

**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 480 of 2021****(Judgment/Order reserved on 08.10.2021)****(Delivered on 26.10.2021)**

1. Anil Tuteja S/o Late Shri H. L. Tuteja Aged About 58 Years R/o Near Zonal Office, State Bank of India, Baran Bazar, P. S. Civil Lines, Raipur Chhattisgarh Currently posted as Director of Industries to Government of Chhattigarh
2. Alok Shukla S/o Late Shri T. C. Shukla Aged About 61 Years R/o C-1/4 Officers Colony Devendra Nagar, Raipur Chhattisgarh currently posted at Principal Secretary, Department of Parliamentary Affairs, Government of Chhattisgarh, and also holding an Additional Charge of Principal Secretary in School Education Department along with Additional Charge of Chairman of Board of Secondary Education Chairman of Professional Examinations Board and Principal Secretary, Technical Education Department. --- **Petitioners**

Versus

State of Chhattisgarh through Station House Officer, Police Station Economic Offences Wing/Anti Corruption Bureau, Civil Lines, Raipur Chhattisgarh
--- **Respondent**

For the Petitioner : Mr. Avi Singh, Advocate with Mr. Harsh Wardhan Parganiha & Mr. Ayush Bhatia, Advocates.

For the Respondent : Mr. Sudeep Agrawal, Deputy Advocate General

Hon'ble Shri Justice Goutam Bhaduri**C.A.V. JUDGMENT/ORDER**

1. The challenge in this revision petition is two fold. One is to the order dated 24.06.2021 passed by the Special Judge (PC Act), Raipur in Special Criminal Case No.794/2015 whereby the applications filed u/s 227 of the Cr.P.C., to discharge the



petitioners is dismissed. Another challenge is to the order dated 30.06.2021 passed in the aforesaid Criminal Case, whereby the learned Special Judge has framed charges against the petitioners under the Prevention of Corruption Act and IPC.

2. Brief facts of the case are that pursuant to the FIR lodged on 12.02.2015, the charge sheet was initially filed against 16 accused wherein these applicants were not arrayed. Though the initial sanction order was given by the State Government to prosecute the applicants but awaiting the sanction, they being in service of Indian Administrative Services on 04.7.2016 sanction was granted by the Central Government of India to prosecute the applicants. Thus supplementary charge sheet was filed against the present applicants pursuant to such sanction given by the Government of India. In between the intervening period of time from the initial filing of charge sheet against 16 accused and filing of the supplementary charge-sheet as against the present applicants, as many as 153 witnesses were examined by the prosecution. Thereafter, when the applicants entered their appearance, charges were framed against applicant Anil Tuteja u/s 120-B, 420, 409 read with section 34 of IPC and section 11, 13(1), 13(1)(a) & 13(1)(d) read with section 13(2) of the Prevention of Corruption Act 1988 and as against applicant No.2 Alok Shukla, charges u/s 120-B of IPC & sections 13(1)(a), 13(1)(d) read with section 13(2) of the P.C. Act were framed. While the initial charge sheet based on FIR was filed, it was stated against the applicants that supplementary final report/charge sheet would be submitted in the trial Court after





getting sanction for the prosecution from the Competent Authority. The applicants after putting their appearance, filed an application before trial Court to discharge them. The said application for discharge was dismissed and consequently the charges were framed. As a chronological sequence, on 24.06.2021 application to discharge the applicants was dismissed and by subsequent order dated 30.06.2021 charges have been framed against the applicants. Being aggrieved by both the orders, the instant revision petition is filed.

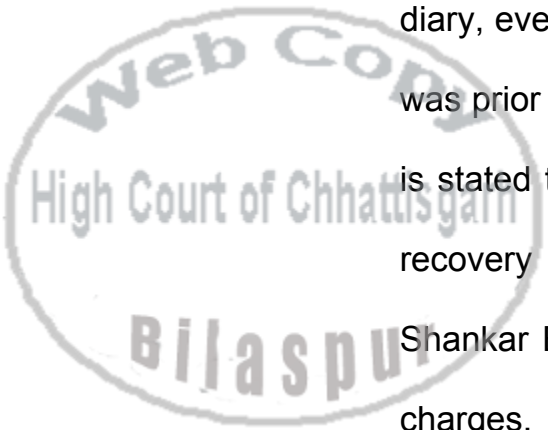
3. Learned counsel for the applicants would submit that the initial FIR was registered in the month of June 2015 wherein both the applicants were not named. It is contended that no search or seizure was ever made from the applicants. It is further contended that in order to get the necessary sanction, the documents collected by the prosecution in its entirety were not placed before the authorities. It is further submitted that no explanation has been given why the supplementary charge-sheet has been filed after a long lapse of time. Counsel would submit that initially when the final charge sheet was filed in the month of June 2015 against 16 accused, these applicants were not arrayed for want of sanction to prosecute by Central Government. Subsequently, with the lapse of time, as the trial against other persons continued, 153 witnesses were examined and nothing substantial has been stated by the prosecution witnesses which could have been used against the present applicants as the allegation of conspiracy has been made, which would otherwise inculcate these applicants but no proof or





statement supporting the evidence of prosecution is made. Therefore, there is no iota of evidence against the applicants. It is further submitted that the court cannot frame the charges without looking into the admissibility of the evidence. It is contended that the part of documents in the charge sheet, are the loose documents of diary filed by the prosecution, so they could not have been considered in absence of entire production of documents. It is further stated that the trial Court relied on the disclosure statement of few of the accused, but no recovery of any nature was made from these applicants. It was reiterated that since the prosecution case is based on the loose pages of diary, even the date and time of those papers would show that it was prior to the joining the duty to the post by the applicants. It is stated that the applicants are inculpated only on the basis of recovery of money and documents seized from one Shiv Shankar Bhatt. He would further submit that the particulars of charges, the time, the period and particulars have not been mentioned and general allegations are made that a loss of amount to the tune of Rs.1,12,99,555/- was sustained by the state.

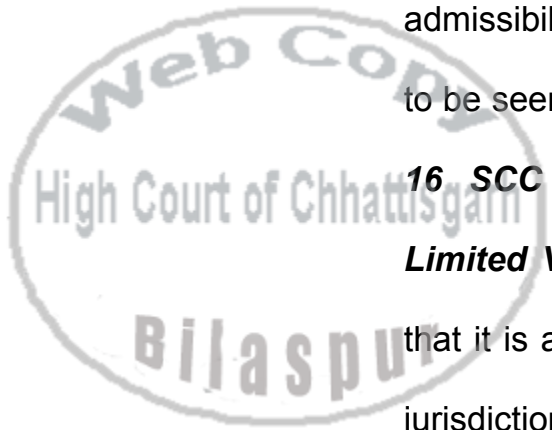
4. It is further contended that the final report reflects that though certain pen-drives were seized but it has not been made the part of charge sheet. He would submit that the trial Court virtually refused to look into the records of charge sheet and thereby fell into error. It is stated that one Arvind Singh Dhruv, Steno-Typist, from whom the alleged pen-drive was recovered has not supported the case of prosecution. Likewise Jeet Ram Yadav,





Senior Assistant, who was a witness has turned hostile. Further G.H. Trinath Reddy, Assistant, has not supported the prosecution version. It is stated that only Girish Sharma, P.A., has supported the case of prosecution from whom a laptop was seized from his office room but in his statement nothing has been attributed to these applicants. Naming further witnesses, it is stated that the other witnesses have also not supported the case of prosecution, therefore, the applicants cannot be made to suffer only on presumption.

5. It is further contended that the Special Judge did not apply her mind to the material placed in the charge sheet inasmuch as the admissibility of the document for framing of charges is required to be seen. Reliance is placed on a case law reported in **(2018) 16 SCC 299 (Asian Resurfacing Road Agency Private Limited Versus Central Bureau of Investigation)** to contend that it is an appropriate case where this Court can exercise the jurisdiction to consider the challenge against an order framing charge and grant stay. It is further submitted that the trial Court erred in law in dismissing application of discharge as no admissible evidence/documents are on record supporting the case of prosecution qua the applicants herein. Reliance is placed reliance **Dipakbhai v. Union of India, (2019) 16 SCC 547** to contend that the allegations must be supported by some material which may be translated into admissible evidence at trial. It is further contended that the Special Judge also erred in law in not disclosing any of the documents which are part of the charge sheet and have been relied by the prosecution so as to





dismiss the application of discharge.

6. Learned counsel for the applicants would further submit that the charges as have been framed are based on inadmissible evidence and the Special Judge wrongly concluded that the admissibility of evidence is not required to be considered at the stage of discharge which runs counter to the law laid down by the Supreme Court in **CBI Vs. V.C. Shukla, AIR 1998 SC 1406**. Further referring to **Common Cause v. Union of India (Sahara-Birla Diaries) (2017) 11 SCC 731** learned counsel would submit that only on the basis of few pages of case diary, the investigation of the charge sheet cannot stand as fundamentally the loose papers without the entirety of the case diary cannot be accepted in evidence. He would further submit that the charge sheet is based on the statement of the other co-accused which cannot be accepted as a evidence, therefore, the application rejecting the discharge was wrongly dismissed.
7. It is further submitted that inculpatory evidence of other co-accused is made the basis for framing charge which is inadmissible in evidence and the transcripts of other electronic evidence which form the basis of the charge-sheet are not supported by the 65-B Certificate as required under the Indian Evidence Act. It is stated that such nature of electronic evidence would be inadmissible in view of the law laid down in **Anvar v. PK Basheer (2014) 10 SCC 473 and Arjun Panditrao v. kailash (2020) 7 SCC 1**. He further submitted that the testimonies of 153 witnesses were recorded who have not supported the case of prosecution prior to the applicants were





being charged but the applicants have been charged with the same charges of conspiracy, therefore, the deposition of examined witnesses will have the same value as it carries for the other accused and 161 CrPC statement of these accused would lose its efficacy since they have been examined before the Court. Consequently the application to discharge the accused should have been allowed and the charges against the petitioners cannot be framed.

8. Per contra, learned State Counsel would submit that as many as 153 witnesses have been examined prior to filing of supplementary charge sheet against these applicants and after the applicants have been charge-sheeted, 52 witnesses have already been examined. Referring to the statement of Girish Sharma P.W.142 learned State Counsel would submit that sufficient positive evidence has been deposited by Girish Sharma against these applicants. Therefore, on the basis of sole testimony of Girish Sharma, the applicants can be convicted. Referring to the contents of supplementary charge sheet, he would submit that certain voice transcriptions in between Shiv Shankar Bhat, Arvind Dhruv and Girish Sharma are part of the charge sheet which shows that huge amounts were transferred in between as part of corruption and conspiracy and the applicants were the beneficiaries. It is contended that Girish Sharma, the witness, has supported these facts, therefore, at this stage, the applicants neither can be discharged nor the order framing the charges against the applicants can be said to be bad in law.





9. Heard learned counsel for the parties and also perused the documents on record. In the instant petition the challenge is to the charge-sheet submitted before the Court of Special Judge, Raipur and thereafter when the applicants entered their appearance, charges were framed against the applicant Anil Tuteja u/s 120-B, 420, 409 read with section 34 of IPC and sections 11, 13(1), 13(1)(a) and 13(1)(d) read with section 13(2)j of th PC Act, 1988 and as against applicant No.2 Ahok Shukla, charges u/s 120-B of IPC and Sections 13(1)(a), 13(1)(d) read with section 13(2) of the P.C. Act were framed. The primary contention of the applicants is that the dismissal of discharge application and the charges framed against them are illegal.

10. The Supreme Court in ***M.E. Shivalingam Murthy Vs. Central Bureau of Investigation, Bengaluru (2020) 2 SCC 768*** has laid down the Legal Principles applicable in regard to an application seeking discharge. Paras 17 & 18 are relevant quoted here-in-below :

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala (2010) 2 SCC 398 and discern the following principles :

17.1 If two views are possible and one of them give rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.



17.4. 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 offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6 The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8 There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (*See State of J& K v. Sudershan Chakkar (1995) 4 SCC 181 : AIR 1995 SC 1954*). The expression, “the record of the case” used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (*See State of Orissa v. Debendra Nath Padhi (2005) 1 SCC 568 : AIR 2005 SC 359*)”.

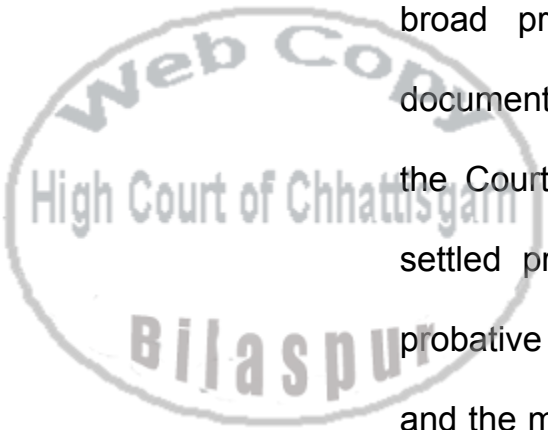
11. In view of the aforesaid legal principles set out by the Supreme Court when the submissions of the applicants are examined, it





reflects that when there are two possible views and one of them gives rise to suspicion only, the trial Judge would be empowered to discharge the accused but when a grave suspicion comes to fore, no discharge can be made. In the instant case, *prima facie* reading the statement of witnesses along-with the documents raises a grave suspicion. While examination of charge sheet shows that there are sufficient grounds to proceed, which include the statement recorded by the Police and the documents produced before the Court. At this stage, the documents which are produced by the prosecution are not required to be examined on the admissibility and the Court has to consider the broad probabilities, the total effect of the evidence and documents produced before the Court. This would not entitle the Court to make roving enquiry into *pros and cons*. It is settled principle that at the time of framing of charges, the probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted as true. The documents produced by the prosecution shows that there exist some materials which can form the basis of drawing up a charge and refusing to discharge the accused. The Supreme Court has laid down that the defence of the accused is not to be looked into at the stage when the accused seeks to be discharged u/s 227 of CrPC. It has been further laid down that the "record of the case" used in section 227 of CrPC is to be understood as the document and the article produced by the prosecution.

12. Likewise in ***State of Bihar Vs. Ramesh Singh, AIR 1977 S.C.***





2018, the Supreme Court held 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 further held that 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 Court further held that 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.

13. The Supreme Court in ***Kanti Bhadra Shah and another Versus State of West Bengal (2000) 1 SCC 722*** observed that if there is no legal requirement that the trial court should write an order showing the reasons for framing a charge. The judgment observed that why should the already burdened trial courts be further burdened with such an extra work. The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. The Court further observed that if a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further

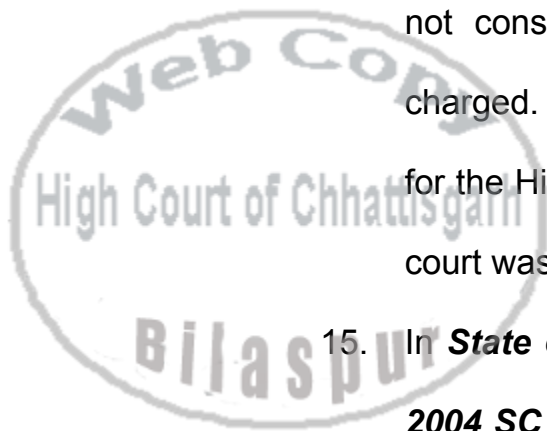




be slowed down.

14. In ***Munna Devi Versus state of Rajasthan AIR 2002 SC 107*** the Supreme Court held that the revision power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers, the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the FIR even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged. The Supreme Court further held that It was premature for the High Court to say that the material placed before the trial court was insufficient for framing of charges.

15. In ***State of Maharashtra Vs. Salman Salim Khan & Anr. AIR 2004 SC 1189 Paragraph*** the Supreme Court held that though it is open to a High Court entertaining a petition under section 482 of the Code to quash charges framed by the trial Court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The Court held that the truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.



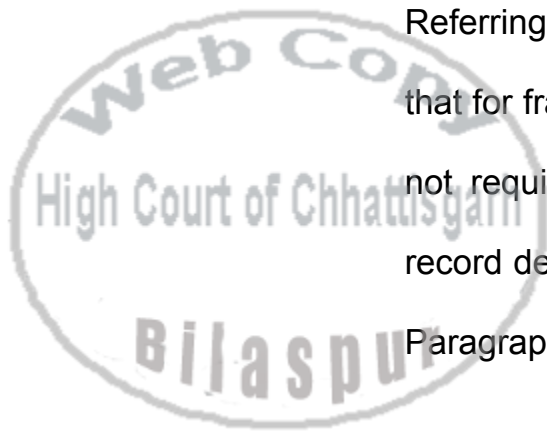


16. Recently in ***Bhawna Bai Versus Ghanshyam and others (2020) 2 SCC 217 (Para 13)*** the Supreme Court held that the circumstances alleged by the prosecution indicate that there are sufficient grounds for proceeding against the accused, then, in such a case, at the time of framing the charges, only prima facie case is to be seen; whether the case is beyond reasonable doubt, is not to be seen at this stage. It further held that 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. Referring to the earlier decisions, the Supreme Court reiterated that for framing of charges under Section 228 CrPC, the Court is not required to hold elaborate enquiry and is not required to record detailed reasons, but only prima facie case is to be seen.

Paragraphs 16 & 17 are also relevant and quoted below:

“**16** – After referring to *Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460* in *Dinesh Tiwari Vs. State of U.P. (2014) 13 SCC 137* 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 the record and hearing the 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.

17 For framing the charges under Section 228 CrPC the Judge is not required to record detailed reasons. **As pointed out earlier, at the stage of framing the charge, the Court is not required to hold an elaborate enquiry, only prima facie case is to be**





seen. As held in *Kanti Bhadra Shah Versus State of W.B. (2000) 1 SCC 722* while exercising the power under Section 228 CrPC the Judge is not required to record his reasons for framing the charges against the accused.....”

(Emphasis Supplied)

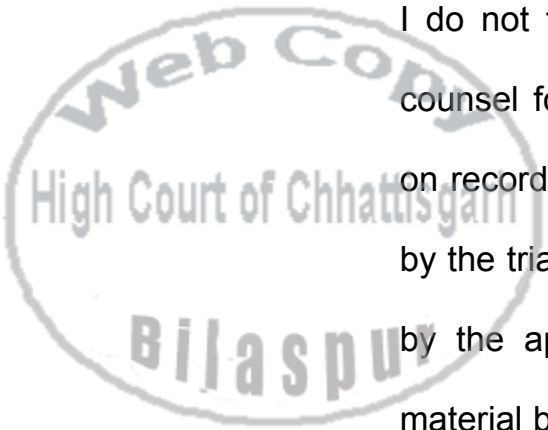
17. While applying the aforesaid principles, it is clear that at the stage of framing of charge, the Court is not required to meticulously weigh the evidence and the prima-facie view of the matter is to be taken into consideration. If the criminal Court, on consideration of the material on record finds that a prima facie case is made out and grave suspicion exists about the involvement of the accused in the crime alleged, it is expected to frame the charge and put the accused on trial. As such, at the initial stage of trial, the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not required to be meticulously judged, all that is required is, that the Court must be satisfied that with the material available, a prima facie case is made out for the accused to stand trial. Apart from the aforesaid finding, when the submission of the applicants is considered that 153 witnesses have been examined and no one has deposed against the applicants, therefore, the charges cannot be framed, I do not also find any substance in such submission. The applicants on one hand have contended that because of the reason that conspiracy charges are levelled against the applicants, the deposition of 153 witnesses who were examined did not support the prosecution case, would be applicable. However, such submission of applicants is shelved when the





statement of Girish Sharma P.W.143 is seen. This witness has supported the case of prosecution which inculcates the present applicants too and his statement is still to be tested with the other evidence even when the charges of conspiracy exists. Even if the submission of the applicants is considered for the sake of arguments, there cannot be a piece-meal pick and choose method, which can be adopted to the statements of witnesses. At this stage, what would be the impact of statement of P.W.142 Girish Sharma is required to be appreciated by the trial Court and this Court while exercising the power of revision would restrain itself to pass any observations as of now. Hence, I do not find any substance in the submission of the learned counsel for the applicants that prima facie there is no material on record to justify the framing of charge against the applicants by the trial Court. As only the probabilities have been projected by the applicants, it would not be open to them to rely on material by way of defence and persuade the Court to discharge them and the applicants can only rely on materials which are produced by the prosecution.

18. In view of the foregoing discussion, the order passed by the Special Judge (PC Act), Raipur dated 24.06.2021 whereby the application to discharge the applicants has been rejected and the subsequent order dt. 30.06.2021 whereby the learned Special Judge has framed charges against the applicants do not warrant any interference by this Court. In the result, the revision is liable to be and is hereby dismissed.
19. It is clarified that this Court has not expressed any opinion on





the merits of the case and whatever is observed and stated hereinabove is solely for the purpose of disposal of the present petition and shall not tantamount to any expression on the merits of the case.

**Sd/-
(GOUTAM BHADURI)
JUDGE**

Rao

