

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 10th December, 2021**
Pronounced on: 22nd December, 2021

+ **CRL.M.C. 3973/2011 & CRL.M.A. 18337/2021**

ANIL KUMAR Petitioner

Through: Mr. Dayan Krishnan, Sr. Advocate
with Mr. Amit Sharma, Advocate

versus

STATE THR. CBI Respondent

Through: Mr. Nikhil Goel, SPP for CBI

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The Petitioner has approached this Court by way of the instant petition under Section 482 of the Code of Criminal Procedure (hereinafter referred to as "Code") praying for quashing of First Information Report dated 10th June 2009 bearing number RC 2(A)/2009/CBI/ ACU- VI/New Delhi lodged against the Petitioner, the subsequent charge sheet filed in pursuance thereof, order on charge and all the proceedings arising out of it. Another Application bearing CRL. M.A. - 18337/2021 has also been filed before this Court under Section 482 of the Code *inter alia* seeking clarification as to application of the interim orders passed on 29th July 2019 as subsisting and in force.

2. Before adverting to the submissions made by the learned counsels for parties, it is essential to highlight the factual background of the instant matter.

FACTUAL MATRIX

3. The Petitioner was posted as an Assistant Engineer at the Municipal Corporation of Delhi (hereinafter, referred to as “MCD”), South Zone from December 2006 till May 2009. The petitioner was responsible to look after thirteen wards including Ward No. 174, Chattarpur Extension where the alleged unauthorized construction took place.

4. In Civil Writ Petition No. 4771 of 1993 titled as ***Common Cause v. Union of India***, this High Court issued certain directions regarding the unauthorized construction in Delhi. These directions were also published in newspapers by Urban Development Department, National Capital Territory of Delhi on 14th September 1998. The directions issued by the Hon’ble High Court Delhi are as under:

“We restrain all concerned from carrying out any construction activities in unauthorised colonies. We make it clear that not only the person constructing, namely, the owner of unauthorised construction but others also who, directly or indirectly, aid and assist the unauthorised construction particularly, the Builders, Contractors, Architects, concerned Junior Engineers and Station House Officers would be severely dealt with in case unauthorised construction activity in violation of the Order of this Court is

noticed. Besides, the officers would also be liable for departmental action. It will be expected from the Government to take immediate departmental action against their officers in case it is found that within the area of their jurisdiction unauthorised construction was being undertaken.”

5. With reference to the directions of the High Court dated 3rd November 1993, the Commissioner of MCD had issued Circular No. D/401/Addl.CM(E)/97 dated 13th November 1997 to curb unauthorized construction s in Delhi. Relevant portion of the Order is extracted hereunder:

“The High Court in the matter No.6093/96, 174, 1610, 6476, 6875/97 and 7829/93 & 4889/94 in CWP No.4771/93 issued certain directions on 3.11.1993. One of the directions is as under: -

We restrain all concerned from carrying out any construction activities in unauthorised colonies. We make it clear that not only the person constructing, namely, the owner of unauthorised construction but others also who, directly or indirectly, aid and assist the unauthorised constructions particularly, the Builders, Contractors, Architects, concerned Junior Engineers and Station House Officers would be severally dealt with in case unauthorised construction activity in violation of the order of this court is noticed. Besides the Officers would also be liable for departmental action. It will be expected from the Government to take immediate departmental action against their officers in case it is found that within the

area of their jurisdiction unauthorised construction was being undertaken.”

2. It is, therefore, impressed upon all D.M.C. and the staff of the Building Department to keep a strict vigil on the construction activities in the unauthorized colonies. Any laxity would be taken very seriously, and the defaulters would be liable to stem disciplinary action.”

6. The FIR bearing number RC 2(A)/2009/CBI/ACU-VI/New Delhi was registered by the Central Bureau of Investigation (hereinafter, referred to as “CBI”) on 10th June 2009 in wake of the unauthorized construction in the South Zone of the MCD. It was alleged in the FIR that the illegal construction was carried “under the patronage of MCD officials in collusion with the plot owners by accepting illegal gratification of Rs. two lakhs per floor.” It was further averred in the FIR that MCD officers were submitting false reports to the monitoring committee as required under the standing instructions coupled with the office order dated 20th August 2001 issued by the Commissioner of MCD.

7. It was further stated in the FIR that three buildings on plot number(s) A-360, B-60 and B-322 respectively were being constructed without any authorization from the concerned authorities. These plots were situated in B-Block, Chhatarpur Extension, New Delhi where any sort of construction was barred.

8. The FIR further averred that the unauthorized construction was taking place in furtherance of the conspiracy entered into between the three officers namely the Petitioner/Accused Anil Kumar (Assistant

Engineer), Shri Sunil Dawar (Assistant Engineer) and Shri Surender Kumar (Junior Engineer) with the owner/builder for allowing unauthorized construction after obtaining illegal gratification. Based on the aforesaid, the FIR was registered under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as “PC Act”), read with Section 120-B of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”).

9. In pursuance of the said case, investigation was carried on by the CBI and upon completion of the same, a charge sheet bearing number 01/2010 for commission of offences under Sections 13(2) and 13(1)(d) of the PC Act read with Section 120-B of the IPC was filed before the Special Judge, CBI Cases in the Patiala House Courts, Delhi on 27th September 2010. The Chargesheet *inter alia* included the recovery of Rs. 67,38,000 in cash made from the locker of the Petitioner and his relatives.

10. In furtherance of the same, and in view of the recoveries made and the allegations levelled in the FIR, sanction was granted by the Commissioner of MCD for prosecution of the Petitioner under Section 19(1)(c) of the PC Act.

11. After detailed consideration, charges were framed by the Learned Special judge on 12th August 2011. The order on charge states that as per the order dated 20th August 2001 issued by the Commissioner of MCD, it was the duty of the present Petitioner to detect unauthorized construction by carrying out inspection. It was further stated in the order on charge that the present petitioner by acting in connivance with Surendra Kumar

(Junior Engineer) submitted false inspection reports in the period of January-June 2009. Relying upon a decision of the Hon'ble Supreme Court in ***Union of India v. Prafulla Kumar Samal* AIR 1979 SC 366**, statements of witnesses and recoveries made, the Special Judge held that in light of the facts and recovery made, a *prima facie* case has been made out against the accused and thus the charges were framed under Sections 13(2) and 13(1)(d) of the PC Act read with Section 120-B of the IPC.

12. The Petitioner had approached this Hon'ble Court by way of filing the instant petition on 11th November 2011. Considering the decision of this Court in ***A.K. Ganju v. CBI* 2013 SCC OnLine Del 4686**, an Interim Order was passed by this Court on 15th September 2014 directing the Trial Court to continue with the proceedings however restraining it from announcing any final decision until further orders by this Court.

SUBMISSIONS

13. Mr. Dayan Krishnan learned senior counsel appearing for the petitioner has primarily advanced three arguments which form the crux of the case for the petitioner.

- a. *Firstly*, he contended that the land on which the alleged illegal construction was being carried on was under the jurisdiction of Revenue Department, implying thereby that the Municipal Corporation of Delhi or its officers have no jurisdiction over the said land rather the Patwari is the competent authority of the concerned area. It was thus submitted that the

present Petitioner has neither the jurisdiction nor any involvement whatsoever with the unauthorized construction;

b. *Secondly*, learned senior counsel vehemently argued that the Petitioner never signed or generated any report to be sent to the monitoring committee. On the same note, he submitted that Petitioner never granted any permission or approved the construction that was allegedly illegally ongoing on the said plot of land. He also submitted that the Petitioner has a supervisory role while the person responsible for on field inspection are the executive engineers; and

c. *Lastly*, it was argued that from the facts and circumstance of the case, no offense can be said to be made out under Section 13(1)(d) of the PC Act since there is no conscious demand and acceptance of the bribe by the petitioner herein, as required by various rulings of this Court.

To buttress his arguments, the learned counsel has placed reliance on judgments of this Court. He referred to paragraph 111 of the judgment in the case of ***A.K. Ganju v. CBI 2013 SCC OnLine Del 4686***.

14. He also drew the attention of this court to the judgment of the High Court in ***Ashwini Kumar Batra v. CBI 2011 SCC OnLine Del 2641***, specifically paragraphs 63 and 68 of the said judgement to contend that

whenever an unauthorized construction takes place, the Junior Engineer needs to report to the Assistant Engineer, who is further required to issue a show cause notice to the person concerned under his signature.

15. *Per Contra*, learned Standing Counsel on behalf of CBI drew the attention of the Court to the Office Order dated 20th August 2001, issued by Commissioner's Office, MCD, New Delhi. As per Standing Instructions issued vide the Office Order, inspection of unauthorized construction in respective area is to be carried out by Junior Engineer, Assistant Engineer and Executive Engineer in 7 days, 15 days, and 30 days respectively. Inspection report mentioning the areas visited and unauthorized construction detected, if any, were to be sent positively to the next higher officer in hierarchy. Further as per clause 3 of the Office order No. PSC/716/2008 dated 12th September 2008 issued by Shri K S Mehra, Commissioner, MCD, New Delhi the detection of unauthorized construction at the first level shall be carried out by the Junior Engineers and Assistant Engineers of the concerned zones under the supervision of Executive Engineers. Additionally, as per clause 8 of the same Office Order, JE of each ward of the zone would every month issue a certificate under his signature certifying that there is no unauthorized construction/or encroachment of Govt./Municipal land. This certificate should also give details regarding ongoing unauthorized construction and/or encroachment and action taken thereof as per provisions of Delhi Municipal Corporation Act, 1972 (hereinafter referred to as the "DMC Act").

16. Thus, the inspection in the former clause needs to be carried out by the Junior and Assistant Engineers under the supervision of Executive

Engineers whereas in the latter clause, Junior Engineer is required to issue a certificate under his signature detailing the unauthorized construction as per the provisions of the DMC Act. Based on these clauses, it is submitted that detection of unauthorized construction and the concerned duties was an integral part of the duties of the officials of the Municipal Corporation of Delhi including the Petitioner and hence, it would be wrong to contend that the Petitioner merely had a supervisory role in the entire exercise.

17. It was also argued by the counsel for the Respondent that the agricultural land comes under the purview of the Revenue authorities as long as the land is used for agricultural purposes but once the construction activities have started, the jurisdiction is conferred with the Municipal Corporation of Delhi. It is submitted relying on Section 507 of the DMC Act that revenue authorities were only required to issue certificate for converting the land from agricultural to commercial purposes however when the same is not done, the MCD will always have a jurisdiction when no plan has been approved by it. The Counsel submitted that, hence, the Petitioner will always have a role to play when an unauthorized construction takes place on a land, be it agricultural or commercial.

18. It is also brought to the notice of this Court that the Petitioner has been taking contradictory stands. It is because once the present FIR was registered, the same division of MCD decided to register an FIR under Section 332 of the DMC Act. Extending the argument, it is submitted that if MCD had no jurisdiction on the said property, then how come the actions were initiated by them subsequently. It has also been argued that the arguments of Petitioner regarding the jurisdiction have already been

canvassed before the learned Special judge when the order on charge was framed and on a prima facie satisfaction, he framed the charges. Further, the trial has been concluded and the matter is posted for arguments before the Trial Court. At this stage, it may not be appropriate for this Court to delve into the merits and scrutiny of evidence while exercising inherent jurisdiction under Section 482 of the Code. Thus, no interference is warranted by this Hon'ble Court at this stage.

19. Concluding his arguments, learned Standing Counsel has submitted that the instant petition ought to be dismissed, for the reasons stated hereunder:

- A) *Firstly*, the dispute regarding jurisdiction as being raised is unwarranted since:
- a. properties in dispute as shown in FIR falls within the territorial jurisdiction of MCD;
 - b. as per Sections 331 and 332 of Chapter XVI of DMC Act, building regulation regarding erection of building is applicable on any building, on any site, irrespective of the land, whether it is agricultural or otherwise; and
 - c. lodging of the FIR by MCD under Section 332 of the DMC Act, subsequent to the registration of FIR by CBI in the same matter regarding unauthorized construction in pursuance of the Order of the Court in ***Common Cause (supra)***, clearly shows that the MCD

has the jurisdiction;

- B) *Secondly*, there is ample material on record and substantial recovery has been made on the basis of which the charges have been framed and order on charge passed by the learned Trial Court; and
- C) *Thirdly*, the Trial is at a mature stage posted for final arguments and the instant petition under Section 482 has remained pending since 11th November 2011, and no good grounds are made out for exercise of the Court's jurisdiction under Section 482.

20. In the course of arguments, learned Standing Counsel on behalf of CBI made passing reference to a catena of judgments of the Supreme Court. Specific reliance has been placed on paragraphs 9.1 and 9.2 of ***Kaptan Singh v. State of U.P. (2021) 9 SCC 35*** dealing with the restraints on the exercise of Section 482 jurisdiction of the Court.

21. The rival submissions now fall for consideration before this Hon'ble Court.

ANALYSIS & FINDINGS

22. Heard the counsels for parties and perused the record at length.

23. Before advertng to the analysis of the arguments made and case laws cited by the parties, to appreciate the case at hand, it is pertinent to

refer to the law laid down in this context along with a perusal of the statutory scheme of the Code.

(i) Sanction for Prosecuting Public Servants

24. It is to be noted that the prosecution in the present matter is not of an ordinary citizen but of a government official involved in discharging important functions of public importance. Unlike, an ordinary criminal prosecution, such government officials' prosecution needs to be sanctioned by the government under Section 197 of the Code. Thus, the present prosecution has passed an additional layer of scrutiny in the form of sanction before being prosecuted before the Ld. Special judge. Before advertng to the sanction order, it is essential to refer to the rationale of introducing the need for sanctioning for the government officials.

25. In this regard, it is essential to take note of the case of ***Rakesh Kumar Mishra v. State of Bihar, (2006) 1 SCC 557***, where the Hon'ble Apex Court examined the legislative intent behind the grant of sanction in the following words:

“6. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer

on the Government, if it chooses to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant from the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties.”

26. The present petitioner has passed this muster of sanction under Section 197 of the Code whereby his superior officer, Mr. K.S. Mehra after considering the evidence and statements on record held that:

“And whereas the aforesaid acts, omissions and commissions on the part of Shri Anil Kumar, AE, Shri Surender Kumar, JE, Jasbir Deswal, Sarabjit Singh, Wasim Khan and Pavitra Singh constitute offences punishable u/s,120-B IPC r/w13 (2)r/w 13 (1) (d) of PC Act, 1988.

Now, therefore, I, K.S. Mehra, Commissioner,

Municipal Corporation of Delhi being the authority, competent to remove said Shri Anil Kumar, Asstt. Engineer, Municipal Corporation of Delhi from his office, after fully and carefully examining all the facts and circumstances of the case as well as the material including the statements of witnesses recorded under section 161 of Cr.P.C. and the documents placed before me in regard to the said allegations, considered that Shri Anil Kumar, Asstt. Engineer should be prosecuted in the court of law for the said offences.”

(ii) Summoning

27. The veracity of the *prima facie* case as being alleged against the petitioner got further strengthened by the subsequent process where the Court concerned summoned the accused upon its satisfaction and subsequently went ahead with the framing of charges.

28. The Hon’ble Supreme Court in the case of ***Pepsi Foods Ltd. v. Special Judicial Magistrate (1998) 5 SCC 749*** has laid down the law pertaining to material relevant for the purpose of summoning as under:

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of

allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

29. The Hon’ble Supreme Court in the case of ***Chandra Deo Singh v. Prokash Chandra Bose AIR 1963 SC 1430*** has also highlighted the purpose of issuance of summons as under:

“7. ...No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage,

necessarily to be determined on the basis of the material placed before him by the complainant...”

30. Thus, the test for issuance of summons essentially involves determining whether the offense can be said to have been committed upon a perusal of the material on record. The satisfaction of the authority for issuing summons does not require a detailed scrutiny but a mere *prima-facie* satisfaction of the magistrate concerned.

(iii) Framing of Charges & Order on Charge

31. The Hon’ble Bombay High Court in the case of ***Samadhan Baburao Khakare v. State of Maharashtra***, 1995 SCC OnLine Bom 72 has highlighted the objective and importance of Charge in criminal trial in the following words:

“11. The whole purpose and object of framing charges is to enable the defence to concentrate its attention on the case that he has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offence with which the accused is convicted is not brought out in the charge then the charge is not only defective but illegal. It is no doubt that when the accused is charged with a major offence, he can be convicted of a minor offence. It is true that what is major offence and what is minor offence is not defined. The gravity of offence must depend upon the severity of the punishment that can be inflicted, but the major and the minor offences must be cognate offences which have the main ingredients in common, and a man charged with one offence which is entirely of a different nature from the offence

which is proved to have been committed by him, cannot in the absence of a proper charge be convicted of that offence, merely on the ground that the facts proved constitute a minor offence. For example, a man charged with an offence of murder cannot be convicted for forgery or misappropriation of funds, or such offences which do not constitute offences against person, the reason being that the accused had no opportunity in such a case to make defence, which may have been open to him, if he had been charged with the offence for which he is to be convicted.”

32. The Hon’ble Supreme Court in the case of ***Santosh Kumari v. State of J&K***, (2011) 9 SCC 234 has comprehensively dealt with the question and purpose of framing of charges as under:

“18. The object of the charge is to give the accused notice of the matter he is charged with and does not touch jurisdiction. If, therefore, the necessary information is conveyed to him in other ways and there is no prejudice, the framing of the charge is not invalidated. The essential part of this part of law is not any technical formula of words but the reality, whether the matter was explained to the accused and whether he understood what he was being tried for. Sections 34, 114 and 149 IPC provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention; and as explained by a five-Judge Constitution Bench of this Court in Willie (William) Slaney v. State of M.P. [AIR 1956 SC 116 : 1956 Cri LJ 291 : (1955) 2 SCR 1140] SCR at p. 1189, the charge is a rolled-up one

involving the direct liability and the constructive liability without specifying who are directly liable and who are sought to be made constructively liable.”

33. The Hon’ble Supreme Court in ***Main Pal v. State of Haryana***, (2010) 10 SCC 130 observed as follows:

“(i) The object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet. The charge must also contain the particulars of date, time, place and person against whom the offence was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.”

Thus, what can be seen from the above extract is the fact that the object of framing of charge is to make the accused aware about the defense that is required to be brought in through evidence and witnesses.

34. It is also required to be noted that the charge does not render a conclusive finding with respect to guilt or innocence of the accused. The charge is merely an indication to the accused about the offense for which he is being tried for. In this regard, it is essential to take note of the following observation of the Hon’ble Supreme Court in ***Esher Singh v. State of A.P.*** (2004) 11 SCC 585, where the Hon’ble Court observed:

“20. Section 2(b) of the Code of Criminal Procedure, 1973 (in short “the Code”) defines “charge” as follows:

“2. (b) ‘charge’ includes any head of charge when the charge contains more heads than one;”

The Code does not define what a charge is. It is the precise formulation of the specific accusation made against a person who is entitled to know its nature at the earliest stage. A charge is not an accusation made or information given in the abstract, but an accusation made against a person in respect of an act committed or omitted in violation of penal law forbidding or commanding it. In other words, it is an accusation made against a person in respect of an offence alleged to have been committed by him. A charge is formulated after inquiry as distinguished from the popular meaning of the word as implying inculcation of a person for an alleged offence as used in Section 224 IPC.”

35. In the instant case, charges were framed by the learned Special judge on 12th August 2021 after detailed consideration of the material on record. The order on charge states that as per the order dated 20th August 2001 issued by the Commissioner of Municipal Corporation of Delhi, it was the duty of the present Petitioner to detect unauthorized construction by carrying out inspection. It was further stated in the order on charge that the present petitioner by acting in connivance with Surendra Kumar (Junior Engineer) submitted false inspection reports in the period of January-June 2009.

36. Further, it is pertinent to take note of certain observations made in the order on charge:

“16. Prima facie, there is sufficient evidence on record to establish that A-1 Anil Kumar remained posted as Assistant Engineer In MCD, South Zone from December 2006 to 10.06.2009 and was looking after Ward No.174 i.e. Chhattarpur Extension which is supported by documentary evidence D-47, D-57 and the statement of PW-26. As per office order dated 20.08.2001 issued by Commissioner IMCD, it was the duty of A-1 Anil Kumar to detect the unauthorized construction at the first level and to carry out Inspection of the area under his jurisdiction in every 15 days which is supported by the documentary evidence and statement of PW-39. There is evidence on record that he in connivance with A-2 Surender Kumar who did not submit the inspection report of the ward concerned during the period from January 2009 to June 2009 and forwarded a false monthly report of A-Surender Kumar. There is evidence on record that action was not taken against alleged unauthorized construction on three plots which supports the allegations that A-1 Anil Kumar (AE) and A-2 Surender Kumar (JE) allowed the unauthorized construction by abusing their official position as such public servants.

17. There is evidence on record that during investigation cash amounting to Rs. 67 Lacs was recovered from the locker of A-1 Anil Kumar (AE) and his family members along with incriminating documents pertaining to immovable properties which prima facie corroborates the allegation of corruption and misuse of official position by A-1 Anil Kumar (AE). PW9, PW25 and PW 44 have stated that A-1 Anil Kumar and A-2 Surender Kumar were bribed by

A-5 Jasbeer Singh Deshwal, A-4 Pavltar Singh, A-5 Sarabjit Singh and A-6 Washim Khan. There is evidence that A-2 Surender Kumar was duty bound to check the unauthorized construction in his area at first level and to take action but instead of taking action he submitted false monthly report showing unauthorized construction in his area and accepted bribes along with A-1 Anil Kumar from A-3, A-4, A-5 and A-6 and thereby abused his official position as such public servant.”

37. Relying upon a decision of the Hon’ble Supreme Court in ***Union of India v. Prafulla Kumar Samal AIR 1979 SC 366***, statements of witnesses and recoveries made, the Special Judge held that in light of the facts and recovery made, a *prima facie* case has been made out against the accused and thus the charges were framed under Sections 13(2) and 13(1)(d) of the PC Act read with Section 120-B of the IPC.

38. This court is of the view that in light of the recoveries made and statement made by the independent witnesses, it cannot be ruled out that the petitioner has been involved in the commission of Sections 13(2) and 13(1)(d) of the PC Act read with Section 120-B of the IPC. Thus, this court finds no infirmity, illegality or perversity in the order on charge for which the inherent powers need to be exercised under Section 482 of the Code especially when the matter is listed for final arguments.

(iv) Section 482 of the Code

39. The jurisdiction of this Court has been invoked under Section 482 of the Code, which reads as under:

482. Saving of inherent powers of High Court. – Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The bare language of the provision unambiguously states that the inherent powers of the High Court are meant to be exercised (i) to give effect to any order under the Code (ii) to prevent abuse of the process of any Court; or (iii) to secure the ends of justice.

40. The aforementioned provision has been referred, analyzed and interpreted in a catena of judgments of the Hon'ble Supreme Court which are referred to in the following paragraphs.

41. In the case of **Kaptan Singh v. State of U.P.**, (2021) 9 SCC 35, the Hon'ble Supreme Court has held that:

9.1 At the outset, it is required to be noted that in the present case the High Court in exercise of powers under Section 482 Cr.P.C. has quashed the criminal proceedings for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC. It is required to be noted that when the High Court in exercise of powers under Section 482 Cr.P.C. quashed the criminal proceedings, by the time the Investigating Officer after recording the statement of the witnesses, statement of the complainant and collecting the evidence from the incident place and after taking statement of the independent witnesses and even statement of the accused persons, has filed the charge-sheet before the

*Learned Magistrate for the offences under Sections 147, 148, 149, 406, 329 and 386 of IPC and even the learned Magistrate also took the cognizance. From the impugned judgment and order passed by the High Court, it does not appear that the High Court took into consideration the material collected during the investigation/inquiry and even the statements recorded. If the petition under Section 482 Cr.P.C. was at the stage of FIR in that case the allegations in the FIR/Complaint only are required to be considered and whether a cognizable offence is disclosed or not is required to be considered. However, thereafter when the statements are recorded, evidence is collected and the charge-sheet is filed after conclusion of the investigation/inquiry the matter stands on different footing and the Court is required to consider the material/evidence collected during the investigation. Even at this stage also, as observed and held by this Court in catena of decisions, the High Court is not required to go into the merits of the allegations and/or enter into the merits of the case as if the High Court is exercising the appellate jurisdiction and/or conducting the trial. As held by this Court in the case of **Dineshbhai Chandubhai Patel** (Supra) in order to examine as to whether factual contents of FIR disclose any cognizable offence or not, the High Court cannot act like the Investigating agency nor can exercise the powers like an Appellate Court. It is further observed and held that question is required to be examined keeping in view, the contents of FIR and prima facie material, if any, requiring no proof. At such stage, the High Court cannot appreciate evidence nor can it draw its own inferences from contents of FIR and*

material relied on. It is further observed it is more so, when the material relied on is disputed. It is further observed that in such a situation, it becomes the job of the Investigating Authority at such stage to probe and then of the Court to examine questions once the charge-sheet is filed along with such material as to how far and to what extent reliance can be placed on such material.

9.2 In the case of **Dhruvaram Murlidhar Sonar** (Supra) after considering the decisions of this Court in **Bhajan Lal** (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself. It is further observed that appreciation of evidence is not permissible at the stage of quashing of proceedings in exercise of powers under Section 482 Cr.P.C. Similar view has been expressed by this Court in the case of **Arvind Khanna** (Supra), **Managipet** (Supra) and in the case of **XYZ** (Supra), referred to hereinabove.

42. In **Jitul Jantilal Kotecha v. State of Gujarat and Others**, 2021 SCC OnLine SC 1045, the Hon'ble Supreme Court has recently held that:

*27. It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in **Jugesh Sehgal v. Shamsher Singh Gogi**, this Court has held that,*

*“[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice.” In **Simrikhia v. Dolley Mukherjee**, this Court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362 of the CrPC, observed that the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held:*

“5. ...Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction.”

*31. Recently, in **Mahendra KC v. State of Karnataka**, this Court has reiterated the well settled test to be applied by the High Court for exercise of its powers under Section 482 for quashing an FIR:*

“16...the test to be applied is whether the allegations in the complaint as they stand, without adding or detracting from the complaint, prima facie establish the ingredients of the offence alleged. At this stage, the High Court cannot test the veracity of the allegations nor for that matter can it proceed in the manner

that a judge conducting a trial would, on the basis of the evidence collected during the course of trial.”

43. On 11th December 2021, the Hon’ble Supreme Court while deciding the case of ***State of Odisha v. Pratima Mohanty (Criminal Appeal No.s 1455-1456 of 2021)*** has comprehensively dealt with the powers and extent of the jurisdiction of the High Court while deciding a petition under Section 482 of the Code. The Hon’ble Supreme Court has held as under:

6. *As held by this Court in the case of State of Haryana and Ors. vs Ch. Bhajan Lal and Ors. AIR 1992 SC 604, the powers under Section 482 Cr.P.C. could be exercised either to prevent an abuse of process of any court and/or otherwise to secure the ends of justice. In the said decision this Court had carved out the exceptions to the general rule that normally in exercise of powers under Section 482 Cr.P.C. the criminal proceedings/FIR should not be quashed. Exceptions to the above general rule are carved out in para 102 in Bhajan Lal (supra) which reads as under:*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein

such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

6.2 It is trite that the power of quashing should be exercised sparingly and with circumspection and in rare cases. As per settled proposition of law while examining an FIR/complaint quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing of a complaint/FIR should be an exception rather than any ordinary rule. Normally the criminal proceedings should not be quashed in exercise of powers under Section 482 Cr.P.C. when after a thorough investigation the

chargesheet has been filed. At the stage of discharge and/or considering the application under Section 482 Cr.P.C. the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting the mini-trial. As held by this Court the powers under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.

44. The position of law that is crystallized, in light of the aforementioned judgments, is that quashing should be an exception and the Section 482 jurisdiction for the same should be exercised sparingly, with circumspection and in rarest of the rare cases. Further, while examining an FIR for quashing, the court cannot (a) enter into the merits of the case, (b) embark upon a roving enquiry or (c) conduct a trial as to the reliability or genuineness of allegations made in the FIR; nor (d) it has to see the probability of conviction on the basis of evidence on record – what is required is to be seen that whether there has been an abuse of process or interests of justice requires the proceedings to be quashed. In this case, in light of the aforesaid analysis, a case for exercise for Section 482 jurisdiction is not made.

45. The counsel for petitioner has heavily relied on a judgment of the High Court in **A.K. Ganju v. CBI** (*supra*). After having gone through the ratio of the judgment, and analyzing the case at hand, it is essential to distinguish the aforementioned judgment for the reasons that *firstly*, the facts of the case are not similar to the one at hand; *secondly*, the criminal proceedings in the instant case arise out of the directions of this Court in

Common Cause v. Union of India (*supra*) qua illegal and unauthorized construction as contrasted to the facts of the *A. K. Ganju* case; and *thirdly*, in the instant case, the MCD has itself initiated criminal proceedings by way of lodging of FIR details of which have been mentioned earlier as well as the sanction for prosecuting the public servants in question been granted by the superior officer of the petitioner upon his satisfaction.

46. Upon a perusal of the contentions raised as well as the record, specifically - the chargesheet, order on charge, and further in light of the recoveries made during the investigation, this Court neither finds any force in the arguments made by the learned Counsel for petitioner nor finds any apparent error in the finding of the Court below, since a *prima facie* case is made out against the accused. This court is also of the opinion in view of the evidence on record that the possibility of offense under the said sections cannot be ruled out. Thus, the baton is before the trial court which has to proceed with the final arguments since the trial is completed to examine the merits of the case as against the nature of jurisdiction conferred upon this Court under Section 482 of Code.

47. Considering the above, this Court does not deem it fit to interfere with the order on charge of the Trial Court.

CONCLUSION

48. In view of these facts and circumstances and having perused the provisions of law, this Court finds no merit in the instant petition, a case for exercise of Section 482 jurisdiction is not made out and is therefore,

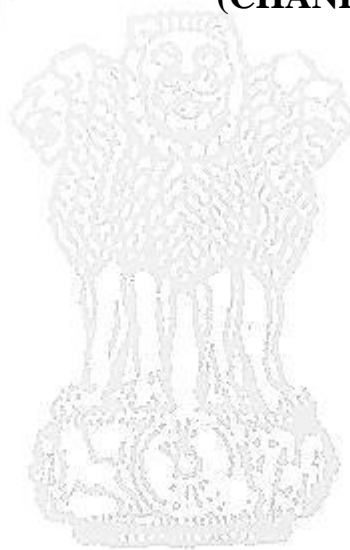
inclined to dismiss the same. Hence, this Court does not allow the instant petition as prayed for.

49. Accordingly, the petition and pending applications stand dismissed.

50. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

DECEMBER 22, 2021
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