IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Reserved On: 03.12.2016
Judgment Pronounced On: 12.05.2017

CRL.REV.P. 262/2016

ANOOP SINGH ..... Petitioner

versus

STATE ..... Respondent

CRL.REV.P. 263/2016

D. V. MALHOTRA ..... Petitioner

versus

STATE ..... Respondent

CRL.REV.P. 264/2016

GOPAL ANSAL ..... Petitioner

versus

STATE ..... Respondent

CRL.REV.P. 265/2016

SUSHIL ANSAL ..... Petitioner

versus

STATE ..... Respondent

Advocates who appeared in the cases:

For the Petitioners : Mr. Puneet Mittal, Advocate with Ms. Arushi Tangri, Advocate, for Mr. Anoop Singh in CRL.REV.P.262/2016.

Mr. Pawan Narang, Advocate with Ms. Vasundhara Chauhan and Mr. Karan Jain, Advocates, for Mr. D.V. Malhotra in CRL.REV. P. 263/2016

Mr. Vijay Kumar Aggarwal, Advocate with Mr. Neeraj Kumar Jha, Advocate for Mr. Gopal Ansal in CRL.REV.P.264/2016.

Ms. Rebecca M. John, Sr. Advocate with Mr. Gurpreet Singh, Mr. Vishal Gosain, Mr. Harsh Bora, Mr. Kushdeep Gaur and Ms. Nicy Paulson, Advocates, for Mr. Sushil Ansal in CRL.REV.P.265/2016.

For the Respondents : Mr. Dayan Krishnan, Sr. Advocate with Mr. Trideep Pais, Ms. Aakashi Lodha and Ms. Deeksha Gujral, Advocates, for State.

Mr. Vikas Pahwa, Sr. Advocate with Ms. Kinnore Ghosh and Mr. Tushar Sharma, Advocates, for AVUT.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J.

1. The present batch of criminal revision petitions, instituted under the provisions of section 397 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), seeks to assail the order framing charges, dated 31.05.2014, rendered by the Court of Learned Chief Metropolitan Magistrate, Patiala House Courts, New Delhi, in the case titled as *'State* v. *Dinesh Chand Sharma & Ors.'*, arising out of the FIR bearing No. 207/2006, registered at Police Station, Tilak Marg (Crime Branch), New Delhi.

2. At the outset, it would be relevant to state that by way of the impugned order dated 31.05.2014, the Learned Chief Metropolitan Magistrate has framed charges against the following persons, for the offences punishable under the provisions of sections 120-B, 109, 201 and 409 of the Indian Penal Code, 1860 (hereinafter referred to 'IPC'):

i. Mr. Sushil Ansal
ii. Mr. Gopal Ansal
iii. Mr. Har Swarup Panwar (Mr. H.S. Panwar)
iv. Mr. Dinesh Chand Sharma
v. Mr. Dharam Vir Malhotra (Mr. D.V. Malhotra)
vi. Mr. Prem Prakash Batra (Mr. P.P. Batra)
vii. Mr. Anoop Singh

3. The impugned order dated 31.05.2014 has been sought to be assailed before this Court by, **Mr. Sushil Ansal** by way of Criminal Revision Petition No. 265 of 2016; **Mr. Gopal Ansal** by way of Criminal Revision Petition No. 264 of 2016; **Mr. D.V. Malhotra** by way of Criminal Revision Petition No. 263 of 2016; and **Mr. Anoop Singh** by way of Criminal Revision Petition No. 262 of 2016.

4. In view of the circumstance that, the charges against all the revisionists before this Court have been framed by way of a common order dated 31.05.2014; and since common questions of fact & law arise in the present batch of revision petitions, the same is being disposed of by way of a common judgment.

FACTUAL MATRIX:

5. Exposition of the background facts with essential details is imperative, in order to appreciate the controversy in the present case in the proper perspective.

6. The backdrop of the present case, as per the impugned order, is that it is an offshoot of the trial proceedings conducted in relation to a devastating fire that occurred in Uphaar Theatres, New Delhi; what is commonly referred to as, in the realm of the media, the 'Uphaar Cinema Fire Tragedy'.

7. The facts as are necessary for the adjudication of the present batch of petitions are adumbrated as follows:

a) The Uphaar Cinema Fire Tragedy that occurred on 13.06.1997, led to the filing of case RC3(S)/97/SIC.IV/CBI/ND under sections 304, 304-A and 337 of the IPC and section 14 of the Cinematograph Act, 1952, culminating into trial (hereinafter referred to as 'Main Uphaar Trial').

b) Investigation was conducted in the said case RC3(S)/97/SIC.IV/CBI/ND and charge sheet was filed before the concerned Trial Court, arraying 16 persons, including, but not limited to, **Mr. Sushil Ansal, Mr. Gopal Ansal** and **Mr. H.S. Panwar**, as accused.

c) A letter dated 28.11.1996 written by Mr. V.K. Nagpal, Vice President, Ansal Properties & Industries Limited to the Delhi Fire Services, was found half-torn, from the judicial file/record, at the time when the examination of PW-33, Mr. T.S. Sharma, ADO, Delhi Fire Service, was being recorded on 20.07.2002, before the Court of Ld. Additional Sessions Judge, Patiala House Courts, New Delhi, in the Main Uphaar Trial.

d) Consequent thereto, the Ld. Public Prosecutor, on examining the judicial record in the Main Uphaar Trial, found that several documents were either torn, tampered with, or not readily available.

e) An application dated 13.01.2003, was instituted by the Ld. Public Prosecutor, bringing to the knowledge of the Court of Ld. Additional Sessions Judge the circumstance that several important documents that were seized by the investigating agency during the course of the investigation; and were filed along with the charge sheet; and formed a part of the judicial record in the Main Uphaar Trial, were missing, tampered, or mutilated by way of tearing a portion thereof. The application was opposed by Mr. H.S. Panwar, Mr. R.M. Puri (a director in Uphaar Cinema at the relevant time), by way of filing replies, on 15.01.2003 and by Mr. K.L. Malhotra (DGM, Uphaar Cinema at the relevant time) by way of filing reply, on 17.01.2003, respectively, to the said application.

f) Thereafter, an application dated 20.01.2003 came to be instituted by the Ld. Public Prosecutor seeking permission to lead secondary evidence regarding the documents which were either missing, torn or tampered with. On 31.01.2003 the Prosecution was granted permission to lead secondary evidence. Further, the Ld. Additional Sessions Judge also directed that a letter be sent to the Ld. District Judge for initiating an inquiry against Mr. Dinesh Chand Sharma, the Ahalmad in the Court of Ld. Additional Sessions Judge, at the relevant time. Consequently, Secondary Evidence was led in the Main Uphaar Trial.

g) Subsequently, a Departmental inquiry under the provisions of Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 was conducted against Mr. Dinesh Chand Sharma, by the Ld. Additional District and Sessions Judge/the Inquiry Officer. By way of the report dated 30.04.2004, it was *prima facie* found that Mr. Dinesh Chand Sharma is guilty of negligence & carelessness amounting to serious misconduct; responsible for the loss of and the tampering of the documents forming part of the judicial record in the Main Uphaar Trial. A penalty of dismissal from service was imposed upon him by way of an order dated 25.06.2004.

h) The Association of the Victims of the Uphaar Tragedy (hereinafter referred to as 'AVUT') instituted an application dated 14.02.2003 under the provisions of section 439(2) of the CrPC, before the Trial Court, seeking cancellation of bail granted to the accused in the Main Uphaar Trial, namely, Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar; in light of the circumstance that certain documents forming part of the judicial record in the Main Uphaar Trial were missing, torn, or tampered with. The said application seeking cancellation of bail was dismissed by way of the order dated 29.04.2003.

i) Thereafter, AVUT instituted Crl. M. (M) No. 2380 of 2003, before this Court, assailing the said order dated 29.04.2003. AVUT also filed a Crl. M. No. 2229 of 2006 under section 482 of the CrPC, in the said Crl. M. (M.), praying for further directions seeking registration of a criminal case against persons responsible for tampering with the

documents that formed a part of the judicial record in the Main Uphaar Trial.

j) This Court by way of the order dated 05.05.2006, dismissed Crl. M. (M) No. 2380 of 2003. Further, this Court by way of the said order dated 05.05.2006, in Crl. M. No. 2229 of 2006, directed the Special Branch of Delhi Police to register a case under appropriate provisions of law; and also directed that investigation be conducted by an officer not below the rank of Assistant Commissioner of Police; against such persons as are found to be guilty and involved in removal/mutilation and tampering of documents forming part of the judicial record of the case, pending trial before the Ld. Additional Session Judge, Patiala House Courts, Delhi, titled as '*State* v. *Sushil Ansal & ors.';* in RC3(S)/97/SIC.IV/CBI/ND under sections 304, 304-A and 337 of the IPC and section 14 of the Cinematograph Act, 1952 (the Main Uphaar Trial). The said order dated 05.05.2006 was modified by way of the order dated 25.05.2006 to the extent that instead of Special Branch of Delhi Police, the Economic Offences Wing of the Delhi Police was directed to register a case under appropriate provisions of law against such persons as are found to be guilty and involved in removal/mutilation and tampering of documents forming part of the judicial record of the Main Uphaar Trial.

k) Thereafter, pursuant to the directions issued by this Court by way of the said order dated 05.05.2006, rendered in the said Criminal Miscellaneous Application; an FIR bearing No. 207/2006, dated 17.05.2006, was registered at Police Station, Tilak Marg, New Delhi,

for the offences punishable under the provisions of sections 109, 193, 201, 218, 409 and 120-B of the IPC, subsequent to a complaint dated 13.05.2006 made by Mr. R. Krishnamurthy, General Secretary, AVUT.

l) Consequent upon the registration of the said FIR No. 207/2006, investigation was conducted and a charge sheet dated 12.02.2007 was filed before the Court of Ld. Chief Metropolitan Magistrate, whereby Mr. Dinesh Chand Sharma was arrayed as an accused.

m) Subsequently, 1st Supplementary charge sheet dated 23.05.2007 came to be filed whereby certain documents including the CFSL report, were filed in the Court.

n) Thereafter, 2nd Supplementary charge sheet dated 18.01.2008 came to be filed, whereby the following persons were also arrayed as accused:

i. Mr. Sushil Ansal
ii. Mr. Gopal Ansal
iii. Mr. H.S. Panwar
iv. Mr. P.P. Batra
v. Mr. D.V. Malhotra
vi. Mr. Anoop Singh

o) Summons were issued by the Ld. ACMM, Patiala House Courts, Delhi on 15.02.2008. The summoning order was assailed before this Court, by way of revision petition being Criminal Revision Petition No. 224 of 2008 alongwith Criminal Main No. 4800 of 2008, instituted by Mr. Sushil Ansal; Criminal Miscellaneous No. 1332 of 2008 & Criminal Miscellaneous Application No. 5036 of 2008, instituted by Mr. D.V.

Malhotra; Criminal Main No. 1334 of 2008 & Criminal Miscellaneous Application No. 5038 of 2008, instituted by Mr. Gopal Ansal; Criminal Main No. 1378 of 2008 & Criminal Miscellaneous Application No. 5177 of 2008, instituted by Mr. P.P. Batra. The aforementioned matters were dismissed by this Court with costs of Rs.25,000/- each, by way of order dated 03.09.2009.

p) Thereafter, at the stage of rebuttal of arguments on charge addressed by the Prosecution before the Ld. Trial Court, permission was sought by the Ld. Public Prosecutor to file additional documents.

q) Consequently, 3rd Supplementary charge sheet dated 17.02.2014 came to be filed alongwith fresh documents.

r) After hearing detailed arguments on charge, the Court of Ld. Chief Metropolitan Magistrate, by way of the impugned order dated 31.05.2014, was pleased to render an order framing charges against Mr. Dinesh Chand Sharma, Mr. Sushil Ansal, Mr. Gopal Ansal, Mr. H.S. Panwar, Mr. P.P. Batra, Mr. D.V. Malhotra and Mr. Anoop Singh, for the offences punishable under the provisions of sections 120-B, 109, 201 and 409 of the IPC.

CASE OF THE PROSECUTION

8. Mr. Sushil Ansal and Mr. Gopal Ansal, who exercised control over the day-to-day functioning of the Uphaar Cinema; alongwith Mr. H.S. Panwar, the Fire Officer of the Delhi Fire Services, who issued an NOC to Uphaar Cinema for fire safety and fabricated a proforma inspection report without, in fact, conducting an inspection, were facing trial that was a culmination of the Uphaar Cinema Fire Tragedy.

9. The substratum of the case of the prosecution is that Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar, colluded to scuttle the process of law and escape the legal consequences of their misdeeds and a conspiracy was hatched between these three persons and Mr. Dinesh Chand Sharma (the Ahalmad in the Court where the Main Uphaar Trial was ongoing), through Mr. P.P. Batra (stenographer in the legal cell at Ansal Properties and Infrastructure Limited).

10. Mr. P.P. Batra, who acted as link between Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar, on one hand and Mr. Dinesh Chand Sharma, on the other; established contact with Mr. Dinesh Chand Sharma, in order to further the object of the conspiracy.

11. In furtherance of the conspiracy, documents from the judicial file in the Main Uphaar Trial were destroyed (some documents went missing; some were mutilated, torn; and ink was spread over some of the documents).

12. When the fact of destruction of documents was brought to the knowledge of the Court, and after his dismissal from service, Mr. Dinesh Chand Sharma contacted Mr. P.P. Batra to secure employment.

13. Thereafter, at the behest of Mr. Sushil Ansal & Mr. Gopal Ansal, through Mr. P.P. Batra, Mr. Dinesh Chand Sharma was provided with a job at A-Plus Security Agency, upon the recommendation of Mr. D.V. Malhotra. He was paid salary through Mr. D.V. Malhotra, in cash, at a rate higher than the usual rate at A-Plus Security for a work of similar nature (Rs.15,000/- was paid to Mr. Dinesh Chand Sharma as against Rs.7,500/- paid to other Field Officers in the firm).

14. Mr. Anoop Singh, Chairman of A-Plus Security Agency provided the said job to Mr. Dinesh Chand Sharma upon the recommendation of Mr. D.V. Malhotra. Mr. Anoop Singh applied fluid on the name of Mr. Dinesh Chand Sharma in the firm's wages' register and wrote a fictitious name, in order to scuttle the process of law when he came to know about the investigation in the present case.

15. The documents which were destroyed from the judicial file are collated hereinbelow:

I. SEIZURE MEMO DATED 18.07.1997

This memo is regarding the seizure of documents from Mr. S.S. Gupta, Company Secretary of Ansal Properties & Industries Limited. By way of the said seizure memo, the following documents were seized:

i. Register of Directors of Green Park Theatre and Associates Pvt. Ltd.
ii. Register of Members.
iii. Register of Contract under section 301, Companies Act, 1956.
iv. Register of Directors and shareholdings & shareholders.
v. Register of Share transfers.
vi. Share Capital Ledger.
vii. Original Letter with respect to Sh. Pranav Ansal.
viii. Original Resignation letter of Mr. Vijay Agrawal.
ix. 3 pages of minutes of meetings of directors of Ansal Theatre & Clubotels Pvt Ltd dated 02.06.1997.

- It is stated that the *lower left portion of the second page of the said seizure memo is partly torn*.
- It is further stated that the documents seized by way of the torn seizure memo establish that Mr. Sushil Ansal and Mr. Gopal Ansal were in control of the company which was running Uphaar Theatres. This factual position has been denied by Mr. Sushil Ansal and Mr. Gopal Ansal.

II. <u>PAGE NO. 123 OF THE FILE OF DELHI FIRE SERVICES</u>

The document is regarding Uphaar Cinema, containing a letter dated 28.11.1996 from Ansal Properties & Industries Limited written by the Mr. Vimal Nagpal, Vice President (services) to the Divisional Officer, Delhi Fire Services, intimating the removal of the defects pointed by the Delhi Fire Services vide their inspection report dated 18.11.1996.

- The said Letter is *half torn from the lower portion*; and
- The *signature of Mr. H.S. Panwar has been torn off*.
- It is stated that the lower portion of the said page has the address of Ansal Properties and Industries Limited, which is the same as the address of Star Estate Management Limited (SEML), of which Mr. D.V. Malhotra was the General Manager.
- It is stated that this letter proves that Ansal Properties and Industries Limited, of which Mr. Sushil Ansal was the chairman, had direct control over the functioning of Uphaar cinema. Further, it is stated that the object behind the tampering of this document was also to not let a document linking Ansal Properties & Industries Limited to Ansal

Theatres and Clubotels Limited (ATCL) from being exhibited in Court.

III. SEIZURE MEMO DATED 27.08.1997 ALONGWITH CHEQUE NO. 955725 DATED 26.06.1995 FOR Rs.50 LACS

The said cheque has been signed by Mr. Sushil Ansal, as the authorized signatory of Green Park Theatre Associated Pvt. Ltd. in his own favour.

- It is stated that the said cheque *earlier went missing, but was later magically produced by Mr. Dinesh Chand Sharma* on 10.06.2003, at the time, when the applications for cancellation of bail were pending before this Court and permission to travel was sought by Mr. Gopal Ansal.
- It is stated that the said cheque establishes that Mr. Sushil Ansal had financial control over Uphaar Cinema post the year 1988, contrary to his statements and protestations denying the same.

IV. SEIZURE MEMO DATED 18.08.1997 ALONGWITH CHEQUE NO. 805578 DATED 30.11.1996 FOR Rs.1.50 LACS

The said cheque is signed by Mr. Gopal Ansal as the authorized signatory of Ansal Theatre and Clubotels Limited, in the favour of Music Shop as well as cheque No. 805590 dated 20.02.1997 for Rs.2,96,550/- signed by Mr. Gopal Ansal as the authorized signatory of Ansal Theatre and Clubotels Limited, in the favour of M/s Chancellor Club.

- It is stated that the said cheque *also went missing but was later produced by Mr. Dinesh Chand Sharma* at the time when applications for cancellation of bail were pending before this Court and permission to travel was sought by Mr. Gopal Ansal.

- It is stated that this cheque establishes that Mr. Gopal Ansal had financial control over Uphaar Cinema post the year 1988, contrary to his contention denying the same.
- It is stated that the sudden re-appearance of the cheques at the time when AVUT filed an application for cancellation of bail clearly shows a link between Mr. Sushil Ansal & Mr. Gopal Ansal and Mr. Dinesh Chand Sharma.

V. SEIZURE MEMO DATED 27.08.1997 ALONGWITH CHEQUE NO. 183618 DATED 23.05.1996 FOR Rs.9,711

The said cheque is signed by Mr. Gopal Ansal, as authorized signatory of Green Park Theatre Association Pvt. Ltd, in the favour of Chief Engineer, Water, drawn on Syndicate Bank.

- It is stated that this cheque *went missing*.
- The said Cheque was issued from Green Park Theatre Association Pvt. Ltd., which had ceased to exist since 10.03.1996, on which date its name was changed to Ansal Theatres and Clubotels Limited. The cheque was therefore issued by a defunct company.
- Further, it is stated that this cheque establishes that Mr. Gopal Ansal had complete financial control over Uphaar Cinema.

VI. FILE CONTAINING MINUTES OF MD'S CONFERENCE OF UPHAAR GRAND

- This piece of evidence containing 40 pages, whereof, *Pages 1, 9, 12, 14, 18 and 19 are missing.*

- The said missing documents are the covering letters for the Managing Director's conference held on 07.05.1997, 02.04.1997 and 01.05.1997. The covering letters had named Mr. Gopal Ansal as the Managing Director (MD). The minutes, which are not missing, referred only to 'MD'. The said 'MD' could not have been identified without the covering letters.
- It is stated that these letters, therefore unequivocally establish who the MD referred to in the minutes, was. Further, the Covering letters authenticate the minutes, as the bare minutes do not bear any signatures.
- All these meetings were proximate to the date of the Uphaar Cinema Fire Tragedy and the last two meetings were in held May, 1997, barely one month before the said fire tragedy occurred on 13.06.1997.
- It is stated that, read alongwith the Covering Letters, the minutes make it clear that the management and day-to-day functioning of Uphaar Grand, were held under the chairmanship of Mr. Gopal Ansal as MD and also that Mr. Gopal Ansal was involved in the day-to-day functioning of the Cinema.

VII. ONE REGISTER I.E. OCCURRENCE BOOK OF THE CONTROL ROOM HEADQUARTERS, DELHI FIRE SERVICES

- *Pages 363 to 400 of this piece of evidence are missing.*
- The relevant page is stated to be page 379, which pertains to the departure of Mr. H.S. Panwar, Fire Officer, for inspection of Uphaar Cinema on 12.05.1997.

- The inspection on 12.05.1997 was conducted one month prior to the fire tragedy in Uphaar Cinema, and Mr. H.S. Panwar issued a proforma inspection report on the basis of which an NOC was given.
- It is stated that this shows the collusion between Mr. H.S. Panwar and Mr. Sushil Ansal & Mr. Gopal Ansal, and the apparent failure of Mr. H.S. Panwar to perform his duties.

VIII. OCCURRENCE BOOK REGISTER OF BHIKAJI CAMA PLACE FIRE STATION, NEW DELHI

- This documentary evidence *containing pages 1 to 400, of which (i) Pages 95 to 104 are missing; (ii) Ink has been spread over Pages 109 to 116; and (iii) Pages 96 to 113 thereof contain the movement of fire officers to attend the fire calls and conduct inspections from 21.12.1996 to 23.12.1996.*
- It is stated that no movement has been shown for Mr. H.S. Panwar to inspect Uphaar Cinema, but there is a proforma inspection report with his signature dated 22.12.1996.
- This is stated to be indicative of the collusion between Mr. H.S. Panwar and Mr. Sushil Ansal & Mr. Gopal Ansal.

IX. CASUAL LEAVE REGISTER MAINTAINED IN DELHI FIRE SERVICES HEADQUARTERS FOR THE PERIOD 1995-1996 AND SEIZURE MEMO FOR THE SAME

- *Pages 45 to 50 are missing* from this documentary evidence.
- Page 50 thereof shows that Mr. H.S. Panwar was on leave on 22.12.1996 (the date of the said proforma inspection report).

- This is stated to indicate the collusion between Mr. H.S. Panwar and Mr. Sushil Ansal & Mr. Gopal Ansal.

ARGUMENTS ADVANCED ON BEHALF OF THE PARTIES

16. Ms. Rebecca M. John, learned senior advocate, appearing on behalf of Mr. Sushil Ansal, would, vehemently canvass that the impugned order is bad in law since it is rendered on the basis of surmises and conjectures. In other words, it is the submission of revisionists that the impugned order deserves to be set aside on the ground that the charges framed against the revisionists are unsupported by any fact or circumstance brought on record before the Ld. Trial Court.

17. Ms. John would also urge that the prosecution has admitted to the weakness of its own case. In this behalf, the attention of this Court would be drawn to the chargesheet dated 12.02.2007, to urge that the entire case of the prosecution, admittedly, has been based on possibilities and suspicion.

18. It would also be contended by Ms. John that the impugned order deserves to be set aside, in view of the settled legal principle that when two views are possible at the stage of framing charges, the view favouring the accused must be adopted by the Court. In this behalf, reliance would be placed on the decisions in *Ashok Kumar Nayyar* v. *State,* reported as 2007 Cri LJ 3065; *Dr. Anup Kumar Srivastava* v. *State through CBI,* in Crl. MC 4360/2012; and *Dilawar Balu Kurane* v. *State of Maharashtra,* reported as (2002) 2 SCC 135.

19. The next ground for challenge to the impugned order would be that the Ld. Trial Court has failed to elaborate the particulars of the offences and the role attributed to every accused person. Therefore, it would be submitted that the impugned order is unsustainable in law, inasmuch as, the same has not been rendered in accordance with the mandate of the relevant provisions of the CrPC. In order to buttress this submission, reliance would be placed on the decision in *Neelu Chopra & anr.* v. *Bharti,* reported as 2009 (4) JCC 3021.

20. Mr. Aggarwal, Ld. Counsel appearing on behalf of Mr. Gopal Ansal, would seek to assail the impugned order on the ground that charges have been framed without adhering to the mandate of the provisions under sections 212, 213, 218, 221 of the CrPC. In order to supplement this submission, reliance would be placed on the decisions in *Ramesan & ors.* v. *State of Kerala*, reported as 2007 Cri LJ 1637; *Muniswamy* v. *State*, reported as AIR 1954 Mysore 81; *Kishan Lal Gupta* v. *King Emperor,* reported as 47 Cri LJ 1946; *State of West Bengal* v. *Laisal Haque & ors.,* reported as (1989) 3 SCC 166; *Jatinder Kumar* v. *State,* reported as 1992 Cri LJ 1482; *Banwarilal Jhunjhunwala* v. *Union of India & anr.,* reported as AIR 1963 SCC 1620.

21. Mr. Narang, learned counsel, appearing on behalf of Mr. D.V. Malhotra, would also urge that the impugned order has been rendered whilst bypassing the mandate of the provisions under sections 227, 228 of the CrPC. In order to fortify this argument, reliance would be placed on the decisions in *Union of India* v. *Prafulla Kumar Samal & anr.,* reported as (1979) 3 SCC 4; *Ashok Kumar Nayyar* v. *State,* (*supra*).

22. Next, Ms. John, Ld. Senior advocate and Mr. Pawan Narang, learned counsel, would seek to assail the charge framed against the revisionists for the commission of the offence of conspiracy under the IPC. It would be urged that the Ld. Trial Court has erroneously held that the alleged conspiracy, to destroy the documents in the Main Uphaar Trial, continued to persist even after the factum of the missing documents in the Main Uphaar Trial was brought to the knowledge of the concerned Court. In this behalf, it would be further argued that there is nothing on record to support of the finding that the conspiracy persisted till the time Mr. Dinesh Chand Sharma was provided a job at A-Plus Security Agency.

In order to buttress this submission, strong reliance would be placed on the decisions of the Hon'ble Supreme Court in *Leo Roy Frey* v. *Superintendent, District Jail, Amritsar & anr.,* reported as AIR 1958 SC 119; *State of Kerala* v. *P. Sugathan & anr.,* reported in (2000) 8 SCC 203; *Firozuddin Basheeruddin & ors.* v. *State of Kerala,* reported as 2001 SCC (Crl.) 1341; and *State* v. *Nalini,* reported as (1999) 5 SCC 253.

23. It would further be urged, that the Ld. Trial Court has proceeded to frame the charge of conspiracy against the revisionists based on suspicion, assumptions and presumptions, and by connecting a few bits here, and a few bits there; and that the same is contrary to the settled principles of criminal jurisprudence. In order to buttress this submission, reliance would be placed on the decisions in *State of Kerala* v. *P. Sugathan & anr.,* (*supra)*; *P.K. Narayanan* v. *State,* reported as (1995) 1 SCC 142; *CBI* v. *K. Narayana Rao,* reported as (2012) 9 SCC 512; *V.C. Shukla* v. *State (Delhi Administration),* reported as (1980) 2 SCC 665; *Sanjay Singh* v. *State of Uttar Pradesh,*

reported as 1994 Supp (2) SCC 707; *Kehar Singh* v. *Delhi Administration*, reported as (1988) 3 SCC 609; *Subramanian Swamy* v. *A.Raja*, reported as (2012) 9 SCC 257; *State of Maharashtra & ors.* v. *Som Nath Thapa*, reported as (1996) 4 SCC 659; *State (NCT of Delhi)* v. *Navjot Sandhu*, reported as (2005) 11 SCC 600; *Emperor* v. *Pir Miundin Adbul Rehman & anr.*, reported as AIR 1944 Sind 225; *Amritlal* v. *Emperor*, reported as AIR 1916 Cal. 188; *State of Karnataka* v. *Muniswamy & ors.*, reported as (1977) 2 SCC 699; *K. R. Purushothaman* v. *State of Kerala*, reported as (2005) 12 SCC 631.

24. It would also be the contention of the learned counsel appearing on behalf of the revisionists that the revisionists have played no role in the alleged conspiracy. The arguments, in this regard, are as follows:

i. Ms. Rebecca M. John, learned senior advocate, appearing on behalf of Mr. Sushil Ansal, would argue that only three out of all the documents which were found to be torn, tampered with, or which went missing, pertained to Mr. Sushil Ansal. Ms. John would then canvass that, the Seizure memo dated 18.07.1997, and Cheque no. 955725 dated 26.06.1995 for a sum of Rs.50,00,000/- signed by him, already stood admitted by Mr. Sushil Ansal at the stage of charge on 27.02.2001, during the Main Uphaar Trial. Further, that the said Cheque no. 955725 was later located by the Court staff in the Main Uphaar Trial. Furthermore, there is nothing on record to support the case of the prosecution that Mr. Sushil Ansal could have benefitted/did in fact benefit, from the alleged mutilation or destruction of the above said

two documents and the Page no. 123 of the file of Delhi Fire Services regarding Uphaar Cinema, Green Park, New Delhi.

ii. It would then be canvassed that the Ld. Trial Court erroneously came to a conclusion that Mr. Sushil Ansal controlled the day-to-day functioning of the Uphaar Cinema. Further, that there is no material on record to show that the alleged communication between Mr. P.P. Batra and Mr. Dinesh Chand Sharma was established at the behest of Mr. Sushil Ansal. Furthermore, it would be the case of Mr. Sushil Ansal that he had nothing to do with the job secured to Mr. Dinesh Chand Sharma at A-Plus Security Agency.

iii. Mr. Pawan Narang, learned counsel appearing on behalf of Mr. D.V. Malhotra, would contend that the mere act of recommending Mr. Dinesh Chand Sharma for a job at A-Plus Security Agency, would not make the former liable to be prosecuted for the alleged offences. It would further be vehemently urged that all the allegation of the prosecution against Mr. D.V. Malhotra, with respect to payment to a higher amount of salary in cash, to Mr. Dinesh Chand Sharma, is unsupported by any material on record.

iv. Mr. Mittal, learned counsel appearing on behalf of Mr. Anoop Singh would urge firstly, that since the latter was neither a witness, nor an accused in the Main Uphaar Trial, he could not have benefitted from the alleged conspiracy in any manner whatsoever. Secondly, it would be argued that charges framed against Mr. Anoop Singh ought to be quashed since the allegations against him only are acts of commission and omission after the object of conspiracy already stood achieved.

25. Ms. John and Mr. Aggarwal, learned counsel, would then contend that the charge of conspiracy does not hold water, inasmuch as, no *mens rea* has been found in the acts committed by Mr. Dinesh Chand Sharma, who is allegedly the main actor in the conspiracy, by the inquiry officer conducting a departmental inquiry against him. In this behalf, it would be asseverated that the Ld. Trial Court has failed to appreciate the findings in the inquiry report dated 30.04.2004 of Mr. S.C. Malik, Ld. Additional Sessions Judge, whereby no criminality has been attributed to the acts committed by Mr. Dinesh Chand Sharma; and that Mr. Dinesh Chand Sharma has in fact, only been indicted for dereliction of duty as an act of high carelessness and negligence amounting to serious misconduct.

26. Ms. John would then urge that, inasmuch as, the allegations of mutilation, tearing and destroying of documents have been made against the revisionists solely based on inferences unsupported by any material brought on record before the Ld. Trial Court; the charge framed under section 109 IPC cannot be sustained in law. In order to supplement this argument, reliance would be placed on the decisions in *Saju* v. *State of Kerala*, reported as (2001) 1 SCC 378; *Ganga Devi* v. *State*, reported as 1985 (9) DRJ 158; and *Kulwant Singh* v. *State of Bihar*, reported as (2007) 15 SC 670.

27. Mr. Narang would then canvass that the charge framed under section 201, IPC is misfounded in law and thus, ought to be quashed.

28. Challenge to the charge framed for the offence under section 409 IPC, would sought to be made by Mr. Aggarwal. It would be contended by Mr. Aggarwal that the ingredients of the offence punishable under section 409 IPC are not made out. Further, in this regard, it would be urged that contrary

to what has been found by the Ld. Trial Court, the documents in relation to which the offences have been committed, would fall under the category of 'evidence' and not 'property'. In this behalf, reliance would be placed on the decisions in *Varsha Heera* v. *State,* rendered in Crl. Rev. Pet. 174/2008; *Sardar Singh* v. *State of Haryana*, reported as 1977 Crl LJ 1158; *S. Narasimha Kumar & ors.* v. *State of A.P.,* reported as 2003 Crl LJ 3188.

29. Challenge to the impugned order would also sought to be made by Ms. John on the ground that the facts & circumstances and material of the Main Uphaar Trial has been relied upon by the Ld. Trial Court to pass the impugned order, which is impermissible in law. In order to amplify this submission, reliance would be placed on the decision in *Mithulal & anr.* v. *State of Madhya Pradesh*, reported as (1975) 3 SCC 529.

30. The impugned order would also be assailed on the ground that the disclosure statement of Mr. Dinesh Chand Sharma ought not to be relied upon to pass the impugned order, inasmuch as, the reliance placed upon the disclosure statement, at the stage of framing of charges, is contrary to the principles of criminal jurisprudence. In order to amplify this submission, reliance would be placed on the decisions in *Amit Pratap & anr.* v. *State,* reported as 2012 (1) JCC 86; *Kapil Kumar* v. *State,* reported as 1996 1 AD (Delhi) 86; and *Mahabir Mandal* v. *State of Bihar*, reported as (1972) 1 SCC 748.

31. It would also be urged by Ms. John and Mr. Narang, learned counsel, that the invocation of the principles of section 10 of the Indian Evidence Act, 1872, (hereinafter referred to as 'the Evidence Act') is misplaced, inasmuch as, the charge of conspiracy itself is misfounded. In this behalf, reliance

would be placed on the decisions in *Natwarlal Sakarlal Mody* v. *State of Bombay*, reported as (1963) 65 BLR 660 (SC); *Emperor* v. *Manchankhan*, reported as 34 Bom LR 1087 ; and *Prakash Chand* v. *State (Delhi Administration)*, reported as 1979 (3) SCC 90.

32. Mr. Narang would also make an asseveration that the proceedings before the Ld. Trial Court would stand vitiated, inasmuch as, prior sanction under the provisions of section 196 CrPC, for the prosecution of Mr. D.V. Malhotra, has not been obtained. In order to fortify this submission, reliance would be placed on the decision in *Jugeshwar Singh & ors.* v. *Emperor*, reported as AIR 1936 Pat 346; *Rewati Raman Singh* v. *State*, reported as 2012 (127) DRJ 176; *Md. Batchal Abdullah* v. *Emperor*, reported as AIR 1934 Sind 4.

33. Mr. Aggarwal would also make an asseveration that the Ld. Trial Court ought not to have proceeded to frame charges against the accused persons, without there being a sanction for prosecution of Mr. Dinesh Chand Sharma. In order to buttress this submission, reliance would be placed on the decisions in *Ashok Kumar Aggarwal* v. *CBI & ors.*, rendered in W.P. (Crl) 1401/2002; and *Prof. N.K. Ganguly* v. *CBI*, reported as (2016) 2 SCC 143.

34. Mr. Aggarwal would vehemently assert that, contrary to what has been found by the Ld. Trial Court, the proceedings in the Main Uphaar Trial were not hampered by any acts of commission or omission on the part of the revisionists, inasmuch as, the prosecution proceeded to in fact, lead secondary evidence *qua* the documents which went missing; were torn, tampered with; or destroyed. In order to buttress this submission, reliance would be placed on the decisions in *State of NCT of Delhi* v. *Shiv Charan*

Bansal, reported as 2009 (3) JCC 2202; *State of U.P.* v. *Dr. Sanjay Singh & anr.*, reported as 1994 Supp (2) SCC 707.

35. Mr. Aggarwal would also urge that the reliance by the Ld. Trial Court, upon the statements of Mr. Anokhe Lal and Mr. Shiv Raj Singh, under the provisions of section 161 CrPC, is misplaced, inasmuch as, there are evident contradictions in the said statements. In order to buttress this submission, reliance would be placed on the decision in *Ashok Kumar Nayyar* v. *State (supra).*

36. Mr. Aggarwal would then contend that the Ld. Trial also erred in relying upon the statements of Mr. Anokhe Lal and Mr. Shiv Raj Singh, under the provisions of section 161 CrPC, inasmuch as, the said persons are unpardoned accomplices and thus, their statements cannot be considered by the Court for framing of charges against the accused persons.

37. Mr. Aggarwal would assert that this Court, in Criminal Miscellaneous Main No. 2380 of 2006 by way of order dated 05.05.2006, had directed the Economic Offences Wing of the Delhi Police to register a case under appropriate provisions of law with regard to the incident of removal/tampering with/mutilation of documents from the judicial record of the Ld. Trial Court. In this behalf, it would thus be contended that the act of the prosecution to register an FIR on the complaint of a specific person, is *non est* in the eyes of law. In this behalf, reliance would be placed on the dictum of the Hon'ble Supreme Court in *State of Punjab* v. *Davinder Pal Singh Bhullar & ors.*, reported as (2011) 14 SCC 770.

38. It would also be urged that as opposed to the case of the prosecution, there is no material on record to show that the documents that were tampered

with and those that went missing, were vital in nature, for the proceedings in the Main Uphaar Trial.

39. Per contra, Mr. Dayan Krishnan, learned senior advocate, appearing on behalf of the State, would, firstly refer to the law elucidating the scope of revisional jurisdiction of the Court. In this behalf, the attention of this Court would be drawn to the decisions in *Sheonandan Paswan* v. *State of Bihar*, reported as (1987) 1 SCC 288; *Ashish Chadha* v. *Asha Kumari*, reported as (2012) 1 SCC 680; *Amit Kapoor* v. *Ramesh Chander,* reported as (2012) 9 SCC 460; and *State of Tamil Nadu* v. *Mariya Anton Vijay,* reported as (2015) 9 SCC 294.

40. Next, the attention of this Court would be drawn to the law with regard to framing of charges. Reference would be made to the decisions in *Superintendent & Remembrancer of Legal Affairs, West Bengal* v. *Anil Kumar Bhunja*, reported as (1979) 4 SCC 274; *Palwinder Singh* v. *Balwinder Singh*, reported as (2008) 14 SCC 504; *Om Wati* v. *State thr. Delhi Administration,* reported as (2001) 4 SCC 333; *State of M.P.* v. *S.B. Johari*, reported as (2000) 2 SCC 57; and *State of Tamil Nadu* v. *Mariya Anton Vijay (supra).*

41. With regard to the charge of conspiracy, Mr. Dayan Krishnan would seek to refer to the decisions in *Baliya* v. *State of Madhya Pradesh*, reported as (2012) 9 SCC 696; *Hardeo Singh* v. *State of Bihar,* reported as (2000) 5 SCC 623; *State of M.P.* v. *S.B. Johari (supra); State* v. *Nalini (supra);* and *Yakub Abdul Razak Memon* v. *State of Maharashtra,* reported as (2013) 13 SCC 1.

42. Whilst further arguing on the correctness of the charge of conspiracy against the revisionists, it would be submitted by Mr. Krishnan that the object of the conspiracy was to aid the accused persons, namely, Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar, in the Main Uphaar Trial. It would further be submitted in this behalf, that the conspiracy, in fact, continued till Mr. Dinesh Chand Sharma was provided a job at A-Plus Security Agency.

In order to fortify this submission, reliance would be placed on the decisions in *Leo Roy Frey* v. *Superintendent, District Jail, Amritsar (supra); Yakub Abdul Razak Memon* v. *State of Maharashtra (supra);* and *State* v. *Nalini (supra).*

43. Further, it would be urged on behalf of the State that the material, facts and circumstances from the Main Uphaar Trial can be used in the trial in the present case, in accordance with the principles of law governing the provisions of sections 5, 80, 145, 155 and 157 of the Indian Evidence Act, 1872. In order to amplify this submission, reliance would be placed on the decision in *State of Kerala* v. *Babu*, reported as (1999) 4 SCC 621.

44. Next, Mr. Dayan Krishnan would vehemently controvert the submissions challenging the correctness of the impugned order, on the anvil of the mandate of the provisions governing framing of charges, under the relevant provisions of the CrPC, by placing reliance on the principles laid down in *Kanti Bhadra Shah* v. *State of West Bengal*, reported as (2000) 1 SCC 722.

45. It would then be urged on behalf of the State that in accordance with the provision of section 27 of the Indian Evidence Act, 1872, the disclosure

statement of Mr. Dinesh Chand Sharma can be relied upon by the prosecution to the extent of, (i) the information therein which leads to discovery of facts; and (ii) for the factum regarding the contact established between Mr. Dinesh Chand Sharma and Mr. P.P. Batra, which can be proved by the call data records available with the prosecution.

In order to buttress this submission, Mr. Dayan Krishnan would seek to place reliance on the decisions in *Pulukuri Kottaya* v. *King Emperor,* reported as AIR 1947 PC 67; and *State (NCT of Delhi)* v. *Navjot Sandhu (supra).*

46. Next, it would be urged on behalf of the State, that the prosecution faced grave difficulties whilst leading secondary evidence in the Main Uphaar Trial, not merely because the documents, which went missing, were destroyed, or tampered with, had to be reconstructed; but further because the application instituted seeking permission to lead secondary evidence was vehemently opposed, directly and indirectly, by Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar.

47. It would lastly be submitted on behalf of the State that there is no requirement of a sanction of prosecution as against Mr. D.V. Malhotra and Mr. Dinesh Chand Sharma.

48. Mr. Vikas Pahwa, learned senior counsel appearing on behalf of AVUT, the complainant, would firstly contend that the phrase 'other person' under the provisions of section 401(2) also includes the complainant in the present case, and therefore, the AVUT can be granted the right to be heard in a criminal revision petition.

49. It would be then urged that the contentions of the revisionists are ill-founded and ought to be rejected in *toto.*

50. With regard to the offence of conspiracy, it would be submitted that the objective of the conspiracy in the present case has been to sabotage the Main Uphaar Trial and to seek acquittal of the accused persons in the Main Uphaar Trial, namely, Mr. Sushil Ansal, Mr. Gopal Ansal, Mr. H.S. Panwar; and the said object was sought to be achieved by the removal/destruction of vital documents from judicial record of the proceedings in the Main Uphaar Trial. In order to buttress this submission, reliance has been placed on the decision by the Hon'ble High Court of Bombay at Nagpur, in *Sarika* v. *State of Maharashtra* in Criminal Application No. 1964/2007 dated 07.03.2008.

51. It would then be urged that the impugned order ought to be upheld in its entirety, inasmuch as, the beneficiaries of a conspiracy need not necessarily do an overt act to be charged with the offence of conspiracy. Reliance in this behalf would be placed on the decisions in *Kehar Singh (supra); Yash Pal Mittal (supra); Ajay Aggarwal* v. *Union of India* reported as AIR 1993 SC 1637*;* and *Ram Narain Popli* v. *Central Bureau of Investigation* reported as (2003) 3 SCC 641.

52. It would be urged lastly that, the grant of permission for leading secondary evidence was opposed by *inter alia* the accused persons, namely, Mr. Gopal Ansal and Mr. H.S. Panwar. It would also be urged that, the smooth conduct of the trial proceedings in the Main Uphaar Trial was hampered by the revisionists, firstly, by destroying primary evidence and thereafter by opposing to the grant of permission to lead secondary evidence.

53. I have heard the learned counsel appearing on behalf of the parties and perused the entire material and case-record.

54. The issues that arise for consideration in the present batch of petitions fall within a narrow compass. The same are as follows:

(i) *Whether sanctions for prosecution of Mr. Dinesh Chand Sharma and Mr. D.V. Malhotra, were required to be obtained before proceeding against them.*

(ii) *Whether there exist any circumstances for this Court to interfere with the impugned order framing charge, on account of there being no strong suspicion & prima facie case against the accused persons, borne out from the material on record.*

55. For the determination of the first issue, it would be relevant to refer to the following statutory provisions:

I. <u>Section 197(1), CrPC:</u>

> "197. Prosecution of Judges and public servants.
>
> (1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction:
>
> (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;
>
> (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression" State Government" occurring therein, the expression" Central Government" were substituted."

56. A plain reading of the above extracted provision of section 197(1), CrPC, would reveal that the requirement of sanction for prosecution under section 197(1), CrPC, is attracted only against a public servant who is removable from his office by an order of the Government.

II. Section 196, CrPC:

> "196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.
> (1) No Court shall take cognizance of-
> (a) any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or Section 295 A or sub section (1) of section 505 of the Indian Penal Code (45 of 1860) or
> (b) a criminal conspiracy to commit such offence, or
> (c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.
> (1A) No Court shall take cognizance of-
> (a) any offence punishable under section 153B or sub- section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or
> (b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.
> (2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceedings:
> Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary."

57. Section 196(1) and (1A) enumerates the specific offences for which sanction for prosecution is required to be obtained. Section 196(2) of the CrPC clearly mandates that sanction for prosecution ought to be taken, *inter*

alia, for criminal conspiracy entered into for the commission of offences other than the offences punishable with death, life imprisonment, or rigorous imprisonment for a term of two years or upwards.

58. The argument that has been advanced by the revisionists is in the teeth of the provisions of section 196 and section 197(1) of the CrPC. It has been urged that proceedings in the instant case would stand vitiated since sanction is a precursory sacrosanct step and *sine qua non* for prosecution of public servants, namely, Mr. Dinesh Chand Sharma (ahalmad of the Court where the Main Uphaar Trial was being conducted) and Mr. D.V. Malhotra (Retired Brigadier, working as General Manager of SEML).

59. The foregoing argument is fallacious and devoid of merit for the following reasons:

(i) Sections 109, 201, 409, 120-B, IPC are not included in the specific list of offences specified under the Provisions of section 196(1) and (1A).

(ii) The provision of section 196(2) provides that sanction for prosecution of public servants is required to be obtained for the offence of criminal conspiracy for the commission of offences **other than** the offences punishable with death, life imprisonment or rigorous imprisonment for a term of 02 years or above. In the instant case, charges have been framed for the offences punishable under sections 109, 201, 409 and 120-B of the IPC. Allegedly, the conspiracy in the instant case has been hatched to commit the offences under sections 409, 201, IPC, which offences are punishable with life imprisonment or rigorous imprisonment for a term of 02 years or above. In view thereof the

provision of section 196(2) is not attracted to the facts of the instant case.

(iii) The provision of section 197(1) provides that sanction for prosecution is required to be obtained in case of a public servant who is removable from his office by the Government. The term 'Government' has been defined under section 17 of the IPC to mean the Central Government and the State Government. In the present case, however, Mr. Dinesh Chand Sharma was removable from his office by an order of the District and Sessions Judge. Therefore, the provision is not attracted as against Mr. Dinesh Chand Sharma.

(iv) Furthermore, the Hon'ble Supreme Court and this Court, have held that the protective umbrella of the provisions of section 197, CrPC, is available only when a direct connection or inseparable link with one's official duty as a public servant are clearly demonstrated. At the most, one's official status might have furnished him with an opportunity or occasion to commit the alleged criminal act. [Ref: *B. Saha* v. *M.S. Kochhar* reported as (1979) 4 SCC 177; *Devinder Singh & ors* v. *State of Punjab thr. CBI* reported as (2016) 12 SCC 87; *Rekha Sharma* v. *CBI*, reported as (2015) 218 DLT 1.]

In light of the aforesaid legal position, it is evident that the acts of commission and omission by Mr. Dinesh Chand Sharma, cannot be said to have been committed whilst in discharge of his official duties as a court ahalmad. Furthermore, Mr. D.V. Malhotra, is alleged to have committed the offences in his capacity as the General Manager of SEML and not as public servant.

(v) Moreover, even otherwise, the Hon'ble Supreme Court has also held in a number of decisions that sanction under Section 197, CrPC for prosecution for an offence under Section 409, IPC is not necessary. [Ref: *Om Prakash Gupta* v. *State of U.P.* reported as AIR 1967 SC 458; *Baijnath* v. *State of M.P.*, reported as AIR 1966 SC 220 and *Harihar Prasad* v. *State of Bihar***,** reported as **(**1972) 3 SCC 89]

60. In view of the aforesaid reasons, the first issue that arose for consideration is answered in the negative and against the revisionists.

61. For the determination of the second issue, at the outset, it would be pertinent to first refer to the statutory provisions that are applicable in the present gamut of facts and circumstances.

I. Section 227 CrPC:

"Section 227. Discharge.

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

II. Section 228 CrPC:

"Section 228. Framing of charge.

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant- cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

62. A bare reading of the above provisions, in the context of the case at hand, makes the following abundantly clear:

(i) The Court, at the stage of framing of charges, has to consider the material on record and hear the submissions of the prosecution and accused persons in that behalf.

(ii) Thereafter, if the Court is of the opinion that there are no sufficient grounds for proceeding against the accused, the accused may be discharged, after recording reasons in that behalf.

(iii) However, if there exists sufficient ground for proceeding against the accused, charge shall be framed against him, in writing.

III. <u>Section 211, CrPC:</u>

"<u>211. Contents of charge.</u>

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific- name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court.

(7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed."

IV. Section 212, CrPC:

"212. Particulars as to time, place and person.

(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, It shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219; Provided that the time included between the first and last of such dates shall not exceed one year."

V. Section 213, CrPC:

"213. When manner of committing offence must be stated.

When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose."

63. The object of sections 211 to 213 of the CrPC is evidently to provide a fair idea to the accused persons of the offence with which they are being charged with.

VI. Section 27, the Evidence Act:

> "27. How much of information received from accused may be proved.—
> Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved."

64. Starting with a proviso, this provision lifts the ban against the admissibility of the confession/statement made to the police to the limited extent by allowing proof of information of a specified nature furnished by the accused in police custody. In this sense Section 27 is considered to be an exception to the principles embodied in Sections 25 and 26 of the Evidence Act.

VII. Section 5, Evidence Act:

> "5. Evidence may be given of facts in issue and relevant facts.
>
> Evidence may be given in any suit or proceedings of the existence or non-existence of every fact in issue and of such other facts as are hereinafter declared to be relevant, and of no others.
>
> Explanation-
>
> This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

This section shall not enable any person to give evidence of a fact which he is disentitled to prove by any provision of the law for the time being in force relating to Civil Procedure.

Illustrations-

(a) A is tried for the murder of B by beating him with a club with the intention of causing his death. At A's trial the following facts are in issue:— A's beating B with the club; A's causing B's death by such beating; A's intention to cause B's death.

(b) A suitor does not bring with him, and have in readiness for production at the first hearing of the case, a bond on which he relies. This section does not enable him to produce the bond or prove its contents at a subsequent stage of the proceedings, otherwise than in accordance with the conditions prescribed by the Code of Civil Procedure."

VIII. Section 80, Evidence Act:

"80. Presumption as to documents produced as record of evidence.

Whenever any document is produced before any Court, purporting to be a record or memorandum of the evidence, or of any part of the evidence, given by a witness in a judicial proceeding or before any officer authorized by law to take such evidence, or to be a statement or confession by any prisoner or accused person, taken in accordance with law, and purporting to be signed by any Judge or Magistrate, or by any such officer as aforesaid, the Court shall presume—

That the document is genuine; that any statements as to the circumstances under which it was taken, purporting to be made by the person signing it, are true, and that such evidence, statement or confession was duly taken."

IX. Section 145, Evidence Act:

"145. Cross-examination as to previous statements in writing.

A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; but, if it is

intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

X. Section 155, Evidence Act:

"Impeaching credit of witness:

The credit of a witness may be impeached in the following ways by the adverse party, or with the consent of the Court, by the party who calls him:

(1) By the evidence of persons who testify that they, from their knowledge of the witness believe him to be unworthy of credit;

(2) By proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;

(3) By proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;

Explanation:
A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.
Illustrations:
(a) A sues B for the price of goods sold and delivered to B.
C says that he delivered the goods to B.
Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.
The evidence is admissible.
(b) A is indicted for the murder of B.
C says the B, when dying, declared that A had given B the wound of which he died. Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence.
The evidence is admissible."

XI. Section 157, Evidence Act:

"157. Former statements of witness may be proved to corroborate later testimony as to same fact.—In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact, at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

XII. Section 201, IPC:

"201. Causing disappearance of evidence of offence, or giving false information to screen offender.

Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false; if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.—and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years' imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration: A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine."

65. A bare reading of the above extracted provision makes it clear that the main ingredients to constitute an offence under this section are as follows:

a) that an offence has been committed;

b) that the accused knew or had reason to believe the commission of such an offence;

c) that with such knowledge or belief, he: (i) caused any evidence of the commission of that offence to disappear, or (ii) gave any information relating to that offence which he then knew or believed to be false;

d) that he did so as aforesaid with the intention of screening the offender from legal punishment; and

e) if the charge be of an aggravated form, it must be further proved that the offence in respect of which the accused did as above mentioned, was punishable with death or imprisonment for life or imprisonment extending to 10 years.

XIII. <u>Section 409, IPC:</u>

> "409. Criminal breach of trust by public servant, or by banker, merchant or agent.
> Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1[imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."

66. For bringing home a charge under this section, firstly, it is essential that the prosecution proves that the accused person was entrusted with the property or with any dominion or power over it. Secondly, it has to be established that in respect of the property so entrusted, there was commission of a criminal breach of trust.

67. Criminal breach of trust, as provided under section 405 of the IPC, consists of any of the positive acts, namely, misappropriation, conversion,

use, or even the disposal of property in violation of the mandate of law prescribing the mode in which the entrustment is to be discharged.

XIV. Section 109, IPC:

> "109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence. Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment. Illustrations
>
> (a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.
>
> (b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.
>
> (c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.
>
> CLASSIFICATION OF OFFENCE
>
> Punishment—Same as for offence abetted—According as offence abetted is cognizable or non-cognizable—According as offence abetted is bailable or non-bailable—Triable by court by which offence abetted is triable—Non-compoundable."

68. A plain reading of the above provision makes it clear that following are the essentials for bringing home a charge under section 109, IPC:

a) Abetment of an offence, either by instigation, conspiracy or aiding;

b) The commission of the act abetted, in consequence of abetment;

c) There must not be any express provision, in the Indian Penal Code for the punishment of such abetment.

XV. Sections 120-A, & 120-B, IPC:

"120A. Definition of criminal conspiracy.

When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agree-ment is designated a criminal conspiracy: Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof. Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

120B. Punishment of criminal conspiracy.—

(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

XVI. Section 397, CrPC:

"Section 397. Calling for records to exercise powers of revision.

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order,- recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in

> confinement, that he be released on bail or on his own bond pending the examination of the record.
> Explanation.- All Magistrates whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub- section and of section 398.
> (2) The powers of revision conferred by sub- section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

69. A plain reading of the above-extracted provision reveals that the CrPC has vested this Court with ample powers to satisfy itself of, (a) the correctness; or (b) legality; or (c) propriety, of an order recorded or passed by an inferior Court and, as to the regularity of any proceedings of an inferior Court.

70. The dominant idea being conveyed by the incorporation of the expressions, 'to satisfy itself', is that the revisional power of the Court under this provision is essentially a power of superintendence.

Revisional jurisdiction of this Court whilst dealing with an order framing charge

71. For the effective adjudication of the present issue, it would now be relevant to refer to the case law on the framing of charge; revisional jurisdiction of the Court while dealing with an order on charge; and the offence of conspiracy.

72. In *Superintendent & Remembrancer of Legal Affairs, West Bengal* v. *Anil Kumar Bhunja (supra),* the Hon'ble Supreme Court whilst relying on

the dictum in *State of Bihar* v. *Ramesh Singh* reported as (1977) 2 SCC 194, upheld the order on charges; and observed that the positive and negative facts, in conjunction with other subsidiary facts, appearing, expressly or by implication, from the materials which were before the Magistrate at that initial stage, were sufficient to show that there were grounds for presuming that the accused-respondents had committed offences under the relevant provisions of the Arms Act, 1959.

73. In *Union of India* v. *Prafulla Kumar Samal*, *(supra)*, the Hon'ble Supreme Court adverting to the conditions enumerated in Sections 227 and 228 of the CrPC, enunciated the following principles:

> "(1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.
>
> (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.
>
> (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
>
> (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

74. In *State of Maharashtra* v. *Som Nath Thapa, (supra)* it has been observed as follows:

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

(emphasis in original. Emphasis also supplied herein by underlining.)

75. In *State of M.P.* v. *S.B. Johari (supra)*, the Hon'ble Supreme Court rendered the following observations:

> **"4.** In our view, it is apparent that the entire approach of the High Court is illegal and erroneous. From the reasons recorded by the High Court, it appears that instead of considering the prima facie case, the High Court has appreciated and weighed the materials on record for coming to the conclusion that charge against the respondents could not have been framed. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. In such case, there would be no sufficient ground for proceeding with the trial. In *Niranjan Singh Karam Singh Punjabi* v. *Jitendra Bhimraj Bijjayya*[(1990) 4 SCC 76 : 1991 SCC (Cri) 47] after considering the provisions of Sections 227 and 228 CrPC, the Court posed a question, whether at the stage of framing the charge, the trial court should marshal the materials on the record of the case as he would do on the conclusion of the trial. The Court held that at the stage of framing the charge inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The court may peruse the records for that limited purpose, but it is not required to marshal it with a view to decide the reliability thereof. The Court referred to earlier decisions in *State of Bihar* v. *Ramesh Singh* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] , *Union of India* v. *Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] and *Supdt. & Remembrancer of Legal Affairs, W.B.* v. *Anil Kumar Bhunja* [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038] and held thus: (SCC p. 85, para 7)
>
> "From the above discussion it seems well settled that at the Sections 227-228 stage 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*. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

(emphasis supplied)

6. In our view the aforesaid exercise of appreciating the materials produced by the prosecution at the stage of framing of the charge is wholly unjustified. The entire approach of the High Court appears to be as if the Court was deciding the case as to whether the accused are guilty or not. It was done without considering the allegations of conspiracy relating to the charge under Section 120-B. In most of the cases, it is only from the available circumstantial evidence an inference of conspiracy is to be drawn. Further, the High Court failed to consider that medicines are normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead necessary evidence at the time of trial to establish its case that purchase of medicines for the Cancer Hospital at Indore was at a much higher price than the prevailing market rate. Further again non-joining of the two remaining members to the Purchase Committee cannot be a ground for quashing the charge. After framing the charge and recording the evidence, if the Court finds that other members of the Purchase Committee were also involved, it is open to the Court to exercise its power under Section 319 of the Criminal Procedure Code. Not only that, the Court erroneously considered the alleged statement of the manufacturing company that quotations given by M/s Allied Medicine Agency, Indore were genuine without there being any cross-examination. The High Court ignored the allegation that many of the items have not been purchased and the amount is paid on bogus vouchers. Hence, there was no justifiable reason for the High Court to quash the charge framed by the trial court." (emphasis supplied.)

76. In *Om Wati* v. *State thr. Delhi Administration (supra),* the Hon'ble Supreme Court, whilst placing reliance on the decisions in *Anil Kumar Bhunja (supra), State of Bihar* v. *Ramesh Singh (supra)* and *Kanti Bhadra*

Shah (supra), upheld the order of the Trial Court for framing charges and rendered the following observations:

> "**7.** Section 227 of the Code provides that if upon consideration of record of the case and the documents submitted therewith, the Judge considers 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. This Court in *Kanti Bhadra Shah* v. *State of W.B.* [(2000) 1 SCC 722 : 2000 SCC (Cri) 303] held that there is no legal requirement that the trial court should write an order showing the reasons for framing a charge. Taking note of the burden of the pending cases on the courts, it was held: (SCC pp. 725-26, paras 11-12)
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> > "*11*. Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections he is obliged to record his reasons for doing so. In this context it is pertinent to point out that even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.
> >
> > *12*. If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, 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. 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. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate if such a detailed order has been passed for culminating the proceedings before them. But it is quite unnecessary to write detailed orders at this stage, such as issuing process, remanding the accused to custody, framing of charges, passing over to next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985."

8. At the stage of passing the order in terms of Section 227 of the Code, the court has merely to peruse the evidence in order to find out whether or not there is a sufficient ground for proceeding against the accused. If upon consideration, the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case 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. This Court in *Stree Atyachar Virodhi Parishad* v. *Dilip Nathumal Chordia* [(1989) 1 SCC 715 : 1989 SCC (Cri) 285] cautioned the High Courts to be loath in interfering at the stage of framing the charges against the accused. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the court in the face. The opinion on many matters can differ depending upon the person who views it. There may be as many opinions on a particular point, as there are courts but that would

not justify the High Court to interdict the trial. Generally, it would be appropriate for the High Court to allow the trial to proceed.

9. Dealing with the scope of Sections 227 and 228 of the Code and the limitations imposed upon the court at the initial stage of framing the charge, this Court in *State of Bihar* v. *Ramesh Singh* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018] held: (SCC pp. 41-42, para 4)

> "Reading the two provisions together in juxtaposition, 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 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, 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."

10. A three-Judge Bench of this Court in *Supdt. & Remembrancer of Legal Affairs, W.B.* v. *Anil Kumar Bhunja* [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. Relying upon its earlier judgments in *Ramesh Singh* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : AIR 1977 SC 2018] and *Anil Kumar Bhunja cases* [(1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : AIR 1980 SC 52] this Court again in *Satish*

Mehra v. *Delhi Admn.* [(1996) 9 SCC 766 : 1996 SCC (Cri) 1104] reiterated: (SCC pp. 769-70, para 9)

> "*9.* Considerations which should weigh with the Sessions Court at this stage have been well designed by Parliament through Section 227 of the Code of Criminal Procedure (for short 'the Code') which reads thus:
>
> '227. *Discharge*.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.'
>
> Section 228 contemplates the stage after the case survives the stage envisaged in the former section. When the court is of opinion that there is ground to presume that the accused has committed an offence the procedure laid down therein has to be adopted. When those two sections are put in juxtaposition with each other the test to be adopted becomes discernible: Is there sufficient ground for proceeding against the accused? It is axiomatic that the standard of proof normally adhered to at the final stage is not to be applied at the stage where the scope of consideration is where there is 'sufficient ground for proceeding'."

12. We allow this appeal by setting aside the order of the High Court and upholding the order of the trial court. We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled-for and unjustified litigation under the cloak of technicalities of law."

(emphasis supplied.)

77. In *State of Orissa* v. *Debendra Nath Pandhi*, reported as (2005) 1 SCC 568, the Hon'ble Supreme Court considered the question whether the trial Court, at the time of framing of charges, can consider material filed by the accused. The question was answered in the negative by the Hon'ble Supreme Court in the following words:

> "18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced...Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.
>
> 23. As a result of aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. ..."

(emphasis supplied.)

78. Whilst dealing with an order on charge, the Hon'ble Supreme Court in *Soma Chakravarty* v. *State through CBI*, reported as (2007) 5 SCC 403, relied upon the principles laid down in *Union of India* v. *Major J.S. Khanna*, reported as (1972) 3 SCC 873; *State of Maharashtra* v. *Som Nath Thapa, (supra)*; and *L. Chandraiah* v. *State of A.P.*, reported as (2003) 12 SCC 670 and held as follows on the scope of powers of the Court whilst framing charges:

> "10. The settled legal position is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. 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… Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.
>
> *****
>
> 19. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the Court must come to a prima facie finding that there exist some materials therefor. Suspicion alone, without anything more, cannot form the basis therefor or held to be sufficient for framing charge."
>
> (emphasis supplied.)

79. In *Sheoraj Singh Ahlawat & ors.* v. *State of Uttar Pradesh* reported as (2013) 11 SCC 476, the Hon'ble Supreme Court discussed the legal position with respect to framing of charges as hereunder:

> "15. …This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words: *(Onkar Nath Mishra* v. *State (NCT) of Delhi, (2008) 2 SCC 561)*

> "11. 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, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."
> (emphasis supplied)

16. Support for the above view was drawn by this Court from earlier decisions rendered in State of Karnataka v. L. Muniswamy 1977 Cri.LJ 1125, State of Maharashtra & Ors. v. Som Nath Thapa and Ors. 1996 Cri.LJ 2448 and State of M.P. v. Mohanlal Soni 2000 Cri.LJ 3504. In Som Nath's case (supra) the legal position was summed up as under:

> "32. …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.*" (emphasis supplied)

17. So also in *Mohanlal case* (supra) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate

evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in *Mohanlal case* (supra) is in this regard apposite:

> "8. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.""
>
> (emphasis supplied.)

80. The Hon'ble Supreme Court in *Duli Chand* v. *Delhi Administration* reported as (1975) 4 SCC 649, observed as hereunder:

> "**4.** … Now the jurisdiction of the High Court in a criminal revision application is severely restricted and it cannot embark upon a reappreciation of the evidence, but even so, the learned Single Judge of the High Court who heard the revision application, examined the evidence afresh at the instance of the appellant. This was, however, of no avail, as the learned Single Judge found that the conclusion reached by the lower courts that the appellant was guilty of gross negligence, was correct and there was no reason to interfere with the conviction of the appellant. The learned Single Judge accordingly confirmed the conviction and sentence recorded against the appellant and dismissed the revision application. Hence the present appeal by special leave obtained from this Court.
>
> **5.** Now it is obvious that the question of whether the appellant was guilty of negligence in driving the bus and the death of the deceased was caused on account of his negligent driving is a question of fact which depends for its determination on an appreciation of the evidence. Both the learned Magistrate trying the case at the original stage and the learned Additional Sessions Judge hearing the appeal arrived, on an assessment of the evidence, at a concurrent finding of fact that the death of the deceased was caused by negligent driving of the bus by the appellant. The High Court in revision was exercising supervisory jurisdiction of a restricted nature and, therefore, it would

have been justified in refusing to reappreciate the evidence for the purposes of determining whether the concurrent finding of fact reached by the learned Magistrate and the learned Additional Sessions Judge was correct. But even so, the High Court reviewed the evidence presumably for the purpose of satisfying itself that there was evidence in support of the finding of fact reached by the two subordinate courts and that the finding of fact was not unreasonable or perverse. The High Court came to the conclusion that the evidence clearly established that the death of the deceased was caused on account of the negligent driving of the bus by the appellant. When three courts have, on an appreciation of the evidence, arrived at a concurrent finding of fact in regard to the guilt of the appellant, it is difficult to see how this Court can, in the exercise of its extraordinary jurisdiction under Article 136 of the Constitution, interfere with such finding of fact. We have had occasion to say before and we may emphasise it once again, that this Court is not a regular court of appeal to which every judgment of the High Court in criminal case may be brought up for scrutinising its correctness. It is not the practice of this Court to reappreciate the evidence for the purpose of examining whether the finding of fact concurrently arrived at by the High Court and the subordinate courts is correct or not. It is only in rare and exceptional cases where there is some manifest illegality or grave and serious miscarriage of justice that this Court would interfere with such finding of fact. Here, not only is the appreciation of the oral evidence by the learned Magistrate, the learned Additional Sessions Judge and the High Court eminently correct, but there are certain tell-tale circumstances which clearly support the finding of fact reached by them."

(emphasis supplied.)

81. In *Sheonandan Paswan* v. *State of Bihar, (supra)* the Hon'ble Supreme Court opined that the provisions of section 397 of the CrPC give the High Court jurisdiction to consider the correctness, legality or propriety of any finding, sentence or order and as to the regularity of the proceedings of any inferior court. This jurisdiction ought to be exercised, normally,

without dwelling at length upon the facts and evidence of the case. The Court in revision ought to consider the materials only to satisfy itself about the correctness, legality and propriety of the findings, sentence or order and refrain from substituting its own conclusion on an elaborate consideration of evidence.

82. In *Munna Devi* v. *State of Rajasthan*, reported as (2001) 9 SCC 631, it was observed as follows:

> "3. We find substance in the submission made on behalf of the appellant. 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 first information report 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."
>
> (emphasis supplied.)

83. This Court, in an unreported decision in *Veena Ajmani* v. *State & ors.* rendered in Criminal Revision Petition No. 281 of 2012; and Criminal Revision Petition No. 282 of 2012, where final orders on charge had been assailed, observed as hereunder:

> "28. The Supreme Court in P. Vijayan vs State of Kerala and Another, reported at (2010) 2 SCC 398 has held that the consideration of the court at the stage of framing of charges is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. Whether the material in the hands of the prosecution is sufficient or not are matters of trial. Moreover, the issue whether the trial will end in conviction or acquittal is also immaterial. The relevant portion of the decision is as reproduced below:

12. …This Court has thus held that whereas strong suspicion may not take the place of the proof at the trial stage, yet it may be sufficient for the satisfaction of the Trial Judge in order to frame a charge against the accused.

25. As discussed earlier, Section 227 in the new Code confers special power on the Judge to discharge an accused at the threshold if upon consideration of the records and documents, he find that "there is not sufficient ground" for proceeding against the accused. In other words, his consideration of the record and document at that stage is for the limited purpose of ascertaining whether or not there is sufficient ground for proceeding against the accused. If the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228, if not, he will discharge the accused. This provision was introduced in the Code to avoid wastage of public time when a prima facie case was not disclosed and to save the accused from avoidable harassment and expenditure.

26. In the case on hand, though, the learned Trial Judge has not assigned detailed reasons for dismissing the discharge petition filed under Section 227, it is clear from his order that after consideration of the relevant materials charge had been framed for offence under Section 302 read with Section 34 IPC and because of the same, he dismissed the discharge petition. After evaluating the materials produced by the prosecution and after considering the probability of the case, the Judge being satisfied by the existence of sufficient grounds against the appellant and another accused framed a charge. Whether the materials at the hands of the prosecution are sufficient or not are matters for trial. At this stage, it cannot be claimed that there is no sufficient ground for proceeding against the appellant and discharge is the only remedy. Further, whether the trial will end in conviction or acquittal is also immaterial. All these relevant aspects have been carefully considered by the High Court and it rightly affirmed the order passed by the Trial Judge dismissing the discharge petition filed by A3-appellant herein. We fully agree with the said conclusion.””

(Emphasis supplied.)

84. The Hon'ble Supreme Court in *Ashish Chadha* v. *Asha Kumari (supra)* upheld the order on charge; and held that the High Court overstepped its revisional jurisdiction by appraising the evidence in the case. In this regard, it was further observed as follows:

> "20. … It is the trial court which has to decide whether evidence on record is sufficient to make out a prima facie case against the accused so as to frame charge against him. Pertinently, even the trial court cannot conduct roving and fishing inquiry into the evidence. It has only to consider whether the evidence collected by the prosecution discloses prima facie case against the accused or not."

85. In *State of Tamil Nadu* v. *Mariya Anton Vijay (supra)* the Hon'ble Supreme Court, whilst setting aside the order of the High Court, observed that the approach of the High Court, in exercise of its inherent powers and under section 397 of CrPC, was wholly unwarranted and illegal. It was further observed that the order had been rendered by overlooking the principles laid down by the Hon'ble Supreme Court in *State of M.P.* v. *S.B. Johari (supra)*, inasmuch as by way of its order, the High Court went into the questions of fact, appreciated the materials produced in support of the charge-sheet, drew inference on reading the statements of the accused, and applied the law, which according to the High Court, had application to the facts of the case; and then came to a conclusion that no prima facie case had been made out against any of the accused for their prosecution.

86. The Hon'ble Supreme Court in *Palwinder Singh* v. *Balwinder Singh (supra)*, dealt with the decision of the High Court in a revision application, observed that, (i) the High Court committed a serious error in rendering the decision, insofar as it entered into the realm of appreciation of evidence at

the stage of the framing of the charges itself; (ii) the jurisdiction of the learned Sessions Judge while exercising power under Section 227 of the CrPC is limited; (iii) charges can be framed on the basis of strong suspicion; and (iv) marshalling and appreciation of evidence is not in the domain of the Court at that point of time.

87. The Hon'ble Supreme Court in *Amit Kapoor* v. *Ramesh Chander & anr. (supra)*, on the question of the powers of the High Court in exercise of its revisional and inherent jurisdiction, whilst dealing with a challenge to an order framing charges, was pleased to lay down the following legal principles:

> "**25.** Having examined the interrelationship of these two very significant provisions of the Code, let us now examine the scope of interference under any of these provisions in relation to quashing the charge. We have already indicated above that framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there is a bar and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the

accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under these two provisions.

26. This further raises a question as to the wrongs which become actionable in accordance with law. It may be purely a civil wrong or purely a criminal offence or a civil wrong as also a criminal offence constituting both on the same set of facts. But if the records disclose commission of a criminal offence and the ingredients of the offence are satisfied, then such criminal proceedings cannot be quashed merely because a civil wrong has also been committed. The power cannot be invoked to stifle or scuttle a legitimate prosecution. The factual foundation and ingredients of an offence being satisfied, the court will not either dismiss a complaint or quash such proceedings in exercise of its inherent or original jurisdiction. In *Indian Oil Corpn.* v. *NEPC India Ltd.* [(2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] this Court took the similar view and upheld the order of the High Court declining to quash the criminal proceedings because a civil contract between the parties was pending.

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:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

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.

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.

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.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

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.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

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.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae* i.e. to do real and substantial justice for administration of which alone, the courts exist.

[Ref. *State of W.B.* v. *Swapan Kumar Guha* [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] ; *Madhavrao Jiwajirao Scindia* v. *Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] ; *Janata Dal* v. *H.S. Chowdhary* [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] ; *Rupan Deol Bajaj* v. *Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] ; *G. Sagar Suri* v. *State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] ; *Ajay Mitra* v. *State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703] ; *Pepsi Foods Ltd.* v. *Special Judicial Magistrate* [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400 : AIR 1998 SC 128] ; *State of U.P.* v. *O.P. Sharma* [(1996) 7 SCC 705 : 1996 SCC (Cri) 497] ; *Ganesh Narayan Hegde* v. *S. Bangarappa* [(1995) 4 SCC 41 : 1995 SCC (Cri) 634] ; *Zandu Pharmaceutical Works Ltd.* v. *Mohd. Sharaful Haque* [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] ; *Medchl Chemicals & Pharma (P) Ltd.* v. *Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615 : AIR 2000 SC 1869] ; *Shakson Belthissor* v. *State of Kerala* [(2009) 14 SCC 466 : (2010) 1

SCC (Cri) 1412] ; *V.V.S. Rama Sharma* v. *State of U.P.* [(2009) 7 SCC 234 : (2009) 3 SCC (Cri) 356] ; *Chunduru Siva Ram Krishna* v. *Peddi Ravindra Babu* [(2009) 11 SCC 203 : (2009) 3 SCC (Cri) 1297] ; *Sheonandan Paswan* v. *State of Bihar* [(1987) 1 SCC 288 : 1987 SCC (Cri) 82] ; *State of Bihar* v. *P.P. Sharma* [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192 : AIR 1991 SC 1260] ; *Lalmuni Devi* v. *State of Bihar* [(2001) 2 SCC 17 : 2001 SCC (Cri) 275] ; *M. Krishnan* v. *Vijay Singh*[(2001) 8 SCC 645 : 2002 SCC (Cri) 19] ; *Savita* v. *State of Rajasthan* [(2005) 12 SCC 338 : (2006) 1 SCC (Cri) 571] and *S.M. Datta* v. *State of Gujarat* [(2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] .]

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction under Section 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence."

(Emphasis supplied.)

88. Considering the conspectus of the decisions discussed hereinabove, the following legal position emerges with regard to the law on charge; the revisional jurisdiction of the High Court; and the powers exercisable by the High Court in revisional jurisdiction whilst dealing with an order on charge:

(i) The jurisdiction of the Trial Court whilst exercising power under **Section 227 of the CrPC** is limited.

(ii) At the stage of charge, the Trial Court has to merely peruse the evidence in order to find out whether there is a sufficient ground for proceeding against the accused or not.

(iii) If upon consideration of the material placed before it, the Trial Court is satisfied that a *prima facie* case is made out against the accused, it must proceed to frame charge in terms of **Section 228 of the CrPC**.

(iv) The Trial Court cannot conduct a roving and fishing inquiry into the evidence or a meticulous consideration thereof at this stage. Marshalling and appreciation of evidence, and going into the probative value of the material on record, is not in the domain of the Court at the time of framing of charges.

(v) In other words, at the beginning and the initial stage of the trial, the truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be meticulously judged, and nor is any weight to be attached to the probable defence of the accused. *Thus, a 'mini trial' is not to be conducted.*

(vi) It is not obligatory for the Trial Court at the time of framing of charges, 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 CrPC.*

(vii) Thus, it is axiomatic that at the initial stage if there is a *strong/grave 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.

(viii) The Trial Court may sift the evidence to determine whether the facts emerging therefrom *taken at their face value disclose the existence of all the ingredients constituting the alleged offence* or not.

(ix) Detailed orders are not necessary whilst framing charges and contentious issues are not required to be answered by the Trial Court at the stage of framing of charges.

(x) Only in a case 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.

(xi) Further, if the scales of pan as to the guilt or innocence of the accused are something like *even* 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 of the CrPC.

(xii) The provisions of **section 397 of the CrPC** empower the High Court with supervisory jurisdiction to consider the *correctness, legality* or *propriety* of any finding, sentence or order and as to the *regularity of the proceedings* of any inferior court.

(xiii) Revisional jurisdiction is severely restricted, and ought not to be exercised in a routine and casual manner. It has to be exercised, normally, *without* dwelling at length upon the facts and appraising the evidence of the case.

(xiv) Further, the Court in revision ought to *refrain* from substituting its own conclusion on an elaborate consideration of evidence.

(xv) Whilst in revisional jurisdiction, the High Court **cannot enter into the realm of appreciation of evidence at the stage of the framing of the charges itself.**

(xvi) The High Court, under statutory obligation, *ought to be loath in interfering at the stage of framing the charges against the accused, merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused person.* Thus, self-restraint on the part of the High Court should be the rule unless there is a glaring injustice staring the Court in the face.

(xvii) **Revisional powers could be exercised only when it is shown that, (a) there is a legal bar against the**

continuance of the criminal proceedings; (b) the framing of charge or the facts as stated in the first information report 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; (c) where the exercise of revisional power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts.

(xviii) 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*.

89. The law in relation to the offence of conspiracy has been discussed in a catena of judgments by the the Hon'ble Supreme Court and various High Courts.

90. As far back as in 1837, in *Regina* v. *Murphy*, (1837) 173 ER 502, *Coleridge, J*., observed that although common design is the root of the charge for the offence of conspiracy, it is not necessary to prove that the two parties had come together and actually agreed in terms to have the common design and to pursue it by common means and so as to carry it into

execution, as in many cases of established conspiracy, there are no ways of proving any such thing. If it is found that these two persons pursued by their acts, the same object, often by the same means, one performing one part of an act and the other another part of the same act so as to complete it, with a view to attain the object which they are pursuing, then in this event, the Courts will be at liberty to draw the conclusion that they have been engaged in a conspiracy to effect that object.

91. *Mirza, J.,* in *Emperor* v. *Ring*, reported as 1929 Bom 296, observed that where the main charge is of conspiracy, it is not possible to always have proof of direct meeting, of combination or that the parties have been brought into each other's presence. In order to establish a charge of conspiracy, the agreement is very often to be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design.

92. In *Bhola Nath* v. *Emperor*, reported as 1939 ALL 567, it has been observed by *Richpal Singh, J.,* that there may be cases in which conspiracy may be proved by evidence of surrounding circumstances and by the antecedent and subsequent conduct of the accused persons.

93. Further, with regard to the offence of conspiracy, the Hon'ble Supreme Court in *Leo Roy Frey (supra),* observed as hereunder:

> "4. …The offences with which the petitioners are now charged include an offence under Section 120-B of the Indian Penal Code. Criminal conspiracy is an offence created and made punishable by the Indian Penal Code. It is not an offence under the Sea Customs Act. The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences.

> This is also the view expressed by the United States Supreme Court in *United States* v. *Rabinowich* [(1915) 238 US 78]."
>
> (emphasis supplied.)

94. The decision in *Hardeo Singh* v. *State of Bihar (supra)* makes it clear that the Court at the stage of charge has to see whether some suspicion is being raised; whether some factor and some connecting link are in existence. A natural inference has to be drawn and when there exists some connecting factor/link between the accused persons, then charge ought to be framed. The relevant paragraphs thereof have been reproduced hereunder:

> "As a matter of fact some connecting link or connecting factor somewhere would be good enough for framing of charge since framing of charge and to establish the charge of conspiracy cannot possibly be placed at par. To establish the charge of conspiracy, there is required cogent evidence of meeting of two minds in the matter of commission of an offence-in the absence of which the charge cannot be sustained. This is however not so, in the matter of framing of charge since the incidence of the offence shall have to be investigated."

95. In *P. Sugathan (supra)*, the Hon'ble Supreme Court has observed that the circumstances relied on for the purposes of drawing an inference of conspiracy should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy. Further, it has been observed that a conspiracy is a continuing offence which continues to subsist till it is executed or rescinded or frustrated by choice of necessity. During the subsistence of conspiracy, whenever any one of the conspirators does an act or series of acts, he would be held guilty under section 120-B, IPC.

96. In *Mir Nagvi Askari* v. *Central Bureau of Investigation*, (2009) 15 SCC 643, it was enunciated that courts in deciding on the existence or

otherwise, of an offence of conspiracy, must bear in mind that it is hatched in secrecy and that it is difficult, if not impossible to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons had taken part are relevant. To prove that the propounders had expressly agreed to commit the illegal act or had caused it to be done, may be proved by adducing circumstantial evidence and or by necessary implications.

97. The Hon'ble Supreme Court in *State of Karnataka* v. *Selvi J. Jayalalitha*, in Criminal Appeal Nos. 300-303 of 2017 [Arising out of SLP (Crl.) Nos. 6117-6120 of 2015], reported as 2017 SCC OnLine SC 134, observed as follows:

> "179. The agreement which is the quintessence of criminal conspiracy can be proved either by direct or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available."

98. The Hon'ble Supreme in *Yakub Abdul Razak Memon* v. *State of Maharashtra*, *(supra)*, had the occasion of dealing with a catena of judgments, on the offence of conspiracy. The relevant portions of the report are reproduced hereinbelow:

> "129. The proposition that the mere agreement constitutes the offence has been accepted by this Court in several judgments. Reference may be made to *Major E.G. Barsay* v. *State of Bombay* [*Major E.G. Barsay* v. *State of Bombay*, AIR 1961 SC 1762 : (1961) 2 Cri LJ 828 : (1962) 2 SCR 195] wherein this Court held that the gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. It is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the

commission of a number of acts. The Court in *Barsay case* [*Major E.G. Barsay* v. *State of Bombay*, AIR 1961 SC 1762 : (1961) 2 Cri LJ 828 : (1962) 2 SCR 195] has held as under: (AIR p. 1778, para 31)

> *"31*. … Section 120-A of the Penal Code, 1860 defines 'criminal conspiracy' and under that definition,
>
> 'When two or more persons agree to do, or cause to be done, an illegal act, or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy'.
>
> The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts. Under Section 43 of the Penal Code, 1860 an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge the accused are charged with having conspired to do three categories of illegal acts, and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable."

131. Each conspirator can be attributed each other's actions in a conspiracy. The theory of agency applies and this rule existed even prior to the amendment of the Penal Code in India. This is reflected in the rule of evidence under Section 10 of the Evidence Act, 1872. Conspiracy is punishable independent of its fruition. The principle of agency as a rule of liability and not merely a rule of evidence has been accepted both by the Privy Council as well as by this Court. The following judgments are relevant for this proposition:

131.4. In *Nalini* [*State* v. *Nalini*, (1999) 5 SCC 253 : 1999 SCC (Cri) 691] , this Court explained that conspiracy results in a joint responsibility and everything said, written or done in furtherance of the common purpose is deemed to have been done by each of them. The Court held: (SCC pp. 515-18, para 583)

"*583*. Some of the broad principles governing the law of conspiracy may be summarised though, as the name implies, a summary cannot be exhaustive of the principles.

(*1*) Under Section 120-A IPC offence of criminal conspiracy is committed when two or more persons agree to do or cause to be done an illegal act or legal act by illegal means. When it is a legal act by illegal means overt act is necessary. Offence of criminal conspiracy is an exception to the general law where intent alone does not constitute crime. It is intention to commit crime and joining hands with persons having the same intention. Not only the intention but there has to be agreement to carry out the object of the intention, which is an offence. The question for consideration in a case is did all the accused have the intention and did they agree that the crime be committed. It would not be enough for the offence of conspiracy when some of the accused merely entertained a wish, howsoever horrendous it may be, that offence be committed.

(*2*) Acts subsequent to the achieving of the object of conspiracy may tend to prove that a particular accused was party to the conspiracy. Once the object of conspiracy has been achieved, any subsequent act, which may be unlawful, would not make the accused a part of the conspiracy like giving shelter to an absconder.

(*3*) Conspiracy is hatched in private or in secrecy. It is rarely possible to establish a conspiracy by direct evidence. Usually, both the existence of the conspiracy and its objects have to be inferred from the circumstances and the conduct of the accused.

(*4*) Conspirators may for example, be enrolled in a chain—*A* enrolling *B*, *B* enrolling *C*, and so on; and all will be members of a single conspiracy if they so intend and agree, even though each member knows only the person who enrolled him and the person whom he enrols. There may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. These are theories and in practice it may

be difficult to tell which conspiracy in a particular case falls into which category. It may however, even overlap. But then there has to be present mutual interest. Persons may be members of a single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role.

(*5*) When two or more persons agree to commit a crime of conspiracy, then regardless of making or considering any plans for its commission, and despite the fact that no step is taken by any such person to carry out their common purpose, a crime is committed by each and everyone who joins in the agreement. There have thus to be two conspirators and there may be more than that. To prove the charge of conspiracy it is not necessary that intended crime was committed or not. If committed it may further help prosecution to prove the charge of conspiracy.

(*6*) It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

(*7*) A charge of conspiracy may prejudice the accused because it forces them into a joint trial and the court may consider the entire mass of evidence against every accused. Prosecution has to produce evidence not only to show that each of the accused has knowledge of the object of conspiracy but also of the agreement. In the charge of conspiracy the court has to guard itself against the danger of unfairness to the accused. Introduction of evidence against some may result in the conviction of all, which is to be avoided. By means of evidence in conspiracy, which is otherwise inadmissible in the trial of any other substantive offence prosecution tries to implicate the accused not only in the conspiracy itself but also in the substantive crime of the alleged conspirators. There is always difficulty in tracing the

precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy. As observed by Judge Learned Hand 'this distinction is important today when many prosecutors seek to sweep within the dragnet of conspiracy all those who have been associated in any degree whatever with the main offenders' [*United States* v. *Falcone*, 109 F 2d 579 (2d Cir 1940)] .

(*8*) As stated above it is the unlawful agreement and not its accomplishment, which is the gist or essence of the crime of conspiracy. Offence of criminal conspiracy is complete even though there is no agreement as to the means by which the purpose is to be accomplished. It is the unlawful agreement which is the gravamen of the crime of conspiracy. The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators. The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy.

(*9*) It has been said that a criminal conspiracy is a partnership in crime, and that there is in each conspiracy a joint or mutual agency for the prosecution of a common plan. Thus, if two or more persons enter into a conspiracy, any act done by any of them pursuant to the agreement is, in contemplation of law, the act of each of them and they are jointly responsible therefor. This means that everything said, written or done by any of the conspirators in execution or furtherance of the common purpose is deemed to have been said, done or written by each of them. And this joint responsibility extends not only to what is done by any of the conspirators pursuant to the original agreement but also to collateral acts incidental to and growing out of the original purpose. A conspirator is not responsible, however, for acts done by a co-conspirator after termination of the conspiracy. The joinder of a conspiracy by a new member does not

create a new conspiracy nor does it change the status of the other conspirators, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies.

(*10*) A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. One who commits an overt act with knowledge of the conspiracy is guilty. And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, is guilty though he intends to take no active part in the crime."

133. Since conspiracy is hatched in secrecy, to bring home the charge of conspiracy, it is relevant to decide conclusively the object behind it from the charges levelled against the accused and the facts of the case. The object behind it is the ultimate aim of the conspiracy. Further, many means might have been adopted to achieve this ultimate object. The means may even constitute different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy.

134. In *Ajay Aggarwal* v. *Union of India* [(1993) 3 SCC 609 : 1993 SCC (Cri) 961 : AIR 1993 SC 1637] , this Court rejected the submission of the accused that as he was staying in Dubai and the conspiracy was initially hatched in Chandigarh and he did not play an active part in the commission of the acts which ultimately lead to the incident, thus, could not be liable for any offence, observing: (SCC pp. 616-17, para 8)

"*8*. … Section 120-A IPC defines 'conspiracy' to mean that when two or more persons agree to do, or cause to be done an illegal act, or an act which is not illegal by illegal means, such an agreement is designated as 'criminal conspiracy'. No agreement except an agreement to commit an offence shall amount to a criminal conspiracy, unless some act besides the agreement is done by one or more parties to such agreement in furtherance thereof. Section 120-B IPC prescribes punishment for criminal conspiracy.

It is not necessary that each conspirator must know all the details of the scheme nor be a participant at every stage. It is necessary that they should agree for design or object of the conspiracy. Conspiracy is conceived as having three elements: (*1*) agreement (*2*) between two or more persons by whom the agreement is effected; and (*3*) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. It is immaterial whether this is found in the ultimate objects. The common law definition of 'criminal conspiracy' was stated first by Lord Denman in *Jones case* [*R.* v. *Jones*, (1832) 4 B & Ad 345 : 110 ER 485] that an indictment for conspiracy must 'charge a conspiracy to do an unlawful act by unlawful means'…."

The Court, thus, held that an agreement between two or more persons to do an illegal act or a legal act by illegal means is criminal conspiracy. Conspiracy itself is a substantive offence and is distinct from the offence to be committed, for which the conspiracy was entered into. A conspiracy is a continuing offence and continues to subsist and is committed wherever one of the conspirators does an act or series of acts. So long as its performance continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity. A crime is complete as soon as the agreement is made, but it is not a thing of the moment. It does not end with the making of the agreement. It will continue so long as there are two or more parties to it intending to carry into effect the design. (Vide *Sudhir Shantilal Mehta* v. *CBI* [(2009) 8 SCC 1 : (2009) 3 SCC (Cri) 646] .)

135. In *Yash Pal Mittal* v. *State of Punjab* [(1977) 4 SCC 540 : 1978 SCC (Cri) 5] the rule was laid down as follows: (SCC p. 543, para 9)

"*9.* … The very agreement, concert or league is the ingredient of the offence. It is not necessary that all the conspirators must know each and every detail of the conspiracy as long as they are co-participators in the main object of the conspiracy. There may be so many devices and

techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested. There must be unity of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators. In achieving the goal, several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators."

136. For an offence under Section 120-B IPC, the prosecution need not necessarily prove that the conspirators expressly agreed to do or cause to be done the illegal act, the agreement may be proved by necessary implication. It is not necessary that each member of the conspiracy must know all the details of the conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omissions committed by the conspirators in pursuance of a common design. Being a continuing offence, if any acts or omissions which constitute an offence are done in India or outside its territory, the conspirators continuing to be the parties to the conspiracy and since part of the acts were done in India, they would obviate the need to obtain the sanction of the Central Government. All of them need not be present in India nor continue to remain in India. The entire agreement must be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to do or the object they wanted to achieve. (Vide *R.K. Dalmia* v. *Delhi Admn.* [AIR 1962 SC 1821 : (1962) 2 Cri LJ 805] , *Lennart Schussler* v. *Director of Enforcement* [(1970) 1 SCC 152 : 1970 SCC (Cri) 73] , *Shivnarayan Laxminarayan Joshi* v. *State of Maharashtra* [(1980) 2 SCC 465 : 1980 SCC (Cri) 493] and *Mohd. Usman Mohammad Hussain Maniyar* v. *State of Maharashtra* [(1981) 2 SCC 443 : 1981 SCC (Cri) 477 : AIR 1981 SC 1062] .)

137. In *Yogesh* v. *State of Maharashtra* [(2008) 10 SCC 394 : (2009) 1 SCC (Cri) 51] this Court held: (SCC p. 402, para 25)

"*25*. Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement."

138. In *Nirmal Singh Kahlon* v. *State of Punjab* [(2009) 1 SCC 441 : (2009) 1 SCC (Cri) 523 : AIR 2009 SC 984] , this Court following *Ram Lal Narang* v. *State (Delhi Admn.)* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] , held that a conspiracy may be a general one and a separate one, meaning thereby, a larger conspiracy and a smaller one which may develop in successive stages.

139. In *K.R. Purushothaman* v. *State of Kerala* [(2005) 12 SCC 631 : (2006) 1 SCC (Cri) 686] this Court held: (SCC pp. 636-37, paras 11 & 13)

"*11*. Section 120-A IPC defines 'criminal conspiracy'. According to this section when two or more persons agree to do, or cause to be done (*i*) an illegal act, or (*ii*) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy.

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13. … The existence of conspiracy and its objects are usually deduced from the circumstances of the case and the conduct of the accused involved in the conspiracy."

140. In *State of Maharashtra* v. *Som Nath Thapa* [(1996) 4 SCC 659 : 1996 SCC (Cri) 820 : AIR 1996 SC 1744] , this Court held: (SCC p. 668, para 24)

"*24*. … 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 inferred from the knowledge itself. This apart, the prosecution has not to establish that a *particular* unlawful use was intended … 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."

(emphasis in original)

142. In *Firozuddin Basheeruddin* v. *State of Kerala* [(2001) 7 SCC 596 : 2001 SCC (Cri) 1341] , this Court held: (SCC pp. 606-08, paras 23 & 25-27)

"*23*. Like most crimes, conspiracy requires an act (actus reus) and an accompanying mental state (mens rea). The agreement constitutes the act, and the intention to achieve the unlawful objective of that agreement constitutes the required mental state. … the law punishes conduct that threatens to produce the harm, as well as conduct that has actually produced it. Contrary to the usual rule that an attempt to commit a crime merges with the completed offence, conspirators may be tried and punished for both the conspiracy and the completed crime. The rationale of conspiracy is that the required objective manifestation of disposition to criminality is provided by the act of agreement. Conspiracy is a clandestine activity. Persons generally do not form illegal covenants openly. In the interests of security, a person may carry out his part of a conspiracy without even being informed of the identity of his co-conspirators.

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25. Conspiracy is not only a substantive crime, it also serves as a basis for holding one person liable for the crimes of others in cases where application of the usual doctrines of complicity would not render that person liable. Thus, one who enters into a conspiratorial relationship is liable for every reasonably foreseeable crime committed by every other member of the conspiracy in furtherance of its

objectives, whether or not he knew of the crimes or aided in their commission. The rationale is that criminal acts done in furtherance of a conspiracy may be sufficiently dependent upon the encouragement and support of the group as a whole to warrant treating each member as a causal agent to each act. Under this view, which of the conspirators committed the substantive offence would be less significant in determining the defendant's liability than the fact that the crime was performed as a part of a larger division of labour to which the accused had also contributed his efforts.

26. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. …

27. Thus conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confréres."

[See also *State (NCT of Delhi)* v. *Navjot Sandhu* [*State (NCT of Delhi)* v. *Navjot Sandhu*, (2005) 11 SCC 600 : 2005 SCC (Cri) 1715] .]

143. In *Ram Narayan Popli* v. *CBI* [(2003) 3 SCC 641 : 2003 SCC (Cri) 869] this Court held: (SCC p. 778, para 342)

"*342*. … The elements of a criminal conspiracy have been stated to be: (*a*) an object to be accomplished, (*b*) a plan or scheme embodying means to accomplish that object, (*c*) an agreement or understanding between two or more of the accused persons whereby, they become definitely committed to cooperate for the accomplishment of the object by the means embodied in the agreement, or by any effectual means, and (*d*) in the jurisdiction where the statute required an overt act. The essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. From this, it necessarily follows that unless the statute so requires, no overt act need be done in furtherance of the conspiracy, and that the object

of the combination need not be accomplished, in order to constitute an indictable offence. The law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design."

144. In *Mohd. Khalid* v. *State of W.B.* [(2002) 7 SCC 334 : 2002 SCC (Cri) 1734] this Court held: (SCC p. 356, para 27)

> "*27.* Where trustworthy evidence establishing all links of circumstantial evidence is available the confession of a co-accused as to conspiracy even without corroborative evidence can be taken into consideration."

150. The law on the issue emerges to the effect that conspiracy is an agreement between two or more persons to do an illegal act or an act which is not illegal by illegal means. The object behind the conspiracy is to achieve the ultimate aim of conspiracy. In order to achieve the ultimate object, parties may adopt many means. Such means may constitute different offences by themselves, but so long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts of conspiracy. For an offence of conspiracy, it is not necessary for the prosecution to prove that conspirators expressly agreed to do an illegal act, the agreement may be proved by necessary implication. It is also not necessary that each member of the conspiracy should know all the details of the conspiracy. Conspiracy is a continuing offence. Thus, if any act or omission which constitutes an offence is done in India or outside its territory, the conspirators continue to be the parties to the conspiracy. The conspiracy may be a general one and a smaller one which may develop in successive stages. It is an unlawful agreement and not its accomplishment, which is the gist/essence of the crime of conspiracy. In order to determine whether the conspiracy was hatched, the court is required to view the

entire agreement and to find out as to in fact what the conspirators intended to do."

(emphasis supplied by underlining.)

99. From a conspectus of the above decisions, the legal position that emerges, is collated as follows:

i. The offence of Conspiracy has two elements, viz. (1) an agreement between two or more persons by whom the agreement is effected; and (2) a criminal object, which may be either the ultimate aim of the agreement, or may constitute the means, or one of the means by which that aim is to be accomplished. *The gist of the offence of conspiracy is an agreement to break the law.*

ii. Since it is the unlawful agreement which is the gravamen of the crime of conspiracy, the offence of criminal conspiracy is *an exception* to the general law where intent alone does not constitute a crime.

iii. *Conspiracy itself is a substantive offence and is distinct from the offence to be committed*, for which the conspiracy was entered into. Therefore, the crime is complete as soon as the agreement is made.

iv. It thus, also follows that the offence of criminal conspiracy is complete even though there might be no agreement as to the means by which the purpose is to be accomplished.

v. However, the offence might not end with the making of the agreement in certain cases.

It thus follows that *conspiracy is a continuing offence* and continues to subsist wherever one of the conspirators does an act or series of acts, in furtherance of the object of the conspiracy. So long as its performance

continues, it is a continuing offence till it is executed or rescinded or frustrated by choice or necessity.

vi. Therefore, it follows from the above propositions that **the offence of conspiracy is punishable independent of its fruition**. The parties to an agreement will be guilty of criminal conspiracy, even in the circumstance that the illegal act agreed to be done might not actually have been done. In other words, to prove the charge of conspiracy, it is not necessary that intended crime was committed. If the crime is committed, it may further help prosecution to prove the charge of conspiracy.

vii. Since a conspiracy is hatched in private or in secrecy, **it is rarely possible to establish a conspiracy by direct evidence.** The unlawful agreement which amounts to a conspiracy need not be formal or express, but may be inherent in and inferred from the circumstances, especially declarations, acts and conduct of the conspirators.

viii. **Usually, both the existence of the conspiracy and its objects, have to be inferred from the circumstances and the conduct of the accused.** But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn.

ix. Conspiracy may comprise the commission of a number of acts.

x. Further, there may be many devices and techniques adopted to achieve the common goal of the conspiracy and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator must be aware and in which each one of them must be interested.

xi. There, however, must be *unity* of object or purpose but there may be plurality of means sometimes even unknown to one another, amongst the conspirators.

xii. Further, in achieving the goal, several offences may be committed by some of the conspirators even unknown to the others. The only relevant factor is that all means adopted and illegal acts done must be and purported to be in furtherance of the object of the conspiracy even though there may be sometimes misfire or overshooting by some of the conspirators. The means may even constitute different offences by themselves, but as long as they are adopted to achieve the ultimate object of the conspiracy, they are also acts forming a part of the conspiracy.

xiii. All accused persons are guilty of the offence of conspiracy to do illegal acts, though for individual offences all of them may not be liable. In other words, **a criminal conspiracy is a partnership in crime**, and there is in each conspiracy, a joint or mutual agency for the prosecution of a common plan. Each conspirator can be attributed each other's actions in a conspiracy by virtue of the application of the theory of agency.

xiv. Conspirators may, be enrolled in a chain; or there may be a kind of umbrella-spoke enrolment, where a single person at the centre does the enrolling and all the other members are unknown to each other, though they know that there are to be other members. It may however be that both the theories overlap in a given case. But then there has to be present a mutual interest.

xv. A man may join a conspiracy by word or by deed. However, criminal responsibility for a conspiracy requires more than a merely passive attitude towards an existing conspiracy. *One who commits an overt act with knowledge of the conspiracy is guilty.* And one who tacitly consents to the object of a conspiracy and goes along with other conspirators, actually standing by while the others put the conspiracy into effect, *is also guilty* though he intends to take no active part in the crime.

xvi. Persons may be members of a single conspiracy even though each is ignorant of the identity of many others who may have diverse roles to play. It is not a part of the crime of conspiracy that all the conspirators need to agree to play the same or an active role. It is not necessary that all conspirators should agree to the common purpose at the same time. They may join with other conspirators at any time before the consummation of the intended objective, and all are equally responsible. What part each conspirator is to play may not be known to everyone or the fact as to when a conspirator joined the conspiracy and when he left.

xvii. There is always difficulty in tracing the precise contribution of each member of the conspiracy but then there has to be cogent and convincing evidence against each one of the accused charged with the offence of conspiracy.

xviii. *The agreement need not be entered into by all the parties to it at the same time, but may be reached by successive actions evidencing their joining of the conspiracy. Acts subsequent to the achieving of the object*

of conspiracy may tend to prove that a particular accused was party to the conspiracy.

xix. **The joinder of a conspiracy by a new member does not create a new conspiracy nor does it change the status of the other conspirators**, and the mere fact that conspirators individually or in groups perform different tasks to a common end does not split up a conspiracy into several different conspiracies. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design.

xx. To establish a charge of conspiracy *knowledge* about indulgence in either an illegal act or a legal act by illegal means is necessary.

xxi. Regarding admissibility of evidence, loosened standards prevail in a conspiracy trial. Contrary to the usual rule, in conspiracy prosecutions, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, **is admissible** against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions.

100. Having discussed the statutory provisions and the position of law with regard to the same, I would now proceed to deal with the submissions made on behalf of the parties with respect to the second issue.

101. In this behalf, it would be profitable to note the material that has been relied upon by the Ld. Trial Court, to conclude that there exists a *prima facie* case and strong suspicion against the accused persons, in order to frame charges against them. The same are as culled out hereinbelow:

(i) Mr. Sushil Ansal, Mr. Gopal Ansal (who were allegedly in financial control & control over the day-to-day functioning of the Uphaar Cinema, at the relevant time) and Mr. H.S. Panwar (Fire Officer at the Delhi Fire Services) were facing prosecution in the Main Uphaar Trial.

(ii) Documents forming a part of the judicial file in the Main Uphaar Trial were destroyed.

(iii) Mr. Dinesh Chand Sharma, the Ahalmad in the Court where the Main Uphaar Trial was being conducted, was proceeded against by way of a departmental inquiry. He was found guilty of carelessness and negligence amounting to serious misconduct and responsible for the destruction of documents forming part of the judicial file in the Main Uphaar Trial. Subsequently, he was dismissed from service.

(iv) During investigation in the present case, the following were undertaken:

a) Call Data Records of Mr. P.P. Batra (stenographer in the legal cell at Ansal Properties & Infrastructure Limited) and Mr. Dinesh Chand Sharma were obtained.

b) Disclosure statement of Mr. Dinesh Chand Sharma was recorded.

c) Statements of Mr. Anoop Singh, Mr. Anokhe Lal and Mr. Shiv Raj Singh were recorded.

d) Wages' Register of A-Plus Security agency seized.

e) GEQD Report was obtained.

(v) Pursuant to the investigation, *inter alia* the following facts and circumstances came to light:

a) Contact was established between Mr. P.P. Batra and Mr. Dinesh Chand Sharma during the proceedings in the Main Uphaar Trial.

b) Documents forming part of the judicial file in the Main Uphaar Trial were tampered with, mutilated, torn, went missing, etc., and consequent thereto, upon a departmental inquiry in this behalf, Mr. Dinesh Chand Sharma was dismissed from service.

c) Mr. Dinesh Chand Sharma contacted Mr. P.P. Batra for seeking employment after the former's dismissal from service.

d) Mr. Dinesh Chand Sharma was recommended for a job at A-Plus Security Agency, by Mr. D.V. Malhotra at the behest of Mr. Sushil Ansal and Mr. Gopal Ansal.

e) Mr. D.V. Malhotra was the General Manager of SEML at the relevant time.

f) 90% of the shares of SEML were held in the names of Mr. Sushil Ansal and Mr. Gopal Ansal.

g) SEML had a security services contract with A-Plus Security Agency to supply the latter with manpower.

h) Mr. Anoop Singh was the Chairman of A-Plus Security Agency at the relevant time.

i) Fluid was applied in the wages' register of A-Plus Security Agency over the name and remuneration paid to Mr. Dinesh Chand Sharma, and instead, a fictitious name and lower remuneration was written over the same, by Mr. Anoop Singh,

when he came to know about the investigation in the present case. The same is also revealed in the GEQD Report.

(vi) The documents that were destroyed were vital to the case of the prosecution in the Main Uphaar Trial, inasmuch as, the nature of the documents forming a part of the judicial record, that were destroyed and of the destruction thereof, reveals as follows:

a) The documents demonstrate the control of Mr. Sushil Ansal and Mr. Gopal Ansal over the day-to-day functioning and working of the Uphaar Cinema and their complete financial control over the same.

b) The documents show dereliction of duty on the part of Mr. H.S. Panwar as a Fire Officer of the Delhi Fire Services.

c) The documents demonstrate the collusion between Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar.

d) The documents show that the address of Ansal Properties and Industries Limited is depicted same as that of SEML, demonstrating the connection between Mr. D.V. Malhotra and Mr. Sushil Ansal and Mr. Gopal Ansal.

102. In view of the foregoing material before the Ld. Trial Court, it is abundantly clear that *prima facie*, the ingredients of the offence punishable under section 201 are made out inasmuch as, (a) the actors of the alleged conspiracy were aware of the offences committed by Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar and the prosecution against the latter by way of the Main Uphaar Trial; (b) disappearance of the evidence of the commission of the offences that were being prosecuted in the Main Uphaar

Trial, was caused, with the intention of screening Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar from the legal punishment thereof. [Ref: *Palwinder Kaur* v. *State of Punjab,* reported as AIR 1952 SC 354; *Roshan Lal & ors.* v. *State of Punjab,* reported as AIR 1965 SC 1413]

103. Furthermore, contrary to what has been urged by the revisionists, the ingredients of section 204, IPC would not be attracted to the facts of the instant case, inasmuch as, in the present case, *inter alia,* the alleged act is causing disappearance of evidence. However, under the provisions of section 204, IPC, the punishable act is the destruction of a document which is yet to be produced as evidence before a court of law.

104. Furthermore, in view of the material as elaborated in the preceding paragraphs, it has been established that *prima facie* the ingredients of the offence punishable under section 409, IPC are made out, inasmuch as, (a) Mr. Dinesh Chand Sharma was entrusted with the dominion and physical custody of the judicial file in the Main Uphaar Trial. Allegedly, he received the said file from his predecessor in intact and good condition, after proper checking of the judicial record; (b) the act of destruction of the documents forming part of the said judicial file, is indicative of the fact that the disposal of the entrusted judicial file was in blatant violation of the mandate of law, thereby constituting criminal breach of trust. [Ref: *Ram Narain Popli* v. *CBI (supra)*]

105. Next, on a bare reading of the material relied upon by the Ld. Trial Court, it has also been *prima facie* established that with regard to the offence punishable under section 109, IPC, all the essential ingredients are made out in the instant case, inasmuch as, (a) Mr. Sushil Ansal, Mr. Gopal Ansal and

Mr. H.S. Panwar, are alleged to have instigated each other as well as the other actors in the conspiracy to further the object of the conspiracy; (b) all the actors in the conspiracy have committed offences in furtherance of the instigation; (c) the acts of commission and omission by the actors are, in fact, offences punishable under the sections 201, 409 of the IPC.

106. Coming now to the offence of conspiracy. The argument of the revisionists that the conspiracy came to an end when the conspiracy was frustrated, i.e., when the fact of the destruction of documents was brought to the knowledge of the concerned court, cannot be countenanced, inasmuch as, the object of the conspiracy was not the destruction of the documents, per se.

107. It is in fact, evident from the material hereinabove elaborated, that *prima facie* the object of conspiracy was to secure, favourable orders and the acquittal of Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar, by employing illegal means. Therefore, all acts of commission and omission, done in furtherance of the object of the conspiracy, can be considered to form a part of the same offence of the alleged conspiracy. [Ref: *State* v. *Nalini (supra)*]

108. In this regard, it is also trite to observe that, it is not necessary that all the actors in the conspiracy must have joined the offence from its very inception. Conspiracy is a continuing offence and the acts of the persons who join the conspiracy at a later point in time, in furtherance of the object thereof, form a part of the same offence of conspiracy. [Ref: *State* v. *Nalini (supra); Yakub Abdul Razak Memon* v. *State of Maharashtra (supra), Leo Roy Frey (supra)*]

109. Therefore, it follows that the acts allegedly committed in furtherance of the objective of the conspiracy include, (i) the act of destruction of the documents forming a part of the judicial file, which were vital to the case of the prosecution in the Main Uphaar Trial as against Mr. Sushil Ansal, Mr. Gopal Ansal and Mr. H.S. Panwar; and (ii) providing a job to Mr. Dinesh Chand Sharma, in order to 'take care' of him in lieu of his role in the conspiracy.

110. In view of the foregoing, the argument of the revisionists that the acts of commission and omission by Mr. D.V. Malhotra and Mr. Anoop Singh, did not form a part of the same alleged conspiracy, does not hold water and is thus, rejected.

111. Furthermore, in *Yakub Abdul Razak Memon (supra)*, it has been observed that no direct communication may exist between the accused of a conspiracy and there might be intermediaries for facilitating the commission of offences. Therefore, the submission advanced by the revisionists that no direct contact existed between Mr. Sushil Ansal & Mr. Gopal Ansal and Mr. Dinesh Chand Sharma, is rendered nugatory, inasmuch as, allegedly, contact between Mr. Sushil Ansal & Mr. Gopal Ansal and Mr. Dinesh Chand Sharma, was established through Mr. P.P. Batra.

112. It is thus pertinent to note that there is a recognizable difference between the object of the alleged conspiracy and the means adopted to realise that object, as observed in the preceding paragraphs. It is not necessary that all the acts committed in furtherance of the object of a conspiracy, be acts that are punishable offences under law. In the instant case, the acts, of providing a job to Mr. Dinesh Chand Sharma; and of paying

him a higher sum as remuneration, are not acts that are offences in themselves, yet the same are essential elements forming a part of the circumstantial evidence to prove the offence of conspiracy.

113. There are two branches of evidence in a criminal case, direct evidence and circumstantial evidence. In relation to the often-reviled circumstantial evidence, the American philosopher and author, Mr. Henry David Thoreau, [Journal, November 11, 1850] wrote as follows:

> *'Some circumstantial evidence is very strong, as when you find trout in the milk.'*

114. If we had lived in Thoreau's time, when there were no health department regulations and consumer protection agencies to oversee the contents of milk and when it was a common practice by milk suppliers to increase the volume of the milk by adding water, we would have well understood that a trout in our milk would strongly suggest that our milk supplier had added water from a nearby stream. These are the natural inferences which Courts are called upon to draw on the basis of circumstantial evidence. Cases of direct evidence, on the other hand, are as plain as the nose on one's face. Whatever one perceives with any of his physical senses is direct evidence and every other piece of evidence is circumstantial.

115. Conspiracy is an offence that is hatched in secrecy and more often than not, it is proved by circumstantial evidence. The overwhelming judicial opinion is that a conspiracy, as in the instant case, can be proved by circumstantial evidence as mostly having regard to the nature of the

offending act, no direct evidence can be expected. [Ref: *State of Karnataka* v. *Selvi J. Jayalalitha (supra)*]

116. On the basis of the above discussion, in my view, prima facie, there was sufficient ground for proceeding against the accused. Further, there is adequate material for presuming that the accused had committed the offences for which they have been charged. Therefore, the Ld. Trial Court cannot be faulted for forming a presumptive opinion regarding the existence of the factual ingredients constituting the offences alleged, and for the framing of charges on the basis of a strong suspicion founded on the material hereinbefore elaborated.

117. In this behalf, it is axiomatic to state that the standard of proof normally adhered to at the final stage, is not to be applied at the stage of framing of charges. In my opinion, the probative value of the material on record could not be gone into at this stage. Whether, in fact, the accused has committed the offences, can only be decided in the trial.

118. Resultantly, the second issue that arose for determination is answered in the negative and against the revisionists.

119. Before parting with this order, it would be necessary to deal with the other contentions made on behalf of the revisionists.

120. The Economic Offences Wing of the Delhi Police was directed by this Court vide order dated 05.05.2006, (modified by way of order dated 25.05.2006) rendered in Crl. M.2229 of 2006, to register a case under appropriate provisions of law with regard to the incident of removal/tampering with/mutilation of documents from the judicial record of the Main Uphaar Trial. Consequently, FIR bearing no. 207/2006 was

registered on the basis of a complaint made by Mr. Krishnamurthy, the General Secretary of the AVUT.

121. The revisionists have challenged the legality and validity of the FIR No. 207/2006 and the proceedings pursuant thereto, on the ground that the same was registered on the basis of a complaint made by the General Secretary of the AVUT. The principle of law in *State of Punjab* v. *Davinder Pal Singh Bhullar & ors. (supra)*, sought to be relied upon in this behalf, does not come to the aid of the revisionists, inasmuch as, in that case, the order of the High Court directing investigation to the CBI was declared to be a nullity on the grounds of, (i) judicial bias; (ii) want of jurisdiction by virtue of application of the provisions of Section 362 CrPC coupled with the principles of constructive res judicata; and (iii) the Bench had not been assigned the roster to entertain the petitions under Section 482 CrPC.

122. Per contra, in the instant case, (i) neither the legality and validity of the order dated 05.05.2006 has been assailed on the ground of any judicial bias or, for an error or want of jurisdiction; and (ii) more importantly, nor has it been alleged that the investigation has not been conducted in accordance with law. Therefore, a baseless technical plea, *qua* the registration of the FIR on the basis of a complaint by a specific person, does not amount to vitiating the FIR and the proceedings pursuant thereto.

123. Consequently, this bald contention made on behalf of the revisionists is frivolous, devoid of any merit and thus, rejected.

124. The revisionists have sought to advance an untenable argument, that in order to frame charges against the accused persons, the Ld. Trial Court ought not to place any reliance on the facts, circumstances and inferences from the

Main Uphaar Trial. In support thereof, the revisionists have relied upon the decision in *Mithulal & anr.* v. *State of Madhya Pradesh (supra)*. A perusal of the said decision, would show that the same is not attracted to the instant case, inasmuch as, in that case, the evidence recorded in a so-called 'cross-case' was relied upon by the High Court to reach its decision. It is needless to state that case is only an authority for what it actually decides, and not for what logically follows from it. (Ref: Lord Halsbury in *Quinn* v. *Leathem*, 1901 AC 495). The present factual matrix however, is starkly distinguishable, inasmuch as, allegedly, the conspiracy was initiated into action at the time of the conduct of proceedings in the Main Uphaar Trial and, furthermore, with the motive to affect the lawful and fair decision to be rendered therein.

125. To controvert this argument, Mr. Dayan Krishnan, learned senior advocate, has placed reliance on the decision in *State of Kerala* v. *Babu (supra)*, wherein, it has been held that it is permissible for the Court to rely upon the statements forming a part of the case diary of another case, in order to contradict a witness, subject however, to the bar operating under the provisions of sections 162 of the CrPC and 145 of the Evidence Act.

126. In respect to this argument canvassed on behalf of the revisionists, it is observed that a bare reading of the Evidence Act and in particular, sections 5, 80, 145, 155 and 157 thereof as well as the rules governing the law of evidence, clearly permit the evidence or statements recorded in the Main Uphaar Trial to be exhibited as evidence during the course of the trial in the present case, and any objection thereto could be raised by the revisionists at the appropriate stage.

127. It is noted that the prosecution proceeded to lead secondary evidence in the Main Uphaar Trial *qua* the documents which were destroyed from the judicial record. In this regard, it would be relevant to observe that the revisionists cannot, for a moment, be heard to say that since the prosecution eventually led secondary evidence in the Main Uphaar Trial, *qua* the documents which were destroyed from the judicial record, the proceedings thereof were not hampered by the destruction of the said documents. This submission is specious, self-serving & cannot be countenanced, and is thus, outrightly rejected.

128. Challenge has also been made by the revisionists to the admissibility of the disclosure statement of Mr. Dinesh Chand Sharma. However, the decision rendered in *Pulukuri Kottaya (supra)*, the *locus classicus* with regard to the interpretation of Section 27, Evidence Act would render this challenge nugatory.

129. In *Pulukuri Kottaya (supra)* and in *Navjot Sandhu (supra)*, which also discusses the ratio enunciated in the former, the following principles of law with regard to section 27 of the Evidence Act were enunciated:

(i) The term 'fact', employed in section 27 of the Evidence Act, embraces within its fold, both the physical object as well as the mental element in relation thereto.

(ii) The important condition of the said provision is that only 'so much of the information' as relates *distinctly* to the fact *thereby* discovered is admissible. The rest of the information has to be excluded.

(iii) The expressions 'so much of the information', as employed in the said provision, refer to that part of the information supplied by the accused which is the *direct* and *immediate* cause of the discovery.

(iv) The extent of the information admissible must depend on the exact nature of the fact discovered to which such information is required to relate.

(v) The reason behind this partial lifting of the ban against confessions and statements made to the police, is that if a fact is actually discovered in consequence of the information given by the accused, it affords some guarantee of truth of that part; and that part only, which was the clear, immediate and proximate cause of the discovery. No such guarantee or assurance attaches to the rest of the statement which may be indirectly or remotely related to the fact discovered.

130. In light of the foregoing legal position, it is abundantly clear that the disclosure statement of Mr. Dinesh Chand Sharma would *prima facie* at this juncture be considered to be admissible under the provisions of section 27 of the Evidence Act, to the extent of the information contained therein that has led to the discovery of the facts, material to the instant case, as per the case of the prosecution.

131. Furthermore, the revisionists have sought to urge that there exist discrepancies in the statements by Mr. Anokhe Lal and Mr. Shiv Raj Singh recorded under section 161, CrPC. The decision in *Ashok Kumar Nayyar* v. *State (supra)* has been relied upon in this behalf.

132. However, the decision in *Ashok Kumar Nayyar*, is not attracted to the factual matrix of the present case, inasmuch as, in that case, the statements of

the informant and material witnesses gave two completely different pictures of the incident in question and hence this Court set aside the order on charge.

133. Per contra, in the present case, the revisionists have failed to demonstrate how the alleged contradictions in the statements by Mr. Anokhe Lal and Mr. Shiv Raj Singh, would at this stage, belie the allegations levelled by the prosecution against the accused. That determination can only be made at the ensuing trial.

134. In keeping with the principles of law laid down in *Amit Kapoor* v. *Ramesh Chander (supra)*, as discussed in the preceding paragraphs hereinabove, this is not the stage where this Court ought to delve into the probative value of evidence. In view thereof, this unsubstantiated assertion made on behalf of the revisionists cannot be accepted.

135. Next, it has been the contention of the revisionists that since Mr. Anokhe Lal and Mr. Shiv Raj Singh, are unpardoned accomplices, their statements could not have been considered in order to frame charges and further, that Mr. Anokhe Lal and Mr. Shiv Raj Singh also ought to be made accused in the present case.

136. It is needless to state that the prosecution has the right to examine any person, including an unpardoned co-accused, as a witness.[Ref: *Laxmipat Choraria* v. *State of Mahrashtra,* reported as AIR 1968 SC 938]

137. Therefore, in the event this Court were to accept the argument of the revisionists that Mr. Anokhe Lal and Mr. Shiv Raj Singh are unpardoned accomplices, an order to try these decoy witnesses along with the co-accused, will render the aforesaid right of the prosecution inconsequential.

138. Furthermore, non-joining of the persons is not a ground for quashing the charge. After framing the charge and recording the evidence, if the Court finds that other persons were also involved, it is always open to the Court to exercise its power under Section 319 of the CrPC. [Ref: *State of M.P.* v. *S.B. Johari (supra)*]

139. Therefore, in view of the foregoing, the argument *qua* the impermissibility of considering the statements of unpardoned accomplices as witnesses, as well as the argument that they ought to be also made accused in the present case, is misfounded at this juncture and accordingly, rejected.

140. The argument of the revisionists that no criminality has been attributed to the acts of Mr. Dinesh Chand Sharma in the inquiry report dated 30.04.2004, is also misfounded in law, on account that the findings in a departmental proceeding are not binding upon a Court. The Court is vested with ample powers to go beyond the findings of a departmental disciplinary proceeding initiated against a person. This Court in all its wisdom, owing to the glaring fact of destruction of documents and evidence in the judicial file of the Main Uphaar Trial, when the proceedings were ongoing, was compelled to issue directions to the Economic Offences Wing of the Delhi Police to investigate the matter.

141. Thus, the argument that since no *mens rea* was found in the said inquiry report, the offence of conspiracy cannot be made out against the other co-accused persons herein, is frivolous and misfounded in law. It is thus rejected.

142. It has also been urged that the alleged destruction of documents did not, in fact, benefit the accused persons, in any manner and therefore, the

object of conspiracy was not achieved. This submission is eminently untenable and in the teeth of the well-settled position of law that the offence of conspiracy is independent of its fruition, as discussed in the preceding paragraphs. [Ref: *Yakub Abdul Razak Memon* v. *State of Maharashtra (supra)*]

143. Challenge to the impugned order has also been made with regard to the mandate of the provisions under section 211, 212, 213 of the CrPC. A perusal of the impugned order reveals that the compliance with the mandate of the provisions under section 211, 212, 213 of the CrPC, has been made, inasmuch as:

a) The impugned order specifies the *modus operandi* and object of the alleged conspiracy between the six persons against whom charges have been framed.

b) The time period with respect to hatching of the alleged conspiracy, and commission of the acts in furtherance of the object of the conspiracy have been elaborated in the impugned order.

c) The impugned order clearly specifies the documents in respect of which the charges for the offences punishable under section 409, 201, 120-B, 109 of the IPC have been framed.

144. The decision in *Neelu Chopra & anr.* v. *Bharti (supra)* relied upon by the revisionists in this behalf, does not come to their aid, inasmuch as, in that case, the Hon'ble Supreme Court found that the complaint was vague and devoid of any particulars of the offences allegedly committed by the accused persons and also with respect to their role in the crime. In the present case, however, as is elaborated hereinabove, the offences alleged to have been

committed by the accused as well as their role in the crime alleged to have been committed, has been clearly spelt out in the impugned order.

145. In view of the foregoing, the submission of the revisionists that the impugned order is unsustainable in law, inasmuch as, the same is rendered without compliance to the relevant provisions of the CrPC, is meritless and thus, rejected.

146. In *Amit Kapoor* v. *Ramesh Chander (supra)*, the Hon'ble Supreme Court clearly enunciated that the revisionial powers could be exercised only when it was considered absolutely essential so to do, in order to prevent patent miscarriage of justice or to correct some grave error. It further postulated that the High Court, whilst exercising revisional jurisdiction should be loath to interfere at the threshold to throttle the prosecution in exercise of its powers. The High Courts were directed not to interfere unduly, or to determine whether there was sufficient material to conclude that the case would end in a conviction. The Courts were further directed, at the stage of framing of charges, to be concerned primarily with, whether the allegations taken as a whole would constitute the commission of an offence. The Courts were also instructed to be more inclined to permit the continuation of prosecution, rather than venture into the realm of a full-fledged appreciation of evidence.

147. For the reasons aforesaid, I am of the opinion that the Ld. Trial Court proceeded correctly, in exercise of its powers, to frame charges against the revisionists. The material on record gives rise to strong suspicion that the accused persons had committed the offences for which the charges were framed against them by way of the impugned order.

148. Consequently, there exist no circumstances to warrant interference with the impugned order by this Court in exercise of its revisional jurisdiction.

149. The present revision petitions are accordingly dismissed, with no order as to costs.

150. The Ld. Trial Court is directed to proceed further with the trial, in accordance with law.

151. The Trial Court Record be sent back, forthwith.

SIDDHARTH MRIDUL, J

MAY 12, 2017
dn/sb