

TARUN JIT TEJPAL

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v.

THE STATE OF GOA & ANR.

(Criminal Appeal No. 1246 of 2019)

AUGUST 19, 2019

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[ARUN MISHRA, M. R. SHAH AND B. R. GAVAI, JJ.]

Code of Criminal Procedure, 1973: ss.227, 228 – Scope of exercise of power at the stage of framing of charge – In the instant case, appellant-original accused was facing trial for offences under ss.354, 354A, 354B, 341, 342, 376(2)(f) and 376(2)(k), IPC – Charge sheet filed by Investigating officer – Sessions Judge ordered charges to be framed against the appellant for offences under the aforesaid sections – Appellant filed revision application before the High Court – High Court dismissed the revision application and refused to discharge the appellant of charged offences – Hence the appeal – Discharge was sought on the ground that in the present case, both, the informant and the Investigating Officer were same and, therefore, entire criminal proceedings were vitiated – Reliance was placed upon the decision of this Court in Mohan Lal v. State of Punjab (2018) 17 SCC 627 – Held: The submissions made on behalf of the appellant are on merits and are required to be dealt with and considered at an appropriate stage during the course of trial – Some of the submissions made on behalf of the appellant on the conduct of the victim/prosecutrix also are required to be dealt with and considered at an appropriate stage during trial – The same are not to be considered at the stage of framing of the charge – There is ample material against the appellant and, therefore, trial court rightly framed charge against him and the same is rightly confirmed by High Court – No interference called for – Further held that appellant shall not be discharged on the ground that in the present case, both, the informant and the Investigating Officer are same, as decision of this Court in Mohan Lal case shall not be applicable as in the present case proceedings were initiated prior to the decision in Mohan Lal case – No interference called for – Trial court directed to conclude the trial at the earliest – Penal Code, 1860 – ss.354, 354A, 354B, 341, 342, 376(2)(f) and 376(2)(k) – Crime against women.

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- A **Dismissing the appeal and disposing of the M.A., the Court HELD :** 1. The decision in the case of *Mohan Lal* shall not be applicable to the facts of the case on hand as criminal prosecution has been initiated in the instant case much prior to the decision in the case of the *Mohan Lal*. Therefore, the appellant
- B cannot be discharged at this stage on the said ground mainly that as the Investigating Officer and the complainant/informant are the same the trial is vitiated, relying upon the decision of this Court in the case of *Mohan Lal*. Even the decision of this Court in the case of *Bhagwan Singh*, relied upon by the Counsel appearing on behalf of the appellant-original accused, also shall
- C not be of much assistance to the appellant at this stage. In the case of *Bhagwan Singh* and after the trial this Court held that as the complainant herself was the Investigating Officer, the case of the prosecution would not be free from doubt. It was the case after trial and not at the stage of framing of the charge. Where
- D the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record but it would be completely a different thing to say that the trial itself would be vitiated for such infraction. Therefore, the said ground is not required to be
- E considered at this stage, namely, at the stage of framing of the charge. At the stage of framing of the charge, the different considerations would weigh. [Para 8.2] [685-A-H]
- F 2. The submissions made on behalf of the appellant on merits are required to be dealt with and considered at an appropriate stage during the course of the trial. Some of the submissions made on behalf of the appellant on the conduct of the victim/prosecutrix also are required to be dealt with and considered at an appropriate stage during the trial. The same are not required to be considered at this stage of framing of the charge. There is more than a *prima facie* case against the accused for which he is
- G required to be tried. There is sufficient ample material against the accused and therefore the trial court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for. [Para 9.5] [694-A-E]
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Bhagwan Singh v. The State of Rajasthan (1976) 1 SCC 15 ; *Mohan Lal v. State of Punjab* (2018) 17 SCC 627 : [2018] 9 SCR 1006 – held inapplicable. A

Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4 : [1979] 2 SCR 229 ; *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39 : [1978] 1 SCR 257 ; *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia* (1989) 1 SCC 715 : [1989] 1 SCR 560 ; *Amit Kapoor v. Ramesh Chander* (2012) 9 SCC 460 : [2012] 7 SCR 988 ; *Ajay Singh v. State of Chhattisgarh* (2017) 3 SCC 330 : [2017] 1 SCR 286 ; *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijuaya* (1990) 4 SCC 76 : [1990] 3 SCR 633 ; *State of T.N. v. N. Suresh Rajan* (2014) 11 SCC 709 : [2014] 1 SCR 135 ; *State v. S. Selvi* (2018) 13 SCC 455 ; *Mauvin Godinho v. State of Goa* (2018) 3 SCC 358 : [2018] 1 SCR 821 ; *Varinder Kumar v. State of Himachal Pradesh* (2019) SCC OnLine SC 170 – referred to. B

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Case Law Reference

(1976) 1 SCC 15	held inapplicable	Para 5.5	
[2018] 9 SCR 1006	held inapplicable	Para 5.5	E
[1979] 2 SCR 229	referred to	Para 6.3	
[1978] 1 SCR 257	referred to	Para 6.3	
[1989] 1 SCR 560	referred to	Para 6.3	
[2012] 7 SCR 988	referred to	Para 6.3	F
[2017] 1 SCR 286	referred to	Para 6.3	
[1990] 3 SCR 633	referred to	Para 6.3	
[2014] 1 SCR 135	referred to	Para 6.3	
(2018) 13 SCC 455	referred to	Para 6.3	G
[2018] 1 SCR 821	referred to	Para 6.3	

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- A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1246 of 2019.

From the Judgment and Order dated 20.12.2017 of the High Court of Bombay at Goa in Crl. Revision Application No. 60 of 2017.

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M.A. No. 2207/2018 in S.L.P.(Crl) No. 3149-3150/2014.
Vikas Singh, Sr. Adv., Ankur Chawla, Aamir Khan, Aditya Pujari, Bhanu Soodh, Sarvesh Singh Baghel, Advs. for the Appellant.
Tushar Mehta, SG, Pratap Venugopal, Ms. Surekha Raman, C Santosh Salvador Rebello, Ms. Viddusshi, M/s. K J John And Co., Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J. 1. Leave granted.

- D 2. Feeling aggrieved and dissatisfied with the impugned Judgment and Order dated 20.12.2017 passed by High Court of Bombay at Goa in Criminal Revision Application No. 60 of 2017 by which the High Court has dismissed the said Revision Application preferred by the appellant herein – original accused and has refused to discharge the appellant–original accused for offences under Sections 354, 354A, 354B, 341, 342, 376 (2) (f) and 376 (2) (k) of the IPC, appellant–original accused has preferred the present appeal.
- E 3. That the appellant herein – original accused is facing the trial for the offences under Sections 354, 354A, 354B, 341, 342, 376 (2) (f) and 376 (2) (k) of the IPC. The criminal proceedings were initiated against the appellant herein pursuant to the FIR lodged on 22.11.2013 by the Police Inspector, CID, Crime Branch, Dona Paula for the aforesaid offences alleged to have been committed on 21.11.2013. That the Investigating Officer collected the relevant material/evidence and also recorded the statement of the relevant witnesses including the prosecutrix F and thereafter filed the charge-sheet against the appellant for the aforesaid offences. That thereafter, the learned Additional Sessions Judge, Mapusa vide Order dated 07.09.2017 ordered charge to be framed against the appellant for the offences under Sections 354, 354A, 354B, 341, 342, 376 (2) (f) and 376 (2) (k) of the IPC.
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3.1 Feeling aggrieved and dissatisfied with the Order dated 07.09.2017 passed by the learned Additional Sessions Judge, Mapusa ordering charge to be framed against the appellant herein – original accused for the aforesaid offences, the appellant herein-original accused approached the High Court by way of Revision Application.

3.2 By the impugned Judgment and Order, the High Court has dismissed the said Revision Application and has refused to discharge the accused for the offences for which he has been charged. Hence, the appellant-original accused is before this Court by way of present appeal.

4. Shri Vikas Singh, learned Senior Advocate has appeared on behalf of the appellant herein – original accused and Shri Tushar Mehta, learned Solicitor General of India has appeared on behalf of the respondents.

5. Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused has vehemently submitted that, in the facts and circumstances of the case, the High Court has materially erred in not exercising the revisional jurisdiction and has materially erred in not discharging the appellant – original accused from the offences for which he has been charged.

5.1 Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused has further submitted that the High Court has materially erred in not properly appreciating the scope and ambit of powers to be exercised under Section 227 and 228 of the CrPC.

5.2 It is further submitted by Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused that the material collected during the course of the investigation and the evidence so far on record do not make out even a *prima facie* case against the appellant for the offences for which he has been charged.

5.3 Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused has further submitted that even from the CCTV footage no case is made out against the appellant for the offences for which he has been charged.

5.4 Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused has taken us to some WhatsApp messages by the prosecutrix and has commented upon the same and

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- A has submitted that the prosecutrix is not reliable at all and the prosecutrix shall not be believed.

5.5 It is further submitted by Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused that in the present case, the complainant and the Investigating Officer are the

- B same and therefore the entire criminal proceedings have been vitiated. In support of his above submissions, Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused has heavily relied upon the decisions of this Court in the case of *Bhagwan Singh v. The State of Rajasthan* (1976) 1 SCC 15 as well as the subsequent decision of this Court in the case of *Mohan Lal v. State of Punjab* (2018) 17 SCC 627.

5.6 It is further submitted by Shri Vikas Singh, learned Senior Advocate that as such the decision of this Court in the case of *Mohan Lal* (Supra) is referred to a larger Bench by a two Judge Bench of this

- D Court vide Order dated 17.01.2019 in the case of *Mukesh Singh v. State (Narcotic Branch of Delhi)* SLP (Crl.) D. No.39528 of 2018 and, therefore, if this Court is not inclined to consider/follow the decision of this Court in the case of *Mohan Lal* (Supra), the present appeal may be kept pending till the decision by a larger Bench in the case of *Mukesh Singh* (Supra). It is submitted that, however, in the case of *Mohan Lal* (Supra), this Court has specifically observed and held that if the complainant and the Investigating Officer are the same, the trial is vitiated. Therefore, by heavily relying upon the decision of this Court in the case of *Mohan Lal* (Supra) and the decision of this Court in the case of *Bhagwan Singh* (Supra) it is prayed to quash the criminal proceedings against the appellant and discharge the appellant from the offences for which he has been charged.

5.7 Learned counsel appearing on behalf of the appellant- original accused has also made submissions on merits. However, in view of the limited scope of jurisdiction to be exercised at the stage of Sections 227/ 228 of the CrPC which shall be dealt with hereinbelow, we do not propose

- G to go in detail and consider the submissions on merits at this stage as even otherwise any observation by this Court at this stage in the present proceedings may ultimately affect either of the parties in the trial.

5.8 Making the above submissions and relying upon above decisions, it is prayed to allow the present appeal and quash and set

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aside the impugned Judgment and Order passed by the High Court as well as the Order passed by the learned Trial Court and discharge the appellant from the offences under Sections 354, 354A, 354B, 341, 342, 376 (2) (f) and 376 (2) (k) of the IPC.

6. The present appeal is vehemently opposed by Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the respondents.

6.1 Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the respondents has vehemently submitted that in the present case, after thorough investigation and thereafter having found the *prima facie* case against the accused, the Investigating Officer has filed the charge-sheet against the accused for the offences under Sections 354, 354A, 354B, 341, 342, 376 (2) (f) and 376 (2) (k) of the IPC. It is submitted that thereafter, after considering the material/evidence on record, the learned Trial Court has framed the charge against the accused. It is submitted that thereafter, considering the limited scope of jurisdiction to be exercised at the stage of framing the charge under Section 227/ 228 of the CrPC, the High Court has rightly refused to discharge the appellant-original accused and has rightly refused to set aside the Order passed by the learned Trial Court ordering charge to be framed against the appellant-original accused.

6.2 Shri Tushar Mehta, learned Solicitor General of India appearing on behalf of the respondents has heavily relied upon the following decisions of this Court in support of his submission that at the stage of Section 227 and/or Section 228 of the CrPC - at the stage of framing of the charge, the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is vehemently submitted by Shri Tushar Mehta, learned Solicitor General that it is not obligatory for the Judge, at the stage of framing of the charge, to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. It is vehemently submitted by Shri Tushar Mehta, learned Solicitor General that at the stage of framing of the charge the Court is only required to consider whether there is ground for presuming that the accused has committed the offence and nothing more than that. It is submitted that even it is held by this Court that if, at the initial stage, there is a strong suspicion which leads the Court to think that there is

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- A ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

- 6.3 It is further submitted by Shri Tushar Mehta, learned Solicitor General that in the present case, there is ample material/evidence on record against the accused and sufficient grounds are available for proceeding against the accused.

- 6.4 It is further submitted by Shri Tushar Mehta, learned Solicitor General that whatever submissions are made by the learned counsel appearing on behalf of the appellant-original accused are on merits of the case and/or they can be said to be of defence which may be available to the accused and they are not required to be considered at the stage of framing of the charge. And thereafter, it is prayed to dismiss the present appeal. In support of his above submissions and prayer to dismiss the present appeal, Shri Tushar Mehta, learned Solicitor General has heavily relied upon the following decisions of this Court :

- D (i) *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 (Para 10),

(ii) *State of Bihar v. Ramesh Singh*, (1977) 4 SCC 39 (Para 4),

- E (iii) *Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia*, (1989) 1 SCC 715,

(iv) *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460,

(v) *Ajay Singh v. State of Chhattisgarh*, (2017) 3 SCC 330,

- F (vi) *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijuaya*, (1990) 4 SCC 76,

(vii) *State of T.N. v. N. Suresh Rajan*, (2014) 11 SCC 709 (Para 29 to 31.3),

(viii) *State v. S. Selvi*, (2018) 13 SCC 455,

- G (ix) *Mauvin Godinho v. State of Goa*, (2018) 3 SCC 358.

6.5 Now, so far as the submissions made by Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused that as in the present case the Investigating Officer and the complainant are the same and therefore the criminal proceedings are

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required to be quashed and the reliance placed upon the decisions of this Court in the case of *Bhagwan Singh* (Supra) and in the case of *Mohan Lal* (Supra) are concerned, it is vehemently submitted by Shri Tushar Mehta, learned Solicitor General that in the case of *Mohan Lal* (Supra) this Court was considering its earlier decision in the case of *Bhagwan Singh* (Supra), however, subsequently, another three Judge Bench of this Court in the case of *Varinder Kumar v. State of Himachal Pradesh* Criminal Appeal No.2450-51 of 2010 dated 11.02.2019, (2019) SCC OnLine SC 170 has specifically observed and held that the decision of this Court in the case of *Mohan Lal* (Supra) shall be applicable prospectively and that all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal* (Supra) shall continue to be governed by the individual facts of the case. It is submitted therefore that in view of the law laid down by this Court in the case of *Varinder Kumar* (Supra), as in the present case, the criminal prosecution has been initiated prior to the decision of this Court in the case of *Mohan Lal* (Supra), the criminal proceedings are not required to be quashed and set aside and the appellant-original accused against whom strong grounds are made out for prosecution, is not required to be discharged.

6.6 Making the above submissions and relying upon the above decisions, it is prayed to dismiss the present appeal.

7. In rejoinder and on the reliance based upon the subsequent decision of this Court in the case of *Varinder Kumar* (Supra) relied upon by Shri Tushar Mehta, learned Solicitor General, Shri Vikas Singh, learned Senior Advocate has vehemently submitted that in the case of *Varinder Kumar* (Supra) it was not open for the subsequent Bench to observe and hold that the decision in the case of *Mohan Lal* (Supra) would be applicable prospectively. It is vehemently submitted by Shri Vikas Singh, learned Senior Counsel that only in the case of *Mohan Lal* (Supra), the Court could have observed and held that the said decision shall be made applicable prospectively. It is submitted that in the case of *Mohan Lal* (Supra) the Bench did not observe that the said decision shall be applicable prospectively. It is submitted that therefore it was not open for the subsequent Bench to observe and hold that the decision in the case of *Mohan Lal* (Supra) would be applicable prospectively. It is submitted that therefore the decision of this Court in the case of *Mohan Lal* (Supra) shall be applicable with full force to the facts of the case on

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- A hand and as the complainant and the Investigating Officer are the same, the entire criminal proceedings have been vitiated and therefore it is prayed to allow the present appeal and discharge the appellant from the offences for which he has been charged.

- B 8. We have heard the learned Counsel for the respective parties at length. We have also gone through and considered the Judgment and Order passed by the High Court as well as the relevant material on record.

- C 8.1 At the outset it is required to be noted that after conclusion of the investigation, the Investigating Officer had filed the charge-sheet against the accused for the offences under Sections 354, 354A, 354B, 341, 342, 376 (2) (f) and 376 (2) (k) of the IPC. That thereafter, learned Trial Court has framed the charge against the appellant-original accused for the aforesaid offences, in exercise of its powers under Section 227/ 228 of the CrPC. Framing of the charge against the accused for the aforesaid offences was the subject matter before the High Court. By D the impugned Judgment and Order the High Court has dismissed the Revision Application and has confirmed the Order passed by the learned Trial Court ordering to frame the charge against the accused for the aforesaid offences. Hence, the appellant-original accused is before this Court by way of present appeal.

- E 8.2 That it is mainly contended on behalf of the appellant that in the present case as the complainant and Investigating Officer are the same and therefore in view of the decision of this Court in the case of *Mohan Lal* (Supra) the entire criminal proceedings are vitiated and therefore the appellant – original accused is to be discharged. However,

- F it is required to be noted that apart from the fact that the decision of this Court in the case of *Mohan Lal* (Supra) has been doubted and pursuant to the Order passed by this Court dated 17.01.2019 in SLP (Crl.) D. No.39528 of 2018, the same is referred to the larger Bench. In the subsequent decision in the case of *Varinder Kumar* (Supra), a three Judge Bench of this Court had an occasion to consider the decision of G this Court in the case of *Mohan Lal* (Supra) and the three Judge Bench of this Court has held that the decision of this Court in the case of *Mohan Lal* (Supra) shall be applicable prospectively, it is further held that all pending criminal prosecutions, trials and appeals prior to the law laid down in *Mohan Lal* (Supra) shall continue to be governed by the

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individual facts of the case. Therefore, the reliance placed upon the decision of this Court in the case of *Mohan Lal* (Supra) by the learned Counsel appearing on behalf of the appellant-original accused is misplaced. Now, the submission made by Shri Vikas Singh, learned Senior Advocate appearing on behalf of the appellant-original accused that the subsequent Bench in the case of *Varinder Kumar* (Supra) could not have held that the decision of this Court in the case of *Mohan Lal* (Supra) shall be applicable prospectively is concerned, at the outset, it is required to be noted that this Bench is not considering whether in the subsequent decision in the case of *Varinder Kumar* (Supra), the Bench could not have considered the prospective applicability of the decision in the case of *Mohan Lal* (Supra) or not? The three Judge Bench of this Court held that the decision of this Court in the case of *Mohan Lal* (Supra) would be applicable prospectively and the same shall not affect criminal prosecutions, trials and appeals. We are bound by that decision. Therefore, we are of the opinion that the decision of this Court in the case of *Mohan Lal* (Supra) shall not be applicable to the facts of the case on hand as criminal prosecution has been initiated in the present case much prior to the decision in the case of the *Mohan Lal* (Supra). Therefore, the appellant cannot be discharged at this stage on the aforesaid ground mainly that the Investigating Officer and the complainant/informant are the same the trial is vitiated, relying upon the decision of this Court in the case of *Mohan Lal* (Supra). Even the decision of this Court in the case of *Bhagwan Singh* (Supra), relied upon by the learned Counsel appearing on behalf of the appellant-original accused, also shall not be of much assistance to the appellant at this stage. In the case of *Bhagwan Singh* (Supra) and after the trial this Court held that as the complainant herself was the Investigating Officer, the case of the prosecution would not be free from doubt. It was the case after trial and not at the stage of framing of the charge. Where the complainant himself had conducted the investigation, such aspect of the matter can certainly be given due weightage while assessing the evidence on record but it would be completely a different thing to say that the trial itself would be vitiated for such infraction. Therefore, the aforesaid ground is not required to be considered at this stage, namely, at the stage of framing of the charge. At the stage of framing of the charge, the different considerations would weigh, which are dealt with hereinbelow.

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A 9. Now, so far as the prayer of the appellant to discharge him and the submissions made by Shri Vikas Singh, learned Senior Advocate on merits are concerned, the law on the scope at the stage of Section 227/228 CrPC is required to be considered.

B 9.1 In the case of *N. Suresh Rajan* (Supra) this Court had an occasion to consider in detail the scope of the proceedings at the stage of framing of the charge under Section 227/228 CrPC. After considering earlier decisions of this Court on the point thereafter in paragraph 29 to 31 this Court has observed and held as under:

C “29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

H G 30. Reference in this connection can be made to a recent decision of this Court in *Sheoraj Singh Ahlawat v. State of U.P.* [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52] , in which, after analysing various decisions on the

point, this Court endorsed the following view taken in *Onkar Nath Mishra v. State (NCT of Delhi)* [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] : (*Sheoraj Singh Ahlawat case* [(2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52] , SCC p. 482, para 15)

“15. ‘11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, *taken at their face value*, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. *What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.*’ (*Onkar Nath case* [(2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507] , SCC p. 565, para 11)”

(emphasis in original)

31. Now reverting to the decisions of this Court in *Sajjan Kumar* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] and *Dilawar Balu Kurane* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the court cannot make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Session under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted

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- A otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused:
- B 31.1. Under Section 227 of the Code, the trial court is required to discharge the accused if it “considers that there is not sufficient ground for proceeding against the accused”. However, discharge under Section 239 can be ordered when “the Magistrate considers the charge against the accused to be groundless”. The power to discharge is exercisable under Section 245(1) when, “the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebuted, would warrant his conviction”.
- C 31.2. Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.
- D 31.3. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a *prima facie* case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in *R.S. Nayak v. A.R. Antulay* [(1986) 2 SCC 716 : 1986 SCC (Cri) 256]. The same reads as follows: (SCC pp. 755-56, para 43)
- E “43. ... Notwithstanding this difference in the position there is no scope for doubt that the stage at which the Magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of ‘*prima facie*’ case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the trial court is satisfied that a *prima facie* case is made out, charge has to be framed.”
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9.2 In the subsequent decision in the case of *S. Selvi* (Supra) this Court has summarised the principles while framing of the charge at the stage of Section 227/228 of the CrPC. This Court has observed and held in paragraph 6 and 7 as under:

“6. It is well settled by this Court in a catena of judgments including *Union of India v. Prafulla Kumar Samal* [*Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609] , *Dilawar Balu Kurane v. State of Maharashtra* [*Dilawar Balu Kurane v. State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310] , *Sajjan Kumar v. CBI*[*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , *State v. A. Arun Kumar* [*State v. A. Arun Kumar*, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , *Sonu Gupta v. Deepak Gupta* [*Sonu Gupta v. Deepak Gupta*, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , *State of Orissa v. Debendra Nath Padhi* [*State of Orissa v. Debendra Nath Padhi*, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] , *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijuaya* [*Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijuaya*, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and *Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja* [*Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja*, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038] that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubtedly 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; where the material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large 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 rights to discharge the accused. The Judge 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 statements and the

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- A 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 materials as if he was conducting a trial.
- B 7. In *Sajjan Kumar v. CBI* [*Sajjan Kumar v. CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)
- C “(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
- D (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.
- E (iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.
- F (iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.
- G (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material
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placed on record and must be satisfied that the commission of offence by the accused was possible. A

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case. B

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

9.3 In the case of *Mauvin Godinho* (Supra) this Court had an occasion to consider how to determine prima facie case while framing the charge under Section 227/228 of the CrPC. In the same decision this Court observed and held that while considering the prima facie case at the stage of framing of the charge under Section 227 of the CrPC there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. D

9.4 At this stage the decision of this Court in the case of *Stree Atyachar Virodhi Parishad* (Supra) is also required to be referred to. In that aforesaid decision this Court had an occasion to consider the scope of enquiry at the stage of deciding the matter under Section 227/ 228 of the CrPC. In paragraphs 11 to 14 observations of this Court in the aforesaid decision are as under : F

“11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides:

“227. *Discharge*.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.” G

- A 12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject-matter of consideration by this Court. In *State of Bihar v. Ramesh Singh* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257], Untwalia, J., while explaining the scope of the said sections observed: [SCR p. 259 : SCC pp. 41-42 : SCC (Cri) pp. 535-36, para 4]
- B Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously Judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused.
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- G 13. In *Union of India v. Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229], Fazal Ali, J., summarised some of the principles: [SCR pp. 234-35 : SCC p. 9 : SCC (Cri) pp. 613-14, para 10]
- H “(I) 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 had been made out.

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(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.

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(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.

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(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.”

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14. These two decisions do not lay down different principles. *Prafulla Kumar case* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in *Ramesh Singh case* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257]. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that “the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused”. The “ground” in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and

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A weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into.”

- 9.5 Applying the law laid down by this Court in the aforesaid
- B decisions and considering the scope of enquiry at the stage of framing of the charge under Section 227/228 if the CrPC, we are of the opinion that the submissions made by the learned Counsel appearing on behalf of the appellant on merits, at this stage, are not required to be considered. Whatever submissions are made by the learned Counsel appearing on behalf of the appellant are on merits are required to be dealt with and
 - C considered at an appropriate stage during the course of the trial. Some of the submissions may be considered to be the defence of the accused. Some of the submissions made by the learned Counsel appearing on behalf of the appellant on the conduct of the victim/prosecutrix are required to be dealt with and considered at an appropriate stage during the trial.
 - D The same are not required to be considered at this stage of framing of the charge. On considering the material on record, we are of the opinion that there is more than a *prima facie* case against the accused for which he is required to be tried. There is sufficient ample material against the accused and therefore the learned Trial Court has rightly framed the charge against the accused and the same is rightly confirmed by the High Court. No interference of this Court is called for.

10. In view of the above and for the reasons stated above, the present appeal fails and as a result the appeal stands dismissed. Considering the fact that the allegations against the appellant of sexual abuse are very serious and affecting the dignity of a woman and is the most morally and physically reprehensible crime in a society, an assault on the mind and privacy of the victim and the trial for such offences are required to be decided and disposed of at the earliest and considering the fact that in the present case the learned Trial Court has framed the charge against the accused and the incident is of 2013 and there is already a delay in concluding the trial because of the pending proceedings, we direct the learned Trial Court to conclude the trial at the earliest within a period of six months from the date of receipt of the Order of this Court. All concerned are directed to cooperate with the Trial Court in the earlier disposal of the trial and within the stipulated time observed hereinabove.

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With these observations present appeal stands dismissed. Pending A application(s), if any, stand(s) disposed of.

MA No.2207 of 2018 in SLP (Crl.) No.3149-3150 of 2014

The present MA has been filed in a disposed of matter in SLP (Crl.) No.3149-3150 of 2014 with the prayer to direct the Trial Court to release the passport of the applicant so as to enable him to travel to London anytime between 21.08.2018 to 01.09.2018. Since that period is already over, the present MA has become infructuous and is disposed of as such. B

Devika Gujral

C
Appeal dismissed and M.A. disposed of.