

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

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Reserved on: 31.08.2017

Delivered on: 17.10.2017

+ CRL.M.C.1229/2016 & CrI.M.A.5286/2016

JAGDISH TYTLER

..... Petitioner

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Advocates who appeared in this case:

For the Petitioner : Mr.Arvind K.Nigam, Sr.Adv. with Mr.Amit Sharma, Mr.Vaibhav Tomar, Ms.Shruti Choudhary, Mr.Karma Dorjee, Mr.Mikhil Sharda and Mr.Aditya Bhardwaj.

For the Respondent : 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 and Sections 420 and 471 of the IPC and has framed charges under the aforesaid sections against him.

2. A case was registered on the basis of a complaint dated 20.07.2012 made by Sh.Ajay Maken, the then State Minister (Independent charge) Youth Affairs & Sports, Government of India alleging that a fake letter on his letter head has been unauthorizedly used for some pecuniary advantage. Sh.Maken had come to know about the aforesaid letter from a news item published in the Indian Express on 15.07.2012 under the title “Among Verma Papers, an Unsigned Maken Letter to P.M”. A case was, thereafter, registered against Sh.Abhishek Verma; 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 were 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 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 co accused Sh.Abhishek Verma who was famous for his contacts in Government of India, he contacted Sh.Abhishek Verma on 28.10.2009 for help. They (Mr.D.K.Ghosh and Sh.Abhishek Verma) met in Hotel Radisson, Delhi on 29.10.2009. In

presence of Mr.D.K.Ghosh, Sh.Abhishek Verma had a talk on telephone with someone who was explained about the Visa problem. Thereafter, Sh.Abhishek Verma asked Mr.D.K.Ghosh to come to the residence of the petitioner on 30.10.2009. During the meeting at Radisson Hotel, Sh.Abhishek Verma 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. With respect to the petitioner, investigations revealed that he used a mobile telephone No.9899485136 and was in contact with Sh.Abhishek Verma between 28.10.2009 to 03.11.2009. On 30.10.2009, Sh.Abhishek Verma and Mr.D.K.Ghosh had gone to the residence of the petitioner where Mr.D.K.Ghosh is said to have explained about the Visa problem to the petitioner. The petitioner 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, Sh.Abhishek Verma 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 Sh.Abhishek Verma that the payment issue will have to be dealt with by the Chinese officials. Mr.D.K.Ghosh, thereafter met one Mr.Gan Yong, Director, Marketing, ZTE Telecom India Pvt Ltd at Hotel Oberoi along with Sh.Abhishek Verma. Sh. Abhishek Verma 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 between 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. Sh.Abhishek Verma is then said to have obtained email ID of Mr.Gan Yong. Sh.Abhishek Verma also entered into correspondence with one Mr.C.Edmonds Allen through his email ID *evaherzigova@gmail.com* who was Sh.Abhishek Verma's business associate in USA and was also looking after the work of M/s.Ganton USA on behalf of Sh. Abhishek Verma. The emails exchanged by Sh.Abhishek Verma with Mr.C.Edmonds Allen discloses that Sh.Abhishek Verma 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 (Mr.Abhishek Verma) had been approached for help which would entail cost. Sh.Abhishek Verma 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.

5. 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 Sh.Abhishek Verma, Mr.C.Edmonds Allen and Mr.Gan Yong were retrieved. It further came to light during the investigation that on 03.11.2009, Sh.Abhishek Verma called Mr.Gan Yong on his mobile and asked him to come to the residence of the petitioner in the afternoon. During the meeting at the residence of the petitioner, 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 the petitioner in order to make him believe that the Visa problem was being sorted out through his help.

Thereafter, Sh.Abhishek Verma 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 Sh.Abhishek Verma again visited the residence of the petitioner where the forged letter was again shown to Mr.D.K.Ghosh. Thereafter, it is alleged that Sh.Abhishek Verma 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 Mr. Abhishek Verma 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.

6. When the aforesaid agreement was not signed by the officials of M/s.ZTE Telecom India Pvt Ltd and M/s.Ganton USA, co accused Sh.Abhishek Verma 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.

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

8. 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 the petitioner at his residence in presence of Sh.Abhishek Verma. An assurance was given to Mr.Gan Yong by Sh.Abhishek Verma in presence of the petitioner that the Visa issue would be pursued. Mr.D.K.Ghosh was also assured of help at the residence of the petitioner. Thus the investigation, according to the charge sheet, clearly revealed that the petitioner had knowingly and actively connived with Sh.Abhishek Verma in attempting to cheat M/s.ZTE Telecom India Pvt Ltd.

9. Charge sheet was submitted against the petitioner and others 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.

10. 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 and

Sections 420 and 471 of the IPC and separately for the substantive offence under Section 471 IPC. 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 Jagdish Tytler as under:-

Firstly, that you with your co-accused Abhishek Verma 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 your co-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 you 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 your co-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 you accused with your co-accused Abhishek Verma during the aforesaid period and place and in pursuance to the aforesaid criminal conspiracy dishonestly and fraudulently used as genuine fake and forged letter addressed to Hon'ble Prima 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.

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

11. The learned Special Judge, after reminding herself of the requirements for framing charge viz. that wherever a grave suspicion existed about the involvement of an accused in a crime, charges could be framed against him and at such 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 are made out against him for being tried. The Special Judge observed that from the materials collected during the investigation, there was evidence that the petitioner had conspired with accused Sh.Abhishek Verma and had full knowledge of the transaction which was entered into between Sh.Abhishek Verma and M/s.ZTE Telecom India Pvt Ltd officials. Thus, charges against the petitioner were framed under Sections 120B read with Section 8 of the P.C Act and Sections 420 and 471 of the IPC and separately for the offence under Section 471 IPC.

12. Mr.Arvind K.Nigam, learned senior advocate appearing for the petitioner submitted that the charges against the petitioner are groundless. He has submitted that 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.

13. Mr.Nigam, has argued that from the allegations in the charge sheet, even if taken on its face value and presumed to be correct, no offence under Section 8 of the P.C Act can at all be said to have been made out. For constituting an offence under Section 8 of the P.C Act, it was essential, in the first place, that there be a solicitation or offer or receipt of a gratification. Secondly, such a gratification must have been asked for, offered or paid as a motive or reward and that such illegal act must be done by a public servant who would, for gain, confer a favour or render some service in lieu of such gratification. It was further argued that Section 8 of the Prevention of Corruption Act, 1988 requires that the payment must be in pursuance of the inducement and the inducement must be by corrupt or illegal means. Since there is no allegation that the petitioner attempted to obtain money as motive or reward to induce any public servant by illegal or corrupt means to sort out the Visa problem, no charge under Section 8 of the P.C Act even with the aid of Section 120B IPC could have been framed.

14. 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.”

15. 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.

16. 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].

17. 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.

18. 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.

19. The learned counsel for the petitioner drew the attention of this Court to the observations made by a Division Bench of the Kolkata High Court in **Empress vs. Riasat Ali, 1881 Vol.VII ILR Calcutta Series 352**, which reads as hereunder:-

“What constitutes a false document, or part of a document, is not the writing of any number of words which in themselves are innocent but the affixing of the seal or signature of such person to the document or part of a document, knowing that the seal or signature is not his and that he gave no authority to affix it. In other words, the falsity consists in the document or part of a document being signed or sealed with the name or seal of a person who did not in fact sign or seal it.”

20. In **Jibrial Diwan vs. State, (1997) 6 SCC 499**, the learned counsel has pointed out that, the Supreme Court has held as follows:-

“Dishonestly” has been defined to mean that whoever does anything with the intention of causing wrongful gain to one

person or wrongful loss to another person, is said to do that thing “dishonestly”. The word “fraudulently” has been defined to mean that a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. This Court in S. Dutt (Dr) v. State of U.P. [AIR 1966 SC 523 : (1966) 1 SCR 493] has explained the words “intent to defraud” as being not synonymous with the words “intent to deceive”. It requires some action resulting in a disadvantage which but for the deception the person defrauded would have avoided. Here by the delivery of forged letters, there is neither any wrongful gain to anyone nor any wrongful loss to another. The act of the appellant could not thus be termed to have been done dishonestly. Likewise the appellant cannot be said to have any intention to defraud because his action resulted in no disadvantage to anyone which but for the deception the person defrauded would have acted otherwise.”

21. Thus it was argued that the entire case of the prosecution qua the petitioner is that he had shown the alleged forged letter on 03.11.2009 at his residence to Mr.Gan Yong. It was also the admitted case of the prosecution that there was no disadvantage which had accrued to any party and that there was no wrongful gain or wrongful loss to anyone. In the absence of any wrongful loss or gain, the

petitioner cannot be put on trial for having acted dishonestly. There was no intention to defraud and to dishonestly induce anybody to pay up money.

22. Lastly, it was urged that the whole edifice of the prosecution version is based upon an alleged fake, unsigned letter on the letter head of Mr.Ajay Maken, addressed to the Hon'ble Prime Minister, which was shown to the officials of M/s.ZTE Telecom India Pvt Ltd by the petitioner. It has been submitted that the very existence of the letter is doubtful and the investigation papers itself reveal that it could not be established as to who typed the letter and on which computer was it typed. The letter (D-21) was not recovered at the instance of either Sh.Abhishek Verma or Mr.D.K.Ghosh or from any electronic records seized by the investigating agency from Sh.Abhishek Verma or the officials of M/s.ZTE Telecom India Pvt Ltd. The original of the aforesaid letter is also not on record. The source of this letter is a pen drive provided by Mr.C.Edmonds Allen to Assistant Director, Directorate of Enforcement, Government of India who got the data transferred into the hard disk from CFSL, CBI, New Delhi. The said hard disk was obtained by the CBI from the Enforcement Directorate.

Thus, the letter, for it to be accepted in evidence was required to be processed in terms of Section 65B of the Evidence Act as it was an electronic evidence. During the investigation, the certificate under Section 65B of the Evidence Act was given by Mr.C.Edmonds Allen in support of such electronic evidence. It has been argued that the prosecution has relied upon, for the aforesaid purpose, the statement of Mr.C.Edmonds Allen recorded under Section 50 of the PMLA Act by one of the officials of Enforcement Directorate.

23. Thus, the certificate given by Mr.C.Edmonds Allen was not as per the requirements of Section 65B of the Indian Evidence Act and as held by the Hon'ble Supreme Court in **Anvar P.V vs. P.K.Basheer & Ors, (2014) 10 SCC 473**, it was not admissible in evidence.

24. It was postulated that under no circumstances can the original of the forged letter be avoided to be brought on record and if an original document is not brought on record, the prosecution must necessarily fail. In **Srichand P.Hinduja & Ors vs. State through CBI, 2005 (85) DRJ 494**, the Delhi High Court has held as under:-

“It seems to me that if these documents are not proved by satisfactory secondary evidence and will not be ever proved at the trial, it will be a cruel joke on the

accused to expose them to a long and arduous trial and waste public time and money which will be totally out of proportion to the results to be achieved.”

25. Mr.Nigam, therefore, submitted that at the time of framing of the charge, it was the bounden duty of the Court to sift through the material to ascertain whether a prima facie case has been established for justifying the prosecution of the petitioner. This exercise not having been undertaken, it has been argued, an innocent person has been put on trial merely on the basis of a flippant or vague and vindictive accusation which is bereft of any probative evidence. In such an event, the petitioner would suffer the ordeal of the trial unnecessarily and without any reason.

26. Mr.Narinder Mann, learned SPP, on the other hand, sought to defend the order impugned by stating that the offence of conspiracy to commit a crime is 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 co-accused Sh.Abhishek Verma 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, it was to be seen whether the petitioner had the knowledge of such a motive of co-accused. It matters not if the accused persons did not succeed in getting the illegal gratification. But, except for the ultimate act of accepting the payment, everything else had been done at the end of the accused persons, thus making the attempt to commit the offences charged complete. How the letter came into existence, who forged it and whether the petitioner or other accused persons were responsible for the same are matters of trial and at the stage of framing of charge, such issues could not be pre judged. If the letter was shown by the petitioner to an official of M/s.ZTE Telecom India Pvt Ltd in presence of co accused Sh.Abhishek Verma, it is certain that the petitioner knew about the intention of co accused Sh.Abhishek Verma to get money from the Chinese officials of M/s.ZTE Telecom India Pvt Ltd for the political intervention through the petitioner. This obviously, it has been argued, cannot be called a legal means of getting paid for the work done. The petitioner, from the materials collected, can safely be said to have known that the letter was not written by Mr.Ajay Maken.

28. D-21, it been asserted is a forged letter allegedly written by Mr.Ajay Maken, the then Minister of State, Home Affairs whereas D-22 are set of documents which contain certificates under Section 65B of the Evidence Act, pen drives and CDs, Emails sent by Sh.Abhishek Verma to Mr.C.Edmonds Allen, statement of Mr.C.Edmonds Allen recorded under Section 50 of the PMLA Act and other documents obtained at New York, USA by the official of the Department of D.E.

29. The above pen drives/CDs received from Mr.C.Edmonds Allen were sent to the CFSL for imaging the same in a hard disk. The contents of the pen drives/CDs were imaged on two hard disks of 250 GB each by one Gautam Roy, SSO Grade-I, CFSL, who also gave a CFSL report with regard to making of those hard disks. A copy of one of the hard disk was obtained by the CBI during the investigation of this case.

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, sent by Sh.Abhishek Verma 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 ranging from 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 presumption that no evidence can come during the trial in favour of the prosecution.

31. From the conspectus of the materials on record and on bestowing consideration over the arguments made on behalf of the parties, it appears that a letter purportedly typed on the letter head of Sh.Ajay Maken was found in the papers of Mr.Abhishek Verma 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 such letter was shown by the petitioner at his residence to Mr.Gan Yong, one of the officials of M/s.ZTE Telecom India Pvt Ltd. What could be the purpose of showing such letter to Mr.Gan Yong but for inducing him into believing that the political recommendation was being made by the petitioner for sorting out the Visa problem. Till the time, there existed no monetary reason for sorting out the Visa problem, the act would not have come under the category of any offence but, if materials could be collected during the course of investigation indicating an attempt to obtain money for the aforesaid political intervention, then definitely it becomes an offence, at least for the purposes of putting the petitioner on trial for ascertaining as to as to whether any attempt was made for cheating by the petitioner, who played a positive role in inducing an official of a Chinese company to pay up money. If the letter, later, is not found to be genuine, it would lead to the inference that such letter was forged for the purposes of defrauding somebody and whether the petitioner was aware of the fact that the letter was a forged one or that co accused persons had been

making attempts or entertained motive for obtaining money from the Chinese officials on the pretext of providing them political help, are subject matters of the trial and cannot be pre judged at the stage of framing of charge.

32. 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.”

33. 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.

34. 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.”

35. 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.”

36. 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 Biharv. 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.”

37. 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.”

38. 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.

39. 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.

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

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

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

43. The petition is thus dismissed.

44. 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.5286/2016

1. In view of the main petition having been dismissed, this application becomes infructuous.

2. This application is disposed of accordingly.

ASHUTOSH KUMAR, J

OCTOBER 17, 2017

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