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

% **Reserved on: 24th February 2022**
Pronounced on: 29th April 2022

\+ CRL.REV.P. 830/2017, CRL.M.A. 17940/2017, CRL.M.A 15751/2021 & CRL.M.A 15752/2021

V K VERMA ..... Petitioner

Through: Mr. Ajit Kumar Sinha, Senior Advocate with Mr. Srijan Sinha, Ms. Parul Dhurvey and Mr. Naveen Soni, Advocates.

versus

CBI ..... Respondent

Through: Mr. Prasanta Varma, SPP.

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 filed under Section 397 read with Section 401 and Section 482 of the Code of Criminal Procedure (hereinafter referred to as the "Code") seeking setting aside of order on charge dated 24th July 2017 passed by the Ld. Special Judge, CBI Court, Patiala House in CC No. 01/2013 and for quashing criminal proceedings against the petitioner. Vide the impugned order, the petitioner has been charged under Section 420 and Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as "IPC") read with Section 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "PC Act").

2. The brief facts of the instant case, as alleged in the FIR, are that V.K. Verma, the then DG, Organizing Committee (OC), Commonwealth Games, 2010 and other officers of the OC entered into a criminal conspiracy with Suresh Kumar Seenghal, Director of M/s. Premier Brands Pvt. Ltd. (PBPL), with Chairman, M/s. Compact Disc India Ltd. and others. The OC officers scrapped the process of initial Request for Proposal (RFP) on flimsy grounds after receipt of the proposal of PBPL, to extend undue favour to PBPL by appointing the said company as Official Master Licensee for Merchandising and Online and Retail Concessionaire for Commonwealth Games, 2010 (CWG) against a minimum royalty amount of Rs. 7.05 crores. PBPL, however, after earning a huge amount from the CWG band properties did not pay anything to the OC and the cheque amounting Rs. 3.525 Crores were dishonoured by the Bank on instructions from PBPL, which caused pecuniary advantage to Suresh Kumar Seenghal and PBPL and corresponding loss to the Govt. Exchequer.

3. After completion of investigation, a charge sheet was filed on 24th January 2013 under Section 120B read with 420 of IPC and Section 13(2) read with section 13(1)(d) of PC Act, 1988 upon which the Ld. Trial Court took cognizance and ordered charge under Section 228 of Code against the petitioners and all other accused persons under Section 120B of IPC read with Section 13(1)(d) read with Section 13(2) of P.C. Act, 1988 and Section 420 of IPC after the final report.

4. The petitioner, thus, challenged the impugned order passed by the Ld. Court on the grounds of patent defects and errors of jurisdiction. It was contended that the Ld. Judge had not satisfied the constituents of conspiracy as alleged between Petitioner and co accused who allegedly

recommended acceptance of Technical Bid of PBPL and later recommended its appointment as Master Licensee.

SUBMISSIONS

5. Mr. Ajit Kumar Sinha, learned Senior Advocate, appearing for the Petitioner submitted that the Ld. Special Judge has failed to appreciate the arguments advanced by the accused during the impugned proceedings. The perusal of entire evidence, even if taken on face value, does not make out any case as is being alleged by the Prosecution against the Petitioner.

6. It is submitted that the impugned order erroneously records that in a meeting held in the afternoon of 24th February 2010, the petitioner raised objection to the 1st RFP which led to its annulment and paved the way for issuance of fresh tender (the 2nd RFP) making it possible for accused company (PBPL) to participate in the L&M program of Organising Committee. The impugned order erroneously records that the 2nd RFP was only for the left-out items from the 1st RFP and that the 1st RFP was at the last stage of formalization.

7. The Ld. Counsel for Petitioner further submitted that the impugned Order, without any basis, holds that the petitioner met with the Accused No.-7 Chairman, PBPL on 19th January 2010 and thereafter the decision to issue the fresh tender was taken. The impugned Order holds that the 1st RFP did not mandatorily require an Organising Committee Finance Committee's (OCFC) approval and thus annulment of the 1st RFP was on a flimsy ground. The impugned Order further holds that the Petitioner thwarted the post facto approval of the 1st RFP by withdrawing the Agenda from the 22nd OCFC Meeting and suffers from material defects and causes grave injustice to the petitioner. It is submitted that the RPF

No. 1 and 2 are different, and the first RPF was annulled, in light of the second RPF.

8. It is submitted that the Tender Notification for the 1st RFP published on 3rd November 2009 was for 12 specific categories whereas the tender notification published on 24th February 2010 for 2nd RFP was open ended and not for limited or left out categories from the 1st RFP. The 1st RFP lists out 12 categories whereas the 2nd RFP on record lists out 18 categories including the 12 which featured in the 1st RFP. A total of 71 bidders including M/s PBPL Ltd. responded to the 2nd RFP across various categories extending beyond and including all categories as listed out in the 1st RFP. And a note dated 10th January 2010 of the Revenue Department confirms the list of these bidders.

9. Learned Counsel for petitioner, further submitted that the above observation states that the stage at which the 1st RFP was suspended was that of signing of MOU or in other words a final stage. It is submitted that this is an extremely incorrect proposition stated in the Impugned order. The format for commercial bids in the 1st RFP required the bidders to submit bids valid until 31st December 2009 and all bids were received incorporating these conditions. As the commercial evaluation process was held in abeyance until 31st December 2009 and approval of Competent Authority as per financial guidelines (EMC) was never obtained, nor extension of validity processed, all commercial bids received against the 1st RFP became infructuous at the midnight of 31st December 2009. Under the Indian Contract Act 1972 no MoU could have been signed on the basis of invalid and illegal bids.

10. Learned counsel for the petitioner further submitted that the impugned Order on Charge, *prime facie* is arbitrary, illegal and patently flawed and the main ingredients for invoking Section 420 and 120 B of IPC read with Section 13 (1) (d) and 13 (2) of the PC Act are not even made out.

11. It is submitted that the Ld. Special Judge, CBI has failed to appreciate the arguments advanced on behalf of the accused no. 1, being the Petitioner herein, causing gross and manifest prejudice to the Petitioner and thereby resulting in grave miscarriage of justice. Impugned order on charge is without application of mind to the facts and circumstance.

12. The Petitioner contends that there is no *prima facie* case made out against the Petitioner for the purpose of framing charges for the offence mentioned in the chargesheet. The principle governing the exercise of jurisdiction under section 228 of CrPC have been culled out in the case of ***Amit Kapoor v. Ramesh Chander & Anr (2012) 9 SCC 460***. Further, the scope of interference and exercise of jurisdiction of this Hon'ble court under section 397 has been explained in case of ***State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198***.

13. It is submitted that the Ld. Judge has not satisfied the constituents of conspiracy as alleged between Petitioner and Accused A2 - A6 who allegedly recommended acceptance of Technical Bid of PBPL and later recommended its appointment as Master Licensee. It is submitted that the Ld. Judge has committed a grave error in holding the Accused A1 - A6 responsible for the loss of Rs 3.525 crores in royalty money to OC as the

cheques from PBPL were dishonoured by the Bank, however this is contrary to the record.

14. The Ld. Counsel for Petitioner submitted that the Ld. Judge has failed to appreciate facts on record and concluded that the Petitioner with a view to help PBPL insisted on seeking OCFC approval for the 1st RFP and it was because of this insistence that the 1st RFP got cancelled. Ld Special Judge, merely on the basis of an email sent by Petitioner and without going into the contents of the said mail, has erroneously held that the Petitioner was meddling in the affairs of Revenue FA.

15. It is submitted that the mail itself explains that the Petitioner was called for a Project Management Unit by the CEO and the instructions in the mail were as per decision taken in the meeting. The said mail was addressed to Finance FA and was copied to the CEO for remaining transparent. The mail only reminded the Finance FA to place the L&M RFPs for the approval of OCFC in line with identical written directions issued by the CEO to Finance 10th March 2010.

16. It is submitted that Article 3 of the Financial and Administrative Guidelines as well as OCFC Terms of reference issued on 16th September 2009 and 6th November 2009 at clause (i) stipulates that all financial proposals require approval of the OCFC and holding of the impugned order that no OCFC approval was required is a patently illegal proposition.

17. It is further submitted that the holding of the impugned order was erroneous wherein it was stated that the Petitioner had met the accused Sh. Suresh Kumar Seenghal and accused No. 07 on 19th January 2010 whereas no such meeting had taken place on the aforesaid date between

the said individuals and the petitioner had only met with Mr. Suresh Kumar after the approval for issuing fresh tender had been granted by Mr. Jarnail Singh, CEO.

18. It is submitted that the Notification for fresh tender (2nd RFP) for appointing Licensees stood published in the morning edition of National Newspapers of 24th February 2010 which was before the meeting as alleged for frivolous cancellation referred to in the Order on Charge and the publication of fresh tender in the morning newspapers was also noted by the members in the meeting.

19. The Learned Counsel for Petitioner further stated that the decision to issue fresh tender was, in fact, made by Jarnail Singh, CEO on 22nd January 2010 based on a recommendation made by officials of Revenue FA and the petitioner was not associated with this proposal/approval at any stage as the Revenue FA was directly reported to Jarnail Singh, CEO.

20. It was, thus, concluded by the Learned Counsel for Petitioner that the Ld. Special Judge has failed to examine the prayer for discharge of the Petitioner made in his written submission in reply to the chargesheet filed by the CBI and has framed charges against him.

21. *Per Contra*, learned counsel for the CBI submits that the present petition is not maintainable as the order of framing charge is an interlocutory order within the ambit of Section 19 (3)(c) of Prevention of Corruption Act, 1988 and thus, non-revisable under Section 397 (2) read with Section 482 of the Code. To further substantiate the submission, the counsel has relied on ***Shri Anur Kumar Jain v. Central Bureau of Investigation*** **178 (2011) DLT501**, ***Dharambir Khattar Vs. Central Bureau of Investigation*** **159 (2009) DLT 636**, ***R.C. Sabharwal v.***

Central Bureau of Investigation **0125 AD (Delhi) 131** wherein it has been held that the order for framing charge is an interlocutory order, thus barring the jurisdiction of the High Court.

22. It is further stated that the reliance placed on the judgment of ***Girish Kumar Suneja v. CBI*** **AIR 2017 SC 3620**, ***Amit Kapoor v. Ramesh Chander & Anr.*** **(2012) 9 SCC 460**, ***State of Rajasthan v. Fatehkaran Mehdu*** **(2017) 3 SCC 198** by the petitioner has been entirely misplaced as the judgments were passed on the merits of the case and not on the preliminary issue of maintainability. It is submitted that the case was registered on source information and after the completion of investigation chargesheet was filed. The chargesheet is based on the statements of 65 witnesses.

23. As per the submissions of the Learned Counsel for the CBI, the petitioner entered into a criminal conspiracy and caused wrongful losses to the government exchequer. The petitioner along with other accused abused their official position in order to cause pecuniary advantage to Suresh Kumar Seengal and M/s PBPL. The cheques issued by PBPL were dishonoured on presentation before the bank at their request.

24. It is submitted that the petitioner had got 1st RPF cancelled, when the 1st RFP had attained finality, on false grounds and at the last stage the first RFP was revoked. Petitioner could not provide any sufficient reason for such cancelling as the process was initiated through him and he did not note any such objection in the beginning. Furthermore, final approval for advertisement and further course of action to be taken, was also given by the accused.

25. The Learned Counsel for the CBI stated that the petitioner raised objections regarding the first RFP only on 24th February 2010. Furthermore, the accused met Sh. Suresh Kumar Seengal, accused No.-7 on 19th January 2010 and accused no.- 7 had written a letter dated 1st February 2010, giving an offer for securing a contract although he did not participate in the first RFP. Only after the aforesaid development did the accused no.-1 raised objections and got the first RFP cancelled.

26. It is further submitted that the facts categorically show that accused No.-1 was interested in bringing accused no.-7, Suresh Kumar @ Seenghal and his company in the bidding process for the Merchandising and License programme and had raised frivolous objection to get the first RFP annulled. It is submitted that the role of the accused No.-5, K.U.K. Reddy is clear as he is being the member of the Evaluation Committee has granted favour to M/s Premier Brands Pvt. Ltd., by holding it to be qualified during technical evaluation and appointing it as Master Licensee.

27. It is submitted that the Ld. Special Judge after considering the evidence in totality passed the order framing charge dated 24th July 2017 against the Petitioner and other co-accused persons under Section 120-B and Section 420 of IPC read with Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The observations made by Ld. Special Judge has been on the basis of evidence and material on record.

28. It is submitted that the Petitioner got the first RPF cancelled on false and frivolous grounds. The Members of the Evaluation Committee in connivance with the petitioner, wrongly recommended the name of

M/s PBPL for becoming the only franchise for all the merchandise and licensing along with the related CWG Logo, etc.

29. The Learned Counsel for the CBI, therefore, submits that the present petition has been filed with a *mala fide* intention to delay the proceedings and hence be dismissed as being devoid of merits.

ANALYSIS

30. Heard learned counsel for the parties and perused the record, specifically the impugned Order on Charge as well as the contentions made by the parties.

31. In order to decide the case at hand, first it is pertinent to refer to the position of law laid down in reference to the revisional jurisdiction regarding maintainability of the instant petition.

i. Revisional Jurisdiction and Framing of Charge

32. A preliminary question *qua* jurisdiction that often arises and was raised in the instant matter, while an order framing charges against the accused is challenged before a Court sitting in its Revisional Jurisdiction, is whether the impugned order framing charges is an interlocutory order and hence, does it attract the bar of Section 397(2) of the Code, ousting the powers of revision in relation to interlocutory orders. The question has been settled by a catena of judgments of the Hon'ble Supreme Court. A basic analysis of a few landmark judgments pertaining thereto has been made hereunder.

33. The Hon'ble Supreme Court in the case of ***Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation*** **(2018) 16**

SCC 299 has held that an order framing charge can be interfered under the revisional jurisdiction. The Hon'ble Court held as under:

> *"37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 CrPC or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e., the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced."*

34. While discussing the same question, the Hon'ble Supreme Court recently in ***Sanjay Kumar Rai v. State of Uttar Pradesh & Anr.*** **2021 SCC Online SC 367** reiterated the aforementioned ruling as well as the original position of law as laid down in ***Madhu Limaye v. State of Maharashtra,*** **(1977) 4 SCC 551** in this context, and has held that:

> *"16. The correct position of law as laid down in Madhu Limaye (supra), thus, is that orders framing charges or refusing discharge are neither interlocutory nor final in nature and are therefore not affected by the bar of Section 397 (2) of CrPC. That apart, this Court in the above-cited cases has unequivocally acknowledged that the High Court is imbued with inherent jurisdiction to prevent abuse of process or to secure ends of justice having regard to the facts and circumstance of individual cases. As a caveat it may be stated that the High Court, while exercising its aforestated jurisdiction ought to be circumspect. The discretion vested in the High Court is to be invoked carefully and judiciously for effective and timely administration of criminal justice system. This Court, nonetheless, does not recommend a complete hands-off approach. Albeit, there should be interference, may be, in exceptional cases, failing which there is likelihood of serious prejudice to the rights of a citizen. For example, when the contents of a complaint or the other purported material on record is a brazen attempt to persecute an innocent person, it becomes imperative upon the Court to prevent the abuse of process of law."*

35. Thus, the issue is well-settled and the controversy *qua* revisional jurisdiction is set to rest with the actual position of law being that the order of framing charge or that of discharge is neither interlocutory nor final and hence, does not attract the bar of Section 397 (2) of the Code. The High Court is thus competent to entertain a revision petition against such orders.

36. Having decided the maintainability of the petition, it is now pertinent to refer to the objective of framing of Charge under the scheme of the Code.

ii. Framing of Charges & Order on Charge

37. The Hon'ble Bombay High Court in the case of ***Samadhan Baburao Khakare v. State of Maharashtra***, **1995 SCC OnLine Bom 72** has highlighted the objective and importance of Charge in criminal trial in the following words:

> *"11. The whole purpose and object of framing charges is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offence with which the accused is convicted is not brought out in the charge then the charge is not only defective but illegal. It is no doubt that when the accused is charged with a major offence, he can be convicted of a minor offence. It is true that what is major offence and what is minor offence is not defined. The gravity of offence must depend upon the severity of the punishment that can be inflicted, but the major and the minor offences must be cognate offences which have the main ingredients in common, and a man charged with one offence which is entirely of a different nature from the offence which is proved to have been committed by him, cannot in the absence of a proper charge be convicted of that offence, merely on the ground that the facts proved constitute a minor offence. For example, a man charged with an offence of murder cannot be convicted for forgery or misappropriation of funds, or such offences which do not constitute offences against person, the reason being that the accused had no opportunity in such a case to make defence, which may have been open to him, if he had been charged with the offence for which he is to be convicted."*

38. The Hon'ble Supreme Court has succinctly analyzed its previous decisions with respect to framing of charge in ***State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659** and has laid down the following test for framing of charges:

> *"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.*
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> *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.*
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> *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."*

Thus, the court concerned with the framing of charges has to merely see whether the commission of offense can be a possibility from the evidence on record or not.

39. It is also required to be noted that the charge does not render a conclusive finding with respect to guilt or innocence of the accused. The charge is merely an indication to the accused about the offense for which he is being tried for. In this regard, it is essential to take note of the ruling of the Hon'ble Supreme Court in ***Esher Singh v. State of A.P.*****, (2004) 11 SCC 585,** where the Hon'ble Court observed:

> *"20. Section 2(b) of the Code of Criminal Procedure, 1973 (in short "the Code") defines "charge" as follows:*
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> *'2. (b) 'charge' includes any head of charge when the charge contains more heads than one;'*
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> *The Code does not define what a charge is. It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. A charge is*

formulated after inquiry as distinguished from the popular meaning of the word as implying inculpation of a person for an alleged offence as used in Section 224 IPC."

40. Additionally, at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence. The Hon'ble Supreme Court held in the case of ***Chitresh Kumar Chopra* v. *State (NCT of Delhi),* (2009) 16 SCC 605** as under:

> *"25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."*

41. The Hon'ble Supreme Court in ***Main Pal v. State of Haryana,* (2010) 10 SCC 130** observed as follows:

> *"17. (i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged."*

42. The Hon'ble Supreme Court in the case of ***Santosh Kumari v. State of J&K,*** **(2011) 9 SCC 234** has comprehensively dealt with the question and purpose of framing of charges as under:

> *"18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. [AIR 1956 SC 116 : 1956 Cri LJ 291 : (1955) 2 SCR 1140] SCR at p. 1189, the charge is a rolled-up one involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable."*

43. Therefore, it is clear that the framing of charge is a manifestation of the principle of Fair Trial, by giving sufficient notice along with all particulars to the accused being charged so as to enable him to prepare his defence.

44. Recently, in the case of ***State of Rajasthan v. Ashok Kumar Kashyap,*** **2021 SCC OnLine SC 314**, the Hon'ble Supreme Court held that the evaluation of evidence on merits is not permissible at the stage of considering the application for discharge. At the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible. The Bench held as under:

> *" 23. In the case of **P. Vijayan (supra)**, this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts."*

45. Thus, the position of law that emerges is that at the stage of discharge/framing of charge, the Judge is merely required to shift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused, or in other words, whether a *prima facie* case is made out against the accused.

46. Now, having analysed the object as well as the test for framing of charges, it is pertinent to refer to the scope of revision as exercisable by this Court in respect to an Order on Charge.

iii. Scope of Revisional Jurisdiction – qua Order on Charge

47. In ***Amit Kapoor* v. *Ramesh Chander* (2012) 9 SCC 460**, the Hon'ble Supreme Court has elucidated on the revisional power of the Court under Section 397:

> *"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 aforestated. Even framing of charge is*

a much advanced stage in the proceedings under CrPC."

48. The Hon'ble Supreme Court in the same case has also enunciated a set of principles which the High Courts must keep in mind while exercising their jurisdiction under the provision:

> *"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:*
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> ***
>
> *27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*
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> *27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*
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> *27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and*

for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

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27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

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

49. In the case of ***State of Rajasthan* v. *Fatehkaran Mehdu*** **(2017) 3 SCC 198**, the Hon'ble Supreme Court has elucidated on the scope of the interference permissible under Section 397 with regard to the framing of a charge, as cited hereunder:

"26. The scope of interference and exercise of jurisdiction under Section 397 CrPC has been time and again explained by this Court. Further, the scope of interference under Section 397 CrPC at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not

with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with the scheme of the Code of Criminal Procedure."

50. The aforementioned judgments have been upheld by the Hon'ble Supreme Court in the case of ***State of M.P. v. Deepak*, (2019) 13 SCC 62**. The Hon'ble Court reiterated the same in their findings for deciding the scope and extent of revisional jurisdiction while considering the question of Charge.

51. Recently, in the case of ***State of Rajasthan v. Ashok Kumar Kashyap* (Supra)**, the Hon'ble Supreme Court held that the evaluation of evidence on merits is beyond the scope of revisional jurisdiction of the High Courts, at the stage of considering the application for discharge. In the cited case, while discharging the accused, the High Court had gone into the merits of the case and had considered whether on the basis of the material on record, the accused was likely to be convicted or not. At the stage of framing of the charge and/or considering the discharge application, a mini trial is not permissible. The Bench held as under:

" 26. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Code while discharging the accused, the High Court

has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application."

52. In light of the aforesaid, it is well settled that under the provisions of Section 397/401 of Code, the Revisional Court has to only consider the correctness, legality or propriety of any finding *inter se* an order and as to the regularity of the proceedings of any inferior court.

53. It is also established that while considering the legality, propriety or correctness of a finding or a conclusion, normally the Revisional Court does not dwell at length upon the facts and evidence of the case. A court in revision considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence.

54. In the instant case, the Petitioner has *inter alia* also invoked the inherent jurisdiction of this Court vested under Section 482 of the Code. Therefore, it is appropriate to refer to the said provision and the extent of powers that are exercisable under the same.

iv. Section 482 of the Code

55. The provision of Section 482 of the Code reads as under:

> *"482. Saving of inherent powers of High Court. – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."*

56. It is a well-established principle of law that the High Court has inherent power to act *ex debito justitiae* - to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. The bare language of the provision unambiguously states that the inherent powers of the High Court are meant to be exercised:

(i) to give effect to any order under the Code; or

(ii) to prevent abuse of the process of any Court; or

(iii) to secure the ends of justice.

57. The principle embodied in this Section is based upon the maxim: *Quando lex alquid alicui concedit, concedere videtur et id quo res ipsaesse non potest* i.e., when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavoidable. The Section does not confer any new power, rather it only declares that the High Court possesses inherent powers for the purposes specified in the Section. The use of extraordinary powers is required to be reserved only for extraordinary cases, where the judicial discretion is warranted as per the facts of the case.

58. The aforementioned provision has been referred to, analysed and interpreted in a catena of judgments of the Hon'ble Supreme Court, few of which are referred to in the following paragraphs.

59. A seven-judge Bench in the case of ***P. Ramachandra Rao v. State of Karnataka,*** **(2002) 4 SCC 578** laid down the principles for exercise of the power under Section 482 of the Code in a case where the Court was convinced that such exercise was necessary in order to prevent abuse of the process of any Court or to secure the ends of justice. The Hon'ble Supreme Court observed:

> *"21. ... In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the*

*High Courts have exercised their jurisdiction under Section 482 CrPC for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in **A.R. Antulay** case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted."*

60. In the case of ***Kaptan Singh v. State of U.P.,* (2021) 9 SCC 35**, the Hon'ble Supreme Court has held that:

*9.2 In the case of **Dhruvaram Murlidhar Sonar (Supra)**after considering the decisions of this Court in **Bhajan Lal (Supra)**, it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of **Arvind Khanna (Supra), Managipet (Supra)** and in the case of **XYZ (Supra)**, referred to hereinabove.*

61. In ***Jitul Jentilal Kotecha v. State of Gujarat and Others,* 2021 SCC OnLine SC 1045**, the Hon'ble Supreme Court has recently held that:

*"27. It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in **Jugesh Sehgal v. Shamsher Singh Gogi**, this Court has held that, "[t]he inherent powers do not confer an*

arbitrary jurisdiction on the High Court to act according to whim or caprice." In ***Simrikhia v. Dolley Mukherjee****, this Court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362 of the CrPC, observed that the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held:*

> *"5. … Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction."*

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31. Recently, in ***Mahendra KC v. State of Karnataka****, this Court has reiterated the well settled test to be applied by the High Court for exercise of its powers under Section 482 for quashing an FIR:*

> *"16… the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner that a judge conducting a trial would, on the basis of the evidence collected during the course of trial."*

62. The Hon'ble Supreme Court while deciding the case of ***State of Orissa v. Pratima Mohanty,*** **2021 SCC OnLine SC 1222** on 11th December 2021**,** has comprehensively dealt with the powers exercisable and extent of the jurisdiction of the High Court while deciding a petition under Section 482 of the Cr.P.C. The Hon'ble Supreme Court has held as under:

> *"6. As held by this Court in the case of **State of Haryana and Ors. vs Ch. Bhajan Lal and Ors. AIR 1992 SC 604**, the powers under Section 482 Cr.P.C. could be exercised either to prevent an abuse of process of any court and/or otherwise to secure the ends of justice…*
>
> > *6.2 … At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducing the mini-trial. As held by this Court the powers under Section482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court."*

63. In ***Jaswant Singh v. State of Punjab and Another*, 2021 SCC OnLine SC 1007**, the Hon'ble Supreme Court has held as under:

> *"15. The power under Section 482 Cr.P.C. is to be exercised to prevent the abuse of process of any Court and also to secure the ends of justice. This Court, time and again, has laid emphasis that inherent powers should be exercised in a given and deserving case where the Court is satisfied that exercise of such power would either prevent abuse of such power or such exercise would result in securing the ends of justice…"*

64. The position of law that is well-settled, in light of the aforementioned judgments, is that the jurisdiction under Section 482 should be exercised sparingly, with circumspection and in rarest of the rare cases. It is also settled that although the test at the time of framing of charges is not that of the satisfaction of possibility and probability of accused having committed the offence and not of the proof of his culpability beyond reasonable doubt, yet while framing the charge some

material must still be available so as to appeal to the judicial conscience on which a *prima facie* case is established against the accused.

FINDINGS AND CONCLUSION

65. From the aforesaid analysis, it is clear that at the stage of framing of charge, the Ld. Judge is merely required to overview the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused, or in other words, whether a *prima facie* case is made out against the accused. It is also settled that at the time of framing of charges there is requirement of satisfaction only regarding the probability of the accused having committed the offence and not of the proof of his culpability beyond reasonable doubt, yet while framing the charge some material must still be available so as to appeal to the judicial conscience on which a prima facie case is established against the accused.

66. The revisional jurisdiction is not meant to test the waters of what might happen in the trial. The Revisional Court has to consider the correctness, legality or propriety of any finding inter se an order and as to the regularity of the proceedings of the court below. While doing so, the Revisional Court does not dwell at length upon the facts and evidence of the case, rather it considers the material only to satisfy itself about the legality and propriety of the findings, sentence and order and refrains from substituting its own conclusion on an elaborate consideration of evidence. In the instant case, the Petitioner has failed to make out a case for exercise of the revisional jurisdiction since there is no patent error in the impugned order on the face of record.

67. Further, as per the settled position of law the jurisdiction under Section 482 has to be exercised sparingly, with circumspection and in

rarest of the rare cases, only to prevent abuse of the process of any Court or to secure the ends of justice. In the instant case, there is no such abuse of process or that the ends of justice warrant the exercise of the said jurisdiction, therefore there is no cogent reason warranting the exercise of the jurisdiction.

68. The beauty of procedural law lies in the stages and remedies available during the course of a criminal proceeding. The procedure ought to be followed and framing of charge is an important step in that process where the trial court peruses the record for want of a prima facie probability of the accused having committed the offence as alleged. Framing of charge does not mean that the accused is guilty, it only implies the accused may be guilty. The minute scrutiny of evidence is a matter of trial.

69. Corruption is a silent killer in society. It is a serious economic issue since it adversely affects the country's economic development and inhibits the achievement of developmental goals, by promoting inequality in allocation of resources and inefficiencies in utilisation of resources. It adds to the deprivation of the poor and weaker sections of the society. Therefore, every effort should be made to eradicate the same. At the end of the day, it is society and the downtrodden who bear the pangs of the corrupt acts of a few. If the court below finds that evidence against an accused is prima facie sufficient for framing of charge, then it has the jurisdiction to proceed with the same concerned accused must face trial.

70. In the impugned order, the Ld. Judge has noted as under:

> *"The first RFP was forMerchandising and Licensing programme in respect of 12 product categories and the second RFP was*

proposed for leftout items, it is clear that the first RFP had attained finality andentire process was complete except signing of MOU. Accusedno.1, V.K. Verma, has raised objections that approval of OCFC was required for the said RFP on which ground the first RFPwas cancelled. It is not disputed that no approval of OCFC wasneeded for the first RFP, therefore, it is clear that accused no.1, V.K. Verma, has raised a false ground in order to get the firstRFP cancelled/revoked. There does not appear any reason forthe accused no.1, V.K. Verma, for raising such objection whenthe first RFP had almost attained finality. The process for firstRFP was initiated through him and he did not note any suchobjection in the beginning. Accused V.K. Verma had initiallysuggested changes in the Draft Advertisement and RFPdocuments. Final approval for advertisement and furthercourse of action to be taken, was given by accused. It is alsonoted that accused no.1, V.K, Verma, raised objection regarding first RFP only on 24.02.2010. Here, it is relevant to point outthat accused, V.K. Verma met accused Suresh Kumar Seengal, accused no.7, on 19.01.2010 and accused no.7 had written aletter dated 01.02.2010, giving offer for securing contractalthough did not participate in first RFP. Only after aforesaid development, the accused no.1 raised objection and got the firstRFP cancelled. PW-50 Jarnail Singh has stated that since RFP was initiated through accused no.1, they believed that accused is rightly raising objection regarding approval of OCFC forfirst RFP.

The charge sheet shows that accused no.1. V.K. Verma,the then DG, OC, CWG. 2010, and other members of theEvaluation Committee for the second RFP entered into criminalconspiracy with accused no.7, Suresh Kumar @ Seengai, and got the first RFP annulled through OCFC on 24.02.2010facilitating M/s Premier Brands Pvt. Ltd., accused no.8, toparticipate in the second RFP. Accused no.l to 6, public servants abused their official position and granted undue favourto accused no. 7, Suresh Kumar @ Seengai and accused no.8,M/s Premier Brands Pvt. Ltd., holding accused no. 8 tobe technically qualified at the time of technical evaluation andfurther granted master license to M/s Premier Brands Pvt. Ltd., accused no.8, which was against the terms and conditions ofthe RFP."

71. Perusal of the material on record shows that the petitioner herein was interested in bringing accused no.7, Suresh Kumar @ Seengal and his company in the bidding process for the Merchandising and License programme and had raised frivolous objections to get the first RFP annulled. Considering the aforesaid, a *prima facie* case against the petitioner cannot be ruled out.

72. The Petitioner has utterly failed to point out what is causing grave miscarriage of justice in the impugned order. By the instant petition, rather than pointing out patent irregularities, the petitioner is asking the revisional court to critically examine and analyse the evidence on record which is a matter of trial and cannot be examined at this stage. The petitioner has been unable to satisfy why this court should use its revisionary jurisdiction and quash the charges framed against the petitioner.

73. In light of the arguments advanced, submissions made and settled legal position, this court is not inclined to exercise its revisional and extraordinary jurisdiction. As such, the revision petition is devoid of merit and is accordingly dismissed.

74. It is made clear that observations made herein shall have no bearing whatsoever on the merits of the case at any stage during the trial or any other proceedings before any other Court.

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

CHANDRA DHARI SINGH, J

APRIL 29, 2022
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