

*** THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CRIMINAL REVISION CASE No.1606 OF 2013

% Dated 09.11.2018

Dr. J. Muralidhar Goud
s/o J. Sdharshan Goud
r/o 69-506, Joharapuram Post
Kurnool District Petitioner

Vs.

\$ The State of Telangana
rep by its Spl. Public Prosecutor for CBI, Hyderabad
High Court of Judicature at Hyderabad
for the State of Telangana and the State of AP Hyderabad

..... Respondent

! Counsel for the petitioner : Pilix Law Firm

^ Counsel for the respondent :
1. R-1 Sri K. Surender, Spl. P.P. for C.B.I

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? Cases referred

1. AIR 1981 SC 379
2. AIR 1953 Cal. 226
3. 1954 CriLJ 310
4. 2004 Cri.L.J 2626
5. AIR 1992 SC 604
6. AIR 1964 SC 221
7. 2014 Cri.L.J 299
8. AIR 1959 SC 707
9. AIR 1955 SC 196(1)
- 10.(2000) 8 Supreme Court Cases 590
- 11.AIR 1971 Supreme Court 520
- 12.1973 SC 799
- 13.2006 (3) SCC (CrI) 225
- 14.2001 Cri.L.J 2695
- 15.1971 AIR 520
- 16.AIR 1953 Cal.226 (Vol.40, C.N.78(1))
- 17.1954 Cri.L.J 310
- 18.2004 Cri.L.J 2626
- 19.2006 CrI.L.J 2320
- 20.(2000) 5 Supreme Court Cases 88
- 21.AIR 1992 SC 604
22. AIR 1944 P.C. 73
23. AIR 1950 PC 26

- 24.(2014) 16 SCC 285
- 25.AIR 1971 SC 508
26. 1959 Supp 2 SCR 201 at pp 210 and 211
- 27.AIR 1971 SC 1525
- 28.(1973) 1 SCC 726
- 29.2017 (16) SCC 126
- 30.1990 SCC (Cri) 330
31. AIR 1955 SC 196
32. AIR 2010 SC 663
33. 1994 INSC 308
34. AIR 2000 SC 522
35. AIR 2013 SC 52
- 36.2000 Cri.LJ 3504
- 37.1996 Cri.L.J 2448
- 38.(2005) 1 SCC 568
- 39.(1979) 3 SCC 4
- 40.(2008) 2 SCC 561
- 41.1996 Cril.L.J 2448
- 42.(2012) 12 SCC 406
- 43.AIR 1977 SC 1489
- 44.AIR 1989 SC 2045
- 45.(1989) 1 SCC 715
- 46.(1996) 11 SCC 439
- 47.AIR 2000 SC 2583
- 48.AIR 2002 SC 564
- 49.AIR 1979 SC 366
- 50.AIR 2001 SC 1375
- 51.AIR 1990 SC 1962
- 52.AIR 1997 SC 2041
- 53.AIR 1977 SC 2018
- 54.AIR 2018 SC 749
- 55.(2010) 9 SCC 368
- 56.(2015) 2 SCC 417
- 57.(2018) 4 SCC 641
- 58.(2015) 16 SCC 1



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**CRIMINAL REVISION CASE NO.1606 OF 2013****ORDER:**

This criminal revision case is filed by the accused under Sections 397 & 401 Cr.P.C challenging the order in CrI.M.P.No.305 of 2012 in C.C.No.24 of 2010 passed by II Additional Special Judge for C.B.I Cases, Hyderabad, dated 18.06.2013, filed under Section 239 Cr.P.C to discharge him from the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act (for short 'P.C. Act').

The petitioner being the sole accused filed CrI.M.P.No.305 of 2012 before the II Additional Special Judge for C.B.I Cases, Hyderabad under Section 239 Cr.P.C, alleging that, while the petitioner was discharging his official duties as Medical Superintendent of Railway Poly Clinic, accepted a sum of Rs.1,00,000/- as illegal gratification other than legal remuneration and as such he committed offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act. The petitioner was served with the copies of the documents as required under Section 207 Cr.P.C and such documents and statements do not disclose any offence committed by the petitioner muchless the offences alleged to have been committed by him under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act. It is also contended that the charge sheet does not disclose any official favour that was pending with the petitioner as alleged by the complainant in his complaint and the statements of various

witnesses recorded by the Investigating Officer to substantiate the alleged offences committed by this petitioner.

It is also contended that, the material produced along with the charge-sheet itself shows that the act of alleged receipt of Rs.1,00,000/- is not in connection with his official duty and in the absence of any piece of paper, proceedings against this petitioner by framing charges under Section 238 Cr.P.C for various offences is nothing but subjecting this petitioner to harassment. It is also contended that, though the complainant did not submit the bills for the month of September, 2009, complained that he submitted such bills which turned out to be false and even the recommendation for extension of recognition was already done in the month of September, 2009, it is falsely alleged by the complainant that it is still pending with the petitioner for the purpose of implicating the petitioner in a false case. Therefore, based on false or concocted story created by the complainant, a charge-sheet is filed and requested to discharge this petitioner for the offences referred supra.

The respondent filed counter stating that, based on the written complaint received from Dr. Narasinga Reddy, MD Jaya Hospitals, Hanamkonda, for demanding Rs.3,00,000/- by the petitioner who was Medical Superintendent, Railway Polyclinic, Kazipet for clearing the pending bills of the Hospital from January 2009 to August 2009, also for accepting the bills for the month of September 2009 and for renewal of MOU between Railway Polyclinic, Kazipet and M/s Jaya Hospital, filed charge-sheet after completion of investigation in RC.16(A)/2009 under Section 7 of

P.C Act, 1988,. In pursuance of the earlier demand, the petitioner/accused accepted Rs.1,00,000/- as bribe towards part payment from the complainant at the residence of the petitioner and was caught red-handed by C.B.I, the bribe amount was seized. The respondent/C.B.I has initiated action against the petitioner/accused after making thorough verification of the contents of the complaint and the investigation disclosed that there were 71 pending bills of Jaya Hospital Railway Polyclinic, Kazipet by 12.11.2009 which were not processed by the petitioner and this fact is evident from the statements of witnesses examined during the course of investigation, 71 pending bills were seized on the day of trap by C.B.I under cover of search list in the presence of independent witnesses, as such it can be inferred that, the petitioner has deliberately kept the medical bills pending without processing, only in order to get satisfied with illegal gratification.

It is further contended that the sanctioning authority, after going through the details of the case and after careful examination of the matter, accorded sanction for prosecution of this petitioner and the material produced along with the charge-sheet clearly disclosed commission of offence *prima facie*. Apart from that, the Junior Scientific Officer, CFSL, Ramantapur, Hyderabad, who examined Exs.1 to 7 issued report on 06.05.2010, affirming positive tests for the presence of Phenolphthalein, Sodium and Carbonate Ions in the Exs.1 to 7 and this report is suffice to conclude that, there is *prima facie* material against this petitioner to frame charges.

Upon hearing arguments of both the counsel, the II Additional Special Judge for C.B.I Cases, Hyderabad, dismissed CrI.M.P.No.305 of 2012 in C.C.No.24 of 2010, recording its reasons.

Aggrieved by the said order, the present criminal revision case is filed assailing the legality, propriety and regularity of the order passed by the Court below on various grounds.

The main contentions urged in the grounds of the criminal revision are as follows:

- a) The II Additional Special Judge for C.B.I Cases, Hyderabad did not advert to the law laid down by various Courts and the decisions relied on by the petitioner and that, there was no material to frame charges against the petitioner to proceed further against him for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act. But, the II Additional Special Judge for C.B.I Cases, Hyderabad, erroneously dismissed the petition without satisfactory reasons.
- b) The Court below also failed to advert to the statements of various witnesses recorded under Section 161(3) Cr.P.C and no material is available to substantiate receipt of amount for official favour. It is also urged that the material on record and the charge-sheet did not disclose any such official favour, since the complainant did not submit any bills for the month September, 2009 and also that the recommendation for the extension of recognition was also given by the petitioner. Therefore, the question of demanding

payment of any amount for official favour is false on the face of record, but, the Court below did not verify the material, antecedents and veracity of the complaint, registered the complaint, took up investigation and filed charge-sheet so as to harass the petitioner.

- c) It is further contended that, Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17) are only officers who are working in CBI on deputation from Central Industrial Security Force (CISF) and Railway Protection Force (RPF) units respectively and as such, they are not regarded as police officers, thereby, the Court below did not consider the competency of the Investigating Officers to investigate into the crime and file charge-sheet.
- d) The Trial Court failed to consider the specific contention with regard to incapacity of Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17) to conduct investigation, as both the officers are working in CBI on deputation from Central Industrial Security Force (CISF) and the Railway Protection Force (RPF) units respectively and thereby, the investigation is vitiated by irregularity and finally requested to set-aside the order passed by the II Additional Special Judge for C.B.I Cases, Hyderabad in CrI.M.P.No.305 of 2012 in C.C.No.24 of 2010 for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act.

During hearing, Sri Metta Chandrasekhar, learned counsel appearing for Sri Nanduri Sriram, limited his submissions to the competency of Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17) and would contend that, when the Investigating Officers are incompetent to investigate into the offence, the trial will end in acquittal and thereby, the material on record is not sufficient to frame any charges. Learned counsel for the petitioner has drawn attention of this Court to Central Bureau of Investigation (Admn) Manual, The Railway Protection Force Act, 1957, The Police Act, 1861 and The Delhi Special Police Establishment Act, 1946, questioning the powers of the officers appointed under Railway Protection Force Act.

The main endeavour of the learned counsel for the petitioner is that, when the Investigating Officers are not police officers within the meaning of 'police', they are incompetent to register a crime, investigate into the offence and thereby, the prosecution is groundless.

Learned counsel for the petitioner placed reliance on the judgments of the Apex Court in **Balakishan A. Devidayal v. State of Maharashtra¹**, **Sudhir Kumar v. The State²**, **The State v. Madan Lal³**, **Chandra Sekhar Pani and others v. State of Orissa⁴**, **State of Haryana and others v. Ch. Bhajan Lal and others⁵**, **State of U.P. v. Bhagwant Kishore Joshi⁶** and **P.R.**

¹ AIR 1981 SC 379

² AIR 1953 Cal. 226

³ 1954 CriLJ 310

⁴ 2004 Cri.LJ 2626

⁵ AIR 1992 SC 604

Rajpal v. State of Himachal Pradesh⁷, based on the principles laid down in the judgments referred supra, learned counsel for the petitioner requested to discharge this petitioner for various offences referred supra, by setting-aside the order passed by the II Additional Special Judge for C.B.I Cases, Hyderabad in CrI.M.P.No.305 of 2012 in C.C.No.24 of 2010 for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act, as the investigation done by Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17) is illegal and without any source of authority and thereby, they are incompetent to investigate into the offences.

Whereas, Sri K. Surender, learned Special Public Prosecutor for C.B.I, contended that though, Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17) were initially appointed in Central Industrial Security Force and Railway Protection Force units respectively and deputed to work in CBI, thereby, it is implied that both the officers are discharging their duties as 'Officers' of C.B.I, but not as officers of CISF & RPF units respectively, thereby they are entitled to investigate and file charge-sheet.

Learned Special Public Prosecutor for C.B.I placed reliance on the judgments of the Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and others** (referred supra), **Balakishan A. Devidayal v. State of Maharashtra** (referred supra), **State of**

⁶ AIR 1964 SC 221

⁷ 2014 Cri.LJ 299

M.P. v. Mubarak Ali⁸, H.N. Rishbud v. State of Delhi⁹, Roy V.D v. State of Kerala¹⁰, and P. Sirajuddin v. The State of Madras¹¹, on the strength of the principles laid down in the above judgments, requested to dismiss the criminal revision case.

In view of the rival contentions urged before this Court and perusing the material available on record, the points that arise for consideration are as follows:

- (i) ***Whether Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17), who are working on deputation and discharging their duties in C.B.I are competent to investigate into crime R.C.No.16(A)2009. If not, whether the petitioner is liable to be discharged for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act?***
- (ii) ***Whether the order passed by the II Additional Special Judge for C.B.I Cases, Hyderabad, in Crl.M.P.No.305 of 2012 in C.C.No.24 of 2010 is illegal and irregular. If so, whether the petitioner is liable to be discharged for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act?***

P O I N T N O . 1

The first and foremost contention urged before this Court is that Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying

⁸ AIR 1959 SC 707

⁹ AIR 1955 SC 196(1)

¹⁰ (2000) 8 Supreme Court Cases 590

¹¹ AIR 1971 Supreme Court 520

Officer (LW-17) were the members of CISF & RPF units respectively and they were deputed to work in C.B.I. This fact is not in dispute. But, the strange thing in this case is that, the petitioner did not raise any such contention before the II Additional Special Judge for C.B.I Cases, Hyderabad, more particularly, about the competency of Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17) to investigate into the offences allegedly committed by this petitioner punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act. When this petitioner did not raise such objection as to the incompetency of the Investigating Officers, being the members of CISF & RPF units respectively, who were discharging the duties as Officers of C.B.I on deputation, the Court below is not supposed to advert to record any finding as to the competency of Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17). Further, failure to record any finding by the Court below as to the competency of Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17), is not a ground to interfere with the impugned order, in view of the limited scope of revision under Sections 397 r/w 401 Cr.P.C.

Though, the petitioner failed to raise any such contention with regard to competency and filed petition under Section 239 Cr.P.C before the Trial Court, after its dismissal, the petitioner improved his case substantially without raising any of the grounds before the II Additional Special Judge for C.B.I Cases, Hyderabad,

pointing out the illegality or irregularity or impropriety in the order passed by the Court below on the ground that the Court below did not consider the competency of Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17) and made submissions vehemently as to the competency of the Investigating Officers to investigate into the offences. When the petitioner did not raise such contention before the Trial Court, the petitioner is disentitled to raise such contention for the first time in the revision filed under Sections 397 & 401 Cr.P.C, since it is a new plea set up by the petitioner.

Section 397 Cr.P.C empowers the High Court and a Sessions Judge to call for and examine the record any proceedings before any inferior criminal court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such inferior Court. This section simply lays down the matters which a revisional Court may investigate. The object of this section in conferring the power of revision is that the revisional Court is given a supervisory jurisdiction to secure the correction of a patent error or defect which has resulted in miscarriage of the justice and this may arise from misconception of law or irregularity of procedure. But, the power conferred by this section should not be so exercised as to convert it into a right of appeal, where such a right is excluded by the Code. But unlike Sections 100 and 115 of the Cr.P.C, the power of revision under Cr.P.C is not so rigidly

circumscribed, within the rule requiring clear question of law or of jurisdiction, as to exclude this Court's jurisdiction to interfere where the conclusions of the court below are grossly erroneous and even though grave injustice may have resulted therefrom. Thus, it is clear from the language used in Section 397 Cr.P.C that the revisional Court can exercise power only to call for record to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order as to the regularity of the proceeding. It is a correcting Court. A revisional Court can revise the order of an inferior criminal Court not only on the ground of jurisdiction, but also on the ground that it is illegal or erroneous. 'Legality' and 'propriety' in Section 397 Cr.P.C both include questions of law as to whether a finding, sentence or order was legal or proper having regard to the evidence. 'Correctness' in the section does not mean that the revisional Court may inquire whether the finding was acceptable to it on a balance of the evidence recorded in the Trial Court. The correctness of the finding, sentence or order also implies a legal defence, such as the finding being based on no evidence or being incorrect in the sense that the witnesses may have said. Any finding which is correct on the evidence must necessarily be held to be proper and the order of dismissal which follows the finding must be held to be both correct and proper. No finding can be said to be either correct or proper when the material on which it is based cannot possibly lead any reasonable man to arrive at that finding and in such a case, it will be open to the revisional Court to set it aside and to replace it by what according to it would be the legitimate finding on the evidence. Therefore, this

Court unless concludes that the findings of the Trial Court are not legal and proper or correct or regular, the Court can't interfere with such order.

Section 401 of Cr.P.C. confers a kind of paternal and supervisory jurisdiction on the High Court over all other criminal Courts established in the State in order to correct miscarriage of justice arising from a misconception of law, irregularity or procedure, neglect or proper precautions or apparent harshness of treatment which has on the one hand resulted in some injury to the due maintenance of law and order or, on the other hand, in some underserved hardship to individuals. (vide **Amar Chand Agarwalla v. Shanti Bose**¹²). The revisional power conferred on the High Court by Section 401 of Cr.P.C. is discretionary power, has to be exercised in the aid of justice. Whether or not the High Court will exercise its revisional jurisdiction in a given case, must depend upon facts and circumstances of each case. The discretion conferred on the High Court by Section 401 of I.P.C. has to be exercised judicially, on judicial principles and not arbitrarily. Thus, the jurisdiction of this Court under Section 401 Cr.P.C is limited and it cannot be exercised in a casual manner by this Court and the High Court may exercise such power only when the Court found that there is a manifest perversity in the order or the finding recorded by the Inferior Court is without any evidence or material. In the present case, when the Inferior Criminal Court followed the procedure in accordance with law, irrespective of the correctness and legality of the order, this Court cannot interfere with such

¹² 1973 AIR 799

orders passed by the Inferior Court. Therefore, keeping in mind the scope of revision, I would like to decide the present issue before this Court.

The main ground urged before this Court is confined as to the competency of Sri K.A.A. Salam, Inspector of Police, Investigating Officer (LW-20) and Sri Mohd. Jaffer, Inspector of Police, Trap Laying Officer (LW-17), who were deputed to CBI from CISF & RPF units respectively and discharging their duties. When LWs.20 & 17 are not police officers within the meaning of 'Police Officer', they are not competent to file final report under Section 173 Cr.P.C and the investigation done by them is illegal and thereby sought to discharge this petitioner from the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act.

When the order of the Inferior Criminal Court is challenged before this Court under Sections 397 & 401 Cr.P.C, it has to be tested whether the order passed by the Court below is regular, proper and correct. In fact, the petitioner did not raise the question of incompetency of LWs.20 & 17 before the Inferior Criminal Court to investigate into the offence and file final report. In the absence of any such plea, the Presiding Officer of the Inferior Criminal Court is not expected to record any finding or supposed to record any finding. Apart from that, such contention cannot be urged for the first time before this Court in the revision filed under Sections 397 & 401 Cr.P.C, as this Court has to record its satisfaction as to the correctness, legality and propriety of the order passed by the Presiding Officer of the Inferior Criminal Court, based on the pleas raised before it and this Court cannot allow such additional pleas

which suddenly sprung up for the first time in the revision, when it was not raised either in the petition or urged during argument. Thus, in view of the jurisdiction that conferred on this Court, such plea cannot be entertained for the first time before this Court, since the order passed by the Presiding Officer of the Inferior Criminal Court is not illegal, irregular or improper and on the other hand, the Presiding Officer of the Inferior Criminal Court answered the contentions raised in the petition confining to the plea raised and the arguments advanced before the Court below.

Even assuming for a moment, when such additional plea can be raised that LWs.20 & 17 who are deputed to CBI from CISF & RPF units are incompetent to investigate into the matter, but still the investigation is not vitiated.

Section 13(1)(d) of P.C. Act states that, criminal misconduct of public servant, (i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest.

One of the core contentions raised by the learned counsel for the petitioner before this Court is that, Sri K.A.A. Salam, Inspector of Police, Inspector, CBI, who filed charge sheet was a Member of Central Industrial Security Force and he was deputed to C.B.I and

thereby, he is not entitled to conduct investigation and file charge sheet, since he is not a police officer.

Whereas, the learned Special Public Prosecutor for C.B.I would contend that incompetency of the police officer to conduct investigation would not vitiate the proceedings, unless such investigation caused any prejudice to the petitioner/accused and therefore, the least prejudice was neither pleaded before the Trial Court nor before this Court in the petition filed under Section 239 Cr.P.C and in the revision filed under Section 397 Cr.P.C. Therefore, in the absence of any prejudice to the petitioner/accused and *prima facie* proof of it on account of incompetency of the Investigating Officers, the petitioner/accused cannot be discharged for the offences stated supra.

The Prevention of Corruption Act, 1988, is a special enactment and the provisions therein have to be adhered to strictly to prosecute any personnel. It is relevant to advert to Section 17 of P.C. Act at this stage, in view of the specific contentions raised by the learned counsel for the petitioner.

“17. Persons authorised to investigate.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant: Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by

general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant: Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.”

Thus, to prosecute a person, requirement of authorization is mandatory and the burden of proof of fulfilment of statute is on the prosecution. When the authority of a person to carry out investigation is questioned on the ground that he did not fulfil the statutory requirements laid down therefor in terms of the second proviso, the burden, undoubtedly, was on the prosecution to prove the same.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **State, Inspector of Police, Visakhapatnam v. Surya Sankaram Karri**¹³, wherein, the Division Bench of the Supreme Court adverted to Section 17(2) of P.C. Act and held as follows:

“Provisions of the 1988 Act, no doubt, like the 1947 Act seek to protect public servant from a vexatious prosecution. Section 17 provides for investigation by a person authorized in this behalf. The said provision contains a non-obstante clause. It makes investigation only by police officer of the ranks specified therein to be imperative in character. The second proviso appended to Section 17 of the Act provides that an offence referred to in clause (e) of sub-Section (1) of Section 13, shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. Authorization by a Superintendent of Police in favour of an officer so as to enable him to carry out investigation in terms of section 17 of the Act is a statutory one. The power to grant such sanction has been conferred upon the authorities not below the rank of Superintendent of Police. The proviso uses a negative expression. It also uses the expression "shall". Ex-facie it is mandatory in character. When the authority of a person to carry out investigation is questioned on the ground that he did not fulfil the statutory requirements laid down

¹³ 2006 (3) SCC (CrI) 225

therefor in terms of the second proviso, the burden, undoubtedly, was on the prosecution to prove the same.”

In view of the law declared by the Apex Court, unless a mandatory procedure is followed, the proceedings are liable to be quashed and the Apex Court while deciding an appeal against a conviction passed by the Courts below, adverted to these provisions and recorded such finding. But, in the present case is at the stage of framing charges. No doubt, the statutory functionaries are enjoined with a duty to pass written orders and issuance of an oral direction is not contemplated under the Act and such a concept is unknown in Administrative Law.

Sanction is a pre-requisite to conduct investigation and the provisions of Section 17 of P.C. Act are mandatory and the sanction by an officer not below the rank of Superintendent of Police, in respect of an offence under clause (e) of Sub-section (1) of Section 13, is a pre-requisite to conduct the investigation. (vide **H.S. Gotla v. State**¹⁴). Therefore, Section 17 of P.C. Act mandates the persons who are competent to investigate into the offences that the order of Metropolitan Magistrate or Magistrate of First Class, or make any arrest therefor without a warrant. The first proviso made it clear that, provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest

¹⁴ 2001 Cri.L.J 2695

therefor without a warrant. Further, the second proviso made it clear that, an offence referred to in clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

Here, the offences allegedly committed by the petitioner/accused are offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act. Therefore, the first proviso made it clear that, Inspector of Police may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class or make arrest therefor without a warrant. The second proviso made it clear that, an offence shall not be investigated without the order of Superintendent of Police. As such, authorization of a police officer not below the rank of a Superintendent of Police is mandatory, in view of Section 17 of P.C. Act.

Sri K.A.A. Salam, Inspector, CBI, Hyd was authorized to conduct investigation, whereas, Sri Mohd. Jaffer, Inspector, CBI, was authorized as Trap Laying Officer in the investigation and charge-sheet was filed by Sri K.A.A. Salam, Inspector. Therefore, the petitioner/accused challenged the very validity of the charge sheet filed by Sri K.A.A. Salam, Inspector, Inspector, CBI, who was on deputation from Central Industrial Security Force and authorisation of Sri Mohd. Jaffer, Inspector as Trap Laying Officer, on two grounds.

The first ground is that, Sri K.A.A. Salam, Inspector was an officer in C.I.S.F and Sri Mohd. Jaffer, Inspector was an officer in R.P.F and thereby, they are not police officers, within the definition

of 'Police Officer' and the second ground is that, Sri K.A.A. Salam, Inspector was not authorized to investigate into the offence and file charge sheet.

In view of the specific grounds, it is appropriate to advert to the grounds before deciding the validity of the charge sheet.

Sri K.A.A. Salam, Inspector, CBI is admittedly an officer in C.I.S.F, who was taken on deputation to C.B.I in terms of 2.1 of Recruitment Rules, Appendix 3 of C.B.I (Admin) Manual. According to Recruitment Rules 2.1(vii), Fifty percent posts of Inspectors are filled up by promotion of the Sub-Inspectors in the C.B.I with 5 years regular service in the grade. Remaining fifty percent posts are filled up on deputation/transfer basis of the officers of Centre/State Police Organisations holding analogous posts.

Sri K.A.A. Salam, Inspector, CBI, was working in C.I.S.F, which is a Central Government organization and he was taken into C.B.I on deputation. Similarly, Sri Mohd. Jaffer, Inspector, CBI, was working in R.P.F, which is also a Central Government organization and he was taken into C.B.I on deputation. Thus, it is clear from the material on record that Sri K.A.A. Salam and Sri Mohd. Jaffer, were taken on deputation into C.B.I from C.I.S.F & R.P.F units respectively. If, they were taken into service on transfer, they were deemed to be officers of C.B.I. Even assuming for a moment that they were taken into service of C.B.I on deputation, they are deemed to have discharged the duties of C.B.I officer till they are repatriated to their parent department after completion of deputation period in C.B.I. When they are

discharging their duties as police officers on deputation, they are deemed to be officers in C.B.I for all practical purposes.

The contention of the learned counsel for the petitioner is that, as per Rule 8 of The Police Act, 1861 (Act 5 of 1861), which deals with certificates to police officers, every police officer (appointed to the police-force, other than an officer mentioned in section 4) shall receive on his appointment, a certificate in the form annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a police-officer. On the aspect of surrender of certificate, such certificate shall cease to have effect whenever the person named in it cases for any reason, to be a police-officer, and on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

Indirectly, the argument of the learned counsel for the petitioner is that, unless the Investigating Officer Sri K.A.A. Salam, Inspector, CBI, holds the certificate, as contemplated under Section 8 of the Police Act, 1861, he cannot be deemed to be discharging his duties as a police officer. The word 'police' shall include all persons who shall be enrolled under the Police Act, 1861. On careful analysis of Section 8, only the officers who are appointed to the police force shall be given such certificate under Section 8, under the seal of Inspector General of Police. But, here in this case, Sri K.A.A. Salam, Inspector, CBI, was not appointed to the police force initially, but he was taken to the C.B.I department

either on deputation or on transfer and if it is on transfer, he is deemed to be a full member of C.B.I. Even otherwise, he is discharging his duties as an officer in C.B.I, on deputation, till he is repatriated to the parent department, he is deemed to be an officer of C.B.I and he is entitled to discharge the duties as an officer of the C.B.I. It is not known whether any such certificate was issued to Sri K.A.A. Salam, Inspector, CBI, for deputation period and whether any certificate was issued under Section 8 of the Police Act, 1861 or at the time of transfer in terms of Sub-rule (7) of Rule 2.7 of Police Manual and it was not the case of the petitioner before the Trial Court and for the first time such contention was raised and this is nothing but improvement at the stage of revision before this Court. In the absence of valid grounds before the Trial Court, the Presiding Officer of the Court has not recorded any findings on this aspect and when such question is raised for the first time, the same cannot be entertained, since the jurisdiction of this Court under Section 397(1) r/w 401 Cr.P.C is limited and this Court can interfere only if the Court records a finding that the order of the Court below is irregular, illegal or vitiated by any impropriety. But, when such question was not raised before the Trial Court, there is no meaning in raising such question before this Court. However, the issuance of any certificate under Section 8 of Police Act, 1861 is a question to be decided during trial and such issues need not be taken into consideration while framing charges.

The second ground urged before the Trial Court and this Court is that, Sri K.A.A. Salam, Inspector, C.B.I, SPE was not

authorized to conduct investigation and file charge sheet. Undoubtedly, Superintendent of Police, C.B.I, authorized Sri K.A.A. Kalam, Inspector to conduct investigation and nominated Sri Mohd. Jaffer as Trap Laying Officer. In fact, Sri K.A.A. Salam, Inspector, CBI, participated in the entire investigation and filed charge sheet also. For filing charge sheet, no authorisation is required, but for conducting investigation, authorisation under Section 17(2) of P.C Act is required from the officer in the cadre of Superintendent of Police.

No doubt, Sri K.A.A. Salam, Inspector, CBI, himself completed investigation and filed charge sheet. When, Sri K.A.A. Salam, Inspector, CBI, conducted investigation and filed charge sheet, is it a ground to discharge the petitioner/accused is a question.

Learned counsel for the petitioner contended that, the investigation done by Sri K.A.A. Salam, Investigating Officer is contrary to the law laid down by the Apex Court in **Sirajuddin v. State of Madras** (referred supra).

Learned counsel for the petitioner placed reliance on the judgment of the Apex Court in **Balkishan A. Devidayal v. State Of Maharashtra** (referred supra), where an identical question arose with reference to Section 25 of Evidence Act and the Apex Court adverted to the definition of 'police officer' and laid down the test for determining whether an officer is a police officer or not. Whether the officer concerned under the Special Act, has been invested with all the powers exercisable by an officer-in-charge of a Police Station under Chapter XIV of the Code, qua investigation of

offences under that Act, including the power to initiate prosecution by submitting a report (charge-sheet) under Section 173 of the Code. In order to bring him within the purview of a 'police officer' for the purpose of Section 25 of Evidence Act, it is not enough to show that he exercises some or even many of the powers of a police officer conducting an investigation under the Code. The Apex Court also held that, from the comparative study of the relevant provisions of the Railway Property (Unlawful Possession) Act, 1966 and Cr.P.C, it is abundantly clear that an officer of the RPF making an inquiry under Section 8(1) of the Railway Property (Unlawful Possession) Act, 1966 does not possess several important attributes of an officer-in-charge of a police station conducting an investigation under Chapter XIV of the Code. The character of the 'inquiry' is different from that of an 'investigation' under the Code. The official status and powers of an officer of the Force in the matter of inquiry under the 1966 Act differ in material aspects from those of a police officer conducting an investigation under the Code. Particularly, he has no power to initiate prosecution by filing a charge- sheet before the Magistrate concerned under Section 173 of the Code, which has been held to be the clinching attribute of an investigating 'police officer' and therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act, cannot be excluded from evidence under the said section. In paragraphs 39, 54 & 58, the Supreme Court recorded a specific finding to the effect stated above. Therefore, the main attribute of the police officer is his

competency to investigate and file final report under Section 173 Cr.P.C before the Magistrate.

In the present facts of the case, if Sri K.A.A. Salam, Inspector, C.B.I, was discharging his duties in C.I.S.F, he was incompetent to file a charge sheet or final report under Section 173 Cr.P.C before the Magistrate. But, whereas, he was deputed to C.B.I and working as such, as an officer in C.B.I and in terms of 2.1 of Recruitment Rules, Appendix 3 of C.B.I (Admin) Manual, he acquired the status of police officer in C.B.I on account of his deputation. But, in the facts of the above judgment, the Court did not consider the status of an officer deputed to a police department and discharging duties in the police department or C.B.I, as an officer. In such case, the principle laid down in the above decision cannot be applied to the present facts of the case, as the officer therein was discharging his duties as an officer of Railway Protection Force, but not as an officer in C.B.I.

Learned counsel for the petitioner relied on the judgment of the Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and others** (referred supra) and also judgments rendered by Calcutta, Punjab and Orissa High Courts in **Sudhir Kumar v. The State** (referred supra), **The State v. Madan Lal** (referred supra), **Chandra Sekhar Pani and others v. State of Orissa** (referred supra), respectively, to contend that, unless the officer is authorized to investigate into the crime and file charge sheet or final report, the officers deputed from CISF or RPF are not competent to investigate and file charge sheet. But, in **Chandra Sekhar Pani and others v. State of Orissa** (referred supra), Rule

7 of SC/ST (POA) Rules, came up for consideration and the Orissa High Court held that the investigation done by an officer not below the rank of Deputy Superintendent of Police is an illegality. But, the judgment of Single Judge is contrary to the judgment of the Full Bench of our High Court in **Yannam Satyanarayana v. State of Andhra Pradesh**¹⁵. However, there is another conflicting judgment. Hence, it is not relevant at this stage.

Even if the principles laid down in the above judgment are applied to the present facts of the case, when the officer is incompetent to investigate into the crime and file charge sheet, the investigation done by such officer do not vitiate the entire proceedings.

The learned Special Public Prosecutor for C.B.I contended that, unless it is shown that prejudice is caused to the petitioner/accused on account of investigation done by the incompetent officer, the petitioner/A-1 cannot be discharged by exercising power under Section 239 Cr.P.C and placed reliance on the judgment of Division Bench of the Apex Court in **State of Madhya Pradesh v. Ram Singh**¹⁶. In the said judgment, an identical question under Section 17 of P.C. Act came up for consideration, wherein, the court was of the view that, Persons authorised to investigate Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,--

¹⁵ 2006 CrLJ 2320

¹⁶ (2000) 5 Supreme Court Cases 88

(a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;

(b) in the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank.

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant;

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant;

Provided further that an offence referred to in clause

(e) of sub- section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

This Section provides that no police officer below the rank of an Inspector in the case of Delhi Special Police Establishment, an Assistant Commissioner of Police in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and any other metropolitan area notified as such and Dy. Superintendent of Police or a police officer of the equivalent rank shall investigate an offence

punishable under the Act without prior order of the metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest therefor without warrant. According to the first proviso if a police officer not below the rank of an Inspector of Police is authorised by the Government in this behalf by general or special order, he can also investigate in such offences without the order of Metropolitan Magistrate or the Magistrate of First Class, as the case may be, or make arrest therefor without a warrant. Regarding compliance of this part of the section there is no controversy in the present revision. However, the second proviso provides that where an offence referred to in clause. The Apex Court adverted to the principles laid down in **State of Haryana and others v. Ch. Bhajan Lal and others** (referred supra) and finally concluded that the order passed by the High Court that the investigation done by a competent officer, who was not authorized is unsustainable and directed the Trial Court to proceed with the case. In the facts of the judgment, order clearly indicates the name of the accused and number of F.I.R and also authorisation to investigate.

Coming to the present facts of the case, Sri K.A.A. Salam, Inspector, CBI, himself investigated into the crime and filed charge sheet. In such case, what is the prejudice caused to this petitioner/accused is a question to be decided. If the question is answered in affirmative, the petitioner is entitled to be discharged, since the prosecution is groundless.

An identical question about the competency of the Investigating Officer came up for consideration in various

judgments and in view of the present controversy, I would like to advert to the law laid down by various Courts.

In **Prabhu v. Emperor**¹⁷ and **Lumbhardar Zutshi v. The King**¹⁸, the Privy Council held that, if, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled.

There is no doubt relating to the illegality of arrest in the course of investigation while the Court concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. Therefore, it is clear that whether the cognizance of the case has in fact been taken and the case has proceeded, the invalidity of the investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

Since, the prior authorisation is peremptory, that itself allows an officer of the rank to make the investigation, if permitted by the Magistrate. But this is not any indication by the Legislature that an investigation by an officer of a lower rank without such

¹⁷ A.I.R. 1944 P.C. 73

¹⁸ A.I.R. 1950 P.C. 26

permission cannot be said to cause prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The grant of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it.

In **Union of India v. T. Nathamuni**¹⁹, the Apex Court is for the view that it is clear that in the case of investigation under the Delhi Special Police Establishment Act, an officer below the rank of Inspector cannot investigate without the order of a competent Magistrate. In the present case, order of the Special Judge was obtained by filing an application. That order dated 24.9.2009 shows that it was passed on request and in the interest of justice, investigation pursuant to such order did not suffer from want of jurisdiction.

In **Dr. M.C. Sulkunte vs. The State of Mysore**²⁰, the main question raised by the appellant in an appeal against the order of conviction was that the sanction to investigate the offence given by the Magistrate was not proper in as much as he had not recorded any reason as to why he had given permission to the Inspector of Police to investigate the offence of criminal misconduct of obtaining illegal gratification. Considering Section 5(A) of the P.C. Act, the Supreme Court observed that, although laying the trap was part of the investigation and it had been done by a Police Officer below the

¹⁹ (2014) 16 SCC 285

²⁰ AIR 1971 SC 508

rank of a Deputy Superintendent of Police, cannot on that ground be held that the sanction was invalid or that the conviction ought not to be maintained on that ground. It has been emphasised in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation. The observations in *State of M.P. v. Mubarak Ali*²¹, to the effect that when the Magistrate without applying his mind only mechanically issues the order giving permission the investigation is tainted cannot help the appellant before us.

In the case of *Muni Lal vs. Delhi Administration*²², the Apex Court considered the question with regard to the irregularity in investigation for the offence under the Prevention of Corruption Act. Following earlier decisions, the Apex Court was of the view that, where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the appellant, that there was an irregularity in the investigation and that Section 5-A of the Act, was not complied with in substance, the trial by the Special Judge cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of illegal investigation. The learned counsel for the appellant has been unable to show us how there has been any miscarriage of justice in this case and how the

²¹ [1959 Supp 2 SCR 201 at pp 210 and 211]

²² AIR 1971 SC 1525

accused has been prejudiced by any irregular investigation. Similarly, in **A.C. Sharma vs. Delhi Administration**²³, the provisions of Section 5-A were again considered by this Court and held as under:

"15. As the foregoing discussion shows the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. In *H.N. Rishabud and Inder Singh v. State of Delhi* (supra) it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact been taken and the case has proceeded to termination of the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Prevention of Corruption Act, 1952. This decision was followed in *Munna Lal v. State of U.P* where the decision in *State of Madhya Pradesh v. Mubarak Ali*, AIR 1959 SC 707 was distinguished. The same view was taken in the *State of Andhra Pradesh v. M. Venugopal*, 1964 (3) SCR 742 and more recently in *Khandu Sonu Dhobi v. State of Maharashtra* (supra). The decisions of the Calcutta, Punjab and Saurashtra High Courts relied upon by Mr Anthony deal with different points: in any event to the extent they contain any observations against the view expressed by this Court in the decisions just cited those observations cannot be considered good law."

In **R.A.H.Siguran v. Shankare Gowda & Anr**²⁴, the Apex Court held that, even if investigation is not conducted by an

²³ (1973) 1 SCC 726

²⁴ 2017 (16) SCC 126

authorised officer, the trial is not vitiated, unless prejudice is shown.

In **Raj Kumar Karwal v. Union of India**²⁵, an identical question came up for consideration before the Supreme Court where, the Officers of the Department of Revenue Intelligence who have been invested with the powers of an officer-in-charge of a police station under Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985, are not “police officers” within the meaning of Section 25 of the Evidence Act, 1872. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence as against him. Officer appointed under Section 53 other than a police officer is not entitled to exercise “all” the powers under Chapter XII of the Code including the power to submit a charge-sheet under Section 173 Cr.P.C. However, such officer is entitled to file a complaint and it would be under Section 19 of P.C. Act. Though the fact situation is different, but, such a report can be treated as a private complaint under Section 19 of P.C. Act. If, this principle is applied to the present facts of the case, report filed by the respondent can also be treated as a private complaint.

In the leading judgment in **H.N. Rishbud and Inder Singh v. State of Delhi**²⁶, the Full Bench of the Apex Court considered the ground that the investigations on the basis of which the appellants were being prosecuted were in contravention of the provisions of Sub-section (4) of Section 5 of P.C. Act and held that

²⁵ 1990 SCC (Cri) 330

²⁶ AIR 1955 SC 196

under Section 5(4) of P.C. Act, a police officer below the rank of a Deputy Superintendent of Police shall not investigate any offence punishable under sub-section (2) of Section 5 without the order of a Magistrate of the First Class and the contention was that, the first information reports in these cases were laid in April and June, 1949, but permission of the Magistrate, for investigation as against the public servants concerned, by a police officer of a rank lower than a Deputy Superintendent of Police, was given in March and April, 1951. The charge- sheets in all these cases were filed by such officers in August and November, 1951, i.e. subsequent to the date on which permission as above was given. But admittedly the investigation was entirely or mostly completed in between the dates when the first information was laid and the permission to investigate by an officer of a lower rank was accorded. It appears from the evidence taken in this behalf that such investigation was conducted not by any Deputy Superintendent of Police but by officers of lower rank and that after the permission was accorded little or no further investigation was made. The question, therefore, that has been raised is, that the proceedings pending for trial initiated on such charge-sheets are illegal and require to be quashed.

The Supreme Court, after adverting to Section 5(4) of P.C. Act, which is identical to Section 13(1)(e) & Section 17 of P.C. Act, laid down a test to determine that the provision of the P.C. Act enacting that the investigation into the offences specified therein shall not be conducted by any police officer of a rank lower than a

Deputy Superintendent of Police without the specific order of a Magistrate, directory or mandatory and to determine whether the trial following upon an investigation in contravention of this provision illegal and held that, to determine the first question it is necessary to consider carefully both the language and scope of the section and the policy underlying it. As has been pointed out by Lord Campbell in *Liverpool Borough Bank v. Turner*(1), "there is no universal rule to aid in determining whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed". (See *Craies on Statute Law*, page 242, Fifth Edition). The Code of Criminal Procedure provides not merely for judicial enquiry into or trial of alleged offences but also for prior investigation thereof. Section 5 of the Code shows that all offences "shall be investigated, inquired into, tried and otherwise dealt with in accordance with the Code" (except in so far as any special enactment may provide otherwise). For the purposes of investigation of offences are divided into two categories 'cognizable' and 'non-cognizable'. When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non- cognizable offence, he shall not investigate it without the order of a competent Magistrate. Thus it may be seen that according to the scheme of the Code,

investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance otherwise than on a police report in which case he has the power under section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises. Investigation usually starts on information relating to the commission of an offence given to an officer in charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the

authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in section 162. Under section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be - necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the commission of the offence under section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may

decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefor under Section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173. The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear

that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.

In view of the law declared by the Apex Court in the judgment referred supra, investigation was conducted by Sri K.A.A. Kalam, Inspector, CBI, who is authorized to do so, and, the investigation is not vitiated by any illegality or irregularity, unless it is done with any motive, prejudice or if any miscarriage of justice is caused to the petitioner/A-1, thereby, it is not a ground to exercise power under Section 239 Cr.P.C. to discharge this petitioner/A-1 for the offences punishable under Section 13(2) r/w Section 13(1)(d)(e) of P.C. Act, since the petitioner/A-1 did not plead any such miscarriage of justice either before the Trial Court or before this Court to avail the benefit of this judgment. Moreover, such miscarriage of justice or prejudice is a question of fact to be determined at the end of trial and such questions cannot be decided at this stage, while deciding an application under Section 239 Cr.P.C to discharge this petitioner/A-1.

In view of the long line of perspective pronouncements of Supreme Court and Privy Council, at this stage, the competency of the Investigating Officer is not relevant, since the scope of revision under Section 397 Cr.P.C is limited and this Court may look that the propriety, legality and regularity of the order passed by the

Trial Court under Section 397(1) r/w 401 Cr.P.C, but not beyond that. Hence, the point is held against the petitioner/accused, as I find no substance in the contentions raised by the learned counsel for the petitioner and it is an improvement in the grounds raised by the petitioner/accused and in the Trial Court no such contention was urged.

In view of the aforesaid discussion, I find that, the alleged incompetency of LWs.20 & 17, who investigated into the offences cannot be treated as a ground to find the petitioner not guilty even at the end of trial, unless the petitioner is able to establish that, on account of such investigation by incompetent officer, prejudice or miscarriage of justice is elicited and such question is only a question of fact to be decided after trial. But, at this stage, it is premature to consider such prejudice or miscarriage of justice, more particularly, in the absence of any plea before the Court below or before this Court or during argument. Therefore, on the ground of incompetency, I am unable to accede to the request of the learned counsel for the petitioner to quash the order to discharge this petitioner for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act.

IN RE 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**”²⁷

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

²⁷ AIR 2010 SC 663

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**²⁸ and **Kanti Bhadr Shah And Anr. v. The State of West Bengal**²⁹, the Apex Court while deciding an appeal in a petition filed for discharge held that 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

²⁸ [1994] INSC 308

²⁹ AIR 2000 SC 522

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**³⁰, the Apex Court on elaborate consideration of entire law regarding discharge of an accused, with the approval of law declared in **State of M.P. v. Mohanlal Soni**³¹ and **State of Maharashtra & Ors v. Som Nath Thapa and Ors**³² 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

³⁰ AIR 2013 SC 52

³¹ 2000 Cri.LJ 3504

³² 1996 Cri.LJ 2448

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**³³ 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 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

³³ (2005) 1 SCC 568

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**³⁴ 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 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.

³⁴ (1979) 3 SCC 4

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**³⁵ and **State of Maharashtra & Ors v. Som Nath Thapa & Ors**³⁶ 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**³⁷ in paragraph 16 of the judgment, the Court held that it was not permissible for the Judicial Magistrate to take into

³⁵ (2008) 2 SCC 561

³⁶ 1996 Cri.LJ 2448

³⁷ (2012) 12 SCC 406

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.

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**³⁸; **All India Bank Officers' Confederation etc. v. Union of India and Ors**³⁹; **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia**⁴⁰; **State of M.P. v. Dr.**

³⁸ AIR 1977 SC 1489

³⁹ AIR 1989 SC 2045

⁴⁰ (1989) 1 SCC 715

Krishna Chandra Saksena⁴¹; and State of M.P. v. Mohan Lal Soni⁴²).

In **Dilawar Babu Kurane v. State of Maharashtra⁴³**, 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 Anr⁴⁴**, 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.

In **Suresh v. State of Maharashtra⁴⁵**, the Apex Court after taking note of the earlier judgments in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya⁴⁶** and **State of Maharashtra v. Priya Sharan Maharaj⁴⁷**, held as under:

9...at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents

⁴¹ (1996) 11 SCC 439

⁴² AIR 2000 SC 2583

⁴³ AIR 2002 SC 564

⁴⁴ AIR 1979 SC 366

⁴⁵ AIR 2001 SC 1375

⁴⁶ AIR 1990 SC 1962

⁴⁷ AIR 1997 SC 2041

*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**⁴⁸, 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 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.

⁴⁸ AIR 1977 SC 2018

The Apex Court in **Mauvin Godinho v. State of Goa**⁴⁹, highlighted the scope of Section 228 Cr.P.C, with the approval of law declared in **Sajjan Kumar v. CBI**⁵⁰ **State v. A. Arun Kumar**⁵¹, **State v. S. Selvi**⁵² 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 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* case to the present facts of the case, I find that there is voluminous material against this petitioner to frame charges and try the accused, since the accused was caught red-

⁴⁹ AIR 2018 SC 749

⁵⁰ (2010) 9 SCC 368

⁵¹ (2015) 2 SCC 417

⁵² (2018) 4 SCC 641

handedly and the test conducted by the Junior Scientific Officer, CFSL was found positive.

During investigation, the Investigating Officer examined as many as 14 witnesses under Section 161(3) Cr.P.C. The statement of Dr. T. Narasinga Reddy, Managing Director, Jaya Hospitals, who is responsible for laying trap is clear about pendency of various medical bills with the petitioner herein and spoke about entire trap laid by the Investigating Officer and how the petitioner insisted him to pay bribe. Similarly, Sri Khursheed Ahmed, Administrative Officer, Jaya Hospitals also supported the case of prosecution in *toto*. Sri M.A. Subhan (L.W.4) spoke about lodging a complaint with the Inspector of Police, where, Dr. Reddy expressed his unwillingness to bribe the petitioner to get the bills cleared and also spoke about various bills pending with the petitioner herein and about entire procedure followed by the Trap Laying Officer and the same is supported by evidence of Raju Kolluri (L.W.5).

Dr. C. Ravindra Sharma, Deputy Chief Medical Director, Health & Family Welfare totally supported the case of prosecution with regard to MOU with L.W.2. Dr. Niranjana Rao, Divisional Medical Officer, Railway Poly Clinic, Kazipet, Warangal also supported the same with regard to recognition of Jaya Hospitals and pendency of various bills for the months of July, August, September, October & November, 2009. Besides the statements of witnesses, the report from the Forensic Science Laboratory *prima facie* show that the tests were shown positive and if, the statements coupled with the chemical report are taken into consideration and accepted on its face value, coupled with

presumption under Section 20 of P.C. Act, the material available on record is sufficient to frame charges against this petitioner and proceed further. When there is a presumption in favour of the prosecution, the Court is bound to frame charge against the petitioner for the offences referred supra. Therefore, the cumulative fact of entire evidence collected during investigation is suffice to proceed further against this petitioner to frame charges.

When the petitioner/accused was found in possession of Rs.1,00,000/-, search and seizure of the amount is proved by the prosecution, the Court shall draw a presumption under Section 20 of P.C. Act and the burden will shift to the petitioner/accused to account for such amount found in his possession and in the event of failure to account for the same, the presumption is that, the petitioner received bribe. In this context, it is appropriate to Section 20 of P.C. Act.

“20. Presumption where public servant accepts gratification other than legal remuneration.—

(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause

(a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate.

(2) Where in any trial of an offence punishable under section 12 or under clause (b) of section 14, it is proved that any gratification (other than legal remuneration) or any valuable thing has been given or offered to be given or attempted to be given by an accused person, it shall be presumed, unless the contrary is proved, that he

gave or offered to give or attempted to give that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7, or as the case may be, without consideration or for a consideration which he knows to be inadequate.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the court may decline to draw the presumption referred to in either of the said sub-sections, if the gratification or thing aforesaid is, in its opinion, so trivial that no interference of corruption may fairly be drawn.”

Recently, the Supreme Court in **Rohit Tandon v. Directorate of Enforcement**⁵³ observed that, accused is alleged to have been found involved in a white collar crime. The alleged offence was committed by accused in conspiracy with other co-accused persons in a well planned and thoughtful manner. It has been observed in a catena of decisions by Hon’ble Superior Courts that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

Applying the above principle to the present facts of the case, when this petitioner committed white collar economic offence, he cannot be discharged for the offence, more particularly, when voluminous material collected during investigation by the Investigating Agency directly pointing out his complicity for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act. Therefore, in the present facts and circumstances of the case,

⁵³ (2015) 16 SCC 1

it is difficult to interfere with the order passed by the Court below, as I find no illegality and irregularity or impropriety in the order passed by the Court below warranting interference of this Court while exercising power under Section 397 & 401 Cr.P.C.

In view of my foregoing discussion, I find no ground to reverse the finding recorded by the II Additional Special Judge for C.B.I Cases, Hyderabad, in CrI.M.P.No.305 of 2012 in C.C.No.24 of 2010, for the offences punishable under Sections 7, 13(1)(d) r/w 13(2) of P.C. Act, by exercising power under Sections 397 & 401 Cr.P.C and consequently, the criminal revision case is liable to be dismissed.

In the result, the criminal revision case is dismissed.

Consequently, miscellaneous petitions if any, shall stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date: 09.11..2018

SP

