

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Criminal Revision Petition No. 27/2021

Sudhir Bordiya

-----Petitioner

Versus

State, Through Pp

-----Respondent

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For Petitioner(s) : Mr. C.S. Kotwani  
For Respondent(s) : Mr. S.S. Rajpurohit, P.P.

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**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

**Judgment**

**Reserved on 18/04/2022**

**Pronounced on 20/04/2022**

1. In the wake of instant surge in COVID – 19 cases and spread of its highly infectious Omicron variant, abundant caution is being maintained, while hearing the matters in the Court, for the safety of all concerned.
2. This criminal revision petition under Section 397 read with Section 401 Cr.P.C. has been preferred claiming the following reliefs:

*"It is therefore, most respectfully prayed that this revision petition may kindly be allowed and the impugned order dated 9.12.2020 passed by learned Sessions Judge (Prevention of Corruption Act), Bikaner in Sessions Case No.02/2019 "State Vs. Sudhir Bordiya" may kindly be quashed and set aside and the humble petitioner may kindly be discharged of the charges levelled against him."*

3. Brief facts of the case as placed before this Court by the learned counsel for the revisionist-petitioner are that an F.I.R., bearing No.362/2016, was lodged on 27.12.2016, against the petitioner for the offences under Sections 13 (1) (e) / 13 (2) of the Prevention of Corruption Act, 1988 (*hereinafter referred to as 'Act of 1988'*) after two months of the recovery of an amount of Rs. 50,000/- which was alleged to be a bribe money. And that, the said F.I.R. was lodged after a delay of about 2 months from the date of recovery of the said amount from the revisionist-petitioner. And, that he was in fact, traveling from Bikaner to Udaipur at the relevant time, to visit his family for the festival of Diwali, when the ACB team apprehended him, and took him into custody. And that, on 19.02.2019, the charge sheet was filed against the petitioner under the aforementioned provisions of the Act of 1988.

4. Learned counsel for the revisionist-petitioner further submitted that the learned Court below, without looking into the facts and circumstances of the case, passed the impugned order, whereby it proceeded with framing of charges against the revisionist-petitioner, despite the factum of delay of two months in registration of the FIR.

5. On the other hand, the learned Public Prosecutor, while opposing the aforementioned submissions made on behalf of the petitioner, submitted that the learned court below, after taking into due consideration all the facts and circumstances of the present case and after considering the evidence placed on record before it, has rightly passed the impugned order.

6. Learned Public Prosecutor further submitted that the learned court below has passed the impugned order of framing of charges against the petitioner, wherein a detailed analysis or a roving enquiry is not required at the stage concerned.

7. Learned Public Prosecutor harped upon the word "presumption" occurring in Section 228 Cr.P.C. stating that if the concerned Judge is of the opinion that a ground for presumption of the alleged offences against the accused person(s) lies after consideration and hearing of the case, then charges can be framed against such accused person(s).

8. Heard learned counsel for the parties as well as perused the record of the case.

9. This Court is conscious of the decision rendered by the Hon'ble Apex Court in ***Union of India (UOI) Vs. Prafulla Kumar Samal and Ors., (1979) SCC (Cri) 609***, relevant portion of which reads as under:

*"8. The scope of Section 227 of the Code was considered by a recent decision of this Court in the case of State of Bihar v. Ramesh Singh : 1977CriLJ1606 where Untwalia, J. speaking for the Court observed as follows :-*

*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 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.*

9. In the case of *K.P. Raghavan and Anr. v. M.H. Abbas and Anr.* : 1967CriLJ653 this Court observed as follows :-

*No doubt a Magistrate enquiring into a case under Section 209, Cr.P.C. is not to act as a mere Post Office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session."*

10. The *ratio decidendi* laid down by the Hon'ble Apex Court in ***Prafulla Kumar (supra)***, has received the judicial imprimatur of the Hon'ble Apex Court through multiple subsequent judgments.

11. This Court is also conscious that at the stage of framing of charge, the learned trial court is not required to conduct a meticulous appreciation of evidence or a roving inquiry into the same, as has been laid down by the Hon'ble Apex Court in the judgments rendered in ***Ashish Chadha v. Asha Kumari and Ors (2012) 1 SCC 680*** and ***State of NCT of Delhi and Ors. vs. Shiv Charan Bansal and Ors. (2020) 2 SCC 290***.

12. This Court, therefore, finds that the judicial precedents laid down by the Hon'ble Apex Court is clear, and that at the stage of framing of charge, the scope of interference of the Hon'ble High Court, as a revisional Court is very limited, so much so that the Court must be concerned only with the question whether there is any suspicion against the accused, and not with the proof of the allegation(s). And, as an exception to this, the Hon'ble Apex Court, in the case of **State of Haryana Vs. Bhajan Lal 1992 Supp (1) SCC 335**, observed as follows:

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

- 1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.*
- 2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- 3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same*

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

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

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

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

*7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. 106. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the F.I.R. or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice.*

*It may be true, as repeatedly pointed out by Mr. Parasaran, that in a given situation, false and vexatious charges of corruption and venality may be maliciously attributed against any person holding a high office and enjoying a respectable status thereby sullyng his character, injuring his reputation and exposing him to social ridicule with a view to spite him on account of some personal rancour, predilections and past prejudices of the complaint. In such a piquant situation, the question is what would be the remedy that would redress the grievance of the verily affected party? The answer would be*

*that the person who dishonestly makes such false allegations is liable to be proceeded against under the relevant provisions of the Indian Penal Code-namely Under Sections 182 or 211 or 500 besides becoming liable to be sued for damages."*

13. Thus, this Court is of the firm opinion that if a strong suspicion exists in the mind of the court at the stage concerned, then the same is sufficient for the court to proceed with the framing of the charge against the accused person(s). And if a prayer for discharge has been made before a revisional court, then the same may only be allowed if the court finds that the materials on record are wholly insufficient for the purpose of trial.

14. In view of the aforementioned precedential backdrop and the observations made hereinabove, this Court does not find any legal infirmity in the impugned order passed by the learned court below so as to warrant any interference, at this stage.

15. Consequently, the present petition is dismissed. All pending applications stand disposed of.

**(DR.PUSHPENDRA SINGH BHATI), J.**

SKant/-

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