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

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

\+ CRL.REV.P. 406/2019

CENTRAL BUREAU OF INVESTIGATION ..... Petitioner

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

versus

PREM BHUTANI & ANR ..... Respondent

Through: Mr. Vinay Kumar Garg, Sr. Advocate with Mr. Akansh Singhal, Mr. K.S. Rekhi, Mr. Parv Garg and Mr. Pawas Kulshreshtha, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant Revision Petition has been preferred by the Revisionist/Petitioner (hereinafter "petitioner") under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (hereinafter "Cr.P.C.") seeking setting aside of Order dated 23rd October, 2018 passed by learned Special Judge, CBI-01, PC Act, North West, Rohini, Delhi qua the discharge of the respondents of offences under Sections 120B read with Section 419/420/468/471 of the Indian Penal Code, 1860

(hereinafter "IPC") read with Section 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter "PC Act") and substantive offences thereof.

BRIEF BACKGROUND

2. Brief facts of the case are as laid down under:

a. A Society namely, Om Cooperative Group Housing Society Limited (hereinafter "Om CGHS/the Society") was registered on 5th November, 1982, 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 22nd April, 1988, Mr. Kalidass Khanna, the then president of the Society, applied for the cancellation of liquidation and revival of the Society, however, the same was rejected.

c. Thereafter, on 21st November, 2002, another 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 Chargesheet.

d. 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.

e. 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.

f. A savings account, bearing No. 35150, was opened at the Corporation Bank in the name of the Society by Mr. Prem Bhutani/respondent no. 1, 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.

g. 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.

h. A divisional bench of this Court vide Orders dated 9th January, 2006 and 13th February, 2006 in Writ Petition (C) No. 10066/2004 and CMS 15847/2005, directed the petitioner for investigation into allotment of over 90 societies, including Om Cooperative Group Housing Society, with direction to investigate 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 to enquire the matter relating to Om CGHS.

i. The enquiry also revealed that official of Registrar of Cooperative Societies (hereinafter "RCS") had abused their official position as public servants in conspiracy with private persons by accepting fake and

fabricated documents to have land allotted to the Om CGHS at a lower price than the prevailing market price.

j. Subsequently, the petitioner filed a chargesheet against 17 accused, in the case against Om CGHS, including the present respondents.

k. On 23rd October, 2018 the learned Special Judge- CBI-01, PC Act, North West, Rohini, Delhi framed charges whereby, the present respondents were discharged.

l. Therefore, the petitioner/CBI, preferred the instant petition against the said Orders.

SUBMISSIONS

3. Mr. Nikhil Goel, learned SPP appearing on behalf of the petitioner submitted that the *prima facie* evidence obtained upon investigation makes out cognizable offences against the respondents and the learned Special Judge has erred in discharging the respondents.

4. It is submitted that during investigation the Hon'ble High Court of Delhi passed order dated 10th May, 1991, in CWP No. 2885/90 (Kaveri CGHS vs. Union of India) to the effect that the original date of registration of the society with the RCS office is to be considered for establishing the seniority of the society with the RCS land to a CGHS by DDA. In view of the aforesaid ruling the building mafia of Delhi started looking after such societies which were registered during 80's but were subsequently declared defunct or put under liquidation. The instant case also falls under the aforesaid category in which the building mafias, in criminal conspiracy with RCS officials, got the Om CGHS Ltd. revived entirely on the basis of false and forged documents and subsequently also

succeeded in getting allotment of land from DDA by using the seniority of the society in terms of its registration.

5. It is submitted that during the course of investigation, the promoter members as well as the RCS officials were traced and examined, who were able to prove the rejection of revival of the society on the basis of the documentary evidence.

6. The accused members of the Society in the chargesheet entered into conspiracy to fraudulently and with dishonest intention cheat the office of RCS and DDA for revival of the Society and allotment of land at a rate much lower to the prevailing market rate. It is submitted that the application of revival of the Society was received by the RCS Office on 21st November, 2002, and a note was recorded in this regard in the file of the Society on 11th December, 2002 that the original file of the Society was not traceable. Thereafter, on receipt of an application for early hearing of revival matter by one Mr. Ashok Kumar, another note was recorded proposing initiation of quasi-judicial proceedings and opening of file on the basis of documents available with the Society. The revival of the Society was processed in a reconstructed file and it is submitted that, thereafter, the members of the Society were able to have the Society revived by using forged and false documents as genuine, misrepresenting the facts, deceiving and impersonation. The Society was revived vide Order No. RCS/123/02/2172-2178 on 10th January, 2003, with a condition that pending audit be completed.

7. It is submitted that investigation established that after illegal revival of the Society, the respondents in connivance with Mr. Yashpal Sachdeva, Accused No. 12 and Mr. Sushil Chhabra, Accused No.13, in

furtherance of criminal conspiracy, opened a bank account in the name of the Society at Corporation Bank, Preet Vihar, Delhi for making payment of the 35% towards the land cost for applying for allotment of land to the DDA. It is submitted that respondent no. 1 alongwith Mr. Yashpal Sachdeva and Mr. Sushil Chhabra used false and forged documents created by the other accused persons for opening the account and for submitting application to DDA. Subsequently, the accused persons were also able to get allotment of 6501.52 sq.mtrs. land in Dwarka in the name of the Society from DDA at the pre-determined rate of Rs. 5171/- per sq.mt. fixed for CGHSs for the year 2002-03, which was much lower as compared to the then prevailing market price for adjoining areas of Dwarka.

8. Learned SPP for the petitioner submitted that the Society was put under liquidation 14 years prior to the revival and was revived without removing the defects mentioned in the liquidation order. Further, the list of 115 members was sent to DDA containing non-*bona fide* members without completion of the pending audit, which was a condition for the revival of the Society. This was a testament to haste shown by the RCS officials in revival of the Society.

9. Accordingly, after collecting incriminating evidence, chargesheet was filed against the accused persons, including the respondents, under Section 120B/419/420 468/471 of the IPC and Section 13(2)/13(1)(d) of the PC Act. Another supplementary chargesheet was filed under Section 173(8) of the Cr.P.C. before the learned Special Judge. However, the learned Special Judge, without properly appreciating evidence on record, discharged the respondents of the abovementioned provisions of the IPC.

10. It is submitted that there is sufficient oral as well as documentary evidence to establish the charge against the respondents under the aforesaid provisions. The respondents played a critical role in the criminal conspiracy to cheat DDA for the objective of obtaining the allotment of land at a predetermined subsidized price. It is submitted that the bank account opened for making the payment to the DDA was infact, opened by the respondent no. 1 without any authorization in the name of the Society. He made the co-accused, Mr. Yashpal Sachdeva and Mr. Sushil Chhabra authorized signatories, who were at the time not even the members of the Society.

11. Learned SPP for the petitioner further submitted that the respondents, thereafter, obtained money from their friends by way of cheques, collected in the name of the society, and deposited them in the said account by which the Pay order of Rs. 1,11,02,400/- was issued to the DDA. The said amount alongwith Rs. 4,00,000/- in cash was deposited with the DDA towards the 35% land cost, basis on which the land was allotted by the DDA to the Society. It is pertinent to note that without initial payment of 35% of the land cost, neither the society could be allotted the land nor DDA could have got cheated.

12. Hence, the respondents in furtherance of criminal conspiracy with others were managing the affairs of the society and played a very crucial role in arranging the funds for allotment of land to the society and were liable to be charged under Section 120B/419/420/468/471 of the IPC.

13. It is submitted that the learned Special Judge grossly erred in ignoring the Government Examiner of Questioned Documents ("hereinafter GEQD") opinion, which proved the writing of respondents

on various bank documents of the Society such as account opening form, vouchers, cheques and application for closing the account. The employees of respondents have also identified their handwriting and signatures on various bank documents and they have also deposed that the respondents were managing the affairs of the society. Therefore, it can be safely concluded that both the Respondents were acting in furtherance of the criminal conspiracy in collusion with the other co-accused public and private persons in order to get the land allotted to the society by DDA at cheaper rates, thus cheated DDA and the original members of the society.

14. It is submitted that the learned Special Judge lost sight of the fact that had the land not been allotted to the society, the very purpose of reviving the defunct society by using forged and fabricated documents would have bogged down the surface and no wrongful gain or loss would have been caused to anyone, thereby concluding into closure of the present case.

15. Learned SPP submitted that the learned Special Judge failed to consider the statement of prosecution witness. Some of the statements are produced hereunder: -

PW92, Mr. Krishan Gopal Kashyap, official of the DDA

> *"If it is established (false resignations of genuine members and enrolment of favourable members of basis of forged papers), the DDA and genuine members are defninitely victims of such fraud and heating by the Management Committee of such society, by setting allotment of land to their favourable members in place of genuine members on pre-determined rates. If DDA receives such*

information, necessary action as deemed fit maybe initiated against the society by the DDA, with assistance of Registrar of Cooperative Societies."

PW69, Davide Jose Koola, the then Senior Manager, Corporation Bank, Preet Vihar, Delhi

"I still recollect that Shri Prem Bhutani was the person who approached me personally and requested me to open this account in the name of the society with Shri Yashpal Sachdeva and Sushil Chhabra as its authorised signatories. He introduced the aforesaid two persons as he known and also acted as the introducer of the account. In fact, most of the time I found him associated with the transactions in this account as he used to visit personally or call me telephonically whenever any cheque/cash is deposited or a cheque is issued from the aforesaid account.

I also state from this account only a Pay order for Rs. 1,11,04,400/- issued from the aforesaid account for this purpose. I still recollect that Shri Prem Bhutani personally visited the branch and requested me to issue a Pay Order for the aforesaid amount in favour of DDA.

Thereafter, the Pay Order No. 268852 dated 18.03.2003 for Rs. 1,11,02,400/- was issued as per procedure and the same was handed over to Shri PremBhutani by me."

PW80 Mr. Anil Bakshi

"I further state that sometime in March, 2003, Shri PremBhutani met me in a social gathering where he asked me to lend him some money on interest for six months. Shh Bhutani told me that he was managing a society named Om CGHS ltd. for which some money is to be paid to DDA and that he needed money for this purpose only."

PW-89 Mr.Rajeev Khanna, an employee of Respondents

> *"On being asked, I state that my employer Shri PremBhutani and his brother Shri Anil Bhutani are mainly into the business of construction and sale/purchase of commercial properties such as shops, offices, etc. Besides, during the year 2003-2004 they were also managing a few Cooperative group Housing societies such as Om Cooperative Group Housing society and Arvind Group Housing Society. In Arvind Group Housing Society, myself and another colleague Shri Yoginder Mohan Duggal were made Secretary and President on paper, however, the society was being managed by Shri PremBhutani and his brother Anil Bhutani only. However, I never worked for Om Cooperative Group Housing Society."*

It is submitted that the above mentioned testimonies establish that the respondents were actively involved in managing the affairs of the Society in furtherance of the criminal conspiracy.

16. Learned SPP relied upon the judgment the Hon'ble Supreme Court in ***State of Maharashtra & Others vs. Som Nath Thapa & Others*, 1996 (4) SCC 659,** wherein it was observed as under:-

> *"[l]f 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."

17. For the reasons stated above, it is submitted that the Order dated 23rd October, 2018 is liable to be set aside because the same is untenable, misconceived and contrary to law.

18. *Per Contra*, Mr. Vinay Kumar Garg, learned senior counsel vehemently opposed the instant petition and submitted that the learned Special Judge has committed no error in passing the impugned Order discharging the respondents.

19. It is submitted that the only allegations against the present respondents is that they had opened the bank account, through which the funds were arranged for the payment of 35% of the land cost which was to be made to the DDA.

20. It is submitted that the only role attributed to the respondents was that of the financers for the Society. The respondents were the introducers to bank account in the name of the Society and their role was limited to such introduction of the Society's account in the bank. From March 2003 to September 2003, fulfilling their role as financers, they arranged funds from members as well as non-members, at the request of Mr. Yashpal Sachdeva and Mr. Sushil Chhabra, however, they had no role whatsoever in the alleged criminal conspiracy and had only been roped in the matter by the petitioner without any reasonable or substantial ground.

21. It is submitted that the best case against the respondents could be that they have the knowledge of the conspiracy and mere knowledge is not enough to frame charges against them unless the material on record

shows that they had done any act towards achieving of the object of the conspiracy.

22. It is further submitted that prior to March, 2003, the respondents were not even associated with the Society or its activities and by the time the object of the alleged conspiracy had already been achieved. It has not been alleged that the resignations or the inductions of members were carried out at their instance. There is no iota of evidence to show the meeting of minds of the respondents with the other accused persons.

23. Learned senior counsel submitted that there are no allegations that the respondents had any interest, pecuniary or otherwise, in the Society, since, neither were they members nor office bearers in the Society, at any stage and they were also not the beneficiaries of the objective of the conspirators at all.

24. Learned senior counsel submitted that the learned Special Judge has rightly discharged the respondents after thorough consideration of the material evidence, oral and documentary, on record and hence, there is no cogent reason to allow the instant petition as the same is devoid of any merit and is liable to be dismissed.

FINDINGS AND ANALYSIS

25. Heard learned counsel for the parties and perused the record. I have perused the impugned Order as well as the chargesheet.

26. The instant petition has been filed by the petitioner/CBI challenging the Order dated 23rd October, 2018 passed by the learned Special Judge framing charges in matter arising out of RC-SI8/2006/ E0010/CBI/EOU-IV/N, wherein the present respondents had been discharged by the learned Special Judge. At the very outset it may be

pertinent to outline the extent of power while framing charges and discharging the accused that the concerned Court may exercise.

27. The provisions under the Cr.P.C. with respect to charge are reproduced as under: -

> *"227. Discharge. —If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*
>
> *"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."*

28. The Hon'ble Supreme Court as well as various High Courts have interpreted the provisions in the understated judgements, that have effectuated the principles to be considered while a Judge is framing charge or discharging an accused: -

In ***Union of India vs Prafulla Kumar Samal*, (1979) 3 SCC 4,** 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."

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."

Hon'ble Supreme Court in ***Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 12 has observed as under:-**

"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges

under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]).

In ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715,** Hon'ble Supreme Court reiterated as hereinunder:-

"14. These two decisions do not lay down different principles. Prafulla Kumar case [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257] . In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at

the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

A coordinate bench of this High Court has also expressed its observations in the issue at hand in ***B.N. Rao v. State (CBI),*** **1997 SCC OnLine Del 308** as stated as under:-

*"**7.** After the charge sheet is filed in Court, the prosecutor has to inform the Court as to what is the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. It is at that stage that the Court is to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has thereafter to pass an order either under Section 227 or 228 of the Code of Criminal Procedure (in short referred to as "the Code"). If the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so as enjoined by Section 227 of the Code. If on the other hand, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he shall frame in writing the charge against the accused as provided in Section 228 of the Code. Therefore, at the time of framing of charge, the Court is not required to meticulously judge the truth, veracity and effect of the evidence which the prosecutor proposes to adduce at the trial. It is not obligatory for the Judge at that stage to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test if and judgment which is to be finally applied before recording a finding*

regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding of the matter under Section 227 or Section 228 of the Code. At that stage, the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. If there is a strong suspicion which leads the Court to think that there is a ground for presuming that the accused has committed an offence, then it will not be open for the Court to say that there were no sufficient grounds for proceeding against the accused. It was, therefore, held by the Supreme Court in State of Bihar v. Ramesh Singh, 1977 (4) SCC 39, that if the scales as to the guilt or innocence of the accused are even at the conclusion of the trial, then on the theory of benefit of doubt the case must end in the acquittal of the accused; but if on the other hand, the scales are even at the initial stage of making an order under Section 227 or Section 228 of the Code, then in such a situation, ordinarily and generally, the order will have to be made under Section 228 and not under Section 227 of the Code. The test is whether there is sufficient ground for proceeding and not whether there are sufficient grounds for conviction."

Hon'ble High Court of Gauhati in ***Superintendent of Police/CBI/SPE/ Silchar v. T.Z. Konyak*, 2011 SCC OnLine Gau 252,** has also observed as under:-

"16. The Apex Court in Yogesh (supra) explained that the words, "not sufficient ground for proceeding against the accused", appearing in section 227 of the Cr. PC envisage exercise of judicial mind on the part of the Judge to the facts of the case in order to determine as to whether a case of trial has been made out by the prosecution. It has also been pointed out that in assessing and endeavouring to find out as to whether there is sufficient ground for proceeding with the case, the Judge has the power to sift and weigh the material for the limited purpose of finding out about the existence or otherwise of a prima facie case

against the accused. Though there is no rule of universal application as to what would constitute to be a prima facie case, suffice it to say that the same would depend on the facts and circumstances as emerging in a particular case. The Apex Court in Marlin Burn Ltd. v. R.N. Banerjee, AIR 1958 SC 79, observed that a prima facie case does not mean a case proved to the hilt but a case, which can be said to be established if the evidence, which is led in support of the same, were believed. The Apex Court further stated that while determining whether a prima facie case had been made out, the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion, in question, and not whether that was the only conclusion, which could be arrived at on that evidence. If on the basis of application of judicial mind to the material facts, the learned Judge comes to the conclusion that the materials give rise to suspicion, he would be within his right to discharge the accused. On the contrary, if grave suspicion arises in the mind of the Judge, the Judge would have no option but to frame charge and proceed in accordance with law without taking into consideration as to whether the materials so unfolded would result in conviction in the trial or not. He may not be unjustified to consider as to whether the materials on record, if unrebutted, would make conviction reasonably possible.

18. In S.B. Johari (supra), the Apex Court opined that at the sections 227-228, Cr. PC stage, the court is required to evaluate the materials and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

22. Section 120A of the Penal Code, 1860 defines criminal conspiracy. The Section reads as under:—

> *"120A. Definition of criminal conspiracy.— When two or more persons agree to do, or cause to be done,—*
> *(1) an illegal act, or*
> *(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:*
> *Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof."*

Section 120B of the IPC provides for punishment of an offence of criminal conspiracy. The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. However, conspiracy being what it is, the same is almost invariably shrouded in secrecy and it may not be possible to adduce direct evidence of the common intention of the conspirators. This is where the meeting of the mind of the conspirators can be gathered and inferred from the circumstances laid by the prosecution, if such inference is possible.

23. In Damodar (supra), the Supreme Court had laid down as follows:

> *"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in cither an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may*

> *be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."*
>
> *In Esher Singh (supra) also, the Apex Court had reiterated the same principle regarding criminal conspiracy."*

29. The above laid principles suggest that the learned Judge framing charges shall limit itself to the *prima facie* consideration of material and evidence on record. The Judge need not be satisfied on the question of whether the trial, when conducted, will lead to the conviction or acquittal of the accused, but the consideration needs to be whether the accused is to be sent for trial at the first instance or not, based on the material on record. An investigation into the offence and elaborate appreciation of evidence is not required, and is rather discouraged, at the stage of framing of charges and only the material *prima facie* establishing a case against or in favour of the accused is what is significant. Moreover, as per the requirement of Section 227 and 228 of the Cr.P.C., the learned Judge shall consider whether "sufficient grounds" exist or not and such consideration shall be supported by material on record. Hence, to adjudicate upon the question whether the impugned Order is liable to be set aside, it is pertinent to evaluate whether the learned Special Judge was

satisfied that even a *prima facie* case was not made out against the present respondents.

30. It is accurate to say that the criminal conspiracy alleged in the instant case by the petitioner was indeed a two-fold and two-part criminal conspiracy. The first of the dual objective was the revival of the Om CGHS, the second being receiving allotment from the DDA at a lower than the prevailing market price. Although the respondents were not members of the Society, they played a vital role in obtaining the funds based on which the DDA allotment was concluded, which was the second phase of the conspiracy. Without arrangement of funds from members as well as non-members, the Society would not have been able to secure the land allotment from DDA. It is also an admitted fact that the said funds were arranged by the respondents at the instance of Mr. Yashpal Sachdeva and Mr. Sushil Chhabra, who were the members of the society actively involved in the conspiracy. The association of the respondents with the other accused was during the period when the said conspiracy was being steered. Therefore, appreciating the evidence on its face value, it can be reasonably said that there was a meeting of mind between the respondents and other accused, since, from March 2003 till September 2003 they were in correspondence with each other for fulfilling the objective of their criminal conspiracy.

31. Further, it is found that the statements of the witnesses PW69, PW80 and PW89, which have been reproduced above, corroborated a link between the respondents and the other accused and have expressly indicated that the respondents had a part to play in achieving the objective of procuring the allotment from the DDA at a lower price.

32. In cases of criminal conspiracy circumstantial evidence may be relied upon by the concerned Judge, as has also been observed by the Hon'ble Supreme Court in ***Esher Singh v. State of A.P.*, (2004) 11 SCC 585,** and in the instant case, there was circumstantial evidence on record, including the statements of the witnesses assigning a role to the respondents, continued association of the respondents with the accused Mr. Yashpal Sachdeva and Mr. Sushil Chhabra and role of the respondents as financers that connected the respondents to the criminal conspiracy and prima facie made out a case against them which was sufficient to frame charges against them.

33. Hence, there were adequate material available before the Court of the learned Special Judge for forming the opinion that sufficient grounds existed for presuming that the respondents had committed an offence and that *prima facie* a case was made out against the respondents, which it failed to appreciate while passing the Order dated 23rd October, 2018.

34. In light of the above, this Court finds that the learned Special Judge erred while passing the impugned Order to the extent of discharging the respondents despite having *prima facie* evidence against them on record.

CONCLUSION

35. Keeping in view the abovementioned principles laid down by Hon'ble Supreme Court as well as various High Courts and all other facts and circumstances, this Court finds that there was an error on part of the learned Special Judge in discharging the present respondents despite have *prima facie* material on record for framing charges against them.

36. Accordingly, the impugned Order dated 23rd October, 2018, passed by Special Judge, CBI-01, PC Act, North West, Rohini, Delhi in CBI Vs.

Narayan Diwakar etc., CBI No. 122/2016, is set aside with respect to the observations made qua the present respondents discharging them. The instant matter is remanded back to the learned Special Judge, CBI-01, PC Act, North West, Rohini, Delhi with directions to pass a fresh Order qua the respondents, in accordance with the observations made hereinabove, the material on record before it as well as in accordance with law.

37. The instant petition is allowed with the abovementioned directions granting the relief as prayed for.

38. Pending applications, if any, also stand disposed of.

39. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

April 4th, 2022
AJ/MS