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

Judgment delivered on: 4th November, 2015

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REKHA NAMBIAR

W.P.(CRL) 1432/2014

..... Petitioner

Represented by: Mr. Sanjeev Bansal, Mr. Vineet Tayal, Mr. Gyanendra Mishra, Mr. Kamal Singh and Mr. Jasvinder Singh, Advs.

Versus

C B I

..... Respondent

Represented by: Ms. Sonia Mathur, Standing Counsel with Mr. Sushil Kr. Dubey and Mr. Abhishek Chauhan, Advs. for CBI.

AND

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BHOJRAJ TELI

CRL.M.C. 4781/2014

..... Petitioner

Represented by: Mr. Siddharth Luthra, Sr. Adv. with Mr. Pramod Kumar Dubey, Mr. Shiv Chopra and Mr. Saubha Rumnong, Advs.

Versus

CENTRAL BUREAU OF INVESTIGATION

..... Respondent

Represented by: Mr. Narender Mann, Spl. PP with Mr. Manoj Pant and Ms. Utkarsha Kohli, Advs. for CBI.

CORAM:
HON'BLE MR. JUSTICE SURESH KAIT

SURESH KAIT, J.

1. By way of the present petitions filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), both the petitioners have challenged the order on charge dated 01.05.2014 and order dated 26.05.2014 whereby charges against the petitioners were framed as under:

“That you Smt. Rekha Nambiar being the wife of A-1 Ramesh Nambiar, and you A-3 Bhojraj Teli being the person In-charge of M/s. HYT Group of Companies during the period 14.10.1991 to 26.02.2010 instigated / intentionally aided by your acts and illegal omissions Shri Ramesh Nambiar acquiring assets to the tune of Rs.2,08,38,172.62 which were disproportionate to his known sources of income and thereby abetted the commission of offence u/s 13(1)(e) of the Prevention of Corruption Act punishable u/s 13(2) of the Prevention of Corruption Act by Ramesh Nambiar and thereby committed offence u/s 109 IPC r/w Sec. 13 (1)(e) and 13(2) of Prevention of Corruption Act and within my cognizance and jurisdiction.”

2. Since, both the petitions arise from the same order, this Court has decided to dispose of these petitions by way of this common judgment.

3. The case against the petitioners was registered on 22.02.2010, on the basis of a source information, against accused No.1/Ramesh Nambiar, husband of accused No. 2 Rekha Nambiar (petitioner in W.P.(CRL) No. 1432/2014) along with accused No. 3 Bhojraj Teli (petitioner in CRL.M.C. No. 4781/2014) Managing Director of M/s. HYT Group of Companies, Naveen Patil and Rekha Nambiar under Sections 13 (2) read with Section

13(1)(e) of Prevention of Corruption Act, 1988 ('PC Act') and Section 109 of the Indian Penal Code, 1860 ('IPC') on the allegations that accused Ramesh Nambiar while posted and functioning as AGM (Sport), Air India at New Delhi and other places, being a public servant, amassed assets worth about Rs.2,39,21,165/- during the period from 14.10.1991 to 30.06.1999 in his name, in the name of his wife, i.e., petitioner Rekha Nambiar and his family members, which were disproportionate to his known sources of income.

4. The matter was investigated by the Central Bureau of Investigation ('CBI'), whereby it was disclosed that accused Ramesh Nambiar joined Air India on 14.10.1991 as Sport Assistant at New Delhi. During the entire period of his office, he remained posted in Sport Division at Delhi in different capacities. During the period from September, 1995 to March, 1996, he remained posted as Assistant Private Secretary to the then Minister of State for Railways on deputation. Subsequently, during the period from March, 1998, he remained posted as Additional Private Secretary to the then Textile Minister on deputation. Thereafter, he was promoted as AGM (Sports) on 01.04.2009 and has been continuing as such since then.

5. It was further disclosed that Ramesh Nambiar married to petitioner Rekha Nambiar on 15.09.1994, daughter of late Sh. Gopalan Radhakrishnan, retired AGM, State Bank of India, Mumbai sometimes in 2000. During 2001, Sh. Gopalan went to Sharjah and worked there as Banking Consultant and thereafter worked in Real Estate business at Dubai and had income apart

from his pension.

6. For calculating the disproportionate assets of accused No.1 Ramesh Nambiar, the check period has been taken from 14.10.1991 to 26.02.2010. Accordingly, the investigation disclosed that source of income of accused Ramesh Nambiar was salary including perks, income from selling house property, income as interest on Bank accounts and dividend, income from investment etc. The source of income of petitioner Rekha Nambiar was salary from Standard Chartered Bank, Deutsche Bank, income from selling house property, income as interest from Bank accounts, dividend income from investment and consultancy fee etc. The income of Master Rishab Nambiar, son of accused Ramesh Nambiar is from interest on his Bank accounts and dividend income from investment. Thus, the total income of accused Ramesh Nambiar, his wife petitioner Rekha Nambiar and his son Master Rishab Nambiar from all sources comes to the tune of Rs.1,67,03,318.37/- as detailed in Annexure – IV enclosed with the chargesheet.

7. Investigation further disclosed that petitioner Rekha Nambiar had abetted in acquiring the disproportionate assets by accused Ramesh Nambiar by receiving an amount of Rs.1,04,07,829/- as consultancy fee from accused No.3/Bhojraj Teli, Managing Director of M/s. HYT Group of Companies and creating assets out of the same, though she had not done any real consultancy work for petitioner Bhojraj Teli. Similarly, petitioner Bhojraj Teli abetted the offence in acquiring the disproportionate assets by accused

Ramesh Nambiar by paying the above amount as consultancy fees etc. to petitioner Rekha Nambiar without her having rendered any real consultancy and by allowing his credit card to be used by said accused Ramesh Nambiar and by making payments by cheque for expenditure of accused Ramesh Nambiar and his family members without proper justification.

8. The case of the CBI is that about 15 to 20 years back, petitioner Bhojraj Teli came in contact with accused Ramesh Nambiar and his wife petitioner Rekha Nambiar and developed friendly relations with them. Petitioner Bhojraj Teli had been visiting the office of accused Ramesh Nambiar, when he was posted as a Private Secretary to the then Minister of State for Railways during 1995-1996. Initially, he went to the office of the Minister of State for Railways along with Shantaram Potdhuke, the then MP from Maharashtra as a courtesy meeting as Sh. Suresh Kalmadi, the then Minister of State for Railways belongs to Maharashtra. Subsequently, petitioner Bhojraj Teli used to meet accused Ramesh Nambiar in his office of Railways whenever he visited the Railway Board in connection with his business of supply of machines of Indian Railways etc. Petitioner Bhojraj Teli used to receive orders for supply of machines through various Railway Zones from 1981 onwards.

9. It is further case of the CBI that name of M/s. Archana Traders Pvt. Ltd. and Naveen Patil figured in the FIR that accused Ramesh Nambiar obtained unlawful commission through petitioner Bhojraj Teli of M/s. HYT Group of Companies in the name of consultancy fee for his wife and routed

the same through M/s. Archana Traders Pvt. Ltd., wherein Naveen Patil and parents-in-law of accused Ramesh Nambiar were the major shareholders/Directors. However, investigation could not reveal any evidence to show that accused Ramesh Nambiar had invested the funds in M/s. Archana Traders Pvt. Ltd. directly or indirectly. Accordingly, chargesheet for the offences punishable under Sections 13(2) read with Section 13(1)(e) PC Act against accused Ramesh Nambiar and offences punishable under Section 109 IPC read with Sections 13 (2) and 13 (1)(e) of the PC Act against the petitioners Rekha Nambiar and Bhojraj Teli were filed.

10. The case against petitioner Rekha Nambiar is that consultancy and other payments is simply an excuse to justify the possession of disproportionate assets and as such there was no real consultancy rendered by petitioner Rekha Nambiar to the Companies of petitioner Bhojraj Teli, who had colluded with accused Ramesh Nambiar in order to justify his tainted money to transfer the same to petitioner Rekha Nambiar.

11. Mr. Sanjeev Bansal, learned counsel appearing on behalf of petitioner Rekha Nambiar submitted that there is no evidence on record to show that petitioner Bhojraj Teli had ever got any favour from accused Ramesh Nambiar, i.e., husband of petitioner Rekha Nambiar or that said accused was instrumental in awarding any contract to petitioner Bhojraj Teli from Railways during 1995-1996 or that any payment was made to M/s Archana Traders by petitioner Bhojraj Teli. However, the learned Trial Court while

passing the order on charge recorded that in the absence of any record relating to consultancy at this stage of charge these entries have to be rejected and the entire such income is to be taken into account to see the extent of disproportion. The genuineness of the entries in favour of petitioner Rekha Nambiar has to be established during trial only and no benefit of the same can be given at this stage. Further recorded that letter dated 17.05.2010 of the Deutsche Bank and the statement of Account (D-36) of the said Bank reveal that petitioner Rekha Nambiar was in the employment of the said Bank up to June, 2008 and taking up of any other employment, consultancy etc. during the currency of employment with Deutsche Bank without prior written permission of the Bank was prohibited and nothing available on record that petitioner Rekha Nambiar had taken any prior written permission from the Bank before rendering any consultancy to petitioner Bhojraj Teli from 2006 onwards. Accordingly, no benefit of consultancy fee can be allowed at this stage of charge.

12. Mr. Bansal submitted that the learned Trial Court in its impugned order dated 01.05.2014 further recorded that the explanation that money belongs to petitioner Rekha Nambiar cannot be accepted at this stage of charge, even though reflected in ITRs of Rekha Nambiar, who intentionally aided accused Ramesh Nambiar in acquiring disproportionate assets. Accordingly, the charge against Ramesh Nambiar was framed for the offences punishable under Sections 13(1)(e) read with Section 13(2) PC Act. As far as petitioner Bhojraj Teli is concerned, the learned Trial Court recorded that his role in this case is that he is connected with the payment of

consultancy charges / fee to petitioner Rekha Nambiar which itself is to be established during the trial.

13. Mr. Bansal further submitted that Memorandum of Understanding ('MoU') dated 04.06.2006 (D-13) is an investors' agreement wherein petitioner Rekha Nambiar agreed to contribute 20% of the paid up capital of M/s. HYT Innovative Projects Ltd. However, the Id. Trial Court ignored the said MoU and recorded in the impugned order that it has to be answered during the trial whether petitioner Rekha Nambiar had contributed aforestated 20% or not.

14. Learned counsel submitted that Sh. K.B. Surve (PW3 as per list of witnesses) has also stated that petitioner Rekha Nambiar was paid salary from April, 2008 to October, 2008 amounting to Rs.21,00,000/-. Further submitted that the investigating agency has only considered the salary received from Deutsche Bank by petitioner Rekha Nambiar while calculating the disproportionate assets, however, the consultancy fee, credit card used and travel expenses, though intimated to the Income Tax Authority in ITRs, have not been taken into consideration. It shows that the learned Trial Court has ignored each and every aspect, which is in favour of the petitioners and was on record. Thus, the learned Trial Court framed the charges only on the ground that petitioner Rekha Nambiar was not authorized to undertake any such consultancy work during the currency of her employment with Deutsche Bank without prior written approval of the Bank.

15. Learned counsel further submitted that Section 109 IPC is not applicable against the petitioners for the reason that even the first ingredient of the term ‘abetment’, which has been defined under Section 107 IPC, is not complete. Thus, the CBI has failed to establish the case against the petitioners on their own record, which is a part of the chargesheet and states as under:

“The information has disclosed that various incriminating records were seized during search conducted in the above case from the residence and office premises of Shri Ramesh Nambiar. Information received shows that Shri Ramesh Nambiar has been involved in illegal activities of a middleman/tout and through which he has been earning substantial commission in connivance with various industrialists. Shri Ramesh Nambiar obtained unlawful commissions through one Shri Bhoj Raj Teli of M/s. HYT Group of Companies in the name of consultancy fees for his wife and routed the same through a company M/s. Archana Traders Pvt. Ltd. wherein Sh. Naveen Patil and his father-in-law are the major share holders / Directors.

The information discloses that Shri Ramesh Nambiar along with his wife have acquired assets disproportionate to their known sources of income as discussed above, and Shri Bhojraj Teli of M/s. HYT Group of Companies, M/s. Archana Traders Pvt. Ltd. and Shri Navin Patil have abetted Shri Ramesh Nambiar by various means in acquiring disproportionate assets. Therefore, the information prima facie discloses commission of offence punishable under Section 13 (2) r/w 13 (e) of PC Act, 1988 and Section 109 IPC.”

16. Mr. Bansal further submitted that in order to bring home the guilt, either the prosecution was bound to establish that the amount of income

shown in the name of the petitioner was bribe amount being paid to her husband or that it was the unaccounted money of her, which was being converted to the accounted one. The prosecution, however, did not allege either of the two, but had alleged that husband of the petitioner had obtained unlawful commission through petitioner Bhojraj Teli by routing the same through M/s. Archana Traders Pvt. Ltd. Ultimately, CBI could not establish the complicity of M/s. Archana Traders Pvt. Ltd. Consequently, the only allegations alleged having not been established, the prosecution was liable to be dropped. However, the CBI brought the half baked report before the Trial Court and the learned Trial Court instead of rejecting the same, at the outset, has chosen to frame charges against the petitioners Rekha Nambiar and Bhojraj Teli.

17. To strengthen his arguments, learned counsel has relied upon a case of ***Soma Chakravarty vs State 2007 5 SCC 403***, wherein the Hon'ble Supreme Court held as under:

“9. Learned Counsel for the appellant relied on the decisions of this Court in Union of India and Anr. v. Major J.S. Khanna etc, State of Maharashtra and Ors. v. Som Nath Thapa and Ors. and L. Chandraiah v. State of A.P. and contended that before framing the charges the court must have some material on the basis of which it can come to the conclusion that there is a prima facie case against the accused. In our opinion there was such material before the Court while framing the charge.

10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court could form an opinion that the

accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

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19. Some of the questions, however, which have been raised by the appellant are of some importance and it may be necessary to deal therewith. The learned Trial Judge, it appears, did not properly apply its mind in regard to the different categories of accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exists some materials therefore. Suspicion cannot alone, without anything more, it is trite, form the basis therefore or held to be sufficient for framing charge.”

18. Mr.Siddharth Luthra, learned senior counsel appearing on behalf of petitioner Bhojraj Teli submitted that petitioner has been charged with offence punishable under Section 109 IPC read with Sections 13 (1) (e) and 13 (2) PC Act. The initial ingredient for Section 13 (1) (e) PC Act is that other person must be in possession of the property on behalf of public servant. However, there is no material in the charge sheet that the petitioner was in possession of any property on behalf of accused No.1 Ramesh

Nambiar. As per the case of CBI, M/s HYT Innovative Projects Pvt. Ltd., had paid consultation fees to petitioner Rekha Nambiar and such payments had been made to said petitioner after due deductions of the TDS. The said payment was disclosed and reflected in the income tax returns of the above noted company. Thus, the petitioner cannot be charged for the offences punishable under Section 109 IPC. Ld. Sr. Counsel has placed reliance on ***M Krishna Reddy vs State Deputy Superintendent of Police, Hyderabad (1992) 4 SCC 45*** wherein the Apex Court has held as under:-

“14. We are unable to appreciate that reasoning and hold that the prosecution has not satisfactorily discharged the expected burden of proof in disproving the claim of the appellant. Therefore, on the fact of these unassailable documents i.e. the wealth tax and income tax returns, we hold that the appellant is entitled to have a deduction of Rs. 56,240.00 from the disproportionate assets of Rs. 2,37,842/-.

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18. After the cross-examination, PW-10 was treated as hostile with the permission of the Trial Court. Further in the chief examination, it has been brought out that PW-10 had deposited Rs. 100 to Rs. 200 per month in the account of Dr. Ravindra Reddy during 1981-82; but Ravindra Reddy's account is not produced to corroborate the evidence of PW-10. In view of the evidence that the amount was used to be given by Dr. Indira Reddi herself on many occasions, we are of the view that Exs.P-27 to 35 will not help the prosecution in establishing the allegation that the entire amount was deposited only by the appellant's wife to the credit of Dr. Indira. However, we are not impressed by the evidence of PW-10. Therefore, we do not find any force

in the submission made by the prosecution that this amount standing to the credit of Dr. Indira was benami and that the ostensible owner of the amount was only the appellant.”

19. Mr. Luthra further submitted that case of the CBI is that accused No.1. Ramesh Nambair had transferred unaccounted money in the account of M/s Archana Traders, which was further transferred to the account of M/s HYT Group of Companies, which in turn paid the money to petitioner Rekha Nambiar, wife of accused No.1 as consultation fees. However, it is further stated in the charge sheet that during investigation, no evidence could be revealed to show that Ramesh Nambiar had invested funds in M/s Archana Traders directly or indirectly. Hence, there is no material / evidence which give rise to a grave suspicion that the consultancy fee paid by M/s HYT Group of Companies to petitioner Rekha Nambiar was, in any manner, connected with the unaccounted money of accused No.1. Consequently, there is no material or evidence that M/s HYT Group of Companies was, at any point of time, in possession of unaccounted money of accused No.1. Therefore, there was no connection with the consultation fees paid by M/s HYT Group of Companies to Rekha Nambiar for the commission of offences under Section 109 IPC read with Section 13 (1) (e) PC Act. The allegations against petitioner Rekha Nambiar is that she was not allowed to take further employment without the prior permission of Deutsche Bank, cannot be read against petitioner Bhoj Raj Teli.

20. Learned senior counsel further submitted that taking service of a Professional is not a criminal act. Without any document or the witness,

inference drawn by the learned Trial Court is illegal and liable to be set aside. Moreover, the second employment of petitioner Rekha Nambiar is not a criminal act and it can at the best make her liable for departmental action.

21. To strengthen the contentions, he relied upon the decision of the Apex Court in ***DSP, Chennai vs K Inbasagaran (2006) 1 SCC 420*** wherein the Hon'ble Supreme Court held as under:-

“17. Now, in this background, when the accused has come forward with the plea that all the money which has been recovered from his house and purchase of real estate or the recovery of the gold and other deposits in the Bank, all have been owned by his wife, then in that situation how can all these recoveries of unaccounted money could be laid in his hands. The question is when the accused has provided satisfactorily explanation that all the money belonged to his wife and she has owned it and the Income-tax Department has assessed in her hand, then in that case, whether he could be charged under the Prevention of Corruption Act. It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of the husband or as the case may be, it cannot be fastened on the husband or head of family. It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her by not showing in the Income-tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge. It is very

difficult to segregate that how much of wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being the public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the accused coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income-tax Department, it will not be proper to hold the accused guilty under the prevention of Corruption Act as his explanation appears to be plausible and justifiable. The burden is on the accused to offer plausible explanation and in the present case, he has satisfactorily explained that the whole money which has been recovered from his house does not belong to him and it belonged to his wife. Therefore, he has satisfactorily accounted for the recovery of the unaccounted money. Since the crucial question in this case was of the possession and the premises in question was jointly shared by the wife and the husband and the wife having accepted the entire recovery at her hand, it will not be proper to hold husband guilty. Therefore, in these circumstances, we are of the opinion that the view taken by the High Court appears to be justified and there are no compelling circumstances to reverse the order of acquittal. Hence, we do not find any merit in this appeal and the same is dismissed.”

22. Learned senior counsel further submitted that allegations of the prosecution with regard to any real work being done by petitioner Rekha Nambiar are unsubstantiated. He submitted that the prosecution has relied

upon two documents, which were the Shareholders' Agreement dated 13.12.2012 and the MoU dated 04.06.2006 annexed as Annexures 1 and 2 respectively. Clause 5 of the Shareholders' Agreement and Clauses 1,4,6,9 & 12 of the MoU mentioned above clearly establish that petitioner Rekha Nambiar had rendered her services as Consultant, Advisor and Director of M/s HYT Innovative Projects Pvt. Ltd. She had contributed 20% of the paid up capital in M/s HYT Innovative Projects Pvt. Ltd. She assisted them in marketing the company's products. None of the Directors of M/s HYT Group of Companies could be changed without permission of Rekha Nambiar which clearly establishes that she had active role in the affairs of the said company, for which she has been paid remuneration for her services.

23. Learned senior counsel further submitted that MoU dated 04.06.2006 mentioned above clearly stated that petitioner Rekha Nambiar will receive an amount of Rs.1.50 Lac per month towards fixed marketing and business promotion expenses excluding sale commission. The finding of the learned Trial Court recorded in para No.5 of the impugned order that there is no document to show that petitioner Rekha Nambiar is a Consultant is contrary to the record.

24. Learned counsel further submitted that finding of the learned Trial Court in para No.9 of the impugned order is contrary to the documents relied upon by the CBI. Clause 12 of the MoU dated 04.06.2006 clearly states that Rekha Nambiar will be entitled to reimbursement of travel expenses.

However, learned Trial Court erred in not considering the documents which clearly exonerates the petitioner.

25. Mr.Luthra submitted that the learned Trial Court in para 17 of the impugned order erred by not taking into account the salary of Rekha Nambiar which she had earned for rendering her services to M/s HYT Innovative Projects Pvt. Ltd. Furthermore, findings of the learned Trial Court in para No.19 are contrary to the record in as much as the services rendered by Rekha Nambiar were concerned.

26. To buttress his contentions, learned senior counsel relied upon case of ***S.K.Alagh vs State of Uttar Pradesh & Ors (2008) 5 SCC 662***, wherein the Supreme Court held as under:-

“14. Appellant No.1 is the Managing Director of the Company. Respondent No.3 was its General Manager. Indisputably, the company is a juristic person. The demand drafts were issued in the name of the company. The company was not made an accused. The dealership agreement was by and between M/s. Akash Traders and the company.

15. Mr. Pramod Swarup, learned counsel appearing on behalf of Responent No.2, in support of the order passed by the learned Chief Judicial Magistrate as also the High Court, submitted that as, prima facie, the appellant was in charge of and was in control of the business of the company, he would be deemed to be liable for the offence committed by the company.

16. The Penal Code, save and except some provisions specifically providing therefor, does not contemplate any

vicarious liability on the part of a party who is not charged directly for commission of an offence.

17. A criminal breach of trust is an offence committed by a person to whom the property is entrusted.

18. Ingredients of the offence under Section 406 are:-

- (1) a person should have been entrusted with property, or entrusted with dominion over property;*
- (2) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so;*
- (3) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust."*

19. As, admittedly, drafts were drawn in the name of the company, even if appellant was its Managing Director, he cannot be said to have committed an offence under Section 406 of the Indian Penal Code. If and when a statute contemplates creation of such a legal fiction, it provides specifically therefor. In absence of any provision laid down under the statute, a Director of a company or an employee cannot be held to be vicariously liable for any offence committed by the company itself. {See Sabitha Ramamurthy and Anr. v. RBS Channabasavaradhay [(2006) 10 SCC 581]}.

20. We may, in this regard, notice that the provisions of the Essential Commodities Act, Negotiable Instruments Act, Employees' Provident Fund (Miscellaneous Provision) Act, 1952 etc. have created such vicarious liability. It is interesting to note that Section 14A of the 1952 Act

specifically creates an offence of criminal breach of trust in respect of the amount deducted from the employees by the company. In terms of the explanations appended to Section 405 of the Indian Penal Code, a legal fiction has been created to the effect that the employer shall be deemed to have committed an offence of criminal breach of trust. Whereas a person in charge of the affairs of the company and in control thereof has been made vicariously liable for the offence committed by the company along with the company but even in a case falling under Section 406 of the Indian Penal Code vicarious liability has been held to be not extendable to the Directors or officers of the company. {See Maksud Saiyed v. State of Gujarat and Ors. [2007 (11) SCALE 318]}.”

27. While concluding his arguments, learned senior counsel submitted that money paid by M/s HYT Group of Companies to petitioner Rekha Nambiar has been duly shown in the books of accounts and in the ITRs of the respective years. Moreover, petitioner Rekha Nambiar had also disclosed the income received from M/s HYT Group of Companies in her ITRs, however the learned Trial Court has ignored both the documents mentioned above and opined that these documents are matter of trial.

28. It is also argued that testimonies of witnesses K.B.Surve (PW3), Satish B Sakpal (PW5), C.B. Arora-Income Tax Officer (PW8) and Roop Chand (PW12), all establish income of petitioner Rekha Nambiar. However, learned Trial Court has ignored all these evidences and without application of mind framed the charge against the petitioner.

29. Learned senior counsel has relied upon the case of ***Dilawar Balu Kurane vs State of Maharashtra (2002) 2 SCC 135*** wherein the Supreme Court has observed as under:-

“12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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 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; 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, 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 evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial [See Union of India versus Prafulla Kumar Samal].

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14. We have perused the records and we agree with the above views expressed by the High Court. We find that in

the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant.”

30. Also relied upon ***Prashant Bhaskar vs State (Government of NCT of Delhi) 2014 [1] JCC 750***, wherein the Coordinate Bench of this Court held as under:-

“14. Reliance has been placed on the pronouncements of the Apex Court reported at (2009) 1 SCC Crl. 51 Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra & 1990 Crl.Law Journal 1869 Niranjana Singh Karam Singh Punjabi Vs. Jitendra Bhimraj Bijja & Ors. Learned senior counsel has also relied on the pronouncements of this court reported at 2007 (2) JCC 1415 Sunil Bansal Vs. The State of Delhi; 2002 (1) JCC 127 Bhagwanti Devi Vs. State; & 96 (2002) DLT 566 Majhar @ Papoo & Anr. Vs. State. In support of the submission that the delay in lodging the complaint with the police would by itself cause grave suspicion on the case of the prosecution, reliance has been placed on the pronouncement of this court reported at 22 (1982) DLT SN 5 Satpal Vs. State. Learned senior counsel has urged that in the instant case, the order of the trial court also fails to consider the well settled principles of law laid down by this court in the pronouncements reported at 2007 (II) JCC 1489 Ashok Kumar Nayar Vs. State and 2009 (2) JCC 1004 Vinita Dhaka Vs. State.

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17. It needs no elaboration that at the stage of framing of charge, the court is required to evaluate the materials and documents which have been placed on record by the prosecution and taken at the face value, whether existence of the ingredients constituting the alleged offence or offences are disclosed. It is for this limited purpose alone that the court is permitted to sift the evidence. In para 7 of the judgment in (1990) 4 SCC 76 Niranjana Singh Karmali & Ors. Vs. Jitendra Bhimraj Bijja & Ors. the Apex Court defined the parameters of the scope and consideration thus:

“7. The next question is what is the scope and ambit of the 'consideration' by the trial court at that stage. Can he marshal the evidence found on the record of the case and in the documents placed before him as he would do on the conclusion of the evidence adduced by the prosecution after the charge is framed? It is obvious that since he is at the stage of deciding whether or not there exist sufficient grounds for framing the charge, his enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At that stage he may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that he is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose he must weigh the material on record as well as the documents relied on by the prosecution. In the State of Bihar v. Ramesh Singh 1977 CriLJ 1606 this Court observed that at the initial stage of the framing of a charge, if there is a strong suspicion-evidence 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. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by 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. In Union of India v. Prafulla Kumar Samal and Anr.1979 CriLJ 154 , this Court after considering the scope of Section 227 observed that the words 'no sufficient ground for proceeding against the accused' clearly show that the Judge is not merely a post-office to frame charge at the behest of the prosecution but he has to exercise his judicial mind to the facts of the case in order to determine that a case for trial has been made out by the prosecution. In assessing this fact it is not necessary for the court to enter into the pros and cons of the matter or into weighing and balancing of evidence and probabilities but he may evaluate the material to find out if the facts emerging therefrom taken at their face-value establish the ingredients constituting the said offence. After considering the case law on the subject, this Court deduced as under:

(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 has been made out.

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

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and

it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the judge is satisfied that the evidence adduced 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 of judge which under the present Code is a senior and experienced judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad 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.

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From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the 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.” (Emphasis supplied)

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31. In 2002 (1) JCC 172 (2);2002 SCC CrI. 310, Dilwar

Balu Khurana Vs. State of Maharashtra, the Apex Court had clearly enunciated the principle that if two versions or two inferences can be reasonably drawn, the version favourable to the accused has to be accepted by the court so long as it is a reasonable one.”

31. Ld. Sr. Counsel lastly relied upon ***Shreya Jha vs CBI III (2007) DLT (Crl) 259*** rendered by this Court, in which this Court has observed as under:-

“8. In Sanjiv Kumar v. State of Himachal Pradesh, AIR 1999 SC 782, the Supreme Court, speaking about what is the essential nature of conspiracy held that the offence under Section 120-B is an agreement between the parties to do a particular act. Association or relation to lead a conspiracy is not enough to establish the intention. It is true that conspiracies are products of stealth, and seldom evidenced by direct material; largely it is to be inferred on the circumstances, and attendant facts. Yet, there should be some bedrock facts which can lead to such inferences, even at the charge framing stage. Thus, the sine qua non for a charge to be sustainable under Section 120-B, IPC is the agreement between the parties. Such an essential ingredient is singularly absent; the CBI has been unable to show anything in that regard. I find no infirmity with that approach.

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12. In the light of aforementioned observations, no substantiating prima facie case was made out against the petitioner, at least no prima facie case that about the grave suspicion of her involvement was made out. The Trial Court could not have proceeded to charge the petitioner as it did, on the available materials, and the allegations leveled in the charge-sheet. Its order therefore, cannot be sustained. ”

32. On the other hand, Ms. Sonia Mathur, learned counsel appearing on behalf of the CBI in W.P.(CRL) No. 1432/2014 submitted that the petitioners have been charged for abetting the offence committed by accused Ramesh Nambiar, who was a public servant and alleged to have accumulated assets disproportionate to his known sources of income worth about Rs.2,08,38,170/- during the check period from 14.10.1991 to 30.06.2009 in his name, in the name of his wife, i.e., petitioner Rekha Nambiar and his family members. Further submitted that petitioner Bhojraj Teli colluded with accused Ramesh Nambiar to justify his tainted money by making available his companies to transfer the money of accused Ramesh Nambiar to his wife petitioner Rekha Nambiar.

33. Learned counsel further submitted that while framing the charge, the learned Trial Court has considered *inter alia* the facts that there is no evidence/document on record to establish her appointment as a Consultant with M/s. HYT Group of Companies. There is no evidence with regard to nature of work done by petitioner Rekha Nambiar. No project report was prepared and no permission was taken from her employer Deutsche Bank.

34. It is a settled law that in order to prove offence under Section 13(1) (e) PC Act, the prosecution has to satisfy the ingredients mentioned therein. Further there is no evidence / documents on record to substantiate petitioner Rekha Nambiar's claim of being engaged as Consultant of M/s. HYT Group of Companies and the money paid was towards the services rendered by her to the said company of petitioner Bhojraj Teli.

35. To strengthen her arguments, learned Counsel has relied upon a case of *P. Nallammal etc. vs State rep. By Inspector of Police, AIR 1999 SC 2556*, wherein the Apex Court observed as under:

“20. The above contention perhaps could have been advanced before the enactment of the P.C. Act 1988 because Section 5(1)(e) of the old P.C. Act did not contain an "Explanation" as Section 13(1)(e) now contains. As per the Explanation the "known sources of income" of the public servant, for the purpose of satisfying the court, should be "any lawful source". Besides being the lawful source the Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. So a public servant cannot now escape from the tentacles of Section 13(1)(e) of the P.C. Act by showing other legally forbidden sources, albeit such sources are outside the purview of Clauses (a) to (d) of the sub-section.

21. There is no force in the contention that the offences under Section 13(1)(e) cannot be abetted by another person. "Abetment" is defined in Section 107 of the Penal Code as under:

107. Abetment of a thing.-A person abets the doing of a thing, who-

First.- Instigates any person to do that thing; or

Secondly,- Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.- Intentionally aids, by any act or illegal omission, the doing of that thing.

For the "First" Clause (i.e. instigation) the following Explanation is added to the section:

Explanation I. - A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

For the "Thirdly" Clause (i.e. intentionally aids) the following Explanation is added:

Explanation 2.-Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

22. Shri Shanti Bhushan cited certain illustrations which, according to us, would amplify the cases of abetments fitting with each of the three clauses in Section 107 of the Penal Code vis-a-vis Section 13(1)(e) of the P.C. Act. The first illustration cited is this:

If A, a close relative of the public servant tells him of how other public servants have become more wealthy by receiving bribes and A persuades the public servant to do the same in order to become rich and the public servant acts accordingly. If it is a proved position there cannot be any doubt that A has abetted the offence by instigation.

Next illustration is this:

Four persons including the public servant decide to raise a bulk amount through bribery and the remaining persons prompt the public servant to keep such money in their names. If this is a proved position then all the said persons are guilty of abetment through conspiracy.

The last illustration is this:

If a public servant tells A, a close friend of him, that he has acquired considerable wealth through bribery but he cannot keep them as he has no known source of income to account, he requests A to keep the said wealth in A's name, and A obliges the public servant in doing so. If it is a proved position A is guilty of abetment falling under the "Thirdly" clause of Section 107 of the Penal Code.

23. Such illustrations are apt examples of how the offence under Section 13(1)(e) of the P.C. Act can be abetted by non-public servants. The only mode of prosecuting such offender is through the trial envisaged in the P.C. Act.

24. For the aforesaid reasons we are unable to appreciate the contentions of the appellants that they are not liable to be proceeded against under the P.C. Act. Accordingly we dismiss these appeals."

36. Also relied upon a case of ***State of Tamil Nadu by Inspector of Police Vigilance & Anti-Corruption v. N. Suresh Rajan and Ors. (2014) 11 SCC 709***, wherein it is held that while passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons,

pay income tax on their behalf and then be out from the mischief of law.

37. Learned counsel further submitted that while hearing petition under Articles 226 and 227 of the Constitution of India and under Section 482 Cr.P.C., the Court would exercise its inherent power very sparingly and in exceptional circumstances only keeping in view the facts of the case and only to prevent grave miscarriage of justice. The Court would interfere only if uncontroverted allegations on their face value show that no evidence is on record to make out the case and there is an abuse of the process of the Court. The settled law is that the competent court while considering the question of the framing of charge has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case is made out against the accused. Where the material placed before the Court disclosed grave suspicion against the accused which has not been properly explained, the Court would be fully justified in framing the charge and proceeding with the trial. Further, if on the basis of material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge. At the time of framing of charges, the probative value of the material on record cannot be gone into, but before framing of charge, the Court ought to apply its judicious mind on the materials placed on record and must be satisfied that the commission of offence by the accused is possible.

38. Mr.Narender Mann, learned Special Public Prosecutor appearing on behalf of the CBI in CRL.M.C. No. 4781/2014 submitted that at the stage of

charge, the Court would not ordinarily consider as to whether the accused would be able to establish his defence. The satisfactory explanation as contemplated under Section 13 (1) (e) PC Act has to be before the learned Trial Court during trial, however, the petitioners would get opportunity to prove their cases by leading evidence and establishing the circumstances to the satisfaction of the learned Trial Court.

39. Learned Counsel relied upon ***State of Maharashtra vs Ishwar Piraji Kalpatri & Ors 1996 Crl L J 1127***, wherein the Supreme Court held as under:-

“24. At the stage of quashing of FIR or complaint, the High Court would not be justified in embarking upon an enquiry as to the probability, reliability or genuineness or the allegations made therein. The FIR having been lodged, the Government having accorded sanction and thereafter, the charge having been filed, there was absolutely no justification for the High Court to have stopped the normal procedure of the trial being allowed to continue. ... The truthfulness of the allegations and the establishment of the guilt can only take place when the trial proceeds without any interruption.”

40. It is also argued that the Constitution Bench of the Supreme Court in the matter of ***K Veeraswami vs Union of India & Ors (1991) 3 SCC 655***, held as under:-

“72. Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that the accused or any person on his behalf, has been in possession of pecuniary resources or property

disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The Section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The Legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that his explanation is worthy of acceptance. ..."

41. Learned Prosecutor further submitted that in case of ***P Nallamal*** (*Supra*) the Apex Court held that a non-public servant is also liable to be tried along with the public servant before the Court of Special Judge having jurisdiction over the matter for commission of the offences punishable under Section 109 IPC read with Sections 13 (1) (e) and 13 (2) PC Act. When the material on record *per se* sufficient for the Court to form an opinion that the accused person has committed the offence alleged against him, there is no reason why the charge against the accused should be quashed at such a preliminary stage when only charges having been framed and prosecution has to lead evidence in support of its case.

42. Learned counsel has relied upon the recent decision rendered by this Court on 05.10.2015 in ***Crl.M.C.No.4402/2014 Rekha Rani vs CBI Through its Standing Counsel***, wherein it has been observed as under:-

“17. It is settled law that at the time of framing of charge, the Court is not expected to hold mini trial and delve deep into the matter for the purposes of appreciating the evidence and the evidence can only be weighed when the entire material will be brought before the Trial Court. The Court was required to see at the time of framing charge whether a strong suspicion exists for commission of the offence. The Trial Court found prima facie case against the petitioner, accordingly framed charges.”

43. I have heard the learned counsel for the parties.

44. The case against the petitioners was registered on 22.02.2010 on the basis of a source information, against accused No.1/Ramesh Nambiar, husband of petitioner Rekha Nambiar and Naveen Patil under Sections 13 (2) read with Section 13(1)(e) PC Act and Section 109 IPC on the allegations that accused Ramesh Nambiar while posted and functioning as AGM (Sport), Air India at New Delhi and other places, being a public servant, amassed assets worth about Rs.2,39,21,165/- during the period from 14.10.1991 to 30.06.1999 in his name and in the name of his family members, which were disproportionate to his known sources of income. For calculating the disproportionate assets of accused No.1 Ramesh Nambiar, the check period has been taken from 14.10.1991 to 26.02.2010. Accordingly, the investigation disclosed that source of income of accused Ramesh Nambiar was salary including perks, income from selling house property, income as interest on Bank accounts and dividend, income from investment etc. The source of income of petitioner Rekha Nambiar was salary from Standard Chartered Bank, Deutsche Bank, income from selling

house property, income as interest from Bank accounts, dividend income from investment and consultancy fee etc.

45. The case of the CBI against petitioner Rekha Nambiar is that she had abetted in acquiring the disproportionate assets by accused Ramesh Nambiar by receiving an amount of Rs.1,04,07,829/- as consultancy fee from petitioner Bhojraj Teli, Managing Director of M/s HYT Group of Companies. Similarly, petitioner Bhojraj Teli abetted the offence in acquiring the disproportionate assets by accused Ramesh Nambiar by paying the above amount as consultancy fees to petitioner Rekha Nambiar. Further case of the CBI is that about 15 to 20 years back, petitioner Bhojraj Teli came in contact with accused Ramesh Nambiar and his wife petitioner Rekha Nambiar when Ramesh Nambiar was posted as a Private Secretary to the then Minister of State for Railways during 1995-1996. Initially, petitioner Bhojraj Teli used to go to the office of the Minister of State for Railways, subsequently, he used to meet accused Ramesh Nambiar in his office of Railways, whenever he visited the Railway Board in connection with his business of supply of machines of Indian Railways etc. Petitioner Bhojraj Teli used to receive orders for supply of machines through various Railway Zones from 1981 onwards.

46. Further case of the CBI that accused Ramesh Nambiar obtained unlawful commission through petitioner Bhojraj Teli of M/s. HYT Group of Companies in the name of consultancy fee for his wife and routed the same through M/s Archana Traders Pvt. Ltd., wherein Naveen Patil and father of

petitioner Rekha Nambiar were the major shareholders/Directors. It is not in dispute that investigation could not reveal any evidence to show that accused Ramesh Nambiar had invested the funds in M/s Archana Traders Pvt. Ltd. directly or indirectly.

47. In the case of *P. Nallammal etc.(supra)*, the Apex Court held that a non-public servant is also liable to be tried along with the public servant before the Court of Special Judge having jurisdiction over the matter for commission of the offences punishable under Section 109 IPC read with Sections 13 (1) (e) and 13 (2) PC Act, when the material on record *per se* sufficient for the Court to form an opinion that the accused person has committed the offence alleged against him. The Legislature has advisedly used the expression "satisfactorily account", the emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that his explanation is worthy of acceptance.

48. It is settled law that the property in the name of income tax assessee cannot be a ground to hold that it actually belongs to such assessee. However, the Court would interfere only if uncontroverted allegations on their face value show that no evidence is on record to make out the case and there is an abuse of the process of the Court. 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 adduced 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. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by 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.

49. The CBI failed to bring evidence on record to show that petitioner Bhojraj Teli had ever got any favour from accused Ramesh Nambiar, i.e., husband of petitioner Rekha Nambiar or that said accused was instrumental in awarding any contract to petitioner Bhojraj Teli from Railways during 1995-1996 or that any payment was made to M/s Archana Traders Pvt. Ltd. by petitioner Bhojraj Teli. However, the learned Trial Court while passing the order on charge recorded that in the absence of any record relating to consultancy, at this stage of charge, these entries have to be rejected and the entire such income is to be taken into account to see the extent of disproportion. The genuineness of the entries as submitted by the accused persons has to be established during trial only and no benefit of the same can be given to the accused at the stage of charge. Further recorded that letter dated 17.05.2010 of the Deutsche Bank and the statement of Account (D-36) of the said Bank reveal that petitioner Rekha Nambiar was in the employment of the said Bank up to June, 2008. The learned Trial Court further recorded that the explanation that money belongs to petitioner Rekha Nambiar cannot be accepted at the stage of charge, even though reflected in ITRs of Rekha Nambiar. However, the learned Trial Court ignored the MoU

dated 04.06.2006 (D-13), which is an investors' agreement, wherein petitioner Rekha Nambiar agreed to contribute 20% of the paid up capital of M/s HYT Innovative Projects Ltd. Moreover, the learned Trial Court has ignored the statement of K.B. Surve (PW3), who stated that petitioner Rekha Nambiar was paid salary from April, 2008 to October, 2008 amounting to Rs.21,00,000/-. The learned Trial Court has only considered the salary received from Deutsche Bank by petitioner Rekha Nambiar while calculating the disproportionate assets, however, ignored the consultancy fee, credit card used and travel expenses, which were duly intimated to the Income Tax Authority in ITRs. It shows that the learned Trial Court has ignored each and every aspect which is in favour of the petitioners and was on record. However, the learned Trial Court framed the charges only on the ground that petitioner Rekha Nambiar was not authorized to undertake any such consultancy work during the currency of her employment with Deutsche Bank without prior written approval of her employer.

50. In view of the facts recorded above, Section 109 IPC is not applicable against the petitioners for the reason that even the first ingredient of the term 'abetment', which has been defined under Section 107 IPC, is not complete. Thus, the learned Trial court has ignored the material placed by the CBI, which is part of the chargesheet and states as under:

“The information has disclosed that various incriminating records were seized during search conducted in the above case from the residence and office premises of Shri Ramesh Nambiar. Information received shows that Shri Ramesh Nambiar has been involved in illegal activities of a

middleman/tout and through which he has been earning substantial commission in connivance with various industrialists. Shri Ramesh Nambiar obtained unlawful commissions through one Shri Bhoj Raj Teli of M/s. HYT Group of Companies in the name of consultancy fees for his wife and routed the same through a company M/s. Archana Traders Pvt. Ltd. wherein Sh. Naveen Patil and his father-in-law are the major share holders / Directors.”

51. Thus, the very basis of alleging abetment was that husband of petitioner Rekha Nambiar had been earning substantial commission in connivance with various Industrialists and in this process had obtained unlawful commission through petitioner Bhojraj Teli in the name of consultancy fees for his wife and routed the same through a company under the name and style of ‘M/s. Archana Traders Pvt. Ltd.’. However, while filing the final report, CBI could not establish the complicity of M/s. Archana Traders Pvt. Ltd. by concluding as under:

“The name of M/s. Archana Trades Pvt. Limited and Sh. Naveen Patil figure in the FIR that Ramesh Nambiar obtained unlawful commission through Shri Bhojraj Tali of M/s. HYT Group of Companies in the name of consultancy fee for his wife and routed the same through a company M/s. Archana Traders Private0 Limited wherein Shri Naveen Patil and his (Ramesh Nambiar) father in law and mother in law are the major share holders / directors. However, investigation could not reveal any evidence to show that Sh. Ramesh Nambiar had invested funds in M/s. Archana Traders Pvt. Limited, directly or indirectly.

The aforesaid acts constitute offences punishable under Section 13 (2) r/w 13 (1)(e) of PC Act 1988 against Sh. Ramesh Nambiar (A-1) and constitute offences, punishable under

Section 109 r/w 13 (1) (e) of PC Act against Smt. Rekha Nambiar (A-2) and Sh. Bhojraj Teli (A-3). As investigation could not reveal and evidence against M/s. Archana Traders Pvt. Ltd. and Sh. Naveen Patil, hence, they are not sent up for trial.”

52. Thus, once the very basis and genesis of the allegation stood disappeared, then could still the petitioners be prosecuted, is a question to be considered.

53. In order to bring home the guilt, either the prosecution was bound to establish that the amount of income shown in the name of the petitioner was bribe amount being paid to her husband or that it was the unaccounted money of her, which was being converted to the accounted one. The prosecution, however, did not allege either of the two, but had alleged that husband of the petitioner had obtained unlawful commission through petitioner Bhojraj Teli by routing the same through M/s Archana Traders Pvt. Ltd. But the fact remains that CBI could not establish the complicity of M/s Archana Traders Pvt. Ltd, consequently, the chargesheet has not been filed against said company. In this manner, the CBI has filed the half baked report before the learned Trial Court and the learned Trial Court instead of rejecting the same, at the outset, has chosen to frame charges against the petitioners.

54. It is settled law that before framing the charge, the court must have some material on the basis of which it can come to the conclusion that there is a *prima facie* case against the accused. Before framing a charge, the court must apply its judicial mind on the material placed on record and must be

satisfied that the commitment of offence by the accused was possible. The charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a *prima facie* finding that there exists some materials. Therefore, suspicion cannot alone, without anything more, it is trite, form the basis or held to be sufficient for framing charge. The petitioners have been charged with offence punishable under Section 109 IPC read with Sections 13(1)(e) and 13(2) PC Act. The initial ingredient for Section 13 (1) (e) PC Act is that other person must be in possession of the property on behalf of public servant, however, there is no material in the charge sheet that the petitioner Rekha Nambiar was in possession of any property on behalf of accused No.1 Ramesh Nambiar. It is not in dispute that M/s HYT Innovative Projects Pvt. Ltd., had paid consultation fees to petitioner Rekha Nambair for her services rendered to above noted company and the payments made to petitioner Rekha Nambiar after due deductions of the TDS, have been disclosed and reflected in the income tax returns of the above noted company.

55. It is pertinent to note here that the case of the CBI is that accused No.1. Ramesh Nambair had transferred unaccounted money in the account of M/s Archana Traders, which was further transferred to the account of M/s HYT Group of Companies, which in turn paid the money to petitioner Rekha Nambiar, wife of accused No.1 as consultation fees. However, it is further stated in the charge sheet that during investigation, no evidence could be revealed to show that Ramesh Nambiar had invested funds in M/s Archana Traders directly or indirectly. Hence, there is no material/evidence which

give rise to a grave suspicion that the consultancy fee paid by M/s HYT Group of Companies to petitioner Rekha Nambiar was, in any manner, connected with the unaccounted money of accused No.1. The allegations against petitioner Rekha Nambiar is that she was not allowed to take further employment without the prior permission of Deutsche Bank cannot be read against petitioner Bhoj Raj Teli. Moreover, the second employment of petitioner Rekha Nambiar is not a criminal act and it can at best make her liable for departmental action.

56. The allegations of prosecution with regard to any real work being done by petitioner Rekha Nambiar are unsubstantiated. The prosecution has relied upon two documents, which were the Shareholders' Agreement dated 13.12.2012 and the MoU dated 04.06.2006 annexed as Annexures 1 and 2 respectively. Clause 5 of the Shareholders' Agreement and Clauses 1,4,6,9 & 12 of the MoU mentioned above clearly establish that petitioner Rekha Nambiar had rendered her services as Consultant, Advisor and Director of M/s HYT Innovative Projects Pvt. Ltd. She had contributed 20% of the paid up capital in M/s HYT Innovative Projects Pvt. Ltd. She assisted them in marketing the company's products. Moreover none of the Directors of M/s HYT Group of Companies were to be changed without permission of Rekha Nambiar which clearly establishes that she had active role in the affairs of the said company, for which she has been paid remuneration for her services. Even the aforesaid MoU clearly stated that petitioner Rekha Nambiar will receive an amount of Rs.1.50 Lac per month towards fixed marketing and business promotion expenses excluding sale commission.

However, the finding of the learned Trial Court recorded in para No.5 of the impugned order that there is no document to show that petitioner Rekha Nambiar is a Consultant is contrary to the record.

57. The CBI itself recorded in the charge sheet that accused No.1 was posted as Private Secretary to the then Minister of State for Railways during September, 1995 to March, 1996 and the petitioner Bhojraj Teli used to receive orders for supply of machines from various Railway Zones from 1981 onwards. Hence, as per the case of the prosecution, there is no nexus between the said petitioner and accused No.1, and therefore, there was no occasion for the commission of any of the alleged offences. Therefore, findings of the learned Trial Court in the order on charge that petitioner being in-charge of M/s HYT Group of Companies during the period 14.10.1991 to 26.02.2010 instigated / intentionally aided Ramesh Nambiar in acquiring assets to the tune of Rs.2,08,38,172.60/- is baseless. Whereas in the charge sheet itself it is stated that Bhoj Raj Teli had been visiting the office of accused No.1 Ramesh Nambiar, who was PS to the then Minister of State for Railways during 1995-96. Therefore, the finding of learned Trial Court is contrary to the material on record.

58. On the issue of credit cards used by Ramesh Nambiar and family members for expenditure, learned senior counsel submitted that as per clause 12 of MoU dated 04.06.2006, petitioner Rekha Nambiar will receive an amount of Rs.1.5 Lacs towards fixed marketing and business promotion expenses excluding sale commissions. The allegations against petitioner

Bhoj Raj Teli are that he allegedly committed the acts of paying the professional fees to Rekha Nambiar while acting on behalf of M/s HYT Group of Companies. None of the alleged acts were ever done by petitioner Bhojraj Teli in his personal capacity. There is no concept of vicarious liability in the IPC or the PC Act. In absence of M/s HYT Group of Companies being arrayed as accused or any specific provision for attracting vicarious liability on the petitioner for acts allegedly committed on behalf of the said Company, the order on charge is liable to be set aside qua the petitioner.

59. In case of ***R Kalyani vs Janak C Metha and Others, (2009) 1 SCC 516***, the Apex Court observed as under:-

“41. If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the Company as well as the person responsible for the acts of the Company.”

60. There is evidence on record to establish that money paid by the M/s HYT Group of Companies to petitioner Rekha Nambiar has been duly shown in the books of accounts and in the ITRs of the respective years. Moreover, petitioner Rekha Nambiar had also disclosed the income received from M/s HYT Group of Companies in her ITRs, however the learned Trial Court has ignored both the documents mentioned above and opined that these documents are matter of trial.

61. It is true that the evidence in possession of the accused will be considered at the time of trial, however, the fact remains in the instant case is that documents taken into possession by the CBI establish that both the petitioners had declared the payments made and received in their ITRs and if any misconduct towards the employer has been committed by petitioner Rekha Nambiar, she can be liable for the departmental action, however cannot be booked in this case. It is not the case of the CBI that petitioner Rekha Nambiar has acquired the assets more than her known sources. Her sources are very much known; each and every document was recovered by the CBI, however that has been ignored. Therefore, in the present case, everything cannot be left for trial. If there is no case made out against the petitioners, then why they should face the trial, which will definitely go for years together. The petitioners will also have to face the trauma of trial without having committed any offence by them. Thus, it will be misuse of judicial process.

62. In addition to above, witnesses K.B.Surve (PW3), Satish B Sakpal (PW5), C.B. Arora-Income Tax Officer (PW8) and Roop Chand (PW12) all establish income of petitioner Rekha Nambiar. However, the learned Trial Court has ignored all these evidences and framed charges against the petitioners.

63. In view of the above discussion and settled law, I am of the considered opinion that order on charge dated 01.05.2014 and charge dated 26.05.2014 have been passed by the learned Trial Court without application

of mind by ignoring the clinching evidence available on record in favour of the petitioners. Therefore, the aforesaid orders are hereby quashed. Consequently, FIR in question and all proceedings emanating therefrom are hereby quashed qua petitioners.

64. The petitions are accordingly allowed with no order as to costs.

**SURESH KAIT
(JUDGE)**

NOVEMBER 04, 2015
jg/m/sb