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

Reserved on: 14th March, 2024
Pronounced on: 30th May, 2024

\+ CRL.REV.P. 745/2023 & CRL.M.A. 18447/2023 (Stay)

SH. ASHOK KUMAR SINGH ..... Petitioner

Through: Mr. N. Hariharan, Senior Advocate with Mr. Ajeet K. Singh, Mr. Kumar Sameer, Mr. Shrish Kohli, Ms. Punya Rekha Angara, Mr. MP Singh and Mr. Mueed Shah, Advocates.

versus

STATE OF NCT OF DELHI ..... Respondent

Through: Mr. Amit Ahlawat, APP for State with Inps. Surendra Singh, AEKC/Crime Branch.
Mr. H.S. Phoolka Senior Advocate with Ms. Kamna Vohra and Ms. Shilpa Dewan, Advocates for complainant.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Section 397 read with Section 482 of the Criminal Procedure Code, 1973 ('CrPC') assails the order dated 13.03.2023 whereby an application of the petitioner under Section 227 of Cr.P.C was dismissed by the learned Additional Sessions Judge–02, South District, Saket Court, New Delhi in SC 54/2020 arising from FIR No. 227/2019 under

Sections 307/471 read with Section 120-B of the Indian Penal Code, 1860 ('IPC') registered at PS Hauz Khas, and the learned ASJ ordered the framing of charges and charged the petitioner under Sections 307/471 read with Section 120-B of IPC *vide* order on charge dated 20.04.2023.

BACKGROUND

2. The brief facts, necessary for the disposal of the present petition are as under:

i. The complainant was working as a Chairman in Steel Authority of India Limited ('SAIL') and, on 07.08.2019, at around 10:30 PM, the complainant was returning back home from his office in his car driven by his driver when he noticed that a silver-colored car was following his car and attempted to overtake and intercept his car.

ii. Thereafter, the complainant's car was intercepted at Kranti Marg, Opp. Ansal Plaza and Lalit Kumar (accused no.1), Amarjeet Singh (accused no.2), Pravesh Kumar (accused no.3) and Om Prakash Sharma (accused no.4) got down from their car and assaulted the complainant and his driver.

iii In the meantime, police personnel of PS Defence Colony during their routine patrolling reached the spot and apprehended accused no. 1 and accused no. 2 on the spot, however, the other two accused fled from there. Subsequently, the complainant was medically examined, and the present FIR was lodged at PS Hauz Khas under Sections 307 and 34 of the IPC.

iv. During the course of the investigation, disclosure statements of accused no. 1 and accused no. 2 were recorded, based on which, the

police suspected a conspiracy angle in the present case. Thereafter, accused no. 3, accused no.4, accused no. 5 (Satender @ Chhutku) and accused no. 6 (Sunil Kumar Balhera) were taken into judicial custody.

v. The investigation of the present case was transferred to STF/ Crime Branch PS Hauz Khas and subsequently a chargesheet for offences under Sections 307/120-B/34 of the IPC and Section 25 of the Arms Act was filed against the present petitioner and other accused persons. It is alleged in the chargesheet that prior to the incident accused no. 4, accused no. 5 and accused no. 6 had conducted a recce of the complainant's route to work. It is further alleged that, on the day of the incident, accused no.1, accused no.2, accused no.3 and accused no.4 followed the complainant's car after receiving a signal from accused no.5 and accused no.6.

vi It is also alleged in the chargesheet that the role of the present petitioner came to light on the arrest and disclosure statement of accused no.6 dated 27.08.2019. It is further alleged in the supplementary chargesheet dated 25.11.2022 that, on 01.09.2017, SAIL (the purchaser) and Sonam Trading FZC, a UAE based company (the seller), entered into an Agreement for the sale and purchase of 75,000 metric tons of coking coal. That the agreement was signed by Sh. Anand, who is the son of the petitioner, acting as the Authorized Representative of Sonam Trading FZC. Since the coal did not meet the required specifications and the payment regarding the same was stuck, the petitioner held the complainant responsible and, therefore, had a motive to commit the alleged offences.

vii. Thereafter, the petitioner filed an application for discharge under Section 227 Cr.P.C., however, the same was dismissed and an order on charge and framing of charge dated 13.03.2023 and 20.04.2023 respectively was passed by the learned ASJ against the petitioner under Sections 307 and 471 read with Section 120-B of IPC.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. Learned Senior Counsel appearing on behalf of the petitioner submitted that the learned Trial Court in the impugned order has erred by framing charges against the petitioner as it is merely based on three aspects, which are as follows:

A) Disclosure statement of a co-accused.

B) Call detail records of the petitioner.

C) Privy to a coal deal.

4. Learned Senior Counsel appearing on behalf of the petitioner pointed out that as per the provisions of Section 27 of The Indian Evidence Act, the charge of conspiracy by the present petitioner cannot be based merely on the disclosure statement of a co-accused. Even for framing charge, *prima facie*, some other evidence must be brought on record. To establish the aforesaid, reliance was placed on the judgment of **Vipin Singh @ Vishwaraj Singh v. State of Madhya Pradesh, decided by learned Single Judge of High Court of Madhya Pradesh at Jabalpur on 09.06.2020 in Criminal Revision No. 1137/2019,** wherein it was held as under**:**

> "13. On perusal of the record, it is evident that petitioner was involved as an accused in this case on the basis of disclosure

statement of co-accused Alok Yadav. The Investigating Officer has not collected any incriminating evidence against the petitioner accused at the instance of himself or otherwise. The fact remains that only evidence against the petitioner is the disclosure statement of co-accused Alok Yadav. It is settled law that on the basis of disclosure statement of co-accused charge cannot be framed. In this regard in the case of **Prakash Singh Vs. State of M.P. MPWN 1994 (2) 72** has held as under:-

*"*The statement admissible under Section 27 of the Evidence Act are the statements which could be used as evidence against the maker and not against any other person. Under section 27 only portions of information given by an accused which are admissible are those which relate distinctly to the facts discovered thereby. Consequently statements by an accused which do not relate to aforesaid facts but involve other accused are inadmissible under Section 27 against the later. In the case under the memorandum recorded of the two accused persons, a skeleton was recovered. However, the statement given by the two accused persons that the applicant had also accompanied them and had helped them in the burial of the dead body is not an admissible piece of evidence and thus the applicant cannot be roped in along with other accused persons by virtue of the statement given under Section 27 of the Evidence Act, nor he can be said to be a person on whose information the skeleton of the child was recovered. No other evidence was pointed out by the counsel for the State whereby it could be said prima facie that there is legal evidence on record to implicate the applicant in the commission of the offences charged against him."

5. Learned Senior Counsel also submitted that the son of the petitioner is an authorized signatory and not a beneficiary of the aforesaid coal deal. It was further contended that the learned Trial Court has also failed to appreciate that the petitioner had no financial interest in the coal deal.

6. Learned Senior Counsel pointed out that there is not even a single witness deposing against the petitioner in their statement recorded under Section 161 Cr.P.C by the respondent before the learned Trial Court.

7. Learned Senior Counsel submitted that call detail records alone cannot be relied upon for proving conspiracy or framing charges. Moreover, in the absence of any transcription related to the alleged conversations, the evidence lacks probative value. It was further submitted that the impugned order fails to appreciate the judgment of the Hon'ble Supreme Court in **Babubhai Bhimabhai Bokharia and Anr. v. State of Gujrat and Ors., (2014) 5 SCC 568**. Attention of this Court was drawn to Para 21 of the judgment, wherein the Hon'ble Supreme Court clarified that in the absence of contents of the conversation, CDR's alone cannot be sufficient to establish complicity in the crime. In paragraph 21 of the said judgment it has been observed and held as under:

> "21. The other evidence sought to be relied for summoning the appellant is the alleged conversation between the appellant and the accused on and immediately after the day of the occurrence. But, nothing has come during the course of trial regarding the content of the conversation and from call records alone, the appellant's complicity in the crime does not surface at all."

8. Learned Senior Counsel pointed out that there is no evidence on record to corroborate the disclosure statements of the co-accused persons. It was also submitted that the learned Trial Court has failed to appreciate the multiple contradictions in the disclosure statements of the co-accused persons. Reliance was placed by the Learned Senior Counsel on the Hon'ble Supreme Court's judgment in **Dipakbhai Jagdish Chandra Patel v. State of Gujarat & Anr, (2019) 16 SCC 547 (Para 8 and Para 23)**. Further, it was pointed out that the learned Trial Court has failed to appreciate the ratio in the aforesaid judgment wherein the Hon'ble Supreme Court has held that the disclosure statement of co-accused persons made before the police cannot

have evidentiary value, and solely on the basis of the same, charges shall not be framed.

9. Learned Senior Counsel submitted that the Respondent has failed to establish how the alleged conspiracy was hatched in furtherance of which the alleged incident took place. Reliance was placed on the judgment of the Coordinate Bench of this Court in **Satyapal Singh v. The State (NCT of Delhi), 2018 SCC Online Del 7905,** wherein the essential ingredients required to establish the offence of criminal conspiracy were discussed. It was submitted that the present case does not fall within the following categories as enumerated in the said judgment:

> "70. In Gularri Sarbar v. State of Bihar (now Jharkhand) 2014 Crl. L.J 34, the Supreme Court explained: "The essential ingredients of criminal conspiracy are (i) an agreement between two or more persons; (ii) agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. What is, therefore, necessary is to show meeting of minds of two or more persons for doing or causing. to be done an illegal act or an act by illegal means. Mere knowledge or discussion or generation of a crime in the mind of the accused, is not sufficient to constitute an offence……"

10. Learned Senior Counsel placed reliance on the following judgments:

i. **Union of India v. Prafull Kumar Samal & Anr, AIR 1979 SC 366, (Para 10) and Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 (Para 12) and Satish Mehra v. State (NCT of Delhi), (2012) 13 SCC 61 (Para 21):** Reliance was placed on the said judgments of the Hon'ble Supreme Court to submit that broad probabilities of the case should be considered, while exercising jurisdiction under Section 227 Cr.P.C., and the Court should not

merely rely on the submissions of the prosecution, if grave suspicion has not been raised against the accused, the Court will be fully justified in discharging the accused. Learned Senior Counsel further submitted that conducting trial without any direction or purpose on some conjecture has been held impermissible in the said judgments.

ii. **Afzal v. State of M.P., 2019 SCC OnLine MP 6421 (Para 24)**: Reliance was placed on the said judgment to establish that disclosure statement leading to no recovery is inadmissible as evidence against the co-accused.

iii. **Savitri Periyaswami Devendra v. State of Maharashtra and Anr., 2018 SCC OnLine Bom 5909 (Para 9 and 11), Dr. N.M. Veeraiyan v. State, 2022 SCC OnLine Mad 103 (Para 22) and Pradeep Sharma v. State of M.P., CRR No. 1789/2020 decided by learned Single Judge of Madhya Pradesh High Court Bench at Indore on 14.08.2020 (Para 9, Para 10, Para 11, Para 14 and Para 15):** Reliance was placed on the said judgments to contend that disclosure statement of a co-accused is insufficient to frame charges against the accused and it cannot be solely relied upon to proceed against the co-accused.

iv. **Arvind Kumar Jain v. State of Rajasthan, 2015 (2) RLW 1498 (Raj.) (Para 12 and Para 13), Faim v. State of Maharashtra, 2015 SCC OnLine Bom 5842 (Para 14), Mohammed Rashid Kunju v. State of Maharashtra and Anr., 2015 SCC OnLine Bom 710 (Para 12, Para 13 and Para 14) and Azad v. State (NCT Of Delhi), 2023 SCC OnLine Del 710**: Reliance was placed on the said

judgments to submit that Call Detail Record are not sufficient enough in itself to sustain conviction and cannot be relied upon solely to prove the complicity of the accused. Further, reliance was also placed on the judgment of this Court in **Shyam Gupta and Ors v. State, 2023 SCC OnLine Del 1490,** to support the aforesaid contention.

SUBMISSIONS ON BEHALF OF THE STATE

11. Learned APP for State assisted by learned Senior Counsel for complainant have submitted that there is sufficient material on record to frame charge against the accused persons. It is further submitted that the assault on the complainant was a pre-meditated one arising out of a well hatched conspiracy. It is also pointed out that the petitioner was disgruntled with the complainant who being the Chairman of SAIL had stopped the payment for sub-standard coal supplied by the son of the petitioner.

12. Learned APP for State assisted by learned Senior Counsel for complainant have further submitted that recoveries pursuant to the disclosure statements have been made in the present case. It is further submitted that had the patrolling party not reached the spot by chance, the complainant would have been killed.

13. On behalf of the State reliance was placed on the following judgments:

i. **State (NCT of Delhi) v. Shiv Charan Bansal & Ors with Kanta Devi v. State (NCT of Delhi) & Ors., (2020) 2 SCC 290 (Para 48 and Para 49) and Vibhuti Thakur v. CBI, 2021 SCC OnLine Del 4881 (Para 15 and Para 17-21):** Reliance was placed on the said judgments to demonstrate that conspiracy is primarily proved by circumstantial

evidence by taking into account the cumulative effect of the circumstances indicating the guilt of the accused and not isolating the role played by the accused. Further a tacit understanding between the conspirators for the execution of the common illegal object is sufficient to establish criminal conspiracy.

ii. **State of Gujarat v. Dilipsinh Kishoresinh Rao, 2023:INSC:894:** Reliance was placed on the said judgment to point out the principles to be considered for exercise of jurisdiction under Section 397, particularly in the context of prayer for quashing of charge.

iii. **Mehboob Ali & Anr. v. State of Rajasthan, (2016) 14 SCC 640 (Para 18) and Siju Kurian v. State of Karnataka, 2023 SCC OnLine SC 429:** Reliance was placed on the said judgments to submit that those components or portions of the disclosure statement which were the immediate cause of the discovery would be admissible as evidence.

iv. **Santokh Singh v. State of NCT of Delhi, 2011:DHC:3973:** Reliance was placed on the said judgment to submit that in certain circumstances Call Detail Records are sufficient to create a strong suspicion based on which the accused may not be discharged.

v. **Natwarlal Sakarlal Mody v. The State of Bombay, 1961 SCC OnLine SC 1:** Reliance was placed on the said judgment to demonstrate the quantum of evidence necessary to establish a prima-facie conspiracy.

REJOINDER

14. Learned Senior Counsel submitted that Sh. Anand the son of the petitioner only signed the agreement in the capacity of Authorized Representative of Sonam Trading FZC and had no other financial interest involved in the aforesaid agreement.

15. Learned Senior Counsel further submitted that the dispute arising out of the aforesaid agreement had already been referred to Arbitration in ICC Arbitration Case No. 23597/PTA/HTG between SAIL (India) (claimant) and Sonam Trading FZC (United Arab Emirates) (respondent) and, therefore, complainant had no further role to play in respect of the said deal and assaulting the complainant would not have served any purpose.

ANALYSIS AND FINDINGS

16. Since the present petition challenges the legality and propriety of the impugned order on charge dated 13.03.2023, the relevant paragraphs of the said order are being reproduced below:-

> "7. I have considered the rival contentions.
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> 8. Framing of charge has been opposed by Ld. Counsel for the accused persons primarily on the ground that charge-sheet has been filed on the basis of disclosure statements of the accused persons and CDRs.
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> 9. Section 27 of Indian Evidence Act, 1872 provides as follows:-
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> > *"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."*

10. In Judgment dated 05.02.2004 in Appeal (Crl.) 1105 of 1997 titled as Anter Singh Vs State of Rajasthan, the Hon'ble Supreme Court of India held as follows :

> *"11. The scope and ambit of Section 27 of the Evidence Act were illuminatingly stated in Pulukuri Kotayya v. Emperor AIR 1947 PC 67 in the following words, which have become locus classicus: (AIR p.70, para 10) '*
>
> *"It is fallacious to treat the 'fact discovered' within the section as equivalent to the object produced; the fact discovered embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact. Information as to past user, or the past history, of the object produced is not related to its discovery in the setting in which it is discovered. Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the information to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which stabbed A', these words are inadmissible since they do not related to the discovery of the knife in the house of the informant."*

11. Regarding Section 27 of the Indian Evidence Act, 1872, it has been held by Hon 'ble Supreme Court of India in Jaffar Hussain Dastagir Vs State of Maharashtra, AIR 1970 SC 1934 that *the essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some*

offence. The embargo on statements of the accused before the police will not apply if all the above conditions are fulfilled.

12. Coming to the facts of the present case, the chargesheet discloses that on 07.08.2019 at around 10:30 PM, accused Lalit, Amarjeet, Om Prakash and Pravesh followed the complainant Sh. Anil Kumar Choudhary, Chairman, Steel Authority of India Ltd. (SAIL) who was returning home for his office in his car make Toyota Corolla bearing registration number DL-14CD-040 1 being driven by his driver Sh. N. K. Pathak. The accused persons started following him in one silver coloured car make Honda City bearing registration number DL-4CAB-0408 from the moment when complainant left his office and intercepted his car after overtaking it. They also tried to hit the car of the complainant in their bid to stop it. The charge-sheet shows that the front right door and right motorguard of the complainant's car got scratched and silver paint of the car of the accused persons was found at those places.

13. After obstructing the complainant's car, the above-said four accused persons got down from their car and attacked the complainant and his driver who had also come out of their own car. One of the assailants was carrying iron rod in his hand. The complainant was also hit on his head with the iron rod. Since the complainant dodged the same, the iron rod hit him on his shoulder. The assailants also hit the complainant on his legs with iron rod. The MLC of the complainant would show that the complainant suffered simple blunt injuries i.e. *Swelling LT shin and Abrasions RT hip, medial side of RT knee, LT knee medial aspect, LT shin*. When complainant raised alarm, one of the assailants took out a paper cutter from his car and tried to cause injury on his neck. The complainant somehow saved himself. This pre-meditated assault could have taken an ugly turn had the patrolling staff of PS Defence Colony not reached the spot by chance.

14. While accused Lalit and Amarjeet were caught on the spot, the other two accused fled from there. The identities of the other two assailants were disclosed to be Om Prakash Sharma and Pravesh Kumar. After arrest, accused Om Prakash refused his TIP. Even though Sh. N.K. Pathak, driver of the complainant could not identify accused Pravesh Kumar during TIP but the complainant identified him in the police station as one of the assailants. Accused Pravesh Kumar had refused the subsequent TIP proceedings pursuant to which complainant identified him in the police station. The complainant also identified accused Om

Prakash in the police station as the one who had inflicted injuries on him with iron rod. The complainant also identified accused Lalit as the one who had tried to inflict sharp injuries on his neck with a paper cutter. Accused Amarjeet had beaten up the complainant and gave kick blows and fist blows to him.

15. The investigation further disclosed that accused Om Prakash was carrying a country made pistol at the time when he and the above-said three co-accused were following the complainant's car. The country made pistol with one live round was also recovered at the instance of accused Om Prakash on 11.08.2019. Paper cutter and iron rod were recovered from the spot on 08.08.2019. The car used by the four assailants was found to be a stolen car in respect of which an e-FIR No. 009411 dated 16.03.2019 u/s 379 IPC PS Sarai Rohilla had been registered. The actual registration number of the said car was DL-3C4K-5626 and was used by the accused persons under a fake number plate bearing registration no. DL-4CAB-0408.

16. Mobile phone of accused Lalit was seized on 08.08.2019 and it was found containing a photograph of the complainant's car clicked on 01.08.2019.

17. The entire actual conspiracy came to the fore after the investigation of the case was transferred to STF /Crime Branch. It came to light that accused Sunil Kumar Balhera, accused Satender @ Chhutku and accused Om Prakash entered into a conspiracy pursuant to which they conducted recce of the route taken by the complainant from his home to office. On the day of incident, the accused Om Prakash, accused Amarjeet, accused Lalit and accused Pravesh started following the car of the complainant after getting signal from accused Sunil Kumar Balhera and Satender @ Chhutku. For some distance, accused Sunil Kumar Balhera and Satender @ Chhutku also followed them. After the incident when accused Om Prakash and Pravesh fled from the spot, they met accused Sunil Kumar Balhera and Satender @ Chhutku at Ashoka Hotel Petrol Pump.

18. The prosecution has relied upon the CDRs and location charts to show the presence of the accused Satender @ Chhutku and accused Sunil Kumar Balhera on 01.08.2019 and on the date of incident. As part of the conspiracy, photograph of the car of the complainant was taken by Satender @ Chhutku and fowarded to accused Lalit. This photograph was found on the mobile phone of accused Lalit.

19. The CDRs of the accused persons show that from 01.07.2019 to 09.08.2019, accused Om Prakash Sharma and accused Satender @ Chhutku made about 123 calls to each other. Accused Sunil Kumar Balhera and accused Satender @ Chhutku made around 1 09 calls to each other during this period. Around 20 calls were exchanged between accused Ashok Kumar Singh and Sunil Kumar Balhera during this period.

20. The arrest of accused Sunil Kumar Balhera led to the discovery of the fact of conspiracy flowing from accused Ashok Kumar Singh. That accused Sunil Kumar Balhera and Ashok Kumar Singh were known to each other is not disputed. It came to light that son of accused A. K. Singh was involved in transaction of importing about 75,000 metric tonnes of coking coal to be supplied to SAIL. Since the imported coal did not meet the requisite specifications, payment in sum of Rs 80 to Rs 85 Crores was stuck and accused A. K. Singh held complainant Sh. Anil Kumar Chaudhary, Chairman, SAIL responsible for it.

21. Supplementary charge-sheet discloses that m 01.09.2017, an Agreement for Sale and Purchase of 75,000 metric tonne of coking coal was entered into between SAIL (purchaser) and Sonam Trading FZC, UAE, a company incorporated in UAE (seller). This agreement for sale and purchase had been signed by Sh. Anand who is the son of accused Ashok Kumar Singh. Sh. Anand signed the said Agreement in the capacity of Authorized Representative of Sonam Trading FZC. Accused Ashok Kumar Singh was, therefore, not a stranger to this deal so far as the present case is concerned.

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23. It is well settled that a criminal conspiracy is generally hatched in secrecy, and it is difficult to obtain direct evidence. **The disclosure statements of the accused persons in the present case have led to discovery of such facts which prima facie disclose hatching of conspiracy by accused A. K. Singh with accused Sunil Kumar Balhera who further involved other co-accused persons in the said conspiracy. The motive of the conspiracy was to eliminate the complainant who was Chairman, SAIL so that the stuck payment towards the coal deal could be got released through some other officer of SAIL.** This well hatched conspiracy manifested itself in a pre-

meditated physical assault on the complainant. While two assailants were caught on the spot by the patrolling party, the other two assailants Pravesh and Om Prakash were identified later by the complainant. **The investigation led to discovery of conspiracy hatched by accused Ashok Kumar Singh, Sunil Balhera and Satender@ Chhutku pursuant to which complainant was attacked. The CDRs as well as the documents related to the dispute over payment on account of coal supply were also seized during investigation and prima facie corroborate the allegations against the accused persons.**

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25. The circumstances discussed above do not call for discharge of accused Ashok Kumar Singh who has emerged as the main conspirator in the present case. At the stage of framing of charge, a mini trial case not be conducted and the Court is only required to see whether the circumstances on record prima facie give rise to a grave suspicion against the accused persons or not. In Judgment dated 27.01.2010 in Criminal Appeal No. 192 of 2010 (Arising out of SLP (Crl) No. 4708 of 2007) titled asP Vijayan Vs State of Kerala & Anr., Hon 'ble Supreme Court of India has reiterated in this judgment that 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. Whether, in fact, the accused committed the offence, can only be decided in the trial. Charge may 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 therefore. Suspicion alone, without anything more, cannot form the basis therefore or held to be sufficient for framing charge. It was also held that it is immaterial whether the trial would end in conviction or acquittal."

(emphasis supplied)

17. From the above discussion, it appears that learned ASJ proceeded to frame charge against the present petitioner by relying on the disclosure

statement of the co-accused Sunil Kumar Balhara and connection of the present petitioner with the said co-accused by way of call detail records (CDRs). The fact that the son of the petitioner was involved in arbitration proceedings with SAIL and the complainant being the chairman of SAIL was not in favour of releasing the payment towards the coal deal, has been considered as additional circumstance for framing charge.

18. While relying upon the disclosure statement, the learned ASJ came to the conclusion that the said statement of Sunil Kumar Balhera led to discovery of fact, which, *prima facie*, disclosed the hatching of conspiracy by the present petitioner with accused Sunil Kumar Balhera. The learned ASJ observes as under:-

> "23….the disclosure statements of the accused persons in the present case have led to discovery of such facts which prima facie disclose hatching of conspiracy by accused A. K. Singh with accused Sunil Kumar Balhera who further involved other co-accused persons in the said conspiracy….."

19. Reliance was placed by learned Senior Counsel on the judgment of **Siju Kurian v. State of Karnataka**, **2023 SCC OnLine SC 429,** wherein it has been observed and held as under:-

> "**31.** Section 27 permits the derivative use of custodial statement in the ordinary course of events. There is no automatic presumption that the custodial statements have been extracted through compulsion. A fact discovered is an information supplied by the accused in his disclosure statement is a relevant fact and that is only admissible in evidence if something new is discovered or recovered at the instance of the accused which was not within the knowledge of the police before recording the disclosure statement of the accused. The statement of an accused recorded while being in police custody can be split into its components and can be separated from the admissible portions. Such of those components or portions which were the immediate cause of the

discovery would be the legal evidence and the rest can be rejected vide *Mohmed Inayatullah* v. *State of Maharashtra*[6]. In this background when we turn our attention to the facts on hand as well as the contention raised by the accused that the confession statement is to be discarded in its entirety cannot be accepted for reasons more than one. Firstly, the conduct of the accused would also be a relevant fact as indicated in Section 8. This court in *A.N. Venkatesh.* v. *State of Karnataka*[7] has held to the following effect:

"9. By virtue of Section 8 of the Evidence Act, the conduct of the accused person is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact. The evidence of the circumstance, simpliciter, that the accused pointed out to the police officer, the place where the dead body of the kidnapped boy was found and on their pointing out the body was exhumed, would be admissible as conduct under Section 8 irrespective of the fact whether the statement made by the accused contemporaneously with or antecedent to such conduct falls within the purview of Section 27 or not as held by this Court in *Prakash Chand* v. *State (Delhi Admn.)* [(1979) 3 SCC 90 : 1979 SCC (Cri) 656 : AIR 1979 SC 400]. Even if we hold that the disclosure statement made by the accused-appellants (Exts. P-15 and P-16) is not admissible under Section 27 of the Evidence Act, still it is relevant under Section 8. The evidence of the investigating officer and PWs 1, 2, 7 and PW-4 the spot mahazar witness that the accused had taken them to the spot and pointed out the place where the dead body was buried, is an admissible piece of evidence under Section 8 as the conduct of the accused. Presence of A-1 and A-2 at a place where ransom demand was to be fulfilled and their action of fleeing on spotting the police party is a relevant circumstance and are admissible under Section 8 of the Evidence Act.

32. It is a trite law that in pursuance to a voluntary statement made by the accused, a fact must be discovered which was in the exclusive knowledge of the accused alone. In such circumstances, that part of the voluntary statement which leads to the discovery of a new fact which was only in the knowledge of the accused would become admissible under Section 27. Such statement should have been voluntarily made and the facts stated therein should not have been in the knowhow of others. In this background when the deposition of PW-10 is perused it would leave no manner of doubt in our mind that statement of the accused (Ex.P-2) having been recorded being voluntary and when the statement is

being recorded in the language not known to the accused, the assistance of interpreter if taken by the police cannot be found fault with. The ultimate test of the said statement made by the accused having been noted down as told by the accused or not would be of paramount consideration. If the answer is in the affirmative then necessarily said statement will have to be held as passing the test of law as otherwise not. Merely because the translation was made from Malayalam to Tamil and written down in Kannada would not suggest that such statement be held to be either not being voluntary or the said statement having been recorded improperly. The interpreter having entered the witness box and tendered himself for cross-examination which resulted in nothing worthwhile having been elicited for discarding his evidence, it cannot be gainsaid by the accused that said statement at Ex.P-2 is to be ignored or rejected or discarded. Merely because PW-10 did not know how to read and write Malayalam does not *ipso facto* make the contents of Ex.P-2 to be disbelieved. On the other hand, he states that he is from Kerala and he knows how to speak Malayalam. What was required to be performed by him was to pose the question as stated by the witness to the accused and the answers given to such questions are to be stated to the police for being recorded as stated by the accused. In fact, there is not even a suggestion made to PW-10 about the contents of Ex.P-2 being incorrect."

20. Relying on the aforesaid observations, it was contended that the disclosure statement of accused Sunil Kumar Balhara, revealed the angle of conspiracy which was otherwise not in the knowledge of the Investigating Officer. It is submitted that the entire incident was being taken as a probable case of road rage however, on the basis of statements made in the disclosure statement by Sunil Kumar Balhara, the alleged conspiracy came into light. It was contended that this should be considered as a fact being discovered at the instance of the co-accused, which would be admissible under Section 27 of the Indian Evidence Act.

21. The Hon'ble Supreme Court in **State v. Navjyot Sandhu, (2005) 11 SCC 600,** had a chance to deal with a similar contention and while interpreting Section 27 of the Indian Evidence Act it was observed and held as under:-

> **"114.** The interpretation of Section 27 of the Evidence Act has loomed large in the course of arguments. The controversy centred round two aspects:
>
> (*i*) **Whether the discovery of fact referred to in Section 27 should be confined only to the discovery of a material object and the knowledge of the accused in relation thereto or the discovery could be in respect of his mental state or knowledge in relation to certain things — concrete or non-concrete.**
>
> (*ii*) Whether it is necessary that the discovery of fact should be by the person making the disclosure or directly at his instance. The subsequent event of discovery by the police with the aid of information furnished by the accused — whether can be put against him under Section 27.
>
> These issues have arisen especially in the context of the disclosure statement (Ext. PW-66/13) of Gilani to the police. According to the prosecution, the information furnished by Gilani on certain aspects, for instance, that the particular cellphones belonged to the other accused, Afzal and Shaukat, that the Christian Colony room was arranged by Shaukat in order to accommodate the slain terrorist Mohammed, that police uniforms and explosives "were arranged" and that the names of the five deceased terrorists were so and so are relevant under Section 27 of the Evidence Act as they were confirmed to be true by subsequent investigation and they reveal the awareness and knowledge of Gilani in regard to all these facts, even though no material objects were recovered directly at his instance.
>
> **115. The arguments of the learned counsel for the State run as follows:**
>
> **(*i*)** The expression "discovery of fact" should be read with the definition of "fact" as contained in Section 3 of the Evidence Act which defines the "fact" as meaning and including "any thing, state of things, or relation of things, capable of being perceived by the senses" *and also includes* "any mental condition of which any

person is conscious" (emphasis supplied). **Thus, the definition comprehends both physical things as well as mental facts. Therefore, Section 27 can admit of discovery of a plain mental fact concerning the informant accused.** In that sense, Section 27 will apply whenever there is discovery (not in the narrower sense of recovery of a material object) as long as the discovery amounts to be confirmatory in character guaranteeing the truth of the information given, the only limitation being that the police officer should not have had access to those facts earlier.

(*ii*) The application of the section is not contingent on the recovery of a physical object. Section 27 embodies the doctrine of confirmation by subsequent events. The fact investigated and found by the police consequent to the information disclosed by the accused amounts to confirmation of that piece of information. Only that piece of information, which is distinctly supported by confirmation, is rendered relevant and admissible under Section 27.

(*iii*) The physical object might have already been recovered, but the investigating agency may not have any clue as to the "state of things" that surrounded that physical object. In such an event, if upon the disclosure made such state of things or facts within his knowledge in relation to a physical object are discovered, then also, it can be said to be discovery of fact within the meaning of Section 27.

(*iv*) The other aspect is that the pointing out of a material object by the accused himself is not necessary in order to attribute the discovery to him. A person who makes a disclosure may himself lead the investigating officer to the place where the object is concealed. That is one clear instance of discovery of fact. But the scope of Section 27 is wider. Even if the accused does not point out the place where the material object is kept, the police, on the basis of information furnished by him, may launch an investigation which confirms the information given by the accused. Even in such a case, the information furnished by the accused becomes admissible against him as per Section 27 provided the correctness of information is confirmed by a subsequent step in investigation. At the same time, facts discovered as a result of investigation should be such as are directly relatable to the information.

*** *** ***

119. We have noticed above that the confessions made to a police officer and a confession made by any person while he or she is in police custody cannot be proved against that person accused of an offence. Of course, a confession made in the immediate presence of a Magistrate can be proved against him. So also Section 162 CrPC bars the reception of any statements made to a police officer in the course of an investigation as evidence against the accused person at any enquiry or trial except to the extent that such statements can be made use of by the accused to contradict the witnesses. Such confessions are excluded for the reason that there is a grave risk of their statements being involuntary and false. Section 27, which unusually starts with a proviso, lifts the ban against the admissibility of the confession/statement made to the police to a limited extent by allowing proof of information of a specified nature furnished by the accused in police custody. In that sense Section 27 is considered to be an exception to the rules embodied in Sections 25 and 26 (vide Udai Bhan v. State of U.P. [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251]). Section 27 reads as follows:

> "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."

*** *** ***

125. We are of the view that Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is an authority for the proposition that "discovery of fact" cannot be equated to the object produced or found. It is more than that. **The discovery of fact arises by reason of the fact that the information given by the accused exhibited the knowledge or the mental awareness of the informant as to its existence at a particular place.**

126. We now turn our attention to the precedents of this Court which followed the track of Kottaya case [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] . The ratio of the decision in Kottaya case [AIR 1947 PC 67 : 48

Cri LJ 533 : 74 IA 65] reflected in the underlined [Ed.: Herein italicised] passage extracted supra [Ed.: In para 121, p. 701, above] was highlighted in several decisions of this Court.

127. The crux of the ratio in *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] was explained by this Court in *State of Maharashtra* v. *Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] . Thomas J. observed that: (SCC p. 283, para 35)

> "The decision of the Privy Council in *Pulukuri Kottaya* v. *Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] is the most quoted authority for supporting the interpretation that the 'fact discovered' envisaged in the section embraces the place from which the object was produced, the knowledge of the accused as to it, but the information given must relate distinctly to that effect."

In *Mohd. Inayatullah* v. *State of Maharashtra* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199] , Sarkaria, J. while clarifying that the expression "fact discovered" in Section 27 is not restricted to a physical or material fact which can be perceived by the senses, and that it does include a mental fact, explained the meaning by giving the gist of what was laid down in *Pulukuri Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] . The learned Judge, speaking for the Bench observed thus: (SCC p. 832, para 13)

> **"Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Pulukuri Kottaya* v. *Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] ; *Udai Bhan* v. *State of U.P.* [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251])."**

128. So also in *Udai Bhan* v. *State of U.P.* [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251] J.L. Kapur, J. after referring to *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] stated the legal position as follows: (SCR p. 837)

> **"A discovery of a fact includes the object found, the place from which it is produced and the knowledge of the accused as to its existence."**

The above statement of law does not run counter to the contention of Mr Ram Jethmalani, that the factum of discovery combines both the physical object as well as the mental consciousness of the informant accused in relation thereto. However, what would be the position if the physical

object was not recovered at the instance of the accused was not discussed in any of these cases.

129. There is almost a direct decision of this Court in which the connotation of the expression "fact" occurring in Section 27 was explored and a view similar to *Sukhan case* [AIR 1929 Lah 344 : 30 Cri LJ 414 (FB)] was taken on the supposition that the said view was approved by the Privy Council in *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] . That decision is *H.P. Admn.* v. *Om Prakash* [*H.P. Admn.* v. *Om Prakash*, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] . In that case, on the basis of information furnished by the accused to the police officer that he had purchased the weapon from a witness (PW 11) and that he would take the police to him, the police went to the *thari* of PW 11 where the accused pointed out PW 11 to the police. It was contended on behalf of the accused that the information that he purchased the dagger from PW 11 followed by his leading the police to the *thari* and pointing him out was inadmissible under Section 27 of the Evidence Act. This argument was accepted. Jaganmohan Reddy, J. speaking for the Court observed thus: (SCC p. 261, para 13)

> **"In our view there is force in this contention. A fact discovered within the meaning of Section 27 must refer to a material fact to which the information directly relates. In order to render the information admissible the fact discovered must be relevant and must have been such that it constitutes the information through which the discovery was made. What is the fact discovered in this case? Not the dagger but the dagger hid under the stone which is not known to the police (see *Pulukuri Kottaya* v. *Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65]). But thereafter can it be said that the information furnished by the accused that he purchased the dagger from PW 11 led to a fact discovered when the accused took the police to the *thari* of PW 11 and pointed him out."**

*** *** ***

137. The next endeavour of Mr Gopal Subramanium was to convince us that the precedential force of the judgment in *Om Prakash* [*H.P. Admn.* v. *Om Prakash*, (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] has been considerably eroded by the subsequent pronouncements. Two decisions have been cited to substantiate his contention. They are: *Mohd. Inayatullah* v. *State*

of Maharashtra [(1976) 1 SCC 828 : 1976 SCC (Cri) 199] and *State of Maharashtra* v. *Damu* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] . **We do not think that in any of these decisions "discovery of fact" was held to comprehend a pure and simple mental fact or state of mind relating to a physical object dissociated from the recovery of the physical object.**

138. Let us revert back to the decision in *Mohd. Inayatullah case* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199] . The first sentence in para 13 (SCC p. 832) of the following passage which has already been referred to is relied on by the learned Senior Counsel for the State.

> **"*13*. At one time it was held that the expression 'fact discovered' in the section is restricted to a physical or material fact which can be perceived by the senses, and that it does not include a mental fact [see *Sukhan* v. *Emperor* [AIR 1929 Lah 344 : 30 Cri LJ 414 (FB)] ; *R.* v. *Ganee* (sic *Ganu Chandra* v. *Emperor* [AIR 1932 Bom 286 : 33 Cri LJ 396])]. Now it is fairly settled that the expression 'fact discovered' includes not only the physical object produced, but also the place from which it is produced and the knowledge of the accused as to this (see *Pulukuri Kottaya* v. *Emperor* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] ; *Udai Bhan* v. *State of U.P.* [1962 Supp (2) SCR 830 : AIR 1962 SC 1116 : (1962) 2 Cri LJ 251])."**

The first sentence read with the second sentence in the above passage would support the contention of Mr Ram Jethmalani that the word "fact" embraces within its fold both the physical object as well as the mental element in relation thereto. This ruling in *Inayatullah* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199] **does not support the argument of the State's counsel that Section 27 admits of a discovery of a plain mental fact irrespective of the discovery of physical fact.** The conclusion reached in *Inayatullah case* [(1976) 1 SCC 828 : 1976 SCC (Cri) 199] is revealing. The threefold fact discovered therein was: (*a*) the chemical drums, (*b*) the place i.e. the musafir khana wherein they lay in deposit, and (*c*) the knowledge of the accused of such deposit. The accused took the police to the place of deposit and pointed out the drums. That portion of the information was found admissible under Section 27. The rest of the statement, namely, "which I took out from the Hazibundar of the first accused" was eschewed for the reason that it related to the past history of the drums or their theft by the accused.

139. Let us see how far *Damu case* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] supports the contention of Mr Gopal Subramanium. At the outset, we may

point out that *Damu case* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] did not lay down any legal proposition beyond what was said in *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] . **The statement of law in *Kottaya*** [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] (AIR at p. 70, para 10) **that the fact discovered "embraces the place from which the object is produced and the knowledge of the accused as to this, and the information given must relate distinctly to this fact" was reiterated without any gloss or qualification.** In that case, A-3 disclosed to the investigating officer that "Dipak's dead body was carried by me and Guruji (A-2) on his motorcycle and thrown in the canal". The said statement of A-3 was not found admissible in evidence by the High Court as the dead body was not recovered pursuant to the disclosure made. This Court however took a different view and held that the said statement was admissible under Section 27. It was held so in the light of the facts mentioned in paras 34 and 37. These are the facts: when an offer was made by A-3 that he would point out the spot, he was taken to the spot and there the IO found a broken piece of glass lying on the ground which was picked up by him. A motorcycle was recovered from the house of A-2 and its tail lamp was found broken. The broken glass piece recovered from the spot matched with and fitted into the broken tail lamp. With these facts presented to the Court, the learned Judges after referring to *Kottaya case* [AIR 1947 PC 67 : 48 Cri LJ 533 : 74 IA 65] reached the following conclusion in para 37: (SCC p. 283)

> "*37*. How did the particular information lead to the discovery of the fact? No doubt, recovery of dead body of Dipak from the same canal was antecedent to the information which PW 44 obtained. *If nothing more was recovered pursuant to and subsequent to obtaining the information from the accused, there would not have been any discovery of any fact at all*. But when the broken glass piece was recovered from that spot and that piece was found to be part of the tail lamp of the motorcycle of A-2 Guruji, it can safely be held that the investigating officer discovered the fact that A-2 Guruji had carried the dead body on that particular motorcycle up to the spot."
>
> (emphasis supplied)

The events highlighted in the case speak for themselves and reveal the rationale of that decision. The view taken in *Damu case* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] does not make any dent on the observations made and the legal position spelt out in *Om Prakash case* [*H.P. Admn.* v. *Om Prakash*,

> (1972) 1 SCC 249 : 1972 SCC (Cri) 88 : AIR 1972 SC 975] . The High Court rightly distinguished *Damu case* [(2000) 6 SCC 269 : 2000 SCC (Cri) 1088] because there was discovery of a related physical object at least in part."

22. As pointed out hereinabove, the disclosure statement of Sunil Kumar Balhera is only to the extent that the present petitioner was a co-conspirator. There has been no discovery of any physical fact/object in pursuance of the aforesaid disclosure statement. In the judgment relied upon by learned Senior Counsel in **Siju Kurian (*supra*)**, it is pertinent to note that in the said case, the appellant therein had given a confessional statement Ex.P-2, which led to the recovery of the body of the victim from a certain place, which was then thereafter proved through various witnesses. Further, reliance was placed on **Mehboob Ali & Anr. (*supra*)**, wherein, on the basis of the disclosure statement made by the appellant therein, two other persons were apprehended with forged currency notes which was otherwise not in the knowledge of the police. The disclosure statement made by co-accused Sunil Kumar Balhera, without any further recovery of physical fact, cannot be termed as admissible evidence. As noted hereinabove, the Hon'ble Supreme Court in **Navjot Sandhu (*supra*)** has observed:

> "**This ruling in *Inayatullah*** [(1976) 1 SCC 828 : 1976 SCC (Cri) 199] **does not support the argument of the State's counsel that Section 27 admits of a discovery of a plain mental fact irrespective of the discovery of physical fact.”**

23. The second circumstance which is being placed on record, is the connectivity of the present petitioner with the co-accused Sunil Kumar Balhera reflecting that 20 calls were made between the two between 01.07.2019 to 09.08.2019. It is pertinent to note that it is not denied that the

petitioner knew the co-accused Sunil Kumar Balhera. The alleged incident is of 07.08.2019. As per the CDR, there are two calls on 07.08.2019 and 08.08.2019 between the present petitioner and co-accused Sunil Kumar Balhera. Admittedly, there is no transcript on record to demonstrate the nature of conversation between the said co-accused. The learned ASJ has taken into account the said circumstance in the background of the disclosure statement of the aforesaid co-accused. If the aforesaid disclosure of the co-accused cannot be read as admissible piece of evidence, then the present circumstance of phone call between them cannot be the sole basis to proceed and frame charge against the present petitioner. It is further pertinent to note that even co-accused Sunil Kumar Balhera was arrested on the disclosure statement of other co-accused persons.

24. The third circumstance is with respect to the alleged dispute between the petitioner's son and SAIL. It is the case of the prosecution that the complainant was chairman of SAIL at the relevant time and was opposing the release of money to the petitioner's son. It is the case of the prosecution that one company namely, M/s Sonam Trading, FZC, which was being represented by the petitioner's son had moved an application for permission to sell coal, which was being opposed by SAIL and at the time of the incident, the arbitration proceedings were going on, therefore, it is alleged that the present petitioner was involved in the conspiracy.

25. It is not the case of the prosecution that the complainant has given any statement to the effect that the petitioner or his son ever tried to influence or extend any threat with regard to the aforesaid transactions. At this stage, the following portions of the status report are relevant:-

"On 27.08.19 the accused Sunil Balhera was arrested, during interrogation he revealed that he is a small property dealer in Haryana. Around two years back he had developed a kind of habit to visit different kind of politicians in Delhi, and thereafter he used to roam around here and there to develop some kind of connections in Delhi. Around two years back he met one Applicant/Accused Ashok Kumar Singh through one Rajiv Kumar Singh and got friendly with him. He further revealed that Applicant/Accused Ashok Kumar Singh is a big business man and is having office near Bhikaji Cama Place and he is into business of import of coal and warehouses etc. He started meeting Applicant/Accused Ashok Kumar Singh at his office near Bhikaji Cama Place, one day around one year back Applicant/Accused Ashok Kumar Singh told accused Sunil Balhera that one of his business deal is stuck with Chairman of SAIL, so he asked him to get some connections to short out his matter. On asking, Applicant Accused Ashok Kumar Singh gave him detail of this business deal and stated that around one year back he had applied a tender for import of cooking coal from USA, this coal was to be supplied to SAIL. So, he ordered 67 thousand tons of coking coal from USA and handed over the shipment to SAIL. The cost of this imported coking coal was around Rs. 80-85 Crores. After that the SAIL authorities specially Chairman of SAIL Mr. Anil Kumar Choudhary raised objections on these imported goods and did not release his payment so his payment of Rs. 80-85 Crores is stuck because of this Chairman of SAIL. He further disclosed that Applicant/Accused Ashok Kumar Singh asked him to either pressurize the chairman to release his payment or if he doesn't agree then get him trapped in a Honey Trap case and Applicant/Accused Ashok Kumar Singh promised to pay 1 dollar per ton if his stuck payment is released. Accused Sunil Kumar Balhera agreed to this offer of Applicant/Accused Ashok Kumar Singh and tried here and there but did not success, he also could not arrange the Honey Trap case. He further confessed that thereafter met Applicant/Accused Ashok Kumar Singh again in the office of Applicant/Accused Ashok Kumar Singh in June, 2019. During this meeting Applicant/Accused Ashok Kumar Singh told him that if Chairman of SAIL, Anil Kumar Choudhary is hospitalized for two - three months, in that case his position at office will be taken over by somebody else and by that way he can get his payment released. Applicant/Accused Ashok Kumar Singh also told him that you arrange somebody who can hit on the legs of Chairman Anil Kumar Choudhary and get him hospitalized for two-three months. For this work he offered to pay Rs. 50 lakh or any other

> handsome amount when his payment will be released. But Applicant/Accused Ashok Kumar Singh did not give him any advance money for this job. He agreed to do this job and thereafter arranged all the accused persons through his brother in law (Sala) Satender @ Chhutku. Accused Sunil Balhera took Rs 6 lakh asloan from one of his known Habib Khan and gave Rs 2 lakh from this to accused Om Prakash Shanna to carry out the incident."

26. The prosecution relies on the aforesaid disclosure statement to establish the involvement of the petitioner in the alleged conspiracy. In view of the judicial pronouncements, as discussed hereinabove, a disclosure statement of an accused would be inadmissible in evidence under Section 25 of the Indian Evidence Act unless the same leads to discovery of a physical fact. In such circumstances, except for the discovery of the said fact, no other portion of a disclosure statement would be admissible in evidence. The admissibility of a statement under Section 27 of the Indian Evidence Act would be limited to the discovery of physical fact and the knowledge with regard to the existence of the said fact against the maker. It has been reiterated that except for the aforesaid circumstance nothing in the statement would be read against the person making it. In other words, if the statement is inadmissible under Section 25 of the Evidence Act against the person making it then the same would be inadmissible against any other person including co-accused. In the present case, as already noted hereinabove, there is no discovery of physical fact in pursuance of the aforesaid disclosure statement and, therefore, the aforesaid disclosure statement of Sunil Kumar Balhera cannot be used against the present petitioner.

27. At the sake of repetition, it is noted that if the said disclosure statement is not read, then there is no way to connect the present petitioner in the

present case. The CDR and petitioner's son's arbitration proceedings, without the disclosure statement, cannot be considered sufficient material to frame charges against the petitioner. Hon'ble Supreme Court **in Dilawar Balu Kurane v. State of Maharshtra, (2002) 2 SCC 135**, has observed and held as under:-

> "12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial (see Union of India v. Prafulla Kumar Samal)."

Evidence produced giving rise to grave suspicion should be admissible in law. In the absence of such evidence, there can be no grave suspicion for framing charge.

28. In view of the above said legal position and the discussion hereinabove, this Court is of the considered opinion that there is no sufficient material on record *qua* the present petitioner in order to frame charges under Sections 307 and 471 read with Section 120-B of the IPC and proceed with the trial.

29. The order on charge dated 13.03.2023 and framing of charge dated 20.04.2023 are accordingly set aside. The petitioner stands discharged.

30. Petition is allowed and disposed of accordingly.

31. Pending application(s), if any, also stands disposed of accordingly.

32. Copy of the Judgment be sent to the learned Trial Court for necessary information and compliance.

33. Judgment be uploaded on the website of this Court *forthwith.*

AMIT SHARMA
JUDGE

MAY 30, 2024*/sn*