promised huge recurring Orders between the years 1986 and 1999, but the Orders were diverted to M/s. Traxit Engineers between the period 1999 and 2005. M/s. Traxit Engineers is also one of the front companies incorporated on 8th July 1999. M/s. Traxit Engineers has made remittances to

one Mr. Ravindra Panchal, who is the husband of Petitioner No. 4 and an accomplice of the Accused No.1, who has further made deposits with M/s. Deman Engineers.

10) Further, it appears that M/s. Deman Engineers diverted funds by way of cash withdrawals, i.e., loans given to one Divya, who is related to/ a niece of the Accused No.1, amounts diverted to M/s. Sona Industries, one of the front companies/firms, amounts diverted to Steel Cons., a group company of Quality Engineers Fabricator for M/s. Traxit Engineering, and payments made to firms of the Accused's neighbours and other friends/companies namely, M/s. Lata Steel, M/s. Kapasi Enterprises, and M/s. Emkay Engineers. Funds generated from diverted Orders were also transferred by M/s. Traxit Engineers to Steel Cons., a group company of Quality Eng. Fabricator for M/s. Traxit Engineer, and payments were made to firms of the Accused's neighbours and other friends/companies, namely M/s. Lata Steel, M/s. Kapasi Enterprises, and M/s. Emkay Engineers. M/s. Traxit Engineers also diverted funds for personal use to M/s. Dharmic Associates, a firm of Kavitha Swaminathan, i.e., Accused No. 3 and daughter of Accused No. 1, from which company there are alleged to have been cash withdrawals. There are also cash withdrawals from M/s. Traxit Engineers.

11) Perusal of the statement of the Complainant reveals that, the allegation is that the diversion of Orders of M/s. Fabdecon Engineers started in or around April 1997. Accused No. 1 was in charge and in control of the

affairs of M/s. Fabdecon Engineers, and he had developed a personal rapport with clients from whom Orders were diverted. Respondent No.2 has alleged that: -

(i) An Order from Plasticchemix, one of the important clients of M/s. Fabdecon Engineers, with whom Accused No. 1 had a personal rapport, had been diverted to M/s. Deman Engineers, and advance payment was made as early as 22nd April 1997. It is alleged that the first sale was effected by M/s. Deman Engineers on 30th June 1997, which was before Accused No. 4, Ravindra Panchal, resigned from M/s. Fabdecon Engineers.

(ii) Recurring Orders from one of the important clients, M/s. Voltas Ltd., which had been placing Orders with M/s. Fabdecon Engineers since the year 1983, had been diverted to M/s. Deman Engineers from 1997.

(iii) Orders of Sudershan Chemical Inds. Ltd. for a Sigma Mixer, which were placed with M/s. Fabdecon Engineers in 1998, were manipulated and shown to have been cancelled, and the said Orders were diverted to M/s. Deman Engineers even before the cancellation of the Orders. Though the Orders were diverted, Accused No. 1 continued to show pretentious correspondence with the client till February 1999.

(iv) Orders from Indian Friction Material Engineering Co. (Order of September 1998), Cardinal Cosmetic Pvt. Ltd. (Order of March 2000),

and Pidilite Industries Ltd. (Order of July 2001) were allegedly all diverted to the front firm/Company, M/s. Deman Engineers. It is alleged that the modus operandi of the front firms, i.e., M/s. Deman Engineers and M/s. Traxit Engineers Pvt. Ltd., seems to be similar.

(v) All operations of M/s. Deman Engineers are being carried out by Accused No. 4, with Accused No. 1 being behind the scenes. M/s. Deman Engineers has dealings with M/s. Steel Co. Pvt. Ltd., with which M/s. Traxit Engineers, one of the front companies, has dealt in the manufacture of equipment for a German client. The diverted funds generated from the diverted Orders have been siphoned off to another firm by the name of M/s. Sona Industries, whose ownership has to be investigated.

(vi) Funds from M/s. Deman Engineers have also been diverted through disproportionate cash withdrawals, payments to the owner of M/s. Jyoti Steel, who happens to be the owner of Accused No. 1, and payments to firms of friends like M/s. Kapasi Enterprises and M/s. Emkay Engineers, with whom Accused No. 1 had financial relations through M/s. Fabdecon Engineers.

12) There are on record documents that, would prima facie indicate that, the Accused No. 1 after he resigned from M/s. Fabdecon Engineers was running the affairs of business of M/s. Taxit Engineer.

13) Perusal of the flow chart depicting the diversion of Orders and funds and the statements of the Complainant themselves prima facie indicates that there is material on record which raises a strong suspicion. Prima facie there is enough material on record which would be available for proceeding to frame charge against the Accused. In the background of the material on record, it cannot be said that the charge is groundless or that no case is made out against the Accused. The material on record, the complex nature of the allegations and considering the facts and material in totality, there prima facie appears to be strong suspicion against the accused and material is available to proceed to frame the charge. In my opinion it cannot be said that, the charges are groundless.

14) It would be necessary to refer certain judgments on discharge which are relevant for the issues in the present matter: -

14.1) The Supreme Court in the case of *R.S. Nayak vs. A.R. Antulay and Anr.* reported in *AIR 1986 SC 2045*, while analysing provisions of Sections 227, 239 and 245 of Cr.P.C., in unequivocal terms in Para 44 has held as under: -

"The Code contemplates discharge of the accused by the Court of Sessions 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 police report are dealt with in Section 245. The three sections contain some what different provisions in regard to discharge of the accused. Under Section 227, the trial Judge is required to discharge the accused if he 'considers that there is not sufficient ground for proceeding against the accused.'

Obligation to discharge the accused under Section 239 arises 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." It is a fact that Sections 227 and 239 provide for discharge being ordered before the recording of evidence and the consideration as to whether charge has to be framed or not is required to be made on the basis of the record of the case, including documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the two parties to be heard. The stage for discharge under Section 245, on the other hand, is reached only after the evidence referred to in Section 244 has been taken. 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."

14.2) An extremely useful reference can be made to the judgment of the Hon'ble Supreme Court in the case of *Ghulam Hassan Beigh v. Mohd. Maqbool Magrey*, reported in (2022) 12 SCC 657, where in paragraphs 23 and 26, the Hon'ble Supreme Court has observed as under: -

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

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

(i) The Judge while considering the question of framing the

charges under Section 227CrPC 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.”

26. In *State of Karnataka v. M.R. Hiremath* [*State of Karnataka v. M.R. Hiremath*, (2019) 7 SCC 515: (2019) 3 SCC (Cri) 109: (2019) 2 SCC (L&S) 380], this Court held as under: (SCC p. 526, para 25)

*“25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709: (2014) 3 SCC (Cri) 529: (2014) 2 SCC (L&S) 721], advertent to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)*

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

14.3) A useful reference can also be made to the judgment of the

Hon'ble Supreme Court in the case of *State of T.N. v. R. Soundirarasu*, reported in (2023) 6 SCC 768 where in paragraphs 60,61,67,69,72,73,78,79 the Hon'ble Supreme Court while dealing with the provision of Section 239 of CrPC has observed that: -

“60. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that 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 offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.

61. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is “ground for presuming” that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the

other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See: V.C. Shukla v. State [V.C. Shukla v. State, 1980 Supp SCC 92: 1980 SCC (Cri) 695]).

67. Thus, the word “groundless”, as interpreted by this Court, means that there is no ground for presuming that the accused has committed an offence.

69. The suspicion referred to by this Court must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. Therefore, the words “a very strong suspicion” used by this Court must not be a strong suspicion of a vacillating mind of a Judge. That suspicion must be founded upon the materials placed before the Magistrate which leads him to form a presumptive opinion about the existence of the factual ingredients constituting the offence alleged.

72. The real test for determining whether the charge should be considered groundless under Section 239CrPC is that whether the materials are such that even if unrebutted make out no case whatsoever, the accused should be discharged under Section 239CrPC. The trial court will have to consider, whether the materials relied upon by the prosecution against the applicant herein for the purpose of framing of the charge, if unrebutted, make out any case at all.

73. The provisions of discharge under Section 239CrPC fell for consideration of this Court in K. Ramakrishna v. State of Bihar [K. Ramakrishna v. State of Bihar, (2000) 8 SCC 547: 2001 SCC (Cri) 27], and it was held that the questions regarding the sufficiency or reliability of the evidence to proceed further are not required to be considered by the trial court under Section 239 and the High Court under Section 482. It was observed as follows: (SCC p. 549, para 4)

“4. The trial court under Section 239 and the High Court under Section 482 of the Code of Criminal Procedure is not called upon to embark upon an inquiry as to whether

evidence in question is reliable or not or evidence relied upon is sufficient to proceed further or not. However, if upon the admitted facts and the documents relied upon by the complainant or the prosecution and without weighing or sifting of evidence, no case is made out, the criminal proceedings instituted against the accused are required to be dropped or quashed. As observed by this Court in Rajesh Bajaj v. State (NCT of Delhi) [Rajesh Bajaj v. State (NCT of Delhi), (1999) 3 SCC 259: 1999 SCC (Cri) 401] the High Court or the Magistrate are also not supposed to adopt a strict hypertechnical approach to sieve the complaint through a colander of finest gauzes for testing the ingredients of offence with which the accused is charged. Such an endeavour may be justified during trial but not during the initial stage.”

78. In *Munna Devi v. State of Rajasthan* [*Munna Devi v. State of Rajasthan*, (2001) 9 SCC 631: 2002 SCC (Cri) 775], this Court held as under: (SCC p. 632, para 3)

“3. ... The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged.”

79. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the

offence for which the accused has been charged. It is conferred to check grave error of law or procedure.”

14.4) It would also be useful to refer to the judgment of Hon’ble Supreme Court in the case of *State of Gujarat Vs. Dilipsingh Kishorsingh Rao* reported in (2023) 17 SCC 688 as while considering the scope and ambit in respect of an application of discharge in paragraph 13 has observed that:

“13. 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 State of Maharashtra v. Som Nath Thapa [State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659: 1996 SCC (Cri) 820] and State of M.P. v. Mohanlal Soni [State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338: 2000 SCC (Cri) 1110] 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.”

15) The Hon’ble Supreme Court has very categorically held that, at the initial stage if there is strong and grave suspicion, based on which the Court comes to conclusion, that a prima facie case is made out against the accused, then it will not be open for the Court to say that there is no sufficient ground for proceeding against the accused. In considering a discharge application, the Court from the police report and the document sent with it

under Section 173 of the CrPC, is required to see only whether a prima facie case to proceed with the framing of charge/trial is made out and not whether ultimately the trial would end in a conviction or an acquittal. While considering an application for discharge, the Court is required to proceed on the assumption that, the material available on record is true and consider the said material at its face value, to ascertain whether a prima facie case is made out and if the ingredients to make out the offence are available. The basic criteria, is to see, whether a prima facie case is made out and no more.

16) At the time of considering the application for discharge the court has to consider the facts as alleged at their face value and a presumptive opinion has to be formed as to the existence of the facts and the ingredients as required of the offences as alleged. The Court is not expected to conduct a probative evaluation of the material nor a mini trial. The Court has to basically consider whether there is material available to proceed in the matter and frame the charge. At the stage of framing charge and/or considering a discharge application, the Court is not required to undertake meticulous evaluation of evidence. There is no appreciation of evidence as in and at the time of a trial. It is settled law that, even grave suspicion is sufficient to frame a charge.

17) Considering the material on record which forms part of the chargesheet, it is clear that, there is enough material on record to proceed to

frame the charge. A prima facie case of a strong suspicion is made out. No case for discharge has been made out.

18) In the present case, one of the contentions of the Petitioners was that, the entire proceeding is vitiated and cannot be sustained because by Order dated 5th February 2005, the learned Magistrate had directed reinvestigation of the complaint by the Jogeshwari Police Station after the MIDC Police Station had already filed a 'C' Summary Report. It was contended that, the Magistrate has no powers to direct reinvestigation or fresh investigation. Under Section 173(8) of the CrPC, the power of the Magistrate is confined only to direct further investigation which contemplates continuation of the same investigation. No doubt it is true that, only the Hon'ble Supreme Court and the High Court have the powers, which are used in extraordinary circumstances to direct a fresh *de novo* investigation or reinvestigation. Even the constitutional Courts exercise the said powers sparingly and in rare and exceptional circumstances, where it is clearly shown that, the investigation is tainted with malafides or it is necessary to secure public confidence in the administration of justice. There can be no dispute with the proposition that the power of reinvestigation or ordering a fresh investigation lies only with the constitutional Courts.

19) Considering the peculiar facts of the present case, it is clear that the Petitioners chose not to challenge the impugned Order dated 5th February 2005. Pursuant to the said Order being passed the Petitioner allowed the

investigation to be carried out and a detailed chargesheet came to be filed. During this period, the Petitioners for reasons best known to them chose not to specifically challenge the Order dated 5th February 2005 and by their conduct acquiescence to it. The Petitioners instead filed the discharge application under Section 239 of the CrPC. The scope and ambit of the Court to consider an application for discharge is limited and circumscribed by the section itself. The Court can only consider the report filed under Section 173 of the CrPC and the documents submitted therewith. The learned Magistrate by its Order dated 28th July 2016, was pleased to dismiss the discharge application on the ground that, the allegations, was such that, the same could be decided only after taking evidence. It has been observed that, prima facie there is sufficient evidence against the Accused and that the role played by each of the Accused can only be ascertain after evidence is led by the prosecution. While rejecting the discharge application, it was observed that the complexity of the accused persons will be clear only after the documents are proved in accordance with law. No fault can be found with the order as the learned Magistrate was dealing and considering on application for discharge under Section 239 of the CrPC.

20) The said Order dated 28th July 2016 was challenged by Accused Nos.2, 3, 5 and 6 by filing the revision applications. In the said revision applications, the Sessions Court by Order dated 13th March 2018 was pleased to discharge Dharmi Swaminathan (Petitioner No.1/Accused No.2), Ms.

Bhagyalata Panchal (Petitioner No.4/Accused No.6) from the offence punishable under Section, 403, 406, 409, 468 read with 34 of the IPC. Mrs. Kavita Vaidhyanathan (Petitioner No.2/Accused No.3) was discharged from offences punishable under Section 403, 406, 409 read with 34 of IPC. It is the Order dated 13th March 2018 which has been challenged by the present Petitioners Accused Nos.2, 3, 5 and 6. The Order dated 13th March 2018 has discharged the accused of some Sections/offences. What was considered was a challenge to the rejection of the discharge application. As noted earlier, the Petitioners had in their discretion not challenged the initial Order dated 5th February 2005 directing reinvestigation or fresh investigation.

21) Considering the aforesaid facts and circumstances this Court is of the prima facie view that, there is material available on record to proceed against the Accused. It cannot be said that, the charges are groundless or that there is no material available. Perusal of the material would in fact indicate a strong suspicion as against the Accused. This Court while considering a discharge application has to only see whether a prima facie case is made available and whether there is material available to proceed. Considering the facts and circumstances of the case, this Court is of the opinion that, there is enough material available on record to proceed against the Petitioners.

22) In view thereof, Petition is dismissed.

(RANJITSINHA RAJA BHONSALE, J.)