Uday S. Jagtap

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 555 OF 2019

Smt. Pritee Pritam Nagarkar .. Applicant

Vs.

1. Central Bureau of Investigation
   A.C.B., Mumbai
2. The State of Maharashtra .. Respondents

.....

Mr. Ejaz Khan a/w Mr. Vijay N. Shingnapurkar for the applicant

Mr. Hiten Venegaonkar, S.P.P. for respondent no.1 – CBI

Ms. J.S. Lohokare, APP for respondent no.2 – State

CORAM : PRITHVIRAJ K. CHAVAN, J.

RESERVED ON : 9th DECEMBER, 2020
PRONOUNCED ON : 18th DECEMBER, 2020
(Through Video Conferencing)

P.C.

1. Rule.

2. Rule made returnable forthwith. Heard finally with the consent of learned Counsel for the applicant / original accused no.2 and the learned Special Public Prosecutor appearing for respondent no.1 – C.B.I.

3. Mr. Venegaonkar waives service on behalf of respondent no.1 - CBI.

4. The revisional powers of this Court under Section 397 of the Criminal Procedure Code as well as under Article 227 of the Constitution of India have been invoked impugning an order passed by the C.B.I. Special Court in C.B.I. Special Case No.10 of 2017 on 30th September, 2019 rejecting an application of discharge preferred by the applicant, who is being prosecuted by C.B.I., along with her husband – accused no.1 of the offences under Sections 13(1)(e) read with 13(2) of Prevention of Corruption Act, 1988 (for short "P.C. Act") and Section 109 of the Indian Penal Code.

5. Few facts germane for disposal of the Revision Application, in nutshell, can be summarized as follows :-

6. Pritam Nagarkar is the prime accused of whom the applicant is the wife. Pritam Nagarkar had served with Dena Bank, Malabar Hill Branch for 31 years as a Senior Manager, who has admittedly been dismissed from the services of Dena Bank on 21.03.2016 on the charges of fraud of Rs.224 crores. He is being prosecuted along with the applicant of the offence punishable under Section 13(1)(e) read with 13(2) of the P.C. Act as well as under Section 109 of the Indian Penal Code for having found in possession of assets disproportionate to his known source of income to the tune of Rs.33,28,374/- in his name as well as in the name of his family members for a period from 31.01.2014 to 16.07.2014 (check period).

7. It is the contention of the applicant that she has her own

business of trading in shares. She also earns by conducting private tuition classes for past several years and has also been earning income from house rent. She has been regularly filing income tax returns. The prosecution agency however, has falsely implicated her alleging commission of an offence under Section 13(1)(e) of the PC Act read with Section 109 of the Indian Penal Code.

8. It is contended that Statement "D" submitted along with the charge-sheet in respect of the expenditures indicates that the applicant had forwarded a sum of Rs.21,31,925/- to M/s. J.M. Financial Services Ltd. A perusal of the Statement "C" indicates income during check period whereas the Investigating Agency had shown the net profit earned on trading account to the tune of Rs.18,55,138/-. Statement "B" indicates assets to the tune of Rs.16,41,955/- as shares.

9. It is thus, contended that the applicant had received profits / benefits in two forms namely; one by way of receipt of cheque and other by way of profit in the form of shares which were retained by her. Thus, even though the applicant had shares to the tune of Rs.16,41,955/-, there is no separate payment made other than 21,31,925/-. The Investigating Agency had, therefore, wrongly considered the assets, income and expenditure and thereby erroneously arraigned the applicant as an accused.

10. In support of her contention, the applicant has submitted

a chart in tabular form indicating the comparative figures, which reads as under :-

Particular		As per Defence	As per Prosecution	Differences
Income considered by prosecution	35,37,212			
Income on trading in shares in form of shares, prosecution not considered	16,41,955			
Income by way of interest, dividend, rent credited in A/c 00011000072220 with HDFC Bank, prosecution considered short	1,04,000	52,83,167	35,37,212	17,45,955
Expenditure		32,38,800	32,38,800	
Likely savings		20,44,367	2,98,412	17,45,955
Asset at the end of the check period considered by prosecution.	49,45,299			
Less – prosecution considered Income as assets	16,41,955	33,03,344	49,45,299	16,41,955
Asset prior to check period		24,05,531	24,05,531	
Asset during the check period		8,97,813	25,39,768	16,41,955
Surplus (D.A.)		11,46,554	-22,41,356	

11. On the other hand, in its reply, respondent no.1 – C.B.I. refuted all the contentions of the applicant and contended that after completion of the investigation, a charge-sheet has been filed against the applicant and her husband. It has been noticed that the applicant has abetted the offence under the P.C. Act and was found in possession of assets disproportionate to the tune of Rs.22,41,356/- (63%). It is contended that the calculations made by the respondent are based upon the statements of witnesses and the documents forming part of the record which were collected during the course of investigation.

It is contended that on the basis of documents collected during the investigation, a total amount of Rs.27,13,201/- has been included in Statement “C” as the income of the applicant shown in Income Tax Returns, interest / dividend credited in various savings accounts and income from sell / purchase of shares.

12. Mr. Khan, learned Counsel for the applicant would argue that husband of the applicant had served with the bank for 31 years, whereas the check period of the applicant is only for 6 months i.e. from 31.01.2014 to 16.07.2014. According to the learned Counsel, the Investigating Agency had not called for the explanation of the applicant at any point of time in view of the fact that the applicant is not a public servant but a private person. It is submitted that she has been filing Income Tax Returns regularly for last 10 years and, therefore, the prosecution has failed to bring on record the basic ingredients of Section 13(1)(e) of the P.C. Act. The prosecution has failed to consider the independent earning sources of the applicant in the form of trading in shares, conducting private tuition classes and income by way of receipt of rent from the house properties. It is submitted that the income tax details have been collected only upto the period ending 31.03.2014 whereas the check period is from 31.01.2014 to 16.07.2014.

13. The next limb of the argument of Mr. Khan is that there is a miscalculation of the income. He drew my attention to the chart annexed with the application indicating as to how the Investigating Agency has shown less income and some times the

income is shown as expenditure during the check period. Similarly, he pointed out column no.9 on page 54 of the paper book which indicates the amount forwarded to M/s. J.M. Financial Services Ltd. by the applicant through her bank account for purchase of shares in her Demat Account. According to Mr. Khan, this is an asset of the applicant and not an expenditure. The C.B.I. has made a mistake in showing it as an expenditure. Thus, there is a flaw in calculations by the C.B.I.

14. It is contended by Mr. Khan that ingredients of Section 107 of the Indian Penal Code are not at all attracted and there is no material placed on record even to frame a charge under the said section against the applicant and, therefore, she needs to be discharged.

15. Mr. Venegaonkar, the learned Special Public Prosecutor for respondent no.1. at the outset, while replying the arguments raised by Mr. Khan contended that the requirement of clause (e) of Section 13(1) of the PC Act are precisely attracted.

16. He emphasized on the words “cannot satisfactorily account” and contended that it does not necessarily mean that the Investigating Agency shall obtain written explanation and, therefore, the ingredients of Section 13(1)(e) of the P.C. Act are precisely attracted.

17. Mr. Venegaonkar would argue that the documents

referred to by Mr. Khan indicate that all the sources of income namely trading in shares, tuition classes as well as rent have been considered by C.B.I. He further buttressed his contention by drawing my attention to the income tax record. It is contended that the applicant was an investor which is evident from a document at page 291. It is an account opening kit with M/s. J.M. Financial Services Ltd. Mr. Venegaonkar submits that the explanation tendered by the applicant is two fold; firstly, income through tuition classes and secondly income through investment in trading. The Investigating Agency has, therefore, conducted investigation on the basis of the documents provided by the stock broker.

18. On the aspect of income through tuition classes, Mr. Venegaonkar contends that such classes do not require registration, black board, benches etc. If the applicant had earned an income of Rs.21 lakhs by conducting tuition classes, she ought to have furnished the details, as the burden would shift upon her in view of Section 106 of the Indian Evidence Act. Since there are no rules and regulations for conducting home tuitions, the Investigating Officer had inquired with the applicant about the names and details of the students, the duration of tuition classes, fees etc., to which the applicant could not give satisfactory explanations. There is nothing on record to show that the applicant was conducting institutional coaching classes, which, at least, are governed by some rules. As such, there is a presumption that these are the disproportionate assets of the applicant as she has no legal

source of her income.

19. On the point of Income Tax Returns, Mr. Venegaonkar would argue that only declaration of income and not source of income is considered. The Income Tax Authorities do not ask whether the income earned is from legitimate or illegitimate sources. The Income Tax Authorities are only concerned with tax and not the source of income. However, during investigation, the C.B.I. found that the declaration made was false. He submitted that whatever has been argued by Mr. Khan, can, at the most be the grounds of defence during trial but not while considering the material on record and its sufficiency to frame a charge.

20. As regards showing assets as expenditure, it is contended by Mr. Venegaonkar that when an amount goes to the share broker for purchasing the shares, it is in fact an expenditure for purchase of the shares and, therefore, it cannot be called as an asset as contended by Mr. Khan. It is submitted that what has been shown in Statement “D” on page 54 rightly denotes the expenditure to the tune of Rs.21,31,925/-. It is contended that the applicant could not explain the source of money used for purchasing the shares.

21. The Income Tax Officers, who are named at Sr. Nos. 9, 10 and 11 in the list of witnesses, according to Mr. Venegaonkar, are formal witnesses who cannot clarify source of income of the applicant. They tendered what they had discovered from the

office of the income tax.

22. Thus, it is submitted that it is not a case of absolutely no evidence since there is ample evidence on record and, therefore, it is not a case for discharge. Wrong calculations can be tested during the trial.

23. Broadly, the learned Counsel for the applicant harped upon three points *viz.* the quantification of the alleged income disproportionate to the known sources of the applicant is incorrect, in the sense, the purchase of shares has been termed as 'expenditure' instead of 'asset'; Secondly – she being a private person having independent sources of income through trading in shares, private tuition classes and income from house rent, had not been correctly assessed; and thirdly – her written explanation has not been obtained by the Investigating Officer at any point of time to afford her an opportunity to offer her contention.

24. The position of law on the point of discharge is no more *res integra*. What is required to be seen is as to whether there exists a *prima facie* case. After having considered the documents and material placed on record by the prosecution, if the Court comes to the conclusion that commission of an offence is a probable consequence, a case of framing charge exists, charge can be framed. The probative value of the evidence tendered on record cannot be gone into, as has been tried to be shown by Mr. Khan, learned Counsel for the

applicant.

25. The object of Sections 227 and 228 of the Cr.P.C. is to satisfy the Court that the accusation is not frivolous. What is required to be seen at the stage of framing a charge is existence of sufficient ground for presuming that the accused has committed an offence. One cannot expect a strict proof while evaluating the material placed on record, nor the Court is expected to see whether the case would end into conviction or acquittal. The word 'ground' in Section 227 of the Cr.P.C. does not mean a ground for conviction but ground for putting the accused on trial.

26. A charge sheet is filed against Pritam Nagarkar – husband of the applicant, the applicant and her mother Smt. Kamla Pandya under Section 109 of the Indian Penal Code and under Sections 13(1)(e) read with Section 13(2) of the P.C. Act for possession of assets disproportionate to their known sources of income.

27. The applicant has been mainly charged for abetment of the offence punishable under Section 13(1)(e) of the P.C. Act as she failed to account for the income, which she claimed to be her independent income from lawful sources.

28. In the light of the aforesaid position of law, it would be necessary to see the documents and material placed on record by the respondent no.1 – C.B.I. Along with charge-sheet, the

respondent no.1 has tendered Statements A, B, C & D and then a summary of the Statements A, B, C and D. It would be apposite to reproduce the relevant portion from the aforesaid statements, which read as under :-

<u>Statement A:-</u> Assets before check period i.e. prior to 31.01.2014.

Sr. No.	Description of Property	Date	Amount Rs.
..	……		
9.	Buy value of credit balance of the various Shares purchased by Mrs. Preeti Nagarkar in her Trading Account of **M/s. J.M. Financial Services Ltd.**	30.01.2014	1405770
..	……		
	Statement A Total		**2405531**

Statement B:– Assets at the end of check period : As on 16.07.2014

Sr. No.	Details of Investments / Property	Date of Acquisition	Amount Rs.
..	……		
7.	TD/RD/1495/Kamla Pandya / Preeti Nagarkar with **SVC Bank**, Gamdevi	16.07.2014	30000
..	……		
18.	Credit balance in Account No.007610024821 of Mrs. Preeti Pritam Nagarkar in **Dena Bank**.	01.03.2014	1718
19.	Credit balance in A/c No. 00011000072220 in the name of Preeti Nagarkar / Pritam Nagarkar with **HDFC Bank**.	15.07.2014	265457
…	…..		
24.	Credit balance amount in Trading Account of **M/s. J.M. Financial Services Ltd.** in the name of Mrs. Preeti Nagarkar	16.07.2014	57913
25.	Buy value of credit balance of the various shares purchased by Mrs. Preeti Pritam Nagarkar in the Trading account of **M/s. JM Financial Services Ltd.** at the end of check period	16.07.2014	1641955
…	……		
	Statement B Total		**4945299**

<u>Statement C :-</u> Income during check period (31.01.2014 to 16.07.2014)

Sr. No.	Statement C – Income during the Check Period	Date of Acquisition	Amount Rs.
..	……		
4.	Income to Mrs. Preeti Pritam Nagarkar as per ITRs Ass. Year 2014-15 Rs. 1359149/- (taken for 7 months for the purpose of calculation)	Jan 14 to June 14	792837
..	……		
8.	Various credits received as interest / dividend from shares purchased in A/c No. 102703130001680 of SVC Bank in the name of Mrs. Preeti Nagarkar / Pritam Nagarkara	03.02.2014 to 04.07.2014	39779
…	……		
12.	Interest, dividend, rent credited by into A/c No.00011000072220 in the name of Mrs. Preeti Pritam Nagarkar with HDFC Bank.	April, 2014 to June, 2014	25447
...	…..		
14.	Net profit earned from the various Shares purchased & sold during the period January, 2014 to July, 2014 in the Trading Account of M/s. JM Financial Services Ltd. in the name of Mrs. Preeti Pritam Nagarkar	31.01.2014 to 16.07.2014	1855138
	Statement C Total		**3537212**

<u>Statement D :–</u> Expenditure during check period (from 31.01.2014 to 16.07.2014)

Sr. No.	Particulars of expenditure	Date	Amount Rs.
..	……		
6.	Amount paid toWaman Hari Pethe Jewellers in their “Golden Moments Scheme” monthly plan by Mrs. Preeti Pritam Nagarkar. (Three Schemes) as per letter received from Waman Hari Pethe Jewellers.	Jan, 2014 to July, 2014	87000
..	……		
9.	Amount forwarded to M/s. JM Financial Services Ltd. by Mrs. Preeti Nagarkar through her bank accounts for the purchase of purchasing of shares in her Demat Account No. 1203330000647629	31.01.2014 to 16.07.2014	2131925
	Statement D Total		**3238800**

The summary of A, B, C, D Statements of Shri Pritam V. Nagarkar is given below :- Check Period 31/01/2014 to 16/07/2014

A	Assets at the beginning of the check period		2405531
B	Assets at the end of the check period		4945299
C	Income during the check period		3537212
D	Expenditure during the check period		3238800

Thus, computation below are based on Statements A to D

1	Assets acquired before the check period (statement A)		2405531
2	Assets at the end of the check period (Statement B)		4945299
3	**Assets acquired during the check period (B-A)**		**2539768**
4	Net Income during the check period (Statement C)		3537212
5	Expenditure during the check period (Statement D)		3238800
6	**Likely savings during the check period (C-D)**		**298412**
7	**Disproportionate Assets = (B-A) - (C-D)**		**2241356**

29. Mr. Khan, the learned Counsel for the applicant strenuously urged that the C.B.I. had incorrectly quantified the total of Statement "D" as Rs.32,38,800/-, which is the expenditure during check period. He contends that this amount includes an amount of Rs.21,31,925/- which is the amount forwarded to M/s. J.M. Financial Services Ltd. by the applicant through her bank accounts for the purchase of shares in her Demat Account No.2131925. These are the assets of the applicant in shares and not an expenditure as contended by the C.B.I. If this is excluded, there would be no disproportionate

assets. As according to Mr. Khan, the amount of Rs.21,31,925/- had been paid to M/s. J.M. Financial Services Ltd. for purchase of shares and, therefore, it would be her assets. I am afraid, I cannot buy the arguments of Mr. Khan at this stage as it is a settled position of law that mistakes or errors in the calculation at the stage of framing charge, cannot be gone into as what is required to be seen is that whether there is *prima facie* material on record to put the accused on trial. As already stated, the probative value of the evidence tendered on record cannot be gone into at this stage. Even if, for the sake of argument, if it is taken that there is some flaw in the calculation by the C.B.I., the defence would get an opportunity during trial to clarify the same. The prosecution's evidence can very well be rebutted.

30. Similarly, while going through the Statement 'C' which is the income during the check period as shown in the aforesaid table, it is contended by Mr. Khan that in column no.12 an amount of Rs.25,447/- has been shown less which ought to have been Rs.1,29,440/-, which is an interest, dividend, rent credited into the account of the applicant with HDFC Bank bearing Account No.00011000072220 for the period from April, 2014 to June, 2014. As already stated, even if, it is a miscalculation, it cannot be looked into at this stage. This is significant in the light of the fact that the applicant has come up with a case that she also has her independent sources of income from conducting private tuition classes as well as income through house rent. First of all, it is pertinent to note that the applicant is an investor in the sense that she had purchased

shares of various companies through M/s. J.M. Financial Services Ltd. There is ample documentary evidence on record in the form of the statements and account opening kit of M/s. J.M. Financial Services Ltd. indicating purchase of shares by the applicant of various companies. However, there is nothing on record to indicate that the amount invested in purchase of shares had been derived from the income from tuition classes or from the house rent.

31. It is of common knowledge that there are no set of rules and regulations for conducting home tuition classes. It does not require registration. If it is presumed that the earning of the applicant was to the tune of Rs.21 lakhs during six months, both from tuition classes as well as from house rent as has been rightly contended by Mr. Venegaonkar, the burden is upon the applicant as she contends in regard to her independent sources of income as a private person. Nothing is on record to indicate as to how many students were offered tuition classes, place of conducting the classes, furniture or other paraphernalia required for the same. It is not the contention of the applicant that she was conducting institutional coaching classes. She can very well discharge the burden under Section 106 of the Indian Evidence Act during trial.

32. Mr. Khan,the learned Counsel for the applicant has placed reliance upon a decision of Madras High Court in the case of ***D. Vedagiri, In re (David Annoussamy, J.) 1985 L.W. Cri. 243*** in order to substantiate his contention that an opportunity is

required to be given to the accused to explain the disproportionate assets. If the Investigating Officer fails to give an opportunity to the accused then the charge-sheet vitiates. The relevant portion of the decision of the Madras High Court can be reproduced as under :-

> *"Held: setting aside the order: It is true, that ordinarily it is not necessary in ordinary cases for the investigating officer to examine the accused on the different ingredients of the offence. His duty consists only to find out by examination of witnesses, by search and by other methods open to him whether an offence has been committed. But the offence under S. 5 (1) (e) of the Act is of a special nature.*
>
> *It is seen from S. 5(1) (e) of the P.C. Act that the failure of accounting for the possession of the property by the person concerned is a distinct element of the offence. In fact, it is not merely the possession of the property disproportionate to the known sources of income that constitutes an offence, but it is the failure to satisfactorily account for such possession that makes the possession objectionable and offending the law".*

33. There is no provision in Section 13(1)(e) of the P.C. Act mandating that an explanation, that too, in writing need to be obtained from the accused while investigating the disproportionate assets to his or her known sources of income. It has been rightly observed by the Madras High Court that it is not merely the possession of the property disproportionate to the known sources of income that constitutes an offence but it is the failure to satisfactorily account for such possession that

makes possession objectionable and offending the law. Here, in the case at hand, as can be seen, the applicant herself has come up with a case of her independent sources of income through tuition classes and house rent for which there is no material tendered on record. The ratio can be distinguished accordingly.

34. It is contended by Mr. Venegaonkar that an opportunity has been granted to the applicant pursuant to which she had stated about her sources of income through trading in shares, tuition classes and house rent, however, she could not satisfactorily account for the same. The respondent no.1 – C.B.I. has, therefore, implicated the applicant as an abettor.

35. Mr. Khan has placed reliance upon a judgment of the Hon'ble Supreme Court in the case of ***State of Inspector of Police, Vishakhapattanam Vs. Surya Sankaram Karri, 2006 (6) Supreme Court Cases 172***. In this judgment, the Hon'ble Supreme Court was dealing with an appeal filed by State before it impugning the judgment and order of Andhra Pradesh High Court at Hyderabad whereunder the judgment of conviction and sentence passed against the respondent under Section 13(2) of the P.C. Act and sentencing him to undergo R.I. for 3 years and fine of Rs.4 lakhs, was set aside. In short, it was a case under Section 13(1)(e) read with Section 13(2) of the P.C. Act for acquisition of property by the accused disproportionate to his known sources of income. The property was in the name of accused as well as in the name of his wife.

The trial Court, taken a view that except one son, no other sons of the accused made contributions to their parents from their income. In appeal, the High Court set aside the conviction. It has been observed that the investigation was illegal and unfair for non-examination of important witnesses and non-consideration of relevant documentary evidence by the Investigating Officer. The Investigating Officer failed to ascertain correctness of status of accused and his wife before the Income Tax Department. There was non production of relevant statements of the accused and his wife and sons before the Court. The sanction was invalid. Thus, the Supreme Court declined to interfere with the judgment of the High Court.

36. The ratio laid down in *Surya Sankaram Karri (supra)* by the Hon'ble Supreme Court, would not be relevant at this stage, for, after the High Court of Hyderabad set aside the conviction and sentence of the accused, the Hon'ble Supreme Court confirmed the judgment of the High Court, which was after a full fledged trial in the Special Court. At the stage of framing charge, as stated hereinabove, merits of the case are not required to be gone into. Here the matter is at a preliminary stage of framing charge. There is no doubt that a fair, impartial and honest investigation has to be carried out by the Investigating Agency. While doing so, the Investigating Agency has to see not only the stand of the prosecution but also the defence, particularly in view of the fact that onus of proof might shift upon the accused at a later stage. Thus, there

cannot be any quarrel with regard to the ratio laid down in case of *Surya Sankaram Karri (supra)*. However, it would not be of any assistance to the applicant at this stage and, therefore, can be distinguished accordingly.

37. The next judgment pressed into service is in case of ***DSP. Chennai Vs. K. Inbasagaran, (2006) 1 SCC 420.*** Briefly stated, the accused who was a Senior I.A.S. Officer was charged for offences punishable under Section 13(1)(e) and 13(2) of the P.C. Act. The accused and his wife were in joint possession of the assets. The wife claimed ownership / contribution of the assets and properties. The accused who is a public servant was living together with his wife. In the said case, the prosecution has discharged initial burden by proving recovery of unaccounted money and other assets from the premises jointly in possession of the accused and his wife. The accused, on his part, satisfactorily established that the money and the assets recovered belonged to his wife which she amassed from her own business separately. Since there was no evidence that the assets belonged to the accused, it was held that he cannot be held liable under the P.C. Act for such assets. The proposition emerged from this judgment may not be applicable at the stage of framing charge. In the case at hand, the accused no.1 is not seeking his discharge by contending that the monies and assets recovered, belong to the applicant from her own business which has nothing to do with his income. Thus, this question would arise only after trial on merits.

38. Mr. Khan, has thereafter, placed reliance upon a judgment of the Madras High Court in the case of ***A.P. Pillai Vs. State represented by, The Inspector of Police, SPE:CBI:ACB, Chennai, 2013-2-L.W (Cri.) 358***, the relevant portion of which reads as under :-

> *"2. The learned Counsel for the petitioners submitted that before filing the final report against the accused, the investigating Officer did not call for any explanation from the accused and therefore, the mandatory pre-requisite condition has not been fulfilled by the prosecution. The learned counsel for the petitioners vehemently submitted that an opportunity should have been provided to the accused by the Investigating Officer and the Investigating Officer, with mala fide intention, filed final report against the accused.*
>
> *3. Per contra, the learned Special Public Prosecutor for CBI Cases submitted that it has been stated in the final report at paragraph No.10 that during the course of investigation, the first accused and his wife viz., the second accused have been examined and they have been given opportunities to explain and give satisfactory account for the disproportionate assets, but, the first accused has not offered any satisfactory explanation worthy of acceptance. The learned Special Public Prosecution further submitted that according to the counter filed by the respondent, the Investigating Officer has called for his explanation in person from the accused by showing the statements on 19.12.2011 and he had no satisfactory explanation for the disproportionate assets. The learned Special Public Prosecutor also submitted that though it is stated in the counter that an explanation was called for from the*

> *accused only in person, only on perusal of case diary, it could be ascertained what exactly transpired between the accused and the Investigating Officer. The learned Public Prosecutor also submitted that asking for an explanation in person without giving notice in writing, is not an illegal procedure".*

It is observed by the learned Single Judge that there is no specific procedure contemplated under the provisions of the P.C. Act. Normally it is expected that the Investigating Officer, while calling for an explanation from the accused, must give notice to the accused in writing along with statement showing the disproportionate amount and sufficient reasonable time must be given for explanation. With due respect, I am not in agreement with the view taken by the Madras High Court which can only have a persuasive value. *Sans* any specific provision in the Act, it cannot be mandated that a written explanation of the accused is required to be obtained for clarifying disproportionate assets. This judgment also will not be helpful for the applicant at the stage of framing charge.

39. The income tax returns of the applicant which are at page no. 479 onwards of the paper book obtained by the Income Tax Officer, reveal the gross income of the applicant, deductions under various heads and total tax paid under different heads. The Income Tax Authority had furnished copies of the Income Tax Returns of the applicant as well as the other two accused. It is contended by Mr. Venegaonkar that since the husband of the applicant who was a public servant could not satisfactorily

explain *qua* the assets which are disproportionate to his known sources of income and, therefore, in view of the material placed on record *qua* the applicant, *prima facie*, it can be said that she is an abettor in view of Section 109 of the Indian Penal Code as she being a wife and abettor living together with the husband knew everything.

40. Most of the judgments relied upon by the learned Counsel for the applicant are not directly on the point of discharge of the accused which can, at the most, be looked into after completion of the trial on merits.

41. In a landmark judgment pressed into service by learned Special Public Prosecutor in the case of ***State of Karnataka Vs. Jayalalitha and Ors. (2017) 6 SCC 263,*** the Hon'ble Supreme Court after going through various case laws on the subject elaborately discussed and carved out the following principles, amongst others, which would be precisely attracted to the case in hand especially on the point of quantification of assets, expenditure and income during check period. It would be apposite to refer to the relevant paragraphs of the said judgment, which read as under :-

> ***"186.*** *The respondent in CIT v. Devi Prasad Vishwwanath Prasad (1969) 72 ITR 194 (SC) was a firm dealing in handloom cloth and silk fabrics. In the proceeding for Assessment Year 1946-1947, the Income Tax Officer, amongst others, found a credit of Rs.20,000 in its books of accounts as a deposit in the name of M/s. Banshidhar Rawatmal of Ratangarh. After considering the evidence procured by the assessee, the Income Tax Officer rejected the plea that the amount had been deposited by the above*

firm and concluded that it was the assessee's income from undisclosed source. Eventually, the statement of case was referred to the High Court with the following question (ITR p. 195)

> *"Whether, on the facts and in the circumstances of the case, there was any material to hold that the sum of Rs.20,000 was income of the assessee from some other source and was not income included in the assessed income on the rejection of the books of account?"*

The High Court, having answered, (Deviprasad Vishwanath Prasad V. CIT, 1962 SCC online All 316) in the affirmative in favour of the assessee, the issue reached this Court.

187. It was exposited that there was nothing in law which prevented the Income Tax Officer in an appropriate case from taxing both the cash credit, the source and nature of which was not satisfactorily explained, and the business income estimated by him under Section 13 of the Income Tax Act, 1922, after rejecting the books of accounts of the assessee as unreliable. It was propounded as well that where there was unexplained cash credit, it was open to the Income Tax Officer to hold that it is the income of the assessee and <u>no further burden lies on the income Tax Officer to show that income is from any particular source and that it was for the assessee to prove that even if the cash credit represented income, it was an income from a source which had already been taxed</u>.

188. In Anatharam Veerasinghaiah & Co. V. CIT, 1980 Supp SCC 13, the return filed by the petitioner assessee, who was an Abkari contractor, was not accepted by the ITO as amongst others, excess expenditure over the disclosed available cash was noticeable and further several deposits had been made in the names of others. The assessee's explanation that the excess expenditure was met from the amounts deposited with him by other shopkeepers but were not entered in his book, was not accepted and penalty proceedings were taken out against him holding that the items of cash deficit and cash deposit represented concealed income resulting from suppressed yield and low selling *rates mentioned in the books. The Appellate Tribunal, however, allowed the appeal of the assessee and set aside the penalty order. The High Court reversed (CIT V. Anantharam Veerasingaiah & Co. 197 SCC Online AP 262) the decision of the Appellate Tribunal and the matter reached the Supreme Court.*

189. It was held that as per Section 271(1)(c) of the Income Tax Act, 1961, penalty can be imposed in case where any person has concealed the particulars of his income or has deliberately furnished inaccurate particulars of such income. The related proceeding was quasi-criminal in nature and the burden lay on the Revenue to establish that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars. <u>The burden of proof in penalty proceedings varied from that involved in assessment proceedings and a finding in assessment proceedings that a particular receipt was income cannot automatically be adopted as a finding to that effect in the penalty proceedings. In the penalty proceedings, the taxing authority was bound to consider the matter afresh on the materials before it, to ascertain that whether a particular amount is a revenue receipt. It was observed that no doubt the fact that the assessment year contains a finding that the disputed amount represents income constitutes good evidence in the penalty proceedings, but the finding in the assessment proceedings cannot be regarded as conclusive for the purpose of penalty proceedings.</u> Before a penalty can be imposed, the entirety of the circumstances must be taken into account and must lead to the conclusion that the disputed amount represented income and that the assessee had consciously concealed the particulars of his income or had deliberately furnished inaccurate particulars.

190. ***The decision is to convey that the IT returns and the orders passed in the IT proceedings in the instant case recorded the income of the accused concerned as disclosed in their returns, in view of the charge levelled against them, such returns and the orders in the IT proceedings would not by themselves establish that such income had been from lawful source as contemplated in the Explanation to Section***

13(1)(e) of the PC Act, 1988 and that independent evidence would be required to account for the same.

191.Though considerable exchanges had been made in course of the arguments, centering around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet has been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(e) of the Act.

192. A Constitution Bench of this Court in Iqbal Singh Merwah v. Meenakshi Marwah, (2005) 4 SCC 370 in this *context had ruled that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding on the other as both the cases have to be decided on the basis of the evidence adduced therein.*

193. In CIT V. Piara Singh, 1980 Supp. 166, the respondent was apprehended while crossing the Indo-Pakistan border and a sum of Rs.65,500 was recovered. He revealed at the interrogation, that he was taking the currency notes to Pakistan for purchase of gold to smuggle it into India. The currency notes were confiscated. In the income tax assessment proceedings of the respondent, the ITO held that out of Rs.65,500 an amount of Rs.60,500 constituted income of the assessee from undisclosed sources. The plea of the respondent was that if he was regarded as engaged in the business of smuggling gold, he was entitled to deduction under section 10 1) of the Income Tax Act of the entire amount at Rs.65,500 as loss incurred in the business due to the confiscation thereof. His claim was upheld. <u>It was ruled that if the activities of smuggling can be regarded as business, the currency notes carried by the assessee was meant for acquiring gold in Pakistan to be sold in India at a profit. The carrying of currency note was thus an essential part of the business and the confiscation of currency notes was a loss occasioned in pursuing the business and would be akin to an eventuality, as if the currency notes had been stolen or dropped on the way, while carrying on business</u>.

(emphasis supplied)

194. This rendition too proclaims against probative efficacy of an income tax proceeding or order passed therein as a conclusive determinant of lawfulness of the source of any income involved therein.

195. In State of T.N v. N. Suresh Rajan, (2014) 11 SCC 709, the allegation against the respondent, who was the Minister of Tamil Nadu was acquisition of pecuniary resources and properties in his name and in the names of his family members, and friends, disproportionate to the known sources of income. Charge of abetment was also levelled against the family members and friends. Charge-sheet was submitted under Section 109 IPC read with Sections 13 (1) *(e) and 13 (2) of the 1988 Act. All of them were discharged by the High Court.*

196. This Court ruled that the fact that the accused, other than the two Ministers, had been assessed to income tax and had paid income tax could not have been relied upon to discharge the accused persons in view of the allegation made by the prosecution that there was no separate income to amass such huge property. It was underlined that the property in the name of the income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee and that if this proposition was accepted, it would lead to disastrous consequences. This Court reflected that in such an eventuality it will give opportunities to the corrupt public servant to amass property in the name of known person, pay income tax on their behalf and then be out from the mischief of law.

(emphasis supplied)

197. In CIT v. S.C Kothari, (1972) 4 SCC 402, the respondent S.C. Kothari was a registered firm and carrying on the business of commission agents and general merchants. During Assessment Year 1958-1959, the assessee claimed to have incurred a loss of Rs.3,40,443 in certain transactions and pleaded that the above loss was allowable under Section 10 (1) of the Income Tax Act, 1922 as a deduction against its other business income. The Income Tax Officer was of the view that the transactions in question were hit by the provisions of the Forward Contracts Regulation Act, 1852 and Rules and Regulations of the Saurashtra Oil and Oilseeds Association Ltd. The losses were thus held to have been incurred in illegal transactions and the Income Tax Officer, thus rejected the contention of the assessee that even on the assumption that the losses were incurred in illegal transactions, they would be allowed in the computation of the income. The Appellate Assistant Commissioner confirmed the order of the Income Tax Officer but the Tribunal held, in further appeal, that the transactions in question were not illegal contracts but were contracts which had been validly entered into under the Act and the bye-laws, etc. The Tribunal remanded the matter to the appellate Assistant Commissioner for a report and on the receipt thereof, it *eventually held that such loss could not be set off against the other income but was of the view that the assessee was entitled to a set-off of the loss against the profits in speculative transactions.*

198. The High Court in the reference made, inter alia, held CIT v. S.C. Kothari, 1967 SCC Online Guj. 73 that even though the disputed contracts were not validly entered into in accordance with the above mentioned Act, the loss of Rs.3,40,443 was liable to be taken into account in computing the business income of the assessee under section 10 of the 1922 Act and the assessee was entitled to set off against the profits from other speculative transactions. This Court in the above factual backdrop held that it is well settled that contracts which are prohibited by statute, the prohibition being either express or implied, would be illegal and unenforceable if they are entered into in contravention of statute. If the business is illegal, neither the profits earned or the losses incurred would be enforceable in law. But that does not take the profits out of the taxing statute. Similarly, the taint of illegality of the business cannot detract from the losses being taken into account for computation of the amount which can be subjected to tax as "profits" under section 10 (1) of the 1922 Act and the Tax Collector cannot be heard to say that he will bring the gross receipts to tax. He can only tax profits of a trade or business and that cannot be done without deducting the losses and the legitimate expenses of the business. The view of the High Court that for the purpose of Section 10(1), the losses which have actually been incurred in carrying on a particular illegal business must be deducted before the true figure relating to profits can be computed or determined to be brought to tax, was upheld.

(emphasis supplied)

199. The import of this decision is that in the tax regime, the legality or illegality of the transactions generating profit or loss is inconsequential qua the issue whether the income is from a lawful source or not. The scrutiny in an assessment proceeding is directed only to quantify the taxable income and the orders passed therein do not certify or authenticate that the source(s) thereof to be lawful and *are thus of no significance vis-a-vis a charge under Section 13(1)(e) of the Act.*

200. In Vishwanath Chaturvedi (3) v. Union of India, (2007) 2 SCC (Cri.) 302, a writ petition we filed under Article 32 of the Constitution of India seeking an appropriate writ for directing the Union of India to take appropriate action to prosecute R-2 to R-5 under the 1988 Act for having amassed assets disproportionate to the known sources of income by misusing their power and authority. The respondents were the then sitting Chief Minister of U.P and his relatives. Having noticed that the basic issue was with regard to alleged investments and sources of such investments, Respondents 2 to 5 were ordered by this Court to file copies of income tax and wealth tax returns of the relevant assessment years which was done. It was pointed out on behalf of the petitioner that the net assets of the family though were Rs.9,22,72,000, as per the calculation made by the official valuer, the then value of the net assets came to be Rs.24 crores. It was pleaded on behalf of the respondents that income tax returns had already been filed and the matters were pending before the authorities concerned and all the payments were made by cheques, and thus the allegation levelled against them were baseless. It was observed that the minuteness of the details furnished by the parties and the income tax returns and assessment orders, sale deeds, etc., were necessary to be carefully looked into and analysed only by an independent agency with the assistance of chartered accountants and other accredited engineers and valuers of the property. <u>It was observed that the Income Tax Department was concerned only with the source of income and whether the tax was paid or not and, therefore, only an independent agency or CBI could, on court direction, determine the question of disproportionate assets</u>. CBI was thus directed to conduct a preliminary enquiry into the assets of all the respondents and to take further action in the matter after scrutinizing as to whether a case was out or not.

201. The decision is to emphasis that admission of income tax returns and the assessments orders passed thereon, would not constitute a full proof defence against a charge *of acquisition of assets disproportionate to the known lawful sources of income as contemplated under the PC Act and that further scrutiny / analysis thereof is imperative to determine as to whether the offence as contemplated by the PC Act is made out or not.*

227. This Court in Ravinder Singh v. State of Haryana, (1975) 3 SCC 742, while dwelling on the rule of issue estoppel enunciated that in order to invoke the rule of issue estoppel not only the parties in the two proceedings must be the same but also the fact-in-issue proved or not in the earlier proceeding must be identical with what is sought to be re-agitated in the subsequent one.

228. This ruling was in the context of the plea that in the face of the acquittal of the co-accused (the appellant therein) in a separate trial, conviction against him (the appellant) was unsustainable. This proposition has been relied upon by the prosecution to reinforce its plea that in any view of the matter, it not being a party to the tax assessment proceeding, at any level, the decision passed therein would not be of binding bearing at the trial by invoking the rule of issue estoppel.

229. A Constitution Bench of this Court in Iqbal Singh Marwah v. Meenakshi Marwah, (2005) 4 SCC 370, in this context had ruled that there is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in other as both the cases have to be decided on the basis of the evidence adduced therein.

Interpretation of the expression "satisfactorily account" in the context of the offence of misconduct under Section 5 (1) (e) of the 1947 Act and Section 13 (1) (e) of the 1988 Act.

(emphasis supplied)

42. Thus, it is evident that legality or illegality of the transactions generating profit or loss is inconsequential qua the issue whether the income is from a lawful source or not. The

scrutiny in an assessment proceeding is directed only to quantify the taxable income and the order passed therein do not certify or authenticate that the sources thereof to be lawful and are thus of no significance *vis-a-vis* a charge under Section 13(1)(e) of the P.C. Act. The *ratio decidendi* of this judgment is quite clear which needs no further reiteration.

43. It has been rightly argued by Mr. Venegaonkar that the returns of the income tax would only be considered as a declaration of the income but not the proof of source of income. *Prima facie*, it appears that when the matter was investigated by the C.B.I., it noticed an incorrect or false declaration by the applicant to the Income Tax Department.

44. From the over all material placed on record, it *prima facie* indicates that the applicant committed certain acts and omissions in order to facilitate the commission of the offence by her husband meaning thereby she aided the illegal acts and omissions of the prime accused. These are *prima facie* observations being made only for the purpose of considering whether the applicant can be put on trial.

45. Mr. Venegaonkar has also placed reliance on a judgment of the Hon'ble Supreme Court in case of ***Nirmaljit Singh Hoon Vs. The State of West Bengal & Ors. (1972) SC 2639***, the Hon'ble Supreme Court has interpreted "no sufficient ground for proceedings". The relevant portion of the judgment can be found in paragraph 22, which reads thus :-

"22. Under sec. 190 of the Code of Criminal Procedure, a magistrate can take cognizance of an offence, either on receiving a complaint or on a police report or on information otherwise received. Where a complaint is presented before him, he can under sec. 200 take cognizance of the offence made out therein and has then to examine the complainant and his witnesses. The object of such examination is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such a person. Such examination is provided therefore to find out whether there is or not sufficient ground for proceeding. Under sec. 202, a magistrate, on receipt of a complaint, may postpone the issue of process and either inquire into the case himself or direct an inquiry to be made by a magistrate subordinate to him or by a police officer for ascertaining its truth or falsehood. Under sec. 203, he may dismiss the complaint, if, after taking the statement of the complainant and his witnesses and the result of the investigation, if any, under sec. 202, there is in his judgment "no sufficient ground for proceeding". The words 'sfficient ground' used also in sec. 209 have been construed to mean the satisfaction that a prima faice case is made out against the person accused by the evidence of witnesses entitled to a reasonable degree of credit, and not sufficient ground for the purpose of conviction. [see R.G. Ruia v. Bombay, 1958 SCR 618 = (AIR 1958 SC 97).]. In Vadilal Panchal v. Ghadigaonkar, (1961) 1 SCR 1 = (AIR 1960 SC 1113) this Court considered the scheme of ses. 200 to 203 and held that the inquiry envisaged there is for ascertaining the truth or falsehood of the complaint, that is, for ascertaining whether there is evidence in support of the complaint so as to justify the issue of process. The section does not say that a regular trial of adjudging the truth or otherwise of the person complained against should take place at that stage, for such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial. Sec. 203 consists of two parts. The first part lays down the materials which the magistrate must consider, and the

second part says that if after considering those materials there is in-his judgment no sufficient ground for proceeding, he may dismiss the complaint. In Chandra Deo Singh v. Piokash Chandra Bose, (1964) 1 SCR 639 = (AIR 1963 SC 1430) where dismissal of a complaint by the Magistrate at the stage of sec. 202 inquiry was set aside, this Court laid down that the test was whether there was sufficient ground for proceeding and not whether there was sufficient ground for conviction, and observed (p.653) that where there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left to be decided by the appropriate form at the appropriate stage and issue of a process could not be refused. Unless, therefore, the Magistrate finds that the evidence led before him is self-contradictory, or intrinsically untrustworthy, process cannot be refused if that evidence makes out a prima facie case. In a revision against such a refusal, the High Court also has to apply the same test. The question, therefore, is whether while applying this test the Chief Presidency Magistrate was right in refusing process and the High Court in revision could confirm such a refusal."

46. The next judgment pressed into service is in case of ***State of Bihar Vs. Ramesh Singh, (1977) SC 2018***. This judgment is in respect of Sections 227 and 228 of the Cr.P.C. Paragraph 4 of the judgment reads thus :-

"4. Under S. 226 of the Code while opening the case for the prosecution the prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under S. 227 or S.228 of the Code. If "the Judge considers that there is not sufficient ground fro proceeding against the accused, he shall discharge the

accused and record his reasons for so doing", as enjoined by S. 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which –

…. …… ….. ……

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused", as provided in S. 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S. 227 or S. 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. ……."

47. Similar is the view taken by the Hon'ble Supreme Court in the case of ***State of M.P. Vs. S.B. Johari & Ors. (2000) 2 SCC 57***.

The relevant portion of the judgment reads thus :-

> *"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 material 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."*

48. It can be seen that the applicant has not seriously disputed the Statements A, B, C & D at this stage. Statement 'C' indicates the income during the check period to the tune of Rs.35,37,212/- whereas the expenditure during check period is amounting to Rs.32,38,800/-. The question is whether column no.9 of the expenditure during check period, in view of Statement 'D' which is to the tune of Rs.21,31,995/-, the amount forwarded for purchase of shares is an expenditure? According to Mr. Venegaonkar it is an expenditure for purchase of shares. It cannot be equated with purchase of a land or immovable property.

49. Thus, in view of the observations made hereinabove, *prima facie*, there is sufficient material on record to frame a charge against the applicant.

50. The Learned Special Judge in the impugned order neither appears to have perused Statements A, B, C, and D, the Income Tax Returns of the applicant nor the documents and materials placed on record by the C.B.I. in respect of the investments made by the applicant in M/s. J.M. Financial Services Ltd. for purchase of shares of various companies. The observations by the learned Special Judge are very casual, which do not reflect that the material placed on record has been considered with a view to satisfy himself that there exists a *prima facie* case and there are sufficient grounds to presume that the applicant has committed the offence. However, the learned Special Judge concluded that there is sufficient material. Least that is expected of the trial Court to make a reference to the material placed on record while arriving at a conclusion as regards existence of *prima facie* case. Be that as it may. No case is made out warranting interference in the impugned order. Needless to add, these observations are only for the purpose of framing the charge and shall not be construed as the observations on merits.

51. The Revision Application is rejected.

52. Rule is discharged.

53. This order shall be digitally signed by the Private Secretary of this Court. All concerned shall act on production by fax or e-mail of a digitally signed copy of this order.

(PRITHVIRAJ K. CHAVAN, J.)