has observed that in order to constitute forgery, the first essential is that the accused should have made a false document. The false document must be made with an intent to cause damage or injury to the public or to any class of public or to any community. The questions are : (i) is the document false, (ii) is it made by the accused, and (iii) is it made with an intent to defraud. If all the questions are answered in the affirmative, the accused is guilty. In connection of the said observations I have minutely perused documents, statement of the witnesses and charge-sheet papers. It is prima facie established that present applicant has made signature as a witness at the bottom of the third Sale Deed. I am of the opinion that learned Judge has committed grave error to reject Ex.9 application. In this case present applicant can be cited as witness of the prosecution to support genuineness of called forged documents i.e. third Sale Deed.

18. Present Criminal Revision Application is allowed. The judgment and order dated 6.2.2016 passed below Ex.9 in Criminal Case No.2 of 2013 by the learned Chief Judicial Magistrate, Jamnagar, is hereby quashed and set aside.

19. Record and proceedings, if any, be sent back to the trial Court concerned, forthwith.

Result:- Criminal Revision Application allowed.

ABC 2017 (I) 62 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(S. G. Shah, J.)

Criminal Revision Application (Against Order Passed By Subordinate Court) NO. 857 of 2016 With Criminal Revision Application No. 859 of 2016
Decided on 29 December, 2016

JAMES SAMUAL ***- Appellant(s).***

Versus

STATE OF GUJARAT & ANR. ***- Respondent(s).***

Law Covered:- (A) Indian Penal Code, 1860 — Sections 424, 463, 468, 471, 511 r/w 120-B — Code of Criminal Procedure, 1973 — Section 228 —Discharge — Complaint against company &

retired Assistant Commissioner of Central Excise Department — the Company has never been benefited by seeking exemption of tax — final judgment in favor of one of the accused & against the prosecuting agency — the complaint already quashed against the Managing Director of the Company — Held, when the Company & its Vice President has also compounded the offence with department on payment of compounding charges, it cannot be said that there is sufficient material and ground to continue — the special judge mainly relied upon the facts discussed in the FIR and charge-sheet, but failed to realize the legal position in the case of compromise or compounding of offence by the parties — petitioners discharged. (Para 33)

(B) Code of Criminal Procedure, 1973 — Section 320 — Compounding of offence by department — Held, when the department has compounded the offences then there is no reason to continue the criminal proceedings — more particularly when offences are either in the form of breach of rules or technical offences. (Para 34)

(C) Code of Criminal Procedure, 1973 — Sections 227 & 228 — Framing of charge & Discharge — Requirement of — Held, the Court is required to evaluate the material and documents on record — with a view to find out if the facts emerging there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence — Niranjan Singh Karam Singh Punjabi. (Para 35)

(D) Code of Criminal Procedure, 1973 — Sections 227 & 228 — Framing of charge & Discharge — Duty of the Court — Before framing a charge the court must apply its judicial mind on the material placed on record — & must be satisfied that the commitment of offence by the accused was possible — Soma Chakravarty v. State — relied. (Para 35)

(E) Code of Criminal Procedure, 1973 — Section 190 — Cognizance — The cognizance has to be taken of the offence and not of the offender— General Officer Commanding Vs.CBI — relied. (Para 35).

(F) Code of Criminal Procedure, 1973 — Sections 227 & 228 — Framing of charge & Discharge — Duty of the Court & Investigating agency — Held, it is the duty of the investigating agency to collect and to produce cogent evidence against the accused for framing charge — and Court can convict the accused only if such charges i.e. evidence is proved on record without reasonable doubt — Therefore, if there is no chance to prove a commission of offence by the accused,

charge cannot be framed — General Officer Commanding Vs.CBI — relied. (Para 35)

(G) Code of Criminal Procedure, 1973 — Sections 227 & 228 — Framing of charge & Discharge — Duty of the Court — Held, if the Court arrives at only opinion — there is no evidence against the accused — the Court shall not put accused to harassment by asking him to face a trial — State of M.P. Vs.Sheetla Sahai — relied. (Para 35)

(H) Code of Criminal Procedure, 1973 — Sections 227 & 228 — Framing of charge & Discharge — Duty of the Court — Held, the Court is required to evaluate the material and documents on record — with a view to finding out — if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. (Para 35)

(I) Code of Criminal Procedure, 1973 — Sections 227 & 228 — Framing of charge & Discharge — Weighing of evidence — Duty of the Court — The Court may — 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. (Para 35)

(J) Code of Criminal Procedure, 1973 — Sections 227 & 228 — Framing of charge & Discharge — Duty of the Court — Held, at the stage of framing of the charge — the Court has to consider the material with a view to find out — if there is ground for presuming that the accused has committed the offence — or that there is no sufficient ground for proceeding against him — & not for the purpose of arriving at the conclusion that — whether it is likely to lead to a conviction or not. (Para 35)

Facts:- *Main accused, a public limited Company had filed an application for exemption of Excise duty, pursuant to a notification by the Central Government offering exemption from the excise duty to certain units under specific terms and conditions. While applying for such exemption, the Company had declared that its units had started commercial production.*

However, when the Assistant Commissioner of Central Excise had visited the unit of the Company they found that the plant and machinery were not fully installed and the unit was operated only for limited production. Therefore the disclosure by the Company through its officers was found not only false but fraudulent. It was further contended that even Chartered Accountants of the Company had issued false certificate.

After investigation, CBI submitted its report and filed a complaint against several accused u/s 420, 467, 468, 471, 511, 120(b) of I.P.C. and Section 13(2) r/w sec 13(1)(1)(d) of the PC Act. Amongst such accused, there is the Company itself, its Chairman, Managing Director and other officers so also Chartered Accountants so also present petitioners.

The Managing Director of the Company came forward and discussed the dispute with the department of Customs and Excise conveying that it was a bonafide error or mistake on their part and therefore he would like to settle the dispute with the department. Pursuant to such attempt the Customs and Excise Department agreed to settle the dispute and entered into a compromise and compounded the offence, if any. Finding no specific role attributed to each of the petitioner with regard to the alleged offence petitioners were discharged.

Law of relief:- ***When the department has compounded the offences then there is no reason to continue the criminal proceedings.***

Held:- It becomes clear that the special judge mainly relied upon the facts discussed in the FIR and charge-sheet, but failed to realize the legal position in the case of compromise or compounding of offence by the parties. There is no need to proceed further in criminal proceedings. The Trial Court has also failed to appreciate the factual details that in fact the Company has never been benefited by seeking exemption of tax and that now there is one final judgment in favor of one of the accused and against the prosecuting agency. But the determination of co-ordinate bench which is recollected herein above is certainly applicable to all the accused and it cannot be said that it is applicable only to the person who has preferred such petition. Therefore, when the complainant is already quashed against the Managing Director of the Company and when the Company and its Vice President has also compounded the offence with department on payment of compounding charges, it cannot be said that there is sufficient material and ground to continue with the proceeding against remaining accused including the present petitioners who are practically not concerned with the final benefit if any received by the Company. When factually Company has never received any financial benefit it cannot be ignored that the present petitioner Company, and officers of the Company have to follow the instructions and directions of the Company through its chairman and Managing Director and when Chairman has been relieved from the charges on compounding the offences so also the Company, it cannot be said that its officers can

be separately prosecuted. At the most department or investigating agency may ask for penalty in the form of compounding charges from all the accused. (Para 33)

It is undisputed fact that Central Excise Act and Rules provides for compounding the offences so also section 320 of Cr.PC. It is also undisputed fact that once main offence is compounded then there is catana of judgments by Supreme Court that when the department has compounded the offences then there is no reason to continue the criminal proceedings, more particularly when offences are either in the form of breach of rules or technical offences. In the present case, though some documents are alleged to be forged practically there is no forgery of any documents. It is submitted by the petitioners that, in fact an advance appreciation of work by the Company as per project report happens as per fixed schedule was disclosed. However for one reason or another if such time schedule could not be adhered to either during installation or during production it may not amount to committing offence of forgery, since there is no mens rea and practically there is no financial benefit accrued in favour of the petitioners. (Para 34)

In support of such conclusion, reference to certain judgments of the Apex Court are necessary, which are as under.

(1) AIR 1997 S.C. 2041: State of Maharashtra vs. Priya Sharan Maharaj -

It is held that at the stage of framing the charge, the Court has to consider the material with a view to find out if there is ground for presuming that accused has committed an offence or that there is no sufficient ground for proceeding against him and not for the charges by arriving at the conclusion that it is not likely to lead to a conviction.

(2) AIR 2000 SC 665 = 2000 SCC(2) 57 : State of MP vs. SB Johari -

It was held that, the Court at the stage of S.227 and S.228 is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. Only prima facie case is to be looked into. The charge can be quashed if the evidence which the prosecutor proposes to prove the guilt of the accused, even if fully accepted, it cannot show that accused committed that particular offence. Thus it is settled law that at the stage of framing the charge, the Court has to prima facie

consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial.

(3) 2005 SC 359: State of Orissa vs. Debendra Nath Padhi -

The Apex Court has held that, it is seen from S.227 of the Code that in a case triable before the Court of Session, if the Court on consideration of the record of the case and the documents submitted therewith and after hearing the submission of the prosecution and the accused if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording reasons for doing so.

(4) (1997) 4 SCC 393 = 1997 AIR SCW 1833: State of Maharashtra vs. Priya Sharan Maharaj -

Referring to the case of Niranjan Singh Karam Singh Punjabi (supra) held that at the stage ofSections 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 there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth and even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out that whether there is any ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

(5) AIR 2007 SC 2149 = 2007 AIR SCW 3683 - Soma Chakravarty v. State -

It is held as under: Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible.

(6) AIR 2012 SC 1890 - General Officer Commanding Vs.CBI It is held as under: The cognizance has to be taken of the offence and not of the offender and that it is the duty of the investigating agency to collect and to produce cogent evidence against the accused for framing charge and Court can convict the accused only if such charges i.e. evidence is proved on record without reasonable doubt. Therefore, if there is no chance to prove a commission of offence by the accused, charge cannot be framed.

(7) AIR 2009 SC Supplimentary 1744 - State of M.P. Vs.Sheetla Sahai It is held as under: if the Court arrives at only opinion, there is no evidence against the accused, the Court shall not put accused to harassment by asking him to face a trial.

1. Thus, the law on the subject is now well settled, that while framing charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at 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. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that whether it is likely to lead to a conviction or not. (Para 35)

Counsel:- ***For Appellant(s):*** *Mr Pratik Y Jasani & Mr. Digant M. Popat, Advocates*

For Respondent(s): *Mr RC Kodekar, Advocate.*

Cases Referred:-

1. *Surinderjit Singh Mand V. State of Punjab ; 2013(8) SCC 722. (Para 10)*
2. *Rajesh Kumar Sharma V. Union of India & Ors.; (2007) 9 SCC 158. (Para 17)*
3. *Hira Lal Hari Lal Bhagwati V. CBI, New Delhi ; (2003) 5 SCC 257. (Para 17)*
4. *Rajesh Kumar Sharma V. Union of India & Ors.; (2007) 9 SCC 158. (Para 20)*
5. *G.N.Verma V. State of Jharkhand & Anr.; (2014) 4 SCC 282, (Para 23)*

6. *National Small Industries Corpn. Ltd. V. Harmeet Singh Paintal. (2010) 2 Glh 766 (Para 23)*
7. *G.L. Didwania V. Income Tax officer; 1998 (108) E.L.T. 16 (S.C). (Para 29)*
8. *Kolla Veera Raghav Rao V. Gorantala Venkateshwara Rao And Another; (2011) 2 Supreme Court Cases 703 . (Para 29)*
9. *K.C. Builders And Another V. Assistant Commissioner of Income Tax; (2004) 2 Supreme Court Cases 731 . (Para 29)*
10. *Sunil Bharti Mittal V.Central Bureau of Investigation; (2015) 4 Supreme Court Cases 609 . (Para 29)*
11. *Central Bureau of Investigation V. Jagjit Singh; (2013) 10 Supreme Court Cases 686 . (Para 29)*
12. *Mohit Alias Sonu And Another V. State of Uttar Pradesh And Another; (2013) 7 Supreme Court Cases 789. (Para 29)*
13. *Central Bureau of Investigation V. Jagjit Singh; (2013)10 SCC 686. (Para 30)*
14. *Mohit Alias Sonu And Another V. State of Uttar Pradesh And Another; (2013) 7 Supreme Court Cases 789 (Para 31)*
15. *State of Maharashtra Vs. Priya Sharan Maharaj; AIR 1997 S.C. 2041. (Para 35)*
16. *State of MP Vs. SB Johari; AIR 2000 SC 665 = 2000 SCC(2) 57. (Para 35)*
17. *State of Orissa Vs. Debendra Nath Padhi; 2005 SC 359. (Para 35)*
18. *State of Maharashtra Vs. Priya Sharan Maharaj; (1997) 4 SCC 393 = 1997 AIR SCW 1833. (Para 35)*
19. *Soma Chakravarty V. State; AIR 2007 SC 2149 = 2007 AIR SCW 3683. (Para 35)*
20. *AIR 2012 SC 1890 - General officer Commanding Vs.CBI. (Para 35)*
21. *State of M.P. Vs. Sheetla Sahai; AIR 2009 SC Supplimentary 1744. (Para 35)*

JUDGMENT

S.G. SHAH, J.: - 1. Heard learned advocate Mr. Pratik Jasani and Mr. Digant M. Popat for the petitioners and learned Standing Counsel Mr. R.C. Kodekar for CBI. Perused the record.

2. These two petitions are though by different petitioners, they are arising out of the same FIR and having common and similar disputes between the parties and therefore, they are heard and decided together by common judgment. The advocates have also addressed only one set of arguments for both the petitions. Both petitioners have also opted the submissions and decision dated 3.10.2016 in Criminal Revision Application Nos.594 of 2016 with allied matters, which are also with reference to same FIR, but for other accused. Therefore, the discussion is also recorded in one set only to avoid duplication of work and repetition of same facts separately in separate judgments.

3. Petitioner in Criminal Revision Application No.857 of 2016 namely; James Samual is nowhere connected either with the tax benefit claimed by the Company or with the paper work carried out by another petitioner viz. Babubhai Chhotalal Makwana, an Officer of the Central Excise Department. However, the only allegation against him in the FIR so also in the Chargesheet is to the effect that he has issued forged document in favour of the Company though there was no commercial production by the Company. Whereas, perusal of allegation in the Chargesheet (Page 25 i.e. running page 215 of the petition) on the contrary discloses altogether a different story when it is stated that the Company at Anjar, District Kutch has issued a first invoice being invoice no.1 dated 28.12.2005 to M/s.Angel Enterprise, a proprietary firm of the petitioner. It is also disclosed that a partnership firm of the petitioner M/s.Jai Shakti Engineering and Construction was engaged in fabrication and erection work of the Company. So far as criminal act is concerned, the allegation is only to the effect that though actual supply was of 50 MM thickness MS plates on 4.1.2006, the invoice issued by the Company was for clearance of 06 MS plates of 35 and 40 mm thickness and, thereby, when Company was not able to start production of requisite product, the petitioner firm has tried to show that it has received a proper production as per their order.

4. In any case, this allegation does not amount to any particular offence, inasmuch as, there is no evidence except such bare allegation on paper about discrepancy of the product or the date, inasmuch as, in-fact the report of the Officer of the Department as per local inspection on 28.12.2005 specifically confirms that there was such production on that day. Such report is at page 75 / C dated 2.1.2006 by Mr. S.P. Gawade, Assistant Commissioner of Central Excise of Bhuj. Therefore, fact is quite clear that there is no dispute so far as production and its supply is concerned, inasmuch as, production is dated 27.12.2005, invoice is dated 28.12.2005 and supply of goods is dated 4.1.2006. So far as measurement in terms of thickness of plates are concerned, when immediately goods is supplied practically petitioner has no chance either to accept or to reject the goods but it cannot be said that there was no production even if goods were having some discrepancy in measurement. Therefore there is no clinching evidence to confirm that petitioner has committed any offence as alleged in such chargesheet i.e. either under Sections 424, 463, 468, 471 and 511read with 120B of the Indian Penal Code.

5. The petitioner in Criminal Revision Application No.859 of 2016 namely; Babubhai Chhotalal Makwana is retired Assistant Commissioner of Central Excise Department. The Chargesheet (Page no.22 i.e. running page 212 of the petition, paragraph of the petition) against him states about his role to the effect that he being Assistant Commissioner has submitted a report dated 16.1.2006 mentioning that the Company had invested Rs.45.46 crores and started production and, therefore, eligible for exemption of Central Excise Tax under the Notification. Whereas, according to the Investigating Agency, no commercial production was started on that day. Even if it is to be presumed that on date of such report by the petitioner, the Commercial production was not started, as recorded hereinabove, the fact remains that production was already started on 27.12.2005 which was certified by officer of equivalent cadre being Assistant Commissioner viz; Mr. S.P. Gawade, wherein, it is specifically stated that production has started on 27.12.2005 when Mr. S.P. Gawade has visited the factory. Therefore, when Department is prosecuting present petitioner, it is quite obvious that Department should also prosecute Mr. S.P. Gawade too because if no commercial production was started as certified by the petitioner, then, report of Mr. S.P. Gawade is also equally wrong when he stated that commercial production is commenced by the Company as per his visit dated 27.12.2005. Such report No.IV-16-162- TECH-2005 dated 2.1.2006 is at page 75 / A wherein against the name of the Company, the date of commencement of commercial production is disclosed as 27.12.2005 so also the date of visit as 27.12.2005.

6. Therefore, what is submitted by the petitioner is quite simple and is to the effect that in-fact he has relied upon the documents produced before him regarding investment by the Company which is disclosed as per the Report of the Chartered Accountant and so far as production is concerned, it is in confirmation of the Report by Mr. S.P. Gawade, Assistant Commissioner of Central Excise. Therefore, he has not committed any offence as alleged in the Chargesheet. If certificate by Chartered Accountant was found doubtful thereafter by the Committee, then, it cannot be said that present petitioner has committed the offence of cheating or forgery.

7. For both the cases, it cannot be ignored that ultimately Company has not received any financial benefit since it has on its own declaration to the Department stated that now they are not entitled to

the tax benefit and even, thereafter, Department has penalized them by imposing penalty of Rs.50,000/- for each of the accused who are concerned with the Company and came forward to settle the issue with the Department.

8. So far as petitioner Babubhai Chhotalal Makwana is concerned, he has been charged withSections of Indian Penal Code as stated hereinabove so also for the alleged offences under Section 13 (1) and 13(1)(d) of the Prevention of Corruption Act, 1988. The bare reading of the provisions of Prevention of Corruption Act makes it clear that in any case, there are no ingredients or details in the FIR or in the Chargesheet so as to attract the provisions of Corruption Act and then to prosecute the petitioner under such Act.

9. It is quite clear and obvious that under Section 13(1)(d), the basic requirement is to the effect that the accused himself should have obtained either for himself or for any other person either any valuable thing or pecuniary advantage either by corrupt or illegal means or by abusing his position and without any public interest. Therefore, when there is no allegation about any such fact, it can be said that there is no prima-facie evidence regarding criminal misconduct as alleged.

10. Learned advocate for the petitioner is relying upon the decision in the case of ***Surinderjit Singh Mand v. State of Punjab reported in 2013(8) SCC 722***, wherein, it has been held that for prosecuting a Government servant, a sanction under Section 199 of the Code of Criminal Procedure for the offences under Indian Penal Code and under Section 197 of the Code of Criminal Procedure for the offences under the Corruption Act is must unless it is proved that the act of the accused is not within the purview of his official duties. It is not the case of the respondent that petitioner Babubhai Chhotalal Makwana was not performing his official duty, inasmuch as, on the contrary it is the basic requirement of the Act that if somebody while holding office as a public servant or by abusing his position as public servant obtains any benefit either for himself or for any other person in terms of valuable thing or pecuniary advantage. Therefore, it is obvious that allegation against the petitioner is with respect to performance of his official duty and hence in absence of sanction so also even prima-facie evidence regarding benefit if any obtained by the petitioner, there is no reason to continue the proceedings against him.

11. It is also evident from records that practically impugned order is also common in all these two revision petitions, being order

dated 20th January,2010, below the chargesheet to issue process against petitioners.

12. The sum and substance of the case against the petitions is to the effect that main accused, a public limited Company incorporated under the Companies Act, 1956 namely M/s.Welspun Gujarat Sthal Public Limited which name was changed to M/s.Welspun Corporation Limited (hereinafter referred to as the "Company") has filed an application for exemption of Excise duty, pursuant to the notification dated 31st July, 2001 by the Central Government offering exemption from the excise duty to certain units under specific terms and conditions. It is undisputed fact that said factory has its units at Anjar in Kutch and for the benefit of the Company, while applying for such exemption, the Company had declared that its units had started commercial production. The Company had also disclosed the value of installed plant and machinery by way of producing a certificate issued by the Chartered Accountant and to prove the commercial production and transactions. The Company have also filed invoices alleged to had been issued prior to 31st December, 2005.

13. However, when the Assistant Commissioner of Central Excise had visited the unit of the Company they found that the plant and machinery were not fully installed and the unit was operated only for limited production and that it was the only possible production at the time of inspection i.e. 2nd January, 2006 and thereby there is no possibility of any more production and therefore the disclosure by the Company through its officers was not only false but fraudulent in as much as they wanted to declare themselves eligible under the terms and conditions of the notification dated 31st July, 2001, so as to get exemption from the payment of excise duty. It is further contended that even Chartered Accountants of the Company had issued false certificate claiming that the valuation of the plant and machinery installed is of Rs. 45.46 crores and Rs. 83.69 crores; though there was no such plant and machinery available on the day of inspection. Therefore, it is alleged that even Chartered Accountants had issued installation certificate without physically verifying the plant and machinery. Therefore, as submitted, it is found that several documents are manipulated to get the exemption from excise duty and hence investigation was conducted, wherein it has been revealed that several documents are forged and fabricated and therefore the complaint was lodged against the Company on 31st

July, 2006. After investigation, CBI has submitted its report and filed a complaint against several accused under sections 420, 467, 468, 471, 511, 120(b) of I.P.C. and Section 13(2) read with Section 13(1)(1)(d) of the Prevention of Corruption Act,1988. Amongst such accused, there is the Company itself, its Chairman, Managing Director and other officers so also Chartered Accountants so also present petitioners.

14. Considering the investigation by CBI, the F.I.R and charge-sheet runs into pages, disclosing several irregularities and illegal activities alleged to have been committed by the Company and petitioners. There are several communications from some of the officers and Chartered Accountants disclosing the compliance of certain terms and conditions of the notification under reference. But, mainly it was found that the contents of such communication are not correct.

15. Amongst the accused, the Managing Director of the Company namely B.K. Goenka had come forward and discussed the dispute with the department of Customs and Excise conveying that it was a bonafide error or mistake on their part and therefore he would like to settle the dispute with the department. It cannot be ignored that the basic ingredient of such settlement is the fact that practically Company has never received any exemption from payment of tax, may be because of the fact that the documents were not in order. But, the fact remains that there was no financial benefit to the Company and nor to any of its office bearers or officers or even to the present petitioners in any manner whatsoever. It is also undisputed fact that otherwise also the benefit if any is to be received, it will go the Company and not to any individual and that the benefit to the Company would be ultimately to its shareholders and not to any particular individual in terms of any fix amount.

16. Pursuant to such attempt and exercise by B.K. Goenka, the Managing Director of the Company, the Customs and Excise Department had; considering the bonafides of the Company and its office bearers, so also officers; agreed to settle the dispute and therefore now it would not be necessary to recollect all the minute details of the F.I.R and charge-sheet, or the activities carried out by the Company for getting some advantage, more particularly when they have never received any advantage at all.

17. It is submitted by petitioners that by an Order No.01/ CO/2008 dated 19th December 2008 the Chief Commissioner of

Central Excise had entered into a compromise and compounded the offence, if any, committed by the Company or its office bearers. The perusal of such order,reveals that the Department had, after recording the facts of the case and verification by the reporting authority while recording the findings makes it clear that the applicant before it i.e. M/s Welspun Corporation Ltd., Shri B K Goenka Managing Director of M/s Welspun Corporation Ltd. and Shri Mahesh Khemka Vice President of M/s Welspun Corporation Ltd. have disclosed true facts relating to the case and therefore the Chief Commissioner granted them immunity from prosecution under Section 9 of the Central Excise Act, 1944. While granting such immunity, it has been recorded that the basis on which the Application for exemption was rejected is false information furnished by the Company which constitutes an offence under Section 9(1)(c) of the Central Excise Act, 1944. Further, it was emphasized that the Company had not availed any benefit under the notification dated 31st July, 2001 and has removed the cost of payment of duties by utilization of CENVAT Credit, thereby there has been no loss of revenue to the department by any act of the Company. Therefore, it is certainly a clear position that when department by which the proceeding has been initiated has compounded the offence and that too by imposing condition to pay the amount for such compounding and thereby when the Chief Commissioner of Central Excise compounded the offence subject to the payment of Rs. 50,000/- by each of the applicant before it and that such amount is deposited by the concerned persons / accused; there is no reason to proceed further in criminal trial when the department is not going to come and prove that the Company or any other persons have obtained any illegal and undue advantage from them. Though the legal position is well settled on such issue and thereby though there is no need to continue the trial any further when CBI has filed a charge-sheet, initially the Managing Director of the Company Shri Balakrishna Gopiram Goenka (B.K.Goenka) has challenged the proceeding in a quashing petition being Special Criminal Application No. 2543/2012, such petition was resisted by the State and CBI. The perusal of the judgment dated 10th April,2015, is on record at Annexure P-20 in such petition makes it clear that the Co-ordinate Bench has not only quashed and set aside the FIR qua the petitioner before it namely B.K. Goenka but has categorically observed that the purpose of compounding of offence against the payment of compounding amount is to prevent litigation and encourage early

settlement of dispute as held by Hon'ble Supreme Court of India in the case of ***Rajesh Kumar Sharma v. Union of India & Ors. Reported in (2007) 9 SCC 158,*** and ***Hira Lal Hari Lal Bhagwati v. CBI, New Delhi , reported in (2003) 5 SCC 257***, wherein Hon'ble Supreme Court has held that the Company is immune from any criminal proceedings pursuant to the certificate issued under the scheme.

18. In light of the above background, I have considered the arguments canvassed on behalf of the learned advocates appearing for the parties. I have also gone through the documents produced on record. In the present case, the FIR came to be registered against one of the petitioners namely; B. C. Macwana, the then Assistant Commissioner, Central Excise, Rajkot, M/s. Welspun Gujarat Sthal Rohren Limited and also against present petitioner namely; James Samual for the offences punishable under Sections 120B, 420, 467, 468, 471 and 511 of Indian Penal Code and under Sections 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. After the investigation, a charge-sheet came to be filed against the officers of the aforesaid Company including the present petitioners. The Company passed a resolution in its Board Meeting and decided to apply for getting excise benefit as per Notification dated 31.07.2001 and therefore the Company submitted an application on 24.12.2005. However, from the record,it appears that before the registration of the FIR, an application seeking withdrawal of the benefit, which was sought under Notification dated 31.07.2001, was submitted by the Company and, therefore, the Company has not received any wrongful gain on the basis of its earlier application dated 24.12.2005 and therefore, no pecuniary loss is caused to the Department. Thus, the ingredients of the alleged offence punishable u/s. 420 of IPC are not attracted.

19. It is also clear from the record and more particularly from the order dated 19.09.2008 passed by the Chief Commissioner, Central Excise that when the Central Excise Department had initiated the proceedings under Section 9of the Central Excise Act against the Company and its officers with regard to the similar set of allegations made in the impugned FIR, the department compounded the offence and therefore the allegations made in the proceedings initiated under Central excise Act have come to an end. Thus, when the Company and thereby its officers had compounded the offence, initiation of proceedings under the provisions of IPC and Prevention of Corruption Act for the same allegations cannot be permitted.

20. In the case of ***Rajesh Kumar Sharma v. Union of India & Ors., reported in (2007) 9 SCC 158,*** The Hon'ble Supreme Court, in para 6, observed as under:

> "6. The guidelines for compounding are contained in the Circular No. 54/2005-Cus dated 30th December, 2005.Central Government had brought in to force the Customs (Compounding of Offences) Rules 2005 (in- short the Custom Rules') and Central Excise (Compounding of Offences) Rules 2005) (in short the 'Central Excise Rules') with effect from 30th December, 2005. the purpose of compounding the offences against payment of compounding amount is to prevent litigation and encourage early settlement of diputes. The cases where compounding would be rejected are also spelt out in the said circular."

21. In the case of ***Hira Lal Hari Lal Bhagwati v. CBI, New Delhi, reported in (2003) 5 SCC 257,*** The Hon'ble Supreme Court, in paras 29 and 30, observed as under:

> "29.In our view, in the present case, the alleged criminal liability stands compounded on a settlement with respect to the civil issues and, therefore, the First Information Report was erroneously issued and was totally unwarranted. From the aforesaid judgment, the proposition that follows in the instant case is that the Kar Vivad Samadhan Scheme, 1998 issued by the Government of India was a voluntary scheme whereby if the disputed demand is settled by the Authority and pending proceedings are withdrawn by an importer shall be dropped and the importer shall be immuned from the penal proceedings under any law in force. We are therefore, of the opinion that this judgment squarely comes in the face of any argument sought to be propounded by the respondent that the Kar Vivad Samadhan Scheme, 1998 does not absolve the appellants from criminal liability under the Indian Penal Codee. The learned Single Judge of the High Court of Delhi, in our opinion, has not appreciated the fact that the continuance of the proceedings in the instant case would only tantamount to driving the present appellants to double jeopardy when they had been honorably exonerated by the Collector of Customs by their adjudication and further the GCS of which one of the appellants is the General Secretary in which capacity he is accused in the present

case was granted amnesty under the Kar Vivad Samadhan Scheme, 1998. In our opinion, the present case does not warrant subjecting a citizen especially senior citizens of the age of 92 & 70 years to fresh investigation and prosecution on an incident or fact situation giving rise to the offence under both the Customs Act and the Indian Penal Code when the matter has already been settled. Likewise, the respondent herein has initiated criminal proceedings against Accused No. 2 & Accused No. 1, inter alia , on the ground alleging that the appellant in conspiracy with the co-accused named therein with each other have cheated the Government of India in terms of evasion of Customs Duty and by concealment of facts obtained CDEC in respect of MRI and Lithotripsy machines and by violating the provisions of actual user condition as per Import Export Policy and Customs Notification No. 279/83 dated 30.9.1983 and Customs Notification No. 64/88 dated 1.3.1988 during the year 1987-90, despite acknowledging the fact that Customs Duty has been paid by the appellants to the Customs Department and settled and that commission of offences under Section 120Bread with section 420 of the Indian Penal Code are made out.

30.In our view, under the penal law, there is no concept of vicarious liability unless the said statute covers the same within its ambit. In the instant case, the said law which prevails in the field I.e. the Customs Act,1962 the appellants have been therein under wholly discharged and the GCS granted immunity from prosecution. It is well established principle of law that the matter which has been adjudicated and settled need not to be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable. The true fact and import of the Kar Vivad Samadhan Scheme, 1998, in our view, is that once the said Scheme is availed of and all the formalities complied with including the payment of the duty, the immunity granted under the provisions of the Customs Act,1962 also extends to such offences that may prima facie be made out on identical allegations i.e. of evasion of Customs Duty and violation of any Notification issued under the said Act."

22. In view of the aforesaid decisions, the learned Counsels are right in submitting that in the present case once the offence is

compounded under the provisions of the Central Excise Act and thereby the petitioner herein is granted immunity from the prosecution, the impugned FIR and the charge-sheet be quashed and set aside qua the petitioners also.

23. In case of ***G.N.Verma v. State of Jharkhand & Anr., reported in (2014) 4 SCC 282,*** the Hon'ble Supreme Court, in para 18, 19, 20 and 25, observed as under:

> "18. It is nobody's case that G.N. Verma was appointed as an agent of any mine. Also, the complaint does not allege or state anywhere that G.N. Verma acted or purported to act on behalf of the owner of the mine or that he took part in the management, control, supervision or direction of any mine. In fact his duties and responsibilities have not been described in the complaint. In the absence of G.N.Verma's duties having been spelt out in the complaint, it is not possible to say whether he was merely an administrative head of Karkata Colliery being its Chief General Manager or was he required to be involved in technical issues relating to the management, control, supervision or direction of any mine in Karkata Colliery. The averment in the complaint is bald and vague and is to the effect that at the relevant time G.N. Verma was the Chief General Manager/deemed agent and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the Rules, Regulations, Orders made thereunder.
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> 19. It has been laid down, in the context of Sections 138 and 141 of the Negotiable Instruments Act, 1881 in ***National Small Industries Corpn. Ltd. v. Harmeet Singh Paintal reported in (2010) 2 GLH 766*** that Section 141 is a penal provision creating a vicarious liability. It was held as follows: (SCC p. 336, para 13)
>
> "13. ... It is therefore, not sufficient to make a bald cursory statement in a complaint that the Director (arrayed as an accused) is in charge of and responsible to the Company for the conduct of the business of the Company without anything more as to the role of the Director. But the complaint should spell out as to how and in what manner Respondent 1 was in charge of or was responsible to the accused Company for the

conduct of its business. This is in consonance with strict interpretation of penal statutes, especially, where such statutes create vicarious liability."(emphasis in original)

It was then concluded:

(SCC p. 345, para 39)

"39. (I) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every Director knows about the transaction."

20. Insofar as the criminal complaint is concerned, it does not contain any allegation against G.N. Verma. The only statement concerning him is that he was the Chief General Manager/deemed agent of the mine and was exercising supervision, management and control of the mine and in that capacity was bound to see that all mining operations were conducted in accordance with the Act, the Rules, Regulations, Orders made thereunder. In the face of such a general statement, which does not contain any allegation, specific or otherwise, it is difficult to hold that the Chief Judicial Magistrate rightly took cognizance of the complaint and issued summons to G.N. Verma. The law laid down by this Court in Harmeet Singh Paintal (though in another context) would be squarely applicable.

Under the circumstances, we are of the opinion that on the facts of this case and given the absence of any allegation in the complaint filed against him no case for proceeding against G.N. Verma has been made out.

25. On the facts of this case, we would need to unreasonably stretch the law to include G.N. Verma as a person vicariously responsible for the lapse that occurred in the mine resulting in a fatal accident. We are of the view that under these circumstances, there is no basis for proceeding under Section 72B of the Act against G.N. Verma."

24. In above view of the matter, I am in agreement with the argument canvassed by the learned Counsels for the petitioners that since there is no specific allegation in the FIR or in the charge-sheet against petitioners and merely because the petitioners were in picture

during the activities by the Company, they have been implicated in the offence, but the petitioners cannot be made vicariously liable for the act and/or omission on the part of the Company for the offence punishable under the provisions of the IPC or Prevention of Corruption Act when there is no evidence against them to prove such offences. Whereas Department has already compounded the offence if any committed by the Company.

25. The contention of the learned advocate Shri Kodekar appearing for respondent No.2 - CBI is that petitioners were members of the team of the Company which had tried to execute the resolution passed by the Company whereby it was decided to apply for getting excise benefits as per the Notification dated 31.07.2001 and therefore the petitioners are involved in the aforesaid crime. However, the said contention is misconceived in view of the fact that petitioners were never members of the team of the Company and when Company had decided to give an application for getting the benefit of excise, it cannot be said that petitioners were having any intention to commit the alleged offence.

26. In fact no specific role is attributed to each of the petitioner with regard to the alleged offence. Further, the Company has also decided to withdraw the application given for getting the benefit as per the Notification dated 31.07.2001 and therefore the Company has given an application for withdrawal on 17.07.2006 i.e. before the registration of the FIR. Therefore, it cannot be said that the petitioners have committed the alleged offence. Moreover, it is not the case of the CBI that petitioners have wrongfully gained anything and/or any wrongful loss is caused to the Department. The reliance placed by learned advocate Shri Kodekar on the statement of Shri Kuttan Mohanan Pillai is also misconceived in view of the fact that the said person is coaccused in the chargesheet which is filed against the Company and its officers. In the statement given by the said co-accused, no specific allegations are made by the said coaccused against the petitioner.

27. In view of the aforesaid discussion, when it is prima facie proved that the petitioner has not wrongfully gained anything and/or any wrongful loss is caused to the Department and the Company and its officers including the petitioners have been granted immunity, in the opinion of this Court, there is no need to continue with the criminal prosecution against the present petitioners. Moreover,

neither in the FIR nor in the charge-sheet any specific allegations are leveled against the petitioners that they have forged any document. Even otherwise, looking to the impugned FIR and from the papers of chargesheet, the ingredients of the alleged offence are prima facie not made out.

28. Thus, in view of the aforesaid discussion, the impugned FIR being RC20(A)/2008 - GNR and all proceedings initiated pursuant thereto are nothing but a gross abuse of the process of the Court and therefore in the interest of justice, the same are required to be quashed and set aside. Accordingly, FIR being RC20(A)/2008 - GNR and the charge-sheet filed pursuant thereto are hereby quashed and set aside qua the petitioners. Rule is made absolute.

29. The petitioners are also relying on the following cases which are confirming same principles that prosecution and proceedings after compounding dispute cannot be sustained therefore, further discussion of such judgment has been avoided.

(1) 1998 (108) E.L.T. 16 (S.C) G.L. DIDWANIA V. INCOME TAX OFFICER;

(2) (2011) 2 SUPREME COURT CASES 703 KOLLA VEERA RAGHAV RAO V.GORANTALA VENKATESHWARA RAO AND ANOTHER;

(2) (2004) 2 SUPREME COURT CASES 731 K.C. BUILDERS AND ANOTHER v. ASSISTANT COMMISSIONER OF INCOME TAX;

(3) (2015) 4 SUPREME COURT CASES 609 SUNIL BHARTI MITTAL v.CENTRAL BUREAU OF INVESTIGATION;

(4) (2013) 10 SUPREME COURT CASES 686 CENTRAL BUREAU OF INVESTIGATION v. JAGJIT SINGH;

(5) (2013) 7 SUPREME COURT CASES 789 MOHIT alias SONU AND ANOTHER v. STATE OF UTTAR PRADESH AND ANOTHER.

30. As against that learned Advocate Mr. Kodekar for the CBI is relying on the decision reported in ***(2013)10 SCC 686 Central Bureau of Investigation v. Jagjit Singh*** wherein Hon'ble the Supreme Court has held that settling the dispute with the bank is no ground to quash criminal proceedings against defaulter/loanee because such offences are not related to banking activities and it has harmful effect

on public and it threatens the whole society and therefore though bank seems to be the victim society in general is victimized and hence criminal complaint was denied to be quashed only because payment is made. Whereas in the present case, the fact remains that in the present case, actually there is no default in making any payment but it is only an attempt in getting any exemption from taxation and that was also not materialized and on the contrary the Managing Director of the Company, the Company and its Vice President paid Rs.50,000/- each i.e. a total of Rs.1,50,000 for compounding offences thereby practically there was benefit to the department and there was no benefit to the accused.

31. Mr. Kodekar is also relying upon the decision in ***(2013) 7 SUPREME COURT CASES 789 between MOHIT alias SONU AND ANOTHER v. STATE OF UTTAR PRADESH AND ANOTHER*** wherein Hon'ble Supreme Court has considered the revisional powers of the Court under Section 397(2) with reference to interlocutory order and held that when there is specific remedy provided by way of appeal orcannot and should not be resorted to. Therefore, when the present petitions are not under Section 482 of the Code for quashing the complainant but under Section 397 the Court has to verify the irregularity and illegality if any in the impugned order. Hence, this judgment would not help the respondent.

32. However it cannot be ignored that what is to be looked into is "a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged"; therefore it cannot be said that even if in absence of suspicion, presumptive opinion of the commission of offence as alleged, charge must be framed. Suffice to say that when enactment /statute provides for discharging accused, basically accused has a right to get discharge, which may be subject to fulfillment of certain criteria, that may be laid down either in the statute as well as its interpretation by the Apex Court and not otherwise. Therefore, there can be order of discharge if there is no evidence with charge sheet which gives rise to even a slight suspicion to presume the commission of offence by the accused. Needless to say that even if there is suspicion regarding commission of offence, what is required to frame discharge is suspicion of commission of offence by the accused against whom charge sheet is filed. Thus even if suspicion is possible for commission of offence, and if there is no evidence to link such suspicion with the accused,

there cannot be a presumption against the accused that he had committed the offence and he may be entitled to get discharged from the charges levied against him under the charge sheet. Needless to say that the charges levied against the person is to be considered and not the story or history of incident which results into the commission of offence. For more clarity, commission of offence alone is not sufficient to frame charge against any person, there must be some suspicion that offence had been committed by the said person and not by any other person. If the suspicion is to the effect that though offence has been committed, probably accused might have not committed such offence but real offender may be someone else, Court has to see that truth comes out whereby the Investigating Agency may not be permitted to put their hands down merely by filing charge sheet against any one including any innocent person. In such cases, trial cannot be allowed to continue only upon opinion of the investigating agency that accused had committed the offence as alleged in charge sheet. The Court has to arrive at independent opinion, after considering the available prima facie evidenced on record - which is in the form of papers with the charge sheet, not only tabular charge sheet but list of witnesses and their statement before the investigating agency (police papers). It is the Court's duty to frame independent opinion regarding not only commission of crime but involvement or role of the accused against whom charge sheet is filed and if there is no possibility of even little suspicion against the accused regarding commission of offence by him, there is no bar to discharge such person from the charges leveled against him. In such cases, it would be open for the original complainant and the investigating agency to keep such person under suspicion but to investigate further so as to find out real culprit, else filing of charge against a person only on suspicion but without sufficient evidence against him would be a futile exercise and it will not only increase unnecessary workload but crime in the society also, since real culprits are able to get secluded them from the trial.

33. It becomes clear that the special judge mainly relied upon the facts discussed in the FIR and charge-sheet, but failed to realize the legal position in the case of compromise or compounding of offence by the parties. There is no need to proceed further in criminal proceedings. The Trial Court has also failed to appreciate the factual details that in fact the Company has never been benefited by seeking exemption of tax and that now there is one final judgment in favor of one of the

accused and against the prosecuting agency. But the determination of co-ordinate bench which is recollected herein above is certainly applicable to all the accused and it cannot be said that it is applicable only to the person who has preferred such petition. Therefore, when the complainant is already quashed against the Managing Director of the Company and when the Company and its Vice President has also compounded the offence with department on payment of compounding charges, it cannot be said that there is sufficient material and ground to continue with the proceeding against remaining accused including the present petitioners who are practically not concerned with the final benefit if any received by the Company. When factually Company has never received any financial benefit it cannot be ignored that the present petitioner Company, and officers of the Company have to follow the instructions and directions of the Company through its chairman and Managing Director and when Chairman has been relieved from the charges on compounding the offences so also the Company, it cannot be said that its officers can be separately prosecuted. At the most department or investigating agency may ask for penalty in the form of compounding charges from all the accused.

34. It is undisputed fact that Central Excise Act and Rules provides for compounding the offences so also section 320 of Cr.PC. It is also undisputed fact that once main offence is compounded then there is catana of judgments by Supreme Court that when the department has compounded the offences then there is no reason to continue the criminal proceedings, more particularly when offences are either in the form of breach of rules or technical offences. In the present case, though some documents are alleged to be forged practically there is no forgery of any documents. It is submitted by the petitioners that, in fact an advance appreciation of work by the Company as per project report happens as per fixed schedule was disclosed. However for one reason or another if such time schedule could not be adhered to either during installation or during production it may not amount to committing offence of forgery, since there is no mens rea and practically there is no financial benefit accrued in favour of the petitioners.

35. In support of such conclusion, reference to certain judgments of the Apex Court are necessary, which are as under.

(1) AIR 1997 S.C. 2041: State of Maharashtra vs. Priya Sharan Maharaj -

It is held that at the stage of framing the charge, the **Court has to consider the material with a view to find out if there is ground for presuming that accused has committed an offence** or that there is no sufficient ground for proceeding against him and not for the charges by arriving at the conclusion that it is not likely to lead to a conviction.

(2) AIR 2000 SC 665 = 2000 SCC(2) 57 : State of MP vs. SB Johari -

It was held that, the Court at the stage of S.227 and S.228 is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. **Only prima facie case is to be looked into. The charge can be quashed if the evidence which the prosecutor proposes to prove the guilt of the accused, even if fully accepted, it cannot show that accused committed that particular offence.** Thus it is settled law that at the stage of framing the charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. **The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that accused committed the particular offence. In such case there would be no sufficient ground for proceeding with the trial.**

(3) 2005 SC 359: State of Orissa vs. Debendra Nath Padhi -

The Apex Court has held that, it is seen from S.227 of the Code that in a case triable before the Court of Session, **if the Court on consideration of the record of the case and the documents submitted therewith and after hearing the submission of the prosecution and the accused if the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused after recording reasons for doing so.**

(4) (1997) 4 SCC 393 = 1997 AIR SCW 1833: State of Maharashtra vs. Priya Sharan Maharaj -

Referring to the case of Niranjan Singh Karam Singh Punjabi (supra) held that at the stage ofSections 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 there from taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth and even if it is opposed to common sense or the broad probabilities of the case. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out that whether there is any ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

(5) AIR 2007 SC 2149 = 2007 AIR SCW 3683 - Soma Chakravarty v. State -

It is held as under: Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible.

(6) AIR 2012 SC 1890 - General Officer Commanding Vs.CBI It is held as under: The cognizance has to be taken of the offence and not of the offender and that it is the duty of the investigating agency to collect and to produce cogent evidence against the accused for framing charge and Court can convict the accused only if such charges i.e. evidence is proved on record without reasonable doubt. Therefore, if there is no chance to prove a commission of offence by the accused, charge cannot be framed.

(7) AIR 2009 SC Supplimentary 1744 - State of M.P. Vs.Sheetla Sahai It is held as under: if the Court arrives at only opinion, there is no evidence against the accused, the Court shall not put accused to harassment by asking him to face a trial.

1. Thus, the law on the subject is now well settled, that while framing charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at 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. Therefore, at the stage of framing of the charge, the Court has to consider the material with a view to find out if there is ground for

presuming that the accused has committed the offence or that there is no sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that whether it is likely to lead to a conviction or not.

36. In view of above facts and circumstances, both these Revision Applications are allowed, as prayed for. Thereby impugned order dated 20.01.2010 charge-sheet to proceed further against petitioners are hereby quashed and set aside which results into discharging the petitioners from the offences registered against them pursuant to complaint no. RC/20(A) /2008/GNR and charges leveled against them in CBI Special case No. 3/2010.

3A. Amongst the accused at present we are concerned with accused as petitioner in Revision Petition no.857 of 2016 whereas accused as petitioner in Revision petition no.858 of 2016.

3B. At present the petitioners have challenged the order dated 20th January 2010 where by Special Court has ordered to issue process and to initiate criminal proceedings. However in view of the development on factual side , quashing of FIR and order dated 10th April,2015 in Special Criminal Application No. 2543/2012 petitioners are right to challenge such order and praying to remove the proceedings against them by quashing such orders dated 20.1.2010.

37. Rule is made absolute.

38. Direct Service is permitted.

Result:- Revision Applications allowed.

ABC 2017 (I) 88 GUJ
ACQUITTAL & BAIL CASES
HIGH COURT OF GUJARAT

(A.J. Desai, J.)

Criminal Misc.Application (For Regular Bail) No. 26970 of 2016
Decided on 2 December, 2016

NARENDRADEV DVIJENDRAPRASAD PANDEY - Applicant(s).

Versus

STATE OF GUJARAT & ANR. - Respondent(s).

Law Covered:- (A) Code of Criminal Procedure, 1973 — Section 439 — Regular Bail — Indian Penal Code, 1860 — Sections 307,