



2023:DHC:9033



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

RESERVED ON –12th October,2023

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PRONOUNCED ON – 14th December, 2023

+ CRL.REV.P. 772/2022, CRL.M.As. 23323-25/2022

DR BALWINDER KUMAR SHARMA Petitioner

Through: Mr.Alok Bhachawat, Mr. Jeeva
Nandan, Mr.Anmol Gupta, Advs.

versus

STATE OF UT CHANDIGARH Respondent

Through: Mr.Charanjeet Singh Bakhshi, APP
for UT Chandigarh with Mr. Amit
Sahni, APP for the State

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA,J:

1. The present petition has been filed under Sections 397, 401 read with Section 482 of the Code of Criminal Procedure against the order dated 31.01.2020, passed by Dr. Gagan Geet Kaur, ASJ, Chandigarh, in CC No. 1/2018 arising from the FIR No. 194/2017 registered at Sector-3, Chandigarh Police Station and now pending in the Court of Learned Principal District & Sessions Judge-Cum-Special Judge (PC Act/CBI),



Rouse Avenue Court, New Delhi.

2. Briefly stated facts are that on 16.08.2017, the Recruitment Committee of Punjab and Haryana High Court ordered the Registrar (Vigilance) to conduct a fact-finding Inquiry on a complaint. Based on the 'fact-finding Inquiry report' submitted by the Registrar (Vigilance), the High Court of Punjab and Haryana at Chandigarh passed an order dated 15.09.2017 in CRM-M 28947 of 2017 directing registration of an FIR against the Petitioner and others and to investigate into the matter. Pursuant to the order, FIR no. 194/2017 was registered under Section 409/420/120-B, 201IPC and Section 8, 9, 13(1) (d) r/w Section 1(2) of Prevention of Corruption Act at Police Station-3, Chandigarh. The Punjab and Haryana High Court also constituted a Special Investigation Team of Chandigarh Police (SIT) to conduct an investigation and monitored the investigation by seeking status reports of investigation and issuing directions from time to time.
3. On 05.01.2018, after completion of the investigation, the charge sheet was filed before the Ld. Trial Court against the petitioner and co-accused Sunita on 05.01.2018 and the same was registered as CC No 1/2018, titled ***State vs Sunita & Ors.*** Thereafter four supplementary charge sheets have been filed before the Ld. Trial Court against the other co-accused persons.
4. The matter involves the leakage of the Haryana Civil Services (Judicial Branch) Preliminary Examination, 2017. Allegedly, the question paper remained in the custody of Dr. Balwinder Kumar Sharma, Registrar (Recruitment) i.e. petitioner herein, from the time the question paper was finalized till dispatch to the Examination Centre.



5. Allegedly, Ms. Sunita was known to be in acquaintance with Dr. Balwinder Kumar Sharma and Ms. Sushila. Ms. Sushila was acquainted with Ms. Suman before the HCS (JB) Preliminary Examination 2017. Since Ms. Sunita was in close, intimate relationship and constant contact with the Petitioner herein, the then Registrar Recruitment, who had custody of the question paper for HCS (JB) Preliminary Exams 2017. It is alleged that he had given the copy of the question paper to Ms. Sunita. Ms. Sunita allegedly had further given the copy of question paper to Ms. Sushila and carried out negotiations with Ms. Suman for supplying copy of question paper to her for consideration of money.
6. During investigation, to establish the connection between Dr. Balwinder Kumar Sharma and Ms. Sunita, the Call details record of Mobile No. [REDACTED] of Sunita from Vodafone (PB) and Mobile No. [REDACTED] (Idea) and [REDACTED] (Airtel) both belonging to Dr. Balwinder Kumar Sharma, Registrar (Recruitment) from 20.09.16 till 20.09.17 from the concerned cellular companies have been placed on record which revealed that they remained in touch with each other since before September. 2016. From the detailed scrutiny of call details of accused Sunita and Dr. B. K. Sharma, it has been revealed that they stopped talking with each other on their above said known mobile numbers in the month of Feb 2017 and procured different mobile numbers i.e [REDACTED] and [REDACTED] for further conversations.
7. As per the tower location of their Mobile Phone numbers [REDACTED] and [REDACTED] (Known Nos.) of the petitioner and Mobile No. [REDACTED] (Secret No.), all the three mobile phone numbers showed



same location since February 2017 to 7th August 2017 confirming their being together throughout this period. Similarly, both of Sunita's numbers were together throughout. Upon investigation, it was found that Sunita's secret number was taken with the help of her roommate in tandem with a JIO employee.

8. Investigation has also revealed that the petitioner would visit Sunita at her place at the temple and instead of using his official vehicle, he would book through OLA and Uber using a fake profile made from his second/secret number using names "KharoosKharoos" and "Deepak Goyal."
9. On 08.11.2017, accused Sunita was arrested from her residence in the present case as per procedure. Thereafter, on 10.11.2017 during search of Room No.06, Radha Krishan Mandir Sec 18, Chandigarh, belonging to accused Sunita, Documents i.e. Bill No. 54213 dated 22.12.2016 related to the purchase of mobile phone having IMEI Nos. XXXXXXXXXX and XXXXXXXXXX bought by Sunita were seized.
10. During her interrogation, accused Sunita confessed the aforementioned facts with respect to her acquaintance with Sushila and her relationship with the petitioner along with the acquisition of new numbers by both to contact each other in secret. She admitted that on the evening of 10th July, 2017, she met the petitioner on the road dividing 23/24 towards Sec-24 at around 7 /8 P.M. and he handed over to her the copy of question paper of preliminary exam HES (J.B.) alongwith answers. After collecting the question paper from petitioner, she came back to her room at Radha Krishan Mandir, Sec-18, Chandigarh. On the next



day i.e. on 11th July she showed the question paper to her friend Sushila and directed Sushila if any candidate is ready to pay the amount of Rs. 1-1.5 Crore for the question papers of HCS (JB) 2017, she may also provide the same to them. A day before the exam she also went to Sindhi Sweets restaurant Sector-17, Chandigarh to have a meeting with Sushila's friend Suman for making a deal of leaked Question paper. But due to dispute over the amount, deal could not be finalized.

11. During the investigation, she further disclosed that when she came to know that there is a complaint lodged against her, then the mobile phone which was having details of calls and other data was broken and disposed in dustbin by her. Thus, she had destroyed the information pertaining to this case by breaking the mobile phone knowingly and has committed offence u/s 201 IPC. Hence Section 201 IPC was added in the case.
12. During investigation, when the petitioner was confronted with these facts during his interrogation, he stated that he has never met Sunita outside the High Court. However, their mobile number records show otherwise. It was also found that the petitioner while staying in a tourist resort, he had booked the room for two adults i.e. himself and his wife. Whereas, on verification, from the attendance record of C.L. Aggarwal DAV School, Sec-7, Chandigarh where his wife Smt. Deepa Sharma is serving as a teacher, she was found present in the school during the alleged period of stay of the accused Balwinder Kumar Sharma at Neelkanthi Krishna Dham, Tourist Resort, Kurukshetra.
13. During investigation, evidence came on record against the petitioner, and he was arrested in this case on 28.12.2017 as per due procedure.



Upon obtaining permission from the Court on 29.12.2017-30.12.2017, search of the Petitioner's house at #318, Giani Zail Singh Nagar, Roop Nagar, Ropar, (PB.) was carried out in his presence. The videography of the search operation was done through the Police Videographer. The incriminating documents including printouts and copies of the question papers of various Judicial exams for different years and other documents recovered from the house / study room of the said house of accused Balwinder Kumar Sharma was taken into Police possession through seizure memo.

14. During interrogation, the petitioner disclosed that the final draft of the question paper was prepared by him in Code A, B, C and D, and that he kept this data in his pendrive in his briefcase. The printing work of question papers started on 12.07.17 and completed on 14.07.17 in the printing room of recruitment cell under his supervision. The master copy of the code A, B, C and D and the pen drive remained in his custody till 17.07.17 in his briefcase. He used to carry the brief case along with papers with him to his residence.
15. The High Court of Punjab and Haryana directed the trial court vide order dated 10.01.2020 to consider the framing of charges against the accused in 3 weeks. The learned Trial Court framed the charges vide impugned order dated 31.01.2020.
16. On 19.02.2020, the petitioner filed a Criminal Revision Petition no. 686/2020 before the High Court of Punjab and Haryana against the order dated 31.01.2020 passed by the Court of Dr. Gagan Geet Kaur, ASJ, Chandigarh.
17. The petitioner also filed a Transfer Petition (Criminal) no. 136/2020



before the Hon'ble Supreme Court praying for transfer of the case bearing CC No 1/2018, titled ***State vs Sunita & Ors.***, pending before the Court of Dr. Gagan Geet Kaur, Ld. Additional Session Judge, Chandigarh, to a court of equal and competent jurisdiction in any other State (beyond the jurisdiction of Punjab and Haryana High Court), preferably Delhi.

18. On 05.02.2021, the Hon'ble Supreme Court allowed the Transfer Petition (Crl.) no. 136/2020 and transferred the case bearing CC No 1/2018, titled ***State vs Sunita & Ors.*** from the Court of Ld. ASJ, Chandigarh to Delhi, and the same is now pending trial before the Court of Learned Principal District & Sessions Judge-Cum- Special Judge (PC Act/CBI), Rouse Avenue, New Delhi.
19. On 29.04.2022, given the above said facts and circumstances i.e. transfer of the case bearing CC No 1/2018, titled ***State vs Sunita & Ors.*** to the jurisdiction of this Hon'ble Court, the High Court of Punjab and Haryana at Chandigarh disposed of the above-said Criminal Revision petition no. 686/2020 and other connected matters filed in the case bearing CC no. 1/2018 and FIR NO. 194/2017 stating they have been rendered infructuous. The order passed by the five judge bench is as under:

“ With the consent of counsels for the parties, hearing of CRR- 686-2020, CRM-M-8538, 8541 & 9441-2020, which are listed for 27.05.2022, is preponed to today itself.

The present order shall dispose of 19 petitions i.e. CRM-M No. 28947 of 2017, CRM-M No. 9439 of 2018, CRM-M No.16106 of 2018, CRM-M No. 35204 of 2018, CRM-M No. 50651 of 2018, CRM-M No. 45761 of 2018, CRM-M No.45861 of 2018 and CRM-M No. 21903 of 2018, CRM-M No. 54526 of



2018, CRM-M No. 2606 of 2019, CRM-M No.29789 of 2018, CRM-M No. 52887 of 2018; CRM-M No.53510 of 2018, CRM-M Nos. 8538, 8541, 9441, 3707 & 5072-2020 and CRR-686-2020, as all the petitions arise out of common FIR No.194 dated 19.09.2017 under Sections 8, 9, 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 and Sections 201, 409, 420, 120-B IPC, Police Station Sector 3, U.T.Chandigarh. Reference is being made to **CRM-M No. 28947 of 2017, Suman vs. State of Haryana and others.**

Initially the matter had come to this Court by way of CRMM-28947-2017 wherein certain directions had been sought including registering of the case on the complaint dated 19.07.2017 which pertained to leakage of the question paper of preliminary examination for recruitment of Subordinate Judicial Services, Haryana, (HCS-2017).

The FIR was registered accordingly on the directions passed on 15.09.2017 by this Court.

On 18.09.2017, a Special Investigating Team was constituted keeping in view the list received from the Director General of Police, Chandigarh, in view of the sensitivity of the issue involved.

The matter was transferred by the Apex Court vide order passed in SMTP (Crl.) No.1 of 2017 titled Suman Vs. The State of Haryana & others to itself on 05.10.2017, which was noticed by this Court on 10.10.2017.

Thereafter, the matter was received back as per the orders dated 08.12.2017 passed by the Apex Court and which was to be dealt with by this Court as per orders passed in TC (Criminal) No.2 of 2017 titled Suman Vs. The State of Haryana & others. The Apex Court observed that this High Court would be best suited to monitor the investigation which was being carried out by the SIT.

In pursuance of the said proceedings, Dr. B.K. Sharma filed CRM-3707 of 2020 challenging order dated



18.12.2019 against dismissal of two applications for supplying of copies of statements of 4 witnesses recorded under Section 164 Cr.P.C. He also filed CRM-5072 of 2020 regarding dismissal of application for supplying of sealed parcels, C.Ds., hard discs. CRM-9441-2020 was filed by him challenging orders dismissing his applications for issuance of appropriate direction to the prosecution/SIT to place on record the CFSL report was received etc. was dismissed. He also filed CRM-50651-2018 for quashing order dated 06.06.2018 whereby, applications under Section 202 Cr.P.C. for supplying DDRs and the statements of MMHC had been declined.

Sunil Kumar @ Titu filed CRM-2606-2019 challenging the order whereby the Trial Court had issued directions for obtaining his voice sample and also filed CRM-8538-2020 challenging the order regarding dismissal of his application for supply of documents, transcripts and C.D. conversation. He also filed CRM-8541-2020 whereby, the Trial Court did not supply copies of various challans.

Various other accused filed petitions for grant of regular bail as it had been rejected by the Trial Court i.e. CRM-M-9439-2018 (filed by B.K. Sharma), CRM-M-16106-2018 (filed by Sunita), CRM-M- 29789 of 2018 (filed by Sushila), CRM-M-35204-2018 (filed by Sunil Kumar), CRM-M-45761-2018 (filed by Kuldeep), CRM-M-45861-2018 (filed by Ayushi), CRM-M-52887-2018 (filed by Sushil Badhu), CRMM-53510-2018 (filed by Tejinder Bishnoi) and CRM-M-54526-2018 (filed by Subhash Chander). This Court vide orders dated 12.10.2018, 26.10.2018, 11.12.2018 and 18.01.2019 passed various orders granting interim bail to the said accused.

CRM-21903-2018 is a petition filed by the U.T. Administration whereby it seeks quashing of the order dated 10.04.2018 passed by the Addl. Sessions Judge, Chandigarh regarding preservation of call details record of SIT etc.



On 10.01.2020, directions were issued to frame charges in accordance with law, within 3 weeks and decide all applications as it was noticed that numerous applications were being filed by the accused as charge was not being framed.

Accordingly, the Trial Court framed the charge on 31.01.2020.

Mr. B.K. Sharma, who is an employee of this Court filed CRR-686-2020 against the said order of framing of charge.

It has now been brought to our notice that at the instance of Ayushi and another and Balwinder Kumar Sharma, the Apex Court had in Transfer Petition Nos.66 and 136 of 2020, transferred the trial titled as State vs. Sunita to Delhi High Court and the Hon'ble Chief Justice of the Delhi High Court had been asked to nominate a Court for that purpose. The order dated 05.02.2021 passed by the Apex Court reads as under:

“The Court is convened through Video Conferencing. Heard learned Senior Counsel appearing for the parties.

During the course of hearing, Mr.Nidhesh Gupta, learned Senior counsel appearing for the High Court of Punjab & Haryana and Mr.A.N.S.Nadkarni, learned Senior

Counsel appearing for the Union Territory of Chandigarh, have no objection if the matter is transferred from Chandigarh to Delhi.

Taking into consideration the statements made by the learned Senior counsel appearing for the parties, without going into the merits of the case, we thought it appropriate, in the interest of all the parties, to transfer the case bearing C.C.No.1/2018 titled “State Vs. Sunita & Ors” pending before the Learned Additional Sessions Judge, Chandigarh to Delhi.



Accordingly, we request Hon'ble the Chief Justice of Delhi High Court to nominate an appropriate Court for the purpose.

The Transfer Petitions are allowed in the afore-stated terms.

Let the records be transferred immediately.

All pending applications including application for impleadment also stand disposed of.”

One of the accused, Sunil Kumar @ Titu then challenged the directions passed by this Court on 10.01.2020. Accordingly, on 22.02.2021, the Apex Court passed the following order:

“Heard learned counsel for the parties.

We dispose of this petition with liberty to the petitioner to agitate all aspects/contentions, as may be permissible in law, before the High Court in the pending proceedings. The same be decided on its own merits and in accordance with law.

It was brought to our notice that the case before the Additional Sessions Judge at Chandigarh now stands transferred to Court in Delhi pursuant to order passed by this Court on 5.2.2021. In that case, it will be open to the petitioner to withdraw the application filed by him before the High Court of Punjab & Haryana and take recourse to appropriate remedy, as may be permissible in law.

All contentions available to the parties are left open. Pending applications, if any, stand disposed of.”

It is not disputed that charge already stands framed on 31.01.2020 in pursuance of the investigation having been completed and in view of the order dated 10.01.2020 passed by this Court. Resultantly, now the trial is pending before the Competent Court at Delhi.

Mr. Bakshi, Advocate for U.T. Administration has also brought



to our notice that one of the accused Tejinder Bishnoi in CRL.M.C.3242/2021 and CRL.M.A.19946/2021 has also challenged the order passed by the Trial Court dismissing his application under Section 207 Cr.P.C. wherein certain statements had not been supplied to him and also the order framing the charge, which now are stated to be pending for 23.05.2022 before the High Court of Delhi.

Mr. Bakshi, has made a statement that his client would not press the petition in view of the orders passed by the Apex Court on 22.02.2021 and reserves the liberty to challenge the same before the Delhi High Court.

Keeping in view the above background and in view of the fact that the matter stands transferred to the Court at Delhi at the instance of one of the accused namely Sunil Kumar @ Titu and since the Apex Court has already given him liberty to withdraw his application before this Court and take remedies as permissible in law vide order dated 22.02.2021, which has already been reproduced above, we are of the considered opinion that it would not be appropriate for this Court to further proceed in the matter regarding the other accused/petitioners.

Even otherwise, since the FIR has been lodged, investigation is complete and charge has been framed. Consequently, the purpose of monitoring the proceedings has now been rendered infructuous. Similarly, as noticed above, one of the accused has also approached the High Court of Delhi for his legal remedies.

In such circumstances, we dispose of all the petitions bearing CRM-9439, 16106, 29789, 35204, 45761, 45861, 52887, 53510 & 54526-2018 as having been rendered infructuous.

Liberty is granted to the applicants to seek confirmation of the bail before the Courts of Competent Jurisdiction at Delhi as interim orders have been operating in favour of the accused for a period of over 3 years. The same are extended for a period of 2 months to enable the petitioners to seek their redressal before the Courts of Competent Jurisdiction at Delhi.



All pending applications for impleadment and directions also stand disposed of. All other cases are also disposed of as having been rendered infructuous.

Photocopy of this order be placed on the record of each connected case.”

20. Bare perusal of this order makes it clear that the petition of the petitioner was not disposed of on merits and it is thus required to be examined by this court.
21. Learned counsel for the petitioner submits that the respondent's objection as to the maintainability of the present Criminal Revision Petition is devoid of merits. The petitioner challenged the order on charge dated 31.01.2020 at the earliest opportunity i.e. on 19.02.2020 by filing the Criminal Revision petition bearing No-686/2020 before the High Court of Punjab & Haryana. During the pendency of the said petition before the High Court of Punjab & Haryana, the Supreme Court, on a Transfer Petition bearing no- 136/2020, filed by the petitioner, transferred the trial titled "State vs Sunita" to Delhi vide its order dated 05.02.2021. Thereafter, in a petition of co-accused namely, Sunil Kumar @ Titu, filed before the Hon'ble Supreme Court, the Hon'ble Court disposed of the petition with liberty to the petitioner to agitate all contentions before the High Court. Learned counsel submits that thus in view of the above order and the facts and circumstances of the case, the present petition is maintainable and deserves to be decided on merits.
22. It is submitted that the impugned order on charge dated 31.01.2020 passed by the trial court is a non-speaking order and does not indicate



any application of mind. Learned Trial Court has given the facts, reproduced the arguments of the counsels for the accused persons, and quoted the provisions of law and the law from paragraphs 1 to 27 of the impugned order but has not assigned any reason in the concluding paragraph i.e. paragraph 28 as to on what basis the trial court reached the conclusion that the prima facie case has been made out against the petitioner or grave suspicion arises against the accused/petitioner. Reliance in this regard is placed on *Ashok Bhadauria vs State, Crl. 2016 SCC OnLine Del 6316*, wherein the matter was remanded back with a direction to the learned Trial Judge to pass a fresh reasoned order observing as under:-

“8. In the case of P. Vijayan v. State of Kerala AIR 2010 SC 663. The Hon’ble Apex Court observed that at the time of framing charge, the Judge is not a mere Post Office to frame the charge but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or documents produced before the court which prima facie disclosed that there were suspicious circumstances against the accused.

9. In the case of Sunil Kumar Jha v. State of Bihar (1997) 2 Crimes 131(Pat), it was observed that the responsibility of framing the charge is that of the court and it has to judicially consider the question of doing so. Without fully advertent to the material on the record it must not blindly adopt the decision of the prosecution.

10. Perusal of the impugned order shows that the learned trial court did not consider it necessary to discuss the merits of the case. It has been recorded in the impugned order that as far as the individual allegations and role played by the accused are



being mentioned in detail in charge, therefore there is no need to repeat the same in the order. The learned trial court straightway recorded the conclusion that the accused are liable to be charged under Sections 420 467/468/448/ 120-8 109 I PC.

11. The learned MM did not discuss the material on record while deciding to frame charge. The order on charge must atleast contain the materials on the basis of which prima facie view is made out that the accused has committed the alleged offence as provided in Sections 212 and 213 Cr.P.C. in relation to each of the accused. The non-mentioning of material at the time of passing the order on charge leads to un-sustainability of the order in the eyes of the law.

12. It is a settled law that the Court at the time of framing the charge is required to discuss the material on the record to show its application of mind to reach to the conclusion of sufficiency of material to frame the charge The Court may not write the lengthy order describing the entire material mentioned in the charge sheet but there must be something on the face of the order from where it could be gauged that there is application of mind but the order is contrary to the above mentioned ratio of law”

23.It is submitted that in view of the above settled legal position, the impugned order is liable to be set aside.

24. Learned counsel for the petitioner submits that the present case is a case of no evidence. Petitioner has been charge-sheeted only on the basis of three evidence i.e. (i) Disclosure statement of co-accused Sunita, (ii) Seizure memo pertaining to articles recovered from his house, and (iii) CDRs of mobile phones between co-accused Sunita and Balwinder Kumar Sharma and his alleged visit/stay at Neelkanth with co- accused Sunita.

25.It is submitted that the disclosure statement of Sunita cannot be read



against the petitioner because it is a confession before the police and therefore, falls within the ambit of Section 25 of the Evidence Act. Moreover, in pursuance of the said disclosure statement, no recovery has been effected from Sunita. It is submitted that it is alleged by the prosecution that as per the disclosure statement of Sunita, the petitioner handed over the paper to Sunita near the park of Sector 24, Chandigarh before exams. However, the learned counsel submits that the said paper has not been recovered from any of the accused by SIT and that there is no other incriminating material against the petitioner in the disclosure statements of other co-accused (s).

26. To buttress the contention that the confession of the co-accused cannot be read into evidence against the accused, reliance is placed on ***Lohit Kaushal vs State Of Haryana (2009) 17 SCC 106*** in which it was inter alia held as under:-

“The two statements above-quoted cannot by any stretch be read into evidence against the appellants, as they have the status of being statements made to the police while the two were in custody. Admittedly, the two were also co-accused at that stage (as Satnam Kaur was later discharged by the trial court) for lack of evidence against her.”

27. The court's attention is further brought to the Apex Court's recent judgment titled ***Subramanya vs The State of Karnataka (2022) SCC OnLine SC 1400*** :

“But a confession of a co-accused, their lordships continued to observe, was obviously evidence of a weaker type. It did not indeed come within the definition of 'evidence' contained in Section 3 of the Evidence Act. Such statement was not required to be given on oath nor in the presence of the accused and it could not be tested by cross examination, it was a much weaker



type of evidence than the evidence of an approver which was not subject to any of those infirmities. Section 30, however, provided that the Court might take into consideration the confession and thereby no doubt made it evidence on which the Court could act, but the section did not say that the confession was to amount to proof. Clearly, there must be other evidence and confession was only one element in the consideration of all the facts proved in the case, which can be put into the scale and weighed with other evidence. Their lordships confirmed the view that the confession of a co-accused could be used only in support of the evidence and could not be made a foundation of a conviction.”

28. The learned counsel the petitioner further submits that there is nothing incriminating against the petitioner in the seizure memo with regard to articles recovered from his house on the basis of which prosecution sanction has been granted. Seized items from serial (i) to (xxxxxvii) of the seizure memo, are just hard copies of previous question papers and key answers of Punjab and Haryana Superior Judiciary. The remaining articles from Sr. no, (xxxxxviii) to (xxxxxxvi) were not found relevant later on by the prosecution. It is submitted that nothing incriminating evidence is found from the electronic devices recovered from the house of the petitioner as per the CFSL report dated 28.03.2018.
29. The learned counsel the petitioner moreover submits that it is alleged that the petitioner has a close relationship with Sunita on the basis of the CDR and visitor register at Neelkanth. It is submitted that this allegation is merely on the basis of the call exchange record, that too from numbers that do not belong to the petitioner or co-accused Sunita and has no bearing. It is further submitted that there is no



evidence in the charge sheet to connect the visit or stay of the petitioner at Neellkanth, Kurukshetra with Sunita.

30. Learned Counsel for the State has vehemently opposed the arguments advanced by the learned counsel for the petitioner. The learned counsel for the respondent submits that since the petitioner herein is a public servant who is alleged to have dishonestly and fraudulently misappropriated and converted for his own use the question paper of the Preliminary Examination of HCS(Judicial branch), 2017 entrusted to him and under his control as a public servant and allowed the co-accused-Sunita to have access thereto; therefore charges framed against the petitioner under Section 13 of Prevention of Corruption Act, 1988 are attracted.
31. It is submitted that the petitioner, during preliminary enquiry conducted by the then Registrar (Vigilance) Punjab and Haryana High Court, admitted to the fact that the master copy of the question papers and the pen drive remained in his custody in his brief case with a numeric lock till the day of holding of the examination i.e. 17.07.2017, and further as per the chargesheet, the role of the petitioner was at length enquired into by the then Registrar (Vigilance) and it was found that the petitioner who had the custody of the question paper had given the same to Sunita.
32. The learned counsel further submits that the accused, Sunita, stated that on 10.07.2017, she met the petitioner herein on the dividing road of Sector 23-24 towards sector 24 at around 7/8 PM and the petitioner handed over the said question paper to her and on the very next day she showed the question paper to her friend Sushila and told her that



if any candidate is ready to pay for the said question paper, Sunita will provide the same to them. It is submitted that as per Sunita's statement, a day before the examination she showed the question paper to Sushila and the said question paper was concealed at her House No. 16, Gali no. 3, Gemini Park, Nazafgarh, Delhi. Sunita has further stated that she provided the question paper to her brother Kuldeep Singh, Sunil Chopra alias Titu and her husband Jitender.

33. Moreover, the learned counsel for the respondent submits that co-accused Sushila, who ranked 1 in OBC category in this examination; in her disclosure statement dated 15.01.2018 alleged that a few days before the examination, Sunita asked her to arrange Rupees 1.5 crores in exchange for the question paper. Later, the deal was struck for Rupees 1 crore during which, Sushila had recorded her conversation with Sunita in her mobile phone. Sunita had shown her the question paper on 11.07.2017 and that when the paper leak case was highlighted, Sushila broke her phone into several pieces.

34. Furthermore, the learned counsel brings to the court's attention that the Petitioner herein was entrusted with the said question paper by the High Court in his capacity as a public servant to buttress the contention that the fact that the petitioner leaked the said paper to Sunita clearly amounts to Criminal breach of trust by a public servant under Section 409 IPC. It is submitted that therefore, under Section 106 Indian Evidence Act, 1872, the petitioner being the custodian of this paper, the burden of proof lies upon the petitioner to explain as to how; a question paper which was in his custody was leaked.



35. It is submitted that the continued acquaintance between the petitioner herein and Sunita is not a mere assumption. To establish the connection between the Petitioner and Ms. Sunita, call detail records from the concerned cellular companies have been examined leading to the discovery that they were in touch with each other since before September, 2016. Further, the statement of Virender Kumar's statement u/s 161 and 164 Cr.P.C is relied upon. According to his statement, Virender Kumar plys his own Auto Rickshaw in Chandigarh and was contacted by Sunita Ahlawat to provide her Auto Rickshaw service. Sunita promised to get him a government job in Punjab and Haryana High Court through her friend Balwinder Kumar Sharma, who was stated to be a Judge in Punjab and Haryana High Court, Chandigarh. During the period of using his services, Sunita would often send tiffin boxes and fruits through him to the present petitioner and also on one occasion, demanded a mobile SIM card from him. Moreover, it is submitted that as per the petitioner's OLA and UBER records from his second/secret phone number, he visited Sunita's residence many times.

36. Learned counsel for the respondent submits that as per the statement of Sh. Vajinder Singh, Assistant Registrar, Punjab & Haryana High Court, after the completion of evaluation of OMR and preparation of the final result on 02.08.2017, the guard was removed from printing room. On 05.08.2017 upon the request of Sh. Ishwar Singh superintendent recruitment branch, a guard was deployed in front of printing room where the confidential material (OMR sheets) were



stored; this seemed to annoy the petitioner herein who snubbed him on 08.08.2017 for the same.

37. It is furthermore submitted that as per the statements of Sh. Ishwar Singh, when the result of HCS (JB) Prelims was being prepared after evaluation of OMR sheets, he found that a girl named Sunita was topping the exam and was from General category but might be overage as she was 44 years old, while the age limit for General category candidates was only 42 years. He brought this observation to the knowledge of the Petitioner, who in turn replied that in Haryana Judiciary, there is age relaxation to deserted women. Therefore, it is submitted that it is evident that Sections 409, 420, 120B IPC are attracted by the aforementioned actions of the petitioner.

38. At the outset, the charge sheet against the present petitioner have been filed under Sections 8, 9, 13(1)(d) r/w 13(2) Prevention of Corruption Act, 1988 and Sections 409, 420, 120B and 201 Indian Penal Code, 1860. Pursuant to the filing of the charge sheet, learned Trial Court ordered for framing of the charge against the petitioner. Chapter XVIII of the Code of Criminal Procedure, provides the procedure for trial before a Court of Session. Section 227 of Cr.P.C. provides that if there is no sufficient ground for the proceeding against the accused in the material on the record, the accused shall be discharged. Section 228 Cr.P.C. provides that if the judge is of the opinion that there are grounds for presuming that the accused has committed an offence, the charge shall be framed against the accused. It is a settled proposition that at the stage of charge, the Court is only required to see the prima facie case. It is also a settled proposition that the stage of charge



cannot be converted into a mini trial. There cannot be any dispute to the proposition that the Court is not to act as a mouthpiece of the prosecution and the Court is required to sift and weigh the evidence. There is also no doubt to the proposition that if two views are possible, the view favourable to the accused has to be taken. It is also a settled proposition that the court is not required to pass a detailed order at the stage of charge evaluating the evidence as it may prejudice the party. However, the order must reveal that the learned trial judge has duly applied the mind and exercised discretion judiciously.

39. The Court is required to exercise judicial discretion in order to determine whether a case for trial has been made out by the prosecution. However, for this purpose, the Court is not required to weigh and balance the pros and cons of the matter or the evidence and probabilities; which is, in truth, the function of the Trial Court. At the stage of charge, the Court is not to examine the probative value of the witnesses either. The Court is only required to see that if there are sufficient grounds to proceed for proceeding against the accused.
40. The material which is required to be considered at the stage of charge are the statements recorded by the Police or the document produced before the Court. If such material which the prosecutor proposes to adduce to the guilt of the accused, even if fully accepted, fails to show that the accused has committed the offence then there will no sufficient ground for proceeding with the trial.
41. It may be reiterated that at this stage the Court is only required to consider the broad probabilities and the total effect of the evidence



and documents produced before it. However, the Court is not to conduct a roving enquiry into the pros and cons. The settled proposition is that there must exist some material for entertaining the strong suspicion which confirm the basis for drawing of a charge and refusing to discharge the accused.

42. The Court, at this stage, is required to examine the record produced by the prosecution and the Cr.P.C. does not confer any right upon the accused to produce any document at this stage of framing of charge. However, in exceptional cases where a document may show the prosecution as preposterous, the same can be considered depending upon the peculiar facts and circumstances. However, in the present case, there is no such material.

43. It is also to be taken into account that in cases of criminal conspiracy, the possibility of any direct evidence is hardly possible. The Court has to look at the circumstantial evidence in its entirety so as to form an opinion at this stage. The Courts have also been cautioned to not express any opinion on the merits of the case so as to prejudice either party and therefore, the Court is not expected to go deep into the matter.

44. In *Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4*, the jurisdiction of the Court in testing the framing of charges was *inter-alia* delineated as under:

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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.

(2) 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.

(3) 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. 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.

(4) That in exercising his jurisdiction under Section 227 of the Code the 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.”

45. In the present case, broadly the case of the prosecution against the petitioner herein, who was working as a Registrar Recruitment is that he was in constant touch with the co-accused Sunita. This allegations of the prosecution of the petitioner and the accused being in constant touch is revealed by the following charts of the call details of their alleged known and ‘secret’ phone numbers:



Matching report of call details LINKS						
Sr. No	Party 1	Mobile Number	Period	Party 2	Mobile Number	Total number of call matched
1.	Sunita Candidate	[REDACTED]	01.09.16 to 14.02.17	Dr. BK Sharma	[REDACTED]	580
		Dr. BK Sharma		34		
		Dr. BK Sharma		23		
		Dr. BK Sharma		02		

Matching report of call details LINKS						
Sr. No.	Party 1	Mobile Number	Period	Party 2	Mobile Number	Total number of call matched
1.	Sunita	[REDACTED]	06.01.17 to 11.01.17	Dr. BK Sharma	[REDACTED]	52
			12.01.17 to 07.08.17	Dr. BK Sharma		1100

46. In such cases, where digital/electronic evidence is available, the case of the prosecution cannot be thrown at the initial stage.
47. The record also indicates that the petitioner was in possession of the question paper immediately before the alleged leakage. The case is of a very sensitive nature and the evidence which is required to be led for the purpose of proving the case is either digital or documentary in nature.
48. The jurisdiction of the Court while entertaining the revision petition is



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also very limited, the Court can interfere in the challenged order or only if there is any serious illegality, infirmity or perversity in the order of the learned Trial Court. I do not find any illegality, infirmity or perversity in the order of the learned Trial Court. Hence, the present petition along with pending applications stands dismissed.

DINESH KUMAR SHARMA, J

DECEMBER 14, 2023

Pallavi