

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 13.03.2019	Delivered on 20.03.2019
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH
Crl.OP Nos.3761 to 3764 of 2019 & 3901 of 2019
and
Crl.M.P.Nos.2351 to 2354 & 2412 2019

S.Kanna in Crl.O.P.No.3761 of 2019

Kalanithi Maran ..Petitioner/Accused No.6
in Crl.O.P.No.3762/2019

K.S.Ravi ..Petitioner/Accused No.7
in Crl.O.P.No.3763 /2019/Accused No.5

Dayanidhi Maran ..Petitioner/Accused No.3
in Crl.O.P.No.3764/2019

Vedagiri Gouthaman ..Petitioner/Accused No.4
in Crl.O.P.No.3901/2019

...Vs...

The state represented by,
The Deputy Superintendent of Police,
SPE, CBI STF New Delhi.
(RC/DST/2013/A/0019/CBI/STF/DL)

...Respondent/Complainant
All Crl.OPs

COMMON PRAYER : Criminal Original Petitions filed under
Section 482 of the Code of Criminal Procedure, to call for
the records in C.C.No.12 of 2017 (on the file of Hon'ble
XIV Additional Judge CBI Cases Chennai) and quash the
proceedings.

For Petitioner:

in Crl.O.P.No.3761/2019 : Mr.ARL.Sundaresan,
Sr. counsel
for Mr.A.Selvendran

in CrI.O.P.No.3762/2019 : Dr.Abhishekh Manu Singhvi,
Sr. counsel
for Mr.J.Ravindran

in CrI.O.P.No.3763/2019 :Mr.G.Masilamani,
Sr. counsel
for Mr.R.Vivekananthan

in CrI.O.P.No.3764/2019 : Mr.Neeraj Kishan Kaul,
Sr. counsel
for M/s.M.Sneha

in CrI.O.P.No.3901/2019 : Mr..P.Wilson, Sr. counsel
for Mr.D.Ravichandran

For Respondent : Mr.K.Srinivasan,
(in All CrI.OPs) Special Public Prosecutor
for CBI Cases

COMMON ORDER

These Criminal Original Petitions have been filed challenging the proceedings pending before the Court below against the accused persons in C.C.No.12 of 2017.

2. Case of the prosecution is that, the 3rd Accused Dayanidhi Maran, while he was the Minister for Communication and Information Technology (MOC&IT) in the Government of India during 2004 to 2007 abused and misused his office in connivance with the other accused A-1 [Brahamadathan], A-2 [M.P.Velusamy] (both were Senior Officials of BSNL (Chief General Manager), A-4 [V. Vedagiri Gowtham], Private Secretary, A-5 [K.S.Ravi] Electrician and A-6 [S.Kannan] CTO, SUN TV, and his brother A-7 [Kalanithi Maran] CMD of SUN TV and had obtained pecuniary advantage and caused the exchequer a loss of Rs.1.78 crores by installing a private telephone exchange at his residences in Boat Club and Gopalapuram at Chennai, Tamil Nadu, which he used for business transactions involving the Sun Network. More than 700 high-end Telecom lines, having PRA/BRA/ISDN/leased-line, were installed at the third accused residences in the Boat Club area and Gopalapuram area of the Chennai City. They were installed under the service category and bills were not raised for its utilisation. Besides, illegal installation of Landlines with ISDN facilities, on the instruction of the 3rd accused, additional SIM cards for

use of mobile phones with fancy numbers were blocked for SUN TV and distributed to private individuals connected with SUN TV Network. The facilities given to A-3 was excessive, without authority and not in consonance to the Rules and entitlement of Minister or Member of Parliament. Records were fabricated and used as genuine to cover up the misdeed. Based on fabricated documents, accounts were falsified to show as if there are no outstanding dues from A-3.

3. Based on the above facts and the materials collected in the course of investigation, a final report came to be filed against the above said accused persons for an offence u/s 120B r/w 409, 467, 471, 477-A IPC and Section 13(2) r/w 13(1)(c) (d) of the Prevention of Corruption Act, 1988 and Substantive Offences thereof.

4. To substantiate the above allegations, C.B.I had relied upon 124 documents most of them are files maintained in the course of transaction of the BSNL in their day to day activities and the statements of 62 witnesses recorded under section 161 Cr.P.C.

5. After furnishing the material records relied by the prosecution to the persons accused of the offences, as contemplated under Section 207 of Cr.P.C, the trial Court heard the petitions for discharge filed by four of the accused persons. After hearing both sides, the trial Court by virtue of the power conferred under Section 239 Cr.P.C, discharged all the seven accused persons holding that there is no ground to try the persons accused of the offences alleged.

6. The order of the trial Court, discharging all the accused persons, became a subject matter of challenge before this Court in Criminal Revision Petition Nos.671, 682 to 684 of 2018, filed by the CBI. All the revision petitions were allowed and the trial Court was directed to frame charges and complete the trial within a period of 12 months.

7. This order was subsequently confirmed by the Hon'ble Supreme Court. It will be useful to extract the order of the Hon'ble Supreme Court hereunder:

"Heard the learned counsels for the petitioners and perused the relevant material.

Exemption from filing certified copy of the impugned order is granted.

We are not inclined to interfere. However, as recording our reasons for the above conclusion may affect the trial we refrain from doing so. It will, naturally, be open for each of the accused to urge all contentions before the learned trial Court and

the trial will be held without being influenced by any of the observations/findings recorded in the impugned order(s).

The Special Leave Petitions are disposed of in the above terms."

8. The trial Court thereafter framed charges against all the accused persons. This became a subject matter of challenge before this Court in CrI.O.P.Nos.22121 to 22125 of 2018. This Court, after hearing all the parties passed the following order.

"84. In the result, these Criminal Original Petitions seeking to quash the charges are dismissed, however, with the following directions:-

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

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

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

The connected CrI.MPs are dismissed. No costs".

9. The above order was put to challenge before the Hon'ble Supreme Court and the Hon'ble Supreme Court by an order dt.21.01.2019, disposed the appeal as follows:

"2. The grievance raised by the appellants - accused is with regard to direction No.ii contained in paragraph 84 of the impugned judgment and order dated 9th November, 2018 of the High Court.

3. The contention is that the High Court had directed the learned trial Court to look into all materials and frame proper and necessary charges on an assumption that such materials exist.

4. If the above is the grievance of the appellants - accused we are of

the view that the same can be taken care of by directing the learned trial Court not to proceed on any such assumption as perceived by the accused appellants but to look into such materials only if they are already on record and can be considered by the learned trial Court for framing of charges".

10. While the trial Court again took up the case for the purpose of framing charges, A4, A5 and A6 again approached this Court by filing CrI.O.P.Nos.2434 to 2436 of 2019, on the ground that the trial Court is proceeding to frame charges on the assumption that materials are already available on record and on the basis of the draft charges already submitted by the CBI. This Court passed the following order on 29.01.2019.

"10. The Hon'ble Supreme Court has given a clear direction to the trial Court as to the manner in which the charges will have to be framed. Para 4 of the order makes it clear that the trial Court will have to look into the materials and only thereafter proceed to frame the charges. The Hon'ble Supreme Court has specifically held that the trial Court cannot proceed to frame charges on mere assumption. Therefore except for reiterating the order passed by the Hon'ble Supreme Court, there is nothing new that can be added by this Court.

11. The manner in which the charges will have to be framed in a warrant case has been clearly spelt out under Sections 239 and 240 of Cr.P.C. The trial Court has to strictly follow these two provisions at the time of framing of the charges. To reiterate the clarification that has been made by the Hon'ble Supreme Court, the trial Court is directed to strictly consider the materials available on record, which has been collected by the prosecution in the course of investigation and put those materials to each of the accused persons and seek for their explanation. Thereafter the trial Court has to assess these materials along with the answers that have been given by the accused persons and thereafter satisfy itself about the framing of the charges.

12. It is made clear that at the time of framing charges, the trial Court only needs to put the materials to the accused persons and there is no requirement to hear the counsel on the sufficiency of the materials. There is no such procedure contemplated under Sections 239 and 240 of Cr.P.C."

11. Pursuant to the above order passed by this Court, the trial Court has framed charges against all the accused persons as follows:

Rank of the accused	Offences for which charges have been framed
A 1 to A 4	u/s 120 (B) (1) r/w 409, 467 r/w 471, 477-A IPC & Sec 13(2) r/w 13(1) (c) and 13(1) (d) of Prevention of Corruption Act, 1988.
A 5 & A 6	u/s 120B(1) r/w 477-A IPC r/w 109 IPC and Sec 13(2) r/w 13(1) (c) and 13(1) (d) of the Prevention of Corruption Act, 1988 r/w 109 IPC.
A 7	u/s 120B(1) r/w 467 r/w 471, 477-A IPC r/w 109 IPC and Sec 13(2) r/w 13(1) (c) and 13(1) (d) of the Prevention of Corruption Act, 1988 r/w 109 IPC.
A 1 to A 4	u/s 409 IPC.
A 1 to A 4	u/s 467 r/w 471 IPC.
A 7	u/s 467 r/w 471 r/w 109 IPC.
A 1 to A 7	u/s 477-A of IPC.
A 1 to A 4	u/s 13(2) r/w 13(1) (c) of the Prevention of Corruption Act, 1988.

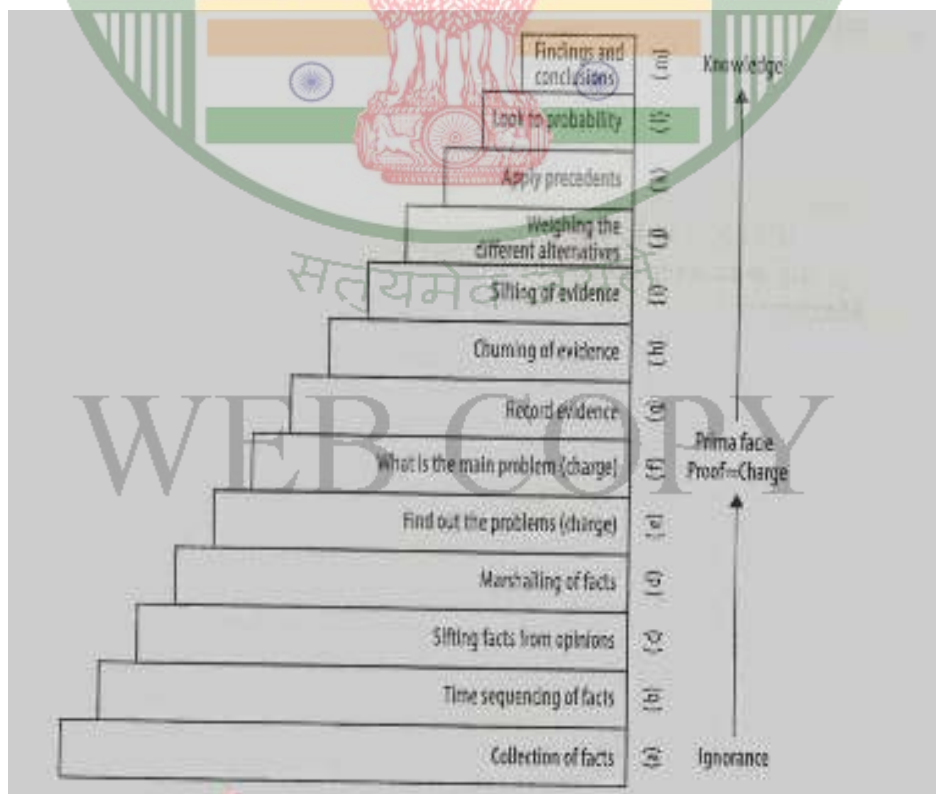
Rank of the accused	Offences for which charges have been framed
A 5 to A 7	u/s.13(2) r/w 13(1) (c) of the Prevention of Corruption Act, 1988 r/w 109 IPC.
A 1 to A 4	u/s.13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988.

Rank of the accused	Offences for which charges have been framed
A 5 to A7	u/s.13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, r/w 109 IPC.

Fundamental Principles on Framing of Charges :

12. A "charge" or "indictment" is like a table of contents in a book so that everybody participating in a trial knows what the different chapters are going to be about. In breaking a stone boulder, one never knows which blow will strike it open. Hundreds of jabs may rain on it without any show of strain. But then one more swing and the whole thing splinters out. If a trial were likened to a stone-breaking effort, on the part of its participants, the charge framing would be included in one of the few first and the earliest strokes that pave the way for others to follow, without minimising their ultimate and lasting significance. A charge shows the kind of take-off made in a trial to combat the confronting confusion, in the journey ahead.

Staircase showing the steps involved in judicial decision-making - starting from ignorance to knowledge.



Courtesy - How to Frame a Charge by Justice Singhal

<https://hcservices.ecourts.gov.in/hcservices/>

13. The art of charge-framing is a practical discipline requiring a margin of flexibility in order to cater to situations not earlier envisaged, but admits to vagueness or lethargy on the part of the judge and may, due to slightest negligence, result in a breakdown of legal machinery due to unenforceability. Of necessity, it requires a degree of caution. It is a sort of preliminary testing of the evidence against the accused person on the basis of information submitted by the police or the citizens. It is across this stage in a warrant or session trial that the court while proceeding from the unknown, achieves, more often than not, a state of absolute knowledge and the least it can have is a level of probable cause, where the prosecution either succeeds or fails in bringing home the guilt of the accused person and the defence in raising, or not, doubt about the veracity of the prosecution evidence.

14. Procedural laws are ground rules for an otherwise elusive concept of justice. While all the noble talk about natural, human and constitutional rights may sound distant and even academic, procedure is the structure that translates those policies into actual practice. Charge framing, being part of the criminal procedural justice system has to be viewed in this perspective. May be, it is a routine exercise in a criminal trial to frame a charge but that routine has the sanctity of a time-seasoned jurisdictional concept behind it that "no man shall be condemned unheard" and that "no man shall be prejudiced in his defence". The act of charge framing on the part of the judge or the Magistrate must, therefore, be performed with the seriousness of effort that it richly deserves and one must avoid the pitfall of routinising it, for routinising leads to trivialising and trivialising to an ultimate fossilisation.

15. Section 211 of the Code deals with form of charges and contents of charge. The Form of Charge referred to in Section 211 of the Code is available in Form No.32 in Schedule II of the Code. The details of each offence are to be stated with reference to the particular accused who committed the offence and the person against whom such offence is committed. It also shows that if the charge is having two or more heads, each charge must be separately detailed. Legislature intended that the Court shall frame charge in such a way that the charge shall contain the necessary details of the distinct offence or offences which include date, time and place where the offence is committed and the person who committed the offence and the person against whom such offence is committed.

the contents and form of a charge and specify the particulars that should be stated in every charge. The object of such statement is to enable the accused person to know the substantive charge, he will have to meet and to be ready for it before the evidence is given. Every charge must contain the following particulars:

1. A statement of the offence with which the accused is charged.

2. A statement of the law and the section of the law against which the offence is said to have been committed.

3. Particulars as to time and place of the alleged offence and the person against whom or the thing in respect of which it was committed.

4. Particulars of the manner in which the alleged offence was committed. This is, however, necessary only where the particulars mentioned in Sections 211 and 212 do not give the accused sufficient notice of the matter, with which he is charged.

17. The extent of the particulars necessary to be given will depend on the facts and circumstances of each case. In drawing up a charge all verbiage should be avoided, as also matters which are not necessary for the prosecution to prove.

18. The provisions relating to the charge are mainly founded on the valuable right of the accused to have a fair trial in criminal cases. Those provisions are intended to ensure that no accused is prejudiced in his defence, in the absence of his knowing the real nature of allegations made against him. Those provisions are laid down to guarantee that the accused is given notice of at least the bare minimum details of the alleged acts committed by him against a particular person, for effectively defending himself. Those provisions are also set on the principles of natural justice.

19. Judicial precedents on Framing of Charges and extent to which an High Court can interfere with it:

i. The essence of the procedure governing the framing of charges under the Code was lucidly explained by Vivian Bose, J in an oft quoted passage in *Willie @ William Slaney v State of Madhya Pradesh*; AIR 1956 SC 116 in the following words:

"We are unable to find any magic or charm in the ritual of a charge. It is

the substance of these provisions that count and not their outward form. To hold otherwise is only to provide avenues of escape for the guilty and afford no protection to the innocent. We agree that a man must know what offence he is being tried for and that he must be told in clear and unambiguous terms and that it must all be "explained to him " so that he really understands (section 271(1) in sessions trials, section 255(1) in warrant cases) but to say that a technical jargon of words whose significance no man not trained to the law can grasp or -follow affords him greater protection or assistance than the informing and the explaining that are the substance of the matter, is to base on fanciful theory wholly divorced from practical reality; and the same applies to the vast bulk of jurors who attend our courts. They are none the wiser because of a formal charge except in a vague and general way that is of no practical account. The essence of the matter is not a technical formula of words but the reality. Was he told? Was it explained to him? Did he understand? Was it done in a fair way?"

The aforesaid observations of Bose, J has, ever since, been the governing principle and has been reiterated in Santosh Kumari v. State of J&K, (2011) 9 SCC 234; wherein it was held as under:

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

18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not

invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for."

- ii. In *Anant Prakash Sinha v. State of Haryana*, (2016) 6 SCC 105, the Hon'ble Supreme Court delineated the wide powers available to the trial court under Section 216 Cr.P.C, to add or alter charges at any stage prior to the pronouncement of judgment. In an instructive passage the Court held as under:

"18. From the aforesaid, it is graphic that the court can change or alter the charge if there is defect or something is left out. The test is, it must be founded on the material available on record. It can be on the basis of the complaint or the FIR or accompanying documents or the material brought on record during the course of trial. It can also be done at any time before pronouncement of judgment. It is not necessary to advert to each and every circumstance. Suffice it to say, if the court has not framed a charge despite the material on record, it has the jurisdiction to add a charge. Similarly, it has the authority to alter the charge. The principle that has to be kept in mind is that the charge so framed by the Magistrate is in accord with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in, charges already framed cannot be altered, for that is not the purport of Section 216 Cr.P.C.

19. In addition to what we have stated herein above, another aspect also has to be kept in mind. It is obligatory on the part of the court to see that no prejudice is caused to the accused and he is allowed to have a fair trial. There are in-built safeguards in Section 216 Cr.P.C. It is the duty of the trial court to bear in mind that no prejudice is caused to the accused as that has the potentiality to affect a fair trial. It has been held in *Amar Singh v. State of Haryana*¹³ that the accused must always

be made aware of the case against him so as to enable him to understand the defence that he can lead. An accused can be convicted for an offence which is minor than the one he has been charged with, unless the accused satisfies the court that there has been a failure of justice by the non-framing of a charge under a particular penal provision, and some prejudice has been caused to the accused.

20. We have reproduced the aforesaid passages by abundant caution so that while adding or altering a charge under Section 216 Cr.P.C, the trial court must keep both the afore stated principles in view. The test of prejudice, as has been stated in the aforesaid judgment, has to be borne in mind."

- iii. The parameters governing the exercise of power under Section 482 Cr.P.C, to quash the charges framed by the trial Court came up for consideration before the Hon'ble Supreme Court (K.T Thomas and M.B Shah, JJ) in State of M.P. v. S.B. Johari, (2000) 2 SCC 57, wherein it was held as under :

"4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-

examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjayya* [(1990) 4 SCC 76 : 1991 SCC (Cri) 47] after considering the provisions of Sections 227 and 228 Cr.P.C, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof."

- iv. In *Tej Bir v. State of Haryana*, (2011) 11 SCC 556, the Court approved its earlier decision in *State of M.P. v. S.B. Johari* (2000) 2 SCC 57, and observed that ;

"the stage of framing of charge, the High Court has to prima facie consider whether there is sufficient ground for proceeding against the accused and the High Court is not required to appreciate the evidence and arrive at the conclusion whether the materials on record are sufficient for conviction of the accused or not. The test at this stage should be, whether after accepting the charge, as framed, any case is made out."

- v. In *Satish Mehra .v. State (NCT of Delhi)*, (2012) 13 SCC 614, the Supreme Court revisited its earlier decisions on the High Court's power under Section 482 Cr.P.C to interdict the framing of charges and held as under:

"14. The power to interdict a proceeding either at the threshold or at an intermediate stage of the trial is inherent in a High Court on the broad principle that in case the allegations made in the FIR or the criminal complaint, as may be, prima facie do not disclose a triable offence, there can be reason as to why the accused should be made to suffer the agony of a legal

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

16. It would also be worthwhile to recapitulate an earlier decision of this Court in *Century Spg. & Mfg. Co. Ltd. v. State of Maharashtra* [(1972) 3 SCC 282]

"10. ... the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge."

It was also held that the court ought not to blindly accept the decision of the prosecution that the accused be tried to face a trial.

19. The view expressed by this Court in Century Spg. case [(1972) 3 SCC 282 : 1972 SCC (Cri) 495 : AIR 1972 SC 545] and in L. Muniswamy case [(1977) 2 SCC 699 : 1977 SCC (Cri) 404 : AIR 1977 SC 1489] to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under Article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spg. [(1972) 3 SCC 282 : 1972 SCC (Cri) 495 : AIR 1972 SC 545] and Muniswamy[(1977) 2 SCC 699 : 1977 SCC (Cri) 404 : AIR 1977 SC 1489] . It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not."

- vi. Very recently in Suresh Kumar Goyal .v. State of Uttar Pradesh (Criminal Appeal 56 of 2019 decided on 11.01.2019), the Hon'ble Supreme Court quoted with approval its earlier decision in Rajiv Thapar .v. Madan Lal Kapoor(2013 3 SCC 330) wherein a nuanced test was laid down for the exercise of power under Section 482 Cr.P.C at the stage of framing of charges. The Court said ;

While dealing with the jurisdiction under Section 482 Cr.P.C, to quash the proceedings at the stage of issuance of process, or at the stage of committal, or at the stage of framing of charges, that is to say before the commencement of actual trial, in the light of material placed on record by the accused, this Court in Rajiv Thapar v. Madan Lal Kapoor laid down as under:

"28. The High Court, in exercise of its jurisdiction under Section 482 Cr.P.C, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the

accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same. The converse is, however, not true, because even if trial is proceeded with, the accused is not subjected to any irreparable consequences. The accused would still be in a position to succeed by establishing his defences by producing evidence in accordance with law. There is an endless list of judgments rendered by this Court declaring the legal position that in a case where the prosecution/complainant has levelled allegations bringing out all ingredients of the charge(s) levelled, and have placed material before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held.

29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 Cr.P.C, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 Cr.P.C, at the stages referred to herein above, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482

Cr.P.C, the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 Cr.P.C, to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 Cr.P.C:

30.1 Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e the material is of sterling and impeccable quality?

30.2 Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e the material is sufficient to reject and overrule the factual assertions

contained in the complaint i.e the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3 Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4 Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5 If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

vii. Kanti Bhadra Shah & Another .vs. State of West Bengal reported in 2001 (1) SCC 722. The relevant paragraphs of the judgment is extracted hereunder:

"7. After observing thus learned Single Judge expressed his helplessness in supporting the order framing charges against the appellants. The Metropolitan Magistrate was thereupon directed to peruse the charge-sheet along with other papers submitted to him and satisfy himself again as to the existence of a prima facie case against the accused. The further directions given by the learned Single Judge read thus:

"If he decides to frame charge upon such satisfaction based on perusal of the charge-sheet and other papers submitted therewith, the learned Magistrate must record the fact of such

perusal and his satisfaction, only then he shall proceed to frame the charge. If on the other hand upon perusal of the aforesaid documents the learned Magistrate finds that the papers do not disclose any prima facie case against the petitioner for framing charges, it shall be open to him to discharge the petitioners from the case."

8. We wish to point out that if the trial court decides to frame a charge there is no legal requirement that he should pass an order specifying the reasons as to why he opts to do so. Framing of charge itself is prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Chapter XIX deals with provisions for trial of warrant cases instituted on a police report.

10. It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused.

11. Even in cases instituted otherwise than on a 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 the first sub-section 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) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context it

is pertinent to point out that even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.

12. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

13. In the present case as the Metropolitan Magistrate has chosen to frame the charge, the High Court, when moved by the accused for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting

aside the charge without stating any reason. But the direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence (if the Magistrate reaches the opinion that there is ground for presuming the commission of offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding an unnecessary extra work on the trial court. Be that as it may, the State has not challenged the order of the High Court. Hence we are not in a position to set aside the impugned order of the High Court. We leave the order as such by making the afore-stated observations. We leave it to the Metropolitan Magistrate to exercise his functions under Section 239 or Section 240 of the Code as he deems fit in the light of the observations made above.

viii. From the above judgment, it is clear that While framing charge reasons are not required to be recorded, order framing charge cannot be quashed merely because it does not contain reasons. For framing of charges a detailed order giving reasons is not necessary under this provision but is so necessary for an order of discharge under 239. At the stage of framing of charge, the trial Court is not called upon to make a detailed documentation of the materials which are available against the accused, but what the Court is required to do is to peruse the same and to pass a reasoned order by indicating the materials in gist and substance.

ix. Munna Devi .vs. State of Rajasthan and Another reported in 2001 (9) SCC 631. The relevant paragraphs of the judgment is extracted hereunder:

"2. Aggrieved by the framing of charges against him under Sections 376, 511, 451 and 354 of the Indian Penal Code, the accused-respondent filed a revision petition in the High Court which was allowed vide the order impugned in this appeal by quashing the charges framed against him. The appellant-complainant-prosecutrix has filed this appeal submitting that the impugned order is against the provisions

of law as the High Court could not prevent the holding of trial by sitting in appeal against the order of framing of charge by sifting and weighing the evidence recorded during the investigation.

3. We find substance in the submission made on behalf of the appellant. The revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged. This Court in *Kanti Bhadra Shah v. State of W.B.* [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] has held that there is no legal requirement for the trial court to write a reasoned or lengthy order for framing the charges.

4. In the instant case the learned Judge ignored the basic principles which conferred the jurisdiction upon the High Court for exercise of revisional powers. It was premature for the High Court to say that the material placed before the trial court was insufficient for framing the charge or that the statement of the prosecutrix herself was not sufficient to proceed further against the accused-respondent.

5. As the impugned order has been passed against the settled position of law, it is unsustainable and is accordingly set aside. The order of framing the charge passed by the trial court against the accused is upheld with directions to it to proceed with the trial of the case and dispose of the same on merits in accordance with law".

x. State of Delhi .Vs. Gyan Devi and Others reported in 2000(8) SCC 239. The relevant paragraphs of the judgment is extracted hereunder:

"7. In the backdrop of the factual position discussed above, the question formulated earlier arises for our consideration. The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 Cr.P.C, seeking for the quashing of charge framed against them the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.

8. In this connection we may refer to the case of Radhey Shyam v. Kunj Behari [1989 Supp (2) SCC 572 : 1990 SCC (Cri) 194] in which a Bench of three learned Judges of this Court referring to the decision in Mohd. Akbar Dar v. State of J&K [1981 Supp SCC 80 : 1982 SCC (Cri) 148] pointed out that at the stage of framing of charges meticulous consideration of evidence and materials

by the court is not required. This Court further observed: (SCC p. 575, paras 9-10)

"9. The High Court has also deemed it necessary to quash the charge against Respondents 1 to 3 because in its opinion the evidence proposed to be adduced by the prosecution, even if fully accepted, cannot show that Respondents 1 to 3 committed any offence and referred in that behalf to the decision in State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] . We find that the High Court's conclusion about the inadequacy of the evidence against Respondents 1 to 3, besides being a premature assessment of evidence, is also attributable to the wrong premises on which the High Court's reasoning is based.

10. We, therefore, find that there was no warrant for the High Court to quash the charge against Respondents 1 to 3 in exercise of its powers under Section 482 Cr.PC."

9. In the case of Minakshi Bala v. Sudhir Kumar [(1994) 4 SCC 142 : 1994 SCC (Cri) 1181] this Court considered the question of quashing of charge by the High Court in invoking its inherent jurisdiction under Section 482 Cr.P.C. In that context, this Court made the following pertinent observations: (SCC p. 145, paras 7-8)

"To put it differently, once charges are framed under Section 240 Cr.P.C the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 Cr.P.C; nor would it be justified in invoking its inherent jurisdiction under Section 482 Cr.P.C to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence.

Apart from the infirmity in the approach of the High Court in dealing with the matter which we have already noticed, we further find that instead of advertent to and confining its attention to the documents referred to in Sections 239 and 240 Cr.P.C the High Court has dealt with the rival contentions of the parties raised through their respective affidavits at length and on a threadbare discussion thereof passed the impugned order. The course so adopted cannot be supported; firstly, because finding regarding commission of an offence cannot be recorded on the basis of affidavit evidence and secondly, because at the stage of framing of charge the Court cannot usurp the functions of a trial court to delve into and decide upon the respective merits of the case."

10. In a recent decision in State of M.P. v. S.B. Johari [(2000) 2 SCC 57 : 2000 SCC (Cri) 311] this Court, advertent to the question of quashing of charges in the light of the provisions contained in Sections 227 and 288, 401 and 397 and 482 Cr.P.C did not favour the approach of the High Court in meticulously examining the materials on record for coming to the conclusion that the charge could not have been framed for a particular offence. This Court, while quashing and setting aside the order passed by the High Court, made the following observations: (SCC p. 60, paras 3-4)

"After considering the material on record, learned Sessions Judge framed the charge as stated above. That charge is quashed by the High Court against the respondents by accepting the contention raised and considering the details of the material produced on record. The same is challenged by filing these appeals.

In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on

record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial."

xi. Amit Kapoor .Vs. Ramesh Chader and Others reported in 2012 (9) SCC 460. The relevant paragraphs of the judgment is extracted hereunder:

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

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power,

the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an

oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of

prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence".

20. From the above judgments, it is clear that the High Court should not unduly interfere with the proceedings of the trial Court. The trial Court is not required to conduct a meticulous examination of the evidence and the High Court should not test the evidence to satisfy itself that the case will end up in a conviction and this is not the requirement at the stage of the framing of the charges or the quashing of the charges. It is neither necessary nor is this Court called upon to hold a full fledged enquiry or to appreciate evidence collected by the Investigating Agency to find out whether it is a case of acquittal or conviction. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the court should be more inclined to permit continuation

of the prosecution rather than its quashing at an initial stage.

21. It is also clear from the above judgments that this Court should exercise its jurisdiction u/s 482 of Cr.P.C, only in exceptional cases and on rare occasions, while this Court is called upon to interfere with the framing of charge. More over once a trial Court has framed a charge against an accused person, the trial must proceed without any unnecessary interference by a superior Court.

22. The High Court exercising its jurisdiction u/s 482 Cr.P.C cannot indulge in micro managing the decisions taken by trial Courts at every stage. The above judgments make it very clear that this Court can interfere with the charges framed only in very rare cases, where even accepting all the allegations levelled by the prosecution, no offence is disclosed. To borrow the words of the Hon'ble Supreme Court "The test at this stage should be whether after accepting the charge, as framed, any case is made out".

SUBMISSIONS ON THE SIDE OF THE PETITIONERS:

Submissions of Dr.Abhishekh Manu Singvi, Senior Advocate :-

23. The learned Senior counsel representing the petitioner [A 7] in CrI.O.P.No.3762 of 2019, primarily addressed his submissions under six heads.

I. There are no materials in order to rope in this petitioner as an accused in this case.

The following submissions were made in order to substantiate this issue.

- In the First Information Report registered by the CBI, this petitioner was not even shown as an accused and there is only mention to the role played by "SUN TV" and Sun TV has not been made as an accused in this case.
- All of a sudden in the Final Report, the name of this petitioner has been roped in on the ground that this petitioner is the ultimate beneficiary of the entire crime and this petitioner has abetted the other accused persons to commit the alleged offence.
- Even in the Final Report there is no specific overt act attributed against this petitioner and the entire allegation proceeds on the basis of assumptions.

- Insofar as this petitioner is concerned only

three witnesses, can at the best, be relied upon and they are LW-6, LW-7 and LW-55. Even these witnesses have stated that the facilities/witnesses could have been used by Sun TV and exchanges might have been installed at different locations and the facilities could have been availed by Sun TV. None of these witnesses have spoken about this petitioner or the actual overt act committed by this petitioner in the entire transaction.

- The check period for the entire transaction was from 2004-2007. LW-55 who has admittedly joined M/s. ABS India Private Limited in the month of July 2012, cannot speak about what happened during the period 2004-2007. That apart his entire statement is based upon the records pertaining to the purchase orders of Sun TV regarding the supply of EPBAX and other tele communication equipments. This purchase order was placed to M/s. ABS India Private Limited. This witness who was not even working in M/s. ABS India Private Limited during the relevant point of time has spoken about the interfacing of the exchanges with Sun TV and he has assumed that based on the purchase order it was possible to interface the various exchanges to Sun TV.
- This statement of LW-55 cannot be taken into consideration in view of the fact that LW-7, who was specifically asked whether any cable connections were provided to Sun TV by BSNL, has given a specific answer, BSNL has not provided any OFC connections to Sun TV. This can be further substantiated from the Final Report itself where a reading of para 11, 12 and 14 clearly shows that there was a point to point connection from BSNL to Gopalapuram residence of A 3 and subsequently to the Boat Club residence. This applies both to the leased line circuits and also the optical fiber connection. This will again prove that LW-55 has merely made an assumption regarding the connection which could have been given to Sun TV.
- LW-57 specifically speaks about the fact that the billing date pertaining to the exact usage is available with the billing section for the relevant period from 2004-2008, and the CD regarding the same was also forwarded to the Investigating Officer. This vital evidence has been intentionally not made as part of the materials filed along with the Final Report. This CD would have clearly shown whether the facilities were in fact utilised by Sun TV,

based on the metered call units. This non furnishing of a vital document must lead to taking an adverse inference against the CBI.

- There are totally 62 witnesses, statements has been recorded by the Investigating Officer and not a single witness has spoken about the part played by this petitioner.

II. Earlier orders passed by this Court and the Hon'ble Supreme Court has not been complied with by the High Court at the time of framing charges.

In order to substantiate this issue, the learned Senior counsel made the following submissions:

- The orders passed by this Court in Crl.O.P.Nos.22121 to 22125 of 2018, the order passed by the Hon'ble Supreme Court in Crl.A.Nos.103 & 104 of 2019 and the subsequent order passed by this Court in Crl.O.P.Nos.2434 to 2436 of 2019, makes it very clear that the trial Court should not proceed on any assumption that materials are available to frame charges, and the trial Court was specifically directed to look into the materials and satisfy itself and put those materials to the accused persons and seek for their explanation and only thereafter proceed further to frame charges.
- The trial Court has not followed these directions and has proceeded to frame charges against this petitioner in a mechanical fashion and the whole process was completed within a period of 30 minutes.
- The trial Court has proceeded to frame the charges for criminal conspiracy on the ground that 10 Mobile Sim Cards were kept for the use of this petitioner in his capacity as the Chairman and the Managing Director of Sun TV. The Final Report does not even state whether these Sim Cards were actually put to use by Sun TV or this petitioner. Admittedly, these Sim Cards were meant to be used only by Sun TV and not this petitioner. The BSNL note file which has been filed as Document No.33 shows that the Sim Card was not put to use. It is a common practice to reserve fancy numbers for companies and that by itself cannot be put against this petitioner and it is very relevant to note that these special numbers, even according to the prosecution was allotted to Sun TV and not to this petitioner.

- The trial Court has also presumed criminal conspiracy on the ground that the entire

illegal facilities obtained from BSNL was utilised for the benefit of A-7. This was not even the case either in the FIR or in the Final Report.

- The trial Court has assumed criminal conspiracy also on the ground that on the approval of A7, A6 has purchased the telephone exchange equipments from M/s. ABS India Private Limited, paid by Sun TV and installed in various places for the usage of Sun Net Work and Dinakaran Net Work. This was not even the case in the Final Report wherein at Paragraph No.31, it does not talk about any approval granted by A-7. Therefore, this is yet another presumption made by the trial Court.
- The trial Court had also presumed that the petitioner had illegally utilised the fraudulently obtained facilities for running Sun TV channel programmes free of cost. The Final Report does not even talk about any conspiracy on the part of the petitioner and there is no material to show that this petitioner had played a role in the allotted fraudulent facility utilised by Sun TV.
- The trial Court has merely presumed the offence of criminal conspiracy and abatement against the petitioner without there being any material against this petitioner or any allegation of overt act on the part of the petitioner. Both the FIR and the Final Report does not show anything to even prima facie prove the charge of abatement.
- The entire material does not establish the role of this petitioner for the offence u/s 477-A IPC. It is alleged that the letter dated 04.05.2009, has been forged by anti dating the letter. There is nothing to show that this petitioner had any role to play in the abatement of the said offence.
- Similarly there is absolutely no material to show that this petitioner had abetted any public servant to commit any offence under the Prevention of Corruption Act. The petitioner cannot be assumed to be part of the conspiracy just because he is the brother of A-3, who was the Central Minister at the relevant point of time. To substantiate this submission, the learned Senior counsel relied upon the judgment of the Delhi High Court in Vinay Jain .Vs. State and Another reported in 2015 SCC Online Del 7363.
- Without taking all these materials into

consideration, the Court below has proceeded to mechanically frame charges against this petitioner.

III. The prosecution has roped in this petitioner as an accused mainly on the ground that this petitioner is the ultimate beneficiary:

In order to substantiate this issue, the learned Senior counsel made the following issues:

- The concept of ultimate beneficiary is alien to criminal law unless it is shown that the accused person was benefited on being part of the conspiracy.
- None of the witnesses or the documents filed along with the Final Report, shows that this petitioner is the ultimate beneficiary. At the best only Sun TV which is a public limited Company can be taken to be the beneficiary and this petitioner cannot be attributed with the offence just because he is the Chairman and Managing Director of the Company. In order to substantiate this submission, the learned Senior counsel relied upon the judgment of the Hon'ble Supreme Court in Manju Gupta .Vs. Lt.Col./M.S.Paintal reported in (1982) 2 SCC 412.

IV. The offence of abatement has not been made out against this petitioner. In order to substantiate this issue, the learned Senior counsel submitted that in order to commit the offence of abatement, there must be either an act of instigation or an act engaging in a conspiracy or an act of intentionally aiding the other accused persons and none of these three ingredients were satisfied in this case.

- In order to constitute an offence of abatement, there must be a specific overt act on the part of the petitioner and there is absolutely no material for the same except for the assumptions made by the trial Court.
- In order to substantiate his submissions, the learned Senior counsel relied upon the following judgments:
 - a) Central Bureau of Investigation .Vs. V.C. Shukla and Others reported in (1998) 3 SCC 401.
 - b) Chitresh Kumar Chopra .Vs. State (Government of NCT of Delhi), reported in (2009) 16 SCC 605.
 - c) Kulwant Singh .Vs. State of Bihar reported in (2007) 15 SCC 670.
 - d) Amit .Vs. State of Maharashtra, reported in 2018 SCC On Line Bom 1399.

V. Sun TV, which is the Public Limited Company has not been made as an accused and this petitioner is roped in on the basis of the concept of vicarious liability.

In order to substantiate this issue, the learned Senior counsel made the following submissions:

- Even though the petitioner has been roped in as an accused in his capacity as the Charman and Managing Director of Sun TV, Sun TV which is the Public Limited Company has not been made as an accused in this case.
- Even, if Sun TV is made as an accused in this case, the criminal liability cannot be fastened against this petitioner on the principle of vicarious liability unless it is shown that the petitioner has played an active role coupled with criminal intent.
- It is the cardinal principle of criminal jurisprudence that there can be no vicarious liability unless the statute specifically provides for the same.
- In order to substantiate his submissions, the learned Senior counsel relied upon the judgment of the Hon'ble Supreme Court in Sunil Bharti Mittal .Vs. CBI, reported in (2015) 4 SCC 609 & HDFC Securities Ltd. and Others .Vs. State of Maharashtra and another reported in (2017) 2 SCC 640.

VI. The scope of interference that can be made by this Court in exercise of its jurisdiction u/s 482 of Cr.P.C after the charges are framed by the trial Court.

In order to substantiate this issue, the learned Senior counsel relied upon the following judgments of the Hon'ble Supreme Court:

- a) Satish Mehra .Vs. State (NCT of Delhi) reported in (2012) 13 SCC 614.
- b) G.Sagar Suri and Another .Vs. State of U.P. and Others, reported in (2000) 2 SCC 636.

Submissions of Mr.ARL.Sundaresan, Senior Advocate:

24. The learned Senior counsel appeared on behalf of the petitioner [A-6] in Crl.O.P.No.3761 of 2019, had made the following submissions:

- This petitioner was not even shown as an accused in the FIR.
- This petitioner was all of a sudden roped in as an accused person in the Final Report only on the ground that this petitioner had issued supply order for purchase of equipments/exchanges worth rupees 50 lakhs from M/s.ABS India Private Limited and got them installed at Chennai and Delhi residence of A-3 to illegally avail the facilities

provided by BSNL to Sun TV.

- Even though it is true that this petitioner had signed the purchase order, that by itself cannot make this petitioner as an accused person unless there are some materials to show that this petitioner was engaged in conspiracy with the other accused persons or this petitioner has abetted the crime committed by the other accused persons. There are absolutely no materials in order to establish the same.
- Insofar as this petitioner is concerned, the statements of LW-3, LW-6, LW-17, LW-36 and LW-55 have been relied upon. Even if all these statements are taken as it is, there is nothing to suggest that A-6 was a part of the conspiracy or A-6 had abetted the other accused persons to commit a crime. The statement of these witnesses does not even establish that high-end telephone connections were used for Sun TV or whether any installations were made in that regard. The entire statement only talks about the possibility or the scope for using the facilities having been actually made use of by Sun TV.
- Insofar as the documents that were collected by CBI during the course of investigation, D-92 to D-96 are the only relevant documents insofar as this petitioner is concerned and none of these documents established any role played by this petitioner in the alleged crime, except the signature of this petitioner in the purchase order.
- Insofar as the issues regarding the earlier orders not being complied with by the trial Court at the time of framing charges, the scope and power u/s 482 of Cr.P.C, the concept of vicarious liability, the scope and ambit of the offences of criminal conspiracy and abetment, are concerned, the learned Senior counsel adopted the arguments of Dr. Abishek Manu Singhvi.
- This petitioner has merely carried out his duties in the course of his employment with Sun TV as a Chief Technical Officer that there are absolutely no materials to show the involvement of this petitioner in any of the offences alleged by the prosecution.
- The Court below has framed the charges in a mechanical fashion and none of the offences for which charge has been framed against this petitioner, is supported by either the statements of the witnesses or the documents

collected in the course of investigation.

Submissions of Mr.P.Wilson, Senior Advocate:

25. The learned Senior counsel representing the petitioner [A 4] in CrI.O.P.No.3901/2019, made the following submissions:

- This petitioner was not shown as an accused in the FIR, and he has been made as an accused in the Final Report only on the ground that he was the additional Private Secretary to A-3.
- No offence has been made out as against A-3, and consequently no offence has been made out against this petitioner also.
- There is no law prescribing any restriction on the telephone facilities provided to a Minister. The Salary, Allowances and Pension of Members of Parliament Act, 1954, is sought to be relied upon and applied to a Minister and the same is totally unsustainable. Since Section 2(b) of the Act, clearly states that a member does not include a Minister, and therefore housing and the members of Parliament (Travelling and Daily Allowances) Rules, 1957, also cannot be made applicable to a Minister.
- The Salaries and Allowances of Ministers Act, 1952, does not provide for the telephone facilities that can be provided to a Minister.
- The Constitution specifically deals separately with the allowances for Ministers and allowances for the member of Parliament and it is dealt with in separate heads in the Union list. Therefore, Allowances of Members of Parliament should not be read into the allowances and facilities provided to a Minister.
- This petitioner has been roped in the Final Report only on the ground that this petitioner converted his residential telephone connection into RSTC category illegally and without any entitlement. This ground is totally unsustainable since RSTC facility is available even to the staff of the Minister and this is evident from Document No.104.
- The RSTC facility was provided after following a detailed procedure which is evident from the various file notings made by different officers in Document No.34.
- LW-2, LW-8, LW-15, LW-16, LW-17, LW-27, LW-40, LW-44, LW-48, LW-56, LW-74 and LW-75 are the only witnesses who refer to the name of this petitioner. However, none of these statements

in any way inculcate this petitioner for the alleged offence and no one has spoken or attributed any specific overt act against this petitioner.

- Document Nos.26, 34, 37, 63 and 104 are the only documents relevant insofar as this petitioner is concerned. None of these documents point out anything incriminating against this petitioner.

- A combined reading of the statements of the witnesses and the relevant documents, at the best only reveals the fact that this petitioner was working as an additional Secretary to A-3 and this petitioner was present during the visits by the various Officials or this petitioner was transferring the calls received from the outsiders to the Minister or this petitioner used the office of A-3. Even though two of the witnesses speak about the so called assistance and coordination by this petitioner for providing the facilities, there is absolutely no material to substantiate the same.

- Document No.73, is the circular which has been put against the accused persons to show that the petitioner is not entitled for the RSTC facility. This circular only applies to BSNL employees and not to outsiders. That apart this circular cannot be given the status of law, and therefore even assuming without admitting that the terms of the circular has been violated, the same by itself will not amount to any offence.

- The trial Court has framed charges in a mechanical fashion without reference to any material that has been collected by the prosecution. None of the charges regarding conspiracy or abatement or forgery or criminal breach of trust or falsification of accounts, have been made out against this petitioner.

- The Court below did not adhere to the requirements of Section 211, 212 and 213 of Cr.P.C at the time of framing of charges.

- The order of the Hon'ble Supreme Court in Crl.A.Nos.103 & 104 of 2019 and which was subsequently reiterated by this Court, has restored the right of the accused persons u/s 239 of Cr.P.C and therefore if no materials are found against the petitioner to frame charges, the petitioner has to be necessarily discharged from the case.

- The learned Senior counsel in order to

substantiate his submissions on facts and in order to substantiate the proposition of law, relied upon the following judgments.

S.No .	Proposition of Law	Citation
1	Charge should be clear, un-ambiguous and not defective filing which it is an incurable illegality and is substantial in nature.	Willie (William) Slaney .Vs. The State of Madhya Pradesh [1955] 2 SCR 1140
2	Irregular exercise of discretion by magistrate in Framing charges.	Natwarlal Sakarlal Mody .Vs. The State of Bombay [1963] 65 Bom LR 660.
		Defects in framing charges
3	Fundamental defect in framing of charges.	State [NCT of Delhi] .Vs. Navjot Sandhu [2005] 11 SCC 600
4	Charge framed in violation of mandatory provision is held illegal.	Rameshan & Others . Vs. State of Kerala 2007 Cri LJ 1637
5	Charge should contain the mandatory particulars.	KLM Vijayachandran K.K. & Anr .Vs. The Supdt., of Police & Anr. [2008] 2 KLJ 751
		Principle for framing of charges
6	Principles relating to framing of charges	Main Pal .Vs. State of Haryana [2010] 10 SCC 130

S.No .	Proposition of Law	Citation
		Order under S.239 of Cr.P.C. does not prevent framing charges under S.240 of Cr.P.C.
7	Challenging of discharge of dismissal of same will not prevent from challenging the framing of charges.	J.Duraimunusamy .Vs. State by The Additional Superintendent of Police Criminal O.P.No.23479 of 2010
		No evidence Charges can be quashed by High Court
8	Requirements of charge of conspiracy.	State through Central Bureau of Investigation .Vs. Dr.Anup Kumar Srivastava [2017] 15 SCC 560
9	The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence.	State of Orissa .Vs. Debendra nath Padhi [2005] 1 SCC 568
		No single charge for several conspiracies/all offences

S.No .	Proposition of Law	Citation
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10	. How the charge should be. . The charge should not mislead the accused. . The court should avoid framing common charges for all offenses.	S. Muralidharan .Vs. State [2018] SCC Online Mad 1359
11	A single charge of conspiracy is not maintainable when there are several different conspirators with separate conspiracy.	R. .Vs. Griffiths and Ors. [1965] 2 ALL E.R. 448
		Forgery & A beneficiary cannot be tried for forgery
12	A charge of forgery cannot be imposed merely because he is beneficiary.	Sheila Sabastian .Vs. R.Jawaharaj and Another [2018] 7 SCC 581
		Quashing of charges under S.482 of Cr.P.C. is maintainable
13	Framing of charges can be challenged under Section 482	Asian resurfacing of Road Agency Pvt.Ltd. .Vs. Central Bureau of Investigation [2018] SCC Online SC 310
		Particulars of charges-Accused is entitled to know
14	The Accused is entitled to know with certainty and accuracy, the exact version of charge brought against him	Kedar Nath Chakravarti and Ors. .Vs. The King-Emperor AIR 1924 Cal 603

S.No	Proposition of Law	Citation
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15	When the person is charged with criminal offence, he must be telling that not only the acts he has alleged to have committed which is said to constitute but also what is the law which he is said to have infringed.	S.K.Roy Chowdhury .Vs. The Kind AIR 1941 Rang 1
		Vague and general nature of charges
16	If the charge is framed in such a vague manner that the necessary particulars with which the accused is convicted is not brought out in the charge within a period is defective.	Emperor .Vs. Makhan AIR 1945 ALL 81
		Charge must contain particulars
17	While framing of charges, when there is no particulars as to the Time, Place and persons it is not a proper charge.	The state .Vs. Rasool and Ors. AIR 1955 ALL 620
		Responsibility of court in framing charges
18	The court may attach blindly the decision of the prosecution to frame charge.	Century Spinning and Manufacturing Co.Ltd. and Ors. .Vs. State of Maharastra [1972] 3 SCC 282
		Framing of charges is an important
19	Framing of charges and examination of accused under Section 313 of Cr.P.C. are two very important stages of criminal trial.	Sajjan Sharma .Vs. State of BIhar [2011] 2 SCC 206
		Cause omissus

S.No	Proposition of Law	Citation
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20	It is not competent to any court to proceed upon the assumption that the legislature has made a mistake. The court must proceed on the footing that the legislature intended what it has said.	Nalikhya Bysack .Vs. Shyam Sundar Haladar and Ors. AIR 1953 SC 148
21	The legislative casus omissus cannot be supplied by judicial interpretative process. A casus omissus cannot be supplied by the court except in the case of clear necessity and when the reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred.	Unique Butyle Tube Industries (P) Ltd. .Vs. U.P. Financial Corporation and Ors. [2003] 2 SCC 455
		Hearing opportunity to the accused under S.239 and 240 of the Cr.P.C.
22	The code enjoins on the court to give audience to the accused for deciding whether it is necessary to proceed to the next stage. There is nothing in the code which shrinks the scope of such audience to oral arguments.	Satish Mehra .Vs. Delhi Administration and Another [1996] 9 SCC 766
23	Under S.239 and 240 of Cr.P.C. at the time of framing of the charges, the judge is first required to consider the police report and documents sent with it and can examine the accused, if he thinks necessary, and give an opportunity to the prosecution and the accused of being heard.	State Anti-Corruption Bureau, Hyderabad and Another .Vs. P.Suryaprakasam [2008] 14 SCC 13

S.No .	Proposition of Law	Citation
24	The judges are duty bound to take case of the constitutional right of the accused persons. They shall see the accused is not prejudiced. Their right should not be abridged, curtailed, jeopardized for reasons beyond their control. 'Hear before Condemn is the basic of "Principles of Natural Justice."	S.Yuvaraj .Vs. The Inspector of Police, Gobichettipalaya m 2013 (6) CTC 320
		Code of conduct not having statutory power is not enforceable by law
25	It can't be sought to enforce the code through contained therein is only having ethical or moral effect and any breach thereof cannot be treated to be lawful or even illegal.	R.Sai bharathi .Vs. J.Jayalalitha and Others [2004] 2 SCC 9
		Un amended S.464 of IPC, 1860
26		Form 32

Submissions of Mr. Neeraj Kishan Kaul , Senior Advocate:

26. The learned Senior counsel representing the petitioner [A 3] in CrI.O.P.No.3764 of 2019, made the following submissions:

- The trial Court has mechanically framed charges against the petitioner without application of mind and without considering the materials available on record, in contravention to the orders passed by the Hon'ble Supreme Court and this Court.

- This petition filed u/s 482 of Cr.P.C challenging the entire proceedings in C.C.No.12 of 2017, has to be considered independently without any reference to the previous orders passed on the earlier occasions. If on an

<https://hcservices.ecourts.gov.in/hcservices/> independent assessment of the material available

on record, this Court comes to a conclusion that no charges can be framed against the petitioner, this Court is entitled to quash the proceedings and while doing so, the earlier orders passed by this Court will not have any bearing.

- The entire proceedings hinges upon a pure question of law, being that of entitlement of the petitioner to telephone/telecom facilities in his capacity as the Minister. For deciding the same, whether the rules applicable to the member of Parliament can be applied to a Minister will have to be considered and if it is held that those rules will not apply to a Minister, the entire bedrock of the case of the prosecution will fall and the natural consequence will be that no offence will be made out against the petitioner. In that case, the petitioner and the other accused persons need not be made to face a meaningless criminal trial.

- The CBI in its charge sheet has based the entire case by assessing the entitlement of the petitioner under Rule 4 of the Members of Parliament Rules, 1956. Based on this rule the CBI is contending that as a Minister, the petitioner is entitled to only three phones, one at his Delhi residence, one at his Constituency and one for broadband connection. Such reliance on the said rules is totally misplaced since u/s 2(b) of the 1954 MP's Act specifically excludes a Minister from the definition of a member. Therefore, a Cabinet Minister is only governed by the 1952, Act.

- The legislature has clearly intended to treat MPs and Ministers differently insofar Salaries, Allowances and other facilities are concerned.

- Section 3 of the 1952, Act makes provision only for salary of a Minister and not for any other allowances. Even after the amendment and coming into force of the 1954 Act, specific provisions have been made only for the medical, housing, telephone and postal facilities for the MPs and no corresponding amendment was carried out for the Ministers.

- When the Act was further amended in the year 1985, constituency allowance was also included as one of the allowances available to an MP. Similarly Section 3 of the Ministers Act of 1952, was also amended to entitle a Minister to a constituency allowance.

- After the 1985 amendment, a Minister who is governed by the 1952 Act, is equated to a Member of Parliament governed by 1954 Act, only for the limited purpose of determining the salary per month, allowance per day and constituency

allowance and for no other purpose. Therefore the natural consequence is that the other facilities of the Minister, including telephone services is not governed by the MPs Act of 1954, and the rules made thereunder.

- The CBI in the charge sheet itself has specifically stated that there are no separate rules in respect of Ministers and the rules framed under the 1954 Act, is also incorporated in the salaries and allowances and pensions of the Ministers Act, 1952, as far as telephone facilities are concerned. This assumption made by CBI is totally baseless and such reading of the provisions of another Act and Rules into the 1952 Minister's Act is alien to the rule of interpretation.

- The 2013 circular, referred by CBI in its charge sheet clarifies that telephone connections would be made available on demand for the Minister. If that is the case it cannot be contended that 1956 rules governed the allotment of telephone facilities to Ministers.

- The statement given by LW-34 and also the extensive file notings approving such connections and the fact that the petitioner immediately after demitting office asked for the closure of the connections, clearly shows that the telephone connections was not made in violation of any rules and it was granted only as per the legitimate entitlement as a Minister.

- The further allegation of the CBI is that this petitioner was having 764 connections. This petitioner was actually having only 10 connections. Under the PRA/PRI connections one telephone connection will have child numbers attached to it and the entire service will be treated as one connection. In this case, the prosecution has construed each child number as a separate connection and has projected as if there are 300 connections and has again shown it twice in the old residence and new residence. This has been done with the sole intention to sensationalize the case.

- A reference to Document Nos.26, 27, 34, 41, 71 and 72 will clearly substantiate the contention that there are only 10 connections at Gopalapuram residence and 10 new identical connections at Boat Club Road after the shifting of the residence. None of the witnesses [7 officials of BSNL] have stated that these lines were misutilized.

- There is absolutely no material to show that the telephone connections were utilized for the

benefit of SUN TV. In the Final Report it is stated that EPABX equipment was ordered by SUN TV by placing a purchase order and it was installed at 19 places, including the residence of the petitioner both in Chennai and New Delhi. According to the Final Report, this equipment can be used for running a private exchange or could have been utilized by SUN Head Office or capable of PRI/BRI connections.

- For the purpose of substantiating the same the statement of LW-17 has been heavily relied upon. The entire reading of the statement given by this witness does not in any way establish telephone connections being used for the benefit of SUN TV. The entire statement is vague and based on conjectures and surmises without any actual specific fact.

- The chart that is contained in the Final Report is based on the statement LW-55, who has joined the ABS Company in the year 2012, and this person talks about the purchase of EPBX machines in the year 2005, and the probable use it could have been put to.

- The prosecution should have at the minimum provided the actual call/usage records, which according to LW-57, is available and for reasons best known this has not been produced along with the Final Report.

- With regard to the allegations of 67 mobile SIMs allotted to the petitioner, documents on record shows that there were only 19 SIM cards and that to for the Ministry and not to the petitioner. This is clear from D.No.102 produced along with the Final Report.

- The investigation revealed that 10 pre-paid connections were blocked for SUN TV. There is absolutely no material to show that it was actually given or utilised by SUN TV. Therefore, even assuming that 10 fancy numbers were reserved for SUN TV, without it being used or any loss has occasioned by putting it to use, no criminal culpability can be alleged against the petitioner.

- Insofar as the allegation of forgery is concerned, the prosecution is relying upon the alteration of the letter dated 04.05.2009, by adding the words and interpolation said to have been done by M.P.Velusamy [A-2]. This does not satisfy the requirement of Section 463 of IPC since it does not amount to making of a false document.

- Insofar as the allegation of ante-dating of the letter which is said to have been prepared on 11.05.2009, being ante-dated to 06.05.2009, it

does not satisfy the requirement of making of a false document. The statement of LW-56 relied upon by the prosecution is falsified by the file notings which shows that it has gone through various Officers at different levels.

- A conjoint reading of Section 409 of IPC and Section 13 (1)(c) and 13(1)(d) of the Prevention of Corruption Act, would reveal that for an act to amount to a criminal breach of trust or criminal misconduct, the act of the public servants must be dishonest and/or fraudulent and in total disregard of the clear legal provision or established guidelines or rule. These charges can never be put against this petitioner since the prosecution is not even able to establish the allegation regarding entitlement against the petitioner and the loss as projected by the prosecution to the Government exchequer is a notional loss without providing any details as to how that loss was arrived at.

- The charge regarding forgery is totally unsustainable since even if the case projected by the prosecution is taken as it is, the same does not satisfy the requirement of making of a false document.

- Section 447(A) speaks about a clerk, officer or servant destroying, altering, mutilating any documents, valuable security etc, which is in the possession of the employer or has been received by him for or on behalf of the employer. By no stretch this provision can be used against the petitioner.

- The charge of conspiracy is being made only on mere conjectures and surmises and not even a single material is available to substantiate the charge of conspiracy.

- In order to substantiate the above submissions, the learned Senior counsel relied on the following judgments which are listed hereunder:

S.No.	Case Law (Title & Citation)
	ABSENCE OF INGREDIENTS FOR SEC 477-A IPC
1.	Central Bureau of Investigation .vs. V.C. Shukla & Ors. 1998 (3) SCC 410

S.No.	Case Law (Title & Citation)
2.	Common Cause (A Registered Society) & Ors. Vs. Union of India and Ors.; 2017 SCC OnLine SC 41
3.	J.Jayalalitha & Ors. V. State, rep.by Director of Vigilance and Anti Corruption, Chennai. 2001 SCC OnLine Mad 875
4.	Dhanya Naik .V. State (1976) 2 Kant LJ 163
5.	Parminder Kaur .V. State of Uttar Pradesh and Another., (2010) 1 SCC 322.
	ABSENCE-DISHONEST INTENTION-INGREDIENTS OF SEC 13 (1) PCA
6.	J.Jayalalitha and Ors. .v. State, rep. by Director of Vigilance and Anti-Corruption, Chennai-2001 SCC OnLine Mad 875.
7.	C.K.Jaffer Sharief .v. State; (2013) 1 SCC 205
8.	Md.Ibrahim & Ors. V. State of Bihar & Anr. (2009) 8 SCC 751.
9.	Manakula Vinayagar Educational Trust .vs. Deputy Superintendent of Police; 2015 SCC OnLine Mad 6629.

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S.No.	Case Law (Title & Citation)
	NO CRIMINAL CASE BASED ON ASSUMPTIONS AND PRESUMPTIONS
10.	Shivaji Sahebrao Bobabe .vs. State of Maharashtra, 1973 (2) SCC 793.
11.	J.Jayalalitha and Ors. .vs. State rep. by Director of Vigilance and Anti-Corruption, Chennai- 2001 SCC OnLine Mad 875.

S.No.	Case Law (Title & Citation)
12.	Sharad Birdhichand Sarda .v. State of Maharashtra, (1984) 4 SCC 116.
	ABSENCE OF CRIMINAL CONSPIRACY
13.	Addl. Superintendent of Police, CBI, .vs. G.B.Anbalagan, MANU/TN/1698/2014.
14.	State of U.P. through CBI .vs. Dr.Sanjay Singh and another 1994 Supp (2) SCC 707.
15.	CBI Hyderabad .V. K.Narayana Rao., (2012) 9 SCC 512.
16.	Vinay Jain .v. State and Another., 2015 SCC Online Del 7363.
17.	R.Sai Barathi .v. J.Jayalalitha and others., (2004) 2 SCC 9.
	ABSENCE OF MENSREA U/S 409,467 & 471 OF IPC
18.	Radha Pisharassiar Amma .v. State of Kerala., (2007) 13 SCC 410.

S.No.	Case Law (Title & Citation)
	SCOPE OF SEC.482
19.	Sathish Mehra .v. State (NCT of Delhi), (2012) 13 SCC 614.
20.	Duraimunuswamy 2011(2) MWN Cr 47
21.	R.P.Kapur .v. State of Punjab, (1960) 3 SCR 388
22.	State of Karnataka .v. L.Muniswamy & Ors; AIR 1977 SC 1489

S.No.	Case Law (Title & Citation)
	ABSENCE - CRIMINAL BREACH OF TRUST-INGREDIENTS OF SEC 409 OF IPC
23.	R.Sai Barathi .v. J.Jayalalitha and others., (2004) 2 SCC 9
24.	Common Cause (A Registered Society) & Ors. .Vs. Union of India and Ors.; 2017 SCC OnLine SC 41.

Submissions of Mr.G.Masilamani , Senior Advocate:

27. The learned Senior counsel representing the petitioner [A-5] in CrI.O.P.No.3763 of 2019, made the following submissions:

- The name of the petitioner did not find place in the FIR. This petitioner was added as an accused in the final report on the ground that the petitioner is working as an electrician and is an employee of Sun TV.
- The statement given by LW5 and LW48 shows that whenever if, as technicians belonging to BSNL visited the residence of A3, this petitioner attended the telephone instrument installed at the residence of A3.
- The statement given by LW15, LW 48 clearly establishes the fact that Gita Tikku, Anandhi and several others maintained the telephones and video conferencing equipments. Therefore, a mere allegation of maintenance of telephones at the residence of A3 by this petitioner, itself does not in any way indicate the complicity of this petitioner inspite of any offence charged regarding the alleged misuse of the telephones at the residence of A3 to benefit Sun TV.
- There is no evidence that A5 assisted the other accused persons with the alleged misuse of the telephone connection at the residence of A3 to benefit Sun TV.
- There is no evidence to indicate that this petitioner had knowledge about the alleged misuse of the telephones in the residence of A3 to benefit Sun TV and that he was aware that he was indirectly assisting such misuse of the telephone connection. Even if the case of the prosecution is taken as it is, the role played by this petitioner to maintain the telephone connection will arise only after the telephone connection are provided by BSNL at the residence of A3. Therefore, by no stretch this petitioner can be attributed within the charge

of conspiracy to instal and misuse the telephone connection.

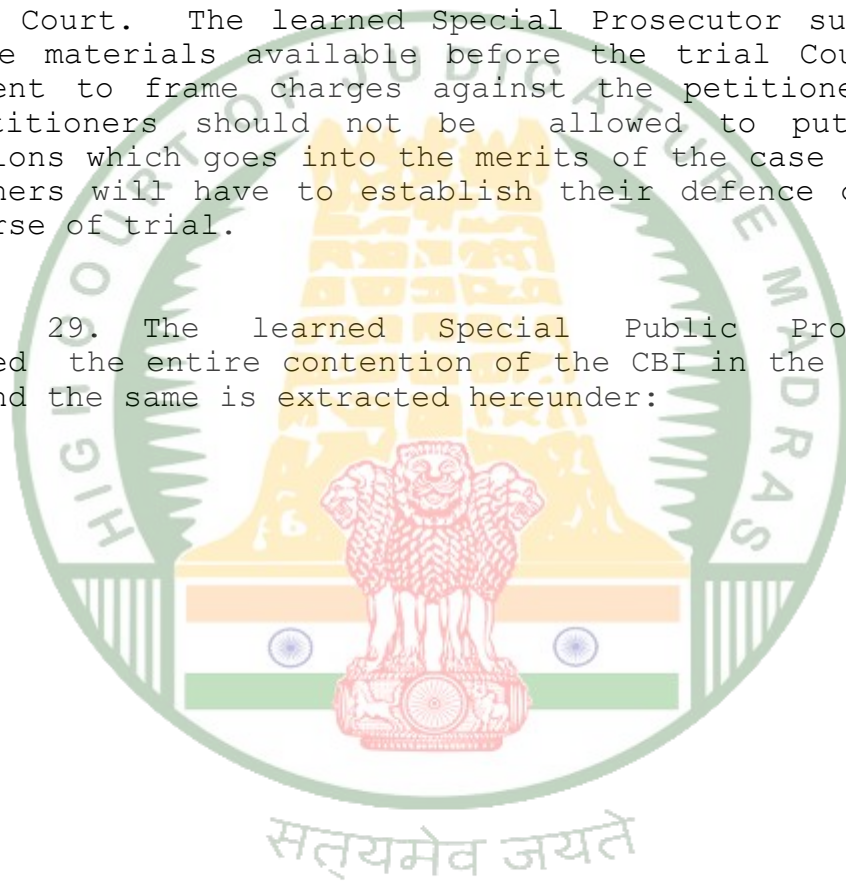
- There is absolutely no material to substantiate the charge of abatement against this petitioner, except for the allegation that this petitioner was in charge of maintaining the telephone connection installed at the residence of A3.
- There is no specific date or period, of the alleged conspiracy and occurrence of the alleged offences mentioned in the final report. The entire charges are vague with reference to the date / period of offence. Therefore, it is impossible for the petitioner to defend himself in the case in the absence of specific allegation against the petitioner.
- Insofar as this petitioner is concerned, there are only four witnesses whose statement may be relevant and they are LW15, 17, 48 and 60. Even if their statements are taken as it is, none of the charges framed against this petitioner is sustainable and the Court below has proceeded to frame charges merely based on assumption and surmises.
- Except for a mere assertion that this petitioner is an employee of SUN Network, there is nothing to show that this petitioner was involved in the offence of creating false documents or committing forgery or had falsified valuable security or accounts of an employer with an intent to defraud the employer.
- The charges framed against this petitioner for an offence under prevention of Corruption Act is totally unsustainable since this petitioner is neither a public servant nor is there any material to show that this petitioner had abated any public servant to commit an offence.
- Even if the entire documents and statements filed by the petitioner along with the final report is taken to be true and correct, no offence has been made out against this petitioner and Court below has mechanically framed charges against this petitioner without there being any material available against this petitioner and therefore, the continuance of the proceedings against this petitioner is an abuse of process of law.

Submissions on the side of CBI:

28. Per contra, Mr.K.Srinivasan, learned Special Public Prosecutor appearing on behalf of the CBI submitted that the petitioners are attempting to re argue the entire case and all the points that has been raised by the petitioners was considered by this Court at the stage

of discharge and all these arguments were rejected and this Court found that there are sufficient materials to frame charges against the petitioners. This judgment was also confirmed by the Hon'ble Supreme Court. Therefore, the petitioners should not be permitted to raise the very same issues in the guise of challenging the charges framed by the trial Court and in the guise of challenging the entire proceedings. The learned Special Public Prosecutor further submitted that quashing the proceedings, as sought for by the petitioners will amount to reviewing the earlier order passed by this Court and the same is not permissible in exercise of jurisdiction u/s 482 of Cr.PC, by this Court. The learned Special Prosecutor submitted that the materials available before the trial Court was sufficient to frame charges against the petitioners and the petitioners should not be allowed to put forth contentions which goes into the merits of the case and the petitioners will have to establish their defence only in the course of trial.

29. The learned Special Public Prosecutor submitted the entire contention of the CBI in the form of chart and the same is extracted hereunder:



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Sl. No.	Questions	Reply
1)	No. of connections given to Dayanidhi Maran at Gopalapuram residence	364 connections - by K.B.Brahmadathan, (A-1), (to bring these connections under Service Category, the correspondence/billing address of office CGM, BSNL was used illegally.) Proved from Advice Notes available in D-3 to D-10 and statement of relevant witnesses i.e. LW-24, LW-54, LW-59. 04 Leased Line Circuits as proved from D-29 to D-32. Statement of relevant witnesses i.e. LW-11, LW-23. 67 Mobile SIMs were issued to Sh.Dayanidhi Maran and also to various persons in their names under references of MOCIT out of which the following 19 mobile SIMs were creating under one account bearing No.500708377, as post paid connections in the name of Minister of Communication. Out of the above SIMs, 10 SIMs were kept reserved for the use of SUN TV (Page-27 of D-37). As proved from the file related to mobile connections bearing No.D-37, statement of relevant witnesses i.e. LW-29, LW-44, LW-74, LW-76.

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Sl. No.	Questions	Reply
2)	No.of connections given to Dayanidhi Maran given at boat club residence.	353 connections by accused M.P.Velusamy (A-2), (to bring these connections under Service Category, the designation of CGM, Chennai Telephones was used as subscriber illegally.) Proved from Advice Notes available in D-13 to D-20 and Statement of relevant witnesses i.e. LW-10, LW-12, LW-25.
3.	At some point of time connections in both the residences were existing parallel.	The connections at Boat Club Road was sanctioned on duplicate basis without disconnecting the connections at Gopalapuram and the connections at both the residences continued to function till July, 2007 as proved from various Advice Notes available in the files related to both the residences vide D-3 to D-10 and D-13 to D-20. The connections were issued on duplicate basis and the previous existing connections at Gopalapuram were not disconnected as evident from as proved from D-26 and statement of Sh.G.Selvam, LW-16, LW-30.
4.	Deliberately bringing those connections under service category in order to evade payment of tariff.	The office address of CGM in case of A-1 and the designation of CGM in case of A-2 was used to deliberately bringing these connections under Service Category and to evade payments. As proved from D-3 to D-10 and D-13 to D-20. From the statements of witnesses i.e. LW-10, LW-12, LW-24, LW-25, LW-54, LW-59.

Sl. No.	Questions	Reply
5.	Creation of an exchange in order to help SUN TV for utilisation of those connections.	The SUN TV purchased High End EPBAX and two of these EPBAX were installed at Delhi and Chennai residences of A-3 with main exchange at SUN HO. These exchanges were so configured that SUN TV exchange could use the facility of any other exchange. As proved from D-93, D-94 to D-96, D-117, 118 and statement of Sh.A.Prabhakar (LW-3), Sh.Nimesh Bhat (LW-36), Sh. Upendra Bhatnagar (LW-55), Sh.Hansraj Saxena (LW-17), opinion of Sh.Sunil Bhadu LW-52 (only opinion cited as D-117) and Sh.Y.K.Sharma (only opinion cited as D-118).
6.	Then A4 personal secretary of Dayanidhi Maran was also extended benefit under service category.	The residential phone of A-4 was also converted into Service Category illegally as evident from D-63. Statement of relevant witness i.e.LW-8.
7.	Antedated documents involving A2, A3 and witness Meenalochiny.	The letter written by A-3 to A-2, purportedly written on 04.05.2009 was antedated and actually received in the office on 06.05.2009 (as evident from the statement of Smt.V.Meenalochiny). A hand written line was inserted in the said letter by A-2 himself as evident from D-33 and specimen/admitted handwriting of A-2 and CFSL opinion cited as D-111 to D-114. Finally a reply stating that only one connection was issued and there was nothing outstanding against A-3 was provided to A-3 at the instance of A-2 despite having knowledge of so many number of connections issued to A-3 as evident from the statement of Smt.V.Meenalochiny and D-88 and D-89.

Sl. No.	Questions	Reply
8.	Involvement of V.Gowthaman (A-4) and K.S.Ravi (A-5) in managing and maintaining the telephone connections installed illegally.	From the statements of E.Iniya Nehru, Senior Technical Director, NIC, Chennai (LW-15) and S.Subramanian, the then SDE, BSNL (LW-48).
9.	OFC connectivity was also provided at the residence of A-3	From the statements of LW-38, LW-43, LW-52, D-42, D-43, D-45, D-47, D-49, D-50, D-84.
10.	Video Conferencing system were also provided by NIC, Delhi and Chennai.	From the statement of LW-15 and LW-26, (D-90, D-91, D-97, D-98)

30. In order to substantiate each and every question referred above, the learned Special Public Prosecutor read the statement of all the relevant witnesses and also brought to the notice of this Court the contents of the relevant documents.

31. The learned Special Public Prosecutor relied upon the following judgments in order to substantiate the above contentions.

1. Asian Resurfacing of Road Agency Pvt.Ltd. . Vs. Central Bureau of Investigation reported in 2018 SCC OnLine SC 310.

2. Sushil Ansal .Vs. State Through Central Bureau of Investigation reported in (2014) 6 SCC 173.

32. The learned Special Public Prosecutor appearing for the CBI ultimately contended that this Court should not adopt the approach of weighing the probabilities and re-appreciating the materials. This Court can interfere with the framing of charges only in exceptional situations for correcting a patent error of lack of jurisdiction and exercise of such jurisdiction has to be limited to the rarest of rare cases. The learned Special Public Prosecutor submitted that this case certainly does not fall in the category of a rarest of rare cases.

REPLY SUBMISSIONS ON THE SIDE OF THE PETITIONERS:

33. The respective Senior counsels appearing on behalf of the petitioners apart from reiterating their earlier submissions mainly concentrated on two issues by way of reply.

- The first issue is that even if submissions made by the learned Special Public Prosecutor appearing for the respondent and the chart submitted by him as a whole is taken into consideration, there are absolutely no materials to frame charges against any of the petitioners. Therefore, the petitioners cannot be made to face the ordeal of trial where the materials do not even satisfy the framing of charges.
- The second issue that has been focussed is the latest judgement of the Hon'ble Supreme Court in Civil Appeal No.2434 of 2019 [Khoday Distilleries Limited Vs. Sri Mahadeshwara Shankara Sakkare Karkhane Ltd.,] dated 01.03.2019. By relying upon this judgement, it was submitted that even though the order of the Hon'ble Supreme Court passed in SLP Nos.6196 to 6199 of 2018 will not merge with the orders passed by this Court in CrI.RC Nos.671, 682 to 684 of 2018, the observations made by the Hon'ble Supreme Court will bind both the parties as well as the Court in any proceedings subsequent there to, by way of Judicial discipline. In Short, it was submitted that the order of the Hon'ble Supreme Court has virtually effaced the order passed by this Court in Criminal Revision petitions. A specific reference in this regard was made to paragraph No.27 of the judgement.

DISCUSSION :

34. This Court has carefully considered the submissions made on either side. This Court before dealing with the submissions made by the learned Senior counsels appearing on behalf of the petitioners, wanted to satisfy itself regarding the availability of the prima facie materials for the purpose of framing charges against the petitioners. Therefore, this Court went through the entire material relied upon by the prosecution.

35. Even though the petitioners tried to give an impression that what is challenged is only the charges framed by the trial Court in exercise of its powers u/s 240 of Cr.P.C, the arguments advanced by the learned Senior counsels appearing for the petitioners will make it

very clear that the petitioners are making one more attempt seeking for a discharge from the case, in the guise of challenging the entire proceedings. All the submissions made by the respective Senior counsels, were also put forth before this Court twice earlier, in the Criminal Revision Petition Nos.671, 682 to 684 of 2018 and the Criminal Original Petition Nos.22121 to 22125 of 2018 referred supra. It is only after considering those submissions, orders were passed by two learned Judges of this Court. Both the learned single Judges came to a very categorical conclusion that there are sufficient materials for framing charges against the accused persons. This Court in exercise of its jurisdiction u/s 482 of Cr.P.C cannot now come to a different conclusion based on the very same materials and very same submissions made earlier before two other learned single Judges.

36. If this Court were to come to a different conclusion, it will virtually amount to reviewing the two earlier orders passed by two other learned Judges of this Court. It will be relevant at this stage to recall the judgment of the Hon'ble Supreme Court in Central Bureau of Investigation and Others .Vs. Keshub Mahindra & Others reported in 2011 6 SCC 2016. The relevant portion of the judgment is extracted hereunder:

"11. No decision by any court, this Court not excluded, can be read in a manner as to nullify the express provisions of an act or the code and the 1996 judgment never intended to do so. In the 1996 judgment, this Court was at pains to make it absolutely clear that its findings were based on materials gathered in the investigation and brought before the Court till that stage. At every place in the judgment where the Court records the finding or makes an observation in regard to the appropriate charge against the accused, it qualifies the finding or the observation by saying "on the materials produced by the prosecution for framing charge". "At this stage", is a kind of a constant refrain in that judgment. The 1996 judgment was rendered at the stage of Sections 209/228/240 of the Code and we are completely unable to see how the judgment can be read to say that it removed from the Code Sections 323, 216, 386, 397, 399, 401, etc. or denuded a competent court of the powers under those provisions. In our view, on the basis of the material on record, it is wrong to assume that the 1996 judgment

is a fetter against the proper exercise of powers by a court of competent jurisdiction under the relevant provisions of the Code".

Even, while this Court exercises its powers u/s 482 of Cr.P.C, this Court must bear in mind the restriction to review an order or judgment imposed u/s 362 of Cr.PC. It will be useful to recall the judgment of the Hon'ble Supreme Court in State of Kerala .Vs. M.M.Manikandan Nair, reported in 2001 4 SCC 752. The relevant portions of the judgment is extracted hereunder:

"6. The Code of Criminal Procedure does not authorise the High Court to review its judgment or order passed either in exercise of its appellate, revisional or original jurisdiction. Section 362 of the Code prohibits the court after it has signed its judgment or final order disposing a case from altering or reviewing the said judgment or order except to correct a clerical or arithmetical error. This prohibition is complete and no criminal court can review its own judgment or order after it is signed. By the first order dated 31.05.2000, the High Court rejected the prayer of the respondent for quashing the criminal proceeding. This order attained its finality. By the impugned order, the High Court reversed its earlier order and quashed the criminal proceeding for want of proper sanction. By no stretch of imagination it can be said that by the impugned order the High Court only corrected any clerical or arithmetical error. In fact the impugned order is an order of review, as the earlier order was reversed, which could not have been done as there is no such provision under the Code of Criminal Procedure, but there is an interdict against it.

7. This court in Hari Singh Mann versus Harbhajan Singh Bajwa & Ors. [2001 (1) SCC 169] held that Section 362 of the Criminal Procedure Code mandates that no court, when it has signed its judgment or final order disposing of a case shall alter or review the same except to correct a clerical or an

arithmetical error and that this section is based on an acknowledged principle of law that once a matter is finally disposed of by a court, the said court in the absence of a specific statutory provision becomes functus officio and is not entitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by the court of competent jurisdiction".

37. This is the third round before this Court, where the accused persons have approached "at the stage of framing charges". This Court took pains to write detailed orders in the Criminal Revision Petitions and also the Criminal Original Petitions, pointing out that there are sufficient grounds and materials for framing charges against the accused persons. Both the orders were also confirmed by the Hon'ble Supreme Court.

38. The Hon'ble Supreme Court while confirming the order passed by this Court in the criminal revision petitions made it very clear that the Court is not inclined to interfere with the order. There is also a very clear indication in the said order that it will be open to the accused persons to urge all the contentions before the trial Court, and the trial will be held without being influenced by any of the observations or findings recorded in the order passed in the revision petitions.

39. It will be relevant to rely upon the judgement of the Hon'ble Supreme Court in Khoday Distilleries Limited referred supra. The relevant portions of the judgement is extracted hereunder :-

"10. The reason for referring the matter to a larger Bench is the conflicting views by different Benches of this Court which have been taken note of in the referral order. Those judgements will be discussed at the appropriate stage. At the same time, we would like to reproduce the following passages from the reference order:

"12. We may also point out in this connection that Article 136 of the Constitution does not confer any right of appeal on any party but it confers a discretionary power on the Supreme Court to interfere in suitable cases. Clause (1) of Article 136 of the Constitution confers very wide and extensive powers on the Supreme Court. The article

commences with a non obstante clause, the words are of overriding effect and clearly indicate the intention of the Framers of the Constitution that it is a special jurisdiction and residuary power unfettered by any statute or other provisions of Chapter IV of Part V of the Constitution. The jurisdiction under Article 136 of the Constitution, of course, cannot be barred by statute since it is extraordinary power under Article 136. Article 136 is an extraordinary power which cannot be taken away by legislation. 13. We also notice that several statutes confer on aggrieved parties right of appeal to the Supreme Court in contradistinction with the powers conferred on the Supreme Court under Article 136 of the Constitution, for instance, Section 15-Z of the Securities and Exchange Board of India (SEBI) Act, 1992 confers a right of appeal to any person aggrieved by any decision or order of the Securities Appellate Tribunal. So also various regulatory legislations provide for statutory right of appeal. To what extent the principle of res judicata and merger would apply in respect of a decision rendered by this Court while exercising its statutory power of appeal as well as the one rendered while entertaining an appeal invoking Article 136 is not seen considered by the larger Bench either in Abbai Maligai or Kunhayammed case, which is also, in our view, an issue to be considered by the larger Bench. 14. We notice that considerable arguments are being raised before this Court as well as before various High Courts in the country on the maintainability of review petitions after the disposal of the special leave petition without granting leave but with or without assigning reasons on which also conflicting views are being expressed by the two-Judge Benches of this Court. In order to resolve those conflicts and for proper guidance to the High Courts, we feel it would be appropriate that this matter be referred to a larger Bench for an authoritative pronouncement."

judgements and particularly the fact that the earlier judgement in the case of Abbai Maligai Partnership Firm is duly taken cognisance of and explained in the latter judgment, we are of the view that there is no conflict insofar as ratio of the two cases is concerned. Moreover, Abbai Maligai Partnership Firm was decided on its peculiar facts, with no discussion on any principle of law, whereas Kunhayammed is an elaborate discourse based on well accepted propositions of law which are applicable for such an issue. We are, therefore, of the view that detailed judgment in Kunhayammed lays down the correct law and there is no need to refer the cases to larger Bench, as was contended by the counsel for the appellant.

27. From a cumulative reading of the various judgements, we sum up the legal position as under:

(a) The conclusions rendered by the three Judge Bench of this Court in Kunhayammed and summed up in paragraph 44 are affirmed and reiterated.

(b) We reiterate the conclusions relevant for these cases as under:

"(iv) An order refusing special leave to appeal may be a non-speaking order or a speaking one. In either case it does not attract the doctrine of merger. An order refusing special leave to appeal does not stand substituted in place of the order under challenge. All that it means is that the Court was not inclined to exercise its discretion so as to allow the appeal being filed.

(v) If the order refusing leave to appeal is a speaking order, i.e., gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration of law by the Supreme Court within the meaning of Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court

of the country. But, this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the special leave petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.

(vi) Once leave to appeal has been granted and appellate jurisdiction of Supreme Court has been invoked the order passed in appeal would attract the doctrine of merger; the order may be of reversal, modification or merely affirmation.

(vii) On an appeal having been preferred or a petition seeking leave to appeal having been converted into an appeal before the Supreme Court the jurisdiction of High Court to entertain a review petition is lost thereafter as provided by sub-rule (1) of Rule 1 of Order 47 CPC."

(c) Once we hold that law laid down in *Kunhayammed* is to be followed, it will not make any difference whether the review petition was filed before the filing of special leave petition or was filed after the dismissal of special leave petition. Such a situation is covered in para 37 of *Kunhayammed* case".

40. It will be more relevant to focus on paragraph No.27 (b) (v), wherein, the Hon'ble Supreme Court was dealing with a case where a leave is refused but there is a speaking order giving reasons for refusing grant of leave. This becomes more relevant since the order passed by the Hon'ble Supreme Court in SLP Nos.6196 to 6199 of 2018 falls within this category. The Hon'ble Supreme Court has categorically held that even such orders will not merge with the order of the Court which became a subject matter of challenge. In other words, the order

passed by this Court in Criminal Revision petitions will not merge with the order passed by the Hon'ble Supreme Court in SLP Nos.6196 to 6199 of 2018. The effect therefore will be that the order passed by this Court in the Criminal revision petitions remains intact.

41. The learned senior counsel appearing on behalf of the petitioners by relying upon the clause in the judgement submitted that a speaking order giving reasons for refusing the grant of leave will bind the

parties there to and also the Court in the subsequent proceedings. By developing this argument, emphasis was made to the observations made by the Hon'ble Supreme Court in the said order to the effect that it will be open to each of the accused person to urge all contentions before the learned Trial Court and the trial will be held without being influenced by any observations/findings recorded in the judgement passed in the Criminal Revision petitions. This according to the learned Senior counsel appearing for the respective petitioners would mean that de-hors the findings of the learned single judge in the criminal revision petitions, the order of the Hon'ble Supreme Court will eclipse the order passed by this Court and as a result, the sufficiency of materials for framing charges should be gone into afresh.

42. This Court is not in agreement with the aforesaid proposition canvassed by the learned senior counsel appearing for the petitioners. It should be kept in mind that the Hon'ble Supreme Court categorically stated in the order that the Court is not inclined to interfere with the order passed by this Court in the Criminal Revision Petitions. This statement makes it clear that the order passed by this Court in the criminal Revision petitions was left untouched and intact. The subsequent observations made by the Hon'ble Supreme Court was only to safeguard the rights of the accused persons to defend themselves during trial, since the trial Court should not get influenced with the observations made by this Court in the Criminal Revision Petitions touching upon the merits of the case. No other meaning can be ascribed to the observations made by the Hon'ble Supreme Court.

43. The learned senior counsel appearing for the petitioners would submit that the process of trial starts with the framing of charges. Therefore, the supreme Court while using the word trial in the above said order also had in its mind the process of framing of charges. That being so, the petitioners are entitled to question the sufficiency of materials again at the time of framing charges.

44. It is a settled law that the order / Judgement of a Court cannot be read like a statute. It cannot be given interpretations to suit a litigants requirements. The wordings used in an order should be understood as it is without attempting to read in between lines. The Hon'ble Supreme Court has categorically upheld the availability of sufficiency of materials that was found by this Court in the Criminal Revision Petitions. The only safeguard that was given to the petitioners was that the trial Court will not get influenced by the

observations made on the merits of the case and the trial court will independently apply its mind during trial. In the considered view of this Court, no other meaning can be ascribed to the order of the Hon'ble Supreme Court.

45. The observations/findings given by this Court in Crl.O.P.Nos.22121 to 22125 of 2018 at para 64, 82 and 83 make it very clear that the petitioners did not succeed in assailing the issue qua the availability of material to frame charges. On appeal, the Hon'ble Supreme Court granted leave and disposed the appeal upholding the judgment dated 09.11.2018. The petitioners consciously restricted their grievance before the Hon'ble Supreme Court to paragraph 84 ("II") of the order of this Court. This was the only issue addressed by the Hon'ble Supreme Court and the observation made by the Hon'ble Supreme Court at para 4 of the order makes it clear that the Hon'ble Supreme Court did not interfere with the findings in the order except to state that a) trial Judge shall look into the material available on record; and b) such material shall be considered by the trial Judge for framing charges. It must be kept in mind that this order was passed by the Hon'ble Supreme Court after granting leave and as a result of the same, the order dated 09.11.2018, passed by this Court had merged with the order of the Hon'ble Supreme Court and the resultant position is summarised as under:

a. The order passed in the revision Petitions dated 25.07.2018 reversing the order of the CBI judge and holding that there were "heaps and heaps of material", had attained finality. Even the Hon'ble Supreme Court did not think fit to interfere with this order.

b. The second round in Crl.o.p.Nos.2434 to 2436 of 2019, dated 29.01.2019, was a re-hash of the earlier round. But the learned single Judge negated the attack on sufficiency and held that the sufficiency of material was already decided in the earlier round and the only error, if any, was in the mode and manner of framing of the charges.

c. On appeal, the Hon'ble Supreme Court upheld the findings in the judgment, including the aforesaid finding at paragraph 82, but thought it fit only to modify paragraph 84 by stating that the trial judge ought to consider only the material already on record and material that "can be considered" for framing charges. The finding on sufficiency was expressly left untouched. By virtue of the grant of leave to appeal the order of this court merged with that of the Supreme Court.

d. The order passed on 29.01.2019 did not dilate on the scope of the direction contained

in the order dated 21.01.2019. In fact, at paragraph 10 it has been made abundantly clear that all that is being done is a reiteration of the direction given by the Supreme Court.

e. It follows that that the question of sufficiency of material has already attained finality vide two orders of the Supreme Court dated 30.07.2018 and 21.01.2019.

46. The entire attempt of the petitioners seem to be to again conduct the case as if this Court is considering their case for discharge. In other words, what the petitioners failed to achieve in the discharge petition, is now sought to be achieved in the guise of challenging the charges framed by the Court below. The petitioners wants the Court below to write a detailed order showing the reasons for framing the charges against the accused persons. That is not a requirement under law as held by the Hon'ble Supreme Court in Kanti Bhadra Shah and another .vs. State of West Bengal referred supra, Magistrate is obliged to record his reasons, if he decides to discharge the accused. But, there is no such requirement if he forms the opinion that there is ground for framing a charge. Framing of charge itself is a prima facie order that the trial Judge has formed the opinion, upon considering the Police Report and other materials collected during the course of investigation.

47. In the instant case the Court below has satisfied the requirements of Section 211 to 213 of Crl.P.C and has applied its mind to all the materials collected by the prosecution and sufficiently read and explained the charges to the accused persons in writing. From the answers given by the accused persons it is clear that they have also perfectly understood the charges framed against them.

48. This Court is of the considered view that this case does not fall within the rarest of rare cases, requiring interference in exercise of its jurisdiction u/s 482 of Crl.P.C.

49. The attempt made by the petitioners in these petitions, is to give a skewed meaning for the observations made by the Hon'ble Supreme Court in Crl.A.No.104 of 2019, dated 21.01.2019, and this Court in Crl.O.P.Nos.2434 to 2436 of 2019, dated 29.01.2019. The Hon'ble Supreme Court and this Court merely directed the trial Court to look into the materials and satisfy itself before undertaking the exercise of framing charges, in accordance with the requirements of the Code of Criminal Procedure. The relevant procedure has already been stated in detail herein above, and this Court is convinced that the trial Court has fulfilled all the requirements before

framing the charges in this case. There is absolutely no ground to interfere with the charges framed by the trial Court. A combined reading of Section 215 and 464 of Cr.P.C, makes it very clear that unless irregularity or omission in framing charges has mislead or caused prejudice to the accused in his defence and had occasioned a failure of justice, it will not vitiate the trial. Such irregularity is even curable u/s 465 of Cr.P.C.

50. The challenge, at this juncture, is to the charge sheet on the basis that there exists no material against the accused and that the trial would be an abuse of process. However, to pass muster under the Bhajan Lal test, the accused must show that the case against them do not "prima facie" make out any offence, or that they are so "absurd or inherently improbable" (paragraphs 102 (1) (3) (5) of Bhajan Lal). However, this would in effect be another bite at the cherry as the finding at paragraph 89 of the order dated 25.07.2018 stares at the accused.

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

51. If the High Court were to take a different view and record a conflicting decision it would, in effect, be a review which is barred under Section 362 of the Code. This is more so in view of the fact that the material that was available then and the material now sought to be assailed are one and the same. This conclusion is fortified by the decision of the Supreme Court in Simrikhia v. Dolley Mukherjee, (1990) 2 SCC 437, wherein it was observed as under:

"3. The inherent power under Section 482 is intended to prevent the abuse of the process of the court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code. If any consideration of the facts by way of review is not permissible under the Code and is expressly barred, it is not for the court to exercise its inherent power to reconsider the matter and record a conflicting decision. If there had been change in the circumstances of the case, it would be in order for the High Court to exercise its inherent powers in the prevailing circumstances and pass appropriate orders to secure the ends of justice or to prevent the abuse of the process of the court. Where there is no such changed circumstances and the decision has to be arrived at on the facts that existed as on the date of the earlier order, the

exercise of the power to reconsider the same materials to arrive at different conclusion is in effect a review, which is expressly barred under Section 362.

52. If the petitioners are confident enough that they have a strong case for defence and none of the charges framed by the Court below can be sustained by the prosecution, they must willingly go ahead facing the trial and get an Hon'ble acquittal. The petitioners have ensured that this case does not cross the threshold of framing of charges and they come up with the same plea every time by giving it a different form. In a case where the prosecution has levelled allegations, bringing out all ingredients of the charges levelled, and have placed materials before the Court, prima facie evidencing the truthfulness of the allegations levelled, trial must be held. But the petitioners do not want to face a trial and establish their defence in accordance with law.

53. The petitioners have consumed sufficient judicial time of this Court and this is the third time, this Court is called upon to interfere with the proceedings of the trial Court, at the stage of framing charges. This Court cannot interfere with the proceedings of the trial Court at each and every step and that is not the purport and scope of exercising its jurisdiction u/s 482 of Cr.P.C.

54. In the result, all the criminal original petitions are dismissed. The Court below is directed to proceed further with the trial, and complete the proceedings within a period of four months from the date of receipt of copy of this order. The trial shall be conducted strictly in line with Section 309 of the Code of Criminal Procedure and the guidelines given by the Hon'ble Supreme Court in Vinod Kumar .vs. State of Punjab reported in [2015 (1) MLJ (crl) 288]. If the petitioners adopt any dilatory tactics, it is open to the trial Court to insist upon their presence and remand them to custody as laid down by the Hon'ble Supreme Court in State of Uttar Pradesh .Vs. Shambhu Nath Singh reported in [JT 2001 (4) SC 319]. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

KP

To,

1.The Deputy Superintendent of Police,
SPE, CBI STF New Delhi.

2.The XIV Additional Judge,
CBI Cases , Chennai.

3.The Public Prosecutor, High Court ,Madras.

+1cc to Mr.A.Selvendran , Advocate SR.No.26487

+1cc to Mr.J.RAvindran , Advocate SR.No. 26483

+1cc to Mr.R.Vivekananthan , Advocate SR.No.26489

+1cc to M/s.M.SNEHA, Advocate SR.No.26490

+1cc to Mr. D.RAVICHANDRAN, Advocate SR.No. 26491

Crl.OP Nos.3761 to 3764 of 2019 & 3901 of 2019
A.SK(29/04/2019)



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