IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.10.2018

PRONOUNCED ON :09.11.2018

CORAM:
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.Nos.22121 to 22125 of 2018
Crl.MP.Nos.12192 to 12196 of 2018

1.Kalanithi Maran Petitioner/A7-Crl.OP.22121/2018
Chairman and Managing Director
Sun TV, Chennai

2.K.S.Ravi ..Petitioner/A5-Crl.OP.22122/2018
3.S.Kannan ..Petitioner/A6-Crl.OP.22123/2018
4.Dayanidhi Maran ..Petitioner/A3-Crl.OP.22124/2018
5.Vedagiri Gowthaman ..Petitioner/A4-Crl.OP.22125/2018

Vs

The State represented by
Deputy Superintendent of Police,
SPE CBI, STF, New Delhi Respondent in all Crl.OPs
(RC/DST/2013/A/0019/CBI/STF/DLI)

Prayer:- These Criminal Original Petitions are filed to call for the records in CC.No.12 of 2017 on the file of the XIV Additional Judge, CBI Cases, Chennai and to quash the charges framed as against the Petitioners/A7, A5, A6, A3 and A4, respectively, in CC.No.12 of 2017, dated 30.08.2018.

For Petitioners : Mr.Amit Desai, SC
for Mr.J.Ravindran-Crl.OP.22121/2018

Mr.A.Ramesh, SC
for Mr.Vivekanandan-Crl.OP.22122/2018

Mr.AR.L.Sundaresan, SC
for Mr.A.Selvendran-Crl.OP.22123

Mr.Neeraj Kishan Kaul, SC
for Ms.M.Sneha-Crl.OP.22124/2018

Mr.P.Wilson, SC for
Mr.Ravichandran, SC-Crl.OP.22125/2018

For Respondent : Mr.G.Rajagopalan, ASG, assisted by
Mr.K.Srinivasan for CBI Cases

COMMON ORDER

This Criminal Original Petitions are filed to call for the records in CC.No.12 of 2017 on the file of the XIV Additional Judge, CBI Cases, Chennai and to quash the charges framed as against the Petitioners/A7, A5, A6, A3 and A4, respectively, in CC.No.12 of 2017, dated 30.08.2018.

2. For the sake of convenience, the parties herein after are referred to as they were arrayed in the impugned Charge Sheet, i.e. A1, A2, A3, A4, A5 and A6 and A7 and the Respondent Police. Though there are seven accused persons/A1 to A7 and the charges were framed against all of them, namely, A1 to A7, only five accused persons/A7, A5, A6, A3 and A4 have challenged the impugned charges, by way of the above Criminal Original Petitions.

3. The facts, in a nutshell, leading to filing of these Criminal Original Petitions and also relevant and necessary for disposal of these Criminal Original Petitions are as follows:-

a. On receipt of reliable information, the Respondent Police, after conducting a preliminary enquiry, finding that Mr.Dhayanithi Maran (Former Union Minister for Communication and Information Technology) and others had hatched a conspiracy to commit breach of trust, fabricated documents, used the forged documents as genuine and falsified accounts detrimental to the Government Exchequer, had registered a First Information Report on 23.07.2013. In the course of the investigation, materials were collected, which according to the Prosecution, were sufficient and relevant to frame charges and try the named accused persons and filed the final report for prosecuting them.

b. The offences were allegedly said to have taken place during the period from 23.05.2004 to 13.05.2007. During such period, A1, K.B.Brahmadathan was working as the Chief General Manager, BSNL Chennai, Chennai District, A2, M.P.Velusamy was working as the Chief General Manager, BSNL Chennai Chennai District, A3 was the Union Minister for Communication and Information Technology, Government of India, A4 was working as the Additional Private Secretary to MOCIT, A5 was working as the Electrician in the Sun TV, Chennai, A6 was working as the Chief Technical Officer, in the Sun TV, Chennai and A7 was the Chairman and Managing Director of the Sun TV. It is alleged that A1 to A4 are Public Servants and A5 to A7 are private persons.

c. The sum and substance of the final report in a nutshell is that A3, while he was the Minister for Communication and Information Technology (MOC&IT) in the Government of India during 2004 to 2007, by abusing his Official Position, in connivance with A1, A2, A4 to A7 had obtained pecuniary advantage and caused, to the Government Exchequer, a loss of Rs 1.78 crores by installing a private telephone exchange at his residences at the Boat Club and Gopalapuram at

Chennai, Tamil Nadu, which he had used for business transactions involving the Sun TV Network. More than 700 high-end telecom lines, having PRA/BRA/ISDN/leased line, were installed at the residences of A3 at the Boat Club area and Gopalapuram area at Chennai. They were installed under the Service Category and bills were not raised for such utilisation. Apart from such illegal installation of Landlines with ISDN facilities, on the instructions of A3, additional SIM cards for use of mobile phones with fancy numbers were blocked for SUN TV and distributed to private individuals connected with SUN TV Network. The facilities given to A3 was excessive, without any authority and not in consonance with the Rules and entitlement of Minister or Member of Parliament. By fabricating and forging the records, the accused had used such facilities as genuine to cover up the misdeeds. Based on fabricated documents, accounts were also falsified to show as if there was no outstanding dues from A3.

d. To substantiate the above allegations, the Respondent Police had relied upon 124 documents, most of which, are files maintained in the course of transaction of the BSNL in their day to day activities and the statements of 73 witnesses recorded under section 161 Cr.PC.

e. After furnishing the material records relied by the prosecution to the persons accused of the offences, as contemplated under section 207 of Cr.PC, the trial court had heard the petitions for discharge filed by four of the accused persons. After hearing the petitioners/accused and the learned Public Prosecutor, the Trial Court, by virtue of the power conferred under Section 239 of Cr.PC, by its order dated, 14.03.2018, had discharged all the accused persons, namely, A1 to A7, on the ground that there were no legal material evidences against them. In the Revision Petitions in Crl.RC.Nos.671 to 684 of 2018, preferred by the Respondent Police as against the said order of discharge, this Court, had called for records from the Trial Court and having found materials for framing charges against the accused, by a detailed and reasoned, order dated, 25.07.2018, had allowed the said Criminal Revision Petitions, directing the Trial Court to frame charges against the accused persons/A1 to A7 and complete the trial within a period of 12 months. As against the same, SLP.Nos.6753-6756 of 2018 were preferred before the Honourable Supreme Court and the same were dismissed on 17.08.2018. After dismissal of the SLPs, the impugned charges came to be framed as against A1 to A7 in CC.No.12 of 2017, dated 30.08.2018. As against the same, these Criminal Original Petitions have been filed by A7, A5, A6, A3 and A4, respectively.

4. Before adverting to the case in details, at the outset, it is necessary to narrate, in a nutshell, the charges framed against each of A1 to A7 as under:-

a. The charges framed against A1 are that while A3 was functioning as a Public Servant, in the capacity of Union

Minister for Communication and Information Technology, pursuant to the conspiracy hatched with A3, A1 had, by abusing his Official Position, as Chief General Manager, BSNL Chennai, Chennai District, provided to A3, 364 telephone connections, 67 Mobile SIMS, under reference of MOCIT and out of which, A1 had created 19 Mobile SIMS under one account bearing No.500708377 as postpaid connection in the name of A3 and reserved 10 Mobile SIMS for the use of M/s.Sun TV with a remark, "To be reserved by CC&IT for "SUNTV pl. inform", 4 Leased Line Circuits and 4 Broad Band Connections under Service Category at the Gopalapuram Residence of A3, without raising any bill for installation, rentals and bills claimed. Also, in order to bring the connections under Service Category, A1 had given the name/address of CGM Office as hirer in the Column of billing as well as the correspondence addresses, though no service connection could be provided to an outsider under the Service Category.

b. The charges framed against A2 are that while A3 was functioning as a Public Servant, in the capacity of Union Minister for Communication and Information Technology, pursuant to the conspiracy hatched with A3, A2 had, by abusing his Official Position, as Chief General Manager, BSNL Chennai, Chennai District, despite knowing about the entitlement of a Member of Parliament, approved on 30.10.2006 for shifting of facilities, provided to A3, at the Gopalapuram residence to the new residence at Boat Club Road, Chennai, of 353 telephone connections under Service Category and used the name/ designation of the CGM as subscriber on all the advice notes, generated by BSNL, whereas in the address column, the residential address of A3 was used, also provided Optical Fibre Cables (OFC) connectivity at the old and new residence of A3 and NIC ordered 4 Conferencing System and delivered and installed at the residences of A3 at Chennai and Delhi, during the month of January- February 2005 and supplied and installed telephone exchange equipments at 19 places with two specific networking named as SUN HO Network (7 places) and Dinakaran Network (12 places).

c. The charges framed against A3 are that in furtherance of the criminal conspiracy, A3 being the Public Servant, with the connivance of A1 and A2, when there is no provision to provide land line connection with ISDN/PRA/BRA facilities and mobile connections with ISD International Roaming, Fax, Super reveal facility to the Members of Parliament under Service Category, dishonestly and fraudulently, and even though as per the guidelines and roles, Union Ministers are not entitled for ISDN connection under Service Category, converted the old ISDN connections into Service Category, by forging documents and by violating the procedures and guidelines laid down, and got allotted 764 telephone connection and 67 Mobile SIMS and also used 19 Mobile SIMS in one account, bearing No.500708377 in his name. A3 by abusing his Official Capacity, without any public interest in order to obtain pecuniary advantage for himself and for A7, by illegal means, dishonestly and fraudulently misappropriated and got allotted 764 telephone connections and 67 mobile SIMS in his name.

d. The charges framed against A4 are that A4, as the then Additional Personal Secretary to MOCIT, by misusing his position as a Public Servant, converted his telephone connection, bearing No.23766464 into RSTC Category illegally, which is applicable only to the Officials of BSNL and remained as service as Service Category from July 2004 to June 2007 and done all the follow up action relating to the telephone connections.

e. The charges framed against A5 are that A5, as an Electrician, in the Sun TV, maintained all the telephone lines and all high end connections in-house lines in both houses and provided all technical support required for the programmes and assisted and coordinated for providing the telephone facilities and leased line and broadband connections provided by BSNL and MTNL and used the facilities illegally with the help of video conferencing system installed at the Office at Delhi and at the residence at Chennai of A3 for the benefit of A7 and abetted A1 to A4 to cause a wrongful loss to the Government Exchequer.

f. The charges framed against A6 are that in pursuance of the above criminal conspiracy, A6, as Chief Technical Officer, utilized the ISDN connections provided to A3 for SUN TV Progammes and provided all technical support and placed an order to supply telephone exchange equipments for Rs.50 lakhs and abetted A1 to A4 to cause a wrongful loss to the Government Exchequer.

g. The charges framed against A7 are that A7 utilized the above telephone facilities extended to A7 by A3 illegally on free of cost and made no payment for installation, rentals and A7 abetted A1 to A4 to cause a wrongful loss to the Government Exchequer.

h. Thus, A1 to A4, being Public Servants, by abusing their Official positions and by violating the procedures and norms laid down, hatched a criminal conspiracy with A5 to A7 and obtained illegal telephone connections with broad band facilities as stated above and thereby, A1 to A7 had caused an undue loss to the tune of Rs.1,78,71,391/- to the Government and undue gain to SUN TV owned by A7 and thereby, A1 to A4 had committed the offences punishable under Sections 120B(1) read with 409, 467, 471, 477A of IPC and Section 13(2) read with 13 (1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 and A5 to A7 had committed the offences punishable under Sections Sections 120B(1) read with 409, 467 read with 471, 477A of IPC read with 109 of IPC and Section 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 read with 109 of IPC.

5. In so far as the Petitioner/A7 is concerned, the averments, in brief, as set out in Cr.OP.No.22121 of 2018, are

as follows:-

a. Based on a source of information, the Respondent Police had conducted a preliminary enquiry in Case No.PE-5(A)/11-ACB/CHE, pursuant to which, a case was registered in RC/DST/2013/A/0019. After completion of the investigation, the Prosecution had filed a final report in Charge Sheet No.28 of 2016 before the learned Principal Sessions Court for CBI Cases, Chennai, against seven accused persons, including the Petitioner/A7, for the offences under Sections 120B, 409, 467, 477A of IPC and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988. The case was taken on file in CC.No.12 of 2017, by the learned Special Judge No.XIV for CBI Cases, Chennai.

b. The Trial Court, by its order dated 13.04.2018, finding that there were no legal material evidences to frame any charge, had discharged the Petitioner. However, in the revision petitions in Crl.RC.No.671, 681 to 684 of 2018 filed by the Prosecution, this Court, by order dated, 25.07.2018, without hearing the Petitioner/A7 and the other accused on the merits of the case, had allowed the said criminal revision petitions, violating the principles of natural justice and the provisions of Cr.PC. After dismissal of the SLP.Nos.6753-6756 of 2018 preferred by the accused, as against the said order dated 25.07.2018, by order dated 17.08.2018 of the Honourable Supreme Court, the following charges came to be framed as against the Petitioner/A7:-

Charges	Section
First Charge	120(B) r/w 409 of IPC, 467 r/w 471 of IPC, 477A of IPC r/w 109 of IPC and 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988
Second Charge	409 r/w 109 of IPC
Third Charge	467 r/w 471 of IPC
Fourth Charge	477A r/w 109 of IPC
Fifth Charge	13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988

b. Despite the non-availability of any legal materials on record to frame charge against the Petitioner/A7, the Trial Court, in a mechanical manner, without considering the same, had framed the present charges. The allegations made in the final report, 161 statements and the documents filed do not constitute any offence as against the Petitioner/A7 and even if the said documents are taken as true, there is not even an iota of legal evidence to constitute an offence as against him and no prima facie case is made out as against him. Merely on the fact that A3 is the brother A7, the Trial Court had framed charges on the presumption that A7 was the ultimate beneficiary as the Managing Director of the Sun TV for the alleged loss incurred by

A3 in the absence of any legal material evidence. Since the charges are improbable and would amount to abuse of process of law, this Criminal Original Petition has been filed, seeking to quash the above said charges on various grounds as set out in the grounds of the Petition.

6. In so far as the Petitioner/A5 is concerned, the averments, in brief, as set out in Cr.OP.No.22122 of 2018, are as follows:-

a. Based on a source of information, the Respondent Police had conducted a preliminary enquiry in Case No.PE-5(A)/11-ACB/CHE, pursuant to which, a case was registered in RC/DST/2013/A/0019. After completion of the investigation, the Prosecution had filed a final report in Charge Sheet No.28 of 2016 before the learned Principal Sessions Court for CBI Cases, Chennai, against seven accused persons, including the Petitioner/A5, for the offences under Sections 120B, 409, 467, 477A of IPC and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988. The case was taken on file in CC.No.12 of 2017, by the learned Special Judge No.XIV for CBI Cases, Chennai.

b. The Trial Court, by its order dated 13.04.2018, finding that there were no legal material evidences to frame any charge, had discharged the Petitioner. However, in the revision petitions in Crl.RC.No.671, 681 to 684 of 2018 filed by the Prosecution, this Court, by order dated, 25.07.2018, without hearing the Petitioner/A5 and the other accused on the merits of the case, had allowed the said criminal revision petitions, violating the principles of natural justice and the provisions of Cr.PC. After dismissal of the SLP.Nos.6753-6756 of 2018 preferred by the accused as against the said order dated 25.07.2018, by order dated 17.08.2018 of the Honourable Supreme Court, the following charges came to be framed as against the Petitioner/A5:-

Charges	Section
First Charge	120(B) r/w 409 of IPC, 467 r/w 471 of IPC, 477A of IPC r/w 109 of IPC and 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988
Second Charge	409 r/w 109 of IPC
Third Charge	467 r/w 471 of IPC
Fourth Charge	477A r/w 109 of IPC
Fifth Charge	13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988

b. Despite the non-availability of any legal materials on record to frame charge against the Petitioner/A5, the Trial Court, in a mechanical manner, without considering the same, had framed the present charges. The allegations made in the final report, 161 statements and the documents filed do not constitute any offence as against the Petitioner/A5 and even if the said documents are taken as true, there is not even an iota of legal evidence to constitute an offence as against him and no prima facie case is made out as against him. Since the present charges are inconsistent with the case of the Prosecution, this Criminal Original Petition has been filed, seeking to quash the above said charges on various ground as set out in the grounds of the Petition.

7. In so far as the Petitioner/A6 is concerned, the averments, in brief, as set out in Cr.OP.No.22123 of 2018, are as follows:-

a. Based on a source of information, the Respondent Police had conducted a preliminary enquiry in Case No.PE-5(A)/ 11-ACB/CHE, pursuant to which, a case was registered in RC/DST/2013/A/0019. After completion of the investigation, the Prosecution had filed a final report in Charge Sheet No.28 of 2016 before the learned Principal Sessions Court for CBI Cases, Chennai, against seven accused persons, including the Petitioner/A6, for the offences under Sections 120B, 409, 467, 477A of IPC and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988. The case was taken on file in CC.No.12 of 2017, by the learned Special Judge No.XIV for CBI Cases, Chennai.

b. The Trial Court, by its order dated 13.04.2018, finding that there were no legal material evidences to frame any charge, had discharged the Petitioner/A6. However, in the revision petitions in Crl.RC.No.671, 681 to 684 of 2018 filed by the Prosecution, this Court, by order dated, 25.07.2018, without hearing the Petitioner/A6 and the other accused on the merits of the case, had allowed the said criminal revision petitions, violating the principles of natural justice and the provisions of Cr.PC. After dismissal of the SLP.Nos.6753-6756 of 2018 preferred by the accused as against the said order dated 25.07.2018, by order dated 17.08.2018 of the Honourable Supreme Court, the following charges came to be framed as against the Petitioner/A5:-

Charges	Section
First Charge	120(B) r/w 409 of IPC, 467 r/w 471 of IPC, 477A of IPC r/w 109 of IPC and 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988
Second Charge	409 r/w 109 of IPC
Third Charge	467 r/w 471 of IPC
Fourth Charge	477A r/w 109 of IPC
Fifth Charge	13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988

b. Despite the non-availability of any legal materials on record to frame charge against the Petitioner/A6, the Trial Court, in a mechanical manner, without considering the same, had framed the present charges. The allegations made in the final report, 161 statements and the documents filed do not constitute any offence as against the Petitioner/A6 and even if the said documents are taken as true, there is not even an iota of legal evidence to constitute an offence as against him and no prima facie case is made out as against him. Since the present charges are inconsistent with the case of the Prosecution, this Criminal Original Petition has been filed, seeking to quash the above said charges on various grounds as set out in the grounds of the Petition.

8. In so far as the Petitioner/A3 is concerned, the averments, in brief, as set out in Cr.OP.No.22124 of 2018, are as follows:-

a. Based on a source of information, the Respondent Police had conducted a preliminary enquiry in Case No.PE-5(A)/ 11-ACB/CHE, pursuant to which, a case was registered in RC/DST/2013/A/0019. After completion of the investigation, the Prosecution had filed a final report in Charge Sheet No.28 of 2016 before the learned Principal Sessions Court for CBI Cases, Chennai, against seven accused persons, including the Petitioner/A3, for the offences under Sections 120B, 409, 467, 477A of IPC and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988. The case was taken on file in CC.No.12 of 2017, by the learned Special Judge No.XIV for CBI Cases, Chennai.

b. The Trial Court, by its order dated 13.04.2018, finding that there were no legal material evidences to frame any charge, had discharged the Petitioner/A3. However, in the revision petitions in Crl.RC.No.671, 681 to 684 of 2018 filed by the Prosecution, this Court, by order dated, 25.07.2018, without hearing the Petitioner/A3 and the other accused on the merits of the case, had allowed the said criminal revision petitions, violating the principles of natural justice and the provisions of Cr.PC. After dismissal of the SLP.Nos.6753-6756 of 2018 preferred by the accused as against the said order dated 25.07.2018, by order dated 17.08.2018 of the Honourable Supreme Court, the following charges came to be framed as against the Petitioner/A5:-

Charges	Section
First Charge	120(B) r/w 409 of IPC, 467 r/w 471 of IPC, 477A of IPC r/w 109 of IPC and 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988
Second Charge	409 r/w 109 of IPC
Third Charge	467 r/w 471 of IPC
Fourth Charge	477A r/w 109 of IPC
Fifth Charge	13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988

c. The Trial Court had violated the mandate of the law in framing the present charges, without material particulars. Hence, this Criminal Original Petition has been filed, seeking to quash the above said charges on various grounds as set out in the grounds of the Petition.

9. In so far as the Petitioner/A4 is concerned, the averments, in a nutshell, as set out in Cr.OP.No.22125 of 2018, are as follows:-

a. Based on a source of information, the Respondent Police had conducted a preliminary enquiry in Case No.PE-5(A)/11-ACB/CHE, pursuant to which, a case was registered in RC/DST/2013/A/0019. After completion of the investigation, the Prosecution had filed a final report in Charge Sheet No.28 of 2016 before the learned Principal Sessions Court for CBI Cases, Chennai, against seven accused persons, including the Petitioner/A4, for the offences under Sections 120B, 409, 467, 477A of IPC and Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988. The case was taken on file in CC.No.12 of 2017, by the learned Special Judge No.XIV for CBI Cases, Chennai.

b. The Trial Court, by its order dated 13.04.2018, finding that there were no legal material evidences to frame any charge, had discharged the Petitioner/A4. However, in the revision petitions in Crl.RC.No.671, 681 to 684 of 2018 filed by the Prosecution, this Court, by order dated, 25.07.2018, without hearing the Petitioner/A3 and the other accused on the merits of the case, had allowed the said criminal revision petitions, violating the principles of natural justice and the provisions of Cr.PC. After dismissal of the SLP.Nos.6753-6756 of 2018 preferred by the accused as against the said order dated 25.07.2018, by order dated 17.08.2018 of the Honourable Supreme Court, the following charges came to be framed as against the Petitioner/A5:-

Charges	Section
First Charge	120(B) r/w 409 of IPC, 467 r/w 471 of IPC, 477A of IPC r/w 109 of IPC and 13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988
Second Charge	409 r/w 109 of IPC
Third Charge	467 r/w 471 of IPC
Fourth Charge	477A r/w 109 of IPC
Fifth Charge	13(2) r/w 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988

c. The Trial Court, without any basis for material evidences, had framed the charges as against the Petitioner/A4. Since the charges are vague and not distinct in order to facilitate him to answer them, which would cause great prejudice to him, this Criminal Original Petition has been filed, seeking to quash the above said charges on various grounds as set out in the grounds of the Petition.

10. On the side of the Prosecution, separate counter affidavits have been filed in all these Criminal Original Petitions, stating the backgrounds and merits of the case and also replying to the grounds raised in these Criminal Original Petitions and also denying the averments made in these Criminal Original Petitions as wrong.

11. In the counter filed on behalf of the Petitioner/A7, it is contended as under:-

a. If this Criminal Original Petition is permitted, it would amount to review of the order of this Court, dated 25.07.2018, which is not permissible under Section 362 of Cr.PC, inasmuch as, in the said order, this Court had dealt with in detail regarding the merits of the case as well as the role of each and every accused, while passing the said order dated, 25.07.2018, in the Criminal Revision Petitions filed by the Respondent Police, against the order of discharge, dated 14.03.2018.

b. There is no bar to consider a challenge against the order of framing charge only in exceptional situation for correcting a patent error of lack of jurisdiction as has been held in 2018 SCC Online SC 310 (Asian Resurfacing of Road Agency Pvt.Ltd V.Central Bureau of Investigation) and exercise of such jurisdiction has to be limited to rarest of rare cases and therefore, the issues raised in this Petition do not fall within the category of rarest of rare or exceptional case and does not relate to lack of jurisdiction and hence, this Criminal Original Petition is not maintainable.

c. No party, i.e. neither the complainant nor the accused or Prosecution has any vested right in seeking alteration of charges and if it is brought to the notice of the Trial Court that a necessity has arisen for a charge to be altered or added, it may do so on its own and no order need to be passed on that purpose, as has been held in 2017 3 SCC 347 (P.Kartikalakshmi V.Sri Ganesh and another) while referring to the provisions of Section 216 of Cr.PC. Therefore, the Petition filed before this Court, regarding the defects in the charges has to be brought to the knowledge of the Trial Court.

d. The Trial Court had, after applying its judicious mind and analysing the statements of the witnesses and the documents, framed the impugned charges. The Petitioner/A7 was very much integral part of the criminal conspiracy, pursuant to which, he got purchased the telephone exchanges with necessary equipments to utilize the high end telecom facilities, illegally obtained by A3 and got them installed at the residences of A3, the then Minister of Communication and Information and Technology, at Delhi and Chennai and therefore, the charge framed under Section 120(B) of IPC read with other offences is proper.

e. Since it was the Petitioner/A7 who had abetted A3 and the other accused to illegally transfer the high end telephone connections for the use and benefit of SUN TV, in which he was the Chairman and Managing Director, the charge framed under Section 409 of IPC read with Section 109 of IPC is also in order. Similarly, the charges framed under Sections 467 read with 471 of IPC are also sustainable, since in that case also, there was proper application of judicious mind and consideration of legal materials. The charges framed against the Petitioner/A7 under Sections 477A of IPC read with 109 of IPC for abetting A1 to A4 are also based on application of judicious mind and careful consideration of materials available on record.

f. As the Petitioner/A7 had utilised the telephone services illegally for SUN TV and was the ultimate beneficiary, the charge was rightly framed for abetting A1 to A4 to cause the wrongful loss to the tune of Rs.1,78,71,391 to the Government Exchequer. There are also sufficient materials in the form of purchase orders for procuring high end exchanges placed on behalf of SUN TV, installation reports in respect of these exchanges and opinion of the experts. There is no error or omission as described in Section 215 of Cr.PC. This Criminal Original Petition has been filed in order to protract the proceedings. In such circumstances, this Criminal Original Petition is liable to be dismissed, as not maintainable.

12. In the counter filed on behalf of the Petitioner/A5, it is contended as under:-

a. With respect to the merits of the case, one and same contentions similar to that of the contentions raised in the counter filed in respect of the Petitioner/A7 are stated.

b. The Trial Court had, after applying its judicious mind and analysing the statements of the witnesses and the documents, framed the impugned charges. On the basis of sufficient oral evidence to the effect that the Petitioner/A5, who was working as the Electrician, remained at Chennai residence of A3 and used to maintain the telephone connections, it was found that he had full knowledge of the connections illegally provided by the BSNL, Chennai Telephones, at the residence of A3 and its connectivity with the SUN TV. By such acts, namely, providing all technical supports and facilities and leased line and broad bond connections, provided by BSNL and MTNL for illegal use of the facilities, the role of A5 was very clear for implicating him with the charges.

c. Since it was the Petitioner/A5 who had abetted A3 and the other accused to illegally transfer the high end telephone connections for the use and benefit of SUN TV, in which he was an employee, the charge framed under Section 409 of IPC read with Section 109 of IPC is also in order. Similarly, the charges framed under Sections 467 read with 471 of IPC are also sustainable, since in that case also, there was proper application of judicious mind and consideration of legal materials. The charges framed against the Petitioner/A5 under

Sections 477A of IPC read with 109 of IPC for abetting A1 to A4 are also based on application of judicious mind and careful consideration of materials available on record.

d. As the Petitioner/A5 being the Electrician had installed and managed the facilities, the charge was rightly framed for abetting A1 to A4 to commit criminal misconduct by illegal means to pecuniary advantage to A1, A4 and A7, who were the beneficiaries and thereby, along with A6 and A7 abetting A1 to A4 to cause a wrongful loss to the tune of Rs.1,78,71,391 to the Government Exchequer. Thus, the charges framed under Section 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 109 of IPC is proper. There is no error or omission as described in Section 215 of Cr.PC. This Criminal Original Petition has been filed in order to protract the proceedings. In such circumstances, this Criminal Original Petition is to be dismissed, as not maintainable.

13. In the counter filed on behalf of the Petitioner/A6, it is contended as under:-

a. With respect to the merits of the case, one and same contentions similar to that of the contentions raised in the counter filed in respect of the Petitioner/A7 are stated.

b. The Trial Court had, after applying its judicious mind and analysing the statements of the witnesses and the documents, framed the impugned charges on the basis of sufficient evidence in the form of statements of the witnesses and documents to the effect that the Petitioner/A6, who was working as the Chief Technical Officer, had placed orders for procurement of the high end telephone exchanges and equipments as the then Vice President (Technical) of SUN TV and got the exchanges and the equipments installed at the Chennai and Delhi residence of A3 to utilize the said telephone facilities obtained illegally under 'Service Category' by A3 for the benefit of SUN TV. Though A6 is a private person, he was in-charge of the entire technical department and provided all technical support and had placed an order with M/s.ABS India P Limited for Rs.50 lakhs to supply equipments, which were supplied and installed at 19 places with two specific networking, named as SUN HO Network (7 places) and Dinakaran Network (12 places). A6 had also provided all technical support required for the programmes and coordinated for providing the facilities and leased line and broadband, provided by BSNL and MTNL for illegal use of the facilities. Thus, the role of A6 was clearly elaborated for implicating him with the charges.

c. Since it was the Petitioner/A6 who had abetted A3 and the other accused to illegally transfer the high end telephone connections for the use and benefit of SUN TV, in which he was an employee, the charge framed under Section 409 of IPC read with Section 109 of IPC is also in order. Similarly, the charges framed under Sections 467 read with 471 of IPC are also sustainable, since in that case also, there was proper application of judicious mind and consideration of legal material. The charges framed against the Petitioner/A6 under Sections 477A of IPC read with 109 of IPC for abetting A1 to A4 are also based on application of judicious mind and careful consideration of materials available on record.

d. As the Petitioner/A6 being the Chief Technical Officer had installed and managed the facilities, the charge was rightly framed for abetting A1 to A4 to commit criminal misconduct by illegal means to pecuniary advantage to A1, A4 and A7, who were the beneficiaries and thereby, along with A6 and A7 abetting A1 to A4 to cause a wrongful loss to the tune of Rs.1,78,71,391 to the Government Exchequer. Thus, the charges framed under Section 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 read with Section 109 of IPC for abetting A1 to A4 is proper. This Criminal Original Petition has been filed in order to protract the proceedings. In such circumstances, this Criminal Original Petition is liable to be dismissed, as not maintainable.

14. In the counter filed on behalf of the Petitioner/A3, it is contended as under:-

a. With respect to the merits of the case, one and same contentions similar to that of the contentions raised in the counter filed in respect of the Petitioner/A7 are stated.

b. The Trial Court had, after applying its judicious mind and analysing the statements of the witnesses and the documents and based on the legal material evidence available on record, framed the impugned charges. There are no fundamental errors in the charges.

c. In respect of the ground of non-existent law, the law is very much in existence. Section 8 of the Salaries and Allowances of Ministers Act, 1952 is very much applicable to the Ministers also and it does not convey in any manner that the Ministers are entitled to have any numbers of phone. Hence, the claim of the Petitioner/A3 that he was entitled for any number of connections is false.

d. The Petitioner/A3 was rightly charged for causing the gross undue loss to the tune of Rs.1,78,71,391/- in the light of Section 212(2) and it does not violate in any manner Section 212(1) of Cr.PC. A charge for criminal breach of trust framed in contravention of the proviso to sub section (2) of Section 212 is merely an irregularity, which can be cured both under Sections 215 and Section 464 of Cr.PC.

e. The charges framed under Section 409 of IPC is also proper, since during the relevant period, A3 was the Minister and thereby, he had dominion over BSNL, which was a Department under the control of Ministry of Communication and Information Technology, in which he was the Minister and A1 and A2 were holding the post of Chief General Manager and had exclusive control over the high end telephone connections, which they illegally passed on to the Petitioner/A3, who illegally got extended such facilities to SUN TV.

f. The Petitioner/A3 was rightly charged under Section 467 read with 471 of IPC, as the Petitioner/A3, abusing his Official position as MOCIT, entered into a criminal conspiracy with A1 and got issued the telephone facilities under 'Service Category' at the Gopalapuram, without raising any bills of installation, rentals and call charges and in order to bring the connections under 'Service Category', the Office address of CGM Office was given as hirer in the column of billing as well as the correspondence address and further, A3, abusing his official position as MOCIT entered into a criminal conspiracy with A2 and availed 353 telephone numbers under 'Service Category' at the Boat Club residence, without raising any bills of installation, rentals and call charges and in order to bring the connections under the 'Service Category', the designation of CGM was given as hirer in the column of billing as well as the correspondence address.

g. The Petitioner/A3 was also charged under Section 471 of IPC for falsification of documents, for having sent an ante-dated typed letter addressed to CGM, BSNL, Chennai to provide the details sought for therein and thereby, A2 forged and fraudulently inserted a hand written line in the 2nd question in the said ante-dated typed letter and thereby, abetted A2 to send a forged ante-dated written reply to A3 that only one BSNL telephone connection was provided to him at No.3, 1st Avenue Boat Club Road, RA Puram, Chennai, fraudulently stating that there are no outstanding dues as on date.

h. There are sufficient materials to satisfy the ingredients of Section 477A of IPC. There is no error or omission whatsoever in the charges framed as described in Section 215 of Cr.PC. This Criminal Original Petition has been filed in order to protract the proceedings. In such circumstances, this Criminal Original Petition is liable to be dismissed, as not maintainable.

15. In the counter filed on behalf of the Petitioner/A4, it is contended as under:-

a. With respect to the merits of the case, one and same contentions similar to that of the contentions raised in the counter filed in respect of the Petitioner/A7 are stated.

b. The Trial Court had, after applying its judicious mind and analysing the statements of the witnesses and the documents and based on the legal material evidence available on record, framed the impugned charges.

c. The role of the Petitioner/A4 was clearly elaborated in the charges. A4, being the then Additional Personal Secretary to MOCIT assisted and coordinated for providing the telephone facilities, leased lines and broad band connections provided by BSNL and MTNL and used the facilities illegally with the help of video conferencing system installed at the residences at Delhi and Chennai of A3 and also by abusing his position, as a public servant, converted his own residential telephone connection bearing No.23766464 into RSTC category illegally, which is applicable only to the Officials of BSNL and took follow up action concerning the telephone connections.

d. The Petitioner/A4 was also rightly charged for offence under Section 409 of IPC as the Petitioner/A4 along with A1 to A3 abused his official position and committed criminal breach of trust by coordinating and facilitating the illegal installation of the telephone connections under the 'Service Category' at the residences of A3 in connivance with A1 and A2.

e. The Petitioner/A4 was also rightly charged for the offences under Sections 467 read with 471 of IPC on the basis of sufficient evidence in the form of statements of witnesses and documents, wherein the name of the Petitioner/A4 is narrated clearly as co-conspirator, who had assisted and coordinated between A1, A2 and A3 for providing the telephone facilities illegally.

f. The charges framed under Section 477A of IPC are also in order, inasmuch as the Petitioner/A4, who was working as the Additional Private Secretary to MOCIT, converted his own residential connection, bearing No.23766464 into RSTC Category illegally and it remained under 'Service Category' from July 2004 to June 2007.

g. The Petitioner/A4 was very much integral part of the criminal conspiracy, pursuant to which, he, as the Additional Private Secretary, of A3, had conveyed and coordinated between MoCIT and the two CGMs for getting allotted illegally the high end telephone connections. This Criminal Original Petition has been filed in order to protract the proceedings. In such circumstances, this Criminal Original Petition is liable to be dismissed, as not maintainable.

16. This court heard the submissions of the learned counsel on either side.

17. The learned senior counsel for the Petitioner/A7 has assailed the impugned charges on the following grounds:-

a. The Trial Court ought to have independently considered the materials available on record before framing the charges. There are no materials produced by the Prosecution either under Section 161 of Cr.PC or documents available on record to frame such charges. In order to deal with the allegation of criminal conspiracy under Section 120B of IPC, the substantive offences alleged would be required to be dealt with first, in order to show how the same is made out in the first place and that without there being any evidence for the substantive offence, the Petitioner/A7 cannot be roped in by way of conspiracy. These charges as against the Petitioner/A7 are not specific. On the presumption that the offences could have been committed or was capable of being committed, the Trial Court ought not to have framed the charges.

b. In respect of second charge of abetting is concerned, the same ought not to have been framed as against when it is the admitted case of the Prosecution that A7 is not a public servant. There is no specific averment with respect to dominion over or entrustment over the property held by any of the accused persons. Hence, this second charge framed without any material is not proper.

c. In respect of third charge with respect to forgery, there is no material as against the Petitioner/A7. The entire reasoning given by the Trial Court does not attribute anything in respect of such charge. Even as per the final report, it is not the case of the Prosecution that the Petitioner/A7 had aided the creation of the alleged forged documents and used the same. In the absence of documents to prove the charge under Section 467, the charge framed, as such, is not maintainable.

d. With regard to the fourth charge under Section 477A of IPC, there are no facts narrated under the said charge and since it is not the case of the Prosecution that any account books had been falsified, the same is not sustainable.

e. In so far as the fifth charge is concerned, i.e. abetment for the loss and alleged amount tabulated, it only pertains to the expenses incurred for the alleged services provided to A3 and there is no legal material evidence to substantiate the said charge.

f. In the absence of any material against the Petitioner/A7 with respect to the role played by him in the commission of the offences alleged and also to show that any pecuniary advantage had been extended to him and also that any of the connections availed of by A3 was used by Sun TV, the impugned charges, in this respect, are liable to be quashed. If these nature of charges are not set aside, the Petitioner/A7 would be put to grave prejudice.

18. The learned senior counsel for the Petitioner/A7 has also submitted that the charges framed as against the Petitioner/A7 as regards abetment is very bald and vague in nature, as abetment requires intentional aid or instigation and there must be some role of the abettor to be attributed and that when the charges directly implicate A1 and A2, there is no question of suggesting that A7, being the Chairman of Sun TV, had committed substantive offence under Section 467 or 471 of IPC. He would further submit that it was only A1 to A4, who had falsified the documents and that there are no details regarding the role played by him, date and time to show that A7 intentionally facilitated the falsification of documents. There is also no material to connect A7 with the alleged loss caused to the Government Exchequer.

19. The learned senior counsel for the Petitioner/A7 would also submit that there is no material to show the gravamen of the charge that A7 had a role to play in obtaining the telephone connections and that merely he being the Chairman of a Corporate Entity, namely, Sun TV and that Sun TV stated to be the ultimate beneficiary, he cannot be roped into the criminal offence unless the doctrine of vicarious liability is attributed and in the absence of any other cogent material connecting him to the offence. He would further submit that Sun TV is not even

named as an accused and that no criminal act is alleged against the Petitioner/A7 and that while framing charges under Sections 239 and 240 of Cr.PC, the Trial Judge has to apply his mind. He would further submit that there are about 3000 pages of documents and about 70 witnesses on the side of the Prosecution and in none of the documents there is reference to the petitioner and none of the witnesses have spoken about the role of the petitioner. In sum and substance, in so far as the Petitioner/A7 is concerned, his case stands on a different footing and in the absence of legal material to implicate him in the case on hand, he is to be acquitted of all the charges levelled against him and that the trial judge had erroneously framed the charges against him.

20. The learned senior counsel for the Petitioner/A7 would also submit that in view of the decision of the Honourable Supreme Court reported in 1975 3 SCC 706 (Superintendent and Remembrancer of Legal Affairs West Bengal Vs. Mohan Singh), the contention of the Respondent that the present petition is nothing, but reviewing of the earlier orders passed in the revisions fails, inasmuch as the present petition is one to challenge the charges after the same were framed under Section 240 of Cr.PC, whereas the earlier order is one challenging the order of discharge passed under Section 239 of Cr.PC and as such, the question of reviewing the earlier orders does not arise, since the Petitioner/A7 stands on a different footing.

21. The learned counsel for the Petitioner/A7 would further submit that this Court has inherent power under Section 482 of Cr.PC to quash the proceedings after framing of charges, where allegations do not disclose prima facie case and that when the charges are not specific, the same can be challenged by invoking such inherent jurisdiction and that dismissal of SLP is not a bar to entertain a petition under Section 482 of Cr.PC when the charges framed are not based on any material.

22. The learned senior counsel for the Petitioner/A7 would further submit that the Petitioner/A7 cannot be made liable as Chairman and Managing Director, as he being the ultimate beneficiary by virtue of his position in the Company, since the Sun TV is a listed Company. He would further submit that there are no allegations of conspiracy against him in the charge sheet even by the CBI and that the charges are not legally sustainable since the ingredients are not made due to absence of material evidence and would further submit that this Court shall not allow the illegality to perpetuate, despite there being an earlier order of this Court, since this Court has got independent powers to decide the case on hand.

23. In support of his contentions, the learned senior counsel for the Petitioner/A7 has relied on the following decisions:-

1. 1976 (2) SCC 819 (S.Harnam Singh V.The State (Delhi Admn.)

2.1999 (6) SCC 667 (Common Cause, A Registered Society V.Union of India and others)

3.2015 SCC Online Kar 8587 (The State of Karnataka V.Rangaswamy)

4.1979 SCC Online Bom 171 (Harbansingh Kripalsingh V.M.K.Chakarborty and another)

5.1992 Cri.L.J.1327 (Dr.A.M.Berry V.Ravi Arora and others)

6.2008 (2) SCC 705 (Sunita Jain V.Pawan Kumar Jain and others)

7.2005 1 SCC 122 (Zandu Pharmaceutical Works Ltd and others V.Mohd.Sharaful Haque and another)

8.1975 (3) SCC 706 (Superintendent and Remembrancer of Legal Affairs, West Bengal V.Mohan Singh and others)

9.1994 SCC Online Guj 187 (R.S.Shah, Competent Autority, Gujarat Slums Clearance Board and others V.Vinod H.Brhamhatt and another)

10.2018 (7) SCC 581 (Sheila Sebastian V.RJawaharaj and another)

11.2015 (4) SCC 609 (Sunil Bharti Mittal V.Central Bureau of Investigation)

12.2013 (4) SCC 505 (Ghcl Employees Stock Option Trust V.India Infoline Limited)

13.2012 (13) SCC 614 (Satish Mehra V.State INCT of Delhi) and another)

14.2014 (3) SCC 92 (Hardeep Singh V.State of Punjab and others)

15.2011 (2) MWN (Cr.)47 (J.Duraimunusamy V.State by the Additional Superintendent of Police)

16.2010 (10) SCC 479 (Maharashtra State Electricity Distribution Co.Ltd V.Datar Switchgear Limited)

17.2009 (16) SCC 605 (Chitresh Kumar Chopra V.State (Government of NCT of Delhi)

18.1984 (Supp) SCC 207 (Jethsur Surangbhai V.State of Gujarat)

19.1982 (2) SCC 412 (Manju Gupta V.M.s.Paintal)

24. The learned senior counsel for the Petitioner/A5 has assailed the impugned charges on the following grounds:-

a. The Trial Court ought to have considered the materials available on record before framing the charges. Since the Petitioner/A5 is mere an employee, no vicarious liability could be fastened on him and there is no material on record to show that the alleged acts were committed within the knowledge of the Petitioner/A5. Even none of the statements of the witnesses disclose or constitute any offences as against him

b. In order to deal with the allegation of criminal conspiracy under Section 120B of IPC, there should be convincing material as against the Petitioner/A5. Without any such material, the Trial Court ought not to have framed such a charge.

c. In respect of the second charge of abetting, the same ought not to have been framed as against him, when it is the admitted case of the Prosecution that A5 is not a public servant. There is no specific averment with respect to dominion over or entrustment over the property held by any of the accused persons. Hence, this second charge framed without any material is liable to be set aside.

d. In respect of the third charge, when it is the case of the Prosecution that A1 to A4, being public servants, conspired together and obtained telephone connections in violation of the procedures and rules and when there is no material as against the Petitioner/A5, the Trial Court ought not to have framed such charge.

e. With respect to fourth charge regarding falsification of accounts so as to obtain undue advantage, the documents relied on by the Prosecution does not specify that the Petitioner/A5 had aided the other accused persons in creation of forged documents and falsification of accounts. He would further submit that there is nothing on record to show what is the document which has been mutilated or forged. The fifth charge was also framed merely on assumptions and without any any materials. If the charges framed against the Petitioner/A5 are not set aside, he would be put to grave prejudice.

25. The learned senior counsel for the Petitioner/A5 would further submit that the onus is on the part of the Prosecution to establish beyond all reasonable doubts that the accused took part in the alleged crime and that there is no such provision creating an offence on the principle of vicarious liability so as to make an employee liable for the act committed by the Principal and that the charges framed as such are bereft of materials and without any materials.

26. In support of his contentions, the learned senior counsel for the Petitioner/A5 has relied on the following decisions:-

1. 1946 SCC Online Oudh CC 105 (Kishan Lal Gupta V.Emperor)

2. Manu/SC/0223/1974 (Superintendent and Remembrancer of Legal Affairs, West Bengal V.Mohan Singh and Ors.)

3. Manu/UP/0062/1950 (Rex V.Daya ShankE jaitly)

4. 2018 (7) SCC 581 (Sheila Sebastian V.RJawaharaj and another)

27. The learned senior counsel for the Petitioner/A6 has assailed the impugned charges on the following grounds:-

a. The Trial Court ought to have considered the materials available on record before framing the charges. Since the Petitioner/A6 is only an employee, no vicarious liability could be fastened on him and there is no material on record to show that the alleged acts were committed within the knowledge of the Petitioner/A6. Even none of the statement of the witnesses disclose or constitute constitute any offences as against him

b. In order to deal with the first charge relating to the allegation of criminal conspiracy under Section 120B of IPC, there should be convincing material as against the Petitioner/A6. Without any such material, the Trial Court ought not to have framed such charge.

c. In respect of second charge of abetting, the same ought not to have been framed as against him, when it is the admitted case of the Prosecution that A6 is not a public servant. There is no specific averment with respect to dominion over or entrustment over the property held by any of the accused persons. Hence, this second charge framed without any material is also liable to be set aside.

d. In so far as the third charge under Section 467 read with 471 of IPC is concerned, when it is the case of the Prosecution that A1 to A4 being public servants, conspired together and obtained telephone connections in violation of the procedures and rules and when there is no material as against the Petitioner/A6 to show that A6 had involved in any of the activities for creation of forged documents and utilised the same, the Trial Court ought not to have framed such charge as against him.

e. With respect to fourth charge regarding falsification of accounts so as to obtain undue advantage, the documents relied on by the Prosecution does not specify that the

Petitioner/A6 had aided other accused persons in creation of alleged accounts documents for falsification of accounts. The fifth charge was also framed merely on assumptions and without any any materials. If the charges framed against the Petitioner/A6 are not set aside, he would be put to grave prejudice, as they are illegal, improper and incorrect.

28. The learned senior counsel for the Petitioner/A6 would further submit that the onus is on the part of the Prosecution to establish beyond all reasonable doubts that the accused took part in the alleged crime and that there is no such provision creating an offence on the principle of vicarious liability so as to make an employee liable for the act committed by the Principal and that the charges framed as such are bereft of materials and without any materials.

29. The learned counsel for the Petitioner/A6 would further submit that the entire case of CBI rests on alleged contravention of Housing and Telephone Facilities (Members of Parliamentary Rules, 1956), which does not form part of the documents, but the Trial Court came to an erroneous conclusion in a mechanical manner in violation of the said rules, which is against the Law. He would further submit that there are no other documents, pertaining to the EPABX purchase orders of installation and connection as alleged and that the case of CBI is only based on assumptions and presumptions, as it is stated that the offence 'can and could have been done'.

30. In support of his contentions, the learned senior counsel for the Petitioner/A6 has relied on the following decisions:-

i. 2010 (1) SCC 322 (Parminder Kaur V.State of Utta Pradesh and another)

31. The learned senior counsel for the Petitioner/A3 has assailed the impugned charges on the following grounds:-

a. In so far as the first charge of criminal conspiracy is concerned, it is omnibus in nature. The alleged non-entitlement of the facilities is based on non-existent law, namely, "the Housing and Telephone Facilities (MP's) Rules 1956" which is an error, since the entitlements of the Petitioner/A3 was placed on par with the Member of Parliament, whereas he was a Minister and that A3's case is covered under "the Salaries and Allowances and Pensions of the Minister's Amendment Act 17 of 2000", wherein no limits have been prescribed for entitlement of phone facilities. The entire charges is based on the question of law with regard to his entitlement, which need not be established by way of evidence. Without any material to show that the Petitioner/A3/Minister was not entitled for the alleged facilities, the charges framed as such cannot be permitted to be taken on trial.

b. The charges are vague, violating the provisions of Section 212(1) of Cr.PC. When the charges relating to Section 120B, it is trite law that when there were meeting of minds, the place and time when A1 to A4 met together and hatched conspiracy, must be mentioned, but such details are absent, which is a fundamental defect. There is no specific overtact is attributed except merely stating that he entered into a conspiracy by abusing his power and that he was the beneficiary. There are also no details as to the loss caused to the Government Exchequer to the tune of Rs.1,78,71,391/0-.

c. In respect of second charge under Section 409 of IPC, it violates the mandate of Section 212(2) of Cr.PC, which stipulates the manner in which the charge under Section 409 of IPC should be made. The charge is an omnibus charge, without specifying particulars as against all the accused and without specifying the role played by each of the accused in the alleged offence. Such an omnibus charge against all the accused would cause serious prejudice in the defence of the accused. The Trial Court failed to ascertain the culpability of each of the accused and also ought to have seen that the period of offence is shown as 23.05.2004 to 13.05.2007.

d. In so far as for the charge under Section 409 of IPC for criminal liability is concerned, there must be initial entrustment of goods, whereas the property entrusted is the Office of the Ministry, which is not property for the purpose of Section 409 of IPC. In respect of the charge that the connections were illegally obtained without entitlement, it negates the concept of entrustment ingrained in Section 405 of IPC and thereby, such charge under Section 409 of IPC is misplaced.

e. In respect of charge under Section 467 read with 471 of IPC, there is no evidence to show as to how and in what manner, the Petitioner/A3 had forged documents. The materials available against the co-accused, assuming if there is any, cannot be attributed to him. Regarding the allegation that A1 and A2 had shown the subscriber's address of the CGM Phones though the services were provided at the residences of the Petitioner/A3, as a statement made in a document assuming it to be false cannot be said to be forgery within the meaning of Section 463 of IPC.

d. In so far as the fourth charge under Section 477A of IPC, relating to falsification of documents is concerned, there are no details as to what were the documents, which were altered and forged and the charge should specifically specify in what capacity the Petitioner/A3 committed the offence.

f. As regards the fifth charge under Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, it is also in violation of the mandate of Section 218 of Cr.PC. Combining of two offences in one charge cannot be done. The ingredients of the said Sections are entirely different. The entire records, 161 statements and the final report would not constitute the offences charged by the Trial Court.

g. The Petitioner/A3 was entitled for the said connections and had obtained the same, which is evident by the

Statutes and statements of the witnesses and there is no element of illegality in obtaining the said connections and there is no legal material to show that the same was used by any third party. Hence, the charges framed are legally unsustainable in the absence of legal material evidence to substantiate the same.

h. Without any legal material evidence and based on non-existent law, the charges frames as such are nothing but abuse of process of Court. Since there are fundamental errors in the charges, which would cause grave prejudice to the Petitioner/A3, they are liable to be set aside.

32. The learned senior counsel for the Petitioner/A3 would further submit that order passed in the earlier revision petition, directing framing of charge will not stand in the way of the present petition, inasmuch as an order framing charge is assailable under Section 482 of Cr.PC and this is a different stage of proceedings and the impugned order in this petition is different from what was before this Court in the revision. The earlier one was at the stage of Section 239 Cr.PC and the present one is challenging the order of framing charges under Section 240 of Cr.PC.

33. The learned senior counsel for the Petitioner/A3 would further submit that entitlement of a Minister to telephone facilities is not the same as that of a Member of Parliament and in view of this error in law, the charges were fundamentally flawed and that the fundamental error committed by the CBI is that Petitioner's entitlement to telephone connections and related facilities was governed by Rule 4 of the Housing and Telephone Facilities (Members of Parliament) Rules, 1956 (1956 Rules) and such reliance on the MP Rules 1956 is misplaced and misleading and a Union Minister's entitlement to phone/ internet is not governed by the 1956 Rules. He would further submit that since a Minister is not governed by the 1954 MP Act, the case of CBI based on rules relating to a Member of Parliament, is misconstrued and misconceived.

34. The learned counsel for the Petitioner/A3 would further submit that the 764 connections being attributed to the Petitioner were actually 10 in number and that there were only 10 connections at Gopalapuram and 10 identical new connections at Boat Club Road and that all service connections were closed in July 2007 and recovered by BSNL and hence, the entire charge sheet is false.

35. The learned counsel for the Petitioner/A3 would also submit that the charge that the telecom facilities availed by the Petitioner/A3 during his tenure as Minister, which were allegedly beyond his entitlement, were actually for the beneficial use of SUN TV is wholly baseless and without any material particulars and based on conjectures and surmises. He would further submit that with respect to the alleged 67 mobile connections, the case of the Prosecution is without any material evidence, inasmuch as the documents on record would show that there were only 19 SIM cards for the Ministry and not the

Minister. He would also submit that the allegation of forgery is ex-facie not made out by valid material evidence.

36. The learned senior counsel for the Petitioner/A3 would submit that the Petitioner/A3 was entitled for the connections and there is no element of illegality in obtaining the said connections and that there is no legal material to show that the same was used by any third party and that the entire records do not constitute the offences charged with by the Trial Court.

37. In support of his contentions, the learned senior counsel for the Petitioner/A3 has relied on the following decisions:-

1. 2011 (2) MWN (Cr.)47 (J.Duraimunusamy V.State by the Additional Superintendent of Police)

2. 2012 (13) SCC 614 (Satish Mehra V.State INCT of Delhi) and another)

3. 1997 (2) SCC 699 (State of Karnataka V.L.Muniswamy and others)

38. The learned senior counsel for the Petitioner/A4 has assailed the impugned charges on the following grounds:-

a. The Trial Court ought to have considered the materials available on record before framing the charges. In order to deal with the first charge relating to the allegation of criminal conspiracy under Section 120B of IPC, there should be convincing material as against the Petitioner/A4. Without any such material, the Trial Court ought not to have framed such charge.

b. In respect of second charge is concerned, the same ought not to have been framed as against him, when it is the admitted case of the Prosecution that A4 was only a Additional Personal Secretary to A3 and was not entrusted any any point of time with any property or dominion over the property in his capacity of a public servant.

c. In so far as the third charge is concerned, there is no evidence by way of documents or 161 statements for such charge and the description of the charges does not constitute the alleged offence and thus, it was framed in a mechanical and routine manner.

e. With respect to fourth charge regarding falsification of documents, it is baseless and unfounded, as there is no material to prove the same. The fifth charges is also based on erroneous conclusion, irrelevant consideration and assumptions. If the charges framed against the Petitioner/A4 are not set aside, he would be put to grave prejudice, as they are illegal, improper and incorrect. Without any legal material evidence, the charges frames as such are liable to be set aside.

39. The learned senior counsel for the Petitioner/A4 would also submit that the impugned charges are omnibus in nature, vague and against the mandatory provisions of Cr.PC and that the scope of Section 240 of Cr.PC has not been properly appreciated by the Trial Court, since the stage of Section 240 of Cr.PC is entirely distinct and different from the stage under Section 239 of Cr.PC and that the mandatory opportunity of hearing before the charge was not given to the Petitioner/A4, thereby violating the principles of natural justice. He would further submit that maintainability of a petition under Section 482 of Cr.PC, challenging the order of framing charge is no longer res-integra and hence, the Petitioner under Section 482 of Cr.PC is maintainable. He would also submit that the order passed earlier by the learned Single Judge of this Court in the earlier round of litigation at the stage of discharge cannot in any way prevent the Petitioner/A4 from independently questioning the order on framing charge. He would also submit that there are fundamental defects in framing the impugned charges by the Trial Court, such as, non application of judicial mind and improper consideration of materials and that the charges do not contain any material particulars of the crime as contemplated under the Code of Criminal Procedure and thereby grave prejudice is caused to the accused.

40. The learned senior counsel for the Petitioner/A4 would also submit that the impugned charges were framed on a non-existent law and in violation of the Code of Criminal Procedure and that the impugned charges framed by the Trial Court, without appreciating the difference between the Minister and Member of Parliament, in terms of payment of salaries and allowances and improperly interpreting the provisions of The Salaries and Allowances of Ministers, Act, 1952 and The Salary, Allowances and Pension of Members of Parliament Act, 1954 and the rules of the Housing and Telephones Facilities (Members of Parliament) Rules, 1956, with regard to entitlement of telephone connections and related facilities, are illegal and omnibus in nature, as there were no material particulars and in violation of Articles 20(1) and 21 of the Constitution of India and that combining of two offences under the Prevention of Corruption Act, 1988, i.e. 13(1)(c) and 13(1)(d), is against the law.

41. The learned senior counsel for the Petitioner/A4 would also submit that the Trial Court failed to appreciate the entitlement of the Petitioner/A4 to have a residential service telephone connection (RSTC) and as per his entitlement, obtaining a conversion of his RSTC is not an offence. He would further submit that the Trial Court also failed to consider that the Petitioner/A4 has no role to play and that there is nothing on material to implicate the Petitioner /A4 for the offence of conspiracy. He would also submit that the mandatory opportunity of hearing at the stage of framing of charges was not given to the Petitioner/A4 contemplated under Sections 239 and 240 of Cr.PC.

42. In support of his contentions, the learned senior counsel for the Petitioner/A4 has relied on the following decisions:-

1. 1995 (2) SCR 1140 (Willie (Willam) Slaney V.The State of Mahdya Pradesh)
2. 1961 SCC Online SC 1 (Natwarlar Sakarlal Mody V.The State of Bombay)
3. 1994 (4) SCC 12 (Minakshi Bala V.Sudhir Kumar and others)
4. 2005 (11) SCC 600 (State (NCT of Delhi) V.Navjot Sandhu)
5. 2006 SCC Online Ker 519 (Rameshan and Others V.State of Kerala)
6. 2006 SCC Online Ker 242 (Vijayachandran K.K. and another V.The Superintendent of Police and another)
7. 2010 (10) SCC 130 (Main Pal V.State of Haryana)
8. Crl.O.P.No.23479 of 2010 (J.Duraimunusamy V.State by the Additional Superintendent of Police)
9. (2012) 1 SCC 699 (Helios and Matheson Information Technology Ltd and others V.Rajeev Sawhney and another)
10. 2013 (7) SCC 256 (Jasvinder Saini and others V.State (Govt. of NCT of Delhi)
11. 2017 (15) SCC 560 State through Central Bureau of Investigation V.Dr.Anup Kumar Srivastava)
12. 2018 SCC Online Mad 1359 (S.Muralidharan V.State)
13. 2018 (7) SCC 581 (Sheila Sebastian V.R.Jawaharaj and Another)
14. 2018 SCC Online SC 310 (Asian Resurfacing of Road Agency Pvt.Ltd V.Central Bureau of Investigation)
15. 1924 SCC Online Cal 145 (Kedar Nath Chakravarti and ors. V.The King-Emperor)
16. AIR 1941 Rang I (S.K.Roy Chowdhury V.The King)
17. AIR 1945 All 81 (Emperor V.Makhan)

18.1955 SCC Online All 308 (The State V.Rasool and ors)

19.1972 3 SCC 282 (Century Spinning and Manufacturing Co.Ltd and ors. V.State of Maharashtra)

20.2011 (2) SCC 206 Sajjan Sharma V.State of Bihar)

21.AIR 1953 SC 148 (Nalinakhya Bysack V.Shyam Sundar Haldar and ors.)

22.2003 (2) SCC 455 (Unique Butle Tube Industries (P) Ltd V.UP Financial Corporation and ors.

43. On the side of the Prosecution, the learned Additional Solicitor General, apart from reiterating the averments made in the counter affidavits and justifying each and every charge framed against the Petitioners/ accused, would submit that if this Criminal Original Petition is permitted, it would amount to review of the order of this Court, dated 25.07.2018, which is not permissible under Section 362 of Cr.PC, inasmuch as, in this said order, this Court, after calling for records and perusing the records of the Trial Court, had dealt with in details regarding the merits of the case as well as the role of each and every accused, while passing the said order dated, 25.07.2018, in the Crl.RCs filed by the Respondent Police, against the order of discharge, dated 14.03.2018. He would further submit that though there is no bar to consider a challenge against the order of framing charge, it could be done only in exceptional situation for correcting a patent error or lack of jurisdiction as has been held in 2018 SCC Online SC 310 (Asian Resurfacing of Road Agency Pvt.Ltd V.Central Bureau of Investigation) and exercise of such jurisdiction has to be limited to rarest of rare cases and therefore, the issues raised in this Petition does not relate to patent error or lack of jurisdiction and hence, this Criminal Original Petition is not maintainable. He would further submit that no party, i.e. neither the complainant nor the accused or Prosecution has any vested right in seeking alteration of charges and if it is brought to the notice of the Trial Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed on that purpose, as has been held in 2017 3 SCC 347 while referring to the provisions of Section 216 of Cr.PC. Therefore, the Petition filed before this Court, regarding the defects in the charges has to be brought to the knowledge of the Trial Court and he would further submit that the accused having understood the charges and having not raised any objections and pleaded not guilty cannot now challenge the same.

44. The learned Additional Solicitor General would further submit that this is second round of litigation and

that filing any further petition is not only abuse of process of law, but also, it is not maintainable. He would further submit that the Trial Court had, earlier selectively and arbitrarily, extracting few portions of the statements and documents, erroneously discharged the Petitioners. He would further submit that the matter went up to the Honourable Supreme Court and the SLP was dismissed and thereafter, charges were framed based on legally valid materials and the accused denied the charges and hence, the question of re-agitating the entire case under Section 482 of Cr.PC would not arise.

45. The learned Additional Solicitor General would also submit that the Petitioners/ accused have not filed any material to substantiate their case, but they have selectively filed only the charge sheet and charges framed against them and that for the reasons best known to them, they have conveniently avoided to file all the materials furnished to them at the time of compliance under Section 207 of Cr.PC. He would further submit that in the earlier round of litigation, this Court had called for the entire records and after perusing all the documents and the statements of the witnesses available on record in the case, dealt with the very same submissions made by the learned counsel for the Petitioners/ accused and had rendered a finding that there are materials available for framing charges against the accused and that when that being so, this Court need not, once again, revisit and call for the records, to come to a conclusion as to whether there are sufficient materials for framing charges or not. He would further submit that it is only a dilatory tactics adopted by the Petitioners/ accused to delay and protract the trial and that as against the orders passed by this Court, the accused had approached the Honourable Supreme Court and the Honourable Supreme Court, while dismissing the SLPs, after perusing the relevant materials, declined to interfere with the matter and directed the parties to approach the Trial Court.

46. The learned Additional Solicitor General would also submit that the case of the Petitioner/A7 cannot be differentiated, in view of the fact that he being the brother of A3,, had been roped into this case for having conspired with his brother, A3, who was the then Minister of Communication and Information Technology at the relevant point of time and that excess of connections had been availed without any entitlement and that there are sufficient materials to show that they had been used for the benefit of A7. He would also submit that at the time of framing charges, the Court has to only see whether there is any prima facie material available for framing charges. He would also submit that at this stage, this Court, after having earlier held that there are sufficient materials available for framing charges, cannot, once again, conduct a roving and fishing enquiry to find out whether the charges will end in conviction or not. A mini trial cannot be conducted by this Court, at this stage and that the accused have to be tried

and the Prosecution is to be given an opportunity to let in evidence to prove their case and thereby, the case should be allowed to come to an logical end than to quash the charges. He would further submit that the Code of Criminal Procedure is a complete Code in itself and that as per Section 216 of Cr.PC, the Trial Court has got ample powers to alter any charge at any time and even if there is an error or irregularity in framing of the charges, it can be cured and set right by the Trial Court by its own motion any time before the judgement is pronounced.

47. The learned Additional Solicitor General would also submit that the language implied in Section 240(1) of Cr.PC is clear that if, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in opinion could be adequately punished by him, he shall frame in writing a charge against the accused. In such case, mere presumption that the accused has committed an offence is enough. Further, consideration, examination and hearing referred in Section 240 of Cr.PC refer to the consideration of materials, examination and hearing the accused at the stage of Section 239 of Cr.PC. He would further submit that all the accused were heard at the stage of proceedings under Section 239 of Cr.Pc and the Trial Court had also considered the evidence and materials on record and had formed an opinion.

48. The learned Additional Solicitor General would rely on the following judgements:-

1. CDJ 2015 MHJ 6376 (Dayanidhi Maran V.The State by, Deputy Superintendent of Police)

2. 2017 (3) SCC 347 (P.Kartikalakshmi V.Sri Ganesh and another)

3. 2018 SCC Onlince SC 310 (Asian Resurfacing of Road Agency Pvt.Ltd V.Central Bureau of Investigation)

4. 2008 (2) SCC 705 (Sunita Jain V.Pawan Kumar Jain and others)

5. 2018 SCC Online Mad 2246 (State Vs. K.B.Brahmadathan and others),

49. This Court has given its careful and anxious consideration to the rival contentions put forward by the learned counsel on either side and the decision furnished across the Bar.

50. Lengthy arguments were advanced by the respective learned senior counsel for the Petitioners/ accused. The sum and substance of the arguments put forth by the learned senior counsel for the Petitioners are as follows:-

i. The Trial Court had framed the impugned charges without any materials.

ii. Since the impugned charges framed are not based on any materials, the charges can be challenged under Section 482 of Cr.PC.

iii. The impugned charges are vague, not specific and not framed in accordance with the relevant provisions under Chapter XVII of the Code of Criminal Procedure.

51. It is contended on behalf of the Prosecution that this is a second round of litigation and that this Court, earlier having called and perused the records from the Trial Court in detail and having given a finding that there are materials for framing charges and that the SLPs filed as against the said order having been dismissed by the Honourable Supreme Court, the question of deciding the availability of materials for framing of charges or not would amount to review of the earlier order of this Court made in the earlier round of litigation and thereby, these Criminal Original Petitions are not maintainable and impermissible. He would further submit that even if the Petitioners/ accused are aggrieved by the improper framing of charges, it would not amount to illegality and that the Code of Criminal Procedure being the complete Code, protects the accused from such a situation and that by invoking the provisions under the Code of Criminal Procedure , the Trial Court can alter or add the charges, which is permissible under law.

52. Though several decisions have been cited by the learned senior counsel for the Petitioners/ accused, this Court does not want to burden this order by referring to all the decisions referred to by them, since the issues raised in those decisions are dealt in the later decisions of the Apex Court, this Court feels that it would be appropriate to refer to the relevant decisions alone to decide these petitions on hand.

53. In so far as the questions regarding availability of materials for framing charges and regarding the maintainability and whether it would amount to review, it is pertinent to point out that prayers in these petitions are only to call for the records and quash the impugned charges framed against the Petitioners/ accused.

54. A serious objection was raised by the learned Additional Solicitor General for the Respondent, stating that the entire documents and the statements of the witnesses had been furnished to the Petitioners / accused in due compliance of the provisions of Section 207 of Cr.PC and that the Petitioners/ accused have purposely avoided to file those statements and documents before this Court. He has also raised another ground, stating that the allegations against the Petitioners/ accused

are for the offences under the provisions of the Prevention of Corruption Act, 1988 and other substantive offences under IPC. He would further submit that the Petitioners/ accused, knowing very well that there are materials available, have wantonly refrained from filing those documents with an oblique motive of delaying and protracting the trial proceedings.

55. This Court, on an earlier occasion, in the Criminal Revision Petitions, had called for the entire records and perused it and it had, based on the very same submissions, had arrived at a conclusion that there are sufficient materials to frame charges and thereby, this Court cannot, at this stage, now once again re-exercise, reassess and reappraise the documents to find out whether there are sufficient materials or not, for framing charges.

56. In this regard, it is relevant to refer to the decision of the Honourable Supreme Court reported in 1987 2 SCC 17 (State of HP Vs. Krishan Lal Pardhan and other), wherein the Honourable Supreme Court had held that the second judge, could not on the same materials on record, come to a different conclusion and review the order passed by the earlier judge and that such an review of the earlier order would be illegal and in paragraph 17, it has been held thus:-

> "7. Now coming to the order of the Special Judge the first glaring feature noticed is that his predecessor judge had found the materials placed before court to make out a prima facie case against all the ten accused persons regarding offences of conspiracy, theft, cheating and forgery besides offences by the public servants under the Prevention of Corruption Act. Very strangely, the successor Special Judge has come to a diametrically opposite conclusion on the same materials and held that the charges were groundless and hence no charges need be framed and all the accused should be discharged. In effect what the Special Judge has done is to review the order of his predecessor which he is not entitled to do under law. It is no doubt true that a magistrate or Special Judge is empowered under Section 239 CrPC to discharge the accused on the ground the charge against him is groundless. But in this case can the Special Judge say that the charges were groundless when on the same materials his predecessor has held that a prima facie case relating to various offences had been made out against the accused? The subsequent order, as already stated, is in effect a review of the earlier order which the Special Judge is not entitled to do under the Criminal Procedure Code."

The very same principle is applicable to the case on hand.

57. Reliance is also by the learned counsel for the Petitioners/ accused, on the decision of the Honourable Supreme Court reported in 2012 13 SCC 614 (Satish Mehra Vs. State (NCT of Delhi) and another), contending that the inherent power of the High Court can be invoked to quash the proceedings, specially after framing of charges and that the power to quash the proceedings after the charges were framed is wider as evidence adduced while submitting the charge sheet can be looked into for determining disclosure of offence against the accused and that where proceedings do not disclose prima facie case and Prosecution of the accused would result in abuse of process of law, then the proceedings can be quashed either at the early stage or at later stage and particularly, referered to paragraph 14 o the said decision, which reads as under:-

> "'14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal proceeding that more often than not gets protracted. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of the process of the law. This is the core basis on which the power to interfere with a pending criminal proceeding has been recognised to be inherent in every High Court. The power, though available, being extraordinary in nature has to be exercised sparingly and only if the attending facts and circumstances satisfy the narrow test indicated above, namely, that even accepting all the allegations levelled by the prosecution, no offence is disclosed. However, if so warranted, such power would be available for exercise not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually come on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in their entirety, do not, in any manner, disclose the commission of the offence alleged against the accused."

58. It is also contended on behalf of the Petitioners/ accused that on a broad principle that in case the allegations made in the First Information Report or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be no reason as to why the accused should be made to suffer the agony of a legal proceedings that more often than not gets protracted. It is also contended that the Prosecution, which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to an abuse of process of the law. It is also contended that when there are absolutely no material to frame the charges, it would amount to lame and sham Prosecution and that the continuance of such Prosecution is nothing, but abuse of process of law, defeating the right of the accused under Article 21 of the Constitution of India.

59. No doubt,the dictum laid in Satish Mehra's case is that the power to quash the charges u/s 482 Cr.P.c is wider, if the court is able to draw its satisfaction that the materials even if accepted in its entireity,do not in any manner disclose the commission of the offence alleged against the accused . Whereas the facts of this case stand on a different footing and thus the answer, to these points in respect of availability of materials and maintainability, by this Court is that this Court, earlier having called for records from the Trial Court and perused the same and having given a finding that there are materials for framing charges against the accused, this Court cannot, now at this stage, review the earlier order passed by the learned Single Judge of this Court and arrive at a different conclusion that there are no materials to frame charges.

60. It is pertinent to note that over the years and by march of law, the law concerning the framing of charges and the standard which Courts must apply while, framing charges is well settled that a Court, while framing charges under Sections 227, 228, 239 and 240 of the Code of Criminal Procedure, should only apply the prima facie standard. Although the application of this standard depends on facts and circumstance in each case, a prima facie case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that, it is sufficient to induce the Court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial, as has been held in 2018 3 SCC 358 (Mauvin Godinho Vs. State of Goa).

61. 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 only for the purpose of deciding prima facie whether the court should proceed with the trial or not, as has been held in 2015 2 SCC 417 (State Vs. A.Arun Kumar).

62. No mini trial is contemplated at the stage of framing of charges or at the stage of considering the validity of such charges framed. Defective or illegal investigation is not a ground for a charge to be held as not maintainable. For this proposition, it is relevant to refer to the decision of the Honourable Supreme Court reported in 2014 11 SCC 709 (State of Tamil Nadu Vs. N.Suresh Rajan and others), wherein, it has been held thus:-

> "29. .... True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.
>
> 32.While passing the impugned orders, the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an

order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification."

63. In 2018 SCC Online Mad 2246 (State Vs. K.B.Brahmadathan and others), which is a case regarding the very same parties, which was dealt by this Court in the earlier round of litigation, as stated above, this Court has indepth analysed the entire materials on record and dealt from paragraphs 34 to 92 and particularly, in paragraphs 84, 87 and 92, wherein, it has been held as under:-

"84. The request of the learned counsel for the respondents to furnish all the documents relied by the prosecution and afford opportunity to them to file reply are not consonance with the provisions of Criminal Procedure Code. They all were furnished with the documents relied by the prosecution in the trial Court itself in compliance with under Section 207 Cr.P.C. Based on those records they were able to file discharge petition and also succeed. Now the prosecution has thought that the order of the trial Court discharging all the accused for want of material to charge them is perverse. So they have preferred the above Revision Petitions. Before this Court prosecution had placed the documents which in their point of view sufficient to frame charge. However, this Court has called for records from the trial Court and had verified to satisfy itself whether material available to frame charge. This Court is fully satisfied that heaps and heaps of material are available to frame charge against all the accused. None of the reasons given by the trial Court to discharge them is sustainable under law. The trial Court had treated petitions for discharge as a case for appreciating evidence with the decree of proof beyond reasonable doubt. He had totally forgotten the fact that he should only weigh the probability of the case for framing."

"87. This conclusion is for sure not without basis or groundless, to discharge exercising power under Section 239 Cr.P.C. Contrarily, the statements and documents extracted above are adequate to form opinion and sufficient to presume that the accused have committed the offences charged."

> "92. Considering the police report and the documents, only opinion any judicial mind could form is that, there are grounds to presume all the 7 accused have committed offence and not otherwise."

Thus having meticulously gone through the records this court had given a finding that there are materials available for framing charges. Even in this case, it is the categoric and specific objection of the Prosecution/respondent that despite there being sufficient materials, the Petitioners have deliberately desisted from producing those materials furnished to them under Section 207 of Cr.PC. only to further drag the proceedings.

64. To repeat, in the case on hand, this Court, in the earlier round of litigation in the Criminal Revision Petitions(Crl.R.C 671,682 to 684 of 2018), after considering the very same submissions made by the learned counsel on either side, had raised strong suspicions that there are grounds for presuming that the accused had committed the offence and after calling for the records from the Trial Court and having consiously looked into the same, this Court had come to a concrete conclusion that there are sufficient grounds and materials for framing charges against the accused. As per such directions of this Court, the Trial Court had framed the impugned charges. When that being so, this Court need not once again venture into the exercise of reappreciating the records and materials of the Trial Court, to come to a conclusion as to whether there are sufficient materials to frame charges or not.

65. At the stage of a charge, the concerned Court should not concern with the proof of allegation, but has to focus on material and thereby, form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove the guilt. Framing of charge is not a stage, at which stage, final test of guilt is applied. The object of Section 397 of Cr.PC is to set right patent defect or an error or perversity which has crept in the proceedings. Though this is a case filed u/s 482 Cr.P.C, the principle is the same. In this regard, in 2017 3 SCC 198 (State of Rajasthan Vs. Fatehkaran Mehdu), the Honourable Supreme Court had held as follows:-

> "26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be

applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 CrPC, which vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

28. It is useful to refer to the judgment of this Court in Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , where scope of Section 397 CrPC has been succinctly considered and explained. Paras 12 and 13 are as follows: (SCC p. 475)

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court

has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under CrPC."

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of quashing of charge framed under Section 228 CrPC. Paras 27, 27.1, 27.2, 27.3, 27.9 and 27.13 are extracted as follows: (Amit Kapoor case [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , SCC pp. 482-83)

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not.

If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.
***
27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
***
27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

30. Applying the above tests, we are of the considered opinion that the High Court erred in quashing the charges framed by the order dated 5-5-2009. In the result, both the appeals are allowed. The order of the High Court is set aside and the order dated 5-5-2009 is restored. The learned Special Judge may proceed with the trial in accordance with the law expeditiously."

Further, in the case of 2018 SCC Online SC 310 (Asian Resurfacing of Road Agency Pvt.Ltd V.Central Bureau of Investigation), wherein a three judges bench of the Honourable Supreme Court has held as under:-

""32. The wisdom of legislature and the object of final and expeditious disposal of a criminal proceeding cannot be ignored. In exercise of its power the High Court is to balance the freedom of an individual on the one hand and security of the society on the other. Only in case of patent illegality or want of jurisdiction the High Court may exercise its jurisdiction. The acknowledged experience is that where challenge to an order framing charge is entertained, the matter remains pending for long time which defeats the interest of justice.

33. We have already quoted the judicial experience as noted in the earlier judgments in Para 9 above that trial of corruption cases is not permitted to proceed on account of challenge to the order of charge before the High Courts. Once stay is granted, disposal of a petition before the High Court takes long time. Consideration of the challenge against an order of framing charge may not require meticulous examination of voluminous material which may be in the nature of a mini trial. Still, the Court is at times called upon to do so inspite of law being clear that at the stage of charge the Court has only to see as to whether material on record reasonably connects the accused with the crime. Constitution Bench of this Court in Hardeep Singh v. State of Punjab [2014 3 SCC 92]observed:

100. However, there is a series of cases wherein this Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 CrPC, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connect the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of prima facie case is to be applied. The court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699], All India Bank Officers' Confederation v. Union of India [(1989) 4 SCC 90] Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia [(1989) 1 SCC 715] State of M.P. v. Krishna Chandra Saksena [(1996) 11 SCC 439] and State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338]

101. In Dilawar Balu Kurane v. State of Maharashtra [(2002) 2 SCC 135] this Court while dealing with the provisions of Sections 227 and 228

CrPC, placed a very heavy reliance on the earlier judgment of this Court in Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4] and held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and whether the materials placed before the court disclose grave suspicion against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but the court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

102. In Suresh v. State of Maharashtra [(2001) 3 SCC 703], this Court after taking note of the earlier judgments in Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [(1990) 4 SCC 76] and State of Maharashtra v. Priya Sharan Maharaj [(1997) 4 SCC 393], held as under: (Suresh case, SCC p. 707, para 9)

"9. … at the stage of Sections 227 and 228 the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as the gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the court has to consider the material with a view to find out if there is ground **for presuming that the accused has committed the offence** or that there is not sufficient ground for proceeding against him and** not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction**. (Priya Sharan case, SCC p. 397, para 8)"(emphasis in original)

103. Similarly in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39], while dealing with the issue, this Court held: (SCC p. 42, para 4)

“4. … 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.”

34. If contrary to the above law, at the stage of charge, the High Court adopts the approach of weighing probabilities and re-appreciate the material, it may be certainly a time consuming exercise. The legislative policy of expeditious final disposal of the trial is thus, hampered. Thus, even while reiterating the view that there is no bar to jurisdiction of the High Court to consider a challenge against an order of framing charge in exceptional situation for correcting a patent error of lack of jurisdiction, exercise of such jurisdiction has to be limited to rarest of rare cases.....”

38. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C. or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to re-appreciate the matter. ....

48. ..... (e) The exercise of power either under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India should be sparingly and in exceptional circumstances be exercised keeping in view the law laid down in Siya Ram Singh (supra), Vishesh Kumar (supra), Khalil Ahmed Bashir

Ahmed (supra), Kamal Nath (supra) Ranjeet Singh (supra) and similar line of decisions in the field.

(f) It is settled law that jurisdiction under Section 482 of the Code of Criminal Procedure or under Article 227 of the Constitution of India cannot be exercised as a "cloak of an appeal in disguise" or to re-appreciate evidence. The aforesaid proceedings should be used sparingly with great care, caution, circumspection and only to prevent grave miscarriage of justice."

66. It is transpired from the above said later and the recent decisions of the Honourable Supreme Court, that the High Court, while exercising the powers under Section 482 of Cr.PC, has to decline to marshal the records so as to decide admissibility and reliability of the documents or materials or records, that too when, the learned Single Judge of this Court had already dealt with in detail, in the earlier round of litigation, as discussed above. However, at the cost of repetition, this Court deems it to apposite to refer to Section 240 of Cr.PC as under:-

> 240. Framing of charge. (1) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in opinion could be adequately punished by him, he shall frame in writing a charge against the accused.
>
> (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

The language implied in the Section 240 of Cr.PC is that if the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in opinion could be adequately punished by him, he shall frame in writing a charge against the accused and thereby, mere presumption is enough rather than proof. This Court is, again, reminded of the findings rendered by this Court in the earlier round of litigation between the same parties.

67. However, apart from answering against the Petitioners/accused in respect of the question relating to

availability of materials and maintainability, of these Criminal Original Petitions under Section 482 of Cr.PC, now, this Court in the case on hand, has to see further, as to whether the impugned charges had been framed in a proper manner and in accordance with the procedures and law contemplated under Cr.PC, more particularly, under Chapter XVII of Cr.PC.

68. In this regard, it is to be narrated that the Statute requires that every charge framed under the Cr.PC should state the offence, with which, the accused is charged and if the law, which creates the offences, gives it any specific name, the offence should also be described in the charge by that name only and that the law and section of the law against which the offence is said to have been committed has to be mentioned in the charge.

69. It is a fundamental priciple of the criminal law that the accused should be properly informed with certainty and accuracy the exact nature of charge brought against him. The charge has to contain such particulars as to the time and place of the alleged offence and the person, against whom it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged and also the charge should contain such particulars of the manner, in which the alleged offence was committed as would be sufficient for that purpose.

70. Some of the provisions of the Code of Criminal Procedure are vital and breach of the other provisions, which are not vital, is a curable irregularity unless the accused is prejudiced by such irregularity. The essential part of the Code of Criminal Procedure is not any technical forumula of words, but the reality whether the matter was explained to the accused and whether he understood what he was being tried for. The charge is a rolled up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.

71. In the light of the above principles, in the case on hand, now, what is to be seen is as to whether the charges have been framed in a proper manner and in accordance with law. In the present case the court is concerned with the nature and manner of framing of charges. Chapter XVII of the The Code of Criminal Procedure expressly deals with charge and framing of charges in several provisions. The provisions of the Code of Criminal Procedure are meant to be obeyed. Hence, the necessary scrutiny required is to interpret them. When there is an omission or error or irregularity in a charge, the charges or conviction need not be set aside, unless, in fact, a failure of justice has resulted. An error or irregularity or even absence of a specific charge shall not render the conviction or charges invalid unless a failure of justice has occasioned thereby.

72. In AIR 1956 SC 116 (Willile (William) Slaney Vs. State of MP) a Constitution Bench has held as under:-

"89. The framing of a charge in trial of cases in which a charge is required to be framed, is one of the important elements in the mode of a trial. On the charge framed, after it has been explained to the accused, the plea of guilty or not guilty is recorded. If the accused pleads guilty, certain consequences follow. If he pleads not guilty, the trial must proceed according to law. When a charge is not framed, obviously no plea of the accused with reference to it is taken and the trial has proceeded without such a plea. Is the framing of a charge and the recording of the plea of the accused merely a ritual or a fundamental provision of the Code concerning procedure in a criminal trial? I think it is the latter. Are the express provisions of the Code as to the manner in which a trial is to proceed to be ignored, or considered as satisfied, merely because the Court explained to the accused as to what he was being tried for? I apprehend not. For to do so is to replace the provisions of the Code by a procedure unwarranted by the statute itself. In my opinion, a total absence of a charge from start to finish in a case where the law requires a charge to be framed, is a contravention of the provisions of the Code as to the mode of trial and a conviction of the accused of an offence in such a case is invalid and the question of prejudice does not arise. None of the decisions of the Privy Council suggest that in such a case the conviction will be deemed to be valid by virtue of the provisions of Section 535, unless the Court is satisfied that there has been a failure of justice.

90. In cases where a charge has been framed and there is an omission or irregularity in it, it is difficult to see how the mode of trial is affected. In any event, the Code expressly provides that in such cases the conviction need not be set aside, unless, in fact, a failure of justice has resulted.

92. In conclusion, I would point out that the provisions of the Code of Criminal Procedure are meant to be obeyed. Contravention of its provisions are unnecessary and neither the prosecution nor the Courts of trial should ignore its provisions in the hope that they might find shelter under Sections 535 and 537 of the code. Where the contravention is substantial and a retrial becomes necessary, public time is wasted and the accused is put to unnecessary harassment and expense."

73. Chapter XVII of the Code of Criminal Procedure deals with “charges” in a criminal case. Though several decisions have been relied on by the counsel relating to framing of charges and the procedure to be adopted as per the Chapter XVII of the Code of Criminal Procedure , it is relevant to refer to the recent decision of the Honourable Supreme Court reported in 2018 7 SCC 743 (Vinubhai Ranchhodbhai Patel Vs. Rajivbhai Dudabhai Patel and others), wherein it has been held thus:-

> “16. Chapter XVII of the Code of Criminal Procedure (hereinafter referred to as “CrPC”) deals with “charges” in a criminal case. Sections 211 to 213 deal with the particulars which are required to be contained in a charge in a criminal trial. These provisions are made to ensure a fair procedure by which a person accused of an offence should be tried — a procedure in compliance with the requirement of the mandate of Article 21 of the Constitution of India. The accused are entitled in law to know with precision what is the charge on which they are put to trial. It was held by this Court in Esher Singh v. State of A.P. [Esher Singh v. State of A.P., (2004) 11 SCC 585 : 2004 SCC (Cri) Supp 113] : (SCC p. 599, para 20)
>
> “20. … It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. A charge is formulated after inquiry as distinguished from the popular meaning of the word as implying inculpation of a person for an alleged offence as used in Section 224 IPC.”

74. No error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the accused was in fact, misled by such an error or omission and it has occasioned in failure of justice, as has been held in 2011 9 SCC 234 (Santosh Kumari Vs. State of JK). It was further held in the said decision as follows:-

> “15. The provisions relating to framing of charge against the accused before the trial commences, are contained in the Code of Criminal Procedure, 1989 (1933 AD) which is applicable to the State of Jammu

and Kashmir. The statute requires that every charge framed under the said Code should state the offence with which the accused is charged and if the law which creates the offence gives it any specific name, the offence should also be described in the charge by that name only. The statute further requires that the law and section of the law against which the offence is said to have been committed has to be mentioned in the charge. It is a fundamental principle of criminal law that the accused should be informed with certainty and accuracy the exact nature of the charge brought against him. The object of the statement of particulars to be mentioned in the charge is to enable the accused person to know the substantive charge he will have to meet and to be ready for it before the evidence is given. The extent of the particulars necessary to be given in the charge depends upon the facts and the circumstances of each case.

16. It is well-settled law that in drawing up a charge, all verbiage should be avoided. However, a charge should be precise in its scope and particular in its details. The charge has to contain such particulars as to the time and place of the alleged offence and the person against whom it was committed as are reasonably sufficient to give the accused notice of the matter with which he is charged. One of the requirements of law is that when the nature of the case is such that the particulars mentioned in the charge do not give the accused sufficient notice of the matter with which he is charged, the charge should contain such particulars of the manner in which the alleged offence was committed as would be sufficient for that purpose. If A is accused of the murder of B at a given time and place, the charge need not state the manner in which A murdered B.

17. Like all procedural laws, the Code of Criminal Procedure is devised to subserve the ends of justice and not to frustrate them by mere technicalities. It regards some of its provisions as vital but others not, and a breach of the latter is a curable irregularity unless the accused is prejudiced thereby. It places errors in the charge, or even a total absence of a charge in the curable class. That is why we have provisions like Sections 215 and 464 in the Code of Criminal Procedure, 1973.

18. The object of the charge is to give the accused notice of the matter he is charged with and does not

touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. [AIR 1956 SC 116 : 1956 Cri LJ 291 : (1955) 2 SCR 1140] SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable."

75. Section 212 of the Code of Criminal Procedure reads as under:-

"212. Particulars as to time, place and person.

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of 'money or other moveable property, it shall be sufficient to specify the gross sum or, as the case may be, described the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year."

76. Section 213 of the Code of Criminal Procedure reads as under:-

"213. When manner of committing offence must be stated.

When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner is which the alleged offence was committed as will be sufficient for that Purpose."

77. Further, the Code of Criminal Procedure being a complete Code has also taken note of the situation about the effect of errors in Section 215, which reads as under:-

""215. Effect of errors. No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure."

78. Section 216 of the Code of Criminal Procedure states that the Court may alter or add any charge at any time before judgement is pronounced and it reads as under:-

""216. Court may alter charge.

(1) Any court may alter or add to any charge at any time before judgment is pronounced.

(2) Every such alteration or addition shall be read and explained to the accused.

(3) If the alteration or addition to a charge is such that proceeding immediately with the trial is not likely, in the opinion of the court to prejudice the accused in his defence or the prosecutor in the conduct of the case the court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

(4) If the alteration or addition is such that proceeding immediately with the trial is likely, in the opinion of the court to prejudice the accused or the prosecutor as aforesaid, the court may either direct a new trial or adjourn the trial for such period as may be necessary.

(5) lf the offence stated in the altered or added charge is one for the prosecution of which previous section is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction

had been already obtained for a prosecution on the same facts as those on which the altered or added charge is founded.”

79. Section 240 of the Code of Criminal Procedure reads as under:-

240. Framing of charge. (1) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

80. As rightly contended by the learned Additional Solicitor General for the Respondent, no party, i.e. neither the complainant nor the accused or the Prosecution has any vested right in seeking alteration of charges as a matter of right and if it is brought to the notice of the Trial Court that a necessity has arisen for a charge to be altered or added, it may do so on its own and no order need to be passed on that purpose Therefore, the Petition filed before this Court, regarding the defects in the charges has to be brought to the knowledge of the Trial Court only. For such proposition, it is relevant to refer to the decision of the Honourable Supreme Court reported in 2017 3 SCC 347 (P.Kartikalakshmi Vs. Sri Ganesh and another), wherein the Honourable Supreme Court has held thus:-

“”6. Having heard the learned counsel for the respective parties, we find force in the submission of the learned Senior Counsel for Respondent 1. Section 216 CrPC empowers the Court to alter or add any charge at any time before the judgment is pronounced. It is now well settled that the power vested in the Court is exclusive to the Court and there is no right in any party to seek for such addition or alteration by filing any application as a matter of right. It may be that if there was an omission in the framing of the charge and if it comes to the knowledge of the Court trying the offence, the power is always vested in the Court, as provided under Section 216 CrPC to either alter or add the charge and that such power is available with the Court at any time before the judgment is pronounced. It is an enabling provision for the Court to exercise its power under certain contingencies which comes to its notice or brought to its notice. In such a situation, if it comes to the knowledge of the Court that a necessity has arisen for the charge to be altered or added, it may do so on its own and no order need to be passed for that purpose. After such alteration or addition when the final decision is rendered, it will be open for the parties to work out their remedies in accordance with law. "

81. In the case on hand, the offences alleged against the accused are under Sections 120B(1) read with 409, 467, 471, 477A of IPC and 109 of IPC and Section 13(2) read with 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

82. On perusal of the impugned charges, in the light of the provisions of the Code of Criminal Procedure and the decisions cited supra, this Court is able to see that despite there being sufficient materials to frame charges as against the accused as it had been held by this Court in the earlier round of litigation in the Criminal Revision Petition, the impugned charges have not been framed in a proper manner and in specific terms, in accordance with the provisions of the Code of Criminal Procedure, particularly, Chapter XVII of Cr.PC. However, since such improper manner of framing charges is fortunately brought to the notice of this Court at the initial stage(before it could result in miscarriage of justice), this Court, placing reliance on the decisions cited supra and the relevant provisions of law,is of the opinion that it is just and necessary to remand/remit the matter back to the Trial Court to frame charges afresh, in accordance with the procedures as contemplated in the Code of Criminal Procedure, particularly, Chapter XVII of Cr.PC.

83. Ultimately, to repeat, when this Court in an earlier proceedings in Criminal Revision Petitions (Crl.RC. Nos.671, 682 to 684 of 2018) had called for the entire records from the Trial Court and after having analysed the documents and the statements of the witnesses, rendered a finding in order dated 25.07.2018 that there are enough and sufficient materials to frame charges, this Court is of the considered view that by invoking the powers under Section 482 Cr.P.C cannot now review the earlier order and quash the charges framed outrightly when the petitioners have not shown any exceptional circumstances or that grave miscarriage of justice has occurred, other than raising the ground that there are no materials for framing charges. However, this Court is of the considered opinion that the Trial Court had not framed proper charges in accordance with law, which, in the opinion of this Court, is curable, at this stage. The point relating to availability of materials and maintainability of the petition to quash the charges is answered against the accused. The point relating to framing of charges is answered in favour of the accused. Accordingly, this Court deems it fit to issue suitable directions to the trial Court.

84. In the result, these Criminal Original Petitions

seeking to quash the charges are dismissed, however, with the following directions:-

i. The charges against the accused in C.C.No.12 of 2017 by the learned XIV Additional Judge, CBI Cases, Chennai being improperly framed, the matter is remanded/remitted back to the Trial Court for consideration and for framing charges afresh.

ii. The Trial Court is directed to carefully look into all the materials and frame proper and necessary charges, in respect of the each and every accused/A1 to A7, in accordance with the procedures, as contemplated in the Code of Criminal Procedure, particularly, Chapter XVII of Cr.PC, based on the materials available.

iii. If necessary, the Prosecution can assist the Trial Court, by filing draft charges.

All the connected Crl.MPs are dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Srcm

To:

1. Deputy Superintendent of Police, SPE CBI, STF, New Delhi.
2. The Public Prosecutor for CBI cases, High Court, Madras.
3. XIV Additional Judge, CBI Cases, Chennai.

+1cc to Mr.D.Ravichander, Advocate, S.R.No.77222
+1cc to Mr.S.R.Vivekananthan, Advocate, S.R.No.77223
+1cc to Mr.J.Ravindran, Advocate, S.R.No.77224
+1cc to Mr.A.Selvendran, Advocate, S.R.No.77225
+1cc to Mr.M.Sneha, Advocate, S.R.No.77226

Crl.OP.Nos.22121 to 22125 of 2018

RJ(CO)

rrs 29/11/2018