

(2024) 07 GUJ CK 0094

In the Gujarat High Court

Case No : Special Criminal Application (Quashing) No. 6548 of 2021, Special Criminal Application No. 5543 of 2021

Arunkumar Somabhai Sutaria Versus

APPELLANT

Vs

State Of Gujarat & Anr.

RESPONDENT

Date of Decision : 26-07-2024

Acts Referred:

Code of Criminal Procedure, 1973 — Section 173, 202, 204, 227, 228, 239, 244, 245, 245(1), 245(2), 277, 295, 311
Prevention of Corruption Act, 1988 — Section 7, 8, 13(1)(A), 13(1)(D), 13(2), 19, 20

Citation : (2024) 07 GUJ CK 0094

Hon'ble Judges : Hemant M. Prachchhak, J

Bench : Single Bench

Advocate : N D Nanavati, R H Rupareliya, Neha R Rupareliya, Mitesh Amin, Trupesh Kathiriya, I H Syed, Subramaniam Iyer

Final Decision : Dismissed

Judgement

Hemant M. Prachchhak, J

1. The original complainant approached the Hon'ble Supreme Court for the purpose of transferring the matters from Gujarat to somewhere else and while disposing of the said matters, the Hon'ble Supreme Court has directed to hear the matters pending before the Court expeditiously and, therefore, with the consent of learned counsel appearing for the respective parties, the matters are taken up for final hearing.

2. The Hon'ble Supreme Court has passed the order in Transfer Petition which reads as under:-

"There is already a stay granted by the High Court as a result of which, the Trial Court cannot proceed with the matter.

2. In view of such facts and circumstances, we are not inclined to consider the present Transfer Petition.

3. It will be open for the petitioner to apply before the High Court for vacation / final disposal of the pending petition in which the interim order is granted. Upon such an application being filed, the High Court is requested to take up the same on priority basis.

4. Liberty is granted to the petitioner to approach this Court again in case after the disposal of the matter by the High Court, the trial cannot proceed due to non-cooperation of the State in ensuring the presence of the accused, it will be open for the petitioner to approach this Court again.

5. The Transfer Petition stands disposed of accordingly.

6. Pending application(s), if any, shall stand disposed of."

3. Both these petitions have been arisen out of the same order dated 12.03.2021 passed below Exhibit 94 in Special A.C.B. Case No. 4 of 2015 by the learned 3rd Additional Sessions Judge and Special Judge, Gandhinagar (hereinafter be referred to as "the Trial Court") whereby the Trial Court has rejected the application.

4. Present petitions are filed by the petitioners for the following reliefs.

(a) To admit and allow this petition;

(b) To issue a writ of mandamus or any other appropriate writ, order or direction ordering to discharge the present petition in connection with Special A.C.B. Case No. 4 / 2015 pending before the Court of 3rd Additional Sessions Judge and Special Judge, Gandhinagar and thereby be pleased to set aside the order dated 12-3-2021 passed below Exhibit – 94 in Special A.C.B. Case No. 4 / 2015 by the 3rd Additional Sessions Judge and Special Judge, Gandhinagar.

(c) Pending the hearing and final disposal of this petition, be pleased to stay the proceedings of the trial of Special A.C.B. Case No. 4 / 2015 pending in the Court of 3rd Additional Sessions Judge and Special Judge, Gandhinagar.

(d) To grant any other appropriate and just relief/ s.

5. Since both the petitions are filed against the same order, the facts of Special Criminal Application No.6548 of 2021 is considered as a lead matter and both the petitions are being disposed of by this common judgment.

6. Brief facts of the present petitions are that in the year 2012, the respondent – complainant filed a private complaint before the Trial Court which came to be numbered as Inquiry Case No.1 of 2021 against Shri Purshottambhai Odhavjibhai Solanki whereby the Trial Court passed an order for verification. It is the case of the petitioner that the Trial Court passed an order granting time and the same was also further extended and, thereafter, the Trial Court passed an order to investigate the case by Anti – Corruption Bureau by relieving the Superintendent of Police from investigating the case and the Deputy Superintendent of Police. Thereafter, the Trial Court ordered to the Registry to issue process against the

accused under the provisions of the Prevention of Corruption Act and the same case was registered as Special Case (A.C.B.) No. 4 of 2015 and the Trial Court passed a suo motu order below application at Exhibit 1 in Special (A.C.B.) Case No. 4 of 2015 directing to issue summons to three investigating officers i.e. Ms.Archana Shivhare, Mr. Sharad Singhal and Mr.P. J. Chaudhary to examine them as witness. The order came to be passed in application for discharge keeping the same pending till the evidence of police officers is over and thereafter, examination in chief and cross examination of the complainant was recorded vide Exhibit 86 and Mr.Sharad Singhal, P. J. Chaudhary and Ms. Archana Shivhare were examined and cross-examined on respective dates. After considering the evidence available on record, the Trial Court rejected the discharge application at Exhibit 94.

7. Being aggrieved and dissatisfied by the impugned order, the petitioner has preferred the present petition.

8. Heard Mr.N. D. Nanavati, learned senior counsel with Mr.R. H. Rupareliya, learned counsel appearing for the petitioners, Mr.Mitesh Amin, learned Public Prosecutor with Mr.Trupesh Kathiriya, learned Additional Public Prosecutor for respondent – State of Gujarat and Mr. I. H. Syed, learned senior counsel with Mr.Subramaniam Iyer, learned counsel appearing for the respondent – complainant at length.

9. Mr.N. D. Nanavati, learned senior counsel with Mr.R. H. Rupareliya, learned counsel appearing for the petitioners in both the petitions has submitted the same facts which are narrated in the memo of petition. He has submitted that private complaint came to be filed against one Purshottambhai Odhavjibhai Solanki and no name of the present petitioners were disclosed in application made before this Court and before the Chief Secretary and even in the deposition of the complainant, no name of the petitioners was given. He has submitted that no prima facie case is made out against the petitioner and no evidence is found against them and the Trial Court has wrongly rejected the discharge applications of the petitioners instead of allowing the same as prima facie no evidence is found against them. He has submitted that looking to the inquiry report and the evidence recorded by the Trial Court, it is apparent on record that the petitioners are innocent. He has submitted that the impugned order passed by the Trial Court may be quashed and set aside and the present petitions may be allowed.

9.1 Over-and-above the oral submissions, Mr.Nanavati, learned counsel has submitted the following written submissions.

“WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER

1. Respondent No.2 filed Special Civil Application No.9958 of 2008 before this Hon'ble High Court and challenged the action of the State Government in awarding fishing contracts in the Reservoir of the State of Gujarat to certain cooperative societies. Respondent no.2 claimed that the impugned contracts were in contravention of the Government Resolution dated 25-2 -2004. The said

petition was allowed vide order dated 29-9-2008 and the respondent State Government was directed to grant a fishing lease in respect of the concerned reservoir by tender process as set out in the Government Resolution dated 25-2-2007. The respondent authority will also refund the amount of the security deposit and proportionate lease amount to the respondent society within 15 days from the date of termination of the impugned contract i.e. on or before 2 -12-2008.

2. Against this order of the Hon'ble High Court, some of the fishing societies approached the Hon'ble Supreme Court. The Hon'ble Supreme Court has granted a stay of the order of the Hon'ble High Court and ultimately petition was dismissed by the Hon'ble Supreme Court and the order of the Hon'ble High Court has become final.

3. The complainant original respondent no.2 wanted to file a complaint against the accused no.1 in ACB Case No. 4/2015 which is pending before the Gandhinagar Special Judge. On 2-12-2009 the complainant wrote a letter to the Chief Secretary, Government of Gujarat to obtain permission to complain against accused no.1 under section 19 of the the Prevention of Corruption Act. But the Government rejected the application dated 20-10-2010. The complainant, therefore preferred Special Criminal Application No. 2226/2010 in the Hon'ble High Court. The matter was remanded back to the Deputy Secretary, by the order dated 30-3-2012 of the Hon'ble High Court, by quashing and setting aside the order dated 20-10-2010 and directing the matter to be decided afresh.

4. The order of the Hon'ble High Court was not complied with, hence a contempt petition No. 1745 of 2010 was filed in the Hon'ble High Court. In the meantime, the State Government allowed the application of the complainant dated 2-12-2009 vide order dated 30-7 -2012.

5. After obtaining the permission, the complainant respondent no.2 filed a Private Complaint before the Special Judge, Gandhinagar which came to be numbered as Inquiry Case No. 1/2012 against only one Mr. Purshottambhai Odhavjibhai Solanki. (page no.45 of the petition)

6. On 3-8-2012 an order was passed in the same for verification. (page no.55)

7. On 5-1-2013, a further order was passed by the Special Judge, Gandhinagar whereby time was granted. (page no.56)

8. On 20-5-2013, an order was passed directing an investigation of the case by the Anti- Corruption Bureau, Gujarat State by relieving the S.P. Gandhinagar from investigating the case. (page no.59)

9. On 31-5-2015, the Dy.S.P. Anti-Corruption Bureau submitted the final report before the Special Judge, Gandhinagar. This report was submitted to the Hon'ble High Court.

10. On 12-8-2015, an order was passed by the Additional District Judge and

Special Judge, Gandhinagar below Exhibit-1 in Criminal Inquiry Case No.1/2012 directing the Registry to register the case and issue process against the Accused Nos. 1 to 7 under sections 7, 8, 13(1)(A), 13 (1)(D) and 13(2) of Prevention of Corruption Act, 1988. (page no.63)

11. On 17-8-2015, the case came to be registered as Special Case (A.C.B.) No.4/2015 and was transferred to Additional District Judge, Gandhinagar for hearing and final disposal in accordance with law. (page no.64)

12. One Mr Dileepbhai sanghani⁹ (Ex Minister, Gujarat) challenged the said order dated 17-8 -2015 before the Hon'ble High Court vide Special Criminal Application No.5338/2015. The Court has rejected the petition with liberty to file a discharge application before the trial court. The relevant portion of the order is reproduced below:

"68. In the overall view of the matter, I have reached the conclusion that no case is made out for interference. Let me clarify that the precharge evidence is being recorded by the Special Judge. As noted above, even at the state of recording of the pre-charge evidence, it is open for the accused persons to cross-examine the witnesses. At the end of recording of the pre- charge evidence, if the writ applicants are of the view that no case is made out for the purpose of framing of the charge, they can prefer an appropriate application for discharge under the provisions of Section 245 of the Code. However, at this stage, I do not see any good ground interfere with the impugned order."

13. The 3rd Additional Sessions Judge and Special Judge issued summons to the original complainant for deposition of pre-charge evidence. On 12 -10-2020/15-10-2020 chief examination and cross-examination were completed. No evidence came on record against the petitioner. So, on 15-10-2020, the petitioner filed a discharge application under section 245 of Cr.P.C. in which the court passed an order for a hearing on 23- 10 -2020 directing to issue summons to the 3 investigating officers viz. i) Ms. Archana Shivhare, ii) Shri Sharad Singhal, and iii) P.J.Chaudhary to examine them as witness.

14. On 23-10-2020, an Order was passed below Exhibit- 94 (application for discharge given by the petitioner) keeping the said application pending till the evidence of police officers is over. (page no.65 to 98)

15. On 12-10-2020 and 15-10-2020: Thereafter examination in chief and cross-examination of the complainant was recorded vide Exhibit- 86. (page no.99 to 103).

16. On 18-12-2020: the witness no. (ii) Sharad Singhal was examined and cross-examination was conducted and recorded vide Exhibit-138 (page 104 to 106).

17. On 1-1-2021, 28-1-2021, the witness no. (iii) P.J. Chaudhary was examined and cross- examination was conducted and recorded vide Exhibit-147 (page 107 to 126).

18. On 23-2-2021, the witness no. (iv) Archana Shivhare was examined and cross- examination was conducted on 23-2-2021 vide Exhibit-185 (pages no.127 to 129).

19. The petitioner submits that the petitioner filed an Application vide Exhibit-94 under section 245 of the Code of Criminal Procedure, 1973 in Special ACB Case No. 4/2015 before the Special Judge and 3rd Additional Sessions Judge, Gandhinagar. The application for discharge was filed on 15-10-2020 before the said Court and the learned Special Judge and 3rd Additional Sessions Judge, Gandhinagar rejected the application on 12-3-2021 (page nos. 16 to 44).

20. SUBMISSIONS:

(A) The original complainant has made an application seeking permission to file a complaint against only one person Parshottambhai Solanki without mentioning the name of the petitioner.

(B) The original complainant has preferred Special Criminal Application No.2226 of 2010 against two persons in which the name of the petitioner was not there.

(C) It is only after the Government had permitted to file private complaints the original complainant has filed a complaint against only one person Parshottambhai Solanki. No permission was sought for filing the complaint against the petitioner nor did the government give any permission.

(D) The complainant has filed a complaint before the Special Judge, Gandhinagar and it was against only one person Parshottam Solanki and the name of the petitioner was not there.

(E) Even in the evidence of the 3 witnesses, the name of the petitioner is nowhere coming on record.

(F) Even in the investigation report submitted by the investigating officer, the petitioner has been given a clean chit. I.O. submitted the final report on 30-5-2014 before the Special Judge, Gandhinagar in ACB Case No. 4/2015 after investigating four allegations and concerning the said four allegations, the petitioner has been given a clean chit.

The allegations are:

(i) The conclusion of the first allegation is on page no.122 of the final report. "?? ?
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(ii) The conclusion of the second allegation is on page no.134 of the final report.

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(?) The conclusion of the third allegation is on page no.161 of the final report.

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(iv) The conclusion of the fourth and final allegation is on page no.350 of the final report. "?? ?????? ?????? ?????????? ?????? ??? ?????????, ?????????????, ????????????? ?? ???
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(G) The investigation officer has recorded statements from 50 witnesses and he has submitted his conclusions from pages 150 to 158. I.O. has also recorded one statement of Jayrajji Monaji Pagi and I.O.'s final conclusion is on page no.166 of the final report and stated that there is no evidence about an allegation of corruption.

(H) That even in the deposition recorded of the complainant, the complainant has not given the name of the petitioner. Even in the evidence of Mr. Sharad Singhal nowhere anything adverse against the petitioner is stated in his deposition. Even from the investigation conducted by him, the involvement of the petitioner anywhere is not suggested.

(I) That even Mr. P.J. Chaudhary has stated before the Court that he has not been able to secure any evidence against the petitioner.

(J) That Ms. Archana Shivhare in her deposition stated that nowhere she could see any involvement of the petitioner during the course of her investigation.

(K) Thus, from the above evidence of the complainant and the investigating officers, it is emerging that the petitioner is not involved in connection with the private complaint.

(L) That in the respectful submission of the petitioner, without applying its mind to the evidence of the complainant and investigating offices, the learned Judge has wrongly rejected the discharge application of the petitioner, instead of allowing the same as prima facie no evidence is found against the petitioner.

(M) No prima facie case is established against the petitioner.

(N) Even otherwise also, looking at the allegations made in the private complaint and the statements recorded by different depositions of the complainant and I.O.

there is no evidence to either suggest or connect the petitioner with the alleged offence, and hence the petitioner deserves to get an order of discharge from this Hon'ble Court.

(O) The petitioner craves leave of this Hon'ble Court to rely upon the judgment of the Hon'ble Supreme Court of India in Criminal Appeal No.1592 of 2022 decided on 17.4.2023 in the case of Soundarajan vs State represented by Inspector Police Vigilance Anti- Corruption, Dindugal, in which in paragraph 9 the Hon'ble Court has observed in paragraph 9 as under:

"We have considered the submissions. It is well settled that for establishing the commission of an offense punishable under section 7 of the PC Act, proof of demand of gratification and acceptance of the gratification is a sine qua non. Moreover, the Constitution bench in the case of Neeraj Dutta has reiterated that the presumption under section 20 of the PC Act can be invoked only on proof of facts in issue, namely, the demand of gratification by the accused and the acceptance thereof."

Thus, in the present case, neither any demand nor any acceptance is proved.

(P) The petitioner further craves leave of this Hon'ble Court to rely upon the judgment of delivered in CRIMINAL APPEAL NO.2504 OF 2023 STATE OF GUJARAT VERSUS DILIPSINH KISHORSINH RAO, wherein in paragraph it has observed as under:

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the State of Maharashtra Vs. Som Nath Thapa (1996) 4 SCC 659 and the State of MP Vs. Mohan Lal Soni (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the 14 charge is to test the existence of prima- facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

9.2 Mr.Nanavati, learned senior counsel appearing for the petitioners has referred to and relied upon the order dated 29.09.2008 passed by the Division Bench of this Court in the case of Special Civil Application No.9958 of 2008 with Special Civil Application No. 10918 of 2008 and the judgment dated 30.03.2012 passed by the Coordinate Bench of this Court in Special Criminal Application No. 2226 of 2010.

10. Mr.Mitesh Amin, learned Public Prosecutor with Mr.Trupesh Kathiriya, learned Additional Public Prosecutor for the respondent- State of Gujarat has submitted that the learned Additional Sessions Judge has not committed any error in passing the impugned order and the present petitions arise from the private

complaint filed by the petitioners. He has submitted that the petitioners were given sufficient opportunity to examine and/or cross-examine the relevant witnesses, but the same has not been done. He has urged that the petition may be dismissed and the impugned order may be confirmed.

10.1 Over-and-above the oral submissions, learned Public Prosecutor for the respondent – State of Gujarat has submitted the following written submissions.

“That all the 3 petitions arises from a private complaint filed by the petitioner for the offences punishable under sections 7, 8, 13(1)(a), 13(d) and 13(2) of the Prevention of Corruption Act. This private complaint is registered before the Court of learned Special Judge, Gandhinagar District as Special ACB Case No. 4 of 2015.

That out of these 3 petitions in two petitions, petitioners are praying for discharge from the record submitted by the petitioner who is original complainant, had examined 4 different witnesses of whom the petitioner has examined himself as PW No. 1 and other 3 witnesses are police witnesses. AS it appears from the record, the case is tried under Chapter 19 of Cr.P.C. more particularly as case is instituted otherwise than on police report.

Out of 4 witnesses examined by petitioner complainant, most important witness is petitioner complainant himself. Examination of chief of the petitioner complainant placed by the petitioner is read for the Hon’ble Court at the stage complainant was supposed to lead sufficient material to implicate concerned petitioners.

Petitioner complainant had examined other witnesses who are police witnesses and holes evidences states about they having recorded statement of different witnesses and all having collected different documents, materials etc but witnesses who are interrogated by police are yet not examined. The material other than statement of witnesses also not placed before the Hon’ble Court as evidence. In view of above all this stage, material available for consideration is examined in chief of the petitioner – complainant and on the basis of it, sufficiency or otherwise of evidence is required to be considered.

Other petitioner is praying for recall of witnesses as he is interested to cross examine the witnesses. Considering the provisions of Section 311 of Cr.P.C prayers of this petition is not unjustified.”

11. Mr.I. H. Syed, learned senior counsel with Mr.K. R. Koshti, learned counsel for the respondent – complainant has opposed the present petition. He has submitted that the applications were preferred on the ground that there is no material against them and they were not originally arraigned as accused persons and, therefore, the issuance of process against them is illegal. He has supported the impugned order with the submissions that the petitioner only seeks prolongation of the trial with the baseless application under Section 311 of the Cr.P.C. According to the learned counsel, the Court below has consciously

exercised its discretion in rejecting the application. He has submitted that the learned Additional Sessions Judge has not committed any error of facts and law in rejecting the application filed by the petitioner and urged to dismiss the present petition.

11.1 Over-and-above the oral submissions, Mr.Syed, learned senior counsel has submitted the following written submissions.

"1. The present Petition has been preferred challenging the order dated 12.07.2021 passed by the Ld. 3rd Addl. Sessions Judge, Gandhinagar in an application below Exh. 93, 94, 95 and 96 in Special ACB Case No. 4 of 2015 whereby, the Petitioners' application to be discharged was rejected. The same has been preferred on the ground that the private complaint by the Complainant was only filed against one Accused person i.e. Shri Parshottambhai Solanki and that the Petitioner and other Accused persons were not arraigned as Accused in the private complaint. Further it is submitted by the Petitioners that there is no role attributed to them and that since only one person was originally arraigned as Accused, that the Petitioner and other Accused should be discharged from Special ACB Case No. 4 of 2015.

Facts:

2. The complainant had filed a private complaint against one erstwhile Minister of Fisheries of the Govt. of Gujarat namely Shri Parshottam Solanki for committing offences under Sections 7,8, 13(1)(a), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988. That the said private complaint was originally registered as Criminal Enquiry No. 1 of 2012 wherein an inquiry was ordered to be conducted by the ACB. The ACB conducted a thorough inquiry and submitted a report dated 30.05.2014 wherein apart from Shri Parshottam Solanki, 6 other persons were arraigned as accused including the present petitioners. The allegation in a nutshell is that the Accused persons in collusion with each other had accepted huge bribes and in exchange awarded fishing contracts to their known persons, at a price significantly lower than the off-set price and therefore cause a huge loss to the exchequer. The same was done in contravention to the Govt. Resolution dated 25.02.2004.

3. The private complaint filed on 03.08.2012 by the complainant came to be registered as Special ACB Case No. 4 of 2015. The said complaint was filed after receiving due sanction dated 26.07.2012 from the then Hon. Governor of Gujarat. Process was issued to the Accused persons under Section 204 Cr.P.C. in the said case vide order dated 12.08.2015. Thereafter, pre-charge evidence was recorded wherein the complainant as well as other witnesses were examined before the concerned court.

Submissions:

4. That on 12.08.2015, by way of an order under Exh – 1 passed in Criminal Enquiry No. 1 of 2012, it was directed to register the case and issue process to

the Accused persons. The said order of issuing process dated 12.08.2015 was challenged before this Hon'ble Court by the Accused persons vide Special Criminal Applications Nos. 207 of 2016, 5338 of 2015 and 8971 of 2017. The Accused had preferred these applications on the ground that there is no material against them and that they weren't originally arraigned as Accused persons and therefore, the issuance of process against them is illegal.

5. That, this Hon'ble Court while rejecting the applications filed by the accused persons by way of a reasoned order has observed that there is more than a prima facie case against all. In paragraph 13 of the order dated 21.12.2018, this Hon'ble Court has observed that:

"13. It appears from the above that although the complaint was lodged only against the writ applicant herein, yet as the inquiry ordered by the learned Special Judge revealed the involvement of other persons too, which includes the writ applicant of the Special Criminal Application No. 5338 of 2015, the process came to be issued to in all seven accused persons."

Further in paragraph 47 of the same judgement, this Hon'ble Court has also observed that:

"47. Bearing the aforesaid principles of law in mind, I looked into the exhaustive inquiry report of the police officer concerned, which is on record. The report is running in more than two hundred pages. A close reading of the report reveals more than a prima facie case to proceed against, not only the sitting Minister of State for Fisheries, but even against the former Minister of Agriculture Shri Dilip Sanghani. The report reveals that all the accused persons, in collusion and connivance with each other and by abusing their position, caused a loss of Rs.21,04,64,515/- to the Government exchequer over a period of five years by arbitrarily awarding contracts to the different parties for their personal monetary gain. It appears that the overall scam is of about Rs.400 Crore.

Surprisingly, the Lokayukta of the State of Gujarat gave a clean chit to one and all. The allegations levelled against the accused persons of corruption and the prima facie materials on record to substantiate such allegations are sufficient, in my view, to put the writ applicants to trial. In my view, no case is made out for quashing of the criminal proceedings at this stage. It appears that the Special Judge, after due consideration of the complaint as well as the inquiry report, arrived at the subjective satisfaction that more than a prima facie case is made out for issue of process to the accused persons for the offences punishable under the provisions of the Act, 1988. In such circumstances, I see no good reason to disturb such order passed by the Special Judge. The learned counsel appearing for the respective writ applicants tried to pick up few stray lines here or there from the inquiry report to make good their case that the prosecution against the writ applicants is frivolous or baseless. What is necessary to be looked into is the overall inquiry report and the same, in my opinion, do disclose more than a prima facie case sufficient to proceed against the accused persons in accordance

with law. Way back on 29th September 2008, the Division Bench of this Court observed in clear terms that the concerned Minister usurped the power vested in the competent authority and awarded the contracts of fishing lease arbitrarily by showing undue favour for extraneous reasons. It appears that the overall scam is of Rs.400 Crore."

6. Thereafter, this Hon'ble Court in the same judgement in paragraph 48 and 49 has gone to the extent of discussing the roles of the Accused persons in the said offence. That, this common order dated 21.12.2018 passed in Special Criminal Applications Nos. 207 of 2016, 5338 of 2015 and 8971 of 2017 was not challenged before the Hon'ble Supreme Court and has attained finality. That these findings and observations of this Hon'ble Court regarding there being a prima facie case against all Accused persons have become final. It is submitted that this order dated 21.12.2018 was not produced before this Hon'ble Court in the captioned application.

7. It is also pertinent to submit before this Hon'ble Court, that the complainant, fearing that a trial conducted locally where the Accused persons exercises significant influence, is not likely to be a fair and impartial one. Therefore, the complainant had preferred a Transfer Petition (Crl.) No. 723 of 2022 praying that the Special ACB Case No. 4 of 2015 be transferred out of the State of Gujarat. That, vide order dated 21.02.2024 the said T.P. was disposed of with an observation that:

"3. It will be open for the petitioner to apply before the High Court for vacation/ final disposal of the pending petition in which the interim order is granted. Upon such an application being filed, the High Court is requested to take up the same on priority basis.

4. Liberty is granted to the petitioner to approach this Court again in case after the disposal of the matter by the High Court, the trial cannot proceed due to non-cooperation of the state in ensuring the presence of the accused, it will be open for the petitioner to approach this Court again"

8. A five judge Constitutional Bench of the Hon'ble Supreme Court of India in the case of Neeraj Dutta v. State (Govt of NCT Delhi) reported in (2023) 4 SCC 731 while laying down the law in respect of the Prevention of Corruption Act has held that "in the absence of evidence of complainant / direct primary oral or documentary evidence, held, it is permissible to draw and inferential deduction of culpability / guilt of a public servant under Section 7 and 13(1)(d) r/w. Section 13(2) based on other evidence including circumstantial evidence, adduced by the prosecution." The Apex Court has further held that "it is permissible to draw and inferential deduction of culpability / guilt of a public servant under Section 7 and 13(1)(d) r/w. Section 13(2) based on other evidence, including circumstantial evidence adduced by the prosecution". That, interfering with the order of the Ld. Special Judge rejecting the discharge application would take away the aforementioned presumption, especially when there is more than a prima facie

case made out against the Accused persons.

9. It is submitted that the foundational fact in the present case remains that the Accused persons in collusion with each other awarded contracts for fishing at prices way under the off set price in exchange for personal gratification, which cause a huge loss to the exchequer. This Hon'ble Court has observed and estimated the scam to be of almost Rs.400 crores. A detailed report has been submitted by the AB before the trial court and has concluded that an offence is made out against the Accused persons.

10. This Hon'ble Court in order dated 21.12.2018 has observed in detail, that prima facie case is made out against all the Accused persons. These findings of this Hon'ble Court have attained finality.

11. It is submitted that, the State has taken a surprising stand of supporting the case of the Accused and arguing for the Accused to be discharged of the private complaint. Though, the state's own agency i.e. the ACB has submitted a detailed report after concluding their inquiry stating that an offence is made out against all Accused persons and in spite the fact that this Hon'ble Court has also observed that prima facie case is made out against Accused for being put to trial, the State has chosen to support the case of the Accused and argued vehemently for them to be discharged. It is submitted that this shows the influence that the Accused persons exercise in the State of Gujarat and that is in the interest of justice that charge be framed against them and that such Accused persons are put to trial for the offences committed by them under the Prevention of Corruption Act.

12. In light of the above, it is the humble prayer of the complainant that the captioned petition be dismissed and the order of the Ld. Special Judge dated 12.07.2021 rejecting the discharge applications of the Accused be upheld. Further, this Hon'ble Court may be pleased to direct the trial to be conducted expeditiously.

11.2 In support of his submissions, Mr.Syed, learned senior counsel appearing for the respondent – complainant has relied upon the judgment of this Court (Coram: Hon'ble Mr.Justice J. B. Pardiwala) dated 21.12.2018 passed in Special Criminal Application No. 207 of 2016 and allied petitions. He has also relied upon the decision of the Hon'ble Supreme Court in the case of Neeraj Dutta Vs. State (Government of NCT of Delhi) reported in (2023) 4 SCC 731.

12. Having considered the facts and circumstances of the case and submissions canvassed by the learned counsel appearing for the respective parties and the decisions cited at the Bar and perused the impugned order passed by the Trial Court, it appears that the petitioners have preferred respective application under Section 245 of the Criminal Procedure Code for discharge in relation to the Special ACB Case No. 4 of 2015 as the Trial Court has passed common order below Exhibit 93, 94, 95 and 96. Therefore, dealing with the said applications, the Trial Court thought it fit to decide all the applications together as the issue

involved in the petition is common. It is relevant to note that the provisions of Section 227 of the Criminal Procedure Code is relating to the discharge based upon the police report and Section 295 of the Criminal Procedure Code is relating to the private complaint. The Trial Court, after considering the submissions made on behalf of both the sides and considering the ratio laid down by the Hon'ble Supreme Court, has passed the impugned order, against which, the petitioners have preferred the present petitions. It is relevant to note herein that while dealing with the application for discharge under Sections 227, 239, 245 of the Criminal Procedure Code, the distinction in the above referred provisions with regard to the discharge, but so far as dealing with the application, the provisions of the Criminal Procedure Code is considered by the Trial Court and at the stage of deciding the application the Trial Court has to see that whether prima facie case for proceedings against the accused is made out or not. At the stage of deciding the application under Section 245 of the Criminal Procedure Code, the Court may sift the evidence to find out whether the allegations made are groundless or not. The probative value of evidence is not to be gone into for framing of the charge. It is only a ground for presuming offence, the evidence sufficient for conviction is not necessary to frame the charge as law does not permit for discharge application which is likely to conduct a trial. It is very clear from the above, at the stage of deciding the application, the Court may not make roving enquiry into the allegations and/or its pros and cons of the matter and weigh the evidence as it was conducting the trial. The Code contemplates the discharge of accused by the Court of Sessions under Section 227 in case of triable by it cases instituted upon the police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245 of the Criminal Procedure Code. From the reading of the aforesaid sections, it is abundantly evident that it contain the somewhat same provision with regard to Section 227 of the Criminal Procedure Code. After going through the materials produced before the Court, if the Trial Court is required to discharge the accused if it is considered that there is no sufficient ground for proceedings against the accused, however, the discharge under Section 239 of the Criminal Procedure Code can be ordered when the Magistrate considers the charge against the accused to be groundless. The power to discharge is exercisable under Section 245(1) of the Criminal Procedure Code, when the Magistrate considers for reasons to be recorded that no case against the accused has been made out which it repudiated would warrant his conviction. Section 227 and 239 of the Criminal Procedure Code provide for discharge before the recording of the evidence on the basis of the police report, the document sent along with the examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245 on the other hand is reached only after evidence referred to in Section 244 has been taken. Therefore, it is clear distinction and difference in the language employed in these provisions. Under these circumstances, the concerned Trial Court requires to see that whether prima facie case against the accused is made out or not. It is pertinent to note that the observation made by the Hon'ble Apex Court that while

dealing with the revision petition or special criminal application preferred by the accused against rejection of the application under Section 245 of the Criminal Procedure Code, the High Court ought to have been cognizant of the fact that the Trial Court was dealing with an application for discharge under the provisions of Section 239 of the Criminal Procedure Code. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. At the stage of considering the application, the probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. Therefore, the Trial Court was right in presuming that the prima facie findings made out against the accused and has also not committed any jurisdictional error while passing the impugned order. The respondent – original complainant gave the complaint which was not registered as an FIR and, therefore, the complainant approached this Court and after passing an order by this Court, the complainant approached the Magistrate Court and filed the private complaint and ultimately, the same came to be lodged with the concerned Police Station. The investigation is culminated into filing of the report and then the Court passed an order under Section 202 and directed the Investigating Officer to carry out the investigation and, thereafter, the Investigating Officer filed the report in the concerned Court and on the basis of the police report, the case is registered as Special (ACB) Case No.4 of 2015. The petitioners have preferred discharge applications on the basis of the observations made by this Court (Coram: Hon'ble Mr. Justice J. B. Pardiwala) while dealing with Special Criminal Application No.207 of 2016 and allied petitions. The Court has held and observed in para 68 as under:-

"68. In the overall view of the matter, I have reached to the conclusion that no case is made out for interference. Let me clarify that the pre-charge evidence is being recorded by the Special Judge. As noted above, even at the stage of recording of the recharge evidence, it is open for the accused persons to cross-examine the witnesses. At the end of recording of the pre-charge evidence, if the writ applicants are of the view that no case is made out for the purpose of framing of the charge, they can prefer an appropriate application for discharge under the provisions of Section 245 of the Code. However, at this stage, I do not see any good ground to interfere with the impugned order."

13. Relevant Sections 227, 239 and 245 of the Criminal Procedure Code read as under:-

"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.

239. When accused shall be discharged.- If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.

245. When accused shall be discharged.- (1) If, upon taking all the evidence referred to in section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

14. In view of the above the petitioners have preferred the applications for discharge before the Trial Court whereby the Trial Court has come to the conclusion that though prima facie case made out against the petitioners, the Court was not inclined to entertain the applications and after going through the police report submitted by the Investigating Officer, the Trial Court rejected the applications. Therefore, the petitioners have preferred the present petitions with prayers to quash and set aside the impugned order and to stay the implementation and execution of the said order. The observations made by the Coordinate Bench of this Court is still in existence and this Court cannot overlook and ignore the observations made by the Coordinate Bench of this Court while dealing with the petitions and, therefore, this Court is of the considered opinion that the petitions are required to be dismissed as this Court has also observed that the prima facie case was made out against the accused and for framing of charge, the Trial Court has to look into the relevant materials and not with regard to the final conclusion that whether the case is culminated into the conviction or acquittal or not. The Trial Court, while considering the relevant evidence and submissions made on behalf of the parties, has passed well-reasoned order which is under challenge in these petitions. On perusal of the impugned order, this Court is of the opinion that the Trial Court has not committed any jurisdictional error while rejecting the applications for discharge. It is trite that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. The Court is of the opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for

convicting the accused has been made out. After considering the relevant materials and the facts emerge from the record and the order passed by the Trial Court, I am of the opinion that the present petitions are devoid of any merits and the same deserves to be quashed and set aside. However, the Coordinate Bench of this Court, while dealing with the issue, has referred and relied upon some of the decisions of the Hon'ble Supreme Court where the identical issue has been decided. It is profitable to refer to the decision of the Hon'ble Supreme Court in the case of State of Tamilnadu Vs. N. Suresh Rajan and others reported in (2014) 11 SCC 709 wherein the Hon'ble Supreme Court has held and observed in para – 21, 22 and 23 which reads as under:-

"21. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the Court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. V/s. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra V/s. State (NCT of Delhi), (2008) 2 SCC 561 :-

"11. It is trite that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging there from, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge

against the accused in respect of the commission of that offence."

22. Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Sec. 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Sec. 227 in a case triable by it; cases instituted upon a Police report are covered by Sec. 239 and cases instituted otherwise than on a Police report are dealt with in Sec. 245. From a reading of the aforesaid Sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Sec. 227 of the Code, the trial Court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Sec. 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction". Sec. 227 and 239 provide for discharge before the recording of evidence on the basis of the Police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Sec. 245, on the other hand, is reached only after the evidence referred in Sec. 244 has been taken. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the Court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of R.S. Nayak V/s. A.R. Antulay, (1986) 2 SCC 716. The same reads as follows :-

"43.....Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Sec. 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three Sections, the legal position is that if the Trial Court is satisfied that a prima facie case is made out, charge has to be framed."

23. Bearing in mind the principles aforesaid, we proceed to consider the facts of the present case. Here the allegation against the accused Minister (Respondent No.1), K. Ponmudi is that while he was a Member of the Tamil Nadu Legislative Assembly and a State Minister, he had acquired and was in possession of the properties in the name of his wife as also his mother-inlaw, who along with his other friends, were of Siga Educational Trust, Villupuram. According to the prosecution, the properties of Siga Educational Trust, Villupuram were held by

other accused on behalf of the accused Minister. These properties, according to the prosecution, in fact, were the properties of K.Ponumudi. Similarly, accused N. Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. While passing the impugned orders, the Court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification.”

15. It is also relevant to refer to and relied upon the decision of the Hon’ble Supreme Court in the case of State of Rajasthan Vs. Ashok Kumar Kashyap reported in (2021) 11 SCC 191 wherein the Hon’ble Supreme Court has held and observed in para – 9, 10 and 11 as under:-

“9. While considering the legality of the impugned judgment and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.

9.1 In the case of P.Vijayan (supra), this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that 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. It is observed that in other words, the sufficiency of grounds 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. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into

the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

9.2 In the recent decision of this Court in the case of M.R. Hiremath (*supra*), one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)

"29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

10. We shall now apply the principles enunciated above to the present case in order to find out whether in the facts and circumstances of the case, the High Court was justified in discharging the accused for the offence under Section 7 of the PC Act.

11. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a *prima facie* case is made out and the

defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application."

16. It is worthwhile to refer to the decision of the Hon'ble Supreme Court in the case of State by Karnataka Lokayukta, Police Station, Bengaluru Vs. M. R. Hiremath reported in (2019) 7 SCC 515 wherein the Hon'ble Supreme Court, while considering the scope for discharge under Section 239, has observed that entering into questions of evidentiary value of material adduced by the prosecution at stage of charge-sheet is impermissible. The Hon'ble Supreme Court in the said decision has held and observed in para 25 as under:-

"25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 of the CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In the State of Tamil Nadu v N Suresh Rajan, 2014 11 SCC 709 advertent to the earlier decisions on the subject; this Court held :

"29. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

17. In the case of State of Tamil Nadu Vs. R. Soundarasu and others reported in (2023) 6 SCC 768 wherein the Hon'ble Supreme Court has held and observed in para 62 and 77 as under:-

"62. Section 239 of the CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused.

77. The word "ground" according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever."

18. This Court has perused the impugned order passed by the Trial Court wherein the Trial Court has made observations which reads as under:-

"19. As per the settled law position, it is clear that at the initial stage, if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. Now, considering the above referred legal position, let me consider the arguments raised by the defence side. On perusal of the record shows that it is not a regular case of demand of illegal gratification or bribe and trap etc. but it is a case of receiving gainful benefits from various persona and giving a fishing contract illegally, and as a public servant, misuses of his powers and post by giving tenders on off-set price without following the government policy of 2004 and loss to the government treasury crores of rupees. Thus, the arguments canvassed by learned advocates that there is no demand of bribe is not a good ground to discharge the accused from the alleged charges.

20. Considering the above referred legal position vis a vis the arguments submitted by the learned advocates Mr. Rupareliya, Ld.Adv. Mr.Gohil, and Ld.

Adv. Mr.Patel, this court find sufficient material to frame the charge against the present accused. Though, the discussion, determination and evaluation of other submissions namely; the names of other accused are not mentioned in the Exh.1 complaint, the accused have performed their duty properly, the SIT fact Finding report where no prima facie case is made, etc. the evidence on record may affect the final trial and therefore this Court has to refrain to discuss other evidence in detailed on record as it may prejudice both the parties. Thus, detailed appreciation of entire evidence along with the Inquiry report is not required to be done at this stage. But, even not evaluating the available record in great detailed so as to come to any definite conclusion regarding guilt or innocence of the applicant against whom the inquiry report having total pages of 3052 filed along with the documentary evidence is filed, it is clear that contracts were given on off set price without following the policy of 2004 and without calling any tenders and ultimately the same were cancelled as per the order of Hon'ble High Court of Gujarat.

21. The test to determine a prima facie case would naturally depend upon the facts of each case. Considering the entire Inquiry Report and along with the Documentary Evidence produced by the prosecution, there is strong prima facie case against the present accused and all the defences raised are in the nature of triable issues. As per the complaint, the accused No.1 has given dams to his henchmen and other persons by getting illegal financial benefits means getting illegal gratification without calling tenders and going against the policy of the government in his own way by abusing and misusing his post, without calling for the tenders has given contracts to 11 parties and other 47 fishing contractual agreement regarding fishers to various other parties without issuing tender by taking bribe, on such complaint, after the investigation, the police has filed the detailed inquiry report (Exh.169) against all the accused for the commission of the offence of Section 7,13(1)(d), 13(2) of PC Act. The complainant has deposed before the Court in support of his complaint and narrated the entire facts in detailed. On the contrary, the evidence of complainant along with the inquiry report establishes the prima facie case against the accused. Surprisingly, none of the parties thought it fit to cross examine the complainant on the material point. The other defences raised by the accused side that the names of other accused No.2 to 7 are not mentioned in the Exh.1 complaint and therefore, their names are falsely involved is not acceptable. Suffice to note that on the basis of inquiry report under section 202, the Court has issued the process under section 204 of the Cr.P.C. Further, to note that the order of process was challenged before the Hon'ble High Court, which was dismissed. As it appear that the case mostly rests on documentary evidence, in the form of meetings held, official notings, the files of concerned section, the necessary endorsement etc. and appreciation of such evidence cannot be taken place at the time of framing charges. The argument that fact finding authority has given opinion that there is no prima facie case is concerned, suffice to note that there after, the prosecution sanction was granted by the Hon'ble Governor and the writ petition was dismissed by the Hon'ble High

Court.

22. Further, this Court has passed detailed order below Exh.1 issuing the witness summons to the police officers, but none of the parties have produced any evidence on record that they have challenged the said order before the Hon'ble Gujarat High Court. Thus, the order below Exh.1 passed by this Court dated 19.10.2021 reached its finality. Thus, considering the evidence of complainant, the police officers, particularly Mr.P.J.Chaudhary, who has conducted the detailed investigation and has submitted detailed inquiry report along with procedural books, prima facie case established against the accused. This Court finds that the charges are not groundless.

23. It is to be noted that at the stage of deciding whether or not there exists sufficient grounds for framing the charge, the enquiry must necessarily be limited to deciding if the facts emerging from the record and documents constitute the offence with which the accused is charged. At the stage of framing of charges, the court may sift the evidence for that limited purpose but he is not required to marshal the evidence with a view to separating the grain from the chaff. All that the court is called upon to consider is whether there is sufficient ground to frame the charge and for this limited purpose the court must weigh the material on record as well as the documents relied on by the prosecution.

24. Therefore, in view of the above discussions, and the law position, there exists strong prima facie case and this court finds sufficient material and grounds to frame the charges as alleged and therefore, for the foregoing reasons, the present application under section 245(2) of Cr.P.C is required to be rejected having no substance.

19. Considering the aforesaid facts and circumstances of the case and the relevant decisions of the Hon'ble Supreme Court, this Court is of the opinion that the Trial Court has not committed an error while passing the impugned order in the applications filed by the petitioners. The decisions relied upon by the learned counsel appearing for the petitioners are not applicable to the facts of the present case.

20. In view of the aforesaid discussions, the impugned order does not suffer from any illegality, irregularity or impropriety and hence the present petitions are liable to be dismissed and accordingly, the petitions stand dismissed. Rule discharged. Interim relief, if any, granted earlier stands vacated forthwith.

(HEMANT M. PRACHCHHAK,J)

FURTHER ORDER

After pronouncement of the aforesaid order, learned counsel appearing for the petitioner requests to grant stay for a period of four weeks. Request is acceded. Considering the facts of the case, the order passed by this Court is hereby stayed for a further period of four weeks from today.