



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 3rd February, 2022**
Pronounced on: 4th April, 2022

+ CRL.M.C. 1590/2019 & CRL.M.A. 6356/2019

SUDHIR KUMAR MARWAHA Petitioner

Through: Mr. Mohit Mathur, Sr. Advocate
with Mr. Manish Kaushik,
Advocate.

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Nikhil Goel, SPP with Mr.
Vinay Mathew and Mr. Aditya
Roy, Advocates

+ CRL.REV.P. 1160/2018, CRL.M.A. 50222/2018 & CRL.M.A.
13911/2021

ROHIT BHUCHAR Petitioner

Through: Mr. N. Hariharan, Sr. Advocate
with Mr. Prateek Bhalla, Mr. Varun
Deswal, Mr. Siddharth Singh
Yadav and Ms. Punya Rekha
Angra, Advocates

versus

CENTRAL BUREAU OF INVESTIGATION Respondent

Through: Mr. Nikhil Goel, SPP with Mr.
Vinay Mathew and Mr. Aditya
Roy, Advocates



+ W.P.(CRL) 1608/2019 & CRL.M.A. 11733/2019
YASHPAL SACHDEVA & ANR Petitioner

Through: Mr. P.S. Singal, Advocate

versus

CBI Respondent

Through: Mr. Nikhil Goel, SPP with Mr.
Vinay Mathew and Mr. Aditya
Roy, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant matters have been filed by the parties against Order of the learned Special Judge dated 23rd October, 2018 and 29th October, 2018 whereby the learned Special Judge, CBI-01, North West, Rohini, Delhi, had passed the Order on charge against the accused, present petitioners, in RC-S18-2006-E0010 filed by the Central Bureau of Investigation (hereinafter "CBI").

BRIEF BACKGROUND OF THE MATTER

a. A cooperative Society was registered on 5th November, 1982, namely, Om Cooperative Group Housing Society Limited (hereinafter "the Society") vide registration No. 480 (GH) having its registered office at 2/827, First Floor, Part-I, Sarai Julena, Okhla Road, Delhi. On 22nd April, 1988, the said Society was put under liquidation.



- b. On 21st November, 2002, an application was made for revival of the Society and vide Order dated 10th January, 2003 the Society was revived by Mr. Narayan Diwakar, the then Registrar Cooperative Societies, (hereinafter “RCS”), also the Accused No. 1 in the FIR.
- c. The Society, thereafter, applied for allotment of land from the Delhi Development Authority (hereinafter “DDA”) and submitted a list of 115 members for the same and on the basis of the list, the case of the Society was processed by the DDA for allotment.
- d. As per the first Offer-Cum-Demand Letter dated 3rd February, 2003, the Society was given the option to either choose between Dhirpur and Dwarka area for allotment of land and after paying 35% of the land cost on the basis of provisional pre-determined rate.
- e. A savings account No. 35150 was opened at the Corporation Bank in the name of the Society by Mr. Prem Bhutani, Accused No. 10, with Mr. Yashpal, Accused No. 12, as his co-sharer for making the payment in the name of the Society and a pay order of Rs. 1,11,02,400/- and of Rs. 4,00,000/- was issued favouring DDA.
- f. DDA issued Offer Letter dated 3rd February, 2003 and Allotment Letter dated 31st December, 2003 as well as the Possession Letters dated 9th September, 2004 and 11th October, 2004 and the Society was allotted and given possession of a plot of land measuring 6501.52 sq. meters at Plot No. 12, Sector-19, Dwarka, New Delhi by DDA on 15th October, 2004.
- g. It was alleged that Mr. S.P. Saxena, Accused No. 7, sold the Society to Mr. Rohit Bhuchar, Accused No. 5 for a sum of Rs.



1,15,05,430/- by way of 13 cheques in the name of the Society towards the 35% cost.

h. A divisional bench of this Court in Writ Petition (C) No. 10066/2004 directed the CBI for investigation into allotment of over 90 societies, including Om Cooperative Group Housing Society, with direction to the CBI on the aspect of “*unholy alliance and connivance between builder mafia and the officers working in the Office of Registrar Co-operative Societies, DDA and the Societies and fraudulent revival of defunct societies.*” Pursuant to the Order and directions, a preliminary inquiry No. PE SIJ 2006 E 0001 dated 9th March, 2006 was registered in CBI EOU-VI and subsequently, the CBI filed a chargesheet against 17 accused, in the case against Om CGHS, including the present petitioners, Mr. Rohit Bhuchar, Accused No. 5, Mr. Yashpal Sachdeva, Accused No. 12, Mr. Sushil Chhabra, Accused No. 13, and Mr. Sudhir Kumar Marwaha, Accused No. 15, under Section 120B/420/468/471 of the Indian Penal Code, 1860 (hereinafter “IPC”) read with Section 13 (2)/ 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter “PC Act”) for allegedly entering into criminal conspiracy for reviving the said Society as well as allotment of the land by DDA on the basis of forged and fake documents.

i. On 29th October, 2018 the learned Special Judge passed the impugned Order whereby charges were framed against the petitioners.

j. Thereafter, the petitioners preferred the instant petition to challenge the said Order.



SUBMISSIONS

2. Mr. Mohit Mathur, learned senior counsel appearing on behalf of the Accused No. 15, Mr. Sudhir Kumar Marwaha in CrI MC 1590/2019, submitted that the impugned Order framing charges against Accused No.15 is erroneous as he had no role in the alleged criminal conspiracy, had only been roped in to be a part of the alleged criminal conspiracy and had joined the Society only on 20th February, 2003, that is much later to the revival of Society on 10th January, 2003. The charges have been framed against him under Section 468/471/420 and Section 120B of the IPC, despite the fact that he did not take any part in the course of some transactions as under the requirement of Section 223 of the Cr.P.C.

3. It is submitted that Mr. Sudhir Kumar Marwaha could not have been involved in the requirement of meeting of mind for criminal conspiracy in so far as he became the member of the Society after the object of such alleged conspiracy, that is the revival of the Society had already been achieved and concluded. There was neither any meeting of mind nor was Mr. Sudhir Kumar Marwaha involved in any manner with the public servants. Learned senior counsel relied upon the case ***Indira Dalal vs. State of Haryana, (2015) 11 SCC 31***, wherein the Hon'ble Supreme Court held that once the object of the conspiracy has been achieved the subsequent act, even if unlawful, would not make the accused a part of that conspiracy. He further relied upon ***John Pandian vs. State, (2010) 14 SCC 129***, wherein the Hon'ble Supreme Court observed that there must be a meeting of minds resulting in timely decision taken by the conspirators regarding the commission of offence, to submit that it had not been alleged that there was meeting of minds of



Mr. Sudhir Kumar Marwaha with any of the other accused persons. It was further observed in the judgment that the essence of the offence of conspiracy is neither in doing or completion, nor even in the attempt to do a particular unlawful act, but in forming of the scheme or agreement between the parties. It is submitted that there was no iota of evidence to establish that Mr. Sudhir Kumar Marwaha had any dishonest intention or knowledge as to what all transpired before the RCS or in the process of revival.

4. It is further submitted that there were no insinuations by the prosecution that Mr. Sudhir Kumar Marwaha had cheated nor was it able to attribute any allegation of forgery against him, owing also to the fact that he had joined the Society after its revival and could not have been involved in the conspiracy leading to the said revival as well as the allotment by the DDA. Further, while he was the President of the society, he signed on various documents and meeting proceedings in good faith relying on the part of the accountant of the society not having the knowledge that whether the records of 115 members of the society for allotment from DDA were bearing forged signatures. Further, even assuming, though not admitting, that he had the knowledge of the conspiracy and its object, it has been reiterated in a plethora of judgements of this Court that mere knowledge of not sufficient to bring home the charge of conspiracy. Learned counsel relied upon the judgment of ***Esher Singh vs State of A.P.*, (2004) 11 SCC 585**, where the Hon'ble Supreme Court has stated that mere knowledge or even discussion, of the plan is not, per say, enough to establish the offence of conspiracy. It was further observed that it was also held that to bring home the charge of



conspiracy, it must be shown that when all the circumstances are comprehensively taken together, should conclusively indicate towards the meeting of minds of the accused persons. A few bits here and a few bits there on which the prosecution relied could not have form the basis of trying the accused persons for the offence of conspiracy.

5. It is submitted that the offence of cheating could not have been attributed towards Mr. Sudhir Kumar Marwaha, since, neither were there any allegations against him nor any of the ingredients of cheating were met. Reliance has been placed on ***A.P. Narang vs. CBI, (2011) SCC OnLine Del 212*** to submit that the offence of cheating was not made out against him.

6. On the charge of forgery, it is submitted by the learned senior counsel that the offence of alleged forgery has been completed prior to the enrolment of Mr. Sudhir Kumar Marwaha as a member of the society. The learned Special Judge erred in framing the charges of forgery against the instant petitioner.

7. The impugned Order of the learned Special Judge is also liable to be set aside as the it did not consider that the Government Examiner of Questioned Documents (“hereinafter GEQD”) Report was not admissible in evidence for the reason that specimen signatures of Mr. Sudhir Kumar Marwaha were not obtained under the directions of the concerned Magistrate.

8. Although Mr. Sudhir Kumar Marwaha was a close associate to Mr. Rohit Bhuchar, Accused No. 5, against whom the charges of conspiracy and forgery have been framed, that did not mean that Mr. Sudhir Kumar Marwaha had also committed that said acts. It is submitted that since the



Accused No. 10 and 11, Mr. Prem Bhutani and Mr. Anil Bhutani, respectively, who were persons managing the funds as well as its movement, had opened the bank account in the name of the Society for carrying out the payment, and made payment to DDA in lieu of the allotment of land at subsidized price, have already been discharged by the learned Special Judge since, no criminal conspiracy could be established against them, hence, the question of Mr. Sudhir Kumar Marwaha being charged under the above-mentioned offences does not even arise.

9. It is submitted on behalf of Mr. Sudhir Kumar Marwaha, in light of the judgements of *Dilawar Balu Kurane vs. State of Maharashtra*, (2000) 2 SCC 135, and *P. Vijayan vs. State of Kerala*, AIR (2010) SC 663, that at the time of framing of charges, the concerned judge has to satisfy itself that prima-facie offences have been made out on the basis of the documents and it is a settled principle of law that the Judge, while framing of charge, must consider the wide probabilities and total effect of the evidence and documents produced before it, however, he must not conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as he was conducting a trial.

10. Hence, in light of the submissions made above, the impugned Order is liable to be set aside and Mr. Sudhir Kumar Marwaha should be discharged in the instant case because there are no sufficient grounds for framing charges against him.

11. Mr. N. Hariharan, learned senior counsel appearing on behalf of Accused No. 5, Mr. Rohit Bhuchar, in Crl. Rev. P. 1160/2018, submitted that his case is similar to Mr. Sudhir Kumar Marwaha as he too, had joined the Society on 20th February, 2003, after the revival of the Society



had already taken place. Further, even though he was a member since February, 2003, he paid the required amount of Rs. 3,01,010/- towards the membership of the Society only in September, 2003, prior to which he was not involved in the activities of the Society. He was elected as the Secretary of the Society from 25th July, 2004 to 31st December, 2006 and is a *bona fide* member of the Society with no undue benefit accruing to him.

12. The chargesheet records the fact that Mr. Rohit Bhuchar paid his membership fees on 6th September, 2003 and as per the Delhi Cooperative Societies Rules, 1973, (hereinafter “DCS Rules”) a person acquires membership rights under Rule 30 (4) only upon payment of the admission fee. Till September, 2003 all objects of the alleged criminal conspiracy had already been achieved.

13. It is submitted that the learned Special Judge was wrong in framing charges against Mr. Rohit Bhuchar as he had no role in the alleged criminal conspiracy or any involvement with the public officials in the revival of the Society, neither was he involved in the activities of the Society. It has been wrongly observed by the learned Special Judge that he had signed various undated proceedings as the Treasurer of the Society and that he used to forge resignations and cash vouchers as genuine. It is submitted that Mr. Rohit Bhuchar was not, at any point of time, the Treasurer of the Society and hence, the observation of the learned Special Judge was patently wrong. Furthermore, there is no material in the charge sheet to the effect that the writing on resignations or cash vouchers was his. Even the GEQD Report has nowhere linked Mr. Rohit Bhuchar to the alleged resignations and cash vouchers.



14. Furthermore, the learned Special Judge has referred to the statements of PW98, Mr. Satish Gupta, and PW99, Mr. Subhash Chander Mahajan, however, none of them have made any allegation against Mr. Rohit Bhuchar in their statements recorded under Section 161 of the Cr.P.C. As per the statement of PW98, it was clear that Mr. Rohit Bhuchar only provided financial help to the Society by arranging an amount of Rs 1.15 Crores through cheques alongwith Rs. 1.50 Lakhs in cash towards miscellaneous and administrative charges. It is submitted that PW98, in his statement under Section 161 of the Cr.P.C. stated that he was approached by Mr. Rohit Bhuchar who requested him to arrange memberships for 25-30 persons in any CGHS, in furtherance of which, he met with Mr. S.P. Saxena, who told him about Om CGHS. He came to know from Mr. S.P. Saxena that due to financial problems society members were unable to pay the remaining amount to be paid towards the land cost to be made to DDA. It was stated by PW98 that Mr. S.P. Saxena desired that Mr. Rohit Bhuchar paid Rs. 1.15 Crores through cheques and a sum of Rs. 1.50 lakhs or Rs. 1.75 lakhs in case. Mr. Rohit Bhuchar arranged the amount on his own account from his relatives, friends, and his partnership firm Suruchi Enterprises. After receiving the said amount through cheques and cash, Mr. S.P. Saxena handed over the records of the Society to Mr. Rohit Bhuchar. It is submitted that the amount was paid towards the society and not to Mr. S.P. Saxena and it has been wrongly observed by the learned Special Judge that Mr. Rohit Bhuchar had taken control over the management and control of the Society. Hence, the only role attributed to Mr. Rohit Bhuchar was of arranging funds by way of loans.



15. It is submitted that during Managing Committee meetings held on various dates between 2004-2005, resignations of members were accepted and some new members were inducted. It is submitted that proper procedure was followed in conducting the meetings of the Managing Committee in accordance with the DCS Act, 1972 as well as DCS Rules and the registered bye-laws of the Society. In fact, some of the resignations from the members of society were made when Mr. Rohit Bhuchar was not even holding office and further, inductions of the family members and friends of Mr. Rohit Bhuchar cannot be coined as criminal conspiracy on his behalf since, even the family members or friends sought membership in their individual capacity for which there existed no *mens rea*.

16. It is submitted that Mr. Rohit Bhuchar never took control and management of the Society from Mr. S.P. Saxena by payment of sum of Rs. 1.15 Crores. Such amount was paid to the Society by way of 13 cheques and not to Mr. S.P. Saxena, as wrongly observed by the learned Special Judge. The chargesheet alleged that he had purchased the Society, however, there is no provision for purchase or sale of a Society under the DCS Rules as well as the registered byelaws of the Society.

17. Learned senior counsel relied upon the judgement of ***State vs. Navjot Sandhu, (2005) 11 SCC 600***, to submit that the alleged accused in a conspiracy who committed the conspiracy by indulging in various overt acts will be individually liable for those offences in addition to being liable for criminal conspiracy, by the non-participant conspirators cannot be found guilty of the offence(s) committed by the other conspirators. It was further observed by the Hon'ble Supreme Court as under:



"107. In Ajay Aggarwal v. Union of India while discussing the question whether the conspiracy is a continuing offence, the following pertinent observations were made by K Ramaswamy, J., speaking for the Bench at para 11: (SCC p. 618)

"Conspiracy to commit a crime itself is punishable as a substantive every individual offence committed pursuant to the conspiracy is a separate and distinct offence for which individual offenders are liable to punishment, independent of the conspiracy."

108. Thus, a distinction was maintained between the conspiracy and the offences committed pursuant to the conspiracy. It is only in order to prove the existence of conspiracy and the parties to the conspiracy, that a rule of evidence is enacted in Section 10 based on the principle of agency. We may recall that Section 10 of the Evidence Act provides that anything said, done or written by one of the conspirators in reference to the common intention of all of them can be proved as a relevant fact as against each of the conspirators, subject to the condition prescribed in the opening part of the section. Thus, the evidence which is in the nature of hearsay is made admissible on the principle that there is mutual agency amongst the conspirators. It is in the context of Section 10 that the relevant observations were made in the first Caveeshar case and Nalini case at p. 517. In the former case, Jagannadhadas, J., after referring to the passage in Roscoe's Criminal Evidence (16th Edn.) that "an overt act committed by any one of the conspirators is sufficient, on the general principles of agency, to make it the act of all", observed that

"the principle underlying the reception of evidence under Section 10 of the Evidence Act of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency" (SCR p. 205}.

It was not held in those cases that the same principle of agency should be stretched either to make all the



conspirators liable for the offensive acts done pursuant to the conspiracy, irrespective of their role and participation in the ultimate offensive acts. Whether or not the conspirators will be liable for substantive offences other than the conspiracy and, if so, to what extent and what punishment has to be given for the conspiracy and the other offences committed pursuant thereto, depend on the specific scheme and provisions of the penal law. The offence cannot be spelt out by applying the principle of agency if the statute does not say so. For instance, in the case of Section 34 IPC, the constructive liability for the crime is specifically fastened on each of those who participate in the crime in furtherance of the common intention. But Section 120-B does not convey that idea.”

18. Reliance was further placed on ***State (through Superintendent of Police) vs. Nalini & Ors., (1999) 5 SCC 253***, wherein it was held as under:-

“662. ... In reaching the stage of meeting of minds, two or more persons share information about doing an illegal act or a legal act by illegal means. This is the first stage where each is said to have knowledge of a plan for committing an illegal act or a legal act by illegal means. Among those sharing the information some or all may form an intention to do an illegal act or a legal act by illegal means. Those who do form the requisite intention would be parties to the agreement and would be conspirators but those who drop out cannot be roped in as collaborators on the basis of mere knowledge unless they commit acts or omissions from which a guilty common intention can be inferred....”

19. Learned senior counsel has also relied upon the judgment of ***Natwarlal Sakarlal Mody vs The State of Bombay, 1961 SCC OnLine SC 1***, wherein the Hon’ble Supreme Court with reference to provision of conspiracy observed that:-



“21. This section lays down a rule of evidence and its application is strictly conditioned by the existence of reasonable ground to believe that two or more persons have conspired together to commit an offence. The opening words of the section laying down a condition and the qualification laid down in the body of the section in regard to admissible acts, that is, they should be in reference to their common intention and also should have been committed, after the time when such intention was first entertained, indicate that the existence of a conspiracy must be established by prima facie evidence before the acts done or things written by any of the persons can be used as evidence against the others or for the purpose of proving the existence of the conspiracy. The illustration also premises the existence of a reasonable ground for believing that a particular person has joined a conspiracy in order to enable the facts particularized in it to be brought under the category of relevant evidence. Shortly stated, before the section can be invoked, as a general rule, some prima facie evidence should be placed before the Court to enable it to form an opinion that there is reasonable ground to believe that two or more persons have conspired together; and if that condition is fulfilled the acts and declarations of a conspirator against his fellow conspirators may be admitted as evidence. In the present case no material had been placed before the Presidency Magistrate to sustain a reasonable ground to believe that the appellants were parties to the main conspiracy and, therefore, the operation of the section even if it was applicable at that stage, would not be of any help to the State. The High Court, in the circumstances of this case, in our view, was not justified in interfering with the discretion of the Presidency Magistrate exercised in a most balanced and reasonable manner.”

20. Further in ***Esher Singh vs State of A.P. (Supra)***, the following observations were made by the Hon’ble Supreme Court as under:-



“36- In Halsbury's laws of England {vide 4th Edn., Vol. 11, p. 44, para 58), the English law as to conspiracy has been stated thus:

"58. Conspiracy consists in the agreement of two or more persons to do an unlawful act, or to do a lawful act by unlawful means. It is an indictable offence at common law, the punishment for which Is Imprisonment or fine or both in the discretion of the court.

The essence of the offence of conspiracy is the fact of combination by agreement. The agreement may be express or implied, or in part express and in part implied. The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful Object at the same time or in the same place; It is necessary to show a meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with every other.

44. The most Important Ingredient of the offence being the agreement between two or more persons to do an illegal act. In a case where criminal conspiracy is alleged, the court must inquire whether the two persons are Independently pursuing the same end or they have come together to pursue the unlawful object. The former does not render them conspirators but the latter does. For the offence of conspiracy some kind of physical manifestation of agreement is required to be established. The express agreement need not be proved. The evidence as to the transmission of thoughts sharing the unlawful act is sufficient. A conspiracy is a continuing offence which



continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During its subsistence whenever any one of the conspirators does an act or series of acts, he would be held guilty under Section 120-B IPC."

21. Reliance has also been placed upon ***L.K. Advani vs Central Bureau of Investigation, 1997 SCC OnLine Del 382***, wherein a Co-ordinate Bench of this Court held as under:

"87. There is another aspect of the matter. The prosecution must prove the factum of the conspiracy by evidence other than the disputed evidence i.e. the diaries and the loose sheets which have been placed on the record of this Court. It has been observed above that there is no such evidence. The alleged entries relate to past facts. The alleged entries must have been made after the disbursement. Hence they cannot be said to have been made in execution of the common intention of the conspiracy."

22. Learned senior counsel also relied upon the judgment of ***Union of India vs Prafulla Kumar Samal, (1979) 3 SCC 4***, to elaborate upon the principles laid down by the Hon'ble Supreme Court on questions to be considered while framing of charges to submit that as such the learned Judge need not conduct a roving enquiry while framing of charges and only *prima facie* consideration needs to be given.

23. It is submitted that for the reasons stated above the impugned Order framing charge against Mr. Rohit Bhuchar is patently illegal and suffers from manifest error and infirmity and hence, is liable to be set aside.

24. Mr. P.S. Singal, learned counsel appearing on behalf of Accused No. 12, Mr. Yashpal Sachdeva and Accused No. 13, Mr. Sushil Chhabra, in W.P. (Crl) 1608/2019, submitted that both the petitioners had joined



the Society after the object of conspiracy had already been achieved and the Society had been revived. It is submitted that the alleged conspiracy was two-fold, for revival of the Society and for obtaining DDA land at a cheaper rate. And hence, the conspiracy ended upon the receipt of land by taking advantage of the Society that had become defunct, however, no benefit accrued to the petitioners in the same and they were not part of the said conspiracy.

25. It is submitted that the learned Special Judge failed to consider that once a freezing list of members is sent to the DDA, there is no role of the officials of RCS and the Society left to be played in allotment of the land.

26. It is further, submitted that at the stage of framing of charge the Court has power to shift and weigh the evidence to find out the *prima facie* case against the accused persons. In the present case, however, there is no evidence connecting Mr. Yashpal Sachdeva and Mr. Sushil Chhabra with the alleged offences. Moreover, the charges against the petitioners/accused are groundless.

27. There are sufficient provisions under the DCS Rules, for prosecution of the accused in relation to the allegations leveled against the petitioners and the prosecution under the IPC and the PC Act is bad in law. It is submitted that since there is a specific law and a complete mechanism to adjudicate upon the allegations made, the application of general statute is not permissible in law and hence, the impugned Order is liable to be set aside for the reason of it being illegal, erroneous, improper and contrary to the facts and law.

28. *Per Contra*, Mr. Nikhil Goel, learned SPP for the Respondent/CBI in all the matters, opposed the instant petitions and submitted that there



are no illegalities or errors in the impugned Order passed by the learned Special Judge. The preliminary enquiry by the CBI into the matter of allotment of land pertaining to 97 housing societies, as per the Orders of a division bench of this Court dated 9th January, 2006 and 13th February, 2006 in Writ Petition (C) 10066/2004, revealed that officials of RCS abused their official position as public servants in criminal conspiracy with the private persons, by accepting false and forged documents, and allotted land to the societies at much lower price than prevailing in the market for construction of residential flats. In light on the above discovery, FIR No. RC no. 10(E)/2006/EOU-IV/CBI, was registered making out cognizable offences under Section 120B read with Sections 420/468/471 of the IPC and Section 13(2) read with 13(1)(d) of the PC Act.

29. Moreover, relying upon the judgement of ***Sajjan Kumar vs. Central Bureau of Investigation, 2010 (9) SCC 368***, it is submitted that at the stage of framing of charge the only requirement to see is whether or not 'grave suspicion' regarding the involvement of the accused exists. The evaluation of material on record has to be done only to determine existence of such suspicion and not to determine the *prima facie* guilt or otherwise of an accused. The material to be analysed at this stage is the prosecution material and not the defence of the accused in accordance with the observations of the Hon'ble Supreme Court in ***State of Orissa vs. Debendra Nath Padhi, (2005) 1 SCC 568***.

30. It is submitted that since, the case involves a charge of conspiracy, individual roles in exclusion to the allegation of conspiracy ought not to be seen at this stage. This is more so in view of the legal position that



conspiracy can be proved even by inference and all that is required to be seen at this stage is whether there is some connecting link or connecting factor which exists to show the involvement of the charge sheeted accused. The impact of such involvement can only be appreciated upon receipt of evidence. It is further submitted that the substance of the conspiracy is that at various stages, the accused have conspired to get a defunct society registered in the year 1982 revived for the purpose of securing a large parcel of land at a concessional rate from DDA. It is submitted that the conspiracy does not get limited to the mere revival of the society but terminates upon getting possession of 1.5 acres of DDA land at a very cheap price and that to for personal use i.e. for profiteering. It is not even the defense in the petitions filed that the land so allotted was to be used for the original members of the society as registered in 1982. The investigation has actually showed that the members of the society were changed, on paper, for the sole purpose of completion of record with the DDA and the land so allotted has actually gone to the private benefit of the accused, it is this conspiracy in respect of which the charges have been framed. The second leg of conspiracy began after receipt of offer letter dated 3rd February, 2003 from the DDA seeking to allot the land admeasuring 6501.52 Sq.mt at plot 12, Sector 19, Dwarka. The conspiracy culminated in handing over the offer letter to Mr. Rohit Bhuchar, who is a contractor by profession, who ensured that not only the 35% of the price paid by Mr. Prem Bhutani and All is returned, the remaining 65% of the money for the land for paid to the DDA. The 115 names for whose requirement the DDA had allotted land was slowly



replaced by other members some accused and some witnesses who were either related to known to or otherwise dealt with Mr. Rohit Bhuchar.

31. It is submitted that the accused in the FIR entered into the criminal conspiracy with fraudulent and dishonest intention to cheat the office of RCS and DDA in the matter of revival of the Society and allotment of land to Om CGHS Ltd. As a result, the Society was revived vide Order dated 10th January, 2003 on the basis of false and forged documents, misrepresentation of facts/deception, impersonation and by using the false and forged documents as genuine. Moreover, the revival had taken place after 14 years of liquidation without removing the defects mentioned in the liquidation. Further, the list of members sent to the DDA for allotment consisted of non-*bona fide* members and the same was done without getting the pending audit completed as stipulated in the revival Order. The same is the testament to approach taken by the RCS in reviving the society.

32. The role of Mr. Yashpal Sachdeva and Mr. Sushil Chhabra came into being when the payment of 35% of land cost was to be made to the DDA. Both were the authorized signatories in the account opened by Mr. Prem Bhutani, Accused No. 10. In September, 2003, Mr. S.P. Saxena sold the society to Mr. Rohit Bhuchar and thereafter, it was decided that the 115 members of the Society were to be ousted in a phased manner and new members were to be inducted as per the choice of Mr. Rohit Bhuchar. It is submitted that after taking over the society, Mr. Rohit Bhuchar made his relatives and friends members and office bearers of the society. It is at this stage that he alongwith Mr. Sudhir Kumar Marwaha started playing an active role in making new members, arranging funds



and making payments to DDA. Besides, these two persons also used the false and forged documents as genuine before RCS office when they falsely intimidated about the resignations, enrolment and election etc. being the Secretary and President of the society, respectively.

33. It is submitted that in fact the contention on behalf of Mr. Rohit Bhuchar that some of the resignations of the members were prior in time to his election as an office bearer is false, in so far as he alongwith Mr. Ashwani Sharma, Accused No. 8, entered into criminal conspiracy to draw backdated proceedings to facilitate him to induct new members on his own volition by falsely showing resignations of all 115 members in a phased manner. It is submitted that the said resignations bore the signatures in the handwriting of officers including Mr. Gokul Chand Aggarwal, Accused No. 6 and Mr. Ashwani Sharma.

34. It is submitted that the investigation established that the accused public servants as well as the private persons were in criminal conspiracy for illegally reviving the Society on the basis of false/forged documents, misrepresentation of facts and impersonation by other co-accused persons. There were further shortcomings in the procedure of the revival of the society. The accused persons did not ensure the existence of the society, genuineness of the members and correctness of the documents before reviving a defunct society after a long gap of more than 14 years.

35. Learned SPP for the Respondent submitted that it was after collecting incriminating evidence that the chargesheet was filed against the 17 accused persons, including the petitioners, herein. It is submitted that the Order framing charges against the petitioners had been passed by the learned Special Judge as per law, and is just and proper. The same



was passed after appreciating the material before it. It is therefore, submitted by the learned SPP that the present petitions may be dismissed for them being devoid of any merit.

ANALYSIS

36. Heard learned counsel for the parties and perused the record. I have perused the impugned Order dated 23rd October, 2018 as well as 29th October, 2018.

37. The instant petitions have been filed by the petitioners in the connected matters challenging the Order of the learned Special Judge-CBI, by which it had framed charges against the accused, including the petitioners herein, of offences punishable under the IPC as well as the PC Act. At the very outset it may be pertinent to outline the extent of power while framing charges that the concerned Court may exercise.

PRINCIPLE ON FRAMING OF CHARGES

38. Section 228 of the Cr.P.C. provides for the power of framing charge and lays down as under: -

“228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the



procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”

39. As per the aforesaid provision, if a Judge upon consideration of record of the case as well as the documents before it, is of the opinion that there exists sufficient ground based on which a presumption can be made that the accused may have committed an offence, then he shall frame such a charge in writing against the accused. Further, to presume that an offence may have been committed, the opinion of the Judge for existence of a ground for presumption is to be supported by the *prima facie* material on record, upon consideration of which the learned Judge may frame the charges against the accused.

40. The Hon'ble Supreme Court in the matter ***State of Maharashtra vs. Som Nath Thapa, (1996) 4 SCC 659*** had laid down its observations by way of the following test for framing of charge:-

“30. In Antulay case [R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716: 1986 SCC (Cri) 256] Bhagwati, C.J., opined, after noting the difference in the language of the three pairs of sections, that despite the difference there is no scope for doubt that at the stage at which the court is required to consider the question of framing of charge, the test of ‘prima facie’ case has to be applied. According to Shri Jethmalani, a prima facie case can be said to have been



made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, a better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame a charge against him for committing that offence.

31. Let us note the meaning of the word 'presume'. In Black's Law Dictionary it has been defined to mean 'to believe or accept upon probable evidence'. In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means 'to take as proved until evidence to the contrary is forthcoming', Stroud's Legal Dictionary has quoted in this context a certain judgment according to which 'A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged.' In Law Lexicon by P. Ramanatha Aiyar the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

41. Further, in ***Prafulla Kumar Samal (Supra)***, the Hon'ble Supreme Court laid down the principles regarding the considerations before the concerned Court while framing of charges and discharging an accused: -



“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

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

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

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

(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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.”

42. The principle has been reiterated in the judgment of ***State of M.P. v. Mohanlal Soni*, (2000) 6 SCC 338**, wherein it has been said that:-



“The crystallised judicial view is that at the stage of framing 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 evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

43. In ***State of M.P. v. Rakesh Mishra, (2015) 13 SCC 8***, the observation mentioned below were provided for:-

“7. The major argument advanced by the State of Madhya Pradesh before us has been that the High Court traversed beyond the permissible limit while deciding the legality of order framing charges, being a pre-trial stage. Various authorities have been cited before us to prove that point. However, it would suffice to say that the law on this point is crystal clear that only charge-sheet along with the accompanying material is to be considered at the stage of framing of charges, so as to satisfy whether a prima facie case is made out. It has to be the subjective satisfaction of the court framing charges. In our opinion, the High Court has only examined the material before it against the prevailing law to reach its conclusions. Thus, the impugned judgment may not be assailable on this ground.

8. However, the question that arises is whether the material available against the accused persons at this stage makes out a prima facie case that the alleged offence could have been committed by them. The offences charged against the accused are the offences under Section 13(2) and Section 13(1)(d) of the Prevention of Corruption Act and Section 120-B of the Penal Code.”

44. The Hon’ble Supreme Court in ***Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217***, has laid down as under:-

“13. ... At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable



doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.

“15. Considering the scope of Sections 227 and 228 CrPC, in Amit Kapoor v. Ramesh Chander [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , the Supreme Court held as under : (SCC pp. 477-79, paras 17 & 19)

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction.....

19. 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....”

16. After referring to Amit Kapoor [Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986] , in Dinesh Tiwari v. State of U.P. [Dinesh Tiwari v. State of U.P., (2014) 13 SCC 137 : (2014) 5 SCC (Cri) 614] , the Supreme Court held that for framing charge under Section 228 CrPC, the Judge is not required to record detailed reasons as to why such charge is framed. On perusal of record and hearing of parties, if the Judge is of the opinion that there is sufficient ground for presuming that the accused has committed the offence triable by the Court of Session, he shall frame the charge against the accused for such offence.”

45. Hence, it can be rightfully said that the extent of appreciating the facts and material before the Court concerned while framing of charges is limited to *prima facie* satisfaction of the Court that the accused before it may have been involved in the commission of the offences alleged against him. As per the abovementioned precedents, it may be reasonable to say that the primary document of chargesheet and the accompanying material would be sufficient for forming the opinion upon the existence of a *prima facie* involvement on the part of the accused in the commission of the offence. The satisfaction of the Court, however, is a significant and principal consideration which would find its foundation on the material available at the time of framing of the charge, how ever simple or elaborate it may be. Further, upon such satisfaction, coupled with *prima facie* appreciation of material on record, the Judge shall also record the reasons in a nutshell for passing the Order of charge, whether charging or discharging the accused, reflecting the consideration of material before it while framing the charges.



FINDINGS

46. The next test, henceforth, would reasonably be to assess whether the learned Special Judge while passing the impugned Order, acted in consonance with the principles discussed above to be followed while exercising the power under Section 228 of the Cr.P.C. to find out whether there was any illegality or perverseness in the said Order.

47. The relevant portion of the learned Special Judge, with regard to the present petitioners is highlighted as under, where the learned Judge has appreciated the arguments as well as the material on record to make the following observations:-

“20. It is true that the society was revived vide order passed by accused Narayan Diwakar, the then Registrar on 10.01.2003 and till that time this accused was not on picture at all. Perusal of the proceedings register of the society shows that he was admitted as member of the society in the managing committee meeting held on 20.02.2003. The minutes of this meeting do not bear the signature of any of the office bearers of the society who were present in the meeting. The argument that the charges cannot be framed against this accused A5 Rohit Bhuchar as no act attributed to him is stated to have been committed prior to 10.01.2003 appears to be attractive at first blush but is found to be devoid any merit when tested on the basis of material on record. As per the case of prosecution, the conspiracy had been hatched in this case with the object of not only getting the society revived on the basis of forged documents but also to secure allotment of land to it by DDA. Mere revival of the society would have been of no use to the conspirators as the benefits would have accrued to them only after the land is allotted to the society upon which flats could be built. Thus, the allotment of the land to the society by DDA was the final object of the conspiracy which can be stated to have been achieved only when the



society was put in possession of the land by the DDA i.e. on 15.10.2004. Therefore, all those persons who joined the conspiracy after 10.01.2003 also and did some act or other towards fulfilment of the final object of the conspiracy can be safely taken to be as co-conspirators and charges can be framed against them. A5 Rohit Bhuchar can not escape liability for his criminal acts by saying that whatever he did was after the society had been revived. It is very clear that he too performed various acts, though after revival of the society, towards achievement of the final object of the conspiracy i.e. allotment of the land to the society.

21. Perusal of the statements of PW98 and PW99 clearly show that accused Rohit Bhuchar had assumed the management and control of the society from S.P. Saxena after paying him Rs. 1.15 crores approximately and retained accused Ashwani Sharma, who had been maintaining accounts/records of the society for accused S.P. Saxena, to forge further records of the society by manipulating the false resignations of all 115 members whose names appeared in the freeze list sent to the DDA and inducting his relatives, friends etc. as members of the society in their place. Thus, this accused had changed the entire complexion of the society by manipulating the membership list of the society on the basis of which plot of land was to be allotted. Hence, there exist strong grounds to frame charges against him.

22. Similar arguments were raised on behalf of accused A14 Mohit Saxena and A15 Sudhir Kumar Marwah. On their behalf also, it was argued that the acts attributed to them had taken place after the revival of the society and therefore, they cannot be stated to be a part of the conspiracy and that the GEQD report is not admissible in evidence for the reason that the specimen signatures of these accused had not been obtained under the directions of the concerned Magistrate. These arguments have already been discussed and rejected hereinabove and need not be



discussed again here. Perusal of the documents on record shows that accused Mohit Saxena has forged the signatures as "Ashok Kumar" Secretary of the Society on the Resolution of the Managing Committee dated 02.02.2003 and also on the letter dated 03.02.2003 submitted on behalf of the society. This clearly shows at this stage that he was acting in connivance with the other accused particularly accused Rohit Bhuchar and was assisting him in forging the documents related to the society to be submitted to DDA to secure plot of land for it. Accused Sudhir Kumar Marwah is stated to be close associate of accused Rohit Bhuchar. He has signed various minutes of the Managing Committee of the Society as its President wherein many new members had been inducted in the society after showing its previous members to have resigned falsely. This was done in order to pave way for inducting the relatives and friends of accused Rohit Bhuchar as member and office bearers of the society so that he has full control over it and the plot of land to be allotted to the society is at his disposal. Hence, there is sufficient material on record indicating the complicity of these accused in the offences involved in this case and no case of their discharge has been made out.

23. So far as the accused Yashpal Sachdeva and Sushil Chhabra are concerned, admittedly they were not the members of the society at any point of time. Despite being strangers, they were appointed as Secretary and Treasurer respectively of the society in the meeting dated 28.02.2003. In the subsequent meeting dated 02.03.2003, they appear to have been given authority to operate the saving bank accounts of the society to be opened in Corporation Bank Ltd., Preet Vihar Branch. Appointment of these accused as the Secretary and Treasurer of the Society and authorising them to open and operate the saving bank account in the name of the society, even though they had not been the



members of the society, raises strong suspicion that they had been involved and were the part of overall conspiracy and had been acting in connivance with the other accused to ensure that the object of the conspiracy is fulfilled. Had they not been part and parcel of overall conspiracy, there was not reason or occasion for them to function as Secretary and Treasurer of the Society and to operate the bank account of the society. Hence, there exist prima-facie grounds for framing charges against these two accused also.”

48. It is true that the conspiracy in question was not limited to achieving just the one objective but there were two aims of forming the conspiracy. The common objective intended to achieve by the conspirators was first, the revival of the society and the second being the allotment by the DDA at a subsidized rate. Hence, it may be the case that the petitioners were not even a member, let alone a member elect, of the society, however, it did not take away the ground for suspicion from them that they were involved in the activities of the Society post their becoming a member of the Society but prior to achievement of the objective of the two-fold conspiracy. Therefore, their role in the conspiracy still subsisted until the final object of getting allotment from DDA was not achieved.

49. The appointment of Mr. Rohit Bhuchar was also an issue of contention, since the minutes of the meeting in which he was inducted as a member did not bear the signature of any elected member. It was apparent that the documents pertaining to his role and election as a Secretary was in fact done fraudulently by fabrication of documents on past dates, so as to provide him with the control and management of the



Society, keeping in view that he played a principal role in creating false resignations as well as inducted a significant amount of members, who were in fact people known to him and thereby creating the list of 115 members, based on which the Society's request for allotment by DDA was processed and was finally granted.

50. The accused Mr. Sudhir Kumar Marwaha was found to be a close associate of Mr. Rohit Bhuchar. He even signed upon minutes pertaining to the Managing Committee meetings that were held wherein several new members of the Society were inducted after showing that the old members of the Society had resigned. His role was found in creating the list of 115 members, who were in fact, fraudulently inducted and which also became the primary ground for consideration of the Society for allotment of the land by the DDA.

51. As per Mr. Yashpal Sachdeva and Mr. Sushil Chhabra, they played a role in opening and then maintaining the accounts of the Society at a very early stage of their membership, as they were designated the Secretary and Treasurer without having being a member of the Society for a significant time. Moreover, a few days later, they were given the authority of operating the savings account of the Society, which again raised a *prima facie* suspicion on their intent and their involvement in the conspiracy.

52. The learned Special Judge, also considered the GEQD Report which made out the case of forgery against the present petitioners and the reasoning is found to have no default. The GEQD Report matched signatures of some of the accused to those found on the resignations of the old members. Although it was argued that the GEQD report was not



in accordance with law for the reason that the signature specimens were not obtained by following proper procedure, the argument did not hold ground in so far as the Report raised a preliminary suspicion upon the accused that there was an involvement of the accused in commission of forgery which led to the freezing of 115 members in the Society, on the basis of which the Society was allotted land by the DDA. Hence, the consideration of the learned Special Judge was also without any error in light of the judgement referred in ***Ravinder Singh @ Dara Singh vs. Republic of India, AIR (2011) SCC 1436.***

53. In accordance with Section 228 of the Cr.P.C., the keywords to be given weightage are “*after such consideration*”, “*Judge is of the opinion*” and “*there is ground for presuming that the accused has committed an offence*”, that define the power of the Judge while framing of charge. In the instant case, the learned Special Judge framed the charge against the present petitioners in the following manner:-

- a. Against Mr. Rohit Bhuchar, Accused No. 5- Under Section 468 read with Section 471 of the IPC for fraudulently, dishonestly and knowingly creating/forging documents and using the fake and fabricated documents as genuine for getting land from DDA at subsidized rate, inducting 115 members on his own choice by falsely showing resignations of previous members, and for causing unlawful gain to himself and his co-accused, submitting the forged documents for getting the land in the land in favour of the Society, for the purposes of cheating the RCS, under Section 420 of the IPC and for offences under Section 120B of the IPC, amongst other reasons as well as.



- b. Against Mr. Yashpal Sachdeva, Accused No. 12- Under Section 468 and 471 of the IPC for fraudulently, dishonestly and knowingly created/forged documents, and using them as genuine, submitting those to the office of RCS/DDA himself or his behalf in favour of the society, opening the bank account in the name of the society when he was not even the member of the same as on the date and forging signatures as office bearers on the documents, and for causing unlawful gain to himself and his co-accused, submitting the forged documents for getting the land in the land in favour of the Society, for the purposes of cheating the RCS, under Section 420 of the IPC and for offences under Section 120B of the IPC, amongst other reasons.
- c. Against Mr. Sushil Chhabra, Accused No. 13- Under Section 468 and 471 of the IPC for fraudulently, dishonestly and knowingly created/forged documents, and using them as genuine, submitting those to the office of RCS/DDA himself or his behalf in favour of the society, opening the bank account in the name of the society when he was not even the member of the same as on the date and forging signatures as office bearers on the documents, and for causing unlawful gain to himself and his co-accused, submitting the forged documents for getting the land in the land in favour of the Society, for the purposes of cheating the RCS, under Section 420 of the IPC and for offences under Section 120B of the IPC, amongst other reasons.
- d. Against Sudhir Kumar Marwaha, Accused No. 15- Under Section 468 read with Section 471 of the IPC for fraudulently,



dishonestly and knowingly creating/forging documents and using the fake and fabricated documents as genuine for getting land from DDA at subsidized rate, inducting 115 members on his own choice by falsely showing resignations of previous 115 members, forging signature as office bearer on documents, and for causing unlawful gain to himself and his co-accused, submitting the forged documents for getting the land in the land in favour of the Society, for the purposes of cheating the RCS, under Section 420 of the IPC and for offences under Section 120B of the IPC, amongst other reasons.

54. It is evident from the elaborate Order on charge, that the learned Special Judge considered, analysed and appreciated the material before it and then passed the Order on charge, recording the reasons for the same. Learned Special Judge, *prima facie* satisfied itself on the question of whether or not the accused may have committed the offence and upon finding the answer to be affirmative, it passed the impugned Order. It is found that in the opinion of the learned Special Judge, there existed sufficient and preliminary grounds to presume that the accused, petitioners herein, were involved in the commission of the offence. The present petitioners were found to be part of a bigger conspiracy and they each had a role to play which was enough to pass an Order framing charge against them at the preliminary stage.

SCOPE OF EXTRAORDINARY JURISDICTION

55. Accused Sudhir Kumar Marwaha has preferred to invoke the extraordinary jurisdiction of this Court under Section 482 of the Cr.P.C. the provision enables the High Courts to make orders which may be



necessary to either, firstly, give effect to any order under this Code, or to secondly, prevent abuse of the process of any Court or finally, secure the ends of justice. These powers under the provision are beyond the ambit of powers otherwise granted to the Court under the Cr.P.C, however, there is a limit to exercise of the inherent powers of the Court. For instance, if a remedy is available with the petitioner under the Cr.P.C., then he may not choose to take the recourse and seek relief under Section 482 of the Cr.P.C. Hence, the power under the Section is innately and highly discretionary and therefore, also extremely wide.

56. In ***Madhu Limaye v. State of Maharashtra, (1977) 4 SCC 551***, the Hon'ble Supreme Court made the following observations:-

“....Then in accordance with one of the other principles enunciated above, the inherent power will come into play, there being no other provision in the Code for the redress of the grievance of the aggrieved party. But then, if the order assailed is purely of an interlocutory character which could be corrected in exercise of the revisional power of the High Court under the 1898 Code, the High Court will refuse to exercise its inherent power. But in case the impugned order clearly brings about a situation which is an abuse of the process of the Court or for the purpose of securing the ends of justice interference by the High Court is absolutely necessary, then nothing contained in Section 397(2) can limit or affect the exercise of the inherent power by the High Court. But such cases would be few and far between. The High Court must exercise the inherent power very sparingly. One such case would be the desirability of the quashing of a criminal proceeding initiated illegally, vexatiously or as being without jurisdiction. Take for example a case where a prosecution is launched under the Prevention of Corruption Act without a sanction, then the trial of the accused will be without jurisdiction and even after his



acquittal a second trial, after proper sanction will not be barred on the doctrine of autrefois acquit. Even assuming, although we shall presently show that it is not so, that in such a case an order of the Court taking cognizance or issuing processes is an interlocutory order, does it stand to reason to say that inherent power of the High Court cannot be exercised for stopping the criminal proceeding as early as possible, instead of harassing the accused up to the end? The answer is obvious that the bar will not operate to prevent the abuse of the process of the Court and/or to secure the ends of justice. The label of the petition filed by an aggrieved party is immaterial. The High Court can examine the matter in an appropriate case under its inherent powers. The present case undoubtedly falls for exercise of the power of the High Court in accordance with Section 482 of the 1973 Code, even assuming, although not accepting, that invoking the revisional power of the High Court is impermissible.”

57. In **Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460**, Hon’ble Supreme Court has observed as reproduced hereunder:-

58. “Section 482 is based upon the maxim *quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it also gives all those things without which the thing itself would be unavoidable. The section confers very wide power on the Court to do justice and to ensure that the process of the court is not permitted to be abused.”

59. In **State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335**, the Hon’ble Supreme Court has dealt with the question of exercise of powers under Section 482 of the Cr.P.C. and has laid down the principles state hereunder:-



“99. Venkatachaliah, J. in State of Bihar v. Murad Ali Khan [(1988) 4 SCC 655 : 1989 SCC (Cri) 27] has stated that the jurisdiction under Section 482 of the Code has to be exercised sparingly and with circumspection and has given the working that in exercising that jurisdiction, the High Court should not embark upon an enquiry whether the allegations in the complaint are likely to be established by evidence or not.

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the



same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

60. In light of judgments of the Hon’ble Supreme Court and High Court in various cases it has been found that the powers under Section 482 also have a scope and limit within which the High Courts have to exercise their inherent powers. In ***M/s Neeharika Infrastructure Private Limited v. State of Maharashtra***, 2021 SCC OnLine SC 315, Hon’ble Supreme Court has prescribed that the High Courts while considering quashing of FIR need not go into the cognizance of the offence and appreciate any evidence. It was further held that under Section 482 the orders directing “no coercive steps to be taken...” cannot be passed in a



mechanical way and the High Court shall record reasons for making such an observation while passing an interim order and it must indicate the application of judicial mind. In case the concerned High Court decides to stay an investigation, it has to be passed with circumspection and when it finds that an exceptional case is made out for stay of investigation, and it has also been observed that the High Court may not interfere with the investigation when a cognizable offence is *prima facie* made out against an accused.

61. Hence, it is inferred that the powers under Section 482 of the Cr.P.C. are although wide enough for the High Courts to exercise their discretion where it is deemed fit for the purpose of securing the ends of justice, however, even these powers have fetters and need to be exercised with extreme caution and without going into the deep and elaborate appreciation of evidence, which may be the matter of trial.

SCOPE OF REVISIONAL JURISDICTION

62. Mr. Rohit Bhuchar has approached this Court impugning the Orders of the learned Special Judge under its revisional jurisdiction. The Cr.P.C makes provision for the High Court to exercise its revisional Jurisdiction in furtherance of any proceeding before any inferior Criminal Court. The provision under Section 397 of the Cr.P.C unequivocally states that the High Court or the Sessions Court which is exercising its revisional jurisdiction shall apprise itself solely of the question of correctness, legality and propriety of order of the subordinate Court. A bare reading of the provision of the Cr.P.C suggests that the Court shall limit itself to the findings, sentence or order passed by the subordinate Court, against which the Revisionist is seeking relief before the Courts



concerned, and shall not go beyond the analysis and observations made by the subordinate court. By extension, a limitation and bar is, hence, set out on the scope of the powers that may be exercised by the concerned Court under the provision which precludes the Revisional Court to go into the enquiry of evidence and submissions made before the subordinate Court at the time of passing of the impugned Order, against which the revision is sought.

63. Presently, the aforesaid order of the learned Special Judge is under challenge before this Court in its revisional jurisdiction as well. The Hon'ble Supreme Court has given its findings with regard to the scope of powers of the revisional jurisdiction and a five-judge bench of the Hon'ble Supreme Court in ***Hindustan Petroleum Corporation Ltd. vs Dilbahar Singh, (2014) 9 SCC 78***, held as under: -

“43. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out facts recorded by the Court/Authority below is according to the law and does not suffer from any error of law.

... to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the Order impugned before it suffers from procedural illegality or irregularity.”



64. Further in **Amit Kapoor v. Ramesh Chander, (Supra)**, it has been observed by the Hon'ble Supreme Court as reproduced under:-

“12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC.

20. The jurisdiction of the court under Section 397 can be exercised so as to examine the correctness, legality or



propriety of an order passed by the trial court or the inferior court, as the case may be. Though the section does not specifically use the expression “prevent abuse of process of any court or otherwise to secure the ends of justice”, the jurisdiction under Section 397 is a very limited one. The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done. The jurisdiction could be exercised where there is palpable error, non-compliance with the provisions of law, the decision is completely erroneous or where the judicial discretion is exercised arbitrarily.”

This Court, in view of the aforesaid findings and the law laid down by the Hon’ble Supreme Court, in its revisional jurisdiction will not proceed into the enquiry of the records, documents and other evidence in consideration before the learned Special Judge, but shall constrain itself to the findings of the learned Special Judge in the impugned order with respect to the Accused No. 5, Mr. Rohit Bhuchar.

SCOPE OF WRIT JURISDICTION

65. The Accused Mr. Yashpal Sachdeva and Mr. Sushil Chhabra have moved this Court under its writ jurisdiction under Article 226 of the Constitution of India. The Hon’ble Supreme Court in ***State v. Navjot Sandhu*, (2003) 6 SCC 641**, has reiterated the principles laid down in ***Pepsi Foods Ltd. v. Special Judicial Magistrate* [(1998) 5 SCC 749]**, as stated under that draw a parallel between the powers granted to the High Court under Section 482 of the Cr.P.C and Article 226 and 227 of the Constitution of India:-

22. It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC



(Cri) 426] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.

23. In *Waryam Singh v. Amarnath* [AIR 1954 SC 215] this Court considered the scope of Article 227. It was held that the High Court has not only administrative superintendence over the subordinate courts and tribunals but it has also the power of judicial superintendence. The Court approved the decision of the Calcutta High Court in *Dalmia Jain Airways Ltd. v. Sukumar Mukherjee* [AIR 1951 Cal 193 (SB)] where the



High Court said that the power of superintendence conferred by Article 227 was to be exercised most sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority and not for correcting their mere errors. The Court said that it was, therefore, a case which called for an interference by the Court of the Judicial Commissioner and it acted quite properly in doing so.

24. In Bathutmal Raichand Oswal v. Laxmibai R. Tarta [(1975) 1 SCC 858] this Court again reaffirmed that the power of superintendence of the High Court under Article 227 being extraordinary was to be exercised most sparingly and only in appropriate cases. It said that the High Court could not, while exercising jurisdiction under Article 227, interfere with the findings of fact recorded by the subordinate court or tribunal and that its function was limited to seeing that the subordinate court or tribunal functioned within the limits of its authority and that it could not correct mere errors of fact by examining the evidence or reappreciating it. The Court further said that the jurisdiction under Article 227 could not be exercised, 'as the cloak of an appeal in disguise. It does not lie in order to bring up an order or decision for rehearing of the issues raised in the proceedings'. The Court referred with approval the dictum of Morris, L.J. in R. v. Northumberland Compensation Appeal Tribunal, ex p Shaw [(1952) 1 All ER 122 : (1952) 1 KB 338 (CA)] .

25. In Nagendra Nath Bora v. Commr. of Hills Division and Appeals [AIR 1958 SC 398] this Court observed as under:

'It is thus, clear that the powers of judicial interference under Article 227 of the Constitution with orders of judicial or quasi-judicial nature, are not greater than the powers under Article 226 of the Constitution. Under Article 226, the power of interference may extend to quashing an impugned order on the ground of a mistake apparent on the face of the record. But under Article 227 of the Constitution, the power of interference is limited to seeing that the tribunal functions within the limits of its authority.'"



CONCLUSION

66. Hence, there is only a limit to the extent of powers which this Court may exercise while entertaining the instant petitions. Without going into the comprehensive evidence and material on record before the learned Special Judge, the consideration if of the findings of the learned Special Judge while passing the Order and whether there were any inconsistencies, illegalities or errors apparent in passing the said Orders. The learned Special Judge has framed charges against the accused in accordance with the law laid down by the Hon'ble Supreme Court and the Cr.P.C. and after appreciating the material before it. The record as well as the facts and circumstances *prima facie* establish that the petitioners were involved in the commission of the offences as alleged against them.

67. It is, therefore, found that after consideration of material before it, the learned Special Judge-CBI-01, North West, Rohini, Delhi had passed a well-reasoned Order and there is no illegality, unlawfulness or error apparent on record while passing the impugned Order dated 23rd October, 2018 and 29th October, 2018 in CBI vs. Narayan Diwakar etc. (Om CGHS Ltd.) CBI No. 122/2016.

68. Keeping in view the facts and circumstances, the allegations levelled against the petitioners, the roles played by them in the criminal conspiracy and the reasons outlined in the impugned Order, this Court does not find any cogent reason to interfere with the Order of the Court below.

69. Accordingly, the instant petitions are dismissed for there being no substantial ground for invoking the jurisdiction of this Court for challenging and setting aside the impugned Orders.



70. Pending applications, if any, also stand disposed of.
71. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

APRIL 4, 2022

Aj/MS

