

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

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Reserved on: 12.10.2017

Delivered on: 17.10.2017

+ W.P(CRL) 575/2016 & CRL.M.A.3187/2016

ABHISHEK VERMA THR. PEROKAR/FRIEND

AARON SINDHU

..... Petitioner

versus

C.B.I.

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Maninder Singh with Mr.Dinhar
Takiar, Mr.Sankalp Kohli and Mr.Karan
Mehta.

For the Respondents : Mr.Narender Mann, SPP with Mr.Manoj
Pant.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. The petitioner has challenged the order dated 09.12.2015 passed by the learned Special Judge (P.C.Act) (CBI)—6, Patiala House Courts, New Delhi in CC No.02/15 arising out of RC No.AC1/2012/A0011/CBI/New Delhi whereby the Court below has refused to discharge the petitioner for the offences under Sections 120B read with Section 8 of the P.C.Act, 1988; Sections 420 and 471

of the IPC; Sections 420 read with Section 511 of the IPC; Section 471 IPC and Section 8 of the Prevention of Corruption Act, 1988 and has framed charges in the aforesaid sections against him.

2. A complaint was made by Sh.Ajay Maken, the then State Minister (Independent charge) Youth Affairs & Sports, Government of India on 20.07.2012 alleging that his letter head has been unauthorisedly used by accused persons. Sh.Maken could come to know about the aforesaid fact only when a news item appeared in Indian Express on 15.07.2012 which disclosed that an unsigned letter of Sh.Maken, addressed to the Prime Minister of India, was found in a bunch of papers of Abhishek Verma/petitioner. On the basis of the aforesaid complaint, a case was registered against the petitioner; unknown officials of M/s.ZET Telecom India Pvt. Ltd; unknown officials of M/s.Ganton Ltd, USA and its subsidiary company M/s.Ganton India Pvt Ltd; and other unknown persons under Section 469 IPC read with Section 8 of the P.C.Act and Section 66A(b)(c) of the IT Act, 2000.

3. During the investigation of the aforesaid case, it came to light that Ministry of Home Affairs (Foreigner Division) had issued

guidelines for grant of extension of Visas to foreign nationals which was directed to all States and UT Administration for grant of extension of Visas to foreign nationals. Pursuant to the aforesaid guidelines, the Deputy Commissioner of Police, HO-cum-Foreigner Registration Officer, Gurugram, Haryana issued an order dated 27.10.2009, under the signature of the competent authority that all foreign nationals who were in India on business Visa in connection with execution of their projects/contracts, ought to leave the country on the expiry of their existing Visas or by 31.10.2009, whichever was earlier. This order could have adversely affected the staff of M/s.ZTE Telecom India Pvt Ltd. During the investigations, it was revealed that the then CEO of M/s.ZTE Telecom India Pvt Ltd had approached Mr.D.K.Ghosh, the then CMD of M/s.ZTE Telecom India Pvt Ltd, India for finding out some way to get the Visa of the employees of M/s.ZTE Telecom India Pvt Ltd extended. Since Mr.D.K.Ghosh, referred to above, was known to the petitioner who was famous for his contacts in Government of India, he contacted the petitioner on 28.10.2009 for help. They (Mr.D.K.Ghosh and the petitioner) met in Hotel Radisson, Delhi on 29.10.2009. In presence of Mr.D.K.Ghosh,

the petitioner had a talk on telephone with someone who was explained about the Visa problem. Thereafter, the petitioner asked Mr.D.K.Ghosh to come to the residence of co accused Sh.Jagdish Tytler on 30.10.2009. During the meeting at Radisson Hotel, the petitioner had made it known to Mr.D.K.Ghosh that the help which would be given, would cost money and that a formal request also ought to be made to the Union Home Minister and the then State Home Minister regarding such Visa problem. This fact was communicated by Mr.D.K.Ghosh to the CEO of ZTE Telecom India Pvt Ltd.

4. Sh.D.K.Ghosh thereafter talked to Mr.Gan Yong, Director, Marketing, ZTE Telecom India Pvt Ltd and informed him that he had talked to the petitioner who had good liaisons with the Government of India and also informed that he was demanding "cost" for the work.

5. It was further revealed that the co-accused Sh.Jagdish Tytler had been using a mobile telephone No.9899485136 and was in contact with the petitioner between 28.10.2009 to 03.11.2009. On 30.10.2009, the petitioner and Mr.D.K.Ghosh had gone to the residence of the Sh.Jagdish Tytler where Mr.D.K.Ghosh is said to have explained

about the Visa problem to the Sh.Jagdish Tytler. Sh.Jagdish Tytler is then said to have made a telephone call from his landline to somebody and also assured Mr.D.K.Ghosh that he shall fully cooperate in the matter. That day also, the petitioner had reminded Mr.D.K.Ghosh that for this political intervention and help, money will have to be paid. However, no commitment was made by Mr.D.K.Ghosh and he informed the petitioner that the payment issue will have to be dealt with by the Chinese officials. Mr.D.K.Ghosh, thereafter met one Mr.Gan Yong at Hotel Oberoi along with the petitioner. The petitioner demanded Rs.50 lakhs for getting the Visa problem solved through his contacts in the Government of India and also suggested that an agreement be signed with ZTE Telecom India Pvt Ltd for the aforesaid work. Mr.Gan Yong also could not commit on his own as he needed to talk to the superior officers of the company. The petitioner is then said to have obtained email ID of Mr.Gan Yong. The petitioner, thereafter, entered into correspondence with one Mr.C.Edmonds Allen through his email ID *evaherzigova@gmail.com*, who was his business associate in USA and was also looking after the work of M/s.Ganton USA on behalf of the petitioner. The emails

exchanged by the petitioner with Mr.C.Edmonds Allen discloses that the petitioner had mentioned about ZTE Telecom India Pvt Ltd having received a notice from the Government of India regarding pull out of their staff on or before 31.10.2009 and that he (the petitioner) had been approached for help which would entail cost. The petitioner requested Mr.C.Edmonds Allen to send the same email immediately at the email of Mr.Gan Yong who would confirm the arrangement regarding the monetary deal.

6. During the course of investigation, Mr.C.Edmonds Allen gave a pen drive to the Enforcement Directorate official, who in turn got the data transferred into hard disk of CFSL, CBI. The hard disk was obtained from one Assistant Director of the D.E. Thus the emails between the petitioner, Mr.C.Edmonds Allen and Mr.Gan Yong were retrieved. It further came to light during the investigation that on 03.11.2009, the petitioner had called Mr.Gan Yong on his mobile and asked him to come to the residence of Sh.Jagdish Tytler in the afternoon. During the meeting at the residence of the Sh.Jagdish Tytler, a letter typed on the letter head of Mr.Ajay Maken, the then State Minister for Home Affairs, addressed to the Hon'ble Prime

Minister was shown to Mr.Gan Yong by Sh.Jagdish Tytler in order to make him believe that the Visa problem was being sorted out through his help. Thereafter, the petitioner insisted upon Mr.Gan Yong for signing the draft agreement sent by Mr.C.Edmonds Allen on behalf of M/s.Ganton USA. In the evening of the same day, Mr.D.K.Ghosh and the petitioner again visited the residence of the Sh.Jagdish Tytler where the forged letter was again shown to Mr.D.K.Ghosh. Thereafter, it is alleged that the petitioner took the letter for the purposes of showing it to Chinese officials of ZTE Telecom India Pvt Ltd so that they could believe that the Visa matter was being sorted out through him because of his contacts in Government of India. A copy of the letter was given to Mr.D.K.Ghosh in Hotel Taj Mansingh on 03.11.2009.

7. When the aforesaid agreement was not signed by the officials of M/s.ZTE Telecom India Pvt Ltd and M/s.Ganton USA, the petitioner sent an email to Mr.C.Edmonds Allen in which he attached the forged letter of Mr.Ajay Maken and communicated to him that ZTE Telecom India Pvt Ltd was backing out of the deal.

8. The letter was apparently a forged one which was confirmed by the CFSL report.

9. However, during investigation, as has been stated in the charge sheet, it could not be conclusively established as to who had forged the letter or where was the letter typed. But what could be clearly drawn from the investigation papers that such letter was first shown to Mr.Gan Yong by Sh.Jagdish Tytler at his residence in presence of the petitioner. An assurance was given to Mr.Gan Yong by the petitioner in presence of Sh.Jagdish Tytler that the Visa issue would be pursued. Mr.D.K.Ghosh was also assured of help at the residence of Sh.Jagdish Tytler. Thus the investigation, according to the charge sheet, clearly revealed that the petitioner had knowingly and actively connived with Sh.Jagdish Tytler in attempting to cheat M/s.ZTE Telecom India Pvt Ltd.

10. Charge sheet was submitted against the petitioner and Sh.Tytler on 30.08.2013 whereupon cognizance was taken by order dated 06.09.2013 and the Court below heard the arguments on behalf of the petitioner on point of charge.

11. The learned Special Judge, by order dated 09.12.2015, held that a prima facie case was made out against the petitioner for framing of charges under Sections 120B read with Section 8 of the P.C.Act, 1988; Sections 420 and 471 of the IPC; Sections 420 read with Section 511 of the IPC; Section 471 IPC and Section 8 of the Prevention of Corruption Act, 1988. Accordingly, charges were framed on the same day. The charge against the petitioner reads as under:-

“CHARGE

I, Anju Bajaj Chandna, Special Judge (PC Act) (CBI)-6, Patiala House Courts, New Delhi do hereby charge you accused Abhishek Verma as under:-

Firstly, that you with your co-accused Jagdish Tytler entered into conspiracy with each other during year 2009 at New Delhi to commit the offences punishable u/s 8 of The Prevention of Corruption Act, 1988 and to cheat M/s ZTE Telecom India Private Limited on the basis of forged letter and in pursuance to that criminal conspiracy you accused Abhishek Verma demanded bribe of Rs.50,00,000/- from officials of M/s ZTE Telecom India Private Limited to sort out the visa issue of their employees through signing of agreement with M/s Ganton USA and your

co-accused Jagdish Tytler also had shown forged letter of Sh. Ajay Maken the then Home Minister for State addressed to Hon'ble Prime Minister in the presence of you accused Abhishek Verma to the officials of M/s ZTE Telecom India Private Limited to make them believe that visa problem was being sorted out through them and you thereby committed an offence punishable u/s 120-B r/w Section 8 of P.C. Act, 1988, 471 IPC and 420 IPC and within my cognizance.

Secondly, that in pursuance to the said criminal conspiracy you accused Abhishek Verma during the aforesaid period and place attempted to cheat M/s ZTE Telecom India Private Limited by dishonestly inducing its officials to deliver the amount of Rs.50,00,000 on the basis of fake and forged letter addressed to Hon'ble Prime Minister purported to be issued by Sh. Ajay Maken the then Minister of State (Home Affairs), by getting the agreement forwarded through Mr.C.Edmonds Allen of M/s.Ganton USA and thereby committed an offence punishable u/s 420 r/w 511 IPC and within my cognizance.

Thirdly, that you accused with your co-accused Jagdish Tytler during the afore-said period and place in pursuance to the afore-said criminal conspiracy dishonestly and fraudulently used as genuine fake and

forged letter addressed to Hon'ble Prime Minister from Sh.Ajay Maken the then Minister of State (Home Affairs) purported to be issued by Sh.Ajay Maken, which you both knew at the time you used it to be a forged document in order to obtain illegal gratification from M/s.ZTE Telecom India Private Limited by corrupt or illegal means on the pretext of influencing public servant and to dishonestly cheat them and you both accused thereby committed an offence punishable u/s.471 IPC and within my cognizance.

Fourthly, that you accused Abhishek Verma in pursuance to the said criminal conspiracy during the aforesaid period and place attempted to obtain from M/s.ZTE Telecom India Private Limited illegal gratification of Rs.50,00,000 for yourself and for Home Minister as a motive for inducing by corrupt or illegal means to Sh.Ajay Maken the then State Minister of Home to sort out the visa problem of employees of M/s.ZTE Telecom India Private Limited on the basis of forged letter purported to be issued by Sh.Ajay Maken and you accused Abhishek Verma thereby committed an offence punishable u/s 8 of the Prevention of Corruption Act, 1988 and within my cognizance.

I hereby direct that you accused be tried by this Court for the above said offences.”

12. The learned Special Judge, after reminding herself of the requirements for framing charge which is that wherever a grave suspicion existed about the involvement of an accused in a crime, charges could be framed against such an accused and at that stage, the truth, veracity or the effect of the evidence which may be adduced during trial are not required to be meticulously judged, rejected the contentions of the petitioner that no such offences were made out against him for being tried. The Special Judge observed that from the materials collected during the investigation, there was sufficient evidence that the petitioner had attempted to obtain illegal gratification from M/s.ZTE Telecom India Pvt Ltd on the pretext of influencing public servants, particularly the Home Minister, for getting their work done. The Court below went on to state that the petitioner had demanded \$4,50,000/- for the work and out of the aforesaid amount, he had a mind to pay \$2,00,000/- to the Home Minister. The petitioner, according to the Court below, had attached in his email a copy of the forged letter and had falsely stated that the original letter was signed by the Home Minister. Thus, it was held by

the Trial Court that the petitioner not only demanded gratification for influencing a public servant but also attempted to dishonestly induce and cheat M/s.ZTE Telecom India Pvt Ltd officials by showing them forged letter through co-accused Sh.Jagdish Tytler. Thus, charges against the petitioner were framed under Sections 120B read with Section 8 of the P.C.Act, 1988; Sections 420 and 471 of the IPC; Sections 420 read with Section 511 of the IPC; Section 471 IPC and Section 8 of the Prevention of Corruption Act, 1988.

13. Mr.Maninder Singh, learned advocate appearing for the petitioner, submitted that the charge sheet itself reveals that from the investigation, it could not be proved as to who manufactured the so-called fraudulent letter nor could the investigating agency recover the computer on which it was typed. It was, therefore, argued, that the case of the prosecution cannot be proved in the absence of the original of the forged letter or the source of obtaining such letter or the persons responsible for printing/bringing into existence such letter and under such circumstances the petitioner could not be saddled with such charges. It has further been stressed by Mr.Singh, learned advocate for the petitioner that the materials collected during the investigation

centred around documents given by Mr.C.Edmonds Allen who had downloaded the correspondences/emails into his pen drives/CDs and had handed over the pen drives to Sh.Pankaj Khanna, Assistant Director, Enforcement Directorate. None of those computer outputs, it has been argued, are accompanied by the certificate adhering to the requirements of Section 65(B)(2)(4) of the Evidence Act, 1872, which is a mandatory requirement to be strictly followed, at the time when a computer output is obtained from any person. It has been argued that non compliance of the aforesaid provision has rendered the entire material inadmissible in view of the pronouncement of the Supreme Court of India in Anvar P.V vs. P.K.Basheer & Ors, 2014 (10) SCALE 660 and Ankur Chawla vs. CBI and Ors, Crl M.C No. 2455/2012 decided on 20.11.2014.

14. It has been argued that the certificate issued by aforesaid C.Edmonds Allen which is part of the investigation papers does not reveal the type of the computer (laptop or desktop), the make of the computer and the manner in which it was downloaded and saved in the pen drive. It is also not clear from the certificate that the computer from which the information was downloaded was regularly being used

by the petitioner and that he had the lawful exclusive control over such computer. It is also not clear that all the correspondences between the parties, in the ordinary course of nature, were fed in that computer.

15. It was further pointed out that the emails were sent in the year 2009, but the printouts were obtained from Mr.C.Edmonds Allen in the year 2012 i.e. after three years from the date of transmission of the correspondences and same cannot be relied upon for prosecuting the petitioner.

16. With respect to the findings of the Investigating agency that C.Edmonds Allen worked for the petitioner, it is submitted that such an assertion is incorrect. M/s.Ganton Ltd, USA was registered in USA and Mr.C.Edmonds Allen was the sole shareholder, Chairman, Secretary as well as proprietor of the company who held 100% share holding of the company. There were evidence, it has been argued that M/s.Ganton India Pvt Ltd was a subsidiary of M/s.Ganton Ltd, USA of which 99.99% shareholding was held by Mr.C.Edmonds Allen. The incorrectness of the finding arrived at by the investigating agency regarding this issue was demonstrated before the Court below by showing the minutes of the meeting of the Board of Directors.

17. Mr.Maninder Singh, learned advocate further submitted that neither Mr.C.Edmonds Allen nor M/s.Ganton Ltd, USA have been made accused in the present case and has stated that the original of the aforesaid letter cannot ever be produced during trial and, therefore, the petitioner cannot be prosecuted for the offence.

18. Mr.Singh, learned advocate also argued that the charges against him are groundless in as much as there cannot be any conspiracy for an attempt; rather it can only be for the commission of an offence. No offence, it has been argued, can at all be said to have been made out under any one of the Sections of the IPC or under the P.C Act, from the evidence collected during the course of investigation. Even if the allegations are accepted to be exfacie true, the offence remained completely inchoate and it did not reach the stage for making an attempt for committing the offence. At best, it may be said that there was some preparation for committing the offence of cheating the Chinese company but no attempt actually was made. This has been argued on the strength of the fact that no agreement was signed between the parties with respect to payment of money. Had the agreement been signed and money would not have been paid, the

petitioner, for the sake of argument, could have been charged for the offence of making attempt to cheat the Chinese officials.

19. The other argument of Mr.Singh, learned advocate is that the correspondences further revealed that Mr.C.Edmonds Allen was aware of the so called forged letter on the letter head of Sh.Ajay Maken, prior to 03.11.2009. Thus, it has been argued that the claims of the CBI that the letter was finally collected by the petitioner on 03.11.2009 to be shown to the Chinese officials of the company is incorrect. Even before the aforesaid attempt to cheat the Chinese officials, news had been flashed that the Visa problem had been resolved. In that view of the matter, it was difficult for anybody, much less the petitioner, to cheat anyone on the pretext of providing help for sorting out the Visa issue.

20. For the offence of conspiracy, it has been vehemently argued that the prosecution was required to show that there was a meeting of mind of two or more persons for the purpose of doing an illegal act or an act by illegal means. In **Kehar Singh and Ors vs. State (Delhi Administration)**, (1988) 3 SCC 609, the Supreme Court while

enumerating the principles regarding the offence of conspiracy has held as under:-

“Gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough.”

21. Similarly, in **Yogesh vs. State of Maharashtra, (2008) 10 SCC 394**, the Supreme Court has held as under:-

20. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. Yet, as observed by this Court in Shivnarayan Laxminarayan Joshi v. State of Maharashtra [(1980) 2 SCC 465 : 1980 SCC (Cri) 493] a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of

minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.

25. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement.

22. The petitioner, it has been argued, has wrongly been charged under Section 471 of the IPC. Section 471 IPC reads as hereunder:-

471. Using as genuine a forged 1[document or electronic record].—Whoever fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged [document or electronic record], shall be punished in the same manner as if he had forged such [document or electronic record].

23. It has been submitted that Section 471 would be attracted only in case if a forged document is used. Forgery has been defined under Section 463 whereas Section 464 lays down as to when a person can be said to have made/manufactured a false document. It has been argued that since the forged letter (D-21) is unsigned and undated, it cannot be said to be a document even though it was typed on the letter head of Mr. Ajay Maken, the then Minister of State for Home Affairs. A reference was made to illustration (j) to Section 464 which reads as hereunder:-

(j) A writes a letter and signs it with B 's name without B 's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property. A has committed forgery.

24. Thus, it has been argued that mere writing of the letter would not make a document false unless it is signed or sealed with the name of the person who did not, in fact, sign or seal it. The document, therefore, does not qualify to be called a document at all.

25. The petitioner, therefore, submits that the entire case of the prosecution qua the petitioner is that he had made attempts to cheat M/s.ZTE Telecom India Pvt Ltd by using the alleged forged letter, in conspiracy with the co-accused Sh.Jagdish Tytler. It was also submitted that according to the admitted case of prosecution, no disadvantage had accrued to any party and that there was no lawful gain or lawful loss to anyone. In the absence of any unlawful loss or gain, the petitioner could not have been put on trial for having acted dishonestly. There was, according to the learned counsel for the petitioner, no intention to defraud or to dishonestly induce anybody to pay up money.

26. Mr.Narinder Mann, learned SPP, CBI, on the other hand, sought to defend the order impugned by stating that the offence of conspiracy to commit a crime is a distinct and separate offence. Till the time the crime is not completed, it remains in the realm of attempt.

27. Once materials are collected indicating that the petitioner wanted to obtain illegal gratification from M/s.ZTE Telecom India Pvt Ltd and attempts were made to achieve the said object of defrauding the officials of M/s.ZTE Telecom India Pvt Ltd and taking money

from them, the offence against the petitioner for which he has been charged, is complete. There could have no motive other than defrauding M/s.ZTE Telecom India Pvt Ltd. It matters not if the petitioner did not succeed in getting the illegal gratification. Except for the ultimate act of accepting the payment, everything else had been done at the end of the petitioner, making the attempt to commit the offences charged complete. It has further been argued that it is not the case of the prosecution that the petitioner forged the letter in question. Thus, how the letter came into existence; who forged it and whether the petitioner was responsible for the same would only be issues which could be thrashed out in trial. At the stage of framing of charge, such issues could not be pre judged.

28. Mr.Mann recounts the overt act of the petitioner in making the representatives of M/s.ZTE Telecom India Pvt Ltd believe that the Visa problem is being resolved at his instance and because of his connection in the political circle. In the aforesaid attempt, he roped in the assistance of the co accused Sh.Jagdish Tytler also.

29. It has further been submitted that the statement of Mr.C.Edmonds Allen was recorded under Section 50 of the PMLA

Act which has been incorporated in the present investigation. The documents which were given by the aforesaid Mr.C.Edmonds Allen were received by an officer of the E.D who transmitted it to the CFSL for imaging those documents in a hard disk. The contents of the pen drive/CDs given by Mr.C.Edmonds Allen were imaged on two hard disks, a copy of which was obtained by the CBI during the investigation of this case. Mr.C.Edmonds Allen has also given a certificate in compliance of Section 65 of the Indian Evidence Act.

30. One Mr.Pankaj was examined during the course of investigation and his statement was recorded under Section 161 of the Cr.P.C. The hard disk was obtained by the IO during the investigation and the same was examined by one Gaurav who retrieved the email with full header which was sent by the petitioner from his email ID *evaherzigova@gmail.com* to Mr.C.Edmonds Allen and the email sent by Mr.C.Edmonds Allen to Mr.Gan Yong during the period between 30.10.2009 to 03.11.2009. All the emails were certified by Mr.Gaurav Katara in token of its correctness and a certificate was given under the provisions of the Evidence Act. All the aforementioned persons have been cited as prosecution witnesses and some of them have even deposed

before the Trial Court and have proved the certificates/documents. It was lastly, argued that at the stage of framing of the charge, the Court concerned is only to see whether there is evidence on record to frame the charges. At the initial stage, the prosecution case cannot be thwarted, on the basis of micro analysis of the evidence and on the presumption that no evidence can come during the trial in favour of the prosecution.

31. This Court has bestowed its consideration over the materials which have been placed on record. From the records, it appears that a letter purportedly typed on the letter head of Sh.Ajay Maken was found in the papers of the petitioner while he was being investigated under the PMLA Act. Mr.Ajay Maken, who learnt about the same from a newspaper item, made a complaint leading to the registration of the FIR. During the course of investigation, materials were collected indicating that when the petitioner was approached by Sh.D.K.Ghosh on behalf of M/s.ZTE Telecom India Pvt Ltd and the petitioner arranged for Mr.D.K.Ghosh's visit to the house of Sh.Jagdish Tytler.

32. The petitioner categorically told Sh.D.K.Ghosh that for the help that he would render, cost will have to be paid. In his presence, co-

accused Mr.Jagdish Tytler assured of help in resolving the Visa problem and also called somebody on telephone (landline). The forged letter was also shown to one Mr.Gan Yong, one of the officials of M/s.ZTE Telecom India Pvt Ltd. The investigation papers revealed that the petitioner had communicated with Mr.C.Edmonds Allen and had asked him to get in touch with Mr.Gan Yong for the purposes of entering into an agreement for payment of money for the help rendered by the petitioner and the payment was to be in the nature of fee for the services rendered.

33. The Trial Court while refusing to discharge the petitioner has held as follows:-

"The electronic evidence pitted against A-1 contains sufficient material to support the prosecution case. It is evident from various e-mails sent on behalf of A-1 that he attempted to obtain illegal gratification from ZTE Telecom officials on the pretext of influencing public servant particularly the Home Minister for getting their work done. In his e-mail dated 03/11/2009, A-1 even went to the extent of stating that out of the demanded amount of \$450,000, \$200,000 was for the Home Minister. A-1 also attached with this e-mail the copy of the forged letter and falsely stated that the original has been signed by the

Home Minister. In this way, A-1 not only demanded gratification for influencing the public servant but also attempted to dishonestly induce and cheat ZTE officials by showing them forged letter through A-2. It does not affect the merits of allegations whether A-1 has any apparent interest in M/s.Ganton in USA or not. It is clear that at the instance of Abhishek Verma (A-1), Mr.C.Edmonds Allen was acting and was sending further e-mails to ZTE officials seeking signing of the agreement whereby money was sought. It is again a matter of trial as to in what manner A-1 was to be benefited by this agreement whereby money was to be transferred to M/s.Ganton USA in lieu of resolving the visa issue.

18. In view of the above said facts, there is clear case as against A-1 for the offence punishable under Section 120B IPC r/w Section 8 of P.C.Act, 471 and 420 IPC and for substantive offences u/s 8 of P.C.Act and 471 IPC and 420/511 IPC."

34. With respect to conspiracy, the Trial Court has further held as follows:-

"20. To constitute a conspiracy, meeting of minds of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not

necessary that all the conspirators must know each other and every detail of the conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implication. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy. Criminal conspiracy is an independent offence in the Penal Code. The unlawful agreement is sine qua non for constituting offence under the Penal Code and not an accomplishment. Conspiracy consists of the scheme or adjustment between two or more persons which may be express or implied or partly express or partly implied. Even Section 10 of the Evidence Act introduces the doctrine of agency and if the conditions laid down

therein are satisfied, the act done by one is admissible against the co-conspirators."

21. In **"Shivanarayan vs. State of Maharashtra"**, AIR 1980 Supreme Court 439, it was held that

"It is manifest that a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the same. The offence can be only proved largely from the inferences drawn from acts or illegal omission committed by the conspirators in pursuance of a common design."

22. In the case of **State of Maharashtra and Others vs. Som Nath Thapa and Others**, (1996) 4 SCC 659, it was held that:-

"To establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods

or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use.

35. In order to appreciate the contention of the parties, it would be necessary to analyze the scope and ambit of the powers of the Trial Court under Sections 227 and 228 of the Code.

“227. Discharge. *If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient*

ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

36. The aforesaid sections form part of Chapter XVIII of the Code. Section 227 contemplates the circumstances under which an accused could be discharged before the actual framing of charge against him for trial. Under Section 228 of the Cr.P.C if the Trial Court is of the opinion that there are grounds for presuming that the accused has

committed an offence, he shall frame charge, read and explain it to the accused and the accused shall thereafter be asked whether he pleads guilty for the offence charged or claims to be tried.

37. The scope of Section 227 of the Code was considered by the Supreme Court in **State of Bihar vs. Ramesh Singh**, (1977) 4 SCC 39 wherein the Supreme Court observed as follows:-

“4. ... Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence,

then there will be no sufficient ground for proceeding with the trial.”

38. In a subsequent decision in **Union of India vs. Prafulla Kumar Samal**, (1979) 3 SCC 4, the Supreme Court listed the following principles for the exercise of powers under Section 227 of the Code of Criminal Procedure:-

“(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 produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

39. The ambit and scope of the aforesaid sections were again considered in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya**, (1990) 4 SCC 76 as follows:-

“6. ... 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 exists 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 State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] 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 [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] this Court after considering the scope of Section 227 observed that the words „not 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 it may evaluate the material to find out if the facts emerging therefrom taken at their face value establish the ingredients constituting the said offence.”

40. In a recent decision in **Soma Chakravarty v. State, (2007) 5 SCC 403**, the Supreme Court has held that:-

“The settled legal position is that if on the basis of material on record the court could form an opinion that the accused might have committed the 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 ... 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. Whether, in fact, the accused committed the offence, can only be decided in the trial.”

41. Thus a charge against a person can be framed if the Court forms an opinion that the accused *might* have committed the offence. For the conviction of an accused, the Court has to come to the conclusion that the accused *must* have committed the offence. This is not the

requirement at the time of framing of the charge. The probative value of the materials on record cannot be gone into. However, there should be an application of judicial mind. But whether an accused committed the offence, can only be decided in the trial.

42. Coming to the facts of the present case, it would appear that the Trial Court has gone in rather detail and has come to the conclusion that the offences for which the petitioner has been charged are prima facie made out for trial.

43. This Court has been informed that pursuant to the framing of charge, 13 prosecution witnesses have already been examined.

44. Considering the aforesaid facts, this Court is of the view that the prosecution of the petitioner ought not to be thwarted at this stage.

45. No case for interference has been made out on behalf of the petitioner.

46. The petition is thus dismissed.

47. However, it is made clear that any opinion expressed in this order be not construed prejudicially against the petitioner and as any opinion on the merits of the case. The Trial Court shall come to its own findings in consonance with law.

Crl. M.A. No.3187/2016

1. In view of the main petition having been dismissed, this application becomes infructuous.
2. This application is disposed of accordingly.

OCTOBER 17, 2017
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ASHUTOSH KUMAR, J

