IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION NO. 15104 of 2022

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JAYESHBHAI DALSINGBHAI DAMOR

Versus

STATE OF GUJARAT

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Appearance:
MR NM PATEL(6042) for the Applicant(s) No. 1
MR.RAJESH B SONI(2632) for the Applicant(s) No. 1
for the Respondent(s) No. 2,3
MR PRANAV TRIVEDI, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE NIRAL R. MEHTA**

Date : 22/08/2022

ORAL ORDER

[1] By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C."), the present applicant – original accused No.3 has prayed for the following reliefs:

> *"12(a) To admit this petition*
>
> *(b) Your Lordship may be pleased to quash and set aside the framing of charge at Exh. 16 in Criminal Case No.170 of 2022 pending before JMFC at Sanjeli Dist. Dahod.*
>
> *(c) During pendency and final hearing of this petition, Your Lordship may be pleased to stay the further proceedings of Criminal Case No.170 of 2022 pending of before learned JMFC at Sanjeli Dist Dahod.*
>
> *(d) Grant any other and further relief that may be deed fit and proper in the interest of justice."*

[2] From the available records, it appears that the present case is that of a question paper leak of Hindi subject in the S.S.C. Examination Board conducted on 9th April 2022. The said question paper with the answer key came to be leaked before the actual examination is over. Pursuant thereto, an F.I.R. being C.R. No.11821002220082 of 2022 came to be registered on 10th April 2022 with Sanjeli Police Station, District : Dahod for the offence punishable under Sections 406, 409 and 114 of the Indian Penal Code and Sections 72 and 72(A) of the Information Technology Act and the investigation thereon came to be initiated. During the course of investigation, name of the present applicant came to be revealed. The Investigating Agency has, thereafter, filed chargesheet on 7th June 2022 against the present applicant along with other co-accused persons for the offence punishable under Sections 406, 409, 201 and 114 of the Indian Penal Code and Sections 72 and 72(A) of the Information Technology Act, 2000 and Sections 43(2),(a)(b),(c),(d),(4) of the Gujarat Secondary and Higher Secondary Education Act, 1972 and Regulations, 1974. The concerned learned Magistrate has, thereafter, framed charge against the present applicant along with other co-accused persons vide order dated 13th July 2022 passed in Criminal Case No.170 of 2022.

[3] Being aggrieved and dissatisfied with the aforesaid order of framing charge passed by the learned Magistrate, the present applicant has approached this Court with the present application.

[4] I have heard Mr. Rajesh Soni, learned advocate for the applicant and Mr. Pranav Trivedi, learned A.P.P. for the respondent – State of Gujarat.

[5] Mr. Soni, learned advocate submitted that the learned Magistrate has committed a serious error in framing charge against the present applicant. Mr. Soni submitted that the learned Magistrate has not properly appreciated the materials collected during the course of investigation and produced by way of chargehseet, and thereby, caused serious miscarriage of justice. Mr. Soni submitted that on bare perusal of chargesheet papers, the involvement of the present applicant in the alleged offence is not established, and thereby, the learned Magistrate could not have framed charge against the present applicant. Mr. Soni further submitted that the present applicant has been implicated in the alleged offence merely on the basis of the statement of co-accused, therefore, without any substantive material produced on record, the learned Magistrate could not have framed charge against the present applicant.

[6] Mr. Soni, to substantiate his aforesaid contentions, relied upon the judgement of the Coordinate Bench of this Court in the case of **Satishchandra Ratanlal Shah vs. State of Gujarat [R/Criminal Miscellaneous Application No.4033 of 2012 decided on 12th April 2018]**.

[7] By making the above submissions, Mr. Soni prays this Court to allow the present application as prayed for.

[8] *Per contra*, Mr. Pranav Trivedi, learned A.P.P. for the respondent – State of Gujarat has vehemently opposed the present application contending that the order passed by the learned Magistrate is perfectly justified and based on material evidence collected during the course of investigation. The learned A.P.P. submitted that the learned Magistrate, at the time of framing of charge, is not obliged to conduct a mini trial, but shall have to form *prima facie* opinion as to whether the accused is required to be put on trial and/or has to form an opinion whether the *prima facie* offence alleged to have been committed or not so as to put the accused on trial. The learned A.P.P. further submitted that the name of the present applicant surfaces on record during the course of investigation and though aware that the paper was leaked with answer key, the present applicant – accused referred the accused No.2 to accused No.1 and thereby, his role, as alleged, is, *prima facie*, satisfied

the provisions under Section 114 of the Indian Penal Code. The learned A.P.P. submitted that the present case is a very serious offence and thereby, at this stage, without appreciation of evidence, this Court may not exercise its jurisdiction under Section 482 of the Cr.P.C.

[9] By making the above submissions, Mr. Trivedi, learned A.P.P. prays this Court to dismiss the present application.

[10] I have heard the learned advocates for the respective parties and have gone through the materials produced on record. No other and further submissions have been canvassed by the learned advocates appearing for the respective parties, except what are stated hereinabove.

[11] Having heard the submissions of the learned advocates appearing for the respective parties and having gone through the material produced on record, a short question that falls for the consideration of this Court is whether the learned Magistrate has committed any error in framing charge against the present applicant?

[12] So as to consider the aforesaid question, it would be apt to take a note of the fact that the role of the present applicant mainly falls under Section 114 of the Indian Penal Code. *Prima facie,* it appears that though the present applicant – accused No.3 was aware that the said paper was

leaked, without taking any step, as expected from the prudent citizen, the present applicant referred the accused No.2 to accused No.1 – main accused, in furtherance of crime, for taking printout of the paper along with answer key. The learned Magistrate, while framing charge against the present applicant, has discussed, in brief, the role of the present applicant, and thereby, deemed fit to frame charge so as to put the present applicant on trial. In my view, the learned Magistrate could not be said to have committed any error. I say so because in the series of judgements of the Hon'ble Supreme Court, the law has been settled that at the time of framing of charge, the Criminal Court should not conduct mini trial. The Criminal Court shall, at the time of framing of charge, keep in mind the *prima facie* materials available against the accused and thereby, shall have to come to *prima facie* opinion that the applicants accused are required to be put on trial for the allegations which are made vis-a-vis the materials collected during the course of investigation. At this stage, it would be profitable to take a note of recent pronouncement of the Hon'ble Supreme Court in the case of **Ghulam Hassan Beigh vs. Mohammad Maqbool Magrey and others (Criminal Appeal No.1041 of 2022 decided on 26th July 2022)**, wherein the Hon'ble Supreme Court, after considering the series of pronouncements on the issue of framing of charge, has thus observed as under:

"18. The purpose of framing a charge is to intimate to the accused the clear, unambiguous and precise nature of accusation that the accused is called upon to meet in the course of a trial. ***[See: decision of a Four Judge Bench of this Court in V.C. Shukla v. State through C.B.I. reported in1980 Supp SCC 92 : 1980 SCC (Cri) 695).***

* * *

21. This Court in the case of ***Union of India v. Prafulla Kumar Samal and another, (1979) 3 SCC 4,*** *considered the scope of enquiry a judge is required to make while considering the question of framing of charges. After an exhaustive survey of the case law on the point, this Court, in paragraph 10 of the judgment, laid down the following principles :*

> *"(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.*
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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 Judge cannot act merely as a Post office or a mouth-piece 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."*

22. There are several other judgments of this Court delineating the scope of Court's powers in respect of the framing of charges in a criminal case, one of those being ***Dipakbhai Jagdishchndra Patel v. State of Gujarat, (2019) 16 SCC 547,*** *wherein the law relating to the*

framing of charge and discharge is discussed elaborately in paragraphs 15 and 23 resply and the same are reproduced as under:

> *"15. We may profitably, in this regard, refer to the judgment of this Court in State of Bihar v. Ramesh Singh wherein this Court has laid down the principles relating to framing of charge and discharge as follows:*
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> *"4…..Reading Sections 227 and 228 together in juxtaposition, as they have got to be, it would be clear that at the beginning and 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial…. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the*

order which will have to be made will be one under Section 228 and not under Section 227."

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a fullfledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

23. In ***Sajjan Kumar v. CBI [(2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] ,*** *this Court had an occasion to consider the scope of Sections 227 and 228 CrPC. The principles which emerged there from have been taken note of in para 21 as under: (SCC pp. 37677) "21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

(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.

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

(iii) The court cannot act merely as a post office or a mouthpiece

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

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

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

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value 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.

(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 dis charge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

24. The exposition of law on the subject has been further considered by this Court in **State v. S. Selvi, (2018) 13 SCC 455 : (2018) 3 SCC (Cri) 710,** *followed in* **Vikram Johar v. State of Uttar Pradesh,** *(2019) 14 SCC 207 : 2019 SCC OnLine SC 609 : (2019) 6 Scale 794.*

25. In the case of **Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148,** *this Court, to which one of us (A.M. Khanwilkar, J.) was a party, in so many words has expressed that the trial court is not expected or supposed to hold a mini trial for the purpose of marshalling the evidence on record. We quote the relevant observations as under:*

"18. Taking note of the exposition of law on the subject laid

down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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; 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 possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, 3 2018(13) SCC 455 4 2019(6) SCALE 794 the trial Judge will be justified in discharging him. ***It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."*** *(emphasis supplied)*

26. In the case of ***State of Karnataka v. M.R. Hiremath, reported in (2019) 7 SCC 515****, this Court held as under:*

"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,*** *(2014) 11 SCC 709, adverting to the earlier decisions on the subject, this Court held: (SCC pp. 72122, 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."

27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the charge sheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. However, the material which is required to be evaluated by the Court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the Court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice. Undoubtedly, apart from the material that is placed before the Court by the prosecution in the shape of final report in terms of Section 173 of CrPC, the Court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution. ***(See : Bhawna Bai v. Ghanshyam, (2020) 2 SCC 217).***

28. In ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460,*** *this Court observed in paragraph 30 that the Legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". There is an inbuilt element of presumption. It referred to its judgement rendered in the case of* ***State of Maharashtra v. Som Nath Thapa and others, (1996) 4 SCC 659,*** *and to the meaning of the word "presume", placing reliance upon Blacks' Law Dictionary, where it was defined to mean "to believe or accept upon probable evidence"; "to take as true until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, incriminating material and evidences put to the accused in terms of Section 313 of the Code, and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the Court forming its final opinion and delivering its judgement....." (emphasis supplied)"*

[13] So far as the judgement relied upon by the learned advocate for

the applicant in the case of **Satishchandra Ratanlal Shah (supra)** is concerned, the Coordinate Bench of this Court has in no uncertain terms made it clear that the High Court can, under Section 482 of the Cr.P.C., interfere with an order of framing charge, however, with a caution that the said exercise to be held in only exceptional situation. The learned advocate for the applicant could not satisfy the Court about existence of any such exceptional situation in the present case. Thus, the judgement relied upon in the case of **Satishchandra Ratanlal Shah (supra)** is not applicable to the present applicant.

[14] In view of the aforesaid discussion and in view of the exposition of law, in my considered opinion, the order dated 13th July 2022 passed by the learned Magistrate in Criminal Case No.170 of 2022 as regards framing of charge cannot be said to be an illegal order, and thereby, does not require to be interfered with. I answer the question accordingly.

[15] Resultantly, the present Criminal Miscellaneous Application is dismissed.

(NIRAL R. MEHTA,J)

CHANDRESH