IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL REVISION APPLICATION NO. 223 of 2022

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AJITSINGH JAGAN SINGH YADUVANSHI

Versus

STATE OF GUJARAT

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Appearance:
MR RJ GOSWAMI(1102) for the Applicant(s) No. 1
MS MH BHATT, APP for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE SAMIR J. DAVE**

Date : 01/08/2022

ORAL ORDER

1. By way of this application, applicant has requested to quash and set aside the order dated 22.11.2021 passed by learned Special Judge, Partan below application Ex. 9 in Special ACB Case No. 4 of 2019.

2. Brief facts of the present case are as under:

2.1 That, FIR came to be registered being CR No. 3 of 2016 with ACB Police Station, Patan for the alleged offence punishable under Sections 7, 12, 13(1)(d) and 13(2) of the Prevention of Corruption act, 1988 by the first informant and in pursuance of the same, raid was carried out and it is alleged that the bribe of Rs. 1.5 lakhs was accepted by accused no.2 Narsang Chaudhari on behalf of the applicant. Thereafter, investigation was carried out and charge sheet was filed on 26.06.2019 for the alleged offence and same has been

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registered as Special ACB case No. 4 of 2019 before the Hon'ble Special Judge, Patan.

2.2 That, before framing of the charge, the applicant submitted an application Ex. 9 for discharge him under the provisions of Section 227 of the Code of Criminal Procedure since there was no evidence to frame charge against the applicant. The learned Special Judge was pleased to hear the application Ex. 9 and after hearing, was pleased to dismiss such application for discharge by order dated 22.11.2021 and therefore, applicant has approached this court by way of present application against the order of rejection of discharge application.

3. Heard learned advocates for the applicant.

4. It was submitted by learned advocate for the applicant that it clearly shows from the record that there is no prima facie case to frame charge though learned Special Judge has not considered all the grounds mentioned in the application for discharge in its true perspective and has not dealt with the same. That, the judgments cited by the applicant are clearly applicable to the facts of the present case, though the learned Special Judge erred in holding that such judgments are not applicable. That, there was no telephonic conversation of the applicant with the complainant on the date of raid and even the call details record is also given but there is no such

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evidence. That, the audio recording of the trap has been done and transcript has been given to the applicant along with the charge sheet including audio CD but the transcript which is given along with the cahrge sheet is incomplete and there are several mistakes in the script and for some recording, even transcript is not given, therefore, the petitioner on his own after taking services of an expert has prepared the true and correct transcript of the audio CD. That the learned Special judge has not considered audio conversations of approximately last 3 minutes, recorded in the voice recorder given in the form of audio CD at page no. 138 and 140 of the charge sheet which is deliberately and intentionally not scripted by the Investigating Officer to hide the facts and factual events, but conversations are part of charge sheet. So far as sanction is concerned, the sanction is granted by Under-Secretary, Industries and Mines Department, Government of Gujarat dated 28.05.2019,who is not competent to grant the sanction. So far as the findings given by the learned Special Judge about the sanction recorded is concerned, the learned Special Judge ought to have considered and ought to have seen as to whether the sanction is valid or not. It is settled law that without sanction, there cannot be any prosecution and if the sanction is granted, then the validity of the said sanction whether it is legal or illegal can also be considered by the learned Special

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Judge in discharge application but the learned Special Judge erred in holding that it is a matter of trial and recording of evidence and cannot be considered at this stage. That, the applicant has not gone into the validity of application or non-application of mind while granting the sanction, but has taken the legal ground that the officer, who has accorded the sanction, was not competent to grant sanction, and therefore also, the learned Special Judge ought to have considered the same. That, when cognizance was taken, the applicant was in service but under suspension and the applicant retired on 30.06.2020 and the sanction was accorded on 28.05.2019. As per the case of the applicant, the sanctioning authority is not competent to remove the applicant from service, and therefore, the said sanction is not valid and legal and is not as per Section 19 of the Prevention of Corruption Act. That the order of suspension was also challenged by the applicant before this court and this court was pleased to issue notice in the matter and at present the said matter is pending. In support of his arguments learned advocate for the applicant has placed his reliance in case of State of Mizoram v. C. Sangnghina reported in (2019) 13 SCC 335. Ultimately, it was submitted by learned advocate for the application to allow present application.

5. Having heard learned advocate for the applicant and considering the averments made in the application and

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conclusion arrived at by the learned trial Court, first of all we have to consider the the grounds of discharge, which have been laid down by the Apex Court in **2001 AAR 394 (SC), Omwati Vs. State (Delhi Administration),** holding that the court may discharge accused on following consideration:-

> (i) If upon consideration that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for so doing. No reasons are required to be recorded when the charges are framed against the accused persons.
>
> (ii) Where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the Court can discharge the accused. The Court is not required to enter into meticulous consideration of evidence and material placed before it at this stage.

6. It appears from the record that while concluding the discharge application filed by the applicant, learned trial court has observed that prima facie, the prosecution does not have

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any reason to make false allegations against the accused and in connection with the application under Section 227 of the Code of Criminal Procedure, while considering the evidence produced before the court by the prosecution, it is to be seen that whether his prima facie involvement is there or not. It is further observed that while reading the complaint, the fact has been disclosed that in this case, the applicant/accused no.1 has sought amount of Rs. 1,50,000/- and prima facie appears that there was meeting of mind between both the accused persons and as per say of the accused no.1, the accused no.2 accepted the amount from the complainant in presence of the panch no.1 and recovery of bribe amount has been made from the accused no.2. It is further observed by learned court below that at this stage, the court should not have to make evaluation of the evidence and at this stage, it is not to be seen whether the accused will be held innocence or not but from the produced record it appears that the strong suspicious case is found then the court can discharge the accused. But, as per observation of the court below, prima facie case is found against the accused no.1/applicant. Thus, while considering the observations made by the learned lower court, this court deems it not fit to accept the prayer made by the applicant in the present application.

7. This Court in the case of **State of Bihar Vs. Ramesh Singh, reported in AIR 1977 SC 2018** observed as under:-

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"4. Under section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. 'The Judge has to pass thereafter an order either under section 227 or section 228 of the Code. If "the Judge consider that there is not. sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by section 227. If, on the other hand, "the Judge is of opinion that there, is ground for presuming. that the accused has committed an offence which-

(b)in exclusively triable by the Court, he shall frame in writing a charge against the accused'-', as provided in section 228. Reading the two provisions together in juxta position, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under section 227 or section 228 of the Code. At that stage the Court is not to 'see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is

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a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the, initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. if the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the, trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But, if, on the other hand, it is so at the initial stage of making an order under section 227 or section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under section 228 and not under section 227.

8. This Court in the case of **State of Maharashtra Vs. Som Nath Thapa, reported in AIR 1977 SC 2018** observed as under:-

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either 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

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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. When can charge be framed ?

30. In Antulay's case, Bhagwati, CJ., opined, after noting the difference in the language of the three pairs of section, 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 even be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, 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 charge against him for committing that offence".

31. Let us note the meaning of the word "presume". In Black's Law Dictionary it has been defined to mean "to believe or accept upon probable evidence". (Emphasis ours). 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 judgement 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." (Emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at page 1007 of 1987 edition.

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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 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.

What is the effect of lapse of TADA ?

33. In the written submissions filed on behalf of appellant Moolchand, it has been urged that TADA having lapsed, section 1(4) which saves, inter alia, any investigation instituted before the Act had expired, itself lapsed because of which it is not open to the prosecution to place reliance on this sub-section to continue the proceeding after expiry of TADA.

57. A perusal of the statement made by aforesaid two Inspectors shows that they had made two statements at two points of time. The first of these has been described as "original statement' by Shri Shirodkar in his written note and the second as "further statement". In the original statement, these two Inspectors are said to have told Thapa, on being asked which would be crucial places for laying trap, that the same were Purar Phata and Behan Phata, at which places trap was in fact laid. But then, in the further statement the Inspectors are said to have opined that watch should be kept at Sai-Morba-Goregoan junction, because that was the main exit point for smuggling done at Shrivardhan and Shekhadi. Shri Shirodkar would not like us to rely on what was stated subsequently by these Inspectors, as that was under pressure of investigation undertaken subsequently by the C.B.I. We do not think that the

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law permits us to find out at this stage as to which of the two versions given by two Inspectors is correct. We have said so because at the stage of framing of charge probative value of the statement cannot be gone into, which would come to be decided at the close of the trial. There is no doubt that if the subsequent statement be correct, Nakabandi was done not at the proper place, as that left Sai-Morba Road free for the smugglers to carry the goods upto Bombay."

9. This Court in the case of **State of Maharashtra Vs. Priya Sharan Maharan, reported in AIR 1997 SC 2041** observed as under:-

"8. The law on the subject is now well-settled, as pointed out in Niranjan Singh Punjabi vs. Jitendra Bijjaya (1990) 4 SCC 76, that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view of 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 that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

11. The above quoted paragraphs from the judgment clearly disclose that the High Curt was much influenced by the submission made on behalf of the defence that Kripalu Maharaj is a saintly old man, who has renounced the world, who is engrossed in spiritual activity and who has thousands/

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millions of disciples all over India and, therefore, he was not likely to indulge in the illegal acts alleged against him. It failed to appreciate that it is not unusual to come across cases where the so-called spiritual heads exploit you girls and women who become their disciples and come under their spell. Moreover, the reasoning of the High Court that it also does not stand to reason that a saintly man who has thousand/millions of disciples all over India would commit sexual intercourse with the praharak of his cult in presence of his disciples stands vitiated because of the vice of misreading the statements. The three girls have nowhere stated in their statements that R-2 had sexual intercourse with them in presence of other disciples. The High Court gave too much importance to the conduct of the three victims and the delay in disclosing those illegal acts to their parent and the police. What the High Court has failed to appreciate is how a victim of such an offence will behave would depend upon the circumstances in which she is placed. It often happens that such victims do not complain against such illegal acts immediately because of factors like fear or shame or uncertainties about the reactions of their parents or husbands in case of married girls or women and the adverse consequences which, they apprehend, would follow because of disclosure of such acts. What the three girls had stated in their statements was not inherently improbable or unnatural. They have disclosed the reasons why they could not immediately complain about those illegal acts for such a long time. What the High Court has failed to appreciate is that while making complaint to the police or giving their statements they were not required to give detailed explanations. As stated earlier, what the Court has failed to appreciate is that while making a complaint to the police or giving their statements they were not required to give detailed explanations. As stated earlier, what the Court has to consider at the stage of framing of the charge is whether the version of the person complaining together with his/her explanation is

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> prima facie believable or not. It was, therefore, not proper for the High Court to seek independent corroboration at that stage and to quash the charge and discharge the accused in absence thereof. It was also improper to describe the version of Sulakshana as false because no extensive injuries were noticed on her person while she was examined by a doctor on the basis of some observations made in Modi's textbook on "Medical Jurisprudence and Toxicology". We do not think it proper to say anything further as, in the view that we are taking, the accused will have to face a trial and whatever observations we make now may cause some prejudice to them at the trial. We would only say that the High Court was wholly wrong in discarding the material placed before the Court as false and discharging the accused on the ground."

10. Thus, in view of the above decisions and discussions made hereinabove, the impugned order does not suffer from any illegality, irregularity or impropriety and present revision application is liable to be dismissed and accordingly, stands dismissed at the admission stage without issuing any notice to the otherside.

(SAMIR J. DAVE,J)

K. S. DARJI

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