

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 297/2021

Mr. Arbind Kumar Jayaswal,
 S/o Shri Basant Lal Shaw,
 Aged about 65 years,
 Occ. Business, R/o. Nagpur.

... **APPLICANT**

VERSUS

Central Bureau of Investigation,
 through Investigating Office,
 EO-1, New Dehli.

... **NON-APPLICANT**

Mr. S. V. Manohar, Senior Advocate assisted by Mr. R. Pandey,
 Advocate for applicant.
 Mrs. Mugdha Chandurkar, Advocate for non-applicant-CBI.

CORAM : **VINAY JOSHI, J.**

CLOSED FOR JUDGMENT : **5th July, 2022.**

PRONOUNCEMENT OF JUDGMENT : **30th SEPTEMBER 2022.**

JUDGMENT :

RULE. Rule made returnable forthwith.

2. Heard finally by consent of respective parties.

3. This application is for challenging the order dated 4th January, 2021 (Exh.128) in Special CBI Case No. 1/2014, whereby the Trial Court has declined to discharge the applicant (accused No.9) in terms of Section 227 of the Code of Criminal Procedure ('Code') for the offence punishable under Sections Section 420, 468, 471, 511 read with Section 120-B of the Indian Penal Code, Section 13(2) read with Section 13(1)(d) of The Prevention of Corruption Act ('P. C. Act').

4. The applicant is the Managing Director of a Company namely Jayaswal Neco Industries Limited (JNIL) incorporated under the provisions of the Companies Act, 1956 having its registered office at Nagpur. The Company was *inter alia* engaged in steel production, iron ore, coal, limestone and mining. In the year 1992, the Government of Madhya Pradesh has floated a special incentive scheme for the establishment of steel plant in the area which was latter became part of the newly established Chhattisgarh State. The JNIL has entered into memorandum of understanding with the Madhya Pradesh Government for allotment of land to set up an integrated steel plant under the scheme. In the year 1995, the JNIL has applied for four prospecting licences ('PL') which were granted in the year 1999 under the Mines and Mineral (Development and Regulation) Act, 1957 ('the Act of 1957') for the area situated in Rowghat, District Balaghat. The

Act of 1957 provides that the PL holder shall have preferential right for grant of mining lease for said area, provided that the PL holder has undertaken prospecting operations to establish mineral resources. On 16.05.2000, the JNIL applied for grant of mining lease for four areas by representing that the JNIL had prospected the area and accordingly submitted the statutory prospecting reports to the State Government.

5. In the meanwhile on 01.11.2000, State of Madhya Pradesh was reorganized and the new Chhattisgarh State has been formed. The proposal of the JNIL for issuing mining licence was dealt by the newly established Chhattisgarh State which vide order dated 31.07.2007 rejected the proposal. While rejecting mining lease proposal, it has been stated that in the proposal forwarded by the JNIL, in the month of May 2000, there was repeated reference of “Chhattisgarh State” however Chhattisgarh State was newly established on 01.11.2000. The prospecting report was found to be fake. It was observed that prospecting reports, submitted on letter head prior to 14th May, 2000 bears telephone numbers which were issued by the Telecom Authority in the year 2002 and thus, it was fake and fabricated. The mining lease proposal of JNIL was *inter alia* rejected for said reason on 31.01.2007.

6. Being aggrieved and dissatisfied by rejection of mining lease, the JNIL has preferred a revision against the order of State of Chhattisgarh to the Statutory Revisionary Authority. In said revision, JNIL submitted few additional documents including certain acknowledgments which were also found to be fake and fabricated.

7. On receipt of source information about JNIL submitting forged and fabricated documents prepared in connivance with the officials of the Indian Bureau of Mine ('IBM') for obtaining mining lease, the First Information Report ('FIR') bearing No. CBI/EO-1/2012 has been lodged on 03.07.2012 against the JNIL Company, applicant (accused No.9) and others. On completion of investigation, charge-sheet has been filed. In the process of the Investigation, the non-applicant recorded statement of several witnesses as well as collected various documents to substantiate the charge.

8. At this stage, the applicant (accused No.9) has filed an applicant Exh. 128 in the Trial Court for discharge claiming that there was no material in entire charge-sheet to support the allegations. It is submitted that even if the entire material contained in charge-sheet is accepted at its face value, it does not disclose the ingredients of the offences with which the applicant was charged. After considering the rival contentions, the Trial Court has rejected the application for

discharge vide impugned order dated 4th January, 2021. Aggrieved by the said order, the applicant (accused No.9) is before this Court.

9. Mr. S. V. Manohar, learned Senior Counsel for the applicant has submitted that bare perusal of entire material indicates that, it is totally insufficient to frame charge against the applicant. Even if the entire material is accepted as it is, it does not make out a grounds for framing a charge. The charge-sheet, statement of witnesses and documents filed by the prosecution does not put-forth direct or circumstantial evidence against the applicant to establish his role in fraudulent activity. The prospecting reports alleged to be forged were very much submitted in the month of May 2000. However latter on, as per requirement, fresh copies on letter head have been supplied and thus, there was no element of fraud or forgery. It is argued that bare comparison of signature on acknowledgments would not *prima facie* justify, to hold the case of forgery. It is submitted that Revisionary Authority as well as Delhi High Court in related proceeding has empathetically negated the case of forgery. It is submitted that merely because applicant is Managing Director, no vicarious liability could be fastened against him in absence of specific statutory provision. On these prime submissions, discharge has been claimed.

10. On the other hand, Mrs. Mugda Chandurkar, learned counsel appearing for the non-applicant-CBI made elaborate submission to justify framing of charge. The non-applicant-CBI has also filed exhaustive reply in resistance. It has been stated that authorities of the JNIL by conspiring with officials of IBM had committed criminal act of forgery and cheating for obtaining mining lease. They have attempted to cheat State Government for crores of rupees. To be specific, the JNIL has submitted forged prospecting reports to the State Government for gaining advantage of the scheme. It is contended that the prospecting reports allegedly submitted in the month of May 2000, bears reference as "Chhattisgarh State" which in-fact, came into existence in the month of November 2000 and thus, apparently, there was fabrication. Moreover, it is stated that before Revisionary Authority i.e. the Central Mining Tribunal, the JNIL has submitted four acknowledgments which were also fake.

11. It is contended that the applicant a Managing Director of JNIL has conspired with the officers of IBM and attempted to cheat the State Government. The applicant being Managing Director was in-charge of the day to day business of the Company, as well as he is the ultimate beneficiary. According to the learned counsel appearing for the non-applicant-CBI, the material collected by the Investigating

Agency is sufficient to make out a triable case at least a case of grave suspicion justifying a trial and thus, by supporting impugned order, prayed for rejection.

12. Both sides have relied on various decisions of the Supreme Court to support their respective stand. I have gone through the orders passed by the Revisionary Authority, Delhi High Court, various statements and documents which are part of the charge-sheet. My attention has been invited to the well settled principles relating to the parameters to be applied at the stage of framing of charge. Heard both sides exhaustively and gone through the entire material on record. At the inception, it is advantageous to make brief reference of the legal position which has been canvassed by both sides. The said exercise is necessary for reminding ourselves as to what approach should be adopted while considering the challenge raised for discharge.

13. On legal premise, Mrs. Chandurkar, learned counsel appearing for the non-applicant-CBI broadly submitted that at the time of framing charge, the Court has to consider the material with a view to find out whether there are grounds for presuming that accused has committed offence, or that there are no sufficient grounds for proceeding further. The Truth and effect of evidence is not to be pre-judged at this stage. The standard of test to be applied at the final

stage cannot be applied while framing charge. Even if there is strong suspicion which leads to the Court to think that there is ground for presuming that the accused has committed an offence, then charge has to be framed.

14. To buttress said contention, she relied on the decision of the Supreme Court in case of ***State of Bihar Vs. Ramesh Singh, AIR 1977 SC 2018*** with particular emphasis on para 4 of the judgment which reads as below:-

“Reading Ss. 227 and 228 together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial, the truth 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 section 227 or section 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.

If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.”

15. The non-applicant-CBI relied on the decision of the Supreme Court in case of *Supdt. & Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhujra and others, 1979, CRI. L. J. 1390*, where in it observed that, at this stage even a very strong suspicion founded upon material before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

16 Further reliance is on the decision of the Supreme Court in case of *Niranjan Singh Karam Singh Punjabi, Advocate Vs. Jitendra Bhimraj Bijja and others, AIR 1990 SC 1962*, wherein it is observed that, at the stage of framing charge, the Court is required to evaluate the material and documents on record, with a view to finding out if the facts emerging therefrom taken at their face value discloses the existence of all ingredients constituting the alleged offence. The Court may for this limited purpose sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth, even if it is opposed to common sense or the broad probabilities of the case.

17. By placing reliance on the decision of the Supreme Court in case of ***State of M. P Vs. S. B. Johari and others, AIR 2000 SC 665***, it is argued that at stage of framing charge, trial Court is not required to marshal materials on record but only to prima facie consider whether there is sufficient material against accused. Relying on the decision of the Supreme Court in case of ***Sanghi Brothers (Indore) Pvt. Ltd. Vs. Sanjay Choudhary & ors., AIR 2009 SC 9***, it has been submitted that even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the Court to frame a charge. Reliance is placed on the decision of the ***State of Maharashtra Vs. Priya Sharan Maharaj and others, (1997) 4 SCC 393*** to contend that at this stage the Court cannot seek for independent corroboration to the version of prosecution for assessing the tenability of framing charge.

18. My attention has been invited by the non-applicant-CBI on the decision of the Supreme Court in case of ***P. Vijayan Vs. State of Kerala and another, AIR 2010 SC 663*** of which para 10 is relevant for our purpose which is extracted as below:-

“10. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere Post Office to frame the charge at the behest of the prosecution,

but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

19. Moreover, the non-applicant relied on the decision of the Supreme Court in cases of ***Shoraj Singh Ahlawat and Ors. Vs. State of U. P. and another***, AIR 2013 SC 52, ***State of Maharashtra, Etc Vs. Som Nath Thapa, Etc.***, AIR 1996 SC 1744 and ***qbalsingh S/o Manaksingh Soni Vs. Central Bureau of Investigation*** (Criminal Revision No. 208/2016 & other connected matters decided on 08.01.2021) to reiterate the position which is well elaborated above.

20. The non-applicant-CBI relied on the decision of the Supreme Court in case of ***Satya Narayan Sharma Vs. State of Rajasthan, (2001) 8 SCC 607***, which relates to the power of the High Court under Section 482 of the Code of Criminal Procedure. Though reliance is placed on the decision of ***Asian Resurfacing of Road Agency Pvt. Ltd. and another Vs. Central Bureau of Investigation, 2018 SCC OnLine SC 310***, however it is not relevant.

21. *Per contra*, Mr. Manohar, learned senior counsel appearing for the applicant has straneously argued that merely because the applicant is Managing Director of the Company, criminal liability cannot be fastened against him. In absence of sufficient incriminating material demonstrating requisite *mens rea*, the person cannot be hauled in criminal prosecution. It is submitted that without ascribing specific incriminating role, the decision making authority of the company cannot be held vicariously liable for criminal prosecution. He made two propositions that the authority i.e. Managing Director can be made an accused, provided there is sufficient incriminating evidence specifying his role coupled with criminal intent, and secondly if there exist a statutory provision attracting the principle of vicarious liability. To substantiate said contention reliance is placed on the decision of the Supreme Court in case of ***Sunil Bharti Mittal Vs. Central Bureau of Investigation, (2015) 4 SCC 609***. Particularly, he has attracted my attention to paras 41 to 44 of the decision which reads as below:-

“41 . In the present case, however, this principle is applied in an exactly reverse scenario. Here, company is the accused person and the learned Special Magistrate has observed in the impugned order that since the appellants represent the directing mind and will of each company, their state of mind is the state of mind of the company and, therefore, on this premise, acts of the company is attributed and imputed to the appellants. It is difficult to accept it as the correct principle of law. As demonstrated hereinafter, this proposition would run contrary to the principle of vicarious liability detailing the circumstances under which a direction of

a company can be held liable.

42. No doubt, a corporate entity is an artificial person which acts through its officers, directors, managing director, chairman etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides so.

43. Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision."

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect."

22. It is submitted that in absence of requisite averment, a liability cannot be fastened on the decision making authority under penal statute. In order to attract the liability, it is incumbent on the prosecution to specifically aver role of the accused, in absence of specific averment, no responsibility can be attracted even on *prima facie* basis. In this regard, he took me through another decision of the Supreme Court in case of ***Maharashtra State Electricity Distribution Company Limited and another Vs. Datar Switchgear Limited and others, (2020) 10 SCC 479*** with particular emphasis on the observation made in para 27 which reads as below:-

“27 A bare perusal of the complaint shows that the gravamen of the allegation is that a fabricated document containing the offending endorsement was tendered in evidence before the Arbitral Tribunal on behalf of MSEB by accused No. 6, who was in-charge of Shirpur Section. It is evident from the afore-extracted paragraphs of the complaint that other accused have been named in the complaint because, according to the complainant, MSEB-accused No. 1 was acting under their control and management. It bears repetition that the only averment made against appellant No. 2 is that appellant No.1, i.e. MSEB was acting under the control and management of appellant No. 2 along with other three accused. There is no denying the fact that appellant No. 2 happened to be the Chairman of MSEB at the relevant time but it is a settled proposition of law that one cannot draw a presumption that a Chairman of a company is responsible for all acts committed by or on behalf of the Company. In the entire body of the complaint there is no allegation that appellant No. 2 had personally participated in the arbitration proceedings or was monitoring them in his capacity as the Chairman of MSEB and it was at his instance that the subject interpolation was made in Exhibit C-64.”

23. In above decision, it is emphasized that though the Company was acting under the control and management of accused in the capacity of Chairman, one cannot draw presumption that a Chairman is responsible for all acts committed by or on behalf of the Company unless specific personal participation is shown.

24. Mr. Manohar, learned senior counsel appearing for the applicant further referred the decision of the Supreme Court in case of ***Thermax Limited and others Vs. K. M. Johny and others, (2011) 13 SCC 412***, to contend that, in order to fasten corporate criminal liability, allegation and proof are necessary, in absence of specific role and allegation, the prosecution is untenable. Relevant observations in this

regard (paras 38 and 39) are as below below:-

“38. Though Respondent No.1 has roped all the appellants in a criminal case without their specific role or participation in the alleged offence with the sole purpose of settling his dispute with appellant-Company by initiating the criminal prosecution, it is pointed out that appellant Nos. 2 to 8 are the Ex-Chairperson, Ex-Directors and Senior Managerial Personnel of appellant No.1-Company, who do not have any personal role in the allegations and claims of Respondent No.1. There is also no specific allegation with regard to their role.

39. Apart from the fact that the complaint lacks necessary ingredients of Sections 405, 406, 420 read with Section 34 IPC, it is to be noted that the concept of ‘vicarious liability’ is unknown to criminal law. As observed earlier, there is no specific allegation made against any person but the members of the Board and senior executives are joined as the persons looking after the management and business of the appellant- Company.”

25. Similarly, the reliance is placed on the decision of the Supreme Court in case of ***GHCL Employees Stock Option Trust Vs. Kranti Sinha, (2013) 4 SCC 505***, wherein it is observed that allegation about commission of offence of cheating and breach of trust against Managing Director, in absence of specific role is not tenable on the basis of general and bald allegation. On the same line, reliance is placed on the decision of Supreme Court in case of ***Maksud Saiyed Vs. State of Gujarat and others, (2008) 5 SCC 668***, to contend that Director cannot be held vicariously liable, as Penal Code does not contain any provision for attracting vicarious liability on the part of Managing Director or the Directors of Company.

26. The learned senior counsel appearing for the applicant took me through the decision of the Supreme Court in case of ***Shiv Kumar Jatia Vs. State of NCT of Delhi, (2019) 17 SCC 193***, wherein the liability of Directors/Controlling Authority of Company has been elaborately dealt by considering earlier pronouncement in case of Sunil Mittal (*supra*). The relevant observation of para 19 reads as below:-

“19. The liability of the Directors/the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in Sunil Bharti Mittal. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.”

27. In this regard, useful reference can be made to the decision of the Supreme Court in case of ***Sham Sunder and Others Vs. State of Haryana, (1989) 4 SCC 630*** with particular reference to para 9 of the judgment which reads as below:-

‘9. But we are concerned with a criminal liability under penal provision and not a civil liability. The penal provision must be strictly construed in the first place. Secondly, there is no vicarious liability in criminal law unless the statute takes that also within its fold. Section 10 does not provide for such liability. It does not make all the partners liable for the offence whether they do business or not.

28. In substance, when the Company is an offender, vicarious liability of the Director cannot be imputed automatically in absence of any statutory provision or specific incriminating material. The Indian Penal Code, barring few exceptions does not contemplate vicarious liability on the part of the accused. To invoke legal fiction by applying vicarious liability, the statute must expressly provide so. Merely because a person is holding high post in the Company, *ipso facto*, it cannot be presumed that he has committed an offence by virtue of his post. The penal statute is to be strictly construed for which there can be no dispute.

29. At this stage, it is advantageous to revisit the case put-forth by the non-applicant-CBI, which would work as turf for adjudicating the legal tassel. The non-applicant-CBI has registered a case on the basis of source information against officials of IBM, Nagpur, Directors and employees of JNIL. Principally, it was alleged that officials of IBM, Nagpur in connivance with the Directors/officials of JNIL committed forgery and cheating for grant of mining lease of the

four areas held by the JNIL under prospecting licence. It was claimed that the JNIL has not prospected the area, but submitted forged statutory prospecting reports to the State Government.

30. It is the non-applicant's case that the investigation unfolds that the applicant-Managing Director of JNIL entered into conspiracy with rest of the accused to actuate the fraud. In pursuant to the criminal conspiracy, all accused attempted to cheat the State Government of Chhattisgarh for crores of rupees. It was transpired during the investigation that accused No. 5 Mr. Chawala, an authorized signatory of JNIL has applied on 16.05.2000 for grant of four Mining lease, falsely claiming that JNIL had prospected the area within scheduled time and had submitted forged prospecting reports on or before 16.05.2000. Accused No. 7 Gokhale – Recognized Qualified Person (RQP) has prepared false prospecting report for four areas fraudulently showing that JNIL had prospected area within the scheduled time. Accused No. 7 Gokhale has put his signature on all four prospecting reports showing to be completed prior to 09.05.2000. Those fabricated anti-dated prospecting reports have been submitted by the JNIL on or before 16.05.2000 for obtaining Mining lease. The Mining lease was rejected by the Chhattisgarh Government for violation of agreement of the prospecting licence along with some discrepancies

found in the prospecting reports. It was found that there was mention of 'Chhattisgarh State' and 'Chhattisgarh Government' in prospecting reports as well as some phone numbers. However, Chhattisgarh State was formed subsequently on 01.11.2000 and telephone numbers were also issued latter on.

31. It is prosecution case that JNIL has preferred a revision against the order of rejection dated 31.01.2007 before the Revisionary Authority. In the said revision, JNIL has submitted forged acknowledgments (dated 16.12.1999, 20.01.2000, 13.05.2000, 17.05.2000) allegedly received under seal of Regional Controller of Mining with false certification. During investigation, the expert has opined that signatures of the Regional Controller of Mining Shri S. M. Pimpale differs from the signatures on the acknowledgments receipts and thus, they were forged. It was alleged that accused No.1 Ajay Shrivastav in pursuant to the criminal conspiracy, had falsely created and maintained the files of IBM in respect of JNIL pertaining to iron Ore Deposits of Rowghat area.

32. So far as the applicant is concerned, it is alleged that he has conspired with co-accused who were the Directors/officials of Company as well as Officers of IBM and they attempted to cheat the Government by producing false and fabricated prospecting reports and

related acknowledgments. According to the non-applicant-CBI, the fabrication is evident from two glaring aspects i.e. reference of “Chhattisgarh State”, in prospecting reports submitted prior to the existence of the Chhattisgarh State, and fabrication of acknowledgments on the basis of discrepancies in signatures and seal. The non-applicant would contend that the aforesaid material collected during investigation is supported by several statements which are sufficient to make out a triable case against the applicant who is Managing Director of the JNIL.

33. With reference to Sections 227 of the Code, after considering the prosecution case as a whole, if the Court forms an opinion that there are no sufficient grounds for proceeding further, then he is under obligation to discharge the accused. However, if having regard to entire material the Court forms an opinion that there are grounds for presuming that the accused has committed the offence, he is well justified in framing of the charge. The basic requirement is to have a *prima facie* view about the overall effect of material sought to be adduced against the accused in the trial. Undoubtedly, it is not permissible at this stage to meticulously weigh the evidence or to consider in detail the effect of the said evidence. The standard which is to be applied is to see whether the material adduced is sufficient to

proceed further, and not adequacy of material to record a finding of guilt.

34. The applicant has come up with a specific case about absence of incriminating material even for proceeding further. According to applicant, the entire material does not travel beyond realm of mere suspicion and thus, discharge is well justifiable in the sense approvable under settled norms. Since the test of determination depends upon the facts of the case, the material adduced by the prosecution needs scrutiny to find out its sufficiency to proceed further.

35. The learned senior counsel appearing for the applicant led emphasis on the decision of the Revisionary Authority and Delhi High Court to contend that the matter under consideration was in depth considered, however no opinion was formed about forgery. To state the background, the application filed by the JNIL for grant of mining lease was rejected by the State Government of Chhattisgarh vide order dated 31.01.2007. It was challenged by the JNIL in terms of Section 30 of the Act of 1957 before the Revisionary Authority. The copy of said order (Annexure-1) is produced on record. My attention has been invited to point No. (e) and (f) framed by the Authority which were as, whether the petitioner (JNIL) had undertaken prospecting operations in the concerned area, and whether the petitioner had prepared and

submitted the prospecting reports in the month of May 2000. While considering the said aspect, the authority has dealt the response of the State raising ground of fabrication of prospecting reports. The order indicates that in response to the allegation of fabrication on the basis of mentioning of word “Government of Chhattisgarh” and about the telephone numbers, the explanation has been furnished by the JNIL. After considering the entire material, the Revisionary Authority has formed opinion that the prospecting reports were submitted in the Month of May 2000 itself, meaning thereby, the objection about fabrication was turned down. The Revisionary Authority has set aside the order of rejection of mining lease by directing State to proceed in accordance with law.

36. The said order was challenged by the State of Chhattisgarh in the High Court of Delhi in Writ Petition (C) No. 396/2008. In the said writ petition High Court took a note that in the meantime, the Chief Vigilance Officer (‘CVC’) has conducted an enquiry and submitted its report. On that basis, the Delhi High Court had remitted the matter back to the Revisionary Authority for reconsideration. The Revisionary Authority has once again considered the entire material along with CVC report, but reaffirmed its earlier view of setting aside the order of rejection.

37. It reveals from the said order that in the meantime, State of Chhattigarh has made a complaint to the Ministry of Mining regarding forged documents. In turn, the Ministry of Mining has asked to CVC to enquire and submit report. The gist of inquiry report which is reproduced by the Revisionary Authority conveys that CVC has closed the complaint of the State Government by issuing caution memo to IBM.

38. Besides that, the learned senior counsel appearing for the applicant also lay his hand on the another decision of Delhi High Court in Writ Petition (C) No. 7587/2011 dated 09.11.2011. It was a petition filed by the Tata Steel Limited challenging the order dated 19.08.2021 passed by the Revisionary Authority after remand. The Tata Steel was impleaded in the revision as it has also staked claim to obtain mining lease in respect of the disputed area. Objection regarding submission of forged prospecting reports by JNIL was raised. The Delhi High Court by relying on the admission of the State Government regarding receipt of acknowledgments and successful completion of prospecting operation has dismissed the petition. The Delhi High Court has taken into account the letter of the State Government dated 08.10.2014 addressed to the Central Government confirming the prospecting operations carried out by the JNIL and about acceptance of explanation

of JNIL that the analysis report was done in house, therefore, fresh report on the letter head was supplied. Considering said explanation and other material, the writ petition was dismissed as well as review was also dismissed.

39. On said material, the learned senior counsel appearing for the applicant would submit that the Revisionary Authority and the Delhi High Court has twice considered the objection about fabrication of the prospecting reports as well as CVC report, but did not accept the claim of fabrication. He has particularly emphasized on the point that for the same cause, the CVC has conducted enquiry and merely issued a note of caution to IBM only. Therefore, according to him, on said background, there is no propriety for CBI to reopen the closed chapter by filing FIR that too after five years. True, the decisions of the Revisionary Authority and the Delhi High Court indicate that the objection regarding fabrication was raised, however the matter pertains to the grant of mining lease. The matter has reached to the Revisionary Authority as well as the Delhi High Court for testing the legality of rejection of mining lease and with that perspective, it was scrutinized. Though the objection of fabrication and consequential post-dated reports was not considered, however that does not mean that there was a finding from the view point of charged offences.

40. It is the applicant's specific case that there is no material at all to establish his complicity even on *prima facie* basis. Though applicant is Managing Director, it has been straneously argued that in absence of material or specific role, he cannot be automatically held responsible for the alleged acts by invoking the principles of vicarious liability which has no place under the Penal Code. It is for the prosecution to point out the relevant material from the charge-sheet on the basis of which it can be safely inferred that the existing material is sufficient for framing charge. Considering requirement of material at this initial stage, even if the material is able to make out a case of strong suspicion against the applicant, it would suffice for framing charge. The responsibility lies on the prosecution to satisfy that there exists adequate material to that extent.

41. In order to meet the legal requirement, the learned counsel appearing for the non-applicant-CBI took me through various statement of witnesses recorded during the course of investigation. I have meticulously gone through all the statements pointed out by the non-applicant to find out adequacy of material needed at this stage. Statement of PW-1 Mr. Panchu Bhattacharya who is Assistant Mining Engineer is pressed into service. He has seen the concerned IBM file regarding Rowghat area pertaining to JNIL with specific reference to

some letters. He stated about the discrepancies in the signature, endorsement on the said letter to contend that they are not in order. On the basis of abnormalities, he expressed that the notes were prepared subsequently. He expressed suspicion about the prospecting reports, however he did not state the role of the applicant. PW-2 – Mr. Randhir Deshbhratar is Assistant Mining Engineer who in similar manner echoed the statement of PW-1 Panchu Bhattacharya. Likewise, the case of PW-3 Mukund Tol, Assistant Mining Geologist.

42. My attention has been invited to the statement of PW-4, Mr. Abhay Agrawal, Deputy Controller of Mines. He stated about the discrepancies in the prospecting reports while inferring that the prospecting reports were not submitted on the dates as shown in reports. He gave a detail account of all four prospecting reports with particular reference that they bear reference of the 'Chhattisgarh State' which was not in existence at the relevant time. He has also stated about the discrepancies found in acknowledgment receipts. On the basis of suspicious circumstances clouded around, opined that fake receipts have been prepared.

43. PW-6, Mr. Vijay Kumar Parsatwar, Chairman of RCOM specified the procedure of diary entries, dispatch and other technicalities to indicate that the receipts are not free from suspicion.

The statement of PW-6 Mrs. Anita Sharma, a Lower Division Clerk is on the same line. My attention has been invited to the statement of PW-7, Mr. Ranjan Sahai, Controller of Mines, who says about the procedure to be adopted by the IBM regarding the prospecting operation. He has unfolded the procedure in that regard. PW-8 Mantu Biswas, Regional Controller of Mines and PW-9, Yogesh Kale, RCOM speak about procedure as well as the scheme. Few statements of witnesses marked as PW-15 to PW 24 have been shown who are officers of Chhattisgarh State. They stated about the scheme, procedure and expressed that the relevant documents are forged.

44. The learned counsel appearing for the non-applicant-CBI took me through statement of PW-25, Prakash Jayaswal who is Chief Executive Officer of JNIL. It is his statement that the applicant was Managing Director of JNIL. He was looking after the work of the Company at Nagpur whilst Ramesh Jayaswal used to look after the work at Raipur. However, he has added that entire work relating to the mining division was being done from Bhilai office of the Company. He stated that he has identified the signature of Mr. Chawla (accused No.5) and had signed the affidavit under the direction of Mr. Chawla who was in-charge of Mining Division. He has also stated that Mr. Chawla used to receive instructions from the Directors of JNIL, however

he speaks about the affairs of the year 1995.

45. The learned counsel appearing for the non-applicant-CBI has attracted my attention to the articles of association of JNIL with reference to the names of the Directors. My attention has been invited to Clause 181 of the articles of association to contend that the day to day management and control was with the Managing Director and whole time Directors of the Company. However, Clause 181 of the articles of association specifies that the Managing Director and whole time Directors have power to distribute day to day management function among other directors as they deem fit. I was taken through a minute book regarding minutes of the meeting dated 30.01.1999 to impress that the applicant was present in the meeting in the capacity of the Managing Director of the Company. However, the non-applicant-CBI is unable to indicate any relevance of the said meeting with the prospecting reports or mining lease.

46. During investigation, Statement of PW-32, Mrs. Vaishali Gokhale who was daughter-in-law of accused No. 7 Sadashiv Gokhale has been recorded. When she was confronted with the prospecting reports bearing reference of 'Chhattisgarh State' prior to its existence, she stated that she cannot explain the said discrepancy. Precisely, the aforesaid material is produced by the prosecution to contend about

sufficiency for framing charge.

47. Careful examination of said material, nowhere indicates that the applicant had either signed on any particular document or he had knowledge about the tainted documents. All what has been argued is that the applicant being the Managing Director, he is supposed to know all the activities of the Company as well as he being ultimate beneficiary, it is to be presumed that under his directions, the tainted documents have been prepared. The material collected by the Investigating Agency though *prima facie* indicates grave suspicion about the prospecting reports, however, relevance of applicant with fabrication resulting into cheating is particularly for scrutiny. The material nowhere indicates that the applicant has partaken in the decision making process of submitting anti-dates or fake prospecting reports or he was a part in managing fake acknowledgments. The charge-sheet specifies the role of the most of the co-accused with their specific act as some of them were signatory, some were connected in one or other way, with the tainted documents. Apparently the allegations have been raised on the premise that the applicant is Managing Director and would be the beneficiary on deception.

48. Undoubtedly, offence was registered against the company and its officers apart from the officers of the IBM. The company is a

corporate entity which is an artificial person which always act through its officers, Directors or Managing Directors or Chairman. If the Company has committed a criminal act involving *mens rea*, it was on the intent of the individuals who have acted on behalf of the Company or at whose instance, the act was done. In the entire body of the investigation papers, there are no allegations that the applicant has personally participated in either of the meeting or any other material to make out that it was the result of the applicant's desire or direction.

49. No doubt, direct evidence on the point of conspiracy is seldom to have. However, merely on the basis of logical inference, everything cannot be presumed. The prosecution has to at least make out the circumstances from which reasonable inference of conspiracy can be drawn. Besides the post held by the applicant, nothing in that direction has been canvassed. In above referred decision in case of Sunil Mittal, the Supreme Court has categorically ruled that, the individual allegedly perpetrated the commission of the crime on behalf of the Company, can be made an accused, if there is sufficient evidence to indicate his active role coupled with criminal intent. Likewise, he can also be roped where the statutory regime itself attracts the doctrine of vicarious liability. Suffice to say that the prosecution has not pointed out any provision of law to say that the Managing Director of a

Company is vicariously liable for the acts done by the Officers of the Company for the offence with which the applicant is charged.

50. The applicant is principally charged for the offence of criminal conspiracy punishable under Section 120-B of the Indian Penal Code. Generally a conspiracy is hatched in a secrecy and it may be difficult to adduce direct evidence on the same. The prosecution will often rely on the evidence of acts of various parties to infer that they were done in reference to their common intention. The evidence about transmission of thought, sharing unlawful design would suffice the purpose. Moreover, the conspiracy is not merely concurrence of mind but a concurrence resulting from agreement between the parties.

51. Since the conspiracy is not open affair, it is to be inferred from the circumstances and the conduct of the parties. Cumulative effect of the proved circumstances should be taken into account in determining the guilt. Of course, each one of the circumstances should be proved from which the inference can be drawn. The material brought by the prosecution would not suffice to establish a link on *prima facie* basis to hold that the applicant has participated in the design of preparation of false document. It is hazardous to accept the submission that only because applicant was a Managing Director, he was supposed to know the things and were done under his directions

and control. The conspiracy cannot be presumed from unconnected facts without reasonable nexus. *Prima facie*, there is no material that forged documents were prepared with the knowledge and consent of the applicant. It is far fetching exercise to presume everything only by keeping in mind the position held by applicant in the Company.

52. The reading of whole material do not speak about the role of the applicant and thus, it is difficult to form a *prima facie* opinion regarding adequacy of material to proceed against the applicant. The Trial Court ought to have satisfied itself regarding adequacy of material to frame charge. One can hardly find few lines of reasoning in para 10 of the impugned order which only says that the applicant being Managing Director was looking after day to day work of the Company, and he is ultimate beneficiary. Besides that, the order is bereft of reasons to substantiate rejection. In the scenario, having regard to the aforesaid discussion coupled with legal position, it is difficult to sustain impugned order which is of perfunctory nature. In conclusion, there is no sufficient material to proceed against the applicant i.e. to frame charge requiring him to face the trial. Obviously, the prosecution is at liberty to exercise its power under Section 319 of the Code, if occasion so arises.

53. In view of above the impugned order is not sustainable in law and therefore application is allowed. Impugned order dated 04.01.2021 passed in Special CBI Case No. 1/2014 is hereby quashed and set aside. The applicant namely Mr. Arbind Kumar Jayaswal is discharged from CBI Case No. 1/2014.

54. Application stands disposed of in above terms.

(VINAY JOSHI, J.)

Gohane