2021 INSC 855

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1590 OF 2021
(@ SPECIAL LEAVE PETITION (CRL.) NO. 9608 OF 2021
(@SLP (CRL.) DIARY NO. 42589 OF 2018)

THE STATE BY S.P. THROUGH THE SPE CBI ...APPELLANT(S)

VERSUS

UTTAMCHAND BOHRA ...RESPONDENT(S)

JUDGMENT

S. RAVINDRA BHAT, J.

1. This special leave petition was filed after a delay of 447 days. The successful respondent (Uttamchand Bohra, hereinafter "Uttamchand/respondent"), who was issued notice as to why delay in filing the petition should not be condoned, objected to the Court's entertaining the petition, urging that the certified copy of the impugned order (delivered on 25.05.2017), was applied for on 13.03.2018 and eventually the petition was

filed on 13.11.2018. Thus, total delay of 447 days occurred in filing of the petition, which is inordinate. It was urged that the application for condonation should not be countenanced, as no sufficient cause was shown.

2. On behalf of the Central Bureau of Investigation (hereinafter "CBI / prosecution"), Mr. Vikramjit Banerjee, learned Additional Solicitor General (hereinafter "ASG") pointed to averments in the affidavit and supported the application seeking condonation of delay on the ground that the certified copy which had been originally applied for, could not be collected since the receipt was misplaced and as a result, the second certified copy was applied for. The matter had to be processed and official approvals obtained, which took some time. The final clearance for filing the petition was given in mid-June 2018 after which it was drafted and eventually filed. The ASG contended that having regard to these facts, this Court should condone the delay for filing the petition.

3. After hearing the rival arguments, this Court is of the opinion that though the delay of over 447 days is considerable, nevertheless explanation given by the petitioner that it lost the original receipt and had to apply for a fresh certified copy, has to be taken note of. The delay which occurred after the receipt of the certified copy in the opinion of the Court is not of such magnitude as to warrant dismissal of the application i.e., I.A. No. 178754/ 2018. The application is allowed and the delay in filing the petition, condoned.

4. Special leave granted. With the consent of counsel for the parties, the appeal was heard finally.

5. The CBI is, in this appeal, aggrieved by a judgment of the Madras High Court[1] by which, exercising jurisdiction under Section 397 and Section 401 of the Code of Criminal Procedure (hereinafter "CrPC") it quashed the charge sheet against the respondent (who was arrayed as fifth accused in C.C. No.5 of 2015, before the Special Judge for CBI cases (XII Addl. Judge, City Civil Court, Chennai (hereinafter "trial court")). The trial court had, by its order dated 29.12.2015, rejected Crl.M.P.No.6873/2015, which was an application under Section 239 CrPC seeking Uttamchand's discharge.

6. The CBI, through its Investigating Officer (hereinafter "IO"), after completing investigation, filed a final report on 20.02.2012 under Section 173 CrPC against five (out of seven) accused. Badhe Rathnam Mahesh, s/o B. S. Rathnam (A-3) and Badhe Anandh Chaitanya, s/o B.R. Mahesh (A-4) were pardoned and became approvers; they were not sent for trial. Those sent up for trial were: (i) Andasu Ravindar, (A-1); (ii) Kavitha Andasu, wife of A-1 (A-2); (iii) Uttamchand (A-5); (iv) Uday K. Agarwal, (A-6); and (v) Pothapragada Srinivas, (A-7). CBI alleged that the accused committed offences punishable under Section 120B and Section 109 of the Indian Penal Code (hereinafter

1 Dated 25.05.2017 in CRP 73/2017.

"IPC") and Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter "PCA").

7. It was alleged in the final report that A-1, in collusion with the other accused, during the period of 01.01.2005 to 29.08.2011 amassed wealth in his name, as well as in the name of his wife (A-2) to the tune of ₹ 2,32,20,296/- which was disproportionate to his known sources of income for which he was not able to account satisfactorily. It was alleged that A-2 was a house wife. She had filed her income tax returns for the assessment years 2005-06, 2006-07, 2007-08, 2009-10 and 2011 through the approver (A-4), a chartered accountant who had acted on behalf of A-1 and received money from him. That money was returned to A-2 to show as if she had earned the income through job contracts and business. It was further alleged that A-1 also purchased properties on several occasions and the income tax returns did not reflect those properties. They were purchased in Chennai in the name of M/s Raviteja Trading Co. Pvt. Ltd., Hyderabad (hereinafter also "Company"). They were purchased only through sources arranged by A-1. On the directions of A-7, ₹ 94,82,300/- was transferred by cheques by A-6 through his companies' accounts (i.e., M/s. Utkarsh Infotech Pvt. Ltd., and M/s. Utkarsh Staffing Pvt. Ltd., Secunderabad) to the current account of M/s. Raviteja Trading Company Pvt. Ltd., Hyderabad with Standard Chartered Bank, Secunderabad. After receiving that amount, M/s. Raviteja Trading Co., Pvt. Ltd., represented by approver (A-4), acquired the

property at Chennai on the directions of A-1. The sale consideration of ₹ 80,00,000/- was paid through two demand drafts each for the value of ₹ 50,00,000/- and ₹ 30,00,000/- respectively and these two demand drafts were purchased by the approver A-4, director of M/s. Raviteja Trading Co., Pvt. Ltd., Hyderabad through its current account and the amount was handed over to the vendor Mr. Badruzman Khan.

8. The prosecution alleged further that the sale deed (dated 13.07.2011) of the property, Flat No.4/3 (old No.28/3), measuring 2108 sq. ft. in second floor at AIL-Ahad Apartment No.28 (present No.4) Nageswara Rao Road (Old No.13, Krishnamcahari Road, Nungambakkam, Chennai-34) was executed and registered under Document No.669/2011, (hereinafter “the sale deed”) in the name of M/s. Raviteja Trading Co. Pvt. Ltd. Though the said property was purchased in the name of the company, its original sale deed was seized from the possession of Uttamchand who was the financier and close associate of A-1.

9. The prosecution case, as regards Uttamchand, had two aspects: the first, relating to the seizure of the sale deed in (C.C. No.5/ 2015), and the second relating to the case in C.C. No.3/ 2013. In the present case, the allegation against Uttamchand is that he was a close associate and financer of A-1 and his family. The original sale deed was executed in the name of the Company. The sale deed was in his custody as per the directions of A-1. Uttamchand thereby had rendered his active assistance to A-1 to acquire assets in his name as well as

in the name of his wife A-2 and in the name of the Company, during the period of 01.01.2005 to 29.08.2011 which, as stated above, was disproportionate to the known sources of income of A-1 to the tune of ₹ 2,32,20,296/-. The percentage of disproportionate assets is calculated at 171.41% for the total income of A-1 and A-2, which they could not satisfactorily account for. The second case (hereafter called "the earlier case") was that Uttamchand was a co-accused (A-3) in R.C. No. 33(A)/2011 (CC. No. 3/2013) and was facing trial in that case. According to the prosecution, his vehicle was intercepted when he had attempted to help A-1 in transporting a bribe amount of ₹ 50 lakhs received by him A-1 to a safe place. That case was registered on 20.02.2012 with CBI, ACB, Chennai under Section 13(1)(e) PCA and Section 109 IPC.

10. Uttamchand's complaint before the High Court was that the only evidence relied upon by the prosecution against him was possession of the sale deed. His argument was that even if the CBI were to prove what it alleged - which is that his employee (V. Sridhar / PW-45) had witnessed the execution of the document, *per se* that circumstance could not make him criminally liable. It was also urged that since Uttamchand's relationship with A-1 and A-2 was known to the prosecution and admitted by it, i.e. as a financer, (which was borne out by the fact that he had advanced monies to A-2 and had disclosed these in the income tax returns), the sale deed, belonging to a third party, with him in no way implicated him. It was also urged that the deposition of V. Sridhar, or even

those of the approvers established in any manner that Uttamchand had links with the company which purchased the flat. That Uttamchand was to face trial in the earlier case could not have been an incriminating circumstance for him to be joined in the second case against A-1, A-2 and other accused.

11. On the other hand, the CBI urged that Uttamchand's role as the holder of title documents of property clearly pointed to a conspiracy between him and A-1, the public servant. He was a facilitator for the purchase of *benami* property by A-1 in the name of the company. It was argued that the Court, while examining whether to frame charges or otherwise against an accused sent up for trial, is not concerned with the probability of truth but whether there is a reasonable suspicion of the accused having committed an offence. Viewed from this perspective, the role attributed to Uttamchand at the stage of framing of charges, i.e., of being in possession of the sale deed, the real owner of the property being A-1, was probable reasonable cause, sufficient for the trial court to frame charges. In any event, it was sufficient for the trial court to reject his application for discharge which it correctly did.

12. The High Court accepted the arguments on behalf of Uttamchand Bohra. After an overall examination of the statements made by the witnesses relied upon by the prosecution under Section 161 CrPC, the High Court concluded that the mere possession of the registered sale deed which was witnessed by Uttamchand's employee, could not incriminate him. It could not amount to

satisfying the prescribed standard, i.e., of reasonable suspicion of commission of the crime, of being attributable to him, i.e., of abetment and conspiracy with a public servant to enable the latter to amass wealth which was disproportionate to his known sources of income. The High Court also noticed that the approver's evidence, i.e., the statements under Section 161 CrPC, in no manner tended to implicate Uttamchand. Those statements merely pointed to the acquisition of property by the Company i.e., M/s.Raviteja Trading Co. Pvt. Ltd., Hyderabad.

Contentions of the prosecution

13. On behalf of the CBI, it was argued by the learned ASG that the chargesheet contained clear allegations of collusion which amounted to criminal conspiracy on the part of Uttamchand with A-1. It was pointed out that the consideration of ₹ 80,00,000/- paid for the property was never disclosed. Although A-1 contended that the property belonged to the Company, nevertheless it was a mere front. The property was purchased through A-1's friend P. Srinivas, director of M/s. Tidal Data Solutions, Bangalore. A-1 had official dealings with two entities (M/s. A.S. Shipping Agencies and M/s. Aban Offshore Ltd., Chennai) to whom M/s. Tidal Data Solutions had approved unified storage servers. The said P. Srinivas received payments from those companies in excess of the invoice value which were deposited in the account of the companies of A-6, Udhay K. Agarwal. Those amounts were then diverted

to the Company i.e., M/s. Raviteja Trading Pvt. Ltd. which ultimately bought the flat.

14. It was submitted that the original sale deed purchased by the said companies was seized from the possession of Uttamchand. He had no explanation as to how the sale deed was in his possession. Uttamchand was the financer to lend money to A-2. Uttamchand's acquiescence to the close dealings with A-1 and A-2, the manner in which the property was purchased after routing the money into the account of the Company, from entities which had official dealings with A-1, and the further circumstances that Uttamchand's employee was witness to the sale deed, pointed to his complicity and guilt. Therefore, the trial court correctly framed charges against him. It was further argued that during pendency of the present proceedings, the trial went ahead, and statements of most witnesses were recorded. In this context, the depositions of PW-70 and PW-71 were relied on, to say that A-1 amassed wealth illicitly and was aided by others like Uttamchand.

15. It was urged that Uttamchand aided and assisted in the execution of the sale deed and abetted the *benami* purchase made by A-1 by making his employee (PW-45) sign as a witness to the sale deed. It was also urged that during the search on 30.08.2011, at the residence of Uttamchand, the original sale deed was seized, in addition to ₹ 48,20,000/-. Counsel also submitted that it was clear from the statement of the chartered accountant, Siddharth Mehta (PW-

73) that the sale deed was handed over to A-1 by Siddharth Mehta. The sale deed eventually was recovered from Uttamchand's residence. This clearly showed the sale deed was given by A-1 himself to Uttamchand only to protect A-1 from any legal pursuit.

16. The ASG also alluded to the facts of the earlier case, in R.C. No. 33(A)/2011 (CC. No. 3/2013) (registered on 29.08.2011 u/s 120B IPC r/w 7 of PCA, 1988. He submitted that A-1 organized survey proceedings in the premises of M/S Everonn Education Ltd., Chennai and concealed taxable income of ₹ 100 crore. He demanded and accepted ₹ 50 lakhs from Shri P. Kishore on 29.08.2011 for showing undue favor and concealing income tax liability. He further urged that the CBI team intercepted Uttamchand going to A-1's residence about 9.00 p.m., and assisting A-1 in transferring the money to a safe place by driving the car in which A-1 was seated. A-1 had a carton, containing ₹ 50 lakhs. Thus, Uttamchand colluded in transporting the bribe amount received by A-1 to a safe place for which he arrived at the latter's residence, which was also proved by telephonic surveillance.

17. Learned ASG urged that this Court, in *Nirmaljit Singh Hoon v. State of West Bengal*[2] held that in a criminal trial, the test was whether there was sufficient grounds for proceeding prevalent, and not whether there was sufficient ground for conviction. When there was *prima facie* evidence, even though person accused may have a defense, the case had to be relegated to be

2 (1973) 3 SCC 753.

decided by appropriate forum at the right stage. He also urged that strong suspicion was sufficient for framing charges and relied on *State of Bihar v. Ramesh Singh*[3].

18. Mr. R. Basant, learned Senior Counsel submitted that *prima facie* the prosecution failed to produce any material to implicate the respondent in the crime of conspiracy. It was submitted that most of the witnesses had already deposed. The only other evidence available to the prosecution to connect the respondent with the crime was a confession of the co-accused which according to the learned counsel was inadmissible in evidence. However, the depositions of PW-70 and PW-71 did not inculpate Uttamchand. Therefore, he contended that the High Court was justified in allowing his discharge application since the prosecution failed to establish even a *prima facie* case against the respondent.

19. It was argued, by referring to *Union of India vs. Prafulla Kumar Samal & Ors*[4] that the test to determine a *prima facie* case depends upon the facts of each case. However, if two views are equally possible and the judge is satisfied that the evidence produced before him may give rise to some suspicion but not grave suspicion against the accused, the judge would be justified in discharging the accused. Counsel also pointed out that while exercising jurisdiction under Section 227 of CrPC, the Court could not merely act as a Post Office or a mouth-piece of the prosecution, but had to consider the broad probabilities of

3 (1977) 4 SCC 39.
4 1979 (3) SCC 04

the case, the total effect of the evidence and the documents produced before it, if any basic infirmities appear in the case, etc.

20. Mr. Basant urged that the High Court correctly held that mere presence of the sale deed in the respondent's residence and other allegations did not constitute any of the offences charged against him. The allegations against Uttamchand in the charge-sheet / final report *prima facie* did not constitute any of the offences for which he was being prosecuted. It was submitted that Uttamchand was not a public servant, and could not commit an offence under Section 13(1)(e) read with Section 13(2) of the PCA. There was no allegation that he received any monetary benefit, or profited from A-1's amassing assets disproportionate to his income. Furthermore, there was no evidence linking the transaction of sale of the flat, with Uttamchand. Further, no allegation against Uttamchand was made in the chargesheet that may amount to an offence under Section 109, IPC.

Analysis and Findings

21. In *Central Bureau of Investigation v. K. Narayana Rao*[5] this Court, after reviewing the previous decisions that dealt with the question of the applicable standard relating to discharge of accused in a criminal case, summarized the principles in the following terms:

> *"13. Discharge of the accused under Section 227 of the Code was extensively considered by this Court in P. Vijayan [(2010) 2 SCC 398 wherein it was held as under: (SCC pp. 401-02, paras 10-11)*

5 (2012) 9 SCC 512

"10. … If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

12. The first decision in Ramesh Singh [(1977) 4 SCC 39] relates to interpretation of Sections 227 and 228 of the Code for the considerations as to discharge the accused or to proceed with trial. Para 4 of the said judgment is pressed into service which reads as under: (SCC pp. 41-42)

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— … (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in 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 evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.

14. *While considering the very same provisions i.e. framing of charges and discharge of the accused, again in Sajjan Kumar [(2010) 9 SCC 368] , this Court held thus: (SCC pp. 375-77, paras 19-21)*

> *"19. It is clear that 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 only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*
>
> *20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the*

Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate 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.

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The 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, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the 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.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but 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.

> *(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.*
>
> *(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."*

22. As is evident from the discussion of the facts, Uttamchand is accused of abetting and/or conspiring with the principal accused, a public servant (A-1), so as to permit him to accumulate assets disproportionate to his known sources of income. A-1 was a senior official of the Central Government, working in the income tax department. According to the prosecution, he acquired the flat, through the company. Two other accused, who facilitated the acquisition, turned approver; they also deposed during the trail. The role attributed to the respondent is that he helped in the execution of the sale deed of the property, and kept custody of the title deed to it. The document was in fact seized from his house. The seizure took place over a year before the present case was initiated; in fact, the CBI had initiated another criminal proceeding, in which A-1 too was implicated. In that case, the CBI had seized ₹ 50 lakhs from him. In the present case, the recovery from Uttamchand's custody of the sale deed of the property, owned by the Company led to initiation of separate proceeding; *inter alia,* Uttamchand was charged with criminal conspiracy, defined under Section

120A, IPC[6] and punishable under Section 120B IPC and abetment, defined by Section 107 IPC[7] and punishable under Section 109 IPC[8]. Section 13 (1) (e) and Section 13 (2), which are relevant, because the respondent Uttamchand was sought to be charged under those provisions, read as follows:

> ***"13. Criminal misconduct by a public servant**.—*
>
> *(1) A public servant is said to commit the offence of criminal misconduct,—*
>
> ********* **********
>
> *(e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.*
>
> *Explanation. —For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant.*

---

6 *"**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 agreement 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."

7 *"**107. Abetment of a thing**.—A person abets the doing of a thing, who—*
First.—Instigates any person to do that thing; or
Secondly.—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
Thirdly.—Intentionally aids, by any act or illegal omission, the doing of that thing.
Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.
Illustration A, a public officer, is authorised by a warrant from a Court of Justice to apprehend Z, B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.
Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

8 ***"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."

> *(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than 3 [four years] but which may extend to 4 [ten years] and shall also be liable to fine."*

23. The factual narration in this case would reveal that Uttamchand, the respondent, was not a public officer or public servant. He cannot therefore, be charged with committing an offence under Section 13(1)(e) read with Section 13(2) of the PCA. There is no allegation against Uttamchand, that he received any monetary or other benefit, or that he held the property in his name for the benefit of A-1. This assumes significance, because the property which the Company purchased, was in its name. There is no evidence against the respondent linking him to the transaction relating to the execution of the sale deed, or alleging that he had an agreement with A-1 and others to commit an illegal act. Further, there is no allegation of a legal act being done in an illegal manner. Therefore, the alleged offence under Section 120-B IPC against the respondent is also not made out from the charge-sheet.

24. The chargesheet further does not contain any allegation which can amount to an offence under Section 109 IPC. The prosecution has not suggested that he abetted A-1 to acquire disproportionate assets in any manner; the only allegation is that the title deeds to the flat, which is in the name of M/s. Raviteja Trading Co. Pvt. Ltd. was seized from his custody and that he had instructed his employee to witness the document. An allegation of the existence of signatures of Uttamchand's employee, as a witness to the sale deed cannot amount to his aiding or abetting A-1 to acquire disproportionate assets. Witnessing a sale deed

is a formal requirement. Likewise, the fact that the sale deed was in Uttamchand's residence cannot satisfy the ingredient of any of the offences alleged against him.

25. The statements of the approvers, A-3 and A-4, who were tendered pardon by the Court, do not reveal any involvement by Uttamchand in commission of the alleged offence. During the pendency of the present proceedings the recording of depositions of 74 witnesses was completed. Those were part of this Court's record; they do not show any incriminating material as far as Uttamchand is concerned. Furthermore, crucially, the money trail for the property bought under the sale deed, does not show Uttamchand's involvement. It may implicate A-3 and A-4, however as stated before, the Court has granted a pardon to them, for which they have turned approvers. The money trail for the purchase of flat, under the chargesheet - which is also discussed in the impugned judgment, is that (a) the property was purchased by M/s. Raviteja Trading Co. Pvt. Ltd. through sources alleged arranged by A-1 through his friend A-7; (b) A-1 had official dealings with two companies M/s. A.S. Shipping Agencies and M/s. Aban Offshore Ltd., Chennai; (c) At A-1's reference, a company (in which A-7 is a director (M/s. Tidal Data Solutions, Bangalore)) had supplied data storage servers to the said two companies (M/s. A.S. Shipping Agencies and M/s. Aban Offshore Ltd.); (d) Th latter two companies [M/s. A.S. Shipping Agencies and M/s. Aban Offshore Ltd.] had made a payment of about ₹ 1 crore in excess (over and above the invoice amount) to A-7; (e) A-7 had

collected the payments through cheques and deposited them in current accounts of A-6's companies (Utkarsh lnfotech Pvt. Ltd., and Utkarsh Staffings Pvt. Ltd.); (f) On A-7's direction, A-6's companies transferred ₹ 94,82,300/- to the account of M/s. Raviteja Trading Co. Pvt. Ltd, of which ₹ 80,00,000/- was used by the Company (represented by approver A-4 to purchase the property at the directions of A-1. Two demand drafts of ₹ 50 lakhs and ₹ 30 lakhs were drawn by A-4.

26. It is clear from the above details that in terms of both the chargesheet and the final report, Uttamchand is not involved with the money trail or the transaction for the purchase of the property which was acquired by A-1, according to the prosecution. It is a fact that not only is the investigation complete, depositions of prosecution witnesses too have been recorded. There cannot be any question of introducing any further evidence.

27. CBI cannot deny that Uttamchand’s name was included in the present case, although the sale deed was seized during a search conducted in relation to another FIR (the earlier case)- and not in relation to the present case, which relates to the disproportionate assets case. The FIR in the present case names only A-1 and A-2 as the accused. The sale deed had already been seized from Uttamchand's house by then.

28. The CBI had urged that the allegations against Uttamchand in the earlier case [CC No. 3/2013] can be used against him in the present case although the final report in the present case does not make any reference to them. The final

report in the present case was filed after the registration of FIR in CC No. 3/2013 and after the seizure of the sale deed from Uttamchand's house. The final report makes a mention of the FIR dated 29.08.2011. There is, however, no allegation against Uttamchand in the chargesheet in the present case [CC No. 5/2015] on the basis of or adopting the allegations against him in CC No. 3/2013. Thus, the two cases are separate. The allegations against Uttamchand in CC No. 3/2013 does not relate to disproportionate assets. This Court, in *State of J&K v. Sudershan Chakkar*[9] , stated that the law required the Court to consider only the chargesheet and materials adduced with it. It was observed that:

> *"In our considered view, the learned Courts below erred in basing their respective orders on the above findings. The question whether the respondents omitted to do their mandatory duties for months together designedly or negligently can be inferred only on an over all view of all the materials collected during investigation and not in isolation as has been done by the learned Courts below. That apart in a case instituted upon a Police Report the Court is required, at the time of framing of the charges, to confine its attention to documents referred to under Section 173 of the Code of Criminal Procedure only. In that context the Court was not justified in referring to, much less, relying upon the letters purportedly written by the accused when, their authenticity and veracity are yet to be gone into."*

Therefore, CC No. 3/2013 is irrelevant to the present case.

29. This Court explained the essence of conspiracy in the context of acts or omissions, and allegations relating to conspiracy along with offences under the PCA, in *K. Narayana Rao* (supra), and observed that:

> *"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial*

9 (1995) 4 SCC 181.

> *evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."*

The material to implicate someone as a conspirator acting in concert with a public servant, alleged to have committed misconduct, under the PCA, or amassed assets disproportionate to a public servant's known sources of income, thus, has to be on firm ground. In the present case, only two circumstances - the custody of the sale deed (of the property allegedly belonging to A-1) and the fact that it was witnessed by Uttamchand's employee - are alleged against the respondent. These are wholly insufficient to raise a reasonable suspicion, or make out a *prima case* against him, for conspiracy.

30. It would be useful, in the context of the present case, to recollect the decision of this Court, in *P. Nallammal v. State*[10] which observed, as follows:

> *"Thus, the two postulates must combine together for crystallization into the offence, namely, possession of property or resources disproportionate to the known sources of income of public servant and the inability of the public servant to account for it. Burden of proof regarding the first limb is on the prosecution whereas the onus is on the public servant to prove the second limb. So it is contended that a non-public servant has no role in the trial of the said offence and hence he cannot conceivably be tagged with the public servant for the offence under Section 13(1)(e) of the PC Act."*

---

10 (1999) 6 SCC 559

As far as the respondent Uttamchand is concerned, the initial burden of showing that a conspiracy existed, cannot even be alleged against him, given the nature of the material presented along with the charge sheet.

31. In a recent decision, *Deepak Surana v. State of M.P.* – where the facts were somewhat, if not entirely, similar to the facts of this case – the Court emphasized again that suspicion is not sufficient to enable framing of a charge. It was observed, *inter alia*, that:

> *"10. In the present case, the agreements relied upon by the prosecution do not bear the signatures of the appellants. It is undoubtedly true that in Aloka Bose v. Parmatma Devi [Aloka Bose v. Parmatma Devi, (2009) 2 SCC 582 : AIR 2009 SC 1527] it has been observed that an agreement of sale signed by the vendor alone is enforceable by the purchaser named in the agreement. But the question here is whether the appellants could be said to be involved in the conspiracy. The agreements in question were not even recovered from the custody of the appellants and were recovered from the vendors themselves. The agreements being unilateral and not bearing the signatures of the appellants, mere execution of such agreements cannot be considered as a relevant circumstance against the appellants. There is nothing on record to indicate that the consideration mentioned in the agreement could be traced to the appellants, nor is there any statement by any of the witnesses suggesting even proximity or meeting of minds between the appellants and any of the other accused. In the circumstances, the view that weighed with the Special Judge was quite correct. The High Court was not justified in setting aside the order passed by the Special Judge. In our considered view, the material on record completely falls short of and cannot justify framing of charges against the appellants."*

32. An entire overview of the material produced before the trial court, with the charge sheet and final report, as well as deposition of the 74 witnesses who were examined during the trial, does not support CBI's allegation of Uttamchand. He did not directly or indirectly finance the transaction by which property was sold to M/s Raviteja Trading Co. Pvt. Ltd, which, according to that

prosecution, was in fact by A-1. The respondent also is not alleged to have facilitated the flow of money to fund acquisition of the flat. The material put against him is that the sale deed was seized, prior to the present case. The other circumstance put against him is that his employee witnessed the sale deed. The respondent is concededly neither the owner, nor has any links with M/s Raviteja Trading Co. Pvt. Ltd. In these circumstances, this Court is of the opinion that no material which can *prima facie* support an inference that Uttamchand was either a conspirator or had abetted the commission of the offences alleged against the accused A-1 is made out.

33. For the foregoing reasons, this Court is of the opinion that the present appeal lacks merit. It is therefore dismissed with no costs.

.....J
[K.M. JOSEPH]

.....J
[S. RAVINDRA BHAT]

New Delhi,
December 9, 2021.