

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASES Nos.1726 and 1998 of 2017

COMMON ORDER:

These two Criminal Revision Cases are filed under Section 397 read with Section 401 Cr.P.C. questioning the propriety, illegality and irregularity of the common order, dated 31.5.2017, passed by the Principal Special Judge for CBI Cases, Hyderabad (for short 'the Special Judge') in CrI.M.P.Nos.367 of 2015 and 1369 of 2014, respectively, in C.C.No.11 of 2014.

The petitioners in CrI.R.C.Nos.1726 and 1998 of 2017 are arrayed as accused Nos.1 and 3, respectively, in C.C.No.11 of 2014 registered for the offences punishable under Sections-120-B and 420 read with Section-511 I.P.C and Section-13(2) read with Sections-13(1)(d) and 15 of the Prevention of Corruption Act, 1988 (for short 'P.C. Act').

For convenience, hereinafter the petitioners will be referred to as arrayed in the said C.C.No.11 of 2014.

Accused No.1 is the Director, Centralised Training Academy for Railway Accounts (C-TARA) and Accused No.3 is the contractor. It is a classic case where accused No.3 entered into an agreement to execute the work entrusted to him by the Railways for Rs.3,92,946/-, which was accordingly, executed by him in accordance with the terms of the said agreement, for which the final bill of Rs.1,373/- was not paid besides not releasing the security deposit of Rs.3,700/-. Thus, the total amount due to accused No.3 was Rs.5,073/-. Thereafter, as the representations made by accused No.3 did not yield any fruitful result, he approached the Arbitrator after following necessary procedure and

one Sri J.Venu Gopal Rao, retired District Judge, was appointed as an Arbitrator who passed an Award on 22.5.2005, for Rs.58,78,383/- together with interest at 18% per annum from 01.1.2000 till the date of realisation.

Aggrieved by the said Award, the Railway Administration filed O.P.No.10 of 1997 on the file of the III Additional Senior Civil Judge, City Civil Court, Secunderabad, to set aside the Award and accused No.3 also filed O.P.No.162 of 1998 on the file of the same Court to make the award rule of Court. While the said petitions are pending before the said Court, the Railway authorities, accused Nos.1 and 2 and others approached the Legal Services Authority for settling the dispute outside the Court and the Railways agreed to pay Rs.1,18,77,439/-, in addition to an amount of Rs.3,52,136/- to accused No.3, which was already paid as awarded earlier. Thus, the total amount they agreed to pay was Rs.1,22,29,575/-. In O.P.No.1 of 2005, the Recall Petition filed by the Railways was dismissed by the III Additional Senior Civil Judge, City Civil Court, Secunderabad. After settling the dispute before the Lok Adalat, the authorities concerned approached the High Court by filing Writ Petitions challenging the award on the ground of fraud. Initially, this Court in Writ Petition Nos.5615 and 5663 of 2008 while making an observation that there is fraud *prima facie*, passed an order directing the authorities to approach the Secretary, Legal Services Authority for appropriate relief and in pursuance thereof, the Secretary, Legal Services Authority, Hyderabad and its members passed an order on the application filed by the Railways rejecting their request to recall the order passed by the District Legal Services Authority.

While the matter stood thus, on suspicion, the CBI took up investigation and traced the element of fraud in the out of Court settlement by approaching the Legal Services Authority. During investigation, the Investigating Agency examined as many as 23 witnesses and recorded their statements under Section-161(3) Cr.P.C, collected 592 documents. On the basis of the documents collected during investigation and the statements of the witnesses recorded under Section-161(3) Cr.P.C., the Inspector of Police, CBI, Hyderabad, concluded that there is *prima facie* material against the petitioners herein to proceed further and accordingly, filed the charge sheet against them before the Special Judge for the offences punishable under Sections-120-B and 420 read with Section-511 I.P.C. and Section-13(2) read with Sections-13(1)(d) and 15 of the Prevention of Corruption Act, 1988. The Special Judge took cognizance of the offences referred above against the petitioners herein and issued summons to them. On appearance, all the accused filed Petitions under Section-239 Cr.P.C. before the Special Judge to discharge them by pleading that taking up of investigation by the CBI, registration of F.I.R. on 19.7.2012, on the basis of source of information against them, and filing of the charge sheet are unwarranted. The accused further pleaded that taking cognizance of offences against them by the Special Judge for various offences referred to above and issuance of summons is a matter of serious concern and therefore, in the absence of any material, they cannot be prosecuted for the said offences and filed petitions for their discharge.

The undisputed facts, in brief, are that in pursuance of the tenders for construction of a building for Railway Recruitment

Board at Secunderabad, work was allotted to accused No.3 on 31.10.1987 for Rs.3,92,946/- and the scheduled date for completion of the said work was on 30.3.1982. Accordingly, an agreement was entered into between accused No.3 and the Railways, represented by the then Principal Chief Engineer, who was examined by the Investigation Agency as L.W-7. As accused No.3 could not complete the said work as scheduled, at his request, the Railways extended the time by five more months. Later, accused No.3 completed the work by 31.3.1984 and received Rs.3,70,411/- for the work he executed from the Railway Administration in full satisfaction of his claim. However, on 07.12.1984, he preferred four claims addressing a letter to the General Manager, South Central Railways (SCR), Secunderabad, requesting to appoint an Arbitrator to adjudicate the dispute in terms of the agreement and out of them, only two claims were referred to one Sri P.K.Gupta, Secretary to CAO/C.SC, being the sole Arbitrator, on 08.8.1986, while rejecting the other two claims. On 02.12.1986, the sole Arbitrator passed an Award for Rs.1,14,106/- with interest at 18% per annum for claim No.1 and Rs.16,002/- for claim No.2. Aggrieved by the said Award, the Railway Administration filed O.P.No.10 of 1997 on the file of the III Additional Senior Civil Judge, City Civil Court, Secunderabad, to set aside the Award and accused No.3 also filed O.S.No.162 of 1998 on the file of the same Court for payment of the amount declared under the Award to him. On 18.01.1999 both the matters were disposed of by a common order by the said Court confirming the Award in respect of claim No.2 while setting aside the Award in respect of claim No.1. Accused No.3 challenged the said order, by

filing CMA.No.465 of 1999 and CRP.No.600 of 1999 before this Court and these matters were disposed of on 15.10.1999 setting aside the orders passed by the Court below and making the Award passed by the Arbitrator as Rule of the Court. Pursuant thereto, the Railway Administration paid Rs.3,29,512/- including interest to accused No.3 on 01.12.1999. While the matter was pending before the III Additional Senior Civil Judge, City Civil Court, Secunderabad, on 04.6.1998, accused No.3 again preferred four new additional claims in addition to the rejected claims of the year 1994, to which the Railway Administration gave a reply on 13.02.2001 informing that he waived his right to raise additional claims for the un-referred claims for arbitration and such claims were barred by limitation.

Accused No.3 filed O.P.No.4 of 2002 on the file of the III Additional Senior Civil Judge, City Civil Court, Secunderabad, to appoint an independent Arbitrator to adjudicate his claims and pass an Award. Thereupon, Sri J.Venugopala Rao, retired District and Sessions Judge, was appointed as sole Arbitrator by order, dated 13.10.2004 to adjudicate the claims and pass an Award. On 22.5.2005, the sole Arbitrator passed an award accepting some of the claims while rejecting others, directing the Railway Administration to pay in all Rs.58,78,383/- with interest at 18% per annum from 01.01.2000 till the date of realisation. Based on the said Award, accused No.3 submitted a letter to the Principal Chief Engineer, SCR, with a request to release the amount. However, on the recommendation of Senior Law Officer, Principal Chief Engineer as well as FA & CAO, SCR and accused No.2, who was the then General Manager, had agreed to contest the award in

Civil Court, whereupon O.P.No.1 of 2005 was filed on the file of the III Additional Senior Civil Judge, City Civil Court, Secunderabad. Accused No.3 filed O.P.No.2 of 2005 on the file of the same Court to make the said Award as Rule of the Court.

While the matter stood thus, on 14.11.2006, accused No.3 addressed a letter to the Principal Chief Engineer, SCR, to settle the dispute out of the Court. However, notings were made thereon from 23.11.2006 to 05.12.2006 by the Deputy CE (Works), Chief Engineer (Works), Principal Chief Engineer, FA & CAO, DGM (G) (accused No.1) including Senior Law Officer, on which, accused No.2, as the then General Manager, has agreed for an out of Court settlement, directing that a committee be constituted with CE (G) as well as FA & CAO/G by order, dated 16.01.2007. This note, in fact, was sought to be put up directly to General Manager for consideration of the representation of accused No.3 along with the observations of finance section thereon. However, accused No.2 recorded the notings on 04.01.2007 requiring the Senior Law Officer to offer his remarks with reference to the request made by accused No.3. The Senior Law Officer, who is cited as L.W-9, endorsed on those notings that since there is no stay, there is no bar to settle the dispute if it is advantageous and is considered expedient in the interest of the Railways. Thereupon, accused No.1 had to put up his note on 10.01.2007 to accused No.2 requiring to constitute a Negotiating Committee as under:

- (a) Finance agreed many occasions for an out of Court settlement in construction and also in Finance and there is no strong ground not to agree to the settlement.**

- (b) **Senior Law Officer opined that there is no bar in settlement if it is advantageous to Railways.**
- (c) **Many cases were settled through “Out of Court settlement otherwise litigations would have continued which has benefited Railways. Still we have an option to continue contesting the Award if the reduction after negotiation is not reasonable”.**

Accused No.2 endorsed thereon agreeing for an out of Court settlement and constituted a Negotiating Committee consisting of Sri Amit Goel, Chief General Engineer, and Sri Arni Gopinath, the then FA & CAO (G), who negotiated with accused No.3 on 02.03.2007 and recorded the minutes, which is a part of Volume-II of the documents relied on by the prosecution. These Minutes recorded the works executed by accused No.3, his claims, the result of arbitration and the request of accused No.3 for an out of Court settlement. It was further recorded that after negotiations, accused No.3 by his letter, dated 02.3.2007, has offered a reduction in the rate of interest from 18% per annum to 14% per annum till the date of realization without reducing the amount relating to claim No.5, awarded at Rs.58,74,383/- and that, this reduction offered by accused No.3 worked out at Rs.16,83,990/- while further recoding that the total claim amount thus came down from Rs.1,34,52,337/- to Rs.1,17,68,347/- resulting 12.51% reduction of the liability of the Railways. The Minutes also recorded that the Finance Member (FA & CAO) had drawn the attention highlighting the opinion of the Law Officer relating to the reservation expressed to proceed for an out of Court settlement, at that juncture being

in appropriate, while referring to earlier orders of accused No.2, as General Manager, agreeing with the opinion of the Senior Law Officer and the views of the Principal Chief Engineer and FA & CAO to contest this award. Accused No.3 also participated in the said meeting. Thereupon, with reference to report of the Committee, note sheet No.23 bears the notings of then CE (Works), dated 20.3.2007 in Volume-II, which are as under (extracted):

“(1) The division was advised for contesting the award pronounced by the Court appointed arbitrator by filing an O.P. in appropriate Court on 01.10.2005 (F/82).

(2) The claimants applied for out of Court settlement vide his letter, dated 24.10.2005.

(3) The O.P. was filed on 17.10.2005 indicating 48 grounds for setting aside the award.

(4) While processing for obtaining the decision of the GM for out of Court settlement on contractors request and after approval, while communicating to the claimant and to the negotiating committee members, clear guidelines, terms and references for negotiation was not indicated.

(5) After negotiation, no recommendations have been forwarded by the negotiating members probably due to the fact that they were specifically not advised to submit recommendations.

(6) The contesting of award by the railway was on policy ground, whereas the result of negotiation is on financial terms but no where the policy of contract conditions have been discussed in the minutes. The claimant has offered a reduction in rate of interest from 18% to 14% on Rs.58,74,383/- from 01.01.2000 to 01.3.2007.

(7) Railway filed the O.P. in the Court to contest the award on total 48 grounds, therefore, obviously the claims and those 48 grounds should have been negotiated concurrently during the negotiating meeting.

(The modalities/feasibility of negotiating on policy matter are not clear).

(8) As none of the grounds for challenging the award has been addressed/rectified during the negotiation, the matter may be brought to the notice of GM, as the negotiation was approved by him.”

On 21.3.2007, the Principal Chief Engineer added this noting referring to point Nos.4 and 5, noted above of CE (Works), stating that if required, the Committee may be directed to negotiate once again to give their recommendation considering the pros and cons in the over all interest of the Railways. It was circulated again and as seen from note No.25, since Regular CE (Works) was on leave, the In-charge CE (Works) namely CE (P.W.&D), referred to above notings for clarification and further directions from General Manager, requesting necessary action which also bears the signature of the then Principal Chief Engineer. Thereupon, on 29.3.2007, accused No.2 as DGM (G) made the following notings (extracted):

“(1) GM may kindly peruse the noting regarding the ‘Out of Court’ settlement. This case was fought in the Court for last 21 years. The whole episode is mainly because of non-payment of final bill.

(2) Against the pleading of Railway, the Court appoint the sole arbitrator-Sri J.Venugopal Rao, Retired District Judge.

(3) The Sole Arbitrator Sri J.Venugopal Rao pronounced the award of Rs.58.74 lakhs in 2005 and the same was contested.

(4) It was contested on the following grounds:

(i) Arbitrator exceeded jurisdiction

(ii) Whether the claim referred barred by limitation.

(5) The sole Arbitrator in the proceedings discussed these issues and gave the 'speaking award'. Supreme Court repeatedly gave judgments not to interfere with the 'speaking award'.

(6) Regarding points raised by CE/Works, the following remarks are offered:

(i) While processing for an 'out of Court settlement' all the aspects have been taken into consideration.

(ii) Negotiating Committee's main responsibility is to negotiate the claim as it is being done in all earlier cases.

(iii) Negotiating Committee negotiates with the contractor for reduction of award. Finally, acceptance of the award lies with the accepting authority.

(7) During negotiations, the contractor reduced Rs.16,64,401/-, the total implication would be around Rs.1.17 crores.

(8) It would be useful to accept as the interest accrued is Rs.10.5 lakh per year and to avoid the litigations which have been going for 21 years.

(9) Courts are not interfering with the speaking awards and Railway has not been able to win and any case in the recent past where interest is involved.

(10) Similar cases have been settled earlier though 'out of Court' settlements to avoid litigation."

Thereafter, Smt Vandhana Singhal, on 19.4.2007 when the file was circulated, questioning the very acceptance for negotiated settlement referring to the history of the case and referring to the objections raised by the then FA & CAO to the effect that the negotiation Committee did not make conclusive recommendation for administration and that for contract value of Rs.3,92,946/- out of which only final bill of Rs.1,373/- and security deposit of Rs.3,700/- in addition to Rs.3,700/- was not released, the Railway

Administration has to pay Rs.1,18,77,439/- in addition to Rs.3,52,136/-, which was already paid as per the Award, and it was found to be a classic case where the claims were inflated out of proportions and the Railway Administration became a party which practice was deprecated by the Supreme Court. Smt Vandhana Singhal-FA & CAO, opined to contest the matter again in a civil Court, which recommendation was accepted by the successor of accused No.2 as General Manager, viz., Praveen Kumar observing that there was no recommendation at all by the Committee nominated to negotiate and the note basing on which the order was passed appears to be incorrect while agreeing that the case should be contested and since settlement was agreed on the basis of misrepresentation of the facts.

After due deliberations, an agreement was entered into by them, the Railway Administration and accused No.3 and was presented before District Legal Services Authority, i.e. Lok Adalat Bench in the Court of III Additional Senior Civil Judge, City Civil Court, Secunderabad and an award was passed in terms thereof by the Legal Services Authority on 07.4.2007 in relation to O.P.No.2 of 2005. Steps were taken by filing I.A.No.1067 of 2007, in O.P.No.2 of 2005 and I.A.No.1062 of 2007 in O.P.No.1 of 2005 by the Railway Administration for recalling of the above Award. However, both the said Petitions were dismissed by District Legal Services Authority the Lok Adalat Bench by order, dated 11.02.2008. Aggrieved by the same, Writ Petition Nos.5615 and 5863 of 2008 were filed and this Court while disposing the said two Writ Petitions by common order, dated 09.9.2011, finally observed as follows:

“In the facts and circumstances of the case, it would be just and proper to set aside the Lok Adalat awards. We, however, do not consider it appropriate to recall the awards in I.A.Nos.1062 of 2007 and 1067 of 2007 in O.P.Nso.1 and 2 of 2005 on the file of the Lok Adalat Bench. We would prefer to set aside the impugned orders of the Lok Adalat and remit the cases to Lok Adalat bench for fresh consideration to determine whether there is possibility of negotiation to pass a consent award if possible. The Lok Adalat shall have to return the cases to III Additional Senior Civil Judge, City Civil Court, Secunderabad, in the event the parties do not agree to a consent award.”

The CBI has set out all the circumstances alleging that accused No.1 dishonestly took administrative decisions, which resulted in accused Nos.2 and 3 taking a ‘U’ turn, resiling from earlier stand of contesting the award, and negotiated settlement in view of the criminal conspiracy among all the accused and that these two public servants have abused their official position without any public interest intending to cause loss to the Railway administration knowing fully well about the financial implication involved i.e., Rs.1.71 crores. It is further case of the CBI that accused No.1 never had such authority to accept negotiated settlement or out of Court settlement in arbitration cases as per Annexure-II of Indian Railway Finance Code Volume-I and as per Clause-35(1) of the powers, since the General Manager was empowered to accept the claims settled out of Court for compensation other than those relating to goods lost or damaged and those arising out of Railway accidents up to Rs.10,000/- only in each case and further alleged that undue and unwarranted haste was shown in accepting the negotiated settlement for the reason that accused No.2 was laying down his office on 31.3.2007 without following the laid down procedure. Thus, accused Nos.1 to

3 conspired together and agreed for an out of Court settlement as negotiated by the Committee in terms of the request made by accused No.3.

Accused No.1 was only authorized to monitor such claims and was not empowered to give comments on merits, when final views of PC and FA & CAO, who are technical and financial heads, were against the out of Court settlement. It is further stated that neither procedure nor any other instructions provide that accused No.1 was in a position to give comments over the issues that fall in the domain of functions of PCE, FA & CAO or Law Officer, whose role was defined to nominate arbitrators, record keeping for sanction orders and award amounts paid, keeping record of arbitration awards for compilation and putting them to General Manager while also keeping the records of deficiencies in GCC as identified during the arbitration. Thus, accused No.1 was not empowered to give technical comments over the comments of PCE, FA & CAO or Law Officer irrespective of fact whether he is from Finance Department or not.

When the award was legally inadmissible and the authority concerned did not recommend for its acceptance, no cogent reasons were recorded for recommending, acceptance of negotiated award by accused No.1 and its acceptance by accused No.2 on 29.3.2007, the same was devoid of *bona fides* and was done without addressing the relevant issues involved and putting them on record. The evidence collected strongly suggested that it was a pre-meditated voluntary decision to somehow accept an out of

Court settlement in favour of accused No.3 before retirement of accused No.2 on 31.3.2007.

Accused No.3 filed SLP (Civil) Nos.4179 and 4180 of 2012 against the common order, dated 09.09.2011 of this Court, passed in Writ Petition Nos.5615 and 5863 of 2008 and the same were dismissed by the Hon'ble Apex Court on 28.10.2013.

Thus, the CBI alleged that the accused committed grave offence causing loss to the railway administration due to agreement for the negotiated settlement by the Committee at the behest of the Railway Administration and the same would constitute the offences punishable under Sections-120-B and 420 read with Section-511 I.P.C. and Section-13(2) read with Sections-13(1)(d) and 15 of the Prevention of Corruption Act, 1988.

Before the Special Judge, Accused No.3 filed a petition under Section-239 Cr.P.C. to discharge him for the offences referred above, contending that there is no whisper against him in the entire charge sheet except making a bare reference as a contractor who had undertaken the work as per the terms of the agreement and claim made by him for realisation of amount; that on account of failure of the Railway Administration to pay the amount due to him, he suffered huge loss; that several times he complained the lapses of the Railway Administration to the Railway Board, Vigilance Department, Auditor General of India, President of India and even informed to CBI in the year 1999, who refused to receive the same stating that it was a quasi-judicial matter; that in such a situation, his collusion with accused Nos.1 and 2 does not arise; that the record clearly revealed that due procedure was followed

while processing his request for an out of Court settlement; that there is no element of fraud and misrepresentation in the settlement since the file relating to the settlement was scrutinized by the officers concerned at all levels; and that as the Arbitration Award passed on 22.5.2005 was not questioned before the High Court or Hon'ble Supreme Court, the same obtained legal sanctity.

Opposing the said petition, the respondent-CBI filed a detailed counter-affidavit, wherein it is *inter alia* stated that accused No.1, who was not empowered to give his comments on merits of the case, colluded with accused Nos.2 and 3 and recommended for an 'out of Court settlement'; and that there is criminal conspiracy among accused Nos.1 to 3 in this case; that as specific role has been attributed to accused No.3, who is the sole beneficiary in the entire transaction, in playing fraud, he is not entitled to be discharged.

Accused No.1 also filed a petition before the Special Court to discharge him for the offences referred above, raising the following grounds:

That he was only a part of the Secretariat of the General Manager, who was competent to take decision; that internal notings cannot be made as basis to fasten criminal liability to him; that the proceedings before the Lok Adalat are still pending and whatever acts done by him were *bona fide*; that the post held by him then was a general post and only serves as an interface between the office of the General manager and functional departments of the Railway; that there is absolutely no evidence in support of the allegations against him as set out in the charge

sheet; and that the noting put up by him are transparent and the decision was taken by other officers concerned thereon.

Opposing the petition filed by accused No.1, the respondent-CBI filed counter almost reiterating the averments in the counter filed by them in the petition filed by accused No.3.

Upon hearing the arguments of both the learned counsel, the Special Judge passed the impugned common order dismissing the petitions filed by accused Nos.1 and 3 under Section-239 Cr.P.C. to discharge them of the offences referred above, while allowing the petition filed by accused No.2 having concluded that there is no *prima facie* material to proceed against him for the above offences. Aggrieved by the said common order passed by the Special Judge, the present Criminal Revision Cases under Sections 397(1) r/w 401 Cr.P.C are filed on various grounds.

While narrating the facts of the case, accused Nos.1 and 3 raised specific grounds mainly contending that the impugned common order of the Special Judge, rejecting their plea for discharging them for the offences referred to above, is illegal, irregular, improper and perverse and that the Special Judge was superfluously influenced by the representation made by accused No.3 to a member of Railway Board, through a Member of Parliament (M.P.), being forwarded to SCR, Secunderabad, on 10.11.2005 and put up by the Deputy Chief Engineer (Works) on 23.11.2006 leading to an out of Court settlement agreed by accused No.2 as General Manager on 16.01.2007, a Negotiating Committee was appointed and the recommendation for settlement out of Court at Rs.1.71 crores before the Lok Adalat. The Special

Judge failed to consider the documents filed by CBI along with the charge sheet which refers to several representations made by accused No.3 from 1982 to 2012 and though no copy of representation made to M.P. was placed on record by the CBI and concluded otherwise without any basis. Therefore, the conclusions arrived at by the Special Judge are irregular and warrant interference by this Court under Section-397 read with Section-401 Cr.P.C. The Special Judge failed to consider the report of Railway Board finding accused No.1 not guilty for the misconduct alleged against him and also failed to consider the material placed on record along with the charge sheet in proper perspective and thereby, committed a grave illegality.

It is further contended that none of the witnesses stated anything about the criminal conspiracy among accused Nos.1 and 3 for settling the dispute out of Court, for payment of Rs.1.17 crores, but the Special Judge had drawn an inference and erroneously concluded that accused Nos.1 and 3 committed such grave offences.

Even if the allegations made in the charge sheet coupled with the documents filed by the CBI are accepted, the same do not disclose *prima facie* case against the petitioners for the offences referred above to proceed further against them and therefore, the case of the prosecution is groundless and in such case, this Court can exercise power under Section-397 read with Section-401 Cr.P.C, requested to set aside the impugned common order passed by the Special Judge and discharge the petitioners for the offences referred supra.

During hearing, the learned Special Public Prosecutor for the respondent-CBI raised an objection about the maintainability of these Criminal Revision Cases in view of the bar under Section-397(2) Cr.P.C.

Sri K.R.K.V.Prasad and Sri P.Surya Narayana Murthy, learned counsel appearing for the petitioners, while contending that these Criminal Revision Cases are maintainable against the order refusing to discharge the petitioners, has drawn the attention of this Court to a full Bench judgment of the Hon'ble Supreme Court in ***Asian Resurfacing of Road Agency Pvt. Ltd. Vs. Central Bureau of Investigation***¹, wherein it was held that a order before the authority cannot be held to be a purely interlocutory order and in a given situation, can be interfered with by the original Court and the bar under Section-397(2) Cr.P.C. will not come in the way to interfere with such order, since such order would affect the substantial rights of the parties.

They also raised several contentions and drawn the attention of this Court to certain documents filed along with the Revision Petitions and contended that the charge is baseless and that in the absence of *prima facie* material against the petitioners herein-accused Nos.1 and 3 to proceed for the offences referred above, the Special Judge committed an error in not discharging the petitioners herein for the offences referred above.

Sri K.R.K.V.Prasad, learned counsel for accused No.1, mainly contended that the file notings by accused No.1 will not fasten any liability on him, being an officer in a higher position, he

¹ 2018 SCC Online SC 310

made certain notings on the file in its process and they made the authority to take decision. In support of this contention that mere making of a file note is not sufficient to fasten any liability, he placed reliance on the following judgments of the Hon'ble Supreme Court in ***Rajendra Yadav Vs. State of Madhya Pradesh and Others***², ***Union of India and another Vs. Ashok Kumar Aggarwal***³ and ***Shanti Sports Club v. Union of India***⁴ and requested this Court to discharge accused No.1 for the offences referred above.

Sri P.Surya Narayana Murthy, learned counsel for accused No.3, contended that accused No.3 being a Contractor had no role to play in the decision taken by the Railway Administration for settlement of the dispute out of the Court; that accused No.3 has nothing to do with the settlement except giving representation and proceeding with the negotiations; apart from that, no witness did state anything against accused No.3 and hence, the order passed by the Special Judge is apparently erroneous, which warrants interference by this Court. He further contended that in the absence of any material collected against accused No.3 during investigation by the Investigating Agency and when there is no *prima facie* material to proceed against him for the offences referred above, the Special Judge ought not to have proceeded against him and consequently, dismissed the petition filed by him for his discharge for the offences referred above and therefore, the impugned order passed by the Special Judge is illegal, perverse and vitiated by irregularities, prayed to set aside the order of the

² (2013) 3 SCC 73

³ (2013) 16 SCC 147

⁴ (2009) 15 SCC 705

Special Judge and discharge accused No.3 for the offences referred above.

Learned Special Public Prosecutor for the respondent-CBI supported the impugned common order passed by the Special Judge while contending that merely because the witnesses did not state anything against accused No.3, the Court cannot discharge him for the offences referred above because one of the offences committed by him is punishable under Section-120-B IPC which is undisputedly a grave offence and the Court can draw inference based on the conduct of the petitioners-accused Nos.1 and 3 before and after the alleged act or omission. In such case, dismissal of the petition by the Special Judge, though no witness spoke anything about the criminal conspiracy among the accused, does not call for interference by this Court while exercising power under Section-397 read with Section-401 IPC since the powers of this Court are limited in Revision and this Court, at best, can exercise the power of revision only when the order is vitiated by irregularities or illegalities or is perverse. In the absence of any such illegality or irregularity in the impugned order of the Special Judge on the face of the record, this Court cannot interfere with the same exercising power under Section-397 read with Section-401 IPC. He further contended that the present case is a classic example as to how departmental authorities misused their official position causing dent to the economy of the railway administration which resulted in loss to a tune of Rs.1.17 crores for their liability of Rs.5,073/-. Apart from that, the allegations made in the complaint and the charge sheet coupled with the statements recorded by the CBI during investigation *prima facie* sufficient to proceed against the

petitioners herein-accused Nos.1 and 3 for the offences referred above. In support of his contentions, he placed reliance on the judgments of the Supreme Court in ***Rajat Prasad vs. Central Bureau of Investigation***⁵, ***India Telecom Limited vs. Motorola Incorporated & Ors***⁶, ***Amit Kapoor Vs. Ramesh Chander and another***⁷ and ***State of Himachal Pradesh Vs. Krishan Lal Pardhan and others***⁸.

Based on the principles laid down in the aforesaid judgments of the Supreme Court, learned Special Public Prosecutor requested to dismiss the Revision Petitions confirming the impugned common order passed by the Special Judge.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1) ***Whether the order dismissing an application under Section 239 Cr.P.C is interlocutory in nature?. If so, whether the revision under Section 397(1) Cr.P.C r/w Section 401 Cr.P.C is maintainable, in view of the bar under Section 397 (2) Cr.P.C?***
- 2) ***Whether the material available on record is sufficient to frame charges for the offences punishable under Sections 13(1)(d) and 15 of P.C. Act?. If so, whether the petitioners are liable to be discharged for the offences punishable under Sections 13(1)(d) and 15 of P.C. Act.***

⁵ (2014) 6 SCC 495

⁶ (2011) 1 SCC 74

⁷ (2012) 9 SCC 460

⁸ 1987 Cri.L.J.709

P O I N T N O . 1 :

The first and foremost contention raised by the learned Special Public Prosecutor for C.B.I is that, the order impugned in these revision petitions is not a final order, as the petition filed under Section 239 Cr.P.C was dismissed by the Trial Court. If, this order is upheld, it would not terminate or culminate the entire proceedings against these petitioners. Therefore, it is an interlocutory order and no revision lies against such an order, in view of the bar under Section 397(2) Cr.P.C and in support of his contentions, he placed reliance on the judgments of Supreme Court in **Amar Nath v. State of Haryana**⁹, **V.C. Shukla v. State through C.B.I**¹⁰, **Prabhu Chawla v. State of Rajasthan**¹¹, **Mohan Lal Magan Lal thacker v. State of Gujarat**¹².

Whereas, learned counsel for the petitioners Sri K.R.K.V. Prasad and Sri Suryanarayana, in both the cases contended that the law laid down by the Apex Court in **Asian Resurfacing of Road Agency Pvt. Ltd and ors. v. Central Bureau of Investigation** (referred supra) to contend that a revision lies against such an order, since the order would seriously affect the substantial rights of the parties and thereby, the order is not interlocutory in nature and the bar under Section 397 (2) Cr.P.C will have no application to such orders.

In view of rival contentions, it is apposite to advert to the law declared by various Courts to find out whether the order under challenge is interlocutory in nature or not?

⁹ (1967) 4 SCC 137

¹⁰ AIR 1980 SC 962

¹¹ (2016) 16 SCC

¹² AIR 1968 SC 733

The Code of Criminal Procedure or Criminal Rules of Practice did not define the word '**Interlocutory Order**', though, the word '**Interlocutory Order**' is referred under Section 397(2) Cr.P.C. Therefore, the Courts in India by placing reliance on the judgment on various Foreign Courts started defining the word '**interlocutory order**' commencing from **S. Kuppaswami v. The King**¹³ and later in **Amar Nath v. State of Haryana** (referred supra), **V.C. Shukla v. State through C.B.I** (referred supra), **Prabhu Chawla v. State of Rajasthan** (referred supra), **Mohan Lal Magan Lal thacker v. State of Gujarat** (referred supra), **Madhu Limaye v. The State of Maharashtra**¹⁴, **K.K. Patel and another v. State of Gujarat**¹⁵ and **M/s. Bhaskar Industries Ltd vs M/S. Bhiwani Denim & Apparels Ltd**¹⁶.

Similarly, the Apex Court, based on its conclusions in judgments of various Foreign Courts, concluded that, the order under challenge is interlocutory in nature in various judgments and by adverting to the law laid down by the earlier Courts, I feel that, it is appropriate to advert to the law referred by various Foreign Courts to find out the meaning of an interlocutory order.

Though the term '**interlocutory order**' is not defined in the Code, according to Webster's New Twentieth Century Dictionary, in law '**interlocutory order**' means '**an intermediate**; not final or definitive; pronounced during the course of a suit, pending final decision, as an interlocutory divorce decree. The **Corpus Juris Secundum** (Volume 60) defines '**interlocutory order**' thus: The

¹³ AIR 1949 FC

¹⁴ (1977) 4 Supreme Court Cases 551

¹⁵ (2000) 6 Supreme Court Cases 195

¹⁶ (2001) 7 SCC 409

word 'interlocutory', as applied to rulings and orders by the trial court, has been variously defined. It refers to all orders, rulings, and decisions made by the trial court from the inception of an action to its final determination. It means, not that which decides the cause, but that which only settles some intervening matter relating to the cause. An interlocutory order is an order entered pending a cause, deciding some point or matter essential to the progress of the suit and collateral to the issues formed by the pleadings and not a final decision or judgment on the matter in issue. An intermediate order has been defined as one made between the commencement of an action and the entry of the judgment.

In **Central Bank of India v. Gokul Chand**¹⁷ the Apex Court while describing the incidents of an interlocutory order, observed as follows:

“In the context of Section 38(1), the words "every order of the Controller made under this Act", though very wide, do not include interlocutory orders, which are merely procedural and do not affect the rights or liabilities of the parties. In a pending proceeding the Controller, may pass many interlocutory orders under Ss. 36 and 37, such as orders regarding the summoning of witnesses, discovery, production and inspection of documents, issue of a commission for examination of witnesses, inspection of premises, fixing a date of hearing and the admissibility of a document or the relevancy of a question. All these interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding; they regulate the procedure, only and do not affect any right or liability of the parties. "The aforesaid decision clearly illustrates the nature and incidents of an interlocutory order and the incidents given by this Court constitute sufficient guidelines to interpret the connotation of the word "interlocutory order" as appearing in Sub-section (2) of S. 397 of the 1973 Code.”

¹⁷ 1967 SC 799, 800

Interlocutory orders are steps taken towards the final adjudication and for assisting the parties in the prosecution of their case in the pending proceeding without affecting the rights and liabilities of the parties. Thus, the order passed in the applications filed during pendency of the main case without affecting the rights of the parties can be described as an interlocutory order.

At this stage, it is relevant to advert to the very intention of the Legislature in incorporating sub-section (2) of Section 397 Cr.P.C, since, there was no such bar prior to amendment of Cr.P.C. Subsection (2) is a new provision and interlocutory orders have been excluded from the purview of revision. Therefore, the very intention of the legislature in incorporating Subsection (2) is to exclude revisions to expedite the disposal of the cases by the Courts, but not to regulate the procedure for expeditious disposal. Thus, Section 397(2) Cr.P.C was incorporated in the new Code with the avowed purpose of cutting out delays and ensuring that the accused persons to get a fair trial without much delay and the procedure was not made complicated. The term 'interlocutory order' has to be given a very liberal construction in favour of the accused in order to ensure complete fairness of the trial. (vide **V.C. Shukla v. State** (referred supra)).

The recommendations of the Commission were examined carefully by 'the Government, keeping in view, among others, the following basic considerations:-

- (i) ***an accused person should get a fair trial in accordance with the accepted principles of natural justice;***

- (ii) ***every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society; and***
- (iii) ***The procedure should not be complicated and should, to the utmost extent possible, ensure fair-deal to the poorer sections of the community.***

The occasion has been availed of, to consider and adopt where appropriate suggestions received from other quarters based on practical experience of investigation and the working to criminal courts. In addition to ensuring fair deal to the accused, separation as provided for in the Bill would ensure improvement in the quality and speed of disposal, as all Judicial Magistrates would be legally qualified and trained persons working under close supervision of the High Court. (vide **V.C. Shukla v. State through C.B.I** (referred supra)).

If, that is the intention, the Court has to define the word to achieve the real object.

In **Salaman v. Warner**¹⁸, it was held that, the words '**not a final order**' must necessarily mean an interlocutory order or an intermediate order.

Ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order' which it deals. Thus, the expression 'interlocutory order' is to be understood and taken to mean converse of the term 'final order' (vide **Madhu Limaye v. The State of Maharashtra** (referred supra)).

¹⁸ [1891] 1 Q.B. 734

In Webster's Third International Dictionary (Vol. II, p. 1170) the expression 'interlocutory order' has been defined thus:

"not final or definitive; made or done during the progress of an action; INTERMEDIATE PROVISIONAL".

Stroud's Judicial Dictionary (Fourth Edition, Vol. 3, p. 1410) defines the interlocutory order as " 'Interlocutory order' (Judicature Act 1873 (c.66), s. 25(8) was not confined to an order made between writ and final judgment, but means an order other than final judgment."

According to Stroud, interlocutory order means an order other than a final judgment. This was the view taken in the case of **Smith v. Cowell** and followed in **Manchester & Liverpool Bank v. Parkinson**. Similarly, the term 'final order' has been defined in volume 2 of the same Dictionary (p. 1037) thus:

"The judgment of a Divisional Court on an appeal from a county court in an interpleader issue, was a 'final order' within the old R.S., Ord. 58, r. 3 (Hughes v. Little, 18 Q.B.D. 32); so was an order on further consideration (Cummins v. Herron, 4 Ch. D. 787); unless action was not thereby concluded.. But an order under the old R.S.C., ord. 25, r. 3, dismissing an action on a point of law raised by the pleadings was not 'final' within the old Ord. 58, r. 3, because had the decisions been the other way the action would have proceeded."

Halsbury's Laws of England (Third Edition, Vol. 22, pp. 743-744) describes an interlocutory or final order thus:

"Interlocutory judgment or order: An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'. An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the subordinate matter with which it deals....."

In general a judgment or order which determines the principal matter in question is termed 'final'."

"At page 743 of the same volume, Blackstone says thus: "Final judgments are such as at once put an end to the action by declaring that the plaintiff has either entitled himself, or has not, to recover the remedy he sues for..... Four different tests for ascertaining the finality of a judgment or order have been suggested:

- (1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute?
- (2) Was it made upon an application upon which the main dispute could have been decided?
- (3) Does the order, as made, determine the dispute?
- (4) If the order in question is reversed, would the action have to go on."

Corpus Juris Secundum (Vol. 49 p. 35) defines interlocutory order thus:

"A final judgment is one which disposes of the cause both as to the subject matter and the parties as far as the court has power to dispose of it, while an interlocutory judgment is one which reserves or leaves some further question or direction for future determination Generally, however, a final judgment is one which disposes of the cause both as to the subject matter and the parties as far as the court has power to dispose of it, while an interlocutory judgment is one which does not so dispose of the cause, but reserves or leaves some further question or direction for future determination..... .. The term "interlocutory judgment" is, however, a convenient one to indicate the determination of steps or proceedings in a cause preliminary to final judgment, and in such sense the term is in constant and general use even in code states."

Similarly, Volume 60 of the same series at page 7 seeks to draw a distinction between an interlocutory and a final order thus:

"The word "interlocutory", as applied to rulings and orders by the trial court, has been variously defined. It refers to all orders, rulings, and

decisions made by the trial court from the inception of an action to its final determination. It means, not that which decides the cause, but that which only settles some intervening matter relating to the cause. An interlocutory order is an order entered pending a cause deciding some point or matter essential to the progress of the suit and collateral to the issues formed by the pleadings and not a final decision or judgment on the matter in issue .. An intermediate order has been defined as one made between the commencement of an action and the entry of the judgment."

Thus, while determining the order under challenge and impugned in the revision as interlocutory or final, the above tests have to be applied.

But, in the case of *Ex Parte Moore In Re Faithfull*, Lord Selbome while defining a final judgment observed as follows:

"To constitute an order a final judgment nothing more is necessary than that there should be a proper *litis contestatio*, and a final adjudication between the parties to it on the merits.

Similarly, Brett, M.R. Observed as follows:

"The question is whether in the Chancery Division there cannot be a "final judgment" when everything which has to be done by the Court itself is finished. Is that a final judgment which directs certain things to be done and certain inquiries to be made, and certain other things to be done on those inquiries being answered ? If the Court ordered the result of the inquiries to be reported to itself before the judgment was given, it would not be a final judgment. But, if the Court orders something to be done according to the answer to the inquiries, without any further reference to itself, the judgment is final."

Wharton's Law Lexicon (14th Edition, p. 529) defines interlocutory order thus:

"An interlocutory order or judgment is one made or given during the progress of an action, but which does not finally dispose of the rights of the parties."

Summing up the natural and logical meaning of an interlocutory order, the conclusion is inescapable that an order which does not terminate the proceedings or finally decides the rights of the parties is only an interlocutory order. In other words, in ordinary sense of the term, an interlocutory order is one which only decides a particular aspect or a particular issue or a particular matter in a proceeding, suit or trial but which does not however conclude the trial at all. This would be the result if the term interlocutory order is interpreted in its natural and logical sense without having resort to Criminal Procedure Code or any other statute. If, interlocutory order in ordinary parlance is construed, it would indicate the attributes, mentioned above, and this is what the term interlocutory order means when used in the Act, examine the true intent and import of an interlocutory order.

Coming to the Indian law as to the definition of interlocutory order, in **S. Kuppuswami v. The King** (referred supra), the Federal Court held that the tests which had to be applied to determine whether an order was a final order were the same both in respect of orders in civil proceedings as well as orders in criminal proceedings. The Federal Court with the approval of **Salaman v. Waner**, the following interpretation of the expression "final order" is as follows:- "If their decision, whichever way it is given, will, if it stands, finally dispose of the matter in dispute, I think that for the purposes of these rules it is final. On the other hand, if their decision, if given in one way, will finally dispose of the matter in dispute, but if given in the other will allow the action to go on, then I think it is not final, but interlocutory.

In **Mohan Lal Magan Lal thacker v. State of Gujarat**

(referred supra), the Apex Court drawn distinction between ‘final order’ and ‘interlocutory order’ , based on the definition of Halsbury’s Laws of England (3rd Edition Volume 22 pg 742-742), the following four tests are required to be applied.

(1) Was the order made upon an application such that a decision in favour of either party would determine the main dispute?

(2) Was it made upon an application upon which the main dispute could have been decided?

(3) Does the order, as made, determine the dispute?

(4) If the order in question is reversed, would the action have to go on.

In **Aswini Kumar Ghose v. Arabinda Bose**,¹⁹ the Supreme Court considered the requirements as to whether the order is interlocutory or not with reference to Section 397(2) Cr.P.C and came to a conclusion that giving the expression interlocutory order is a natural meaning according to the tests laid down as discussed above in **S. Kuppaswami v. The King** (referred supra) and it is clear that, so far as the the expression interlocutory order has been used in the natural sense and not in a special or in the wider sense in Section 397(2) Cr.P.C. This view appears to be in consonance with the object of the Act to provide a bar under Section 397(2) Cr.P.C to do substantial justice and to prevent unnecessary hurdles in the process of completion of trial.

In view of the tests laid down by Apex Court to determine whether an order is interlocutory or final, for the purpose of

¹⁹ AIR 1952 SC 369

Section 397(2) Cr.P.C, applying the same to the present facts of the case, if the order under challenge in the revision is upheld, it will not terminate or culminate the entire proceedings. Therefore, it is interlocutory order, for the purpose of Section 397(2) Cr.P.C.

Whereas, in **Amar Nath v. State of Haryana** (referred supra), the Supreme Court considered the scope of Section 397(2) Cr.P.C and the same was also considered in the later judgment in **Madhu Limaye v. The State of Maharashtra** (referred supra), the Supreme Court is of the view that, as pointed out in Amar Nath's case (supra) the purpose of putting a bar on the power of revision in relation to any interlocutory order passed in an appeal, inquiry, trial or other proceeding is to bring about expeditious disposal of the cases finally, More often than not, the revisional power of the High Court was resorted to in relation to inter-locutory orders delaying the final disposal of the proceedings. The Legislature in its wisdom decided to check this delay by introducing sub-section (2), in section 397. On the one hand, a bar has been put in the way of the High Court (as also of the Sessions Judge) for exercise of the revisional power in relation to any interlocutory order, on the other hand, the power has been conferred in almost the same terms as it was in the 1898 Code. On a plain reading of Section 482, however, it would follow that nothing in the Code, which would include subsection (2) of Section 397 also, "shall be deemed to limit or affect the inherent powers of the High Court". But, if the Court was to say that the said bar is not to operate in the exercise of the inherent power at all, it will be setting at naught one of the limitations imposed upon the exercise of the revisional powers. In such a situation, what is-the harmonious way out ? In the Courts

opinion, a happy solution of this problem would be to say that the bar provided in sub-section (2) of Section 397 operates only in exercise of the revisional power of the High Court, meaning thereby that the High Court will have no power of revision in relation to any interlocutory order. Thus, in accordance with one or the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code. The High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of, a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction. Then the trial of the accused will be without jurisdiction and even after his acquittal a second trial after proper sanction will not be barred on the Doctrine of Autrefois Acquit. Even assuming, although Court shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order. Does it stand to reason to say that inherent

power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused upto the end ? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure, the ends of justice. The label of the petition filed by an aggrieved party is immaterial.

In **Tanguturu Achamma Vs. State of Andhra Pradesh and others**²⁰, this Court held as follows:

“.....It is settled law that Revisional Power cannot be exercised in relation to interlocutory orders in view of sub-section (2) of Section 397 of Code of Criminal Procedure. However, the term ‘interlocutory order’ in Section 397(2) of the Code of Criminal Procedure appears to have been used in a restricted sense and not in a broad sense. Any order, which substantially affects the rights of the parties, cannot be treated as interlocutory order to bar a revision. Therefore, the impugned order, which has the affect on the result of the case, cannot be treated as an interlocutory order. Moreover, the trial Courts shall not close the doors particularly at the time of trial and allow the parties to adduce evidence....”

In another judgment reported in **Ramesh Vs. Patni**²¹, the Hon’ble Apex Court expressed similar view, where the question was whether an order passed by the Claims Officer under the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 under Section 22(1) of the Act was questioned before the High Court on the ground that the Commissioner had no jurisdiction to entertain or try the appeal, but High Court dismissed the petition, summarily holding that it was not final order and it did not decide the controversy between the parties and did not of its own force affect the rights of the parties or put an end to the controversy. Thereupon, the Apex Court observed as follows:

²⁰ 2010(2) ALD (CrI.) page 180 (AP)

²¹ [1966] 3 S.C.R. 198

1. *“that the word ‘proceeding’ in Art. 133 was a word of a very wide import;*
2. *that the contention that the order was not final because it did not conclude the dispute between the parties would have had force if it was passed in the exercise of the appellate or revisional jurisdiction of the High Court, as an order of the High Court passed in an appeal or revision would not be final if the suit or proceeding from which there was such an appeal or revision remained still alive after the High Court’s order;*
3. *but a petition under Art. 226 was a proceeding independent of the original controversy between the parties; the question therein would be whether a proceeding before a Tribunal or an authority or a court should be quashed on the ground of want of jurisdiction or on other well recognized grounds and that the decision in such a petition, whether interfering or declining to interfere, was a final decision so far as the petition was concerned and the finality of such an order could not be judged by co-relating it with the original controversy between the parties. The Court, however, observed that all such orders would not always be final and that in each case it would have to be ascertained what had the High Court decided and what was the effect of the order. If, for instance, the jurisdiction of the inferior tribunal was challenged and the High Court either upheld it or did not, its order would be final.”*

Considering the judgments referred supra, the Apex Court in **V.C. Shukla v. State through C.B.I** (referred supra) consisting strength of four Judges, laid down the following principles to determine whether an order is interlocutory in nature or not:

“There is yet another aspect of the matter which has to be concerned so far as this decision is considered, to which we shall advert when we deal with the last plank of the argument of the learned counsel for the appellant. Suffice it to say at the moment that the case referred to also fully endorses the view taken by the Federal Court and the English decisions, viz., that an order is not a final but all interlocutory one if it does not determine or decide the rights of parties once for all. Thus, on a consideration of the authorities, mentioned above, the following proposition emerge:-

- (1) that an order which does not determine the rights of the parties but only one aspect of the suit or the trial is an interlocutory order;*
- (2) that the concept of interlocutory order has to be explained in contradistinction to a final order. In other words, if an order is not a final order, it would be an interlocutory order;*
- (3) that one of the tests generally accepted by the English Courts and the Federal Court is to see if the order is decided in one way, it may*

terminate the proceedings but if decided in another way, then the proceedings would continue; because, in our opinion, the term 'interlocutory order' in the Criminal Procedure Code has been used in a much wider sense so as to include even intermediate or quasi final orders;

(4) that an order passed by the Special Court discharging the accused would undoubtedly be a final order inasmuch as it finally decides the rights of the parties and puts an end to the controversy and thereby terminates the entire proceedings before the court so that nothing is left to be done by the court thereafter;

(5) that even if the Act does not permit an appeal against an interlocutory order the accused is not left without any remedy because in suitable cases, the accused can always move this Court in its jurisdiction under Art. 136 of the Constitution even against an order framing charges against the accused. Thus, it cannot be said that by not allowing an appeal against an order framing charges, the Act works serious injustice to the accused.'

In **K.K. Patel and another v. State of Gujarat** (referred supra), the Division Bench of the Apex Court held that, it is now well settled that in deciding whether an order challenged is interlocutory or not in relation to Section 397(2) Cr.P.C, the sole test is not whether such order was passed during the interim stage. ***“The feasible test is whether by upholding the objections raised by a party, would it result in culminating the proceedings”***, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) Cr.P.C.

In **Bhaskar Industries Limited Vs. Bhiwani Denim & Apparels Ltd & others** (referred supra), the Apex Court laid down test to determine whether the order under challenge is a final order or an interlocutory order, while deciding revision, defined the word 'interlocutory order' in para 'a' as follows:

“The interdict contained in Section 397(2) is that the powers of revision shall not be exercised in relation to any interlocutory order. Whether an order is interlocutory or not, cannot be decided by merely looking at the order or merely because the order was passed at the interlocutory stage. The safe test is this: if the contention of the petitioner who moves the superior court in revision, as against the order under challenge is upheld, would the criminal proceedings as a whole culminate? If they would, then the order is not interlocutory in spite of the fact that it was passed during any interlocutory stage.”

Keeping the principles laid down in the above judgments, it is apposite to advert to Subsection (2) of Section 397 Cr.P.C and it is extracted for better appreciation of the case.

“(2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

The interdict created by Subsection (2) of Section 397 Cr.P.C is only limited on the jurisdiction of Sessions Court and High Courts to entertain revision petitions against interlocutory orders which are the steps during trial and aid in disposal of main case. The object behind it is speedy disposal to prevent the Courts from entertaining revisions against other order irrespective of its nature. But, the Supreme Court in **Madhu Limaye v. The State of Maharashtra** (referred supra) and this Court in **Tanguturu Achamma Vs. State of Andhra Pradesh and others** (referred supra) invented third category of orders i.e. intermediary orders which affects the rights of the parties against which a revision lies, as the bar is only against interlocutory order, but not against intermediary order. Strictly speaking, the intermediary order is only invention by the judiciary. But, as per the dictionary meaning of the Interlocutory Order, it includes intermediary orders. However, it is the law laid down by the Supreme Court and it is binding on this Court.

There are two situations in a petitions filed under Section 239 Cr.P.C for discharge of the accused for various offences. When the petition is allowed and the accused is discharged, the aggrieved person will always be the prosecution, either State in police report

or private individual in a complaint case. In the event of dismissal of application under Section 239 Cr.P.C, the aggrieved person is always the accused. In the event of allowing the petition filed under Section 239 Cr.P.C, it would culminate or terminate the entire criminal proceedings against such accused, but in case of dismissal, further proceedings against the said accused shall be continued without terminating or culminating the entire proceedings against him. But, if the test laid down in **K.K. Patel and another v. State of Gujarat** (referred supra) is applied, revision against such an order would not lie and the bar under Subsection (2) of Section 397 Cr.P.C would come in the way of entertaining the revision against such an order, since the petition filed by the petitioner, if accepted and upheld, it would terminate or culminate the entire proceedings.

The test laid down by the Constitutional Bench referred in the judgments in **Mohan Lal Magan Lal thacker v. State of Gujarat** (referred supra) with the approval of principle in **S. Kuppuswami v. The King** (referred supra), if applied to the orders passed under Section 239 Cr.P.C, either dismissing or allowing the applications, it is clear that, when the order under challenge in a revision if terminates or culminates the entire proceedings as the main calendar case or sessions case, it is a final order. If not, it is only an interlocutory order and remedy available to such person aggrieved is to file appropriate petition under Section 482 Cr.P.C which conferred inherent jurisdiction on the High Court, but no such petition shall be entertained by the District Judge.

In **V.C. Shukla v. State through C.B.I** (referred supra), an identical question came up for consideration regarding discharge of the accused, which is directly on the point in issue and it is a judgment of Larger Bench consisting of Four Judges. Out of the four Judges, one of the Judges rendered a dissenting order, but, still the judgment is of Four Judges. If, the principle laid down by the Supreme Court in **V.C. Shukla v. State through C.B.I** (referred supra) is applied to the present facts of the case, the inescapable conclusion that can be arrived by this Court is that, the order dismissing an application under Section 239 Cr.P.C is only an interlocutory order and entertaining a revision against such an order is against the intention of the Legislature in creation of such bar under Section 397(2) Cr.P.C, as, the conclusions arrived by the Apex Court are totally in consonance with the judgments in **Mohan Lal Magan Lal thacker v. State of Gujarat** (referred supra) and **S. Kuppuswami v. The King** (referred supra). Final conclusion of the Apex Court in **V.C. Shukla v. State through C.B.I** (referred supra) is that, an order framing a charge being interlocutory falls squarely within the ordinary and natural meaning of the term "interlocutory order" as used in Section 11(1) of the Special Courts (Repeal) Act, 1982, an appeal is incompetent, in view of the provision contained in Section 11(2) of the Special Courts Act and therefore, the preliminary objection must be upheld and the appeal was dismissed, based on majority opinion.

But, in recent judgment of the Apex Court in **Asian Resurfacing of Road Agency Pvt. Ltd and ors. v. Central Bureau of Investigation** (referred supra), the Full Bench of the Supreme Court adverted to the principles laid down in various

judgments and held that, revision is maintainable against an order framing of charges and the bar under Section 397(2) Cr.P.C will not limit or affect the exercise of inherent power by the High Court. But, such cases would be few and the High Court must exercise inherent power very sparingly.

Taking advantage of the principle laid down in the above judgment, learned counsel for the petitioners contended that, the order under challenge affects the substantial rights of the parties, therefore, a revision lies against such order under Section 397(1) and Section 401 Cr.P.C before this Court.

In **Madhu Limaye v. The State of Maharashtra** (referred supra), **Amar Nath v. State of Haryana** (referred supra) and **Asian Resurfacing of Road Agency Pvt. Ltd and ors. V. Central Bureau of Investigation** (referred supra), the only basis for arriving at such conclusion is the order that affects the substantial rights of the parties is amenable to revisional jurisdiction under Section 397 Cr.P.C. No doubt, framing of a charge against the accused would certainly affect substantial rights of the parties, but I am unable to comprehend which are the orders passed during pendency of the main sessions case or calendar case, that would not affect the substantial rights of the accused. For instance, if a petition is filed under Section 311 Cr.P.C to recall a witness or summon a witness, or a petition is filed under Section 91 Cr.P.C which deals with summons to produce document or other thing and, such application is dismissed, it is difficult for the accused to prove his positive case or to prove his innocence, for the charges framed against him. If, no revision is permitted against said orders,

certainly it would affect the substantial rights of the accused, but the Apex Court in **Sethuraman v. Rajamanickam**²² took a view that the order passed under Section 311 Cr.P.C or Section 91 Cr.P.C are not amenable to revisional jurisdiction of either Sessions Court or High Court, since it is an interlocutory order.

Similarly, an order passed under Section 205 Cr.P.C to dispense with the appearance of the accused while permitting the counsel to represent the accused on his behalf during trial, if not allowed, it would affect the substantial rights of the parties, as there is a possibility of compelling him to appear before the Court on all dates of adjournments, since the evidence of witnesses during trial cannot be recorded in the absence of the accused and if, for any reason, he did not appear, the consequences will be serious for his absence. Sometimes, some bureaucrats or sickly persons and other officials highly placed may not be in a position to appear before the Court due to their pre-occupations, either personal or official. If, such petition filed under Section 205 Cr.P.C is disallowed, this would seriously affect the substantial rights of the parties who remained absent on account of pre-occupation or health grounds. But, still, the Courts time and again consistently held that, no revision lies against such orders when they are interlocutory in nature. In such case, the judgment of the Apex Court in **V.C. Shukla v. State through C.B.I** (referred supra) with strength of Four Judges is the binding precedent on the Courts.

In **Madhu Limaye v. The State of Maharashtra** (referred supra), the challenge before the Apex Court was taking cognizance

²² 2009 CriLJ 2247

of the offence punishable under Section 500 IPC and the legal proposition in **Amar Nath v. State of Haryana** (referred supra) was totally different. But, the question in **V.C. Shukla v. State through C.B.I** (referred supra) is directly on the point about maintainability of revision against framing of charges by the Court, wherein, the Apex Court adverted to the judgment in **Madhu Limaye v. The State of Maharashtra** (referred supra) and held that, still it holds the field, since the order framing charges may not be purely interlocutory order and in a given situation, be interfered under Section 397(2) Cr.P.C or Section 482 Cr.P.C or Article 227 of the Constitution of India. But, the judgment in **Madhu Limaye v. The State of Maharashtra** (referred supra) is rendered by Bench of three Judges, whereas, the judgment in **V.C. Shukla v. State through C.B.I** (referred supra) is rendered by Bench consisting of four Judges, though one of the Judge wrote a dissenting order, the same judgment is a binding precedent.

One of the contentions raised by the learned counsel for the respondent is that, when the coordinate bench differs with the view taken by the earlier coordinate bench, the subsequent coordinate bench cannot overrule the judgment of other coordinate bench and at best, the matter has to be placed before the Chief Justice for referring to larger Bench, instead of adopting such procedure, the Full Bench of the Apex Court in **Asian Resurfacing of Road Agency Pvt. Ltd and ors. v. Central Bureau of Investigation** (referred supra), took a different view than the view taken by the Larger Bench, though the question is directly not on the issue, i.e. framing of charges. Thereby, the judgment is not binding on the Courts, according to the contention of the learned counsel for the

petitioner and placed reliance on the judgment in **National Insurance Company Limited v. Pranay Sethi and others**²³, wherein, the Constitutional Bench of the Supreme Court consisting of five Judges while deciding a case under Motor Vehicles Act, 1988, observed in paragraph 14 as follows:

“The aforesaid analysis in Santosh Devi (supra) may prima facie show that the two-Judge Bench has distinguished the observation made in Sarla Verma’s case but on a studied scrutiny, it becomes clear that it has really expressed a different view than what has been laid down in Sarla Verma (supra). If we permit ourselves to say so, the different view has been expressed in a distinctive tone, for the two-Judge Bench had stated that it was extremely difficult to fathom any rationale for the observations made in para 24 of the judgment in Sarla Verma’s case in respect of self-employed or a person on fixed salary without provision for annual increment, etc. This is a clear disagreement with the earlier view, and we have no hesitation in saying that it is absolutely impermissible keeping in view the concept of binding precedents.

Similarly, in paragraph 19, the Court observed as follows:

“Though the aforesaid was articulated in the context of the High Court, yet this Court has been following the same as is revealed from the aforesaid pronouncements including that of the Constitution Bench and, therefore, we entirely agree with the said view because it is the precise warrant of respecting a precedent which is the fundamental norm of judicial discipline.”

(emphasis supplied)

In **Pradip Chandra Parija And Ors vs Pramod Chandra Patanaik And Ors**²⁴, the Constitution Bench of the Supreme Court held that, judicial discipline and propriety demands that a Bench of two learned Judges should follow a decision of a Bench of three learned Judges. But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of

²³ (2017) 16 Supreme Court Cases 680

²⁴ (2002) 10 SCC 437

three learned Judges setting out, as has been done here, the reasons why it could not agree with the earlier judgment.

In **Chandra Prakash v. State of Uttar Pradesh**²⁵, the Constitution bench while dealing with the concept of Precedents stated that, “the doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.....”

In **Sandhya Educational Society v. Union of India**²⁶, it has been observed that judicial decorum and discipline is paramount and, therefore, a coordinate Bench has to respect the judgments and orders passed by another coordinate Bench. In **Rattiram and others v. State of Madhya Pradesh**²⁷, the Court dwell upon the issue what would be the consequent effect of the latter decision which had been rendered without noticing the earlier decisions. The Court noted the observations in **Union of India v. Raghubir Singh**²⁸ and reproduced a passage from **Indian Oil Corporation Ltd. v. Municipal Corporation**²⁹ which is to the following effect:-

“8. ... The Division Bench of the High Court in Municipal Corpn., Indore v. Ratnaprabha Dhandra was clearly in error in taking the view that the decision of this Court in Ratnaprabha was not binding on it. In doing so, the Division Bench of the High Court did something which even a later co- equal Bench of this Court did not and could not do. ...”

²⁵ (2002) 4 SCC 234

²⁶ (2014) 7 SCC 701

²⁷ (2012) 4 SCC 516

²⁸ (1989) 2 SCC 754

²⁹ (1995) 4 SCC 96

Thus, the law declared by the Apex Court is consistent that a coordinate bench or bench consisting of equal strength, if disagrees with the principle laid down by the earlier judgments of same strength, the course open to them is to refer the matter to Larger Bench by placing the matter before the chief Justice. But, instead of doing so, the Apex Court took a different view than the view expressed by the Larger bench consisting of four Judges.

In the situation in the present case, this Court cannot refer the matter to any other Court. But, the course open to this Court is to follow the Larger Bench judgment which is directly on the issue and therefore, by following the judgment of the Apex Court rendered in **V.C. Shukla v. State through C.B.I** (referred supra), which is of Four-Judges, I am in total agreement with the contention raised by the learned Public Prosecutor for C.B.I, while disagreeing with the contention of the learned counsel for the petitioners. Accordingly this point is held.

POINT No.2

Before advertng to the contentions raised before this Court it is apposite to examine the scope of Section 397 and 401 of Cr.P.C., with reference to Section 239 Cr.P.C.

The present revision is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited.

According to Section 239 of Cr.P.C if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 Cr.P.C and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks

necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused after recording his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not

relevant considerations at the stage of framing of charge as held by the Apex Court in “**P.Vijayan v. State of Kerala**”³⁰

It is also contended that when the material available on record is groundless, the Court cannot proceed, since, it would amount to harassment. No doubt, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only few witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate or Sessions Judge summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate or Sessions Judge is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate or Sessions Judge has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

In **Manakshi Bala v. Sudhir Kumar**³¹ and **Kanti Bhadr Shah And Anr. v. The State of West Bengal**³², the Apex Court while deciding an appeal in a petition filed for discharge held that

³⁰ AIR 2010 SC 663

³¹ [1994] INSC 308

³² AIR 2000 SC 522

Magistrate at the stage of discharge petition filed under Section 239 Cr.P.C., has to record his reasons for discharging the accused, but there is no such requirement if he forms an opinion that there is a ground for *presuming the accused had committed an offence which he is competent to try*. In such situation he is only required to frame a charge in writing against the accused. Even in cases instituted otherwise than on police report, the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per sub-section(1) of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) of Section 245, the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. On both sub-sections he is obliged to record his reasons for doing so. In the present case, a presumption shall be drawn under Section 20 that the accused committed *prima facie* offence, when he failed to account for the amount.

In this context, it is pertinent to point out that even in a trial before a Court of Sessions; the Judge is required to record reasons only if he decides to discharge the accused. But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.

In later judgment reported in **Sheoraj Singh Ahlawat & Ors v. State of Uttar Pradesh & Anr**³³, the Apex Court on elaborate consideration of entire law regarding discharge of an accused, with

³³ AIR 2013 SC 52

the approval of law declared in **State of M.P. v. Mohanlal Soni**³⁴ and **State of Maharashtra & Ors v. Som Nath Thapa and Ors**³⁵ held that, if on the basis of material on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage. So also in **State of M.P. v. Mohanlal Soni** (referred supra), it is made clear that the crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused and the court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

Similarly in **State of Orissa v. Debendra Nath Padhi**³⁶ supra) the Apex Court held as follows:

“18.We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the

³⁴ 2000 Cri.LJ 3504

³⁵ 1996 Cri.LJ 2448

³⁶ (2005) 1 SCC 568

learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

In earlier judgment reported in **Union of India v. Prafulla Kumar Samal and Anr**³⁷ the Apex Court laid the following principles:

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly

³⁷ (1979) 3 SCC 4

explained the Court will be, fully justified in framing a charge and proceeding with the trial.

- (3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
- (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Based on various principles laid down in the judgments referred supra, Apex Court concluded that when the allegations made against the accused are specific and having concluded that those allegations would constitute *prima facie* offence, 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, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for conviction the accused has been made out. It is well settled that, at the stage of framing of charge, the defence of accused cannot be put forth. The submissions of the accused has to be confined to the material produced by the police. Clearly the

law is that at the time of framing charge or taking cognizance the accused has no right to produce any material as held in **Onkar Nath Mishra and Ors vs. State (NCT of Delhi) and Anr**³⁸ and **State of Maharashtra & Ors v. Som Nath Thapa & Ors**³⁹ and **Mohanlal Soni's** case (referred supra) and **State of Orissa v. Debendra Nath Padhi** (referred supra).

In **State of Orissa v. Debendra Nath Padhi** (referred supra) which I referred and in **Ajay Kumar Parmar vs. State of Rajasthan**⁴⁰ in paragraph 16 of the judgment, the Court held that it was not permissible for the Judicial Magistrate to take into consideration the evidence of defence produced by the appellant as it has consistently been held by this Court that at the time of framing the charge, the only documents which are required to be considered are the documents submitted by the investigating agency along with the charge sheet. Any document which the accused wants to rely upon cannot be read as evidence. If such evidence is to be considered, there would be a mini-trial at the stage of framing of charge. That would defeat the very object of the code. Even for hearing submission of accused as per Section 227 means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. Even if, in a rare case it is permissible to consider the defence evidence, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

³⁸ (2008) 2 SCC 561

³⁹ 1996 Cri.LJ 2448

⁴⁰ (2012) 12 SCC 406

In view of the law declared by the Apex Court in various judgments referred supra as to considering an application filed under Section 239 Cr.P.C, at the stage of framing charges, the duty of the Court is only to look into allegations made in the final report and the documents annexed to it including statements of witnesses recorded and examined during investigation, and afford an opportunity to the accused to advance arguments. But said argument must be connected to the material on record i.e., allegations in charge sheet and documents filed along with report under Section 173 Cr.P.C, not more than that. The accused is not entitled to produce any documents and adduce any evidence at the time of framing charges or at the time of disposal of petition filed under Section 239 Cr.P.C.

As discussed above, the power of the Court to discharge the accused would arise only in few circumstances and the Court, if, satisfied that the prosecution against this petitioner is groundless, the Court can discharge the accused for any offence.

However, there are series of cases wherein the Apex Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 Code of Criminal Procedure, 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 connects 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 and Ors**⁴¹; **All India Bank Officers' Confederation etc. v. Union of India and Ors**⁴²; **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia**⁴³; **State of M.P. v. Dr. Krishna Chandra Saksena**⁴⁴; and **State of M.P. v. Mohan Lal Soni**⁴⁵).

In **Dilawar Babu Kurane v. State of Maharashtra**⁴⁶, the Apex Court while dealing with the provisions of Sections 227 and 228 Code of Criminal Procedure, with the approval of law laid down in **Union of India v. Prafulla Kumar Samal and Anr**⁴⁷, 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 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.

⁴¹ AIR 1977 SC 1489

⁴² AIR 1989 SC 2045

⁴³ (1989) 1 SCC 715

⁴⁴ (1996) 11 SCC 439

⁴⁵ AIR 2000 SC 2583

⁴⁶ AIR 2002 SC 564

⁴⁷ AIR 1979 SC 366

In **Suresh v. State of Maharashtra**⁴⁸, the Apex Court after taking note of the earlier judgments in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya**⁴⁹ and **State of Maharashtra v. Priya Sharan Maharaj**⁵⁰, held as under:

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 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.

(Emphasis supplied)

Similarly in **State of Bihar v. Ramesh Singh**⁵¹, while dealing with the issue, the Supreme Court held as follows:

“...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...”

(Emphasis supplied)

In view of the law declared by the Apex Court in the catena of decisions referred supra, the jurisdiction of the Inferior Criminal Court is limited, unless, the Court concludes that the prosecution is groundless or there is no *prima facie* material to proceed against

⁴⁸ AIR 2001 SC 1375

⁴⁹ AIR 1990 SC 1962

⁵⁰ AIR 1997 SC 2041

⁵¹ AIR 1977 SC 2018

this petitioner for various offences allegedly committed by this petitioner, the Court cannot discharge the accused for grave offences. However, what is *prima facie* case, remains as a question while dealing with a petition filed under Section 239 Cr.P.C.

The Apex Court in **Mauvin Godinho v. State of Goa**⁵², highlighted the scope of Section 228 Cr.P.C, with the approval of law declared in **Sajjan Kumar v. CBI**⁵³ **State v. A. Arun Kumar**⁵⁴, **State v. S. Selvi**⁵⁵ was of the view that, a Court while framing charges under Section 227 of the Code of Criminal Procedure should 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.

How to determine a *prima facie* case is not highlighted in the judgment. However, the general principle laid down as to the *prima facie* case in civil cases cannot be applied in criminal cases, and in view of the material collected which constitute an offence is

⁵² AIR 2018 SC 749

⁵³ (2010) 9 SCC 368

⁵⁴ (2015) 2 SCC 417

⁵⁵ (2018) 4 SCC 641

sufficient to conclude that there is a *prima facie* case to proceed against this petitioner by framing charges.

As discussed above, at the time of framing charges, the duty of the Sessions Court or Magistrate is limited. The Court has to examine whether the material on record is sufficient to proceed further by framing charges against the petitioners. In the recent judgment, the Apex Court has adopted the theory of “**prima facie standard**” referred supra. Whatever the law is declared by the Courts, it is consistent that the Court can exercise such power to discharge the accused only when the Court found on verification of the entire record, including the charge sheet and other material collected during investigation, including the statements recorded under Section 161(3) Cr.P.C, that when the prosecution is groundless, then the Court can discharge an accused. But, the Court cannot permit the parties to produce any document in supports of its contention to discharge, as it amounts to any trial at the stage of framing charges.

However, what is *prima facie* case, remains as a question while dealing with a petition filed under Section 239 Cr.P.C.

The Apex Court in **Mauvin Godinho v. State of Goa**⁵⁶, highlighted the scope of Section 228 Cr.P.C, by relying on the judgments in **Sajjan Kumar v. CBI**⁵⁷ **State v. A. Arun Kumar**⁵⁸, **State v. S. Selvi**⁵⁹ was of the view that, a Court while framing charges under Section 227 of the Code of Criminal Procedure should apply the “*prima facie*” standard. Although the application

⁵⁶ AIR 2018 SC 749

⁵⁷ (2010) 9 SCC 368

⁵⁸ (2015) 2 SCC 417

⁵⁹ (2018) 4 SCC 641

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.

But, how to determine a *prima facie* case is not highlighted in the judgment. However, the general principle laid down as to the *prima facie* case in civil cases cannot be applied in criminal cases, and in view of the material collected which constitute an offence is sufficient to conclude that there is a *prima facie* case to proceed against this petitioner by framing charges. By applying the same standard of *prima facie* to the present facts of the case, I find that there is voluminous material against the petitioners/A-1 & A-3 to frame charges and try the accused.

In **Manakshi Bala vs Sudhir Kumar**⁶⁰, it was held that the Magistrate was to proceed in accordance with Sections 239 and 240 of the Code, at the time of framing of the charges. Under the above sections, the Magistrate is first required to consider the police report and the documents sent with it under Section 173 Cr.P.C and examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard. If on such consideration, examination and hearing the Magistrate

⁶⁰ 1994 SCC (4) 142

finds the charge groundless he has to discharge the accused in terms of Section 239 Cr.P.C; conversely, if he finds that there is ground for presuming that the accused has committed an offence triable by him he has to frame a charge in terms of Section 240 Cr.P.C.

It is trite that at the stage of framing of charge 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, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence. (vide **Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr**⁶¹)

Therefore, keeping in view the law laid down by various Courts about the duty of the Magistrate or Sessions Judge, at the time of framing charges, the Court has to examine the material on record, strictly adhering to the legal requirements stated above. The Trial Court after elaborate consideration of the material, recorded its findings that there is *prima facie* material to proceed against A-1 and thus framed charges against A-1. But, the order of

⁶¹ (2008) 2 SCC 561

the Court below is challenged before this Court on the ground that, when A-2 was exonerated from his liability and discharged for the above offences, who is similarly placed, the petitioners/A-1 & A-3 are also entitled to such benefit and requested to extend the same benefit to these petitioners and discharge them while highlighting the alleged errors committed by the Sessions Judge in dismissing the petitions filed by these two petitioners.

No doubt, A-2 being the Chief Engineer in Railways is discharged for the above offences, on the basis of same allegations. But, a revision is filed by the C.B.I against such orders before this Court, which is under consideration. Thus, the findings recorded by the Court below against the second accused discharging him for the offences has not attained finality and it is under examination by this Court in a different criminal revision case. Consequently, on the ground that A-2 was discharged for the offences, these petitioners cannot be discharged for the offences referred supra.

The main endeavour of the learned counsel for the petitioners is that, A-1 being the superior officer in the cadre of civil servant working in the railways, prepared an office note and processed the file proposing settlement of dispute before the Lok Adalat. Mere making office notings is not sufficient to conclude that these petitioners are also liable for the offences referred supra. No doubt, the file notings do not give rise to any offences *prima facie*. If, such noting while processing the file is made conspiring with the other accused, still it constitutes offences because the person who prepared the file notings is responsible for leading the higher officials to proceed further.

Learned counsel for the petitioners relied on judgment of the Supreme Court in **Shanti Sports Club & Anr. v. Union of India & Ors**⁶², wherein, in paragraph 43 of the said judgment, the Division Bench of Supreme Court held as follows:

“A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review.”

Similarly, in **Pimpri Chinchwad New Township Development Authority v. Vishnudev Cooperative Housing Society & ors**⁶³, an identical question of evaluation of file notings came up for consideration before the Supreme Court, wherein the Supreme Court concluded that, mere noting in the official files of the Government are matters of internal deliberations and they will not give rise to any cause of action either for criminal wrong or civil wrong.

Turning to the present case, the legal importance of file notings in the government official files is not in dispute, but when it is the question as to whether those file notings were prepared conspiring with other accused, A-1 cannot claim any immunity to discharge for the offences referred supra.

⁶² (2009) 15 SCC 70

⁶³ (2018) 8 SCC 215

The offence allegedly committed by the petitioners are offences punishable under Sections-120-B and 420 read with Section-511 I.P.C. and Section-13(2) read with Sections-13(1)(d) and 15 of the Prevention of Corruption Act, 1988 (for short 'P.C. Act')

Section 120-B IPC deals with punishment for Criminal Conspiracy and to establish criminal conspiracy, no direct evidence is required to be produced and the Court shall take into consideration, the conduct of the petitioner, both prior and subsequent to decide his complicity for the offence punishable under Section 120-B IPC.

Section 120-B I.P.C. deals with punishment for criminal conspiracy. The offence of 'criminal conspiracy' is defined under Section 120A I.P.C according to it, when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy, provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Thus, the most important ingredient of the offence 'criminal conspiracy' is the agreement between two or more persons to do an illegal act or an act not illegal by illegal means (**Kehar Singh and others v. State (Delhi Admin.)**)⁶⁴. The offence of conspiracy is complete when two or more conspirators have agreed to do or cause to be done an act which is itself an offence,

⁶⁴ AIR 1988 SC 1883

in which case no overt act need be established (**Lennart Schussler and another v. Director of Enforcement and another**⁶⁵).

The basic ingredient to constitute an offence punishable under Section 120B I.P.C. is that there must be an agreement between the parties to do an act by illegal means or to do an act, which is not illegal by illegal means. In **Noor Mohammad Mohd. Yusuf Momin v. The State of Maharashtra**⁶⁶, an identical issue came up for consideration before the Honourable Apex Court and the Honourable Apex Court clearly drawn distinction between Section 34, Section 109 and Section 120B I.P.C. and held that Section 34 I.P.C. embodies the principle of joint liability in doing a criminal act, the essence of that liability being the existence of a common intention. Participation in the commission of the offence in furtherance of the common intention invites its application. Section 109 I.P.C. on the other hand may be attracted even if the abettor is not present when the offence abetted is committed provided that he has instigated the commission of the offence or has engaged one or more other persons in a conspiracy to commit an offence and pursuant to that conspiracy some act or illegal omission takes place or has intentionally aided the commission of an offence by an act or illegal omission. Turning to the charge under Section 120B I.P.C., criminal conspiracy was made a substantive offence in 1913 by the introduction of Chapter V-A in the Indian Penal Code. Criminal conspiracy postulates an agreement between two or more persons to do, or cause to be done an illegal act or an act which is not illegal, by illegal means. It differs from other offences in that mere agreement is made an

⁶⁵ AIR 1970 SC 549

⁶⁶ AIR 1971 SC 885

offence even if no step is taken to carry out that agreement. Though there is close association of conspiracy with incitement and abetment the substantive offence of criminal conspiracy is somewhat wider in amplitude than abetment by conspiracy as contemplated by Section 107 I.P.C. A conspiracy from its very nature is generally hatched in secret. It is, therefore, extremely rare that direct evidence in proof of conspiracy can be forthcoming from wholly disinterested quarters or from utter strangers. But, like other offences, criminal conspiracy can be proved by circumstantial evidence. Indeed, in most cases proof of conspiracy is largely inferential though the inference must be founded on solid facts. Surrounding circumstances and antecedent and subsequent conduct, among other factors, constitute relevant material. In fact because of the difficulties in having direct evidence of criminal conspiracy, once reasonable ground is shown for believing that two or more persons have conspired to commit an offence then anything done by anyone of them in reference to their common intention after the same is entertained becomes, according to the law of evidence, relevant for proving both conspiracy and the offences committed pursuant thereto. As seen from the principle laid down by the Honourable Apex Court in the above judgment, there must be two or more persons to do an unlawful act by illegal means to constitute an offence punishable under Section 120B I.P.C.

In **Ram Narayan Popli v. CBI** (referred supra), a similar question came up for consideration with regard to the offence punishable under Section 120-B IPC, wherein, the Supreme Court held in various paragraphs as follows:

“It was observed by this Court in *State of Kerala v. P. Sugathan and Anr.*, [2000] 8 SCC 203, it would be extremely difficult to find direct evidence in case of criminal conspiracy. The circumstances and surrounding factors have to be taken note of. In the instant case, the accused 1, 2 and 5 have submitted that the role of PW-5 as described is that he did not want to be directly shown in the picture. In fact, A-1 wanted that MUL did not want to involve brokers and did not want to deal with them. This itself deals of fatal blow to the stand taken by the accused that there was no prohibition of acting through brokers and the intention was that dealing would be directly with the bank and not through any broker or intermediary. Much has been made out of use of the word 'through' in the resolution. If the clear understanding of A-1 was that the deal should not be dealt with or involved any broker then the question of A-5 acting as broker does not arise. Use of the expression "through" is indicative of the fact that emphasis was on securities being not purchased in the open market, but "through" named PSU. These PSU were admittedly not brokers. They were either Banks or financial institutions. Evidence clearly shows that A-5 wanted that he will not directly come to the picture, and would not appear in the books of accounts of MUL; but would stand to gain by way of commission and as a brokerage from the Bank. The statement of A-1 that he would look into any good proposals if A-5 does not come to the picture shows that the actual state of affairs was intended to be hidden from the MUL authorities and a totally distorted picture was sought to be given. These are factors which does not go in favour of the accused as contended, and on the contrary clearly proves conspiracy.

Much has also been submitted that repayment has been made. That itself is not an indication of lack of dishonest intention. Some times, it so happens that with a view to create confidence the repayments are made so that for the future transactions the money can be dishonestly misappropriated. This is a part of the scheme and the factum of repayment cannot be considered in isolation. The repayment as has been rightly contended by the Solicitor General can be a factor to be considered while awarding sentence, but cannot be a ground for proving innocence of the accused.

The elements of a criminal conspiracy have been stated to be: (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an agreement or understanding between two or more of the accused persons whereby, they; become definitely committed to co-operate for the accomplishment of the object by the means embodied in the agreement. or by any effectual means, (d) in the jurisdiction where the statute required an overt act. The essence of a

criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime, is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co- conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. (See: American Jurisprudence Vol.11 See 23, p. 559). For an offence punishable under Section 120-B, prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. So long as such a design rests in intention only, it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and an act of each of the parties, promise against promise, actus contra actum, capable of being enforced, if lawful, punishable if for a criminal object or for use of criminal means.

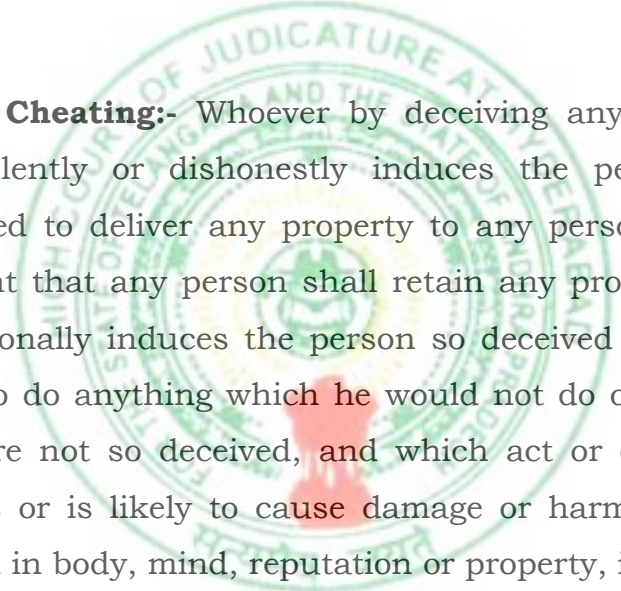
No doubt in the case of conspiracy there cannot be any direct evidence. The ingredients of offence are that there should be an agreement between persons who are alleged to conspire and the said agreement should be for doing an illegal act or for doing illegal means an act which itself may not be illegal. Therefore, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both, and it is a matter of common experience that direct evidence to prove conspiracy is rarely available. Therefore, the circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused.”

(emphasis supplied)

From the law laid down by the Apex Court in the above judgments, it is clear that the criminal conspiracy cannot be

proved in general by direct evidence, since it is a secret act. The Court is bound to draw inferences from the circumstances of the case including conduct prior to and subsequent to the commission of alleged offence. Merely because none of the witnesses did not state anything about the criminal conspiracy allegedly committed by this petitioner along with the other accused, A-2 & A-3, the Court cannot discharge this petitioner for the offence punishable under Section 120-B I.P.C at this stage.

Cheating is defined under Section 415 of I.P.C and it is as follows:



“415. Cheating:- Whoever by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

The essential ingredients to constitute the offence of cheating are:

- (i) There should be fraudulent or dishonest inducement of a person by deceiving him;
- (ii) (a) The person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) The person so deceived should be intentionally induced to do or omit

to do anything which he would not do or omit if he were not so deceived; and

- (iii) In cases covered by (ii) (b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

In **V.Y.Jose v. State of Gujarat**⁶⁷ the Apex Court laid down following ingredients to constitute cheating.

“An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or
- (iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Indian Penal Code can be said to have been made out.

An offence of cheating may consist of two classes of cases:

⁶⁷ (2009) 3 SCC 78

(1) where the complainant has been induced fraudulently or dishonestly. Such is not the case here;

(2) When by reason of such deception, the complainant has not done or omitted to do anything which he would not do or omit to do if he was not deceived or induced by the accused.”

In view of the law declared by Apex Court, to constitute an offence punishable under Section 420 IPC, there should not only be cheating, but as a consequence of cheating, the accused should have dishonestly induced the person deceived to deliver any property to any person, or to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

In view of the ingredients to constitute an offence punishable under Section 420 IPC, I have to examine whether the allegations made against these petitioners would constitute offence punishable under Section 420 IPC or not, *prima facie*, or is it groundless.

A-1 is the Director, Centralised Training Academy for Railway Accounts, who processed the file and A-3 is the contractor. The amount due to the contractor is less than Rs.5,073/-. Out of the said amount, Rs.3,700/- is the security deposit deposited by A-3 and the balance is only the amount due to the contractor for executing the contract. A-3 approached the arbitrator and obtained arbitration award and the said order is now under challenge before the III Additional Senior Civil Judge, City Civil Court, Secunderabad. Both, the contractor/A-3 and railway authorities filed petitions one to set-aside the award and the other to make the

award the rule of the Court, so as to enable A-3 to execute the decree. During pendency of the petitions before the III Additional Senior Civil Judge, City Civil Court, Secunderabad, A-3 addressed letters to the petitioners/A-1 & A-2 requesting to refer the matter to arbitration. Further, the railway administration filed O.P.No.10 of 1997 before III Additional Senior Civil Judge, City Civil Court, Secunderabad and A-3 filed O.P.No.162 of 1998 on the file of same Court to make this rule of the Court and they are pending.

During pendency of the O.Ps, A-3 submitted a representation to the Principal Chief Engineer -L.W.6 to settle the matter out of the Court. The file had been processed in the office of Principal Chief Engineer by L.W.6 for out of the Court settlement. The file had come to DGM/A-1. The petitioner marked the file to Senior Law Officer for his opinion. The Senior Law Officer earlier noted that the matter shall be decided and gave a legal opinion that there is no procedure for out of the court settlement and requested to consider, since the settlement is in the interest of railways allegedly. The file was processed and the matter was referred to the Lok Adalat and there the matter was settled for more than Rs.1.00 crore.

In fact, there were no guidelines for settling the disputes outside the Court by approaching Lok Adalat or any other forums established under the statute. But, according to the material on record, the railway administration settling the dispute outside the Court is because of the prevailing practice, the petitioner/A-1 allegedly recommended for settlement outside the Court and later, the matter reached this Court and on the basis of the observations

made in the interlocutory order, crime was registered based on reliable information. The material on record *prima facie*, shows that the petitioners from the beginning had an intention to induce the railway administration to part with huge amount as settlement outside the Court i.e. before Lok Adalat. When the material *prima facie* indicates the role played by these petitioners, it is difficult to conclude the prosecution of these petitioners for the offence punishable under Section 420 I.P.C is groundless to exercise jurisdiction under Section 239 Cr.P.C.

Sri K.R.K.V. Prasad, learned counsel appearing for A-1 contended that, in the absence of any complaint, taking up investigation suo moto and registering crime on the basis of alleged reliable information is a serious illegality. But, this contention is meritless for the reason that, the provisions of Cr.P.C are applicable for registration of a crime by the C.B.I and for investigation, except to the extent of competency on authorization to do certain acts, specific procedure is prescribed under Sections 17 & 18 of P.C.Act.

Section 154 Cr.P.C deals with Information in cognizable cases and according to it,

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by

such officer in such form as the State Government may prescribe in this behalf

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

In view of the power conferred on the authorities concerned by Section 154 Cr.P.C, registration of a crime by the C.B.I authorities suo moto is not a ground to conclude that the prosecution is groundless against these petitioners. Therefore, on this ground, the petitioners cannot be discharged.

One of the questions before this Court is whether the petitioners/A-1 & A-3 had any intention at the very beginning of commission of offence to cheat and induce the railway administration to part with any amount. But, as seen from the material *prima facie*, there was no practice of settling the dispute outside the Court. But, these are no guidelines for such

settlement. Moreover, arbitration itself is one of the modes of alternative disputes settlement resolution process and settling the disputes before Lok Adalat is another mode of alternative settlement along with conciliation under Section 89 of C.P.C, as amended in the year 2001. But, whether these modes can be resorted simultaneously or alternatively is another question to be decided. However, it is not the forum to decide such issue, in view of the limited scope of Section 397 & 401 Cr.P.C. It is a classic case where the railway administration exhibited its sheer negligence in settling the claims of contractor/A-3 which caused colossal economic/financial loss to the railway administration to a tune of Rs.1,22,29,575/-. The amount due to the third respondent is meagre i.e. Rs.5,073/- and for payment of such amount, the railway administration for one reason or the other protracted the dispute and ultimately agreed to pay more than Rs.1.00 crore as stated above. Therefore, all the officials who are responsible for such loss are liable to compensate the loss incurred by the railway administration on account of their lethargic attitude exhibited in discharging their duties. The material collected by the Investigating Agency during investigation, more particularly, the statements of witnesses recorded under Section 161(3) Cr.P.C clearly indicates the evil intention of A-1, who in collusion with A-3 and other accused, prepared file notings and processed the file, though it is not permissible to resort to parallel alternative modes of dispute resolution and ultimately, settled the dispute before Lok Adalat by awarding huge amount, the rule of dam dupet has no application to the present case, since the liability is arising out of the contractual obligation between the railway administration and

contractor. The statements recorded by the Investigating Agency during investigation under Section 161(3) Cr.P.C and the material collected during investigation *prima facie* pointing out the complicity of these petitioners/A-1 & A-3 who are Director, Centralised Training Academy for Railway Accounts and contractor respectively, more particularly, the criminal conspiracy to cause loss to the railway administration, settling the dispute outside the Court in referring the matter to the Lok Adalat which is an alternative mode of resolution of dispute parallel to arbitration. The Trial Court took all these matters into consideration and concluded that there is *prima facie* material and there are good grounds to presume that both these petitioners/A-1 & A-3 committed such offence punishable under Section 420 Cr.P.C and Section 13(2) r/w Sections 13(1)(c) & (d) of P.C. Act. When the Trial Court discussed the material on record and *prima facie* concluded that the prosecution is supported by material and not groundless, this Court cannot interfere with such orders while exercising power under Sections 397 & 401 Cr.P.C, since the jurisdiction of this Court is limited to the extent stated above.

The other offences allegedly committed by these petitioners are punishable under Sections 13(2) r/w 13(1)(d) and Section 15 of P.C. Act. The Trial Court by adverting to the evidence of LW.7 and other witnesses, concluded that there is *prima facie* material to proceed against the petitioners and framed charges.

In the charge sheet, the respondent/C.B.I has set out all the circumstances claiming that A-1 dishonestly took administrative decisions which resulted in A-1 & A-2 taking U-turn and started

for negotiating the settlement outside the Court, though O.Ps are pending. The settlement of claim for Rs.1.17 crores is contrary to Annexure-2 of Indian Railways Financial Code, Volume-I and as per Clause 35(i) of those powers, the General Manager is empowered to accept the claims settled outside the Court, for payment of compensation other than those relating to goods lost or damaged and those arising out of the railway accidents upto Rs.10,000/- only in each case.

The Indian Railway Financial Code does not permit the authorities to settle the dispute outside the court and it is not a claim arising out of the accidents which is permitted under Annexure-2 of Railway Financial Code of Volume No.1 and Clause 35(i). Therefore, settlement of claim which is not permitted by the Financial code and causing loss to the railway administration for more than Rs.1.00 crore is a serious financial/economic offence.

Further, A-1 was authorized to monitor such claims, who was not empowered to give comments on merits, when final views of PCE and FA & CAO, who were technical and financial heads were against such out of Court settlement. Apart from that, neither procedural orders or any other instructions provided that A-1 was in a position to give comments over the issues falling within the domain of PCE and FA & CAO or Law Officer, whose role was defined to nominate arbitrators, record keeping for sanction orders on award amounts paid, keeping record of arbitration awards for compilation and putting them to general Manager while also keeping the record of deficiencies in GCC as identified during the

arbitration. Further, it is stated that, A-1 was not empowered to give technical comments over the comments of PCE and FA & CAO or Law Officer irrespective of fact whether he is from Financial Department or not.

Thus, the pro-active role played by A-1 is implicitly in support of A-3 and such criminal conspiracy can be proved only during trial based on the material *prima facie*. Therefore, at this stage, it is difficult to conclude that the prosecution against these petitioners/A-1 & A-3 is groundless.

The Trial Court adverted to the material on record including the pending arbitration O.Ps. Further, A-3 is a Contractor who agreed to forego only Rs.16,16,401/- making Railway Administration liable for Rs.1.17 crores and obtained an award from Legal Services Authority. More curiously, Railway Administration also filed an application before the Lok Adalat to set-aside the award. Though the Legal Services Authority is not competent to pass an order and invited an adverse order. The Trial Court also verified the statements of witnesses recorded under Section 161(3) Cr.P.C and other material and concluded that there is prima facie material against these petitioners and such finding cannot be interfered lightly by this Court while exercising power under Sections 397 & 401 Cr.P.C. Therefore, I find no ground to interfere with the orders passed by the Trial Court in CrI.M.P.No.1369 of 2014 in C.C.No.11 of 2014 dated 31.05.2017 and consequently, both the criminal revision cases are liable to be dismissed, as I find no illegality or irregularity or impropriety in the order passed by the Trial Court, warranting interference of this

Court by exercising power under Sections 397 & 401 Cr.P.C, more so, the material on record clearly pointing out the complicity of both these petitioners for the offences punishable under Sections-120-B and 420 read with Section-511 I.P.C. and Section-13(2) read with Sections-13(1)(d) and 15 of P.C. Act.

In the result, both the criminal revision petitions are dismissed.

Consequently, miscellaneous petitions, if any, pending in this criminal revision cases, shall stand closed.

Dated:12.11.2018

SP

JUSTICE M. SATYANARAYANA MURTHY

