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

CRIMINAL REVISION APPLICATION NO.244 OF 2023

Dezy w/o Ajay Kumar,
aged about 39 years, occupation-service,
r/o flat No.302, Shri Ganesh
Apartment, Phase-II, Pushp Vihar,
Harihar Singh Road, Morabadi,
Ranchi, Jharkhand-834009,
Presently residing at flat No.2, Block
No.20, North Railway Colony, South
Eastern Railway, 11, Garden Reach
Road, Kolkata-700043. ..... **Applicant.**

:: **V E R S U S** ::

Central Bureau of Investigation
(ACB), 3rd Floor, Block C, CGO
Complex, Seminary Hills, Nagpur. ..... Non-applicant.

Shri Prakash Naidu, Counsel and Shri J.D.Bastian, Advocate for the Applicant.
Shri P.Sathianathan, Counsel for the Non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
CLOSED ON : 26/03/2025
PRONOUNCED ON : 15/04/2025

JUDGMENT

1. Heard finally by consent of learned counsel Shri Prakash Naidu for the applicant and learned counsel Shri P.Sathianathan for the CBI.

2. The present revision application is filed by the applicant who is accused No.2 challenging order dated 4.10.2023 passed below Exh.22 by learned District Judge-10 and Additional Sessions Judge, Nagpur in Special Case No.215/2020 whereby the application for discharge is rejected.

3. The factual matrix of the case are as under:

The co-accused, husband of the applicant, was Senior Divisional Material Manager at South-East Central Railway, Nagpur and was prosecuted under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act and under Section 109 of the IPC on an allegation that he acquired assets to the tune of Rs.1,12,57,939/- in his name as well as in the name of the applicant and that the value of the assets so acquired was disproportionate to the extent of 80.30% of the known source of income. After completion of the investigation, the chargesheet was submitted against the applicant and her husband. She filed an application for discharge on the ground that merely her name is joined with the public servant, husband in the record of rights will not make her abettor in the alleged crime. The properties are purchased on loan and, therefore, the case of disproportionate assets will not sustain. She was working as Lecturer and she filed Income Tax Returns since year 2014. The gold jewellery and other assets are herself acquired things. Her husband has already declared all assets and liabilities to the employer. Thus, no *prima facie* case is made out against her to sustain the charge and, therefore, she be discharged.

4. The application is strongly opposed by the CBI on the ground that public servant co-accused Ajay Kumar and the applicant were found in possession of disproportionate assets. No documents were submitted before investigating agency to show that she has any separate source of income. Though she alleges that as she is serving as Lecturer, no documentary evidence is produced to show that she was working as Lecturer. During investigation, it revealed that without having any income, she filed the ITRs. The unaccounted amounts were found in the bank account of the applicant and investigation shows that by way of corrupt practices by her husband, they have collected disproportionate assets. At this stage, sufficient material is on record to show her involvement as abettor in the alleged crime. In view of that, the application deserves to be rejected. He further submitted that sufficient material is collected during

investigation to frame charge against the applicant and hence the application is rejected.

5. Learned counsel for the applicant reiterated the contentions that the applicant was having separate source of income. The properties are purchased by obtaining loan. The assets and liabilities are already submitted by the co-accused. Mere suspicion is not sufficient to frame charge. In absence of the evidence, the applicant cannot be forced to face the trial.

6. In support of his contentions, learned counsel for the applicant placed reliance on following decisions:

> **1. D.S.P.Channai vs. K.Inbasagaran, reported in 2006(2) Mh.L.J. 399;**
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> **2. Criminal Appeal No.1590/2021 (The State by S.P.Through the SPE CBI vs. Uttamchand Bohra) decided by the Hon'ble Apex Court on 9.12.2021, and**
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> **3. Lalita Devi vs. State of Bihar, reported in 2009(9) RCR (Criminal) 281.**

7. *Per contra*, learned counsel for the CBI submitted that during investigation it revealed that the applicant has no source of income and without any source of income she has filed ITRs only to mislead the investigating agency. During investigation, the co-accused was found in possession of disproportionate assets. She has not filed the basic accounts to show her source of income. At this stage, sufficient material is collected during investigation to frame the charge against the applicant. In view of that, the application deserves to be rejected.

8. After hearing both the sides and perusing the investigation papers, it is to be seen whether there is sufficient material to frame charge against the applicant.

9. Before entering into the merits of the case, it is necessary to see what are consideration for considering the application for discharge.

10. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023**, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors, reported in (2014) 11 SCC 709** and **The State of Maharashtra vs. Som Nath Thapa, reported in (1996) 4 SCC 659** and **The State of MP Vs. Mohan Lal Soni, reported in (2000) 6 SCC 338,** has held as under:

"10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of **Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:

> "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."

12. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code

of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross examination of the defence. The case of the prosecution is to be accepted as it is.

13. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

> "(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.

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(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 Judge cannot act merely as a Post office or a mouth-piece 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. Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure. With the principles laid down by the Apex Court, if the material in the present case collected during investigation is discussed, there is no dispute as to the fact that the applicant and the co-accused are husband and wife. The co-accused is charged for offence punishable under

Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act and under Section 109 of the IPC.

15. As far as allegations of the prosecution are concerned, the applicant and co-accused were found in possession of disproportionate assets.

16. The applicant is a wife of public servant and separate chargesheet has been filed against him as to the disproportionate assets for the offence punishable under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act and under Section 109 of the IPC. The application for discharge is filed by the applicant on the ground that merely because she is the wife of co-accused she is arraigned as an accused. She has her own source of income. She is also paying income tax. The properties are purchased by obtaining the loan.

17. I have perused the chargesheet. Perusal of the chargesheet reveals that the applicant claimed that she is filing ITRs since 2014-15 and had income from tuition classes as she associates with teaching in college, school and coaching classes etc. She further claimed that during March 2007 to October 2009, she was working on Ad-hoc basis as Administrative officer in GTB College at Bilaspur and during August 2012 to December 2014 she was working on Ad-hoc basis as Assistant Lecturer in GTB College of Education, Bilaspur. However, during investigation, it revealed that neither the applicant nor any such person was appointed in the said college which was confirmed by the staff members of the said college. No document either salary certificate or appointment letter was produced by the applicant issued by these institutions. During house search also, no such document was found. She further contended that she had worked

with Sky Tuition Classes situated opposite Bengali High School at Dhantoli, Nagpur. The investigation papers reveal that no such tuition class in the name of Sky Tuition Classes is in existence at the address given by the applicant. No document is shown by her to show that she had worked with Empower Eduventures, Ram Nagar, Nagpur which is coaching institute, but the partner of the said institute could not produce any document to that effect. It further revealed that she has filed ITRs only to legalize the corrupt earning by her husband. Thus, the investigation papers disclose her involvement in the alleged offence.

18. Learned counsel for the applicant placed reliance on decision in the case of **D.S.P.Channai vs. K.Inbasagaran** *supra,* but the findings given therein are on appreciation of the evidence. He further placed reliance on the decision in the case of **The State by**

S.P.Through the SPE CBI vs. Uttamchand Bohra *supra* wherein the facts therein and facts of the present case appear to be not identical. In the said case, only suspicion was raised and, therefore, the Hon'ble Apex Court by exercising the jurisdiction held that there is no sufficient material to frame the charge. By referring the judgment of **Sajjan Kumar vs. CBI, reported in (2010)9 SCC 368** it is observed that it is clear that 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 only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves 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, there will be no sufficient ground for proceeding with the trial.

19. Learned counsel for the CBI also placed reliance on the decision in the case of **State vs. D.J.Prabhakar Anand, reported in AIR OnLine 2005 AP 23** wherein the Andhra Pradesh High Court observed that the accused Income Tax Officer allegedly was found in possession of disproportionate assets to his known source of income and co-accused wife abetted same by allowing illegally acquired property to be kept in her name and their child. The accused informed the co-accused that property being kept in her name and she consented for the same. As such, she would abettor. Allowing possession of disproportionate assets in one's name would amount to

facilitating possession and consequently amounts to abetment within meaning of Section 109 of IPC.

By referring the judgment of the Hon'ble Apex Court in the case of **Goura Venkata Reddy vs. State of AP, reported in (2) 2004 SCC (Cri) 473** wherein it has been held that the offence of abetment is a separate and distinct offence provided in the Act as an offence. A person abets the doing of a thing when (1) he instigates any person to do that thing; or (2) engages with one or more other persons in any conspiracy for the doing of that thing; or (3) intentionally aides, by act of illegal omission, the doing of that thing. These things are essential to complete abetment as a crime. The word "instigate" literally means to provoke, incite, urge on or bring about by persuasion to do anything. The abetment may be by instigation, conspiracy or intentional aid, as provided in the three clauses of Section 107. Section 109 provides that if the act abetted is committed inconsequence of abetment and there is no provision for the punishment of such abetment then the offender is to be punished with the punishment provided for original offence. "Act abetted" in Section 109, means the specific offence abetted.

On the basis of the observation above, the Andhra Pradesh High Court held that the co-accused cannot be discharged from accusations of being abettor of the same and cognizance has to be taken against her for the same.

20. At this stage, it is not necessary to establish that there was actual operative clause in the mind of the person abetting by instigation. Sometimes, it may not be possible at the initial stage for the prosecution to translate mental disposition of the accused into the evidence. It can be established during the trial. The law does not

require instigation to be in any particular form or that it should only be in words. It may be by conduct and can be established at the time of trial.

21. The instigation has different meanings as to goad, urge forward, provoke, incite or encourage to do an act. To satisfy requirement of instigation, it is not necessary that actual words must be used to that effect or what constitutes instigation must and specifically be suggestive of the consequence.

22. Thus combine reading shows that requirement is a positive act on the part of the accused to institute or aid in committing the offence.

23. After having sifted weigh through the evidence on record and gone through the investigation papers, the acts that filing of false ITRs and representing that she was earning without any documentary evidence are aiding to

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the co-accused to suppress his acts of collecting the money by way of gratification and to aid him to acquire the assets by corrupt and illegal means.

24. At this stage, material collected by the prosecution is to be accepted as it is and it would be sufficient to frame the charge against the accused. I am, therefore, of the view that no interference is called for in the order passed by learned Judge below rejecting the discharge application.

25. In this view of the matter, the criminal revision application deserves to be dismissed and the same is **dismissed**.

Revision stands **disposed of**.

(**URMILA JOSHI-PHALKE, J.**)

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