

(2014) 01 BOM CK 0230

In the Bombay High Court

Case No : Criminal Writ Petition No. 86 of 2011

Carla Guiomar Souza (Dr.)

APPELLANT

Vs

State of Goa

RESPONDENT

Date of Decision : 07-01-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 223, 227, 228
Penal Code, 1860 (IPC) — Section 109, 34, 342, 354, 506(ii)

Citation : (2014) 2 BomCR(Cri) 99

Hon'ble Judges : U.V. Bakre, J

Bench : Single Bench

Advocate : S.G. Dessai, Sr. Advocate and A.V. Pavitran, Advocate for the Appellant; M.S. Joshi, Spl. P.P, Advocate for the Respondent

Final Decision : Allowed

Judgement

U.V. Bakre, J.—Heard the learned Counsel for the parties. By this petition, the petitioner has challenged the orders dated 15/02/2011 and 25/11/2010 respectively passed by the learned Additional Sessions Judge, Panaji in Criminal Revision Application No. 134/2010 and by learned Judicial Magistrate, First Class, "C" Court at Panaji in Criminal Case No. 114/2008/C. The petitioner has also prayed for dropping further proceedings in the matter and discharge her.

2. A charge-sheet was filed by the Women Police Station against One Dr. Anthony Lobo and Dr. Carla Guiomar Souza (petitioner), before the Children's Court, for the offences punishable under sections 342, 354, 509, 506(ii), 109 read with section 34 of Indian Penal Code ("IPC" for short) and section 8 of the Goa Children's Act, 2003 (Children's Act, for short) alleging that since 9 months prior to 05/05/2005 at Machado Cove, Vanguinim, Valley, Dona Paula, the said accused No. 1, Dr. Anthony Lobo wrongfully confined the complainant Ms. Rupa Sharma alias Cristina Fernandes, threatened her with dire consequences, molested by forcing her to sleep on his bed, pulled her towards him and kissed her lips and touched her breasts and other parts of the body and also acted in a

manner thereby insulting the modesty of the said complainant. It was further alleged that the said accused No. 1, Dr. Anthony Lobo also wrongfully confined Ms. Baby alias Babita Bandi and outraged her modesty. The allegation against the accused No. 2 namely Dr. Carla Guiomar Souza (petitioner) was that she abetted the offences committed by the accused No. 1, Dr. Anthony Lobo. The said case came to be registered as Special Case No. 4/2007 before the Children's Court at Panaji.

3. By order dated 18/04/2008 passed in the said Special Case No. 4/2007, the learned President of Children's Court directed that charge be framed only against accused No. 1, Dr. Anthony for offences u/s 8(4) and section 8(9) of the Children's Act for having kept with him Ms. Neelam Rathod, the minor victim girl child aged about 15 years, without prior permission from the Director of women and child Development of the Government of Goa. The Children's Court held that the Complainant Ms. Rupa and the other girl Ms. Babita are major of age being of about twenty years of age and therefore whatever has been stated in the complaint in respect of the incident pertaining to them cannot be subject matter of trial before the Children's Court. The Children's Court further observed that the prosecution may file a separate charge-sheet against the accused persons in respect of the offences against the complainant Ms. Rupa Sharma and against Ms. Babita Bandi.

4. Accordingly, it appears that the prosecution filed a separate charge-sheet against both the accused persons, before the Chief Judicial Magistrate, at Panaji. The said charge-sheet was registered as Criminal Case No. IPC 114/2008/C. By order dated 25/11/2010 passed in the said C.C. No. IPC 114/2008/C, the learned Judicial Magistrate, First Class, Panaji held that prima fade there is material to proceed against the accused persons and directed that charge be framed against both the accused persons under sections 342, 354, 509, 506(ii), 109 read with section 34 of IPC. The accused No. 2 (present petitioner) filed Criminal Revision Application No. 134/2010 against the said order dated 25/11/2010 passed by the Judicial Magistrate, First Class in C.C. No. IPC/114/2008/C. By judgment and order dated 15/02/2011, the learned Additional Sessions Judge, rejected the said Criminal Revision Application. Both the Courts below observed that the material against the petitioner is not just introduction of the victim with the accused No. 1 but something more which is sufficient to invoke the provisions of section 109 of IPC. Therefore, the petitioner is before this Court, having challenged the order dated 15/02/2011 of the learned Sessions Judge at Panaji and order dated 25/11/2010 of the learned Judicial Magistrate, First Class, Panaji, Goa.

5. Mr. Dessai, learned Senior Counsel appearing on behalf of the petitioner, submitted that in the complaint lodged by Ms. Rupa Sharma, there is absolutely nothing which would make out a case of abetment against the petitioner. He further submitted that the statements of Ms. Babita Bandi and of Neelam Rathod also do not disclose anything as against the petitioner. He pointed out that the incident allegedly started from 03/04/2005 and ended on 07/04/2005 and the

complainant left the house of accused No. 1, Dr. Lobo on 08/04/2005 and was at the women Police Station on 11/4/2005, but she lodged the complaint after inordinate delay i.e. on 05/05/2005. He produced a copy of the letter dated 11/4/2005 written by Father Silveiro of "Childline Goa", to the Women and Child Protection Unit, Panaji with respect to Ms. Rupa Sharma and her son Shuban informing that she is being harassed by the biological father of the child and to do the needful. Learned Counsel pointed out that in this letter there is no complaint against the petitioner. He also produced a copy of the opinion dated 15/11/2006, of the Director of Prosecution, wherein it is mentioned that there is no explanation for the delay of 24 days in lodging the complaint and that the Investigating Officer should record a supplementary statement of the complainant thereby explaining the delay. He produced the copy of the belated supplementary statement, dated 19/01/2007, of Ms. Rupa Sharma wherein the delay is sought to be explained. Learned Senior Counsel produced the copy of the deposition of Ms. Neelam Rathod dated 6/10/2008 given before the Children's Court in Special Case No. 4/2007, wherein she has not implicated anybody. Learned Senior Counsel submitted that the above documents are beyond suspicion and hence can be looked into by this Court. He submitted that a comprehensive charge-sheet for all the offences was filed before the Children's Court which Court, by order dated 18/04/2008, did bifurcation of the case on the ground that one victim was minor and others were major. According to him such bifurcation of the case was not permissible under law. He submitted that the accused persons ought to have been tried for all the offences by the Children's Court itself and since that has not been done, the petitioner is entitled for discharge since the said case before the Children's Court has ended. According to learned Senior Counsel, since the petitioner has been discharged by the Children's Court on the same set of facts, it is not now permissible to implicate her again before the Judicial Magistrate without any further evidence against her. He submitted that in the impugned orders, there is no discussion as to how the present petitioner has abetted the offences committed by the other accused. He read out the definition of abetment and submitted that if there is no abetment then, the petitioner is entitled to be discharged of all the offences.

6. Learned Senior Counsel appearing on behalf of the petitioner, relied upon the following judgments:

- (i) State of Andhra Pradesh Vs. Cheemalapati Ganeswara Rao and Another,
- (ii) Union of India (UOI) Vs. Prafulla Kumar Samal and Another, .
- (iii) Harshendra Kumar D. Vs. Rebatilata Koley Etc.,
- (iv) Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra,
- (v) Videsh Karmalkar Vs. State, .
- (vi) Rukmini Narvekar Vs. Vijaya Satardekar and Others, .

7. On the other hand, Mr. Joshi, learned Special Public Prosecutor appearing on

behalf of the respondent, submitted that the offences for which the accused persons have been charged before the learned Judicial Magistrate in C.C. No. IPC 114/08/C are distinct and separate and are not part of the same transaction in which the offence with which the accused persons were charged before the Children's Court. He further submitted that the petitioner, even otherwise, was not discharged by the Children's Court, of the offences under sections 342, 354, 509, 506(ii), 109 of IPC as against the major victims but direction was given to the Investigating Officer to file a separate charge-sheet against the accused persons, on the ground that the Children's Court had no jurisdiction. According to him, the Magistrate was not required to make roving enquiry into the evidence on record as if he was conducting a trial. He read out various portions of the complaint and other statements on record and submitted that they do make out a prima facie case for framing charge against the petitioner. According to him, the effect of delay in lodging the complaint, if any, would be considered by the Magistrate on merits. He submitted that the documents now sought to be produced and relied upon by the learned Senior Counsel for the petitioner are not part of the charge-sheet and hence cannot be looked into at this stage. He, therefore, submitted that no interference is called for with the impugned orders. He relied upon the judgment of the Supreme Court in the case of Sajjan Kumar Vs. Central Bureau of Investigation, .

8. I have gone through the material on record produced by the petitioner. I have considered the submissions made by the learned Counsel for both the parties and I have also considered the judgments cited by them.

9. The principle offence was allegedly committed by the accused No. 1, Dr. Anthony Lobo. The petitioner is alleged to have abetted the commission of the said principle offence. Abetment is constituted by: (i) instigating a person to commit an offence; (ii) engaging in a conspiracy to commit the offence; or (iii) intentionally aiding a person to commit the offence. It is not the case of the prosecution that the petitioner instigated the accused No. 1 to commit the offence or engaged in a conspiracy to commit the offence. Hence, what is to be seen is whether the petitioner intentionally aided the accused No. 1 to commit the offence. The question is whether the charge against the petitioner is groundless.

10. The Children's Court has held that insofar as the complainant, Ms. Rupa Sharma and the witness, Ms. Babita Bandi are concerned, he has no jurisdiction to try the offences against them since they are not minors. However, the Children's Court has also not ordered framing of charge against the petitioner in respect of the minor Neelam Rathod. It directed that charge be framed only against the accused Dr. Anthony Lobo for offences u/s 8(4) and section 8(9) of Children's Act, insofar as the minor is concerned. The Children's Court could not have bifurcated the cases in respect of minor girl and major girls. The Children's Act does not say that when the offences are committed against the victims, some of whom are minor and others major, in the course of same transaction, all the

accused persons cannot be tried by the Children's Court itself. In terms of section 30 of the Children's Act, the Children's Court shall have jurisdiction to try all the offences against the children whether such offence is specified under the Act or not. Section 31 of the said Act deals with the powers of the Children's Court and the Children's Court has all the powers of the Court of Sessions under the Code of Criminal Procedure. Section 223 of the Code of Criminal Procedure provides that persons accused of the same offence committed in the course of the same transaction, may be tried together. In the present case, the offences as against the present complainant namely Ms. Rupa Sharma and witness Ms. Babita Bandi as well as against the minor namely Neelam Rathod were committed in the course of same transaction. It is not the case of the prosecution that the offence against the major namely Ms. Roopa Sharma and Babita Bandi was a separate and distinct offence whereas that committed against the minor namely Neelam Rathod, was distinct and separate offence. As per the prosecution case itself, the offences against the said major victims and the minor victim were committed in the course of the same transaction and, therefore, a comprehensive charge-sheet was filed, before the Children's Court, against both the accused persons in respect of the offences. In the circumstances above, the submission of Mr. Joshi, learned Special Public Prosecutor appearing on behalf of the respondent, to the effect that the offences against the major victims were not committed in the course of same transaction, is not acceptable. Therefore, the Order dated 18/04/2008 passed by the Children's Court is erroneous. The Children's Court could not have bifurcated the cases and ought to have tried the case against all the accused persons including the present, petitioner. In the case of "Videsh Karmalkar", the learned Single Judge of this Court (Coram : N.A. Britto, J.) has held that there won't be any issue of jurisdictional error in case all the accused are tried by the Children's Court not only in respect of the minor victims, who are children, but in respect two victims, who are major and deal with them in accordance with law. The learned Single Judge has observed that there is no provision in the Children's Act to debar a trial of the accused who have committed the offences against the children and against the adults in the course of same transaction. The learned Counsel appearing on behalf of the petitioner submitted that the Special Case No. 4/2008 is over and the accused Dr. Anthony Lobo has already been acquitted by the Children's Court, which fact has not been denied by the respondent. In such circumstances, the question of remanding the case to the Children's Court for trial along with the offence against the minor, does not now arise. Bifurcation of case has caused prejudice to the petitioner.

11. The complaint dated 5/5/2005 lodged by Ms. Rupa Sharma reveals that on 11/4/2005 a fat Christian lady working for "Childline" at Don Bosco under Father Francis had brought her at Women Police Station. However, most strangely, the complainant did not make any grievance or complaint against the petitioner on 11/4/2005. The complaint dated 5/5/2005 further reveals that on 8/4/2005 Ms. Rupa had allegedly narrated the full story to Father Francis of Childline, in the

presence of Ana Rita. But, by letter dated 11/4/2005, Father of "Childline Goa" requested the Women and Child Protection Unit to provide protection to Miss Rupa Sharma and her son Shuban since Miss Rupa Sharma was being harassed by the biological father of Shuban. In this letter, there is absolutely no complaint that the petitioner or Dr. Anthony Lobo had committed any offence against said Ms. Rupa. There is therefore reasonable doubt about contents of the complaint dated 05/05/2005.

12. In her deposition recorded by the Children's Court on 06/10/2008, in Special Case No. 4/2007, the main witness namely Neelam Rathod, who has not been alleged to be a hostile witness, has stated that her Bhabi had kept her in the house of the accused Dr. Anthony for household work and that she used to do the gardening work and housework on instruction of the accused. She has stated that she worked there for two months and thereafter her brother came and took her home. In her cross-examination, though Neelam stated that one Rupa had (sic) and stayed in the house of the accused for five days, however, she did not state anything which would support the case of the prosecution regarding Ms. Rupa. According to Neelam, Rupa had not done any work in the house of the accused. The above deposition of Neelam Rathod, who is also a witness in the present case, creates reasonable doubt in respect of the case of the prosecution.

13. The incident allegedly happened between 4/4/2005 to 7/4/2005. But the complaint has been lodged on 05/05/2005. It is stated by Ms. Rupa in this complaint that after some days she gained confidence and found that the La-Esperanca people are genuine and hence she disclosed the incident to Nympha who advised her to report the matter to the police and brought her to the Women and Children Protection Unit and she gained confidence and strength and is lodging the complaint. However, the said reason for delay was not found to be satisfactory by the Director of Prosecution. The Director of Prosecution by opinion dated 15/11/2006 informed the Investigating Officer that there is no explanation for the delay of 24 days in lodging the complaint and the Investigating Officer should get the same on record by recording supplementary statement of the complainant. Thereafter, on 19/01/2007, i.e. almost after one year and nine months from the date of incident a supplementary statement of Ms. Rupa was recorded. In this belated statement, Ms. Rupa stated that after leaving the house of Dr. Anthony Lobo, she had gone to Father Francis and had narrated the story who sent her to Women Police Station, Panaji along with one lady and at the said Police Station she met Sunita madam but did not tell her the real facts because she was not aware that Sunita madam was a Police Inspector. She has further stated that therefore she did not lodge complaint on that day. There is therefore improvement made in the case by recording a supplementary statement belatedly and this create doubt in the case of the prosecution.

14. The letter dated 11/4/2005 of "Childline Goa" and the opinion dated 15/11/2006 given by the Director of Prosecution and referred to above have not been relied upon by the prosecution and are not the part of the charge-sheet.

However, the genuineness of both the above documents and of the deposition of Neelam Rathod, has not been denied by the respondent. The copies of the letter and opinion have been supplied to the petitioner by the Women Police Station itself. In the case of "Harshendra Kumar D." (supra), the Apex Court has held that in order to prevent injustice or abuse of process or to promote justice, the High Court may look into the materials which have significant bearing on the matter at prima facie stage. It has been held that the High Court can quash the complaint if materials relied upon by the accused are beyond suspicion or doubt or which are in the nature of public documents and are uncontroverted. In the case of "Rukmini Narvekar" (supra), the Apex Court has held thus:--

18. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the Court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted. We agree with Shri Lalit that in some very rare cases the Court is justified in looking into the material produced by the defence at the time of framing of the charges, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

15. In the circumstances above, since the documents namely the letter dated 11/04/2005 and the opinion dated 15/11/2006 produced by the petitioner are genuine and obtained from the Women Police station itself, this Court can look into them and since the deposition of Neelam Rathod is from the records of the Children's Court, this Court can also look into it. The said documents throw suspicion on the truth of the case of the prosecution. In the light of the above, let us see as to what is the material against the petitioner.

16. A minute perusal of the complaint dated 5/5/2005, lodged by Ms. Rupa Sharma alias Rupa Rathod alias Cristina Fernandes reveals that there is nothing in it to involve the present petitioner for having abetted the offences allegedly committed by Dr. Anthony Lobo. It is seen from the said complaint that the petitioner had not called the complainant Rupa at her clinic, but it was Father Francis, who had given the address of the petitioner to Ms. Rupa and had asked her to meet the petitioner. It was the complainant herself, who told the petitioner to help her. As per the complaint, the petitioner told the complainant that she is taking her to Doctor at Dona Paula and that the said person will give her education in respect of computer and nursing and will help her in giving birth certificate and will also pay her Rs. 1,000/- per month. The said complaint further reveals that the petitioner told the complainant that she will take responsibility of her minor son during her education period with the said Doctor. It is seen from the complaint that the complainant Ms. Rupa agreed for the same. There is nothing in the above statement which can reveal that the petitioner had abetted the offences allegedly committed by Dr. Anthony Lobo or to show that the petitioner is responsible for anything allegedly done to Ms. Rupa

by said Dr. Anthony Lobo.

17. It was submitted by Mr. Joshi, the learned Public Prosecutor, that Dr. Anthony Lobo had told the complainant in the presence of the petitioner that the personal secret matters should not be opened to anybody to which the complainant had agreed. This according to the learned Public Prosecutor, *prima facie*, is sufficient to hold that the petitioner had knowledge as to what were those secret matters and had intention to aid the accused No. 1. Let us therefore see as to what exactly is stated by the complainant. In the said complaint dated 05/05/2005, *inter alia*, it is stated as follows:

On 30.3.2005, Dr. Carla brought me in Ambulance car at Dona Paula at the house of said Doctor who is a male person aged around 40 yrs, fair in complexion, medium built, straight hair, clean shaved. Dr. Carla introduced me to the said male person- the Doctor and told me that he will help me in making the birth certificate and for my education. The said Doctor told me that he will train me in gardening, cleaning the house, supervising, Computer training, etc. and asked me whether I will be able to do it. I replied in affirmative. He further told me in presence of Dr. Carla that the personal secret matters should not be opened/told to anybody to which I agreed. I also appraised him about my married life and that I do not wish to go with my husband. We both then returned back to Vasco. While on the way I questioned Dr. Carla regarding the nature of work and whether she will keep me at the said house for work to which she replied in negative.

From the above statement quoted from the complaint, it cannot be said that the petitioner has abetted the offences, which are allegedly committed by the said Doctor Anthony Lobo since the said statement does not at all reveal that the petitioner had knowledge of what the complainant was asked to do by Dr. Anthony Lobo.

18. It was further submitted by Mr. Joshi, the learned Special Public Prosecutor, that the complaint clearly reveals that the petitioner knew as to what type of massaging had to be done. Let us therefore see as to what is stated by the complainant in this regard. It is further stated in the said complaint dated 5/5/2005 as follows:

On 3.4.2005, at around 10.00 hrs. Dr. Carla hurriedly asked me to dress-up telling me that said Doctor from Dona Paula has called me for the job immediately within fifteen minutes and that I should get ready for the same. I told Dr. Carla that I shall phone Fr. Francis for which Dr. Carla said that she will Phone Fr. Francis and will inform him about my job. Accordingly I hurriedly got ready and started with Dr. Carla. I left my minor son Shubham @ Royston in the care of Dr. Carla at Bogmalo Vasco at her Clinic as she promised me that she will take the care of him. While on the way, Dr. Carla informed me that the said Doctor from Dona Paula himself is a patient and required careful massaging on his shoulder and waist and careful massage and bending of hand and his legs to

which I showed my hesitation since he is a male person and I am a female and expressed the same to Dr. Carla. Dr. Carla told me that there are another two girls who will be in the house doing their work and not to get worried. At Cortalim, the said Doctor from Dona Paula had come with his black colour vehicle and Dr. Carla shifted me with my luggage in his car. She too accompanied the said Doctor in his vehicle by leaving the hired Taxi Vehicle at Cortalim. First they went to see a house nearby Lotulim and again we returned back and said doctor drove the vehicle straight to Panaji. On the way said doctor asked me about my family history and I informed him the same. At Panaji Bus stand said Doctor alighted Dr. Carla from his vehicle and told her to take a pilot motorcycle to go back to Vasco.

From the above statement quoted from the complaint also, it cannot be said that the present petitioner is involved in any offence. The massaging spoken of by the complainant is normal which cannot amount to any offence. Merely because the accused No. 1, Dr. Anthony Lobo got something else done at the hands of the complainant and further himself did some thing to her, under the garb of massaging, that does not mean that the petitioner is also a party to the same or had knowledge of or consent to the same or had intention to aid the accused No. 1 in committing the offence.

19. What is important is that in the said complaint dated 05/05/2005, it is specifically stated that the said Doctor Anthony Lobo told Ms. Rupa, the complainant that the complainant is known as teacher, nurse, supervisor and that nobody knows the internal personal work of massaging and even Dr. Carla (petitioner) is not aware of this and that he would not disclose anything to her. The above, therefore, reveals that in fact the petitioner did not know the internal things that were happening at the house of Dr. Anthony Lobo. The scrutiny of the entire complaint reveals that neither the complainant nor Dr. Anthony Lobo had at any time told the petitioner as to what was the kind of work which was required to be done or was being done by the complainant at the house of Dr. Lobo. The complainant has stated in the complaint in detail as to what she was required to do by Dr. Lobo and what she did to him, but the complaint nowhere reveals that she told the said facts to the petitioner and still the petitioner forced her to continue to stay in the house of Dr. Lobo. In the complaint, the complainant has stated that on 07/04/2005, the complainant told the petitioner that she does not wish to work any more and that she would not open any private and secret matter as agreed earlier. There is nothing in the complaint to show that the petitioner had forcibly taken the complainant to the house of Dr. Anthony Lobo and had knowledge of what Dr. Lobo had forced the complainant to do. The complaint, otherwise, reveals that the complainant did not tell anything to the petitioner. In such circumstances, it is difficult to hold that the petitioner had intention to aid the accused No, 1 in commission of offences or that she knew as to what was happening in the house of Dr. Lobo.

20. The complaint dated 05/05/2005 reveals that on 08/04/2005, Ms. Rupa, the

complainant left the house of Dr. Lobo. The complainant then narrated the full story to Father Francis at Don Bosco and Father Francis promised her that he would call up Dr. Carla (petitioner) and see that her son will be back in her custody. After two days i.e. on 11/04/2005, the petitioner brought the son of the complainant at Don Bosco and the complainant took the custody of her son. Therefore, it is difficult to believe that the complainant was wrongfully confined to the house of Dr. Lobo. It cannot be said that the petitioner had any knowledge as to what was happening in the house of Dr. Lobo for prima facie holding that she had abetted the offences.

21. A perusal of the statements of other witnesses also do not reveal anything directly against the present petitioner.

22. In paragraph 17 of the judgment in the case of "Sajjan Kumar" (supra), it is observed as under:

17. Exercise of jurisdiction under sections 227 & 228 of Cr.P.C. - On consideration of the authorities about the scope of section 227 and 228 of the Code, the following principles emerge:--

(i) The Judge while considering the question of framing the charges u/s 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging

therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

23. In the case of "Prafulla Kumar Samal and another" (supra), it has been held as under:

In exercising his jurisdiction u/s 227, the Special Judge, which under the present Code is a senior and experienced Court, cannot act merely as a Post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. While considering the question of framing the charges under this section, he has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. By and large however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

24. In the case of "Yogesh alias Sachin Jagdish Joshi" (supra), it has been held by the Apex Court that it is trite that the words "not sufficient ground for proceeding against the accused" appearing in section 227 of CrPC postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution and in doing so the Judge has power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. It has been held that if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused.

25. In the present case, the material on record may give rise to some suspicion against the petitioner. But the same is not grave and in the light of the other

circumstances disclosed by the documents now produced by the petitioner, the said suspicion against the petitioner itself is not without suspicion of its truth.

26. Considering all the aspects of the prosecution case and the principles laid down by the Apex Court in the cases supra, merely because at the request of the complainant herself and with a view to help her, the petitioner had taken her to Dr. Anthony Lobo, it cannot be said that she had abetted the offences, which are allegedly committed by Dr. Lobo. There is no sufficient material on record to frame charge stating that the petitioner has committed the offence of abetment. Neither the impugned order dated 25/11/2010 of the learned Judicial Magistrate nor the impugned order dated 15/02/2011 of the learned Additional Sessions Judge shows as to what is prima facie material against the present petitioner to show that the petitioner has committed the offence of abetment. In the circumstances above, the petition is bound to succeed. The present petitioner is entitled for discharge.

27. In the result, the petition is allowed. (a) Impugned orders dated 15/02/2011 passed by the learned Additional Sessions Judge in Criminal Revision Application No. 134/2010 and dated 25/11/2010 passed by the Judicial Magistrate, First Class, "C" Court, Panaji in Criminal Case No. IPC 114/2008/C are quashed and set aside.

(b) The petitioner stands discharged of the offences in Criminal Case No. IPC 114/2008/C.

(c) Rule is made absolute in the aforesaid terms.

Writ Petition stands disposed of accordingly.