IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.523 OF 2016

Amritlal Gulabchand Jain
Aged – 56 years, Indian Inhabitant,
Managing Director of
Auro Gold Jewellery Ltd.,
Having its corporate office at
Unit No.2, Cama Indl. Estate,
Sun Mill Compound,
Lower Pare (W), Mumbai – 400 013 .. Petitioner

Vs.

1] The Superintendent of Police
Central Bureau of Investigation,
Anti-Corruption Bureau [ACB],
Having their office at
Tanna House, Shahid Bhagat
Singh Road, Colaba,
Mumbai – 400 005.

2] State of Maharashtra
(Through the Public Prosecutor,
High Court (A.S.), Mumbai. .. Respondent

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Mr.Subhash Jha a/w. Ms.Sanjana Pardeshi i/b. M/s.Law Global, Advocate for Applicant.

Ms.Ameeta Kuttikrishnan, Advocate for Respondent No.1.

Ms.R.M. Gadhvi, APP for Respondent No.2 – State.

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CORAM : PRAKASH D. NAIK, J.

RESERVED ON : FEBRYARY 6, 2018.
DELIVERED ON : MARCH 16, 2018.

JUDGMENT :

The applicant by filing this application seeks to invoke the revisional powers of this Court under Sections 397 and 401 of Code of Criminal Procedure and seeks to challenge the order dated 22nd August, 2016, passed by the Special Judge CBI Mumbai on Exhibit–19, by which the application preferred by the applicant before the said Court under Section 227 of Code of Criminal Procedure has been rejected.

2 The applicant has been arraigned as an accused in First Information Report (FIR) No.BAI/2014/A0006 for the alleged offences punishable under Section 13(2) read with Section 13 (1)(e) of the Prevention of Corruption Act and Section 109 and 120-B of Indian Penal Code (IPC).

3 The brief facts of the prosecution case are as follows:

(a) Shyamal Acharya (A-1), the Deputy General Manager, SBI Corporate Office, Nariman Point Mumbai amassed huge assets in his name and under the names of his family members and one Ms.Kamini Jain who were found in possession of assets disproportionate to his known sources of income to the extent of Rs.3,44,13,111/-. The check period was 1st April 2011 to 23 November, 2013. Accordingly, on the basis of information the FIR was registered on 12th February, 2014.

(b) The investigation revealed that Shyamal Acharya had kept gold weighing 6864 grams with the applicant (accused no.2). This is included at serial no.36 in statement–B i.e. assets at the end of check period for, the purpose of calculating the disproportionate assets of Shri Shyamal Acharya. This was accounted for by accused no.2 (applicant) in the books of account of M/s.Auro Gold Jewellery Private Limited under the name “Archana”. It was further alleged that, by way of documents i.e. party-wise stock reports in the name of Archana as well as a gold inventory seized from the office and residential premises of accused no.1 Shyamal Acharya and hard desks seized during the search of the office premises of the applicant and corroborated by the experts opinion on the data recovered from the hard-disk, as well as the statement of Prashant Bhosale. The applicant allegedly aided and abetted accused no.1 in the commission of the offence under Section 13(2) read 13(1)(e) of the Prevention of Corruption Act.

(c) It is alleged that accused no.1 Shyamal Acharya was found in possession of assets disproportionate to his known source of income to the extent of Rs.2,05,61,288/-, which he could not satisfactorily accounts for.

(d) During the search conducted on 23rd November, 2013, at the office premises of Shyamal Acharya during the investigation of RC-33(A)/2013-Month, *inter-alia* a gold inventory and party-wise account statement of the party "Archana" was seized. The party wise stock report for the period 1st August, 2013 to 9th November, 2013, shows that the total quantity of gold kept with accused no.2 by accused no.1 was 6864 grams, as per the handwritten gold inventory as on 5th November, 2013, the total quantity of gold kept with the applicant was 6633 grams.

(e) During the search conducted on 23rd November, 2013, at the residential premises of Shyamal Acharya, during the investigation of RC-33(A) 2013-Month *inter-alia* one bunch of miscellaneous papers regarding cash/gold transactions including party-wise stock reports of the party Archana and hand written notes were seized.

(f) The party-wise stock reports show that they were regularly maintained by the applicant in the course of his business i.e. M/s.Auro Gold Jewellery Private Limited and that copies of the same had been provided to the accused no.1 by the applicant. The aforesaid party-wise stock reports for various period of time and the gold inventory clearly show that the accused no.1 Shyamal Acharaya had kept gold from time to time with the applicant, that the account of accused no.1 with the applicant stood in the name Archana and that the total amount of gold kept with the applicant by accused no.1 upto November, 2013, was 6864 grams.

(g) During the search conducted on 7th December, 2013, during the investigation of RC-33(A)/2013, at the office of Auro Gold Jewellery Private Limited at Cama Industrial Estate, Sun Mill Compound, Lower Parel *inter–alia* hard disks, one pen drive and 8075.830 grams of gold were seized. During the search conducted on 8th December, 2013, while investigating RC-33(A) at the office of Auro Gold Jewellery at Laxmi Premises, Shaikh Memon Street, Zaveri Road, Laxmi Bazar, two hard-disks and one 1606.860 grams of gold were seized.

4 On completing the investigation the charge–sheet was filed before the Special Court. The proceedings are numbered as Special Case No.58 of 2015. The applicant preferred an application under Section 227 of Code of Criminal Procedure (Cr.P.C.) seeking discharge from the said proceedings. The said application was rejected by the Special Court by order dated 22nd August, 2016. The applicant has preferred this application challenging the impugned order and prayed that the applicant be discharged from the said proceedings.

5 The learned counsel for the applicant Shri Subhash Jha submitted that the applicant is not concerned with the transaction of M/s.World Window Group with that of State Bank of India and/or Shri Shyamal Acharya and similarly he has nothing to do with the alleged offer made by Shri Piyoosh Goyal to Shri Shyamal Acharya of Rs.25 lakhs, as a reward to be paid through Shri Kamal Kishor Kurma, and,therefore,by no stretch of

imagination the CBI to embark upon to effect seizure of the articles which have been reflected in the search lists dated 7th December, 2013 and 8th December, 2013. The gold ornaments or gold bars which have been seized from the factory premises of the applicant are not even remotely concerned in any manner whatsoever with the subject matter of investigation concerning the said FIR. It is submitted that the statement of the co-accused Shri Shyamal Acharya is inadmissible in law and the only material or evidence which the prosecution is relying in the charge-sheet is in the form of statement of account which has been referred to in the charge–sheet. It is submitted that the reference is made to one "Archana" to the extent of 31.703 and 30.680. The CBI seeks to rely upon the statement of Prashant Bhosale, the staff of Auro Gold Jewellery, in which there is a reference of document wherein one entry dated 17th August, 2011, showing 500 grams of gold. In his statement, Prashant Bhosale is claimed to have said that Smt. Dolly Acharya, wife of Shyamal Acharya handed over some jewellery to him and asked to hand over the same to the applicant. This only implies that the wife of Shyamal Acharya, the co-accused would hand over the gold to Prashant Bhosale for being made jewellery out of that and once Shyamal Achaya had even handed over US$ 1000 to be given to the applicant. On the basis of statement of Prashant Bhosale, an inference of an offence under Sections 109, 120-B of IPC or for that matter under Section 13(2) read with 13(1)(e) of prevention of Corruption Act, cannot be said to have been made as has been referred to in the FIR. In the charge–sheet which refers Statement-B concerning assets to the end of check period i.e. 23rd November, 2013, at serial no.36 makes a reference to 6864 grams form of bullion invested with the applicant is of the value of Rs.90,89,309/-. It is submitted that there is no evidence on the basis the applicant could be connected with the offence concerning Shyamal Acharya, who is a public servant. The trial Court has committed an error in not appreciating the fact that the alleged entries made by Shyamal Acharya in his diary to the effect that 6864 grams of gold bullions were invested with the applicant, is not admissible under Section 34 of the Indian Evidence Act. It is further submitted that the alleged entries found in the hard disk are also not admissible under Section 34 of the Evidence Act. The trial Court has misinterpreted the decisions cited before the Court. It is submitted that the evidence on record is not sufficient to frame the charge against the applicant. The prosecution is relying upon the computer print outs recovered from accused no.1, which referred the name “Archana”. It is submitted that there is no reference of the applicant in those print outs and as such it would be no evidence against the applicant. The name Archana is a common name. The entries retrieved from the hard-disk made on the computer of accused no.2 could not tally with party-wise reports. These documents are not admissible documents and charge cannot be framed on the basis of inadmissible documents. It is further submitted that the data retrieved from the hard-disk of the accused–applicant cannot be said to have been maintained in the normal course of business. As such, In accordance with Section 34 of the Evidence Act, the said documents cannot be taken into considering for framing charge.

6 Learned counsel relied upon the following decisions in support of his submissions.

(1) Common Cause (A Registered Society) & Ors. Vs. Union of India & Ors.[1] ;
(2) L.K. AdVani Vs.Central Bureau of Investigation[2];
(3) Central Bureau of Investigation Vs.V.C. Shukla and Ors.[3];
(4) Century Spinning and Manufacturing Company Limited & Ors. Vs. State of Maharashtra[4];

1 AIR 2017 SC 540
2 (1997) 41 DRJ 274
3 (1998) 3 SCC 410
4 (1972) 3 SCC 282

(5) Zenna Sorabji & Ors. Vs. Mirabelle Hotel Company (Pvt) Ltd. & Ors.[5];

(6) Commissioner of income Tax Vs. Vatika Landbase Private Limited[6];

(7) Commissioner of Income Tax Vs. S.M. Agarwal[7];

(8) Bhajanlal Raheja Vs. P. Natrajan[8]; and

(9) B. Sidhalingappa Vs. M.C. Mohan[9].

7 Learned counsel for CBI/Respondent Ms.Kuttikrishnan submitted that there is sufficient evidence to frame charge against the applicant. The submissions advanced by the counsel for the applicant are required to be adjudicated during the trial. It is submitted that to frame a charge a *prima facie* case is made out against the applicant. It is submitted that the computer print outs recovered from the premises of accused no.1 and the hard-disk from the computer of accused no.2 were sent to CFSL to ascertain whether the hard copies were prepared from that hard-disk and the CFSL has reported that the data in the hard-disk tallies with the computer print outs recovered from accused no.1. Learned counsel relied upon the statement of Prashant Bhosale, who is an employee of accused no.2 (applicant) and admitted having received gold from the wife

5 1980 SCC Online Bom 11 : AIR 1981 Bom 446
6 2016 SCC Online Del 1187
7 2007 SCC Online Del 1792
8 2003 SCC Online Mad 145
9 1977 SCC Online Kar 99

of accused no.1. He also referred to the handwritten paper wherein an entry of 6633 grams gold with accused no.2 is written. The statement of Prashant Bhosale and receipts issued by him dated 17th August, 2011 and 13th August, 2011, establish connection of the present accused with the offence. Respondent –CBI has also filed affidavit-in-reply opposing the reliefs prayed in this application. It is submitted that vide forwarding letter dated 25th May, 2014, 21 hard-disks and one pen drive and 23 documents including the handwritten sheets of the paper and computerized print outs of the party-wise stock reports seized from the office premises and residential premises of accused no.1 on 23rd November, 2013, numbered as Q-1 to Q-23, were sent to the Director, Forensic Science Laboratory, Gandhinagar, for analysis in order to ascertain whether the aforesaid party-wise statement in the name of "Archana" seized from the office and residential premises of Shyamal Acharya had been prepared on the hard- disk seized from the office premises of the applicant (accused no.2). The report of the Directorate of Forensic Science, Gandhinagar, dated 17th December, 2014, indicated that 21 hard disks and a pen drive were forensically analized, the questioned documents Q-1 to Q-23, were searched in the hard-disks and pen drive and that had deleted data base file bearing name “STOCKTRAN.DBF” was found on the hard-disk bearing Exhibit B-5-1, which was found to contain data relevant to the documents numbered as Q-2 and Q-8. The hard-disk bearing Exhibit-B-5-1 was seized from the office of Auro Gold Jewellery Private Limited at Cama Industrial Estate, Sun Mill Compound, Lower Parel, Mumbai, and is mentioned at Serial No.8 of Annexure – B of search list dated 7th December, 2013. Q-2 is the print out of the party-wise stock report for the period 1st August, 2013 to 9th November, 2013, seized from the office premises of Shyamal Acharya. Q-8 is the print out of the party-wise stock report for the period 1st August, 2013 to 30th September, 2013, seized form the residential premises of accused no.1 on 23rd November, 2013. It is further submitted that the print out of the file stated above was also provided. Entries pertaining to “Archana” were found in the said file. “Archana” is the name of account of Shyamal Acharya held with applicant. The report clearly indicates that the entries, as aforesaid, found in the documents Q-2 and Q-8, seized from the office and residential premises of accused no.1 respectively correspond in terms of the name of the account, quantity and date to entries found in the deleted database file bearing the name STOCKTRAN.DBF found on the hard-disk bearing Exhibit-B-5-1 seized from the office of

Auro Gold Jewellery Private Limited. This shows the connection between accused no.1 and the present applicant and that the applicant was keeping gold for accused no.1.

8 It is further submitted that the documents seized from the office of Shyamal Acharya on 23rd November, 2013, the document enclosed with D-26, seized from the residential premises of Shyamal Acharya and the specimen signatures of Shyamal Acharya, Samik Acharya (son of accused no.1) and Prahsant Bhosale, were sent to the Director, Central Forensic Science Laboratory for examination and expert opinion vide the forwarding letters dated 21st January, 2015, 27th February, 2015 and 28th May, 2015, respectively. The report of the CFSL Belapur, Navi Mumbai dated 20th March, 2015, indicated that the handwriting of Samik Acharya (son of accused no.1.) was found on some of the documents seized from the office and residential premises of accused no.1. The handwritten portions/documents marked Q-1 to Q-5 in the forwarding letter referred to herein above were found by the handwriting experts to be in the handwriting of Samik Acharya (son of accused no.1.). It is submitted that in view of the above, there is sufficient material to show that the applicant abetted accused no.1 at the relevant

time, a public servant in acquiring and possessing assets disproportionate to his known source of income in the amount of Rs.2,05,61,288/-, by keeping for him 6864 grams gold under the name “Archana”. The applicant aided and abetted accused no.1 in the commission of offence under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act. It is submitted that the prosecution case against the applicant does not rests solely upon the party-wise stock reports, but, also on the corroborative material, as outlined above i.e. the handwritten notes, handwritten gold inventory, statement of Prashant Bhosale, the recovered deleted files from the hard-disk found at the office of applicant and the reports of the experts from Directorate of Forensic Science and the Central Forensic Science Laboratory, Navi Mumbai, all these are legally admissible material against the applicant. Thus, apart from the party-wise stock report, there is independent material against the applicant to corroborate the same, and, hence Section 34 of the Evidence Act will have no applicability in the present case. It is submitted that the charge – sheet filed by the CBI makes out a *prima facie* case against the applicant under Section 109 of IPC read with Section 13(2) read with 13(1)(e) of Prevention of Corruption Act. There is sufficient material to show his involvement in the present case, sufficient ground for proceeding against him is made out, and, hence, the trial Court has rightly rejected the application for discharge. At the stage of framing of charge roving and fishing inquiry is impermissible. It is submitted that the trial Court has gone through the entire record of the case and applying his judicial mind has rightly rejected the discharge application preferred by the applicant. It is, thus, submitted that the applicant is devoid of merits and the same be rejected.

9 I have perused the entire material on record. The case of the prosecution appears to be that investigation revealed that during the period 1st April, 2000 to 23rd November, 2013, Shri.Shyamal Acharya, being a public servant acquired immovable and movable assets to the tune of Rs.2,60,05,119/-, in his name and in the name of his family members against likely savings to the tune of Rs.54,43,831/-, during this period. Investigation revealed that Shri Shyamal Acharya had deposited gold weighing 6864 grams with Shri.Amrutlal Jain, Chairman of M/s.Auro Gold Jewellary Pvt. Ltd. (applicant). This was accounted by the applicant in the books of accounts of M/s.Auro Gold in the Pseudo name “Archana”. This is further established by way of documents and hard-disk seized during search, oral

evidence and experts opinions on handwriting that is of Shamik Acharya (son of accused no.1) and data recovered from the hard disk. Thus, the applicant has aided and abetted accused no.1 in commission of offence under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988. Thus, Shri Shyamal Acharya was found in possession of assets worth Rs.2,05,61,218/-, which are disproportionate to his known source of income for which he did not given any satisfactory account.

10 Primarily, the submission of learned counsel for the applicant is that there is no admissible evidence against the applicant to frame charge against him for the said offences. Applicant no.1 is not concerned with the alleged crime of disproportionate assets being committed by accused no.1. There is no basis for linking the charge levelled against accused no.1 with the applicant. The entries relied upon by the prosecution are not admissible in evidence. The corresponding entries do not tally. There is nothing on record to indicate that the account, which is purportedly opened in the name of “Archana” was connected with any deposits made by accused no.1. It is further contended that the entries relied upon by the prosecution are not maintained in the regular books of accounts. The documents

which have been relied upon by the prosecution are not in the form of account books maintained in the regular course of business. They are random loose papers and their correctness and authenticity even for the purpose of the income mentioned therein cannot be relied upon having no evidentiary value. Such entries are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that the same are admissible. It is argued that the data retrieved from the hard-disks of accused no.2 does not come in the category of books of account; and even otherwise, entires in books of accounts are not alone sufficient to charge any person with liability under Section 34 of Evidence Act. It has to be noted that, the case against applicant is that he has abetted accused no.1 in commission of crime under Prevention of Corruption Act. In case of dealings which are subject matter of this case, the dealings take place in fictitious names without there being proper record.

11 Learned counsel has strongly relied upon the recent decision of the Supreme Court in the case of ***Common Cause (Supra)***. Learned counsel stressed upon the observations of the

Supreme Court in the said decision, wherein it was observed that the loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 of the Evidence Act, so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. Learned counsel further pointed out the observations of the Supreme Court in paragraph 21 of the said decision where it was observed that when the material on the basis of which the investigation is sought is itself irrelevant to constitute evidence and not admissible in evidence, the Court expressed apprehension whether it would be safe to even initiate investigation. The investigation can be ordered as against any person whosoever high in integrity, on the basis of irrelevant or inadmissible entry falsely made by any unscrupulous person or business house that too not kept in regular books of accounts but on random papers at any given point of time. There has to be some relevant and admissible evidence and some cogent reason which is *prima facie* reliable and that too, supported by some other circumstances pointing out that the particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period, which may have co-relations with the random entries.

The decision was delivered by the Supreme Court in the facts of the said case. On reading the said decision, it is apparent that the petitioners therein were seeking constitution of the special investigation team to investigate the alleged crime. From the factual matrix of the said decision it is apparent that the CBI had conducted raid on the premises of business concerns which was followed by the raid of income tax department. The raid conducted by CBI led to recovery of certain incriminating documents and unaccounted cash. The CBI had transferred the incriminating documents to the income tax department. It was also revealed that the laptop of one of the person was seized containing a cryptic entry made in the said laptop referring to political functionaries. The random look suggested that cash was transferred to important public figures and the copies of the random pages were filed before the Court. The document contains the proposal and the actual payments allegedly made to the large number of political leaders of the country. It is in these circumstances, the Supreme Court has considered the fact that the documents which have been filed on record were not in the form of account books maintained in the regular course of business. They were random sheets and loose papers and their correctness and authenticity even for the purpose of income mentioned therein have been found to be unreliable having no evidentiary value by the concerned authorities of income tax. In relation to the documents recovered from one business concern there was adjudication by Income Tax Settlement Commission. The said Commission had observed that, the scrutiny of entries on loose papers, computer prints, hard-disk etc., have noted that transactions were not genuine and the details in the documents have no evidentiary value and the said documents were not relied upon by Settlement Commission. The reference was also made to the observations of the Supreme Court in the case of ***CBI Vs. V.C. Shukla (Supra).*** The Supreme Court further observed that, *prima facie,* such evidence is not admissible. In paragraph 21 of the aforesaid decision, the Supreme Court has observed that there has to be some relevant and admissible evidence and some cogent reason which is *prima facie* reliable and that too supported by some other circumstances pointing out that particular third person against whom the allegations have been levelled was in fact involved in the matter or he has done some act during that period which may have co-relations with the random entries. The Court, therefore, opined that the documents which were relied upon were not maintained in regular course of business and, thus, lack required reliability to be made in the foundation of police investigation. Thus, it is apparent that the observations of the Supreme Court were made in the peculiar facts of the said case. In the present case there is a *prima facie* evidence to establish link between the deposits made by accused no.1 with the applicant. There is direct transaction between both the parties. The evidence cannot be discarded at this stage by interpreting Section 34 of Evidence Act. Apart from that the protection against applicant does not rest solely upon the party-wise stock reports, but, also on corroborative material i.e. handwritten notes, handwritten gold inventory, statement of Prashant Bhosle, recovered deleted file from hard-disk found at applicants office and the reports of experts from Directorate of Forensic Science and Central Forensic Science Laboratory. All this is legally admissible material. The said fact is corroborated by other circumstances, and, therefore, the evidence cannot be discarded at this stage.

12 Learned counsel relied upon the decision of the Delhi High Court in the case of ***L.K. Advani (Supra)*** where in also the prosecution lodged against the accused on the basis of entries in the dairies, note books and loose sheets relating to disbursement of payment to the accused was under challenge and the said

prosecution was quashed and set aside by the Court. In the said case, the accused J.K. Jain had made entries in his own handwritten with regard to the receipt of certain amounts and disbursements thereof. There was no averments in the charge–sheet that the said entries in the books of account came into being in execution of conspiracy and the same were in furtherance of the common intention of the applicant–accused therein and the co-accused Jains. The alleged accounts were maintained by Shri J.K. Jain for the benefit of his employers to let them know as to what were the amounts received and disbursed by them. The Court, therefore, observed that it can thus be safely inferred that the payees of the said amounts were not at all interested in the maintenance of the alleged accounts. Thus, in the factual aspects involved in the said matter the proceedings were quashed against the accused. The said decision was, therefore, taken to Supreme Court which is also relied upon by counsel for applicant. The said decision of the Supreme Court in the case of ***CBI Vs. V.C. Shukla (Supra)*** was discussed at length in the decision in the case of ***Common Cause (Supra)*** which is refereed to hereinabove. In the said decision, it was observed that the entries in the Jain's notebooks were admissible under Section 34 of the Evidence Act, but, the file containing loose sheets of papers were not “book” and, hence, entries therein could not be admissible under Section 34 of the Evidence Act. It was also observed that the books of account “Regularly kept” or whether the books were regularly kept would depend upon the nature of the occupation, system of accounting and contemporaneity in making entries may deffer. Making of entries at or about the time of the transaction is not the test in any case. In the said case, the entire edifies of the prosecution case was built on the dairies and files and for that matter the entries made therein recovered from one J.K. Jain. In the said decision, the prosecution had conceded that besides the alleged entries in the diaries and the loose sheets, there was no other evidence to fasten the liability against the accused. In the order under challenge which was passed by the High Court, it was held that the documents were neither books of account nor kept in the regular course of business and that even if they were admissible under Section 34 of the Evidence Acct, they were not in view of the plain language of the Section sufficient enough to fasten the liability on the head of a person against whom they were sought to be used. The other decision relied upon by the counsel for the applicant in the case of ***Century Spinning and Manufacturing Co. Limited and others (Supra),*** the Court has considered the scope of Section 251-A of the Code of Criminal Procedure. It was observed that if the charge is found groundless on the face of the record the accused is entitled for an order of discharge. In the present case, however, considering the nature of evidence against the applicant, I do not think that the case for discharge is made by the applicant. The Supreme Court in the said decision, has observed that if upon consideration of all the documents referred to in Section 173 and making such examination, if any, of the accused as the Court thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Court considers the charge against the accused groundless, he shall be discharged. The other decisions relied upon by the applicant also deals with the admissibility of evidence in the light of Section 34 of the Evidence Act, which issue was discussed at length in the decisions referred to hereinabove. Hence, it is not necessary to elaborate the views expressed in the said decisions. All these decisions are based on distinct facts and the same cannot help the applicant in dropping proceedings against him. According to the prosecution, the data from the Computer of the applicant was deleted and hard-disk was sent to Forensic Expert. The Forensic Expert retrieved the data which was deleted. The experts report shows that the data pertain to the handwritten document recovered from the premises of accused no.1 wherein there is entry regarding deposit of 500 grams of gold on 17th August, 2011 and 500 grams of gold on 30th August, 2011. The statement of witness Prashant Bhosale indicates that the wife of accused no.1 had deposited the gold on the aforesaid dates and had received that gold as per the say of accused no.1. He also identified his signature on handwritten documents referred to above which is recovered from the premises of accused no.1. This fact give grave suspicion that the applicant and accused no.1 had illegal dealing *inter-say* in gold. The contention of the applicant-accused was that the data retrieved from the hard-disk of accused does not come in the category of books of accounts and even otherwise entries in the books of accounts are not alone sufficient to charge any person with liability under Section 34 of the Evidence Act. The data retrieved from the hard-disk of accused no.2, the computer print out (party-wise stock statement) in the name of "Archana" recovered from the premises of accused no.1, the entry written by the son of accused no. 1 regarding 6633 grams gold with accused no.3 constitute *prima facie* sufficient material to frame charge of abatement against the applicant. The trial Court has rightly rejected the application for discharge. *Prima facie* case is made out to frame the charge. In the light of the evidence before the Court even other than the entries relied upon by the prosecution, it would not be advisable to discard the said evidence on the basis of the submissions advanced by the advocate for the applicant. It would be open to the applicant-accused to pursue the said defence during the course of trial.

13 It is pertinent to note that the report of the Directorate of Forensic Science, Gandhinagar dated 17th December, 2014 indicated that the 21 hard disks and the pen drive were forensically analysed, the questioned documents Q-1 to Q-23 were searched for in the hard disks and pen drive, and that a deleted database file bearing the name “STOCKTRAN.DBF” was found on the hard disk bearing Exh.B-5-1/Serial No.Z3T7NBD5, which was found to contain data relevant to the documents numbered as Q-2 and Q-8. The hard disk bearing Exh.B-5-1/Serial No.Z3T7NBD5 was seized from the office of Auro Gold Jewellery Pvt. Ltd. at Cama Industrial Estate, Sun Mill Compound, Lower Parel (West), Mumbai 400 013, and is mentioned at sr.no.8 of Annexure 'B' of the search list dated 17th December, 2013, (D-36). Q-2 is the printout of the party wise

stock report for the period 1st August, 2013 to 9th November, 2013 seized from the office premises of Shyamal Accharya (A1) on 23rd November, 2013. Q-8 is the printout of the party wise stock report for the period 1st August, 2013 to 30th September, 2013 seized from the residential premises of Shyamal Achahrya (A1) on 23rd November, 2013. A printout of the said file “STOCKTRAN.DBF” was also provided. Entries pertaining to “ARCHANA” were found in the said file as follows:

Name of party	Particulars	Weight	Date	Page No.of Print-out to file	Questioned document to which the entry corresponds
ARCHANA	Gold Jewellery	31.703	31/8/2013	7	Q2, Q8
ARCHANA	Gold Jewellery	31.703	30/9/2013	7	
ARCHANA	Gold Jewellery	30.680	30/9/2013	7	Q2, Q8
ARCHANA	Gold Jewellery	13.160	29/10/2013	10	
ARCHANA	Gold Jewellery	8.660	30/10/2013	10 – 11	
ARCHANA	Gold Jewellery	31.703	31/10/2013	11	Q2
ARCHANA	Fine?	2.260	08/11/2013	12	
ARCHANA	Fine?	200	04/11/2013	12	Q2

“ARCHANA” is the name of the account of Shyamal Achcarya (A1) held with the Applicant/A2.

14 This report clearly indicates that the entries as aforesaid found in the documents Q2 and Q8 seized from the

office and residential premises of Shymal Acharya (A1) respectively correspond in terms of the name of th e account, quantity and date to entries found in the deleted database file bearing the name “STOCKTRAN.DBF” found on the hard disk bearing Exh.B-5-1/Serial No.Z3T7NBD5 seized from the office of Auro Gold Jewellery Pvt. Ltd. at Cama Industrial Estate, Sun Mill Compound, Lower Parel (West), Mumbai 400 013 on 7/12/2013. This shows the connection between the Accused No.1 and the present Applicant /A2, and that the Applicant /A2 was keeping gold for the Accused No.1. The document Q2, i.e. the party wise stock report for the period 1st September, 2013 to 9th November, 2013 clearly shows that the total quantity of gold kept with the Applicant /A2 by the A1 upto November 2013 was 6864 grams. The document Q8, i.e. the party wise stock report for the period 1st August, 2013 to 30th September, 2013 shows that the total quantity of gold kept with the Applicant /A2 by the A1 upto 30th September 2013 was 6632 grams.”

15 The documents (D-24) seized from the office of Shyamal Acharya (A1) on 23/11/2013, the documents seized from the residential premises of Shyamal Acharya (A1) at Nepean Sea Road, Mumbai on 23rd November, 2013, the specimen signatures

of Shyamal Acharya (A1), Samik Acharya (son of the A1) and Prashant Bhosale were sent to the Director, Central Forensic Science Laboratory, Belapur, Navi Mumbai, for examination and expert opinion.

16 The report of the Central Forensic Science Laboratory, CBI Belapur, Navi Mumbai dated 20th March, 2015, indicated that the handwriting of Samik Acharya (son of the A1) was found on some of the documents seized from the office and residential premises of the A1 Shyamal Acharya on 23rd November, 2013. Copies of the handwritten portion/documents marked as Q1 to Q5 in the forwarding letters D-25, D-26 and D-27, which were found by the handwriting expert to be in the handwriting of Samik Acharya (son of the A1).

17 In the aforesaid circumstances, I do not find that there is any substance in the submissions advanced by the applicant and I do not find any infirmity in the order passed by the trial Court. Thus, no case is made out for granting the relief prayed in this application. The application, therefore deserves to be rejected.

18 Hence, I pass the following order:

:: <u>O R D E R</u> ::

(i) Criminal Revision Application No.523 of 2016, is rejected;

(ii) It is made clear that the observations made in this order are only for considering the prayer for discharge and the trial Court shall not be influenced by the same during the trial.

(PRAKASH D. NAIK, J.)