

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-1493-2018 (O & M)

Date of decision: 21.09.2022

Jaspal Kaur

..... Petitioner

V/s

State of Punjab and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. N.C. Kinra, Advocate, for the petitioner.

Mr. Jiteshwar Singh, AAG, Punjab.

Mr. V.N. Sharma, Advocate, for respondent No.3.

JASJIT SINGH BEDI, J. (Oral)

The prayer in the present petition under Section 482 Cr.P.C. is for the quashing of FIR No.107 dated 27.04.2017 under Sections 406/419/420/465/467/468/471 and 120-B IPC registered at Police Station Dera Bassi, District SAS Nagar, Mohali, order framing charges under Sections 406, 419, 420, 465, 467, 468, 471, 120-B, 201 IPC dated 14.07.2017 (Annexure P-5), the charge-sheet dated 14.07.2017 (Annexure P-5/1) and all subsequent proceedings arising therefrom.

2. The brief facts of the case are that FIR No. 107 dated 27.04.2017 under Sections 406/419/420/465/467/468/471 and 120-B IPC, Police Station Dera Bassi, District SAS Nagar, Mohali, came to be registered at the instance of respondent No.3-Jaswinder Kaur, daughter of Asa Singh against Jasmer Singh son of Ajit Singh, Jaspal Kaur wife of Jasmer Singh, Pritpal Singh son of Surmukh Singh and Manjit Kaur wife of Piara Singh. The allegations as extracted from the FIR against the

petitioner-Jaspal Kaur and the co-accused are as under:-

“Jasmer Singh resident of Bal Majra took me to the courts at Rajpura on 18.1.2007. He got the loan of Rs.5,80,000/- from State Bank of Patiala, Khera Gajju Branch, Account No. 65014952087 whereas at the house, he had told for raising a loan of Rs 2,00,000/-, I did not read those papers. The bank officials by visiting the office of the Sub Registrar, Rajpura, got the deed executed for Rs.5,80,000/- in favour of the bank. I was told nothing about it. When I reached home, he came to our house after 2-3 days and enquired from him as to what was the object of recording of Rs.5,80,000/-. He told me that he was her real brother and that there would not be any cheating with her. Thereafter, I kept mum. Now I have come to know that he had done 420 (cheating) with me. When I got the fard of my land, I found that there was an entry of the raising of the loan of Rs 5,80,000/- and it pertained to the Bank branch of Gajju Khera. Reaching there, I and my sister's husband met the manager and checked the record of the bank and found attached a copy of the sale deed and my Aadhar card. He got pasted a joint photo with his wife and got all the signatures of his wife in my place in the bank. And there, by pasting a joint photo of his wife, he has committed cheating whereas the loan was in my name and the address of mine should have been there. He has given the address of Jaswinder Kaur and Jasmer Singh residents of village Bal Majra, Post office, Buha, Tehsil Rajpura, Distt. Patiala and got the entire documents signed from his wife in my place. He himself has been withdrawing the amount and depositing the same himself. On 31.01.2015, he got account No. 65014952087 closed and again got made a fresh limit and its account number is 65014952724. He got a loan of Rs.3,89,000/- by pasting the photo of his wife and here also, he has committing 420 (cheating). In this regard. I gave a letter to the manager and a copy thereof is attached. This was about the committing of cheating by Jasmer Singh and his wife”.

The allegations are that Jasmer Singh, the husband of the petitioner took a loan of Rs.5,80,000/- from State Bank of Patiala, Gajju Khera Branch and he had got pasted a joint photograph of himself with his wife-Jaspal Kaur (petitioner) and Jaspal Kaur had signed in place of the complainant on all the necessary documents of the Bank. The loan was in the name of the complainant but a joint photograph of the petitioner and her husband-Jasmer Singh, had been affixed on the Bank record and the address was given of village Bal Majra, the village of Jasmer Singh and Jaspal Kaur whereas the complainant was a resident of village Kanod.

The second allegation against the accused is as under:-

“Jasmer Singh and his wife came to my house and they took me into confidence and said that about the loan got arranged by me, documents are to be prepared in the court for getting the same cancelled and that earlier our Tehsil was Rajpura and now it is Derabasi and whenever they need, they would take me. Jasmer Singh and his wife had already got prepared the documents at Derabasi and all this, she has come to know now that both of them have done cheating of 420 with me. After 5-7 days, on 4.1.2011, in the morning, both of them came to my house. After taking tea, they said that we had to go upto Derabasi Tehsil on that day and that I should change my clothes immediately. I got ready quickly and started with them because I had been treating them as my brother and brother's wife. When we reached Derabasi, the papers were already ready there. They got my signatures on all the papers. The witnesses present there were not from my village. I signed those papers at the asking of both of them. Now I have come to know that he had got a General Power of Attorney in favour of Pritpal Singh s/o Sh.Surmukh Singh s/o Sampuran Singh r/o village Kurdi, Distt Mohali and Pritpal Singh too has openly committing cheating (420) with me. This General Power of

Attorney relates to the land measuring 10 Bighas 15 Biswa of land situated in village Ram Kala, Tehsil Derabasi and when I went deep into the matter, I got a copy of the General Power of Attorney and from this, it was found that Jasmer Singh and his wife and Pritpal Singh by conniving with each other, sold my land on 6.1.2011 for Rs.20,16,000/- to Manjit Kaur w/o Piara Singh s/o Samunder Singh to Bhago Majra on the basis of General Power of Attorney. We got suspicious that Manjit Kaur is either sister or any other relation of Pritpal Singh. About this, Pritpal Singh, Jasmer Singh and his wife besides Manjit Kaur could tell. By coming to this place, all the above persons have openly committed cheating of 420 with me. Even while opening the account in Gajju Khera Bank Branch, there was no witness from the Village. In that, the witnesses are Jasmer Singh and Nambardar Sheetal Ram of Village Shedkheri. Here also, they have committed cheating of 420. In the General Power of Attorney executed on my behalf, the witnesses are Nambardar of Rampur Kalan, Jasmer Singh Nambardar of village Dappar and Jasmer Singh and his wife have intentionally not become witnesses so that they may avoid their involvement in the cheating. For the purpose of execution of General Power of Attorney, the witnesses are kept from the village and the Namabardar is also supposed from the same village. At this stage also, Jasmer Singh and his wife and Pritpal Singh etc. connived with each other and have committed cheating of 420 with me. At the time of the execution of sale deed in favour of Manjit Kaur w/o Piara Singh too, there was neither any Nambardar nor any witness from the village. Lakhvir Singh, Sarpanch Rampur Kalan, Jagtar Singh s/o Gurdev Singh r/o Budhanpur, Distt. Mohali are the witnesses to the sale deed. The sale deed has been got executed on behalf of the purchaser by Satish Kumar s/o Ram Rakha r/o H. No. 339, Bharat Colony, Rajpura Distt.Patiala and his mobile number is 98550009304. From this also, it is proved

that the aforesaid persons by conniving with each other, have committed cheating of 420 with me. In case, in all the transactions, had the witnesses been from village Kanod, Post Office Karala, they would have told me in this behalf. It is a cheating with me. Jasmer Singh and his wife have openly committed cheating with me by treating me as sister”.

As per the abovesaid allegations, the petitioner-Jaspal Kaur and her husband-Jasmer Singh taking the complainant into confidence took her to the Tehsil at Derra Bassi on 04.01.2011 and got her executed a General Power of Attorney (General Power of Attorney) surreptitiously in favour of one Pritpal Singh and the said Pritpal Singh sold the land of the complainant to one Majit Kaur wife of Piara Singh. The witness in the General Power of Attorney is Jasmer Singh. The sale deed was for a sum of Rs. 20,16,000/- but no money was paid to the complainant.

3. The aforementioned allegations were enquired into and it was found that Jasmer Singh had sold the land of the complainant to Pritpal Singh for a sum of Rs.40,00,000/- after getting executed the General Power of Attorney dated 04.01.2011 secretly after misleading the complainant with whom he shared brotherly relations. It was also found that the petitioner and her husband Jasmer Singh had got sanctioned a limit of the bank loan for a sum of Rs.5,80,000/- by keeping the land of the complainant as collateral. During the course of the enquiry, the parties had arrived at a settlement and furnished their respective affidavits that a compromise would be effected in due course. The husband of the petitioner-Jasmer Singh had admitted that he had received a consideration of Rs.40,00,000/- on account of cheating upon the complainant and had opened an account with the State Bank of Patiala, Gajju Khera Branch using the photograph of his wife in place of the

complainant. However, as the compromise could not fructify, the FIR came to be registered, which culminated in a report under Section 173 Cr.P.C.

4. The learned counsel for the petitioner contends, firstly, that so far as the petitioner Jaspal Kaur is concerned, no liability can be affixed on her as no specific role has been attributed to her in the FIR or in the report under Section 173 Cr.P.C. She is not a party to the civil suit instituted by the complainant. She is neither an executant nor an attesting witness to the General Power of Attorney or the sale deed. No overt act has been attributed to her in the transactions as referred to in the FIR. In fact the complainant was an educated lady and serving in the Education Board. The circumstances explicitly show that the complainant-Jaswinder Kaur was aware of the raising of the loan from the Bank in the year, 2007 while the FIR came to be registered only on 27.04.2017. He contends that the petitioner has been implicated as she is the wife of the main accused Jasmer Singh and there is no evidence of conspiracy under Section 120-B IPC. Even otherwise, no document has been forged as alleged and the offence under Section 465, 467 and 471 IPC are not made out. The dispute, at best, is of civil nature which has been given a cloak of a criminal dispute. He, therefore, contends that the FIR and all subsequent proceedings arising therefrom including the chargesheet ought to be quashed qua the petitioner.

5. The matter had come up for consideration before this Court and on 06.02.2018, an interim order was passed wherein the Trial Court was directed to adjourn the proceedings beyond the date fixed by this Court. The matter has been pending ever since.

6. The respondent No.3-complainant has filed a reply dated

husband Jasmer Singh had affixed a fake photograph of the petitioner and forged the signatures of the complainant while opening the Account No.65014952724. The fact of a fake photograph being affixed of the petitioner and her husband in place of the complainant is borne out from the investigation and from the affidavit of the accused. Further, the petitioner and her husband also admitted that they had got prepared a General Power of Attorney dated 04.01.2011 by misleading the complainant in the name of Pritpal Singh and the said fact has been admitted in the affidavit dated 08.12.2015 (Annexure R-3/T), which was furnished to the investigating agency during the course of enquiry into the complaint which led to the registration of the FIR. It is contended that the respondent-complainant was not aware about the raising of the loan from the Bank in the name of the answering respondent by the petitioner and her husband and the same came to her knowledge when the affidavit, in question, was furnished. It is further submitted by the learned counsel for the complainant that the complainant was mislead into the execution of the Power of Attorney in favour of Pritpal Singh as she treated the petitioner's husband Jasmer Singh as her brother. In fact, as per the FIR, it was the petitioner and her husband who took her to Tehsil Derra Bassi for the execution of the Power of Attorney on 04.01.2011 while telling her that some documents regarding the redemption of the loan was to be executed. He, thus, contends that firstly, the petitioner has affixed her signatures in the Bank documents for obtaining a loan in place of those of the complaint, her photographs in place that of the complainant and further alongwith her husband has misled the complainant in the execution of the Power of Attorney 04.01.2011 in favour of Pritpal Singh. Thus,

clearly the offences under Sections 406, 419, 420, 465, 467, 468, 471, 120-B IPC are made out qua the petitioner as well.

7. The learned counsel for the State has while referring to the reply dated 10.07.2019, submits that prior to the registration of the FIR, the matter was enquired into detail by the Superintendent of Police (City), Mohali and it was found that Jasmer Singh-husband of the petitioner, took the complainant-respondent No.3 in confidence and got executed a General Power of Attorney dated 04.01.2011 in favour of Pritpal Singh in respect of the land situated in Mouja, Rampur Kalan, Tehsil Derra Bassi, District SAS Nagar, for a sum of Rs.40,00,000/- which was never paid to the complainant. It was further found during the course of enquiry that Jasmer Singh in connivance with his wife (the present petitioner) got opened an account No.65014952724 qua 01 Bigha 19 Biswas of land of respondent No.3 with State Bank of Patiala, Gajju Khera Branch, Rajpura by using the photograph of the present petitioner and got the limit of Rs.5,80,000/- sanctioned. The signatures on the documents were not affixed by the complainant/respondent No.3 but in fact by the present petitioner, who impersonated the complainant and got the sanctioned loan in their favour. Thus, it was contended that the petitioner and her husband had committed the offences of forgery, misappropriation and cheating and therefore, the FIR was rightly registered. Even otherwise, once the charges had been framed pursuant to the report under Section 173 Cr.P.C., the question of quashing of the FIR does not arise and a prima facie case is clearly established and therefore the present petition ought to be dismissed.

8. I have heard the learned counsel for the parties at length.

9. The Hon'ble Supreme Court has dealt with the law regarding the level of interference warranted by the Court at the stage of framing of charges in a number of judgments. Some of them have been enumerated hereinbelow.

In the case of "*Tarun Jit Tejpal versus State of Goa and Anr., 2021(2) RCR (Criminal) 42*", the Hon'ble Supreme Court has observed as under:-

"9.1 In the case of N. Suresh Rajan (Supra) this Court had an occasion to consider in detail the scope of the proceedings at the stage of framing of the charge under Section 227/228 CrPC. After considering earlier decisions of this Court on the point thereafter in paragraph 29 to 31 this Court has observed and held as under:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the

materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

30. Reference in this connection can be made to a recent decision of this Court in Sheoraj Singh Ahlawat v. State of U.P. [2013(1) R.C.R.(Criminal) 153 : (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 Supreme Court 52], in which, after analysing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi) [2008(1) R.C.R. (Criminal) 336 : (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (Sheoraj Singh Ahlawat case [2013(1) R.C.R.(Criminal) 153 : (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 Supreme Court 52], SCC p. 482, para 15)

"15. '11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.' (Onkar Nath case [2008(1) R.C.R.(Criminal) 336 : (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507], SCC p. 565, para 11)"

(emphasis in original)

31. Now reverting to the decisions of this Court in Sajjan Kumar [Sajjan Kumar v. CBI, 2010(4) R.C.R.(Criminal) 382 : (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] and Dilawar Balu Kurane [Ditowar Balu Kurane v. State of

Maharashtra, 2002(1) R.C.R.(Criminal) 451 : (2002) 2 SCC 135 : 2002 SCC (Cri) 310], relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused:

31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction".

31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in R.S.

Nayak v. A.R. Antulay [(1986) 2 SCC 716 : 1986 SCC (Cri) 256]. The same reads as follows: (SCC pp. 755-56, para 43)

"43. ... Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of 'prima facie' case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a prima facie case is made out, charge has to be framed."

9.2 In the subsequent decision in the case of *S. Selvi (Supra)* this Court has summarised the principles while framing of the charge at the stage of Section 227/228 of the CrPC. This Court has observed and held in paragraph 6 and 7 as under:

"6. It is well settled by this Court in a catena of judgments including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609], Dlawar Balu Kurane v. State of Maharashtra [Ditowar Balu Kurane v. State of Maharashtra, 2002(1) R.C.R.(Criminal) 451 : (2002) 2 SCC 135 : 2002 SCC (Cri) 310], Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, 2010(4) R.C.R.(Criminal) 382 : (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], State v. A. Arun Kumar [State v. A. Arun Kumar, 2015(1) R.C.R.(Criminal) 295 : (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505], Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, 2015(2) R.C.R.(Criminal) 32 : (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265], State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, 2003(2) R.C.R.(Criminal) 116 : (2003) 2 SCC 711 : 2003 SCC (Cri) 688], Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bjjaya [Niranjana Singh Karam Singh Punjabi v. Jitendra Bhimraj Bjjaya, 1991(1) R.C.R.(Criminal) 89 : (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge

while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to section 239 CrPC, 1973 pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, 2010(4) R.C.R.(Criminal) 382 : (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

"(i) The Judge while considering the question of framing the charges under section 227 CrPC, 1973 has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) *The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

(iv) *If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.*

(v) *At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.*

(vi) *At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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.*

(vii) *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."*

9.3 In the case of Mauvin Godinho (Supra) this Court had an occasion to consider how to determine prima facie case while framing the charge under Section 227/228 of the CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under section 227 of the CrPC, 1973 there cannot be a roving enquiry into the

pros and cons of the matter and weigh the evidence as if he was conducting a trial.

9.4 At this stage the decision of this Court in the case of Stree Atyachar Virodhi Parishad (Supra) is also required to be referred to. In that aforesaid decision this Court had an occasion to consider the scope of enquiry at the stage of deciding the matter under Section 227/228 of the CrPC. In paragraphs 11 to 14 observations of this Court in the aforesaid decision are as under :

"11. Section 227 of the Code of Criminal Procedure, 1973 having bearing on the contentions urged for the parties, provides:

"227. Discharge.-If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject-matter of consideration by this Court. In State of Bihar v. Ramesh Singh [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257], Untwalia, J., while explaining the scope of the said sections observed: [SCR p. 259 : SCC pp. 41-42 : SCC (Cri) pp. 535-36, para 4]

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 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.

13. In Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229], Fazal Ali, J., summarised some of the principles: [SCR pp. 234-35 : SCC p. 9 : SCC (Cri) pp. 613-14, para 10]

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused had been made out.

(2) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and

the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

14. These two decisions do not lay down different principles. Prafulla Kumar case [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257]. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

9.5 Applying the law laid down by this Court in the aforesaid decisions and considering the scope of enquiry at the stage of framing of the charge under Section 227/228 of the CrPC, we are of the opinion that the submissions made by the learned Counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned Counsel appearing on behalf of the appellant are on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned Counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial. The same

are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a prima facie case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for”.

In the case titled as “Amit Kapoor versus Ramesh Chander and another, (Crl. Appeal No.1407 of 2012 decided on 13.09.2012)”, it was held as under:-

“11. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well settled law laid down by this Court in the case of State of Bihar v. Ramesh Singh, (1977)4 SCC 39 :

"4. Under Section 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 Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 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 Section 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 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. 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. 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. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We

may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

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

1) Though there are no limits of the powers of the Court under section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

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

- 3) *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*
- 4) *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*
- 5) *Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*
- 6) *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*
- 7) *The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*
- 8) *Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.*
- 9) *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction, the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*
- 10) *It is neither necessary nor is the court called upon to hold a full- fledged enquiry or to appreciate evidence collected by*

the investigating agencies to find out whether it is a case of acquittal or conviction.

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

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

13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

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

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

{Ref. State of West Bengal & Ors. v. Swapan Kumar Guha & Ors., [AIR 1982 Supreme Court 949]; Madhavrao Jiwaji Rao Scindia & Anr. v. Sambhajirao Chandrojirao Angre & Ors., 1988(1) RCR (Criminal) 565 : [AIR 1988 Supreme Court 709]; Janata Dal v. H.S. Chowdhary & Ors., [AIR 1993 Supreme Court 892]; Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Ors., 1995(3) RCR (Criminal) 700 : [AIR 1996 Supreme Court 309]; G. Sagar Suri & Anr. v. State of U.P. & Ors., 2000(1) RCR (Criminal) 707 : [AIR

2000 Supreme Court 754]; *Ajay Mitra v. State of M.P.*, [AIR 2003 Supreme Court 1069]; *M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors.*, 2003(1) RCR (Criminal) 674 : [AIR 1988 Supreme Court 128]; *State of U.P. v. O.P. Sharma*, [(1996)7 SCC 705]; *Ganesh Narayan Hegde v. S. Bangarappa & Ors.*, 1995(2) RCR (Criminal) 373 : [(1995)4 SCC 41]; *Zundu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque & Ors.*, [AIR 2005 Supreme Court 9]; *M/s. Medchl Chemicals & Pharma (P) Ltd. v. M/s. Biological E. Ltd. & Ors.*, 2000(2) RCR (Criminal) 122 : [AIR 2000 Supreme Court 1869]; *Shakson Belthissor v. State of Kerala & Anr.*, 2009(4) RCR (Criminal) 680 : 2009(6) Recent Apex Judgments (R.A.J.) 60 : [(2009)14 SCC 466]; *V.V.S. Rama Sharma & Ors. v. State of U.P. & Ors.*, 2009(2) RCR (Criminal) 765 : 2009(2) RCR (Civil) 951 : 2009(3) R.A.J. 177 : [(2009)7 SCC 234]; *Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr.*, 2009(3) RCR (Criminal) 506 : 2009(4) R.A.J. 266 : [(2009)11 SCC 203]; *Sheo Nandan Paswan v. State of Bihar & Ors.*, 1996(2) RCR (Criminal) 480 : [AIR 1987 Supreme Court 877]; *State of Bihar & Anr. v. P.P. Sharma & Anr.*, [AIR 1991 Supreme Court 1260]; *Lalmuni Devi (Smt.) v. State of Bihar & Ors.*, 2001(1) RCR (Criminal) 228 : [(2001)2 SCC 17]; *M. Krishnan v. Vijay Singh & Anr.*, 2001(4) RCR (Criminal) 405 : [(2001)8 SCC 645]; *Savita v. State of Rajasthan*, 2006(2) RCR (Criminal) 237 : [(2005)12 SCC 338]; and *S.M. Datta v. State of Gujarat & Anr.*, 2001(4) S.C.T. 248 : 2001(4) RCR (Criminal) 129 : [(2001)7 SCC 659]}.

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

the principle stated by this Court in the case of Madhavrao Jiwaji Rao Scindia (supra) was reconsidered and explained in two subsequent judgments of this Court in the cases of State of Bihar & Anr. v. Shri P.P. Sharma & Anr., [AIR 1991 Supreme Court 1260] and M.N. Damani v. S.K. Sinha & Ors., 2001(2) RCR (Criminal) 653 : [AIR 2001 Supreme Court 2037]. In the subsequent judgment, the Court held that, that judgment did not declare a law of universal application and what was the principle relating to disputes involving cases of a predominantly civil nature with or without criminal intent.

21. In light of the above principles, now if we examine the findings recorded by the High Court, then it is evident that what weighed with the High Court was that firstly it was an abuse of the process of court and, secondly, it was a case of civil nature and that the facts, as stated, would not constitute an offence under Section 306 read with Section 107 Indian Penal Code. Interestingly and as is evident from the findings recorded by the High Court reproduced supra that 'this aspect of the matter will get unravelled only after a full-fledged trial', once the High Court itself was of the opinion that clear facts and correctness of the allegations made can be examined only upon full trial, where was the need for the Court to quash the charge under Section 306 at that stage. Framing of charge is a kind of tentative view that the trial court forms in terms of Section 228 which is subject to final culmination of the proceedings.

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27. Thus, we are of the considered view that the finding returned by the High Court suffers from an error of law. It has delved into the field of appreciation and evaluation of the evidence which is beyond the jurisdiction, either revisional or inherent, of the High Court under Sections 397 and 482 of the Code.

28. For the reasons afore-recorded, this appeal is allowed. The order of the High Court is set aside. The trial Court shall proceed with the trial in accordance with law, uninfluenced in any way whatsoever from what has been recorded in this judgment. Charge against the accused under Section 306 read with Section 107 and Section 448 Indian Penal Code are found to be in order”.

In the case of “ State of M.P. versus S.B. Johari, 2000(1) RCR (Criminal) 523”, it was held as under:-

“4. In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In Niranjana Singh Karam Singh Punjabi etc. v. Jitendra Bhimraj Bijayya and others etc. 1991(1) RCR (Criminal) 89 : 1990(4) SCC 76, after considering the provisions of sections 227 and 228, Criminal Procedure Code, 1973 Court posed a question, whether at the stage of framing the charge, trial Court should marshal the materials on the record of the case as he would do on the conclusion of the trial ? The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The Court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in State of Bihar v. Ramesh Singh, 1977(4) SCC 39, Union of India v. Prafulla Kumar Samal, 1979(3) SCC 4 and Supdt. and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja, 1979(4) SCC 274, and held thus :

"From the above discussion it seems well settled that at the Sections 227-228 stage the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may for this limited purpose shift (sift ?) the evidence as it cannot be expected even at the 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."(emphasis supplied)

10. What can be culled out from a reading of these judgments of the Hon'ble Supreme Court is that at the stage of framing of charges, the Court is only to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclosed the existence of all the ingredients constituting the offences. At that stage, the Court is not expected to get deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for conviction is made out. Strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify framing of charges. The Court should apply the test as to whether the uncontroverted allegations as made out from the record prima facie establish an offence. On the other hand, a full-fledged enquiry or appreciation of evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction is not necessary at this stage. However, if the allegations are

patently absurd or inherently improbable or the ingredients of an offence are not made out, the Court may interfere.

Further, the Court cannot take into consideration external materials provided by an accused for reaching a conclusion that no offence was made out. The Court is to consider the record and documents annexed with the report under Section 173 Cr.P.C. only. However, in certain exceptional circumstances documents/material of unimpeachable character (admitted to be correct by the prosecution) can be looked into at that stage as well.

11. Coming back to the facts of the present case, the first argument of the learned counsel for the petitioner that so far as the petitioner is concerned, no offence has been committed by her as per the FIR and the report under Section 173 Cr.P.C., is fallacious. A perusal of the original complaint, alongwith the enquiry report, which culminated in the registration of the FIR would show that a clear case of cheating and forgery is made out qua the petitioner as well. Firstly, when the bank account was opened at State Bank of Patiala, Gajju Khera Branch, Dera Bassi, the photograph of the petitioner and her husband was affixed on the documents to avail a loan instead of the complainant. The signatures on the loan documents have been affixed by the petitioner instead of the complainant, which clearly make out a case of forgery. Further, it is the categoric case of the complainant that it was the petitioner and her husband Jasmer Singh, who came to her house on 04.01.2011 in the morning and took her to Tehsil Dera Bassi and got her to sign the documents purportedly pertaining to the redemption of the loan when in fact the said document was a General Power of Attorney to be executed in favour of Pritpal Singh. This execution of a document by practising deception on the complainant would amount to forgery as defined

under Section 463(c) IPC. Therefore, prima facie, an offence of forgery is made out.

12. Similarly, a clear case of cheating is made out inasmuch as firstly, a forged General Power of Attorney was got executed in favour of Pritpal Singh on 04.01.2011, who further sold the land to Manjit Kaur on the basis of the said forged General Power of Attorney on 06.01.2011. None of these transactions yielded any consideration in favour of the complainant. As per the case of the prosecution, Jasmer Singh received a sum of Rs.40,00,000/- from Pritpal Singh in lieu of the General Power of Attorney executed by the complainant in the favour of Pritpal Singh. Nothing was paid to the complainant. Similarly, when Pritpal Singh sold the land to Manjit Kaur for a sum of Rs.20,16,000/- vide a sale deed dated 06.01.2011, no amount was paid to the complainant. Therefore, it is apparent that the petitioner and her husband have cheated the complainant.

13. It may also be relevant to mention here that during the course of the enquiry prior to the registration of the FIR, Jasmer Singh furnished an affidavit on his behalf and that of his wife dated 18.12.2015 wherein he has clearly admitted that he alongwith the petitioner had opened the bank account in question in the name of the complainant by affixing the photograph of the petitioner and had taken a loan by forging the signatures of the complainant. He admitted that he treated the complainant as a sister and had got prepared the General Power of Attorney by taking her into confidence. He also admitted that he had received a sum of Rs.40,00,000/- which had not been paid to the complainant.

14. A reading of the judgments (supra) in the light of the facts of the present case would clearly establish that there are sufficient grounds to

presume that the offence has been committed by the petitioner as well in conspiracy with her husband-Jasmer Singh. The specific role of the petitioner has been clearly enumerated by the complainant not only in the original complaint but also during the course of enquiry, which culminated in the FIR, and therefore, the uncontroverted allegations in the FIR as also the report under Section 173 Cr.P.C., which has culminated into an order of framing of charges prima facie establishes the commission of the offence by the petitioner as well and a full-fledged enquiry or appreciation of evidence is not to be done at the stage.

15. In view of the above, I find no merit in the present petition, and therefore, the same is hereby dismissed.

16. However, it is made clear that the observations made in this order are only for the purpose of deciding this case and the Trial Court shall proceed with the Trial uninfluenced by any observations made in this order.

(JASJIT SINGH BEDI)
JUDGE

September 21, 2022
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No