



GAHC010257922018

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1177/2018

MAHBUBUR RAHMAN
S/O LATE LUTFUR RAHMAN
R/O SUNDAR PATH,
SATGAON
P.S. SATGAON
GUWAHATI
KAMRUP (M), ASSAM.

VERSUS

CENTRAL BUREAU OF INVESTIGATION (CBI) AND ANR.
ASSTT. S.G.I., GUWAHATI

2:SRI PRAKASH JYOTI GOGOI
S/O LATE DR. PRAFULLA KR. GOGOI
R/O KHANAPARA FARM GATE
JANAPATH
HOUSENO. 10
2ND BYELANE
GUWAHATI
ASSAM

Advocate for the Petitioner : MR N DUTTA

Advocate for the Respondent : SC, CBI

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN



JUDGEMENT AND ORDER (CAV)

Date : 30-09-2022

Heard Mr. Z. Kamar, learned Senior counsel, being assisted by Mr. B. Talukdar, learned counsel for the petitioner. Also heard Mr. S.C. Keyal, learned standing counsel for the respondent/CBI.

2. In this petition under Section 482, read with Section 397 of the CrPC and Article 227 of the Constitution of India, the petitioner, Dr. Mahbubur Rahman, has challenged the legality, propriety and correctness of the order dated 29.10.2018, passed by the learned Special Judge, CBI, Assam at Guwahati, in Special Case No.04/2017 and also the charge sheet No.Nil, dated 27.09.2017, filed by the I.O. against the petitioner in connection with Crime No.RC-0117 2017 A 0002.

3. It is to be noted that vide impugned order dated 27.09.2017, the learned Special Judge, CBI, Assam at Guwahati has framed charge against the petitioner under Sections 7/13(2)/13(1)(d) of the Prevention of Corruption Act (here-in-after referred to as 'the P.C. Act'), dismissing the petition filed under section 227 of the Code of Criminal Procedure.

4. The factual background leading to filing of the present petition is briefly stated as under:

“On 01.06.2017, one Sri Prakash Jyoti Gogoi of M/s. Akash-D Medicos, Guwahati lodged a complaint to the Head of the Branch, Anti Corruption, Guwahati against Dr. Mahbubur Rahman, Medical Doctor of ESIC Hospital, Beltola, Guwahati to the effect that he has been looking after the business of M/s. Akash-D Medicos, Guwahati, which is in the name of his mother Smti Anima Gogoi and others and the said firm has been awarded contract of supply of drugs and dressing under their local purchase provision, by the ESIC Model Hospital, Beltola, Guwahati, in the month of April, 2016, for a period of one year and the said contract

period was extended for another period of two months from 16.04.2017 to 15.06.2017. As per the practice, the patients bring the copy of '*local purchased allowed prescriptions*' from the ESIC Doctors to them and after collecting the said prescriptions, they used to issue the branded prescribed drugs to the patients and thereafter, submit their bills to the ESIC Model Hospital, once in 15 days, enclosing the local purchase prescriptions collected from the patients and then the ESIC Model Hospital used to make payment to them. In the first week of February, 2017, Dr. Mahbubur Rahman, Medical Doctor, ESIC Model Hospital, Guwahati called him in his mobile No.95777 26525 and asked him to meet him near Science Museum. Accordingly, he met him in front of the Science Museum, Khanapara and thereafter, Dr. Mahbubur Rahman gave him five numbers of OPD cum LP Allowed prescriptions, issued by him in the name of: Ms. Sabina Begum, Mr. SK Haydar Ali, M. Moinul Hoque, Mr. Atul Das and Ms. Jun Begum and asked him to pay 60% of the costs of the medicines of worth Rs.36,000/- (the cost of the fake prescription is around Rs.55,000/- to Rs.60,000/-), mentioned in the said prescriptions by cash and the Doctor also told him that he prepared the said fake prescriptions and he need cash, not the drugs. Then Prakash Jyoti Gogoi refused to make payment of the demanded amount. Then the Doctor told him that he will not prescribe any branded drugs to any patient and he will only prescribe generic medicines and that he will help him getting tender, awarded to him for some more tenure but he refused to give him cash and he retained the OPD slips given to him by the Doctor. Again, a week after the said incident, Dr. Mahbubur Rahman called him in his mobile and asked him to pay the amount demanded by him and in the 3rd week of May, 2017, when he visited the ESIC Hospital to enquire about his pending bills, Dr. Mahbubur Rahman called him to his chamber and asked him to pay the money against the said prescriptions, but, he refused to make any payment to the Doctor. Then in the last week, the Doctor again called him on the demanded money against the fake prescriptions and then the Doctor threatened him to stop the payment against his pending bill and also to blacklist his firm.

5. Upon the said complaint, the Head of the CBI has registered the Crime No.RC-2(A)/2017-GWH on 02.06.2017, after verifying the genuineness of the complaint lodged by Sri Prakash Jyoti Gogoi and carried out investigation and laid trap and apprehend Dr.



Mahbubur Rahman, while taking bribe of Rs.30,000/- from the complainant. Thereafter, the I.O. has arrested Dr. Mahbubur Rahman and forwarded him to the Court and after completion of the investigation, the I.O. laid charge sheet against the accused Dr. Mahbubur Rahman to stand the trial in the Court, under Sections 7/13(2)/13(1)(d) of the P.C. Act. Thereafter, the petitioner, Dr. Mahbubur Rahman appeared before the Court of learned Special Judge, CBI, Assam at Guwahati and after complying the provision of Section 207 CrPC and after hearing learned Advocates of both sides, the learned Court below vide impugned order dated 29.10.2018, pleased to frame charge against the petitioner under Section 7 read with Section 13(2) and read with Section 13(1)(d) of the P.C. Act and on being read and explained over, the accused pleaded not guilty to the same.

6. Being highly aggrieved, the petitioner approached this Court, challenging the impugned order of framing charge dated 29.10.2018 and also the charge sheet No.Nil, dated 27.09.2017, filed in connection with Crime No.RC-0117 2017 A 0002, on the ground that:

- i) That, the assertion made in the charge sheet, even if taken on its face value and read in its entirety, no offence either under any section of the IPC or under the provision of the P.C. Act, appears to be made out.
- ii) That, there is no definite accusation against the petitioner and as such framing of charge against him by the learned Court below, under Section 7 read with Section 13(2) and read with Section 13(1)(d) of the P.C. Act, 1988 is illegal and without any jurisdiction.
- iii) That, the charge sheet is vexatious and filed with ulterior motive and chances of conviction is very bleak.
- iv) That, the learned Court below, while passing the impugned order dated 29.10.2018, failed to consider the vital points, raised and argued by the learned counsel for the petitioner.
- v) That, the materials available on the record are not sufficient to establish the

involvement of the petitioner and the learned Court below, without applying its judicial mind, mechanically framed charges against the petitioner.

- vi) That, the learned Court below has recorded any reason for framing charge against the petitioner.
- vii) That, from the materials available on record, no reasonable person could come to the conclusion that there is material to sustain the charge.
- viii) That, the learned Court below failed to consider the fact that the trial will not lead to any conviction of the petitioner, as the accusation leveled against him are frivolous and baseless.
- ix) That, the complainant Prakash Jyoti Gogoi has no *locus standi* to file the FIR against the petitioner and he has no authority to represent the firm M/s. Akash-D Medicos.
- x) That, the learned Court below has failed to consider the fact that the five prescriptions given to the complainant by the petitioner are all Xerox copies and there is no materials to show that the said OPD slips have been genuinely and originally written by the petitioner but the learned Court below, while framing the charge has failed to consider the same.
- xi) That, the conversation between the complainant and the petitioner, recorded by the I.O. is not part of the record.
- xii) That, there is delay of four months in lodging the FIR and no explanation is forthcoming for such delay.

Therefore, it is contended to set aside impugned order of framing charge dated 29.10.2018 and the charge sheet No. Nil, dated 27.09.2017.

7. Respondent No.1 has filed affidavit-in-opposition, denying the assertion made in the petition by the petitioner. It is stated that the five original OPD slips of the ESIC Hospital, Beltola, written by the petitioner with stamp marked as "LP Allowed", which were produced by the complainant, are part of the FIR, so enclosed with the FIR in original and marked as

Annexure-A, Annexure-B, Annexure-C, Annexure-D and Annexure-E respectively and that the witnesses examined under Section 161 CrPC have supported the allegation made in the FIR and a prima facie case is made against the petitioner to frame charge under Section 7, read with Section 13(2) and Section 13(1)(d) of the P.C. Act and that the impugned order dated 29.10.2018 suffers from no illegality or infirmity requiring any interference of this Court and therefore, it is contended to dismiss the petition.

8. The petitioner has submitted two additional affidavits stating that he filed one RTI Application to ascertain whether ESIC Contractual Doctor for one year service, is a Central Government employee or not and the online RTI status dated 24.06.2020 reveals that "No" and that he is not a public servant as defined in the P.C. Act and ESIC Act.

9. Mr. Z. Kamar, the learned Senior counsel, appearing for the petitioner, at the time of hearing, had advanced three fold argument.

(I) Firstly, Mr. Kamar submits that the petitioner was a contractual doctor for a period of one year in the ESIC Hospital, Beltola at Guwahati and he is not a public servant. Referring to his additional affidavit Nos.1 & 2, Mr. Kamar submits that the petitioner has filed on RTI application to ascertain whether the Contractual Doctors of ESIC Hospital are public servant or not and then it has been replied that "No" and that since the petitioner is not a public servant, the CBI has no authority to register any FIR against the petitioner and to carry out the investigation on the basis of the said FIR. Mr. Kamar, learned Senior counsel referred two case laws in support of his aforesaid submissions: (1) In **State of Maharashtra vs. Dr. Rustom Franroze Hakim** reported in **2000 CriLJ 3401 (BOM)**, wherein the Bombay High Court has held that the panel Doctor under the E.S.I. Scheme is not a public servant within the meaning of Section 93 of the E.S.I. Act read with Section 12(a) and Section 21 of the IPC and as such the prosecution initiated against the accused, in that case, held to be unsustainable and quashed the

proceeding. (2) In **Madhukar Paruleka vs. Jaswant Chobbildas Rajani and others** reported in **(1977) 1 SCC 70**, Hon'ble Supreme Court has held that Panel Doctor under the E.S.I. Scheme is not a public servant within the meaning of Section 93 of the E.S.I. Act read with Clause 12(a) of Section 21 of the IPC.

(II) Secondly, Mr. Kamar submits that the five numbers of OPD slips produced by the complainant are photocopies and the same are not admissible in evidence and unless the original copies were produced before the Court, it will not advance the case of the prosecution and the photocopy cannot take the place of proof. Mr. Kamar has referred following case laws in support of his submission, i.e.:-

- (1) **1995 (2) ALT 651** in **Sama Venkata Subba Rao vs. Pillarisetti Venkata Venugopala Jagannadha Rao**,
- (2) **RFA No.33/2018 (Anjali Dutta Barman & ors. vs. Planters Airways Ltd.)**,
- (3) **Shalimar Chemical Works Ltd. Vs. Surendra Oil and Dal Mills**, reported in **(2010) 8 SCC 423** and
- (4) **Partha Pratim Roy vs. Amal Kanti Raha**, reported in **2018 (1) GLT 161**.

(III) Thirdly, Mr. Kamar submits that the affidavit filed by the respondent No.1 is not related to the present petition and the deponent of the said affidavit is not competent to swear the same. Further, Mr. Kamar submits that the voice sample recorded by the I.O. is never part of the record and that nothing was recovered from his residence and therefore, Mr. Kamar contended to allow this petition by setting aside the impugned order, and the charge sheet submitted by the I.O.

10. On the other hand, Mr. S.C. Keyal, learned standing counsel appearing for the respondent No.1, CBI submits that the petitioner is a 'public servant' within the meaning of Section 93 of the E.S.I. Act and also as per provision of Section 2(c) of the P.C. Act and the petitioner was caught red handed, while accepting bribe from the complainant and that the

witnesses examined by the I.O. under Section 161 CrPC also supported the allegation made in the FIR and that the learned Court below has rightly framed charge against the petitioner under Section 7, read with Section 13(2) and Section 13(1)(d) of the P.C. Act.

11. Mr. Keyal also relied upon the following decisions in support of his submissions:

- (i) Union of India vs. Prafulla Kumar Samal & anr.,** reported in **(1979) 3 SCC 4**
- (ii) M/s. Brij Bhushal Lal Parduman Kumar vs. CIT, Haryana, Himachal Pradesh and New Delhi,** reported in **(1979) 3 SCC 14**
- (iii) State of Maharashtra vs. Priya Sharan Maharaj and ors.** reported in **(1997) 4 SCC 393**
- (iv) Dilawar Balu Kurane vs. State of Maharashtra** reported in **(2002) 2 SCC 135**
- (v) Sajjan Kumar vs. CBI** reported in, **(2010) 9 SCC 368**
- (vi) Amit Kapoor vs. Ramesh Chander and anr.** reported in **(2012) 9 SCC 460**
- (vii) Police, Vigilance and Anti-Corruption, Tamilnadu vs. J. Doraiswamy and ors.** reported in **(2019) 4 SCC 149**
- (viii) Bhawna Bai vs. Ghanshyam and ors.** reported in **(2020) 2 SCC 217**
- (ix) (Satish Kumar Jatav vs. State of U.P.** reported in **2022 LiveLaw (SC) 488**

12. The petitioner had also filed two additional affidavits bringing on record the order of termination of his contract service and online RTI request form details, as to whether ESIC contractual Doctor for one year service is a Central Govt. Employee or not and the reply provided by the Assistant Director Medical as 'No'. And another additional affidavit denying the averments' made by the respondent in its objection.

13. Having heard the submissions of learned Advocates of both sides, I have carefully gone

through the petition and the documents placed on record and also perused the case laws referred by learned Advocates for both sides and perused the impugned order dated 29.10.2018.

14. It appears that, while dealing with the point No.1, argued by Mr. Z. Kamar, learned senior counsel for the petitioner, the learned Court below has dealt with the same in the impugned order as under:-

“On this matter, it may be observed that though Section 21 of the IPC defines the term ‘public servant’; but, in the Prevention of Corruption Act, 1988, this term is defined in Section 2(C). As the Prevention of Corruption Act, 1988 is a special statute, as such it will have a precedence over the IPC. The learned counsel for the defence in support of his plea that the accused is not a public servant and he was simply a contractual employee has placed before this court the following judgment: **A.R. Puri vs. State 1988**, reported in **Crl.L.J. 311** (Delhi High Court)”. Thereafter, considering the said judgment, the learned Court below held that the said judgment is distinguishable from the facts and circumstances of the case in hand and the accused was in the Government Service, though his service was contractual in nature and he was getting a fixed salary from the Government, for the performance of public duty. As such, in terms of Section 2(c)(i) and 2(c)(viii), the accused is definitely a public servant and it is accordingly held so.

15. Having examined the finding, so recorded by the learned court below on the issue of ‘public servant’, as discussed here in above, and view of the given facts and circumstances on the record, this court is of the view that the same suffers from no illegality or infirmity. The Prevention of Corruption Act is a special statute. The term ‘public servant’, as defined in Section 2(c) of the P.C. Act, will definitely, have precedence over the definition of ‘public servant’ as provided in Section 21 of the IPC.

16. It is worth mentioning here in this context that Section 2(c) of the P.C. Act has defined

the public servant as under:-

- “(i) any person in the service or pay of the Government or remunerated by the Government by fees or commission for the performance of any public duty;
- (ii) any person in the service or pay of a local authority ;
- (iii) any person in the service or pay of a corporation established by or under a Central, Provincial or [State Act](#), or an authority or a body owned or controlled or aided by the Government or a Government company as defined in [section 617](#) of the Companies Act, 1956;(iv) any Judge, including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any adjudicatory functions;
- (v) any person authorised by a court of justice to perform any duty, in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by such court;
- (vi) any arbitrator or other person to whom any cause or matter has been referred for decision or report by a court of justice or by a competent public authority;
- (vii) any person who holds an office by virtue of which he is empowered to prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;
- (viii) any person who holds an office by virtue of which he is authorised or required to perform any public duty;

- (ix) any person who is the president, secretary or other office-bearer of a registered cooperative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or [State Act](#), or any authority or body owned or controlled or aided by the Government or a Government company as defined in [section 617](#) of the Companies Act, 1956;
- (x) any person who is a chairman, member or employee of any Service Commission or Board, by whatever name called, or a member of any selection committee appointed by such Commission or Board for the conduct of any examination or making any selection on behalf of such Commission or Board;
- (xi) any person who is a Vice-Chancellor or member of any governing body, professor, reader, lecturer or any other teacher or employee, by whatever designation called, of any University and any person whose services have been availed of by a University or any other public authority in connection with holding or conducting examinations;
- (xii) any person who is an office-bearer or an employee of an educational, scientific, social, cultural or other institution, in whatever manner established, receiving or having received any financial assistance from the Central Government or any State Government, or local or other public authority”.

17. It appears from the above definition that under Clause (iii) of the said definition that any person in the service or pay of a corporation established by or under a Central, Provincial

or [State Act](#), or an authority or a body owned or controlled or aided by the Government or a Government company as defined in [section 617](#) of the Companies Act, 1956, are public servant. Further it appears from Clause (viii) that any person who holds an office by virtue of which he is authorized or required to perform any public duty, is a public servant. Section 2(b) of the P.C. Act, 1988, defined public duty as under:- “public duty” means a duty in the discharge of which the State, the public or the community at large has an interest”.

18. It is worth noting here that in the case of **Govt. of Andhra Pradesh vs. P. Venku Reddy**, reported in **(2002) 7 SCC 631**, Hon’ble Supreme Court has held that:-

“In construing definition of 'public servant' in Clause (c) of [Section 2](#) of the 1988 Act, the court is required to adopt a purposive approach as would give effect to the intention of legislature. In that view the *Statement of Objects* and *Reasons* contained in the Bill leading to the passing of the Act can be taken of assistance of. It gives the background in which the legislation was enacted. The present Act, with much wider definition of 'public servant', was brought in force to purify public administration. When the legislature has used such comprehensive definition of 'public servant' to achieve the purpose of punishing and crubing growing corruption in government and semi-government departments, it would be appropriate not to limit the contents of definition clause by construction which would be against the spirit of the statute. The definition of 'public servant', therefore, deserves a wide construction (see: *State of Madhya Pradesh vs. Shri Ram Singh*, AIR (2000) SC 870”.

19. In the case of **Dr. Subramanian Swamy vs. Dr. Manmohan Singh and anr.**, reported in **(2012) 3 SCC 64**, the Hon’ble Supreme Court has held that:-

“68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible

with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it.”

The aforesaid principle is followed subsequently in the case of **State of Gujarat vs. Mansukhbhai Kanjibhai Shah**, reported in **(2020) 20 SCC 360**, by a three Judges Bench.

20. Here in this case, the petitioner, who was appointed as a contractual Doctor for a period of one year, by the Employees’ State Insurance Corporation and he had performed ‘public duty’ as defined and discussed herein above, and paid by the Government for the performance of such ‘public duty’. And as such, and also in view of the ratio laid down in the case laws discussed herein above, it can be safely be concluded that he was a ‘public servant’, within the meaning of section 2(c) (iii) and (viii) of section 2(c) of the P.C. Act. This being the factual and legal position, the finding, so recorded by the learned Court below in respect of the ‘public servant’ cannot be said to have suffered from any illegality or impropriety.

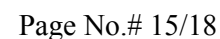
21. I have carefully considered the submission of Mr. Kamar, learned senior counsel for the petitioner, and also gone through the case laws, referred by him and I find that the ratio laid down therein would not come into his aid, in view of our above discussion and finding, and therefore, detail discussion is skipped for the sake of brevity.

22. While dealing with the second limb of argument, advanced by Mr. Kamar, learned senior

counsel, that the five number of OPD slips are photocopies and the originals are not available and produced before the learned Court below, to the considered opinion of this Court also not required to be dealt with in this petition under Section 482 read with Section 397 CrPC and Article 227 of the Constitution of India. Establishing a case beyond reasonable doubt is the duty of the prosecution and the burden lies on them as to how they will prove the same before the learned Court below. Availability or non-availability of the original copies of the aforesaid five number of OPD slips, is the function of the learned Court below and if the same are not available and Xerox copies of the same are not admissible in evidence, then definitely the learned Court below give the quietus the same deserves.

23. So far the third limb of argument of Mr. Kamar, the learned senior counsel for the petitioner that the affidavit submitted by the respondent No.1 is not related to the present petition and that the deponent is not competent to swear the same, this Court is of the view that though some mistake has been committed by the respondent, yet the same cannot be a ground to persuade this court to set aside the impugned order of framing the charge, passed by the learned Court below and to quash the charge sheet.

24. It is to be mentioned here that while exercising the revisional jurisdiction, the High Court cannot substitute its view for that of the trial court in two views are possible. Reference in this context can be made to a decision of Hon'ble Supreme Court in the case of [Helper Girdharbhai vs. Saiyed Mohmad Mirsaheb Kadri and Ors.](#) reported in **AIR 1987 SC 1782**. Same view is taken in various case by the Hon'ble Supreme Court and it is now well settled that While considering submissions for exercise of revisional powers against an order of framing charge the High Court must remind itself that no interference in the order of trial Court would be called for unless some glaring injustice is staring in its face. The view taken by the trial Court on the question of charge should not be substituted by the Revisional Court with its own if the view taken by the Trial Court is such that could possibly be taken under the facts and circumstances of the case. In the case of [Smt. Om Wati and Anr. v. State, through Delhi Administration and Ors.](#) reported in **2001 AIR SCW 1230**, it has been cautioned the High Courts in the following words:



25. In Stree Atyachar Virodhi Parishad v. Dalip Nathumal Chordia and Anr., reported in **1989 SCC (1) 715**, Hon'ble Supreme Court had laid down the parameters within which the revisional courts are expected to remain while examining orders framing charge under [Section 228](#) of the Code. The law as to under what circumstances the Courts should pass discharge order under [Section 227](#) of the Code and on what material an order for charge should be passed under [Section 228](#) of the Code has been propounded in various judgments of the Hon'ble Supreme Court.

“7. **Section 227** of the Code runs thus:-

"227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused

and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

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 his function after the trial starts. 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. 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."

27. Further in the case of **Sajjan Kumar vs. CBI**, reported in **(2020) 9 SCC 368**, the Hon'ble Supreme Court, inter alia, observed that:-

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

* * *

(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".

28. The principles, governing orders under [Sections 227](#) and [228](#) of the Code, which can be crystallised from the illuminating discourse above, is that are that only in those cases where the court is almost certain that there is no prospect of

the case ending in a conviction, and is of the view that the time of the Court need not be wasted by holding a trial, an order of discharge may be passed under [Section 227](#) of the Code. However, in case there is a strong suspicion, founded upon some material available on record, which leads the Court to form a presumptive opinion as to the commission of the offence by an accused, the framing of the charge would be warranted. No detailed or elaborate enquiry is required to be undertaken at this stage by delving deep into various aspects of the matter to find out as to whether an accused can be held guilty or not. Neither probable defense of an accused is to be looked into nor has the probative value of the materials on record to be weighed. An order of discharge under [Section 227](#) of the Code would be warranted only in those cases where the Court is satisfied that there are no chances of conviction of an accused and the trial would be an exercise in futility. In all other cases, an order for charge under [Section 228](#) of the Code has to be passed so as to give the prosecution an opportunity to lead evidence and establish the allegations.

29. In the case in hand, while the impugned order is examined in the light of the facts and circumstances on the record and also in the principle of law discussed here in above, this Court is of the view that the learned Court below has not committed any illegality or impropriety, while framing charge against the petitioner under Section 7, read with Section 13(2) and Section 13(1)(d) of the P.C. Act, having found made out a prima facie case against the petitioner.

30. Thus, the submissions so advanced by Mr. Kamar, the learned senior counsel for the petitioner left this court unimpressed. On the other hand, I find substance in the submissions, so advanced by Mr. S.C. Keyal, learned standing counsel for the respondent CBI, and the ratio laid down in the case laws referred by him, also strengthen the same, but, for the sake of brevity, detail discussion of the same are skipped here in this judgment.



31. In the result, I find no merit in this petition and accordingly the same stands dismissed. Stay, if any, granted earlier, stands vacated. The parties have to bear their own cost.

JUDGE

Comparing Assistant