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STATE OF RAJASTHAN

v.

ASHOK KUMAR KASHYAP

(Criminal Appeal No. 407 of 2021)

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APRIL 13, 2021

**[DR. DHANANJAYA Y. CHANDRACHUD AND
M.R. SHAH, JJ.]**

- Prevention of Corruption Act, 1988: s. 7 – Offence relating to public servant being bribed – On facts, filing of chargesheet*
- C *against the accused for the offence u/s. 7 – Special Judge on basis of the transcript of conversation recorded between the complainant and the accused, found that there is a prima facie case of the alleged offence u/s. 7, and framed the charges against the accused for the said offence – Revision Application thereagainst – High Court*
- D *discharged the accused of the alleged offence u/s. 7 – Sustainability of – Held: Not sustainable – While discharging the accused, the High Court exceeded in its revisional jurisdiction and acted beyond the scope of s. 227/239 Cr.P.C. – High Court considered in detail the transcript of the conversation between the complainant and the accused which exercise at that stage was not permissible at all – At*
- E *the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible – At this stage, even as per s. 7, even an attempt constitutes an offence – Thus, the High Court erred and/or exceeded in virtually holding a mini trial at the stage of discharge application – Order passed by the High Court quashed and set aside, and that of the Special Judge restored.*

Allowing the appeal, the Court

- HELD:** 1. While discharging the accused, the High Court exceeded in its jurisdiction in exercise of the revisional jurisdiction and acted beyond the scope of Section 227/239 Cr.P.C. The High
- G Court went into the merits of the case and considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court considered in detail the transcript of the conversation between the

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complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. The Special Judge rightly held that at the stage of framing of the charge, it has to be seen whether or not a *prima facie* case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the Special Judge having found that there is a *prima facie* case of the alleged offence under Section 7 of the Prevention of Corruption Act, framed the charge against the accused for the said offence. The High Court was required to consider whether a *prima facie* case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court erred and/or exceeded in virtually holding a mini trial at the stage of discharge application. Furthermore, this Court is not entering into the merits of the case and/or merits of the transcript as the same is required to be considered at the time of trial. Defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application. [Para 11, 12][167-B-E; G-H]

2. The impugned judgment and order passed by the High Court discharging the accused under Section 7 of the PC Act is unsustainable in law and is quashed and set aside, and the order passed by the Special Judge framing charge against the accused under Section 7 of the PC Act is restored. [Para 13][168-A-B]

P. Vijayan v. State of Kerana (2010) 2 SCC 398:[2010] 2 SCR 78; State of Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath (2019) 7 SCC 515 : [2019] 8 SCR 713 – relied on.

Srilekha Senthil Kumar v. Deputy Superintendent of Police, CBI, ACB, Chennai (2019) 7 SCC 82; Asim Shariff v. National Investigation Agency (2019) 7 SCC 148 : [2019] 8 SCR 799 – referred to.

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A	<u>Case Law Reference</u>	
	(2019) 7 SCC 82	Referred to
	[2019] 8 SCR 799	Referred to
	[2010] 2 SCR 78	Relied on
B	[2019] 8 SCR 713	Relied on

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 407 of 2021.

C From the Judgment and Order dated 12.09.2018 of the High Court of Judicature for Rajasthan Bench at Jaipur in S.B. Criminal Revision No. 1270 of 2018.

Vishal Meghwal, Milind Kumar, Advs. for the Appellant.

Anuj Bhandari, Adv. for the Respondent.

D The Judgment of the Court was delivered by
M. R. SHAH, J.

1. In the facts and circumstances of the case and having heard the learned counsel for the respective parties, the delay caused in filing the special leave petition is hereby condoned.

E 1A. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.09.2018 passed by the High Court of Rajasthan, Bench at Jaipur in S.B. Criminal Revision No. 1270 of 2018, by which the High Court, in exercise of its revisional jurisdiction, has quashed the

F order passed by the learned Special Judge, Prevention of Corruption Act, Bharatpur dated 22.06.2018 framing the charge against the respondent-accused for the offence under Section 7 of the Prevention of Corruption Act (for short, 'PC Act') and consequently has discharged the accused of the alleged offence under Section 7 of the PC Act, the

G State has preferred the present appeal.

3. That the respondent herein – original accused was serving as a Patwari. That the original complainant Jai Kishore and one another on 31.08.2010 submitted a written report before the Additional Superintendent of Police, Anti-Corruption Bureau, Bharatpur stating that for the purpose of issuing Domicile Certificate and OBC Certificate of

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his son, he has submitted an application enclosed with complete certificates before the accused – Patwari Ashok Kumar Kashyap for endorsing his report. However, the Patwari in lieu of endorsing his report over the said application demanded a bribe of Rs.2,800/- . Thereafter after conducting the investigation a chargesheet came to be filed by the investigating agency against the accused for the offence under Section 7 of the PC Act. That the learned Special Judge heard the prosecution as well as the defence at the time of framing of the charge. After hearing the prosecution as well as the counsel for the defence and considering the material on record which included the transcript of conversation recorded between the complainant and the accused and considering the other material on record and having found that there is a *prima facie* case made out and the defence of the accused is not to be considered at this stage, by order dated 22.06.2018 framed the charge against the accused for the offence under Section 7 of the PC Act.

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4. Feeling aggrieved and dissatisfied with the order passed by the learned Special Judge framing the charge against the accused under Section 7 of the PC Act, the accused preferred revision application before the High Court by filing Criminal Revision No. 1270 of 2018.

4.1 Before the High Court, it was contended on behalf of the accused that no case is made out under Section 7 of the PC Act, even on the basis of the transcript recording the conversation between the complainant and the accused. It was submitted that it is borne out from the transcript that the accused in fact refused to give bonafide residence certificate and returned the form on 29.08.2010 and that no work was pending before him. It was also contended that on reading the entire transcript the factum of demand of Rs.2,800/- is not revealed.

4.2 The revision application was opposed by the learned Public Prosecutor. Heavy reliance was placed on the decision of this Court in the case of *Chitresh Kumar Chopra v. State (Govt, of NCT of Delhi)*, AIR 2010 SC 1446 and it was submitted that as held by this Court that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence. It was submitted that from the transcript it is evident that bribe was demanded from the complainant.

- A 4.3 That by the impugned judgment and order, the High Court has allowed the said revision application and has quashed and set aside the order passed by the learned Special Judge framing the charge against the accused for the offence under Section 7 of the PC Act and consequently discharged the accused from the alleged offence by observing in paragraphs 10 & 11 as under:
- B “10. In the present case in hand, complainant himself when he moved to the Anti Corruption Department mentioned that petitioner had returned the form without making report. From the transcript which is available on record, it is evident that some prior transactions pertaining to bank file was pending between the parties and matter pertained to Rs. 4,850/- out of which as per the petitioner, Rs. 4,000/- was to be paid to the bank and in the transcript he has explained the total amount which was payable by the complainant. There is no specific demand for making a bonafide residence certificate, rather, petitioner had mentioned in the transcript that as the complainant and his son are residing in Agra (U.P.), a bonafide residence certificate cannot be issued. No trap proceedings were conducted in the case and the matter has remained pending with the Anti Corruption for a period of more than five years. There is no specific demand of money by petitioner and on the date of transcript no matter was pending before him.
- C 11. In view of the same, it is evident from bare reading of the transcript that offence under Section 7 of the Prevention of Corruption Act would not be made out against the petitioner.”
- D 5. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, discharging the accused and quashing and setting aside the order of framing charge by the learned Special Judge, in exercise of its revisional jurisdiction, the State has preferred the present appeal.
- E 6. Mr. Vishal Meghwal, learned Advocate appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has erred in discharging the accused of the charged offence when there is ample material and evidence on record against the accused and sufficient grounds are available for proceeding against the accused.
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6.1 It is submitted that the High Court has failed to appreciate A
that at the stage of framing of charge and/or consideration of an application for discharge, the Court is to consider whether there is any prima facie case made out against the accused or not and at that stage the Court is required to evaluate the material and documents relied on by the prosecution only with a view to find out whether the facts emerging therefrom, if taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or not.

6.2 It is submitted that in the present case the High Court has committed a grave error in evaluating the transcript/evidence on merits which at the stage of considering the application for discharge is not permissible. C

6.3 It is further submitted by the learned Advocate appearing on behalf of the State that in the present case even otherwise from the transcript recording the conversation between the complainant and the accused a case of demand of illegal gratification has been made out. It is submitted that the accused has been charged for the offence under Section 7 of the PC Act and therefore even an attempt is sufficient to attract the offence under Section 7 of the PC Act. It is submitted that therefore the High Court has erred in evaluating the evidence on record on merits at the stage of considering the discharge application which, as such, is impermissible and beyond the scope of the exercise of the revisional jurisdiction. E

6.4 Learned Advocate appearing on behalf of the State has heavily relied upon the decisions of this Court in the cases of *P. Vijayan v. State of Kerana*, (2010) 2 SCC 398; *Srilekha Senthil Kumar v. Deputy Superintendent of Police, CBI, ACB, Chennai*, (2019) 7 SCC 82; *Asim Shariff v. National Investigation Agency* (2019) 7 SCC 148; and *State of Karnataka Lokayukta, Police Station, Bengaluru v. M.R. Hiremath*, (2019) 7 SCC 515. F

7. Learned Advocate appearing on behalf of the respondent-accused has vehemently submitted that in the facts and circumstances of the case and as it was found from the transcript recording the conversation between the complainant and the accused that no case, at all, has been made out against the accused for the offence under Section 7 of the PC Act, the High Court has rightly discharged the accused by quashing and setting aside the order passed by the learned Special Judge G

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- A framing charge against the accused. It is vehemently submitted by the learned Advocate for the respondent-accused that, as such, the accused refused to issue residence certificate and caste certificate having come to know about the complaint being the permanent resident of Agra. It is submitted that in fact the complainant wanted a false residence certificate and caste certificate illegally to be made in the State of Rajasthan, though he was the permanent resident of Agra. It is submitted that in fact the respondent-accused gave a report rejecting the request of the complainant on 29.08.2010 and therefore, as such, there was nothing pending before the accused and the decision regarding his application was already taken.
- B 7.1 It is submitted that in fact even as per the case of the prosecution and even the complainant the trap failed and the accused refused to accept the bribe in the trap proceedings.
 - C 7.2 It is submitted that at the time of conversation two persons were present, (1) the complainant – Jai Kishore; and (2) Devi Singh. It is submitted that there was a mixing of the conversation with the complainant as well as Devi Singh. It is submitted that so far as the complainant is concerned, the accused categorically refused to accept any bribe. However, it is submitted that the appellant has tried to confuse and mislead the Court by mixing the conversation of Devi Singh regarding his dues of Rs.4,850/- to the bank against which he has paid Rs.2,000/-
 - D and the remaining amount of Rs.2,850/- was due to the bank. It is submitted that therefore so far as the complainant is concerned, neither there was any acceptance nor there was any demand of bribe and therefore having found on the basis of the material/evidence on record that no case is made out against the accused for the offence under Section 7 of the PC Act, the High Court has rightly discharged the accused.
- E 7.3 Learned counsel appearing on behalf of the accused has heavily relied upon the decision of this Court in the case of *Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 and has submitted that as held by this Court the Court while exercising powers under Section 227 Cr.P.C. and while considering the question of framing of the charge 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 accused is made out and where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained,
- F H the court will be fully justified in framing of the charge and proceeding

with the trial, however, by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him will give rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused. It is submitted that therefore in the present case the High Court was justified in evaluating the evidence on record to come to a conclusion whether there is any sufficient material/evidence making out a case for the offence under Section 7 of the PC Act or not.

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7.4 Number of other submissions have been made by the learned counsel for the respective parties on merits after taking us in detail to the transcript recording the conversation between the complainant and the accused. However, at the stage of framing of the charge and/or while considering the discharge application, we do not propose to go into in detail on merits of the allegations and the evidence on record as for the reasons stated hereinbelow the same is not permissible at this stage.

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8. We have heard the learned counsel for the respective parties.

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By the impugned judgment and order, the High Court in exercise of its revisional jurisdiction has set aside the order passed by the learned Special Judge framing the charge against the accused under Section 7 of the PC Act and consequently has discharged the accused for the said offence. What has been weighed with the High Court while discharging the accused is stated in paragraphs 10 & 11 of the impugned judgment and order, which are reproduced hereinabove.

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

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9.1 In the case of *P.Vijayan (supra)*, this Court had an occasion to consider Section 227 of the Cr.P.C. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the Court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further

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- A observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 Cr.P.C., if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.
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9.2 In the recent decision of this Court in the case of *M.R. Hiremath (supra)*, one of us (Justice D.Y. Chandrachud) speaking for the Bench has observed and held in paragraph 25 as under:

- C **25.** The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of T.N. v. N. Suresh Rajan* [*State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709, advertiring to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)
“29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”
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10. We shall now apply the principles enunciated above to the present case in order to find out whether in the facts and circumstances of the case, the High Court was justified in discharging the accused for the offence under Section 7 of the PC Act.

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11. Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a *prima facie* case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a *prima facie* case of the alleged offence under Section 7 of the PC Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not. As observed hereinabove, the High Court was required to consider whether a *prima facie* case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.

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12. We are not further entering into the merits of the case and/or merits of the transcript as the same is required to be considered at the time of trial. Defence on merits is not to be considered at the stage of framing of the charge and/or at the stage of discharge application.

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- A 13. In view of the above and for the reasons stated above, the impugned judgment and order passed by the High Court discharging the accused under Section 7 of the PC Act is unsustainable in law and the same deserves to be quashed and set aside and is accordingly hereby quashed and set aside and the order passed by the learned Special Judge framing charge against the accused under Section 7 of the PC Act is hereby restored. Now the case is to be tried against the accused by the competent court for the offence under Section 7 of the PC Act, in accordance with law and its own merits.

Nidhi Jain

Appeal allowed.