

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Revision No. 648 of 2025

Mahesh Mehra, aged about 68 years, son of Baijnath Mehra, resident of 10/1, Park Lane, P.O. Park Street, P.S. Park Street, District Kolkata (West Bengal).

... .. Petitioner

Versus

Union of India through Directorate of Enforcement

... .. Opposite Party

With

Cr. Revision No. 529 of 2025

Mahesh Mehra, aged about 68 years, son of Late Baijnath Mehra, resident of 10/1, Park Lane, P.O. Park Street, P.S. Park Street, District Kolkata (West Bengal).

... .. Petitioner

Versus

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CORAM: HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD

For the Petitioner : Mr. Indrajit Sinha, Advocate
Mr. Rishav Kumar, Advocate
(In both the cases)

For the Opposite Party : Mr. Amit Kumar Das, Advocate
Mr. Saurav Kumar, Advocate
Mr. Varun Girdhar, Advocate
(In both the cases)

C.A.V. on 10.12.2025

Pronounced on 07/01/2026

- Both these matters are being heard and taken up together and disposed of by this common order/judgment.
- Both these Criminal Revision petitions have been filed under sections 438 & 442 of Bhartiya Nagarik Suraksha Sanhita, 2023.
- Criminal Revision No. 648 of 2025 is directed against the order dated 17.02.2025 passed by the learned Additional Judicial Commissioner- XVIII-cum-Special Judge, PML Act, Ranchi in Misc. Criminal Application No.102 of 2025, in connection with ECIR Case No. 03 of

2023 arising out of ECIR//05/PAT/2012 registered for the offence under Sections 3 read with Section 70 of PMLA, 2002 and punishable under Section 4 of the Prevention of Money Laundering Act, 2002 (in short PMLA, 2002), whereby and whereunder, the aforesaid petition filed by the petitioner seeking discharge, has been rejected.

4. Criminal Revision No. 529 of 2025 is directed against the order dated 03.03.2025 passed by the learned Additional Judicial Commissioner-XVIII-cum-Special Judge, PML Act, Ranchi in connection with ECIR Case No. 03 of 2023, arising out of ECIR/05/PAT/2012 dated 13.03.2012, whereby and whereunder, the learned Special Court has framed the charge against the petitioner under Section 3 of the PMLA, 2002 punishable under Section 4 of the PMLA.

Factual Matrix:

5. The brief facts of the cases as per the pleadings made in the instant petitions required to be enumerated herein, read as under:
 - (i) The case of the prosecution, in nutshell, is that CBI, ACB, Ranchi registered a FIR bearing No. RC-19(A)/09-R dated 22.10.2009 pursuant to the order of Hon'ble Jharkhand High Court passed in W.P. (PIL) No. 803 of 2009 for violation of Section 120B read with 420, 467, 468 and 471 of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 against the Company M/s Kaushalya Infrastructure Development Corporation Limited (hereinafter "M/s KIDCL") and other entities. Pursuant thereto, an ECIR bearing No. ECIR/05/PAT/2012 dated 13.03.2012 was registered by the Directorate of Enforcement.

(ii) The C.B.I. submitted charge sheet dated 31.01.2011 against the petitioner and other persons/ entities with the following allegations, in brief: -

- a. An agreement No. 1F2/2004-05 dated 19.07.2004 and supplementary agreement No. 1F2/2004-05 dated 19.10.2004 were executed between the then Executive Engineer, Road Construction Department ("RCD"), Daltonganj/ Garhwa with M/s KIDCL as the contractor company for strengthening of Parwa-Garhwa Road in 0-30 Kms for a consideration of Rs.3,96,26,072/- and Rs.74,53,056/- respectively.
- b. As per the agreement [Notice Inviting Tender dated 08.05.2004], it was specifically mentioned that the contractor would procure the packed Bitumen of Grade 60/70 from Government Oil Companies like Indian Oil, Bharat petroleum and Hindustan petroleum and submit the relevant documents like proof of quality/purchase/ receipt of bitumen to the RCD. As per the agreement, about 1257.122 MT of packed bitumen of Grade 60/70, was required to be used for the said work. It is the case of the prosecution that the payment was disbursed on the basis of 59 invoices, out of which 26 invoices showing utilization of 560.959 MT to the tune of Rs.1,08,95,583/- of bitumen are allegedly fake and forged.
- c. It is alleged that these purportedly fake invoices showing procurement of bitumen from HPCL and IOCL were submitted by M/s KIDCL/ Authorized Representative (Nagwant Pandey) to the Engineers of RCD, who in conspiracy prepared measurement books, certified and countersigned the said invoices in token of

having verified the supply of bitumen and facilitated the Contactor Company M/s KIDCL to receive the payment from the department against purported execution of the work in question. The prosecution also relies upon non-return of empty bitumen drums to bring home the charge that less bitumen was utilized in the work.

d. Since, sections 120B read with 420 and 471 of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act are Schedule Offence, enquires were conducted under the PMLA and ECIR Case No. 3 of 2023 has been filed in ECIR bearing No. ECIR/05/PAT/2012 dated 13.03.2012.

- (iii) Subsequent to filing of said ECIR/ Complaint, the learned Special Judge, PML, Ranchi, vide an order dated 06.04.2023, has been pleased to take cognizance of offences defined under Section 3 read with Section 70 of PMLA, 2002 and punishable under Section 4 of the said Act against all the accused persons and directed for issuance of summon to the petitioner.
- (iv) Thereafter, the petitioner filed a discharge petition praying for discharge as there was no sufficient ground for proceeding against the petitioner under Section 3 of the PMLA, 2002 and punishable under Section 4 of the Act, 2002.
- (v) It is the case of the petitioner that the learned Special Court of Addl. Judicial Commissioner-XVIII-cum-Special Judge, PML Act, Ranchi without appreciating the materials available on record, has rejected the discharge petition preferred by the petitioner vide order dated 17.02.2025 and vide order dated 03.03.2025 has framed the charge

for the offence under Section 3 of the PMLA punishable under Section 4 of the PMLA against the petitioner.

- (vi) Being aggrieved with the aforesaid orders dated 17.02.2025 and 03.03.2025, the instant revision applications have been preferred by the present petitioner.

Arguments advanced on behalf of the petitioner:

6. Learned counsel for the petitioner has taken the following grounds in assailing the impugned orders:

- (i) It has been submitted that the petitioner is innocent and committed no offence whatsoever as alleged and has falsely been implicated in the case only on the basis of suspicion and allegation levelled against him.
- (ii) Even if the prosecution complaint, statements of witnesses and documents relied upon by the prosecution, have been taken in entirety, the same do not fulfill the necessary ingredients of the offences as alleged by the prosecution.
- (iii) It has been submitted that the learned Special Judge, PML Act, Ranchi has failed to appreciate that the prosecution has not produced any material which shows that the petitioner has, in any manner, dealt with “proceeds of crime”.
- (iv) It has also been submitted that the learned Special Judge has also failed to appreciate that the petitioner cannot be said to even remotely be associated with the scheduled offence as mentioned in the ECIR.

- (v) It has further been submitted that from the records, it is evident that there is no cogent material to show the petitioner's involvement in the alleged offence and the case of the prosecution is also not supported with any material to show the petitioner's involvement.
- (vi) It has further been contended that there is no evidence the petitioner is the maker of 26 numbers of invoices which were later found to be fake and forged. It has come in the statement of Mr. Baleshwar Baitha, the then Executive Engineer, that the bills were submitted by co-accused Mr. Nagwant Pandey. It is reiterated that the petitioner has never submitted bills in the department.
- (vii) It has been submitted that the learned Special Judge has not considered that as per the MOU, it was M/s Nagraj Construction who was solely responsible to KIDCL and RCD for performance of contract within the scheduled time and also for authenticity of bills along with all invoices/documents submitted to the Principal Employer [RCD].
- (viii) It has further been contended that the learned Special Court has erred in relying upon an alleged money trail from M/s KIDCL to its subsidiaries and associate entities, which is founded solely on assumptions and is not substantiated by credible or admissible evidence. The entire calculation of the alleged "proceeds of crime" is based on selective reading and picking up of data. It is noteworthy to state herein that none of the subsidiaries associate companies were named in the F.I.R. or charge sheeted in the predicate offence.

- (ix) It has further been submitted that M/s Kaushalya Township Private Limited, M/s Bengal KDC Housing Development Limited and M/S Kaushalya Nirman Private Ltd are separate legal and business entities having their independent business altogether. It is a matter of record that none of the above legal entities had connection whatsoever with the alleged scheduled offence and at no point of time dealt with the project and the related cash flows or transactions of M/s KIDCL.
- (x) It is well settled that the trial court while considering the discharge application is not to act as a mere post office but has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect.
- (xi) It has been submitted that the prosecution has failed to collect any material which would show that the petitioner possessed the requisite mens-rea to commit an offence punishable under Section 4 of the PMLA. It is fairly well settled that mens-rea, unless expressly excluded will have to be read into a penal statute.
- (xii) It has been contended that the opposite party-ED cannot be allowed to proceed merely on presumption of commission of predicate offence attracting the offence said to be committed under Section 3 of the PML Act, 2002.

7. Learned counsel for the petitioner, on the aforesaid grounds, has submitted that it is, therefore, a fit case where the impugned orders need to be interfered with.

Arguments advanced on behalf of the Opposite Party/E.D.

8. While on the other hand, Mr. Amit Kumar Das, learned counsel for the opposite party-ED has submitted that there is ground for presuming that the accused has committed an offence, then, as per the requirement of Section 227, it cannot be said that there is no sufficient ground for proceeding against the accused.
9. It has been contended that the investigation in the instant case has revealed the role of the accused petitioner in the commission of the offence of money laundering. Based upon the evidence and material against the accused petitioner, it can be safely concluded that he is involved in the offence of money laundering.
10. It has been submitted that the investigation has established that the company, M/s KIDCL, of which the petitioner was a key Director, received payments against 26 fake and forged invoices, thereby granting proceeds of Crime to the tune of Rs.1,08,95,583/-. The petitioner, being a Director, was directly responsible for the conduct of the business of the said company and its subsidiaries, through which, the proceeds of crime were laundered.
11. It has been contended that the investigation has further established a clear and cogent money trail demonstrating how these proceeds of crime were laundered.
12. Learned counsel for the opposite party-ED has submitted that the order impugned in Cr. Rev. No. 648 of 2025 is refusal of the prayer of discharge and it cannot be said to suffer from an error since ample materials are available based upon which it cannot be said that no *prima facie* case is available against the petitioner leading to quashing of the entire criminal

proceeding rather all these aspects are to be adjudicated in course of the trial.

- 13.** Learned counsel for the Opposite Party-ED, based upon the aforesaid grounds, has submitted that it is, therefore, not a fit case where the impugned orders need to be interfered with.

Analysis:

- 14.** This Court has heard the learned counsel for the parties at length and has also gone through the finding recorded by the learned trial Court in the impugned orders as also the counter affidavit.

- 15.** Now, this Court, deems it fit and proper first to refer the prosecution case for proper adjudication of the case.

- (i) It is evident from the prosecution case that the CBI, ACB, Ranchi registered a FIR bearing No. RC-19(A)/09-R dated 22.10.2009 pursuant to the order of this Court passed in W.P. (PIL) No. 803 of 2009 for violation of Section 120B read with 420, 467, 468 and 471 of Indian Penal Code and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 against the Company M/s Kaushalya Infrastructure Development Corporation Limited (hereinafter "M/s KIDCL") and other entities. Pursuant thereto, an ECIR bearing No. ECIR/05/PAT/2012 dated 13.03.2012 was registered by the Directorate of Enforcement.
- (ii) The C.B.I. submitted charge sheet dated 31.01.2011 against the petitioner and other persons/ entities with the following allegations, in brief: -

- a. An agreement No. 1F2/2004-05 dated 19.07.2004 and supplementary agreement No. 1F2/2004-05 dated 19.10.2004 were executed between the then Executive Engineer, Road Construction Department ("RCD"), Daltonganj/ Garhwa with M/s KIDCL as the contractor company for strengthening of Parwa-Garhwa Road in 0-30 Kms for a consideration of Rs.3,96,26,072/- and Rs.74,53,056/- respectively.
- b. As per the agreement [Notice Inviting Tender dated 08.05.2004], it was specifically mentioned that the contractor would procure the packed Bitumen of Grade 60/70 from Government Oil Companies like Indian Oil, Bharat petroleum and Hindustan petroleum and submit the relevant documents like proof of quality/purchase/ receipt of bitumen to the RCD. As per the agreement, about 1257.122 MT of packed bitumen of Grade 60/70, was required to be used for the said work. It is the case of the prosecution that the payment was disbursed on the basis of 59 invoices, out of which 26 invoices showing utilization of 560.959 MT to the tune of Rs.1,08,95,583/- of bitumen are allegedly fake and forged.
- c. It is alleged that these purportedly fake invoices showing procurement of bitumen from HPCL and IOCL were submitted by M/s KIDCL/ Authorized Representative (Nagwant Pandey) to the Engineers of RCD, who in conspiracy prepared measurement books, certified and countersigned the said invoices in token of having verified the supply of bitumen and facilitated the Contactor Company M/s KIDCL to receive the payment from the department against purported execution of the work in question. The

prosecution also relies upon non-return of empty bitumen drums to bring home the charge that less bitumen was utilized in the work.

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- (iii) Subsequent to filing of said ECIR/ Complaint, the learned Special Judge, PML, Ranchi, vide an order dated 06.04.2023, has been pleased to take cognizance of offences defined under Section 3 read with Section 70 of PMLA, 2002 and punishable under Section 4 of the said Act against all the accused persons and directed for issuance of summon to the petitioner.
- (iv) Thereafter, the petitioner filed a discharge petition praying for discharge as there was no sufficient ground for proceeding against the petitioner under Section 3 of the PMLA, 2002 and punishable under Section 4 of the Act, 2002.
- (v) The learned Special Court of Addl. Judicial Commissioner-XVIII-cum-Special Judge, PML Act, Ranchi after appreciation of the materials available on record, has rejected the discharge petition preferred by the petitioner vide order dated 17.02.2025 and vide order dated 03.03.2025 has framed the charge for the offence under Section 3 of the PMLA punishable under Section 4 of the PMLA against the petitioner, against which the present revision applications have been filed.

(vi) It is further appears from record that petitioner had preferred an application for discharge being Misc. Criminal Application No.102 of 2025 in connection with said ECIR Case No. 03 of 2023 in ECIR/05/PAT/2012 registered for commission offence u/s 3 of the Prevention of Money Laundering Act, 2002 to discharge him from this case on the ground that the material brought on record by the prosecution against this petitioner even if taken in their entirety, do not fulfill the necessary ingredients of the offences as alleged by the prosecution and in such view of the matter, there is not a single ground to proceed and frame charges against the applicant.

16. *Per Contra*, the learned State counsel vehemently opposed the prayer of the petitioner on the ground that, at the stage of framing charge only prima-facie material has to be ascertained and there are sufficient prima-facie clinching material was available on the record, as such, charge has been framed against the petitioner.

17. The Spl. Judge, PML Act, while appreciating the rival contention has rejected the aforesaid discharge application of petitioner, vide order dated 17.02.2025 on the ground that after going through the materials, it transpires that the accused/petitioner not only received huge amount in illegal way earned through illegal mining, trade and transportation of stone chips etc. but also came in possession of such “proceeds of crime”.

18. The aforesaid order dated 17.02.2025 has been assailed before this Court by way of filing the petition being Cr. Revision No. 648 of 2025.

19. Thereafter, the charges have been framed against the petitioner, vide order dated 03.03.2025 passed by the learned A.J.C. XVIII-cum-Special Judge,

PML Act, Ranchi. The said order has also been challenged herein by filing the petition being Cr. Revision No. 529 of 2025.

20. In the background of the factual aspect stated hereinabove, the issues which require consideration are that: —

(i) Whether the orders dated 17.02.2025 and 03.03.2025 by which the application for discharge filed by the petitioner has been dismissed and charges have been framed respectively, can be said to suffer from an error?

(ii) Whether on the basis of the evidence which has been collected in course of investigation, prima facie case against the petitioner is made out or not?

21. Since both the issues are interlinked as such, they are taken up together.

22. This Court, before appreciating the argument advanced on behalf of the parties deems it fit and proper to discuss herein some of the provisions of law as contained under the Act, 2002 with its object and intent.

23. The Act 2002 was enacted to address the urgent need to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

24. It is, thus, evident that Act 2002 was enacted in order to answer the urgent requirement to have a comprehensive legislation *inter alia* for preventing money-laundering, attachment of proceeds of crime, adjudication and

confiscation thereof for combating money-laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime.

25. It needs to refer herein the definition of “proceeds of crime” as provided under Section 2(1)(u) of the Act, 2002 which reads as under:

*“2 (1) (u) “**proceeds of crime**” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property 3[or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4[or abroad]; [Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]”*

26. It is evident from the aforesaid provision that “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

27. In the explanation it has been referred that for removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. The aforesaid explanation has been inserted in the statute book by way of Act 23 of 2019.

28. It is, thus, evident that the reason for giving explanation under Section 2(1)(u) is by way of clarification to the effect that whether as per the substantive provision of Section 2(1)(u), the property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country but by way of explanation the proceeds of crime has been given broader implication by including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

29. The “property” has been defined under Section 2(1)(v) which means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located.

30. The schedule has been defined under Section 2(1)(x) which means schedule to the Prevention of Money Laundering Act, 2002. The “scheduled offence” has been defined under Section 2(1)(y) which reads as under:

“2(y) “scheduled offence” means— (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or (iii) the offences specified under Part C of the Schedule.”

31. It is evident that the “scheduled offence” means the offences specified under Part A of the Schedule; or the offences specified under Part B of the

Schedule if the total value involved in such offences is [one crore rupees] or more; or the offences specified under Part C of the Schedule.

32. The offence of money laundering has been defined under Section 3 of the Act, 2002, which reads as under:

*“3. **Offence of money-laundering.**—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering. [Explanation.— For the removal of doubts, it is hereby clarified that,— (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:— (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever; (ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]”*

33. It is evident from the aforesaid provision that “offence of money-laundering” means whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

34. It is further evident that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or

possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

35. The punishment for money laundering has been provided under Section 4 of the Act, 2002.
36. The various provisions of the Act, 2002 along with interpretation of the definition of “*proceeds of crime*” has been dealt with by the Hon’ble Apex Court in the case of *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors., (2022) SCC OnLine SC 929* wherein the Bench comprising of three Hon’ble Judges of the Hon’ble Supreme Court has decided the issue by taking into consideration the object and intent of the Act, 2002.
37. It is evident that the purposes and objects of the 2002 Act for which it has been enacted, is not limited to punishment for offence of money-laundering, but also to provide measures for prevention of money-laundering. It is also to provide for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such proceeds under the 2002 Act. This Act is also to compel the banking companies, financial institutions and intermediaries to maintain records of the transactions, to furnish information of such transactions within the prescribed time in terms of Chapter IV of the 2002 Act.
38. The predicate offence has been considered in the aforesaid judgment wherein by taking into consideration the explanation as inserted by way of Act 23 of 2019 under the definition of the “proceeds of crime” as contained under Section 2(1)(u), whereby and whereunder, it has been

clarified for the purpose of removal of doubts that, the "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence, meaning thereby, the words "any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence" will come under the fold of the proceeds of crime.

- 39.** In the judgment rendered by the Hon'ble Apex Court in *Vijay Madanlal Choudhary and Ors. Vs. Union of India and Ors. (supra)* it has been held that the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.
- 40.** Now, after having discussed the judgments passed by the Hon'ble Apex Court on the issue of various provisions of the Act, 2002, this Court, is proceeding to discuss the principle governing discharge and framing of charge.
- 41.** Section 250 of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for brevity) provides for discharge in sessions cases, which reads as follows:

“250.Discharge (1) The accused may prefer an application for discharge within a period of sixty days from the date of commitment of the case under section 232 (BNSS). (2) 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 not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for doing so.”

- 42.** Section 227 of Code of Criminal Procedure (‘CrPC’ for brevity) contemplates discharge by the Court of Session. The trial Judge is required to discharge the accused if the Judge considers that there is no sufficient ground for proceeding against the accused. Section 250(2) BNSS corresponds to section 227 CrPC. Section 250(1) BNSS stipulates a time limit of 60 days from the date of committal of the case within which an application for discharge should be filed by the accused.
- 43.** Section 239 CrPC provides for discharge of accused in warrant cases instituted upon a police report. The power under section 239 Cr.P.C. is exercisable when Magistrate considers the charge against the accused to be groundless. Section 262(2) BNSS is similar to section 239 CrPC but section 262 BNSS provides an opportunity to the learned Magistrate to examine the accused either physically or through audio – video electronic means. Section 262(1) BNSS stipulates a time limit of 60 days from the date of supply of documents under section 230 BNSS within which an application should for discharge should be filed by the accused.
- 44.** Section 245 Cr.P.C. deals with warrant cases instituted otherwise than on a police report. Section 245 CrPC corresponds to section 268 of BNSS. The power under section 245 (1) Cr.P.C. is exercisable when the Magistrate considers that no case against the accused has been made out which, if un rebutted would warrant his conviction. The Magistrate has the

power of discharging the accused at any previous stage of the case under section 245 (2) Cr.P.C. Sections 227 and 239 Cr.P.C. 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. But the stage of discharge under section 245 Cr.P.C., on the other hand, is reached only after the evidence referred in section 244 is taken. Despite the difference in the language of the provisions of sections 227, 239 and 245 Cr.P.C. and whichever provision may be applicable, the Court is required to see, at the time of framing of charge, that there is a prima facie case for proceeding against the accused. The main intention of granting a chance to the accused of making submissions as envisaged under sections 227 or 239 of Cr.P.C. is to assist the Court to determine whether it is required to proceed to conduct the trial.

45. The issue of discharge was the subject matter before the Hon'ble Supreme Court in the case of *State of Tamilnadu, by Inspector of Police in Vigilance and Anti-Corruption v. N. Suresh Rajan*, (2014) 11 SCC 709, wherein, at paragraphs no.29, 32.4, 33 and 34, the Hon'ble Apex Court has observed as under:—

“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.

32.4. While passing the impugned orders [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 22 of 2009, order dated 10-12-2010 (Mad)], [State v. K. Ponmudi, (2007) 1 Mad LJ (Cri) 100], the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned [N. Suresh Rajan v. Inspector of Police, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)] suffers from grave error and calls for rectification.

33. Any observation made by us in this judgment is for the purpose of disposal of these appeals and shall have no bearing on the trial. The surviving respondents are directed to appear before the respective courts on 3-2-2014. The Court shall proceed with the trial from the stage of charge in accordance with law and make endeavour to dispose of the same expeditiously.

34. In the result, we allow these appeals and set aside the order of discharge with the aforesaid observations.

- 46.** It is further settled position of law that defence on merit is not to be considered at the time of stage of framing of charge and that cannot be a ground of discharge. A reference may be made to the judgment as rendered by the Hon'ble Apex Court in ***State of Rajasthan v. Ashok***

Kumar Kashyap, (2021) 11 SCC 191. For ready reference, paragraph no.

11 of the said judgment is being quoted hereinbelow: —

“11. While considering the legality of the impugned judgment [Ashok Kumar Kashyap v. State of Rajasthan, 2018 SCC OnLine Raj 3468] and order passed by the High Court, the law on the subject and few decisions of this Court are required to be referred to.

11.1. In P. Vijayan [P. Vijayan v. State of Kerala, (2010) 2 SCC 398 : (2010) 1 SCC (Cri) 1488], this Court had an occasion to consider Section 227 CrPC 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 observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, 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.

11.2. In the recent decision of this Court in M.R. Hiremath [State of Karnataka v. M.R. Hiremath, (2019) 7 SCC 515 : (2019) 3 SCC (Cri) 109 : (2019) 2 SCC (L&S) 380], one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under : (SCC p. 526)

“25. The High Court [M.R. Hiremath v. State, 2017 SCC OnLine Kar 4970] 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 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721], adverting 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.'

47. Further, it is pertinent to mention here that power to discharge an accused was designed to prevent harassment to an innocent person by the arduous trial or the ordeal of prosecution. How that intention is to be achieved is reasonably clear in the section itself. The power has been entrusted to the Sessions Judge who brings to bear his knowledge and experience in criminal trials. Besides, he has the assistance of counsel for the accused and Public Prosecutor. He is required to hear both sides before framing any charge against the accused or for discharging him. If the Sessions Judge after hearing the parties frames a charge and also makes an order in support thereof, the law must be allowed to take its own course. Self-restraint on the part of the High Court should be the rule unless there is a glaring injustice which stares the court in the face. The opinion on any matter may differ depending upon the person who views it. There may be as many opinions on a particular matter as there are courts but it is no ground for the

High Court to interdict the trial. It would be better for the High Court to allow the trial to proceed. Reference in this regard may be taken from the judgment as rendered by the Hon'ble Apex Court in ***Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia, (1989) 1 SCC 715.***

48. Further, the difference between the approach with which the Court should examine the matter in the discharge has been explained by the Hon'ble Supreme Court in ***Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460***, in the following words: —

“17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

30. We have already noticed that the legislature in its wisdom has used the expression “there is ground for presuming that the accused has committed an offence”. This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this

Court in State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659 referred to the meaning of the word “presume” while relying upon Black’s Law Dictionary. It was defined to mean “to believe or accept upon probable evidence”; “to take as proved 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, the incriminating material and evidence is 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 judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.”

49. Thus, it is evident that the law regarding the approach to be adopted by the Court while considering an application for discharge of the accused person the Court has to form a definite opinion, upon consideration of the record of the case and the documents submitted therewith, that there is not sufficient ground for proceeding against the accused.

50. The Hon'ble Apex Court has further dealt with the proper basis for framing of charge in the case of ***Onkar Nath Mishra v. State (NCT of Delhi)*** wherein, at paragraphs 11, 12 and 14, it has been held as under: —

“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.

12. In State of Karnataka v. L. Muniswamy [(1977) 2 SCC 699 : 1977 SCC (Cri) 404], a three-Judge Bench of this Court had observed that

at the stage of framing the charge, the Court has to apply its mind to the question whether or not there is any ground for presuming the commission of the offence by the accused. As framing of charge affects a person's liberty substantially, need for proper consideration of material warranting such order was emphasised.

14. In a later decision in State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338 : 2000 SCC (Cri) 1110] this Court, referring to several previous decisions held that : (SCC p. 342, para 7)

“7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

51. The Hon'ble Apex Court in the case of ***Palwinder Singh v. Balvinder Singh, (2009) 2 SCC (Cri) 850*** has been pleased to hold that charges can also be framed on the basis of strong suspicion. Marshaling and appreciation of the evidence is not in the domain of the court at that point of time.

52. In the judgment passed by the Hon'ble Supreme court in the case of ***Sajjan Kumar v. CBI***, reported in ***(2010) 9 SCC 368***, the Hon'ble Supreme Court has considered the scope of Sections 227 and 228 CrPC. The principles which emerged therefrom have been taken note of in para 21 as under:

“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 apply 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 discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”*

53. In the judgment passed by the Hon'ble Supreme court in the case of ***M.E. Shivalingamurthy v. CBI***, reported in **(2020) 2 SCC 768**, the above principles have been reiterated in para 17, 18, 28 to 31 and the Hon'ble supreme court has explained as to how the matters of grave suspicion are to be dealt with. The aforesaid paragraphs are being quoted as under:

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan v. State of Kerala and discern the following principles:

17.1. If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. 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 offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.

17.6. The court has to consider the broad probabilities, 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, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.

18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar). The expression, “the record of the case”, used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi).

28. *It is here that again it becomes necessary that we remind ourselves of the contours of the jurisdiction under Section 227 CrPC. The principle established is to take the materials produced by the prosecution, both in the form of oral statements and also documentary material, and act upon it without it been subjected to questioning through cross-examination and everything assumed in favour of the prosecution, if a scenario emerges where no offence, as alleged, is made out against the accused, it, undoubtedly, would ensure to the benefit of the accused warranting the trial court to discharge the accused.*

29. *It is not open to the accused to rely on the material by way of defence and persuade the court to discharge him.*

30. *However, what is the meaning of the expression “materials on the basis of which grave suspicion is aroused in the mind of the court's”, which is not explained away? Can the accused explain away the material only with reference to the materials produced by the prosecution? Can the accused rely upon material which he chooses to produce at the stage?*

31. *In view of the decisions of this Court that the accused can only rely on the materials which are produced by the prosecution, it must be understood that the grave suspicion, if it is established on the materials, should be explained away only in terms of the materials made available by the prosecution. No doubt, the accused may appeal to the broad probabilities to the case to persuade the court to discharge him.”*

54. It has been further held in the case of *Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148*, that mini trial is not expected by the trial court for the purpose of marshalling the evidence on record at the time of framing of charge, wherein, it has been held at paragraph no.18 of the said judgment 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, 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.”

55. In the case of *Asim Shariff v. NIA, (supra)*, it has been held by the Hon’ble Apex Court that the words ‘**not sufficient ground for proceeding against the accused**’ clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, 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 his function after the trial starts. 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. The sufficiency of ground 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.

56. Thus, from aforesaid legal propositions it can be safely inferred that 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 doing so and if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge. However, the defence of the accused cannot be looked into at the stage of discharge. The accused has no right to produce any document at that stage. The application for discharge has to be considered on the premise that the materials brought on record by the prosecution are true.

57. Thus, at the time of considering an application for discharge, the Court is required to consider the limited extent to find out whether there is prima facie evidence against the accused to believe that he has committed any offence as alleged by the prosecution; if prima facie evidence is available against the accused, then there cannot be an order of discharge

58. Therefore, the stage of discharge is a stage prior to framing of the charge and once the Court rejects the discharge application, it would proceed to framing of charge. At the stage of discharge, the Judge has merely to sift and weigh the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the prosecution or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame the charge against him and after that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge and, if not, he will discharge the accused.

59. 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.
60. It is considered view that at this stage of the instant case, the Court was only 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 because at the stage of framing of the charge and / or considering the discharge application, the mini trial is not permissible.
61. It requires to refer herein that the purpose of framing a charge is to provide the accused with detailed information about the allegations against him. Framing of proper charge is one of the basic requirements of a fair trial. Charge is of great significance in a criminal trial as it helps not only the accused in knowing the accusation against him but also helps him in the preparation of his defence.
62. In a criminal trial the charge is the foundation of the accusation and every care must be taken to see that it is not only properly framed. At the initial stage of framing a charge, the truth, veracity and effect of the evidence which the prosecution proposes to adduce are not to be considered meticulously.
63. It is settled position of law that the accused is entitled in law to know with precision what is the law on which they are put to trial. Charges are framed against the accused only when the Court finds that the accused is not entitled to discharge under the relevant provision of CrPC/BNSS.

64. In Sessions case the Court shall frame a charge in writing against the accused when the Court is of the opinion that there is ground for presuming that the accused has committed an offence as can be seen from Section 252 of the BNSS. In warrant cases, a charge shall be framed when a prima facie case has been made out against the accused as is evident from sections 263 and 269 of BNSS.
65. The Hon'ble Supreme Court of India in *State of Maharashtra vs. Som Nath Thapa, (1996) 4 SCC 659* has been pleased to hold that if the Court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused had committed the offence. It was further held that at the stage of framing of charge the Court cannot look into the probative value of the materials on record.
66. Further, while considering the question of framing a charge, the Court has the undoubted power to sift and weigh the materials for the limited purpose for finding out whether or not a prima facie case against the accused has been made out. In exercising the power, the Court cannot act merely as a post office or a mouthpiece of the prosecution.
67. The test to determine a prima facie case against the accused would naturally depend on the facts of each case and it is difficult to lay down the rule of universal application and if 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 and proceeding with the trial.

68. In *Kanti Bhadra Shah vs. State of West Bengal, (2000) 1 SCC 722*, the Hon'ble Supreme Court held that whenever the trial Court decides to frame charges, it is not necessary to record reasons or to do discuss evidence in detail.
69. In *State of Andhra Pradesh vs. Golconda Linga Swamy, (2004) 6 SCC 522*, the Hon'ble Supreme Court held that at the stage of framing of charge, evidence cannot be gone into meticulously. It was held that it is immaterial whether the case is based on direct or circumstantial evidence and a charge can be framed if there are materials showing possibility about commission of the offence by the accused as against certainty.
70. It needs to refer herein that Sections 215 and 464 CrPC ensure that technicalities do not defeat justice. Both the sections lay that irregularity or error in framing a charge is not fatal unless the accused is able to show that prejudice is caused to him as result of such irregularity or omission. The object of section 238 BNSS is to prevent failure of justice on account of irregularity in framing of charge.
71. In judging a question of prejudice, as of guilt, the Court must act with a broad vision and look to the substance and not to the technicalities, and its main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was a full and fair chance to defend himself.
72. In *State of Uttar Pradesh vs. Paras Nathi Singh, 2009 INSC 669*, the Hon'ble Supreme Court after considering the language of Section 464 Cr.P.C. held that the burden is on the accused to show that a failure of

justice has been occasioned on account of error, omission or irregularity of the charge.

73. Thus, framing of charge is not a mere empty formality. Every endeavour must be made in a criminal trial to ensure that appropriate charge is framed against the accused. Even though mere omission, error or irregularity in framing charges does not ipso facto vitiate trial, the accused should be made fully aware of the specific accusations against him in order to defend himself properly. Apart from safeguarding the interests of the accused, framing of proper charge also ensures that the interests of the victims and the society at large are safeguarded and no guilty person goes unpunished only on account of error in framing the charge.

74. The Hon'ble Supreme Court of India in *Dipakbhai Jagdishchandra Patel vs. State of Gujarat, (2009) 16 SCC 547* has been pleased to hold that:

“21. 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 of material before the Court is not to be meticulous in the sense that Court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full fledged 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.”

75. Thus, from the aforesaid judicial pronouncements, it is evident that at the stage of framing charges, trial court is not to examine and assess in detail

the material placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. Marshalling of facts and appreciation of evidence at the time of framing of charge is not in the domain of the court. Charge can be framed even on the basis of strong suspicion founded upon materials before the court which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged against the accused.

76. It needs to refer herein that ingredients of offences should be seen in the material produced before the court for framing of charges and duty of court at the stage of framing of charges is to see whether the ingredients of offences are available in the material produced before the court. Contradictions in the statements of witnesses or sufficiency or truthfulness of the material placed before the court cannot be examined at the stage of framing of the charge. For this limited purpose, the court may sift the evidence. Court has to consider material only with a view to find out if there is ground for presuming that the accused has committed an offense and not for the purpose of arriving at a definite conclusion. “Presume” means if on the basis of materials on record, court can come to the conclusion that commission of the offense is a probable consequence, then a case for framing of charge exists.

77. Thus, it is well settled that at the time of framing of charge, meticulous examination of evidence is not required, however the evidence can be sifted or weighed at least for the purpose of recording a satisfaction that a prima facie case is made out for framing charge to proceed in the case. Further the trial Court is not required to discuss the evidence for the

purpose of conducting a trial but the discussion of the materials on record is required to reflect the application of judicial mind for finding that a prima-facie case is made out against the petitioner.

78. It is settled connotation of law that at the stage of framing of charge, the probable defence of the accused is not to be considered and the materials, which are relevant for consideration, are the allegations made in the First Information Report/complaint, the statement of the witnesses recorded in course of investigation, the documents on which the prosecution relies and the report of investigation submitted by the prosecuting agency. The probative value of the defence is to be tested at the stage of trial and not at the stage of framing of charge and at the stage of framing of charge minute scrutiny of the evidence is not to be made and even on a very strong suspicion, charges can be framed.

79. Further, it is settled position of law that at the stage of framing the charge, the trial Court is not required to meticulously examine and marshal the material available on record as to whether there is sufficient material against the accused which would ultimately result in conviction. The Court is prima facie required to consider whether there is sufficient material against the accused to presume the commission of the offence. Even strong suspicion about commission of offence is sufficient for framing the charge, the guilt or innocence of the accused has to be determined at the time of conclusion of the trial after evidence is adduced and not at the stage of framing the charge and, therefore, at the stage of framing the charge, the Court is not required to undertake an elaborate inquiry for the purpose of sifting and weighing the material.

80. Recently, the Full Bench of the Hon'ble Apex Court in the case of ***Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, (2022) 12 SCC 657*** has elaborately discussed the issue of framing of charge and has held at paragraph-27 which reads as under:

“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 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.”

81. Thus, from aforesaid legal propositions it can be safely inferred that 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 doing so and if, after such consideration and hearing as aforesaid, the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, the trial Court shall frame the charge.

- 82.** Therefore, the stage of discharge is a stage prior to framing of the charge and once the Court rejects the discharge application, it would proceed for framing of charge. At the stage of discharge, the Judge has merely to sift and weigh the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the prosecution or the documents produced before the court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame the charge against him and after that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge and, if not, he will discharge the accused.
- 83.** 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.
- 84.** It is the considered view that at this stage of the instant case, the Court was only 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 because at the stage of framing of the charge and / or considering the discharge application, the mini trial is not permissible.
- 85.** In the backdrop of aforesaid case laws and judicial deduction, this Court is now proceeding to examine the fact so as to come to the conclusion, “*as to whether the evidence which has been collected in course of investigation and has been brought on record, as would be available in*

the impugned order prima facie case against the petitioner is made out or not?"

86. The learned counsel for the petitioner has contended that the petitioner has been prosecuted on the basis of assumptions and surmises, and the officials of the Investigating Agency has totally overlooked the principle that there must be 'reason to believe' rather than mere assumptions that the offences alleged against the petitioner have actually been committed by him and further the learned Special Judge, PML Act, Ranchi has failed to appreciate that the prosecution has not produced material which would show that the petitioner has, in any manner, dealt with "proceeds of crime".

87. *Per contra*, the learned counsel for ED has contended by referring to the various paragraphs of the ECIR that that orders impugned in these Cr. Revisions are refusal of the prayer of discharge and subsequently framing of charge and both the orders cannot be said to suffer from an error since ample materials are available based upon which it cannot be said that no prima facie case is available against the petitioner leading to discharge of the petitioner rather all these aspects are to be adjudicated in course of the trial.

88. In order to appreciate the contention of the learned counsel for the parties, this Court has gone through the various paragraphs of the ECIR which has been annexed with the main petition, for ready reference, the various paragraphs of the said ECIR are being quoted as under:

Brief Facts of the offence/allegation/allegation/charge/amount involved under PMLA

That CBI, ACB, Ranchi registered FIR No. RC-19(A)/09-R dated 22.10.2009 for violation of section 120-B r/w 420, 467, 468 & 471 of IPC, 1860 and section 13(2) r/w 13(1)(d) of PC Act, 1988 against the following entities:

(a) Shri Baleshwar Baitha, the then Executive Engineer, Road Construction Department, Daltonganj;

(b) Shri Heeraman Mahto, the then Executive Engineer, RCD, Daltonganj;

(c) M/s Kaushalya Infrastructure Development Corporation Limited;

and (d) Other unknown persons.

It was alleged in the F.I.R. that Shri Baleshwar Baitha & Shri Heeraman Mahto, both Executive Engineers, Road Construction Department (RCD), Daltonganj, during the period 2004-06, entered into a criminal conspiracy among themselves and with M/s. Kaushalya Infrastructure Development Corporation Limited. In pursuance of the said criminal conspiracy, M/s Kaushalya Infrastructure Development Corporation Limited submitted false/bogus invoices showing procurement of bitumen for the execution of contractual works awarded to them, which caused wrongful gain to the contractor and official concerned and corresponding to huge wrongful loss to the Government of Jharkhand to the tune of crores of rupees.

3.2 Consequent upon investigation conducted by the CBI, ACB, Ranchi, Charge-Sheet No. 02/2011 dated 31.01.2011 for contravention of section 120-B, read with 420, 468 & 471 of IPC, 1860 and section 13(2) read with 13(1)(d) of PC Act, 1988 was filed before the Hon'ble Special Court, CBI, Ranchi against the following entities:

(a) M/s Kaushalya Infrastructure Development Corporation Limited (formerly M/s RMS EXIM Pvt. Ltd.), having Corporate Identity Number (CIN) as U51216WB1992PLC055629, registered address: HB-170, Sector-III, Salt Lake, Kolkata, West Bengal-700106, (represented through its directors); b) Shri Sidh Nath Mehra, Director of M/s Kaushalya Infrastructure Development Corporation Limited (from 04.06.1992 to 01.07.2012);

As Sidh Nath Mehra died on 01.07.2012 in Kolkata, Hon'ble Special Court, CBI, Ranchi subsequently dropped all proceedings of scheduled offence against him in FIR No. RC-19(A)/09-R dated 22.10.2009;

(c) Shri Mahesh Mehra, Director of M/s Kaushalya Infrastructure Development Corporation Limited (from 04.06.1992 till date);

(d) Shri Nagwant Pandey, (authorized signatory of M/s Nagraj Constructions) representative of M/s Kaushalya Infrastructure Development Corporation Limited;

(e) Shri Baleshwar Baitha, the then Executive Engineer, RCD, Daltonganj;

(f) Shri Hiranman Mahto, the then Executive Engineer, RCD Road Division, Daltonganj;

(g) Shri Ajay Bahadur, the then Assistant Engineer, RCD, Daltonganj;

(h) Shri Shivmuni Ram, the then Junior Engineer, RCD, Daltonganj;

(i) Shri Anwar Ali Ansari, the then Junior Engineer, RCD, Daltonganj;

(j) Shri Birendra Kumar Singh, the then Junior Engineer, RCD, Daltonganj; &(b) Shri Sidh Nath Mehra, Director of M/s Kaushalya Infrastructure Development Corporation Limited (from 04.06.1992 to 01.07.2012);

As Sidh Nath Mehra died on 01.07.2012 in Kolkata, Hon'ble Special Court, CBI, Ranchi subsequently dropped all proceedings of scheduled offence against him in FIR No. RC-19(A)/09-R dated 22.10.2009;

Shri Mahesh Mehra, Director of M/s Kaushalya Infrastructure Development Corporation Limited (from 04.06.1992 till date);

Shri Nagwant Pandey, (authorized signatory of M/s Nagraj Constructions) representative of M/s Kaushalya Infrastructure Development Corporation Limited;

(e) Shri Baleshwar Baitha, the then Executive Engineer, RCD, Daltonganj;

(1) Shri Hiranman Mahto, the then Executive Engineer, RCD Road Division, Daltonganj;

(g) Shri Ajay Bahadur, the then Assistant Engineer, RCD, Daltonganj;

Shri Shivmuni Ram, the then Junior Engineer, RCD, Daltonganj;

(i) Shri Anwar Ali Ansari, the then Junior Engineer, RCD, Daltonganj;

(l) Shri Birendra Kumar Singh, the then Junior Engineer, RCD, Daltonganj; & k) Shri Jagat Narayan Prasad, the then Junior Engineer, RCD, Daltonganj.

3.3 In the Charge-sheet dated 31.01.2011, the following charges were levelled by the CBI against the accused entities:

a) The contractor company, M/s Kaushalya Infrastructure Development Corporation Limited, had been issued a work order No. 917(Anu) dated 19.07.2004 by the Road Construction Department (RCD), Government of Jharkhand for strengthening of Parwa-Garhwa Road in kms 0-30, vide the following agreements:

(1) agreement No. 1F2/2004-05, dated 19.07.2004, executed between the then Executive Engineer, RCD, Chakradhar Tiwari (now deceased) and accused Sidh Nath Mehra (now deceased), Director of M/s Kaushalya Infrastructure Development Corporation Limited, for a consideration of Rs. 3,96,26,072/- and

(ii) Supplementary agreement vide No. 1F2/2004-05 dated 19.10.2004 executed between the then Executive Engineer, RCD, Chakradhar Tiwari (now deceased) and M/s Kaushalya Infrastructure Development Corporation Limited through Directors accused Mahesh Mehra and Sidh Nath Mehra (now deceased), for a consideration of Rs. 74,53,056/;

In the Notice Inviting Tender (NIT) dated 08.05.2004 (part and parcel of the Agreement dated 19.07.2004), it was specifically mentioned that "the contractor would himself purchase the packed bitumen of Grade-60/70 from the Government Oil Companies and will submit the Proof of the quality of bitumen/Proof of purchase/Receipt to the Road Construction Department (RCD)".

As per Sankalp No. 1680(S) dated 26.03.2002 the contractor company was under the following obligations:

(i) to procure bitumen only from Government Oil Companies, namely, Indian Oil, Bharat Petroleum and Hindustan Petroleum; and

(1) to submit the relevant documents like Receipt of procurement of bitumen, and proof of the quality of bitumen, before its use.

The documents like bitumen invoices were important as proof of "purchase of bitumen, rate of bitumen and grade of bitumen" for the passing of the bills for payment to the contractor;

c) As per the above agreements, total 1257.122 MT of packed bitumen of grade 60/70 was required for the aforesaid road work. Authority letters were issued by the then Executive Engineers of RCD, Government of Jharkhand, namely Chakradhar Tiwari (now deceased) and Shri Baleshwar Baitha, to the Government Oil Companies for sale of bitumen in the following manner:

(1) for the work strengthening of Parwa-Garhwa Road of Km 0-20, authority letter No. 1249 dated 27.10.2004 was issued for sale of 861.931 MT of packed bitumen of grade 60/70;

(ii) for the rest part of the work i.e. from Km 20-30, authority letter No. 198 dated 06.05.2005 was issued for sale of 426.2509 MT of packed bitumen of grade 60/70; and

(iii) another letter No. 116 dated 06.02.2006 was also issued to three Government Oil Companies for sale of 463.686 MT of packed bitumen of grade 60/70 for the said work of Km 0-20.

Upon execution of the contract purportedly executed by the contractor company between 19.10.2004 to 30.03.2007, a total of 14 On Account Bills were submitted by the contractor company and accordingly Rs. 3,92,37,748/- was disbursed by RCD Daltonganj, Government of Jharkhand to the accused contractor company vide 26 number of cheques/DD, including the bituminous works and cost of bitumen;d) The payments made to the accused contractor company included bills for procurement of 1245.968 MT of bitumen, which had been shown utilized in the Measurement Book (hereinafter referred to as MB) of the above work. In terms of the agreement, it was mandatory obligation of the contractor company to submit the required number of invoices covering 1245.968 MT of bitumen to the RCD, Daltonganj;

c) The contractor company submitted only 59 number of bitumen invoices, showing purported procurement of 963.635 MT of bitumen purportedly issued from HPCL, Tatanagar CFA/COD and IOCL, Namkum Depot Ranchi for payment of On Account Bills on different

dates. The payment was disbursed by RCD Daltonganj to the contractor company for utilization of 1245.968 MT of bitumen against proof of procurement of 963.635 MT of bitumen covered by 59 number of invoices, submitted by the contractor company. Secondly, fake invoices were also found to have been submitted as a proof of procurement of bitumen in these 59 invoices, along with genuine invoices;

Investigation by the CBI revealed that out of the aforesaid 59 bitumen invoices purportedly issued from HPCL, Tatanagar CFA/COD and submitted by the accused contractor, 33 nos. of bitumen invoices issued from HPCL, Tatanagar, CFA/COD and IOCL, Namkum Depot were found to be genuine. Remaining 26 invoices covering procurement of 560.959 MT of bitumen amounting to Rs. 1,08,95,583/-, were fake and forged, as these 26 invoices were either not issued or issued to different party, other than the contract executing company.

These 26 nos. of forged invoices showing utilization of 560.959 MT of bitumen worth Rs. 1,08,95,583/- in the execution of contractual work were dishonestly certified by the Engineers of RCD, Daltonganj. Investigation by CBI also disclosed that Vehicle number as mentioned in one of the fake invoices submitted by the contractor company is of a two wheeler and vehicle number as mentioned in one other fake invoice is vacant and had not been allotted to any vehicle for registration.

8.2.8 Shri Karan Mehra, S/o Shri Mahesh Mehra, Director of M/s Kaushalya Township Private Limited (Accused No. 4), in course of his statements recorded under Section 50 (2)&(3) of PMLA, 2002, inter-alia stated that:-

(1) he is one of the Directors of M/s Kaushalya Township Private Limited since 2006. M/s Kaushalya Township Private Limited was incorporated in year 2006. The Directors at the time of incorporation of the company were Karan Mehra, Srishty Mehra and Rahul Mehra. The company is engaged in the business of real estate and land trading. He is just a signatory of the company. The decisions towards the day-to-day affairs and all other decisions of the company have always been taken by his father Shri Mahesh Mehra and other family members,

(1) Tall the investment made by M/s KIDCL in its associate and subsidiary companies could be explained by his father Mahesh Mehra only. The decision regarding the investments made and received as well as that of allotment of shares of M/s Kaushalyan Township Private

Limited has been taken by his father Mahesh Mehra and other family members:

the amount of Rs. 8,78,98,262/ received by M/s Kaushalya Township Private Limited as an advance in the F.Y 2007-08 from M/B KIDCL has not been still paid back to M/ KIDCL; and

(iv) land purchased by M/s Kaushalya Township Private Limited after 2018 has not been mortgaged with any entity. The land purchased by M/s Kaushalya Township Private Limited since inception till 2018 have been offered to developers which receive advances from the customers against proposed sale of flats and the proportionate amount is transferred to M/s Kaushalya Township Private Limited by the Developers which is utilized by the company for further investment in land.

8.2.1 Shri Prashant Mehra, S/o Ramesh Kumar Mehra, the director of M/Bengal KDC Housing Development Limited (Accused No 6) in course of his statement recorded under Section 50 of the PMLA, 2002, inter alia stated that:

(i) he is one of the Directors of M/s Bengal KDC Housing Development Limited since 2006 (i.e. since incorporation). He was also the director of M/s Kaushalya Infrastructure Development Corporation Limited from financial year 2005-2006 but had resigned in financial year 2015-2016, however, during the said period the business decisions of M/s Kaushalya Infrastructure Development Corporation Limited were taken by his uncle, Jate Sidh Nath Mehra and Shri Mahesh Mehra who were actively involved in the operations of the company:

(ii) the investment of Rs. 10.20 Lakhs in 51% equity shares of M/s Bengal KDC Housing Development Limited was made by M/s Kaushalya Infrastructure Development Corporation Limited at the time of inception ie. in 2006 and still continuing as on date making it the subsidiary company of M/s Kaushalya Infrastructure Development Corporation Limited by virtue of the shareholding. M/s Kaushalya Infrastructure Development Corporation Limited has also made investment in preference shares of M/s Bengal KDC Housing Development Limited amounting to Ra. 10 Crores approx.;

(iii) M/s Bengal KDC Housing Development Limited is a subsidiary company of M/s Kaushalya Infrastructure Development Corporation Limited. In the AGM meetings, all shareholders including M/s

Kaushalya Infrastructure Development Corporation Limited have their right to exercise their vote towards the resolutions put up for voting. The Balance Sheet of M/s Bengal KDC Housing Development Limited is also placed in the AGM of its parent company Le. M/s Kaushalya Infrastructure Development Corporation Limited which is chaired by the Chairman of Kaushalya Infrastructure Development Corporation Limited for the purpose of consolidation of accounts;

(iv) he accepted that M/s KIDCL made investment of Rs. 10.20 Lakhs in the shares of M/s Bengal KDC Housing Development Limited. The details of source of such investment would be with M/s KIDCL and its whole time director, Shri Mahesh Mehra;(A) M/s Bengal KDC Housing Development Limited was formed for undertaking LIG, MIG and HIG residential projects in joint venture with West Bengal Government. However, since the Government has decided to exit all such joint ventures, the company has no project in its hand currently,

(vi) M/s Kaushalya Infrastructure Development Corporation Limited had made investment of Ra 1097.33 Lakhs as advance to M/s Bengal KDC Housing Development Limited. This amount was subsequently converted into Preference Shares. The process of conversion of advances to preference shares was followed as per the method prescribed in the Companies Act;

(vii) M/s Kaushalya Infrastructure Development Corporation Limited being a recipient of the preference shares had to also approve such conversion of advances to preference share;

(viii) the Board of M/s Bengal KDC Housing Development Limited decided to return the amount received as investment made into its preference shares by M/s KIDCL in the form of advance/loan and while the said loans were outstanding. M/s Bengal KDC Housing Development Limited had earned interest and had kept the amount of such interest income in a redemption reserve. This reserve was utilized to redeem a part of outstanding preference shares. However, this reserve will now not be used for further redemption and interest income would henceforth be disbursed as dividend to preference share holder Le. M/s KIDCL. The amount redeemed from reserves was Ra 100 Lakhs which has been paid back to M/s Kaushalya Infrastructure Development Corporation Limited during the year 2021-22.

(RUD 81. No. 19)

from 2006 to 2012, the day-to-day affairs and all the decisions of the company was taken by his family members namely Late Sidh Nath Mehra (Father). Shri Mahesh Mehra (Uncle) and Shri Ramesh Mehra (Uncle) and during that period he was only a director for namesake. He has been participating in the day-to-day affairs of the company since 2012;

(iv) the amount of Rs. 1,00,18,356/- was received as advance from M/s KIDCL through banking channel and it is still not paid back to M/s KIDCL;

(v) the advance received from M/s KIDCL from time to time were converted into preferential shares. In lieu of the preferential shares, the company Le. M/s KIDCL will be paid back the profit/dividend when the projects complete;

(vi) the properties which have been purchased after the year 2018 have not been charged/mortgage/ offered to any developer,

(vii) M/s Kaushalya Nirman Private Limited has purchased some land before 2018 and had entered into agreements with some developer for developing the land and selling the flats. The source of fund to purchase land is through advances received from the developer against the sale of flats. The developers received advances from the customers against the sale of flats and the proportionate amount is transferred to M/s Kaushalya Nirman Private Limited which is utilized for further acquisition of land The properties purchased right from the inception of M/s Kaushalya Nirman Private Limited have been offered to developer in this manner only.

10.4.3 The Proceeds of Crime of Rs. 1,08,95,583/- generated during the period 2004-07 in the hands of M/s Kaushalya Infrastructure Development Corporation Limited through submission of fake bills towards procurement of bitumen got credited into its various bank accounts and subsequently got intermingled in the business activities of the company including investments made by it into its sister concerns. The details of the investment by M/s Kaushalya Infrastructure Development Corporation Limited as on 31.03.2022 into the shares of its sister concerns are as under:

10.4.6 Therefore, all the three companies ie. M/s Kaushalya Township Private Limited, M/s Kaushalya Nirman Private Limited and M/s Bengal KDC Housing Development Limited were subsidiary companies

of Accused No. 1 i.e. M/s Kaushalya Infrastructure Development Corporation Limited as on 31.03.2008. The Proceeds of Crime of Rs. 1,08,95,583/-generated into the hands of the Accused No. 1 i.e. M/s Kaushalya Infrastructure Development Corporation Limited (M/s KIDCL) through submission of fake bills towards procurement of bitumen got intermingled with the business activities of the M/s KIDCL and later invested in the aforementioned subsidiary companies as the acquisition of shares at a premium in the year 2007-08. These companies being subsidiaries were wholly under the control of the contractor company (M/s KIDCL) during the period 2007-08 and also the investments and application of funds by these companies were decided by the parent company i.e. M/s KIDCL. All these companies are operated from the same address,

10.4.7 Shri Karan Mehra, one of the Directors of M/s Kaushalya Township Private Limited since 2006, in his statement u/s 50 of the PMLA stated that he is just a signatory of the company. The decisions towards the day to day affairs and all other decisions of M/s Kaushalya Township Private Limited have always been taken by his family members i.e. his father Shri Mahesh Mehra and others. He further stated that the decision regarding the investments made and received as well as that of allotment of shares of M/s Kaushalya Township Private Limited has also been taken by his family members.

10.4.8 In his statement recorded u/s 50 of the PMLA, 2002, Shri Mahesh Mehra (Accused No. 2) stated that he is the chairperson of the board members at the meetings organised by M/s KIDCL and other subsidiary/associate companies of M/s KIDCL.

10.4.9 Further, during the course of search on 07.12.2022 at the residential premise of Shri Mahesh Mehra blank letter heads of M/s Kaushalya Township Private Limited & M/s Kaushalya Nirman Private Limited were found and seized. The finding of blank letter heads at the residence of Shri Mahesh Mehra establishes the key role played by him in the business affairs of M/s Kaushalya Township Private Limited & M/s Kaushalya Nirman Private Limited. Also, the analysis of digital data seized during the course of search dated 07.12.2022 at the office premises of M/s KIDCL reveals a list of beneficial owner of Accused No. 6 i.e. M/s Bengal KDC Housing Development Limited prepared by its Director, Shri Prashant Mehra. It is categorically mentioned in the said list that beneficial owner of M/s Bengal KDC Housing Development Limited is M/s KIDCL. This further establishes the key

role played by Shri Mahesh Mehra in the business affairs of M/s Bengal KDC Housing Development Limited as well through its beneficial owner and parent company, i.e. M/s KIDCL, of which Shri Mahesh Mehra is a whole time Director and key person looking after its day-to-day operations and decisions related to investments, etc.

11.3.2. Role of Accused No.2 Mahesh Mehra in offence of money laundering under Section 3 of PMLA, 2002:

a) Shri Mahesh Mehra, one of the directors of M/s Kaushalya Infrastructure Development Corporation Limited, signed the tender documents, agreements etc. on behalf of the contractor company (M/s KIDCL).

b) He entered into a criminal conspiracy with others and in pursuance to the said criminal conspiracy, 26 forged/fake bitumen invoices worth Rs.1,08,95,583/ were submitted and claimed against purported execution of "Strengthening of Parwa-Garhwa Road from Km 0 to 30" awarded by RCD, Daltonganj during 2004 to 2006.

c) The Proceeds of Crime thus was acquired by his company, i.e. the Accused No. 1, through payments received from the RCD, Daltonganj on the account of submission of such fake/forged invoices of bitumen purchase.

d) Day to day operations of the Accused No. 1 are handled by the Accused No. 2. Shri Mahesh Mehra and Accused No. 1 are key persons in committing the offence of money laundering.

Shri Nagwant Pandey has deposed under section 50 of the Act that Shri Mahesh Mehra along with the other Director namely Late Sidh Nath Mehra used to visit the road work site on weekly basis for supervision.

The offence of money laundering was committed by the Accused No. 1 with the assistance of others including consent and connivance of its Director, Shri Mahesh Mehra (Accused No. 2).

g) Further, the proceeds of crime was transferred by the Accused No. 1 along with its business receipts to the Accused No. 4 to Accused No. 6 in the form of investments. The Accused No. 4 to Accused No. 6 subsequently utilized such investments received in the form of share capital/premium and advances into their business activities including creation of immovable assets.

The Accused No. 2 i.e. Shri Mahesh Mehra has been responsible to the companies i.e. Accused No. 4 to Accused No. 6 for the conduct of the business of these companies and their day to day affairs. This fact has two aspects: firstly, Accused No. 4 to Accused No. 6 were subsidiaries of the Accused No. 1 of which the Accused No. 2 was one of the Directors, this was during 2007-08 i.e. the year in which the proceeds of crime was transferred by the Accused No. 1 along with its business receipts & secondly, the day to day affairs of the Accused No. 4 to Accused No. 6 till date (when Accused No. 4 & Accused No. 5 are associate companies of Accused No. 1 and Accused No. 6 is a subsidiary of Accused No. 1) are also handled by the Accused No. 2. This second aspect has been substantiated by the statement of Shri Mahesh Mehra wherein he deposed that he is the chairperson of the board members at the meetings organised by M/s KIDCL and other subsidiary/associate companies of M/s KIDC Land also the statement of Shri Karan Mehra (Director of the Accused No. 4) who deposed during his statements recorded under section 50 of the Act that the decisions towards the day to day affairs and all other decisions of the Accused No. 4 have always been taken by his family members i.e. his father, Shri Mahesh Mehra (Accused No. 2) and others. The aforementioned second aspect is further substantiated by the finding of blank letter heads of Accused No. 4 & Accused No. 5 and also the list of beneficial owner of Accused No. 6 at the residential premise of Shri Mahesh Mehra and the office premise of M/s KIDCL/associated entities respectively during the course of search dated 07.12.2022.

i) Hence, Shri Mahesh Mehra (Accused No. 2), as a Director of the Accused No. 1, has knowingly assisted and was a party to the activities(i.e. acquisition, use, possession, concealment and projecting or claiming as untainted property) connected with the offence of the money laundering as defined under section 3 of the PMLA, 2002, committed by the Accused No. 1, accordingly, Shri Mahesh Mehra is guilty of the offence of money laundering u/s 3 read with section 70 of the PMLA, 2002 and punishable u/s 4 of the PMLA, 2002.

j) Further, Shri Mahesh Mehra (Accused No. 2), as a person responsible to the conduct of business of the Accused No. 4 to Accused No. 6, has also knowingly assisted and was a party to the activities(i.e. acquisition, use, possession, concealment and projecting or claiming as untainted property) connected with the offence of the money laundering as defined under section 3 of the PMLA, 2002, committed by the

Accused No. 4 to Accused No. 6, accordingly, Shri Mahesh Mehra is guilty of the offence of money laundering u/s 3 read with section 70 of the PMLA, 2002 and punishable u/s 4 of the PMLA, 2002.

89. Thus, from the aforesaid, it is evident that the case record, reveals that accused Mahesh Mehra, Nagwant Pandey and their Corporations/Firms have entered into criminal conspiracy with others through M/s Kaushalya Infrastructure Development Corporation Ltd, submitted 26 forged/ fake bitumen invoices worth Rs. 1,08,95,583/ through the Contractor Company/ Authorized Representative and claimed bills against purported execution of strengthening of Parwa Garhwa Road during 2004-06 against the work awarded by RCD, Daltonganj. The proceeds of crime amounting to Rs. 1,08,95,583/- were received by the contractor company as a part of the total receipt from the RCD amounting to Rs. 4,03,03,179/- in its different bank accounts.

90. As per the prosecution complaint, it has been gathered during investigation that as on 31.03.2022, M/s Kaushalya Township Private Limited (A-4) & M/s Kaushalya Nirman Private Limited (A-5) are associate companies and M/s Bengal KDC Housing Development Limited (A-6) is a subsidiary company of the A-1 i.e. contractor company or M/s Kaushalya Infrastructure Development Corporation Limited (M/s KIDCL). The accused Nagwant Pandey (A-3) was proprietor of M/s Nagraj Construction was authorized by the accused (A-1) vide a letter issued in this regard to Executive Engineer, RCD, Daltonganj to represent the contractor company before RCD. The materials available on record show that the above accused persons/entities are came in possession of the “proceeds of crime” and they actually involved in the activities i.e. use and projecting or claiming the said proceeds of crime as untainted

property. Aforesaid acts are clearly covered by the definition of offence of money-laundering, wherein any person deals with proceeds of crime in any manner (whether concealment or possession or acquisition or use), whether directly or indirectly, such person shall be explaining the said ill-gotten money in such a manner as if it is untainted money. In the instant case, the accused persons/entities have knowingly acquired and possessed the proceeds of crime in such a manner as if it was untainted money. They tried to project the said ill-gotten money/proceeds of crime as untainted money even after detection of the case and still attempting to claim the same as untainted property. Therefore, they continued to project such proceeds of crime as legal and it is conclusively established that accused above named were involved in the process and activity of dealing with proceeds of crime and tried to project it as untainted property and thereby, they have committed the offence of Money Laundering under Section 3 and 70 of PMLA and therefore liable to be punished under Section 4 of PMLA.

- 91.** There are specific allegations against the petitioner and the entities managed and controlled by him that they committed the offence of money laundering with respect to the proceeds of crime obtained through predicate offence.
- 92.** Thus, it is revealed that the petitioner entered into a criminal conspiracy with others and in pursuance to the said criminal conspiracy, 26 forged/fake bitumen invoices worth Rs.1,08,95,583/ were submitted and claimed against purported execution of "Strengthening of Parwa-Garhwa Road from 0 to 3 Km. awarded by RCD, Daltonganj during 2004 to 2006. The Proceeds of Crime thus was acquired by his company, i.e. the

Accused No. 1, through payments received from the RCD, Daltonganj on the account of submission of such fake/forged invoices of bitumen purchase.

93. It has come on record that day to day operations of the Accused No. 1 is handled by the Accused No. 2. Shri Mahesh Mehra (petitioner herein) and Accused No. 1 are key persons in committing the offence of money laundering. The Accused No. 2 i.e. Shri Mahesh Mehra (petitioner herein) has been responsible to the companies i.e. Accused No. 4 to Accused No. 6 for the conduct of the business of these companies and their day-to-day affairs. This fact has two aspects: firstly, Accused No. 4 to Accused No. 6 were subsidiaries of the Accused No. 1 of which the Accused No. 2 was one of the Directors, this was during 2007-08 i.e. the year in which the proceeds of crime was transferred by the Accused No. 1 along with its business receipts & secondly, the day to day affairs of the Accused No. 4 to Accused No. 6 till date, are also handled by the Accused No. 2.

94. This second aspect has been substantiated by the statement of present petitioner Mahesh Mehra wherein he deposed that he is the chairperson of the board members at the meetings organized by M/s KIDCL and other subsidiary/associate companies of M/s KIDC Land also the statement of Shri Karan Mehra (Director of the Accused No. 4) who deposed during his statements recorded under section 50 of the Act that the decisions towards the day to day affairs and all other decisions of the Accused No. 4 have always been taken by his family members i.e. his father, Shri Mahesh Mehra (Accused No. 2/petitioner) and others.

95. The aforementioned second aspect is further substantiated by the finding of blank letter heads of Accused No. 4 & Accused No. 5 and also the list

of beneficial owner of Accused No. 6 at the residential premise of Shri Mahesh Mehra and the office premise of M/s KIDCL/associated entities respectively during the course of search dated 07.12.2022.

- 96.** Thus, from aforesaid prima facie it appears that Shri Mahesh Mehra petitioner (Accused No. 2), as a Director of the Accused No. 1, has knowingly assisted and was a party to the activities (i.e. acquisition, use, possession, concealment and projecting or claiming as untainted property) connected with the offence of the money laundering as defined under section 3 of the PMLA, 2002, committed by the Accused No. 1, accordingly, Shri Mahesh Mehra is guilty of the offence of money laundering u/s 3 read with section 70 of the PMLA, 2002 and punishable u/s 4 of the PMLA, 2002.
- 97.** Further, Shri Mahesh Mehra (Accused No. 2), as a person responsible to the conduct of business of the Accused No. 4 to Accused No. 6, has also knowingly assisted and was a party to the activities (i.e. acquisition, use, possession, concealment and projecting or claiming as untainted property) connected with the offence of the money laundering as defined under section 3 of the PMLA, 2002, committed by the Accused No. 4 to Accused No. 6, accordingly, Shri Mahesh Mehra is guilty of the offence of money laundering u/s 3 read with section 70 of the PMLA, 2002 and punishable u/s 4 of the PMLA, 2002
- 98.** Thus, prima facie it appears that the investigation conducted by the ED has revealed a deep-rooted criminal conspiracy wherein the Petitioner in his capacity as a director at the company M/s Kaushalya Infrastructure Development Corporation Limited (M/s KIDCL) was instrumental in the generation and laundering of Proceeds of Crime amounting to Rs.

1,08,95,583/- These proceeds were criminally derived from a scheduled offence involving the submission of fake and forged invoices to the Road Construction Department, Government of Jharkhand, in connection with a road construction project.

99. Thus, it would be evident from the material collected that the present petitioner had directly indulged and knowingly is a party and is actually involved in all the activities connected with the offence of money laundering. Consequently, based on the evidence gathered during the course of the investigation, *prima facie*, it appears that the petitioner has committed offence under Section 3 of the Prevention of Money Laundering Act, 2002.

100. Thus, from the aforesaid it is evident that *prima-facie* material is available against the present petitioner, as such, charges have rightly been framed under the Section 3 of the Act 2002 against the petitioner.

101. In the aforesaid it requires to refer herein that scheduled offence has been defined in Section 2 (y) of the Act 2002 wherein it has been stipulated that the “scheduled offence” means— (i) the offences specified under Part A of the Schedule; or [(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more.

102. In the aforesaid context, it needs to refer herein that the Hon’ble Apex Court in *Pavna Dibbur v. Directorate of Enforcement (Criminal Appeal No. 2779/2023)* held that who could commit an offence under the PMLA may not be named in the scheduled offence.

103. Further the offence of money laundering as contemplated in Section 3 of the PMLA has been elaborately dealt with by the three Judge Bench in

Vijay Madanlal Choudhary (supra), in which it has been observed that Section 3 has a wider reach. The offence as defined captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and is not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering. Of course, the authority of the Authorized Officer under the Act to prosecute any person for the offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the Act and further it is involved in any process or activity. Not even in case of existence of undisclosed income and irrespective of its volume, the definition of “Proceeds of Crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The property must qualify the definition of “Proceeds of Crime” under Section 2(1)(u) of the Act. As observed, in all or whole of the crime, property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “Proceeds of Crime” under Section 2(1)(u) will necessarily be the crime properties.

104. The Hon'ble Apex Court in the case of *Pavana Dibbur vs. The Directorate of Enforcement (supra)* has considered the effect of the appellant not being shown as an accused in the predicate offence by taking into consideration Section 3 of the Act, 2002.

105. Based upon the definition Clause (u) of sub-section (1) of Section 2 of the Act 2002 which defines "proceeds of crime", the Hon'ble Apex Court has been pleased to observe that clause (v) of sub-section (1) of Section 2 of PMLA defines "property" to mean any property or assets of every

description, whether corporeal or incorporeal, movable or immovable, tangible or intangible.

- 106.** To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime.
- 107.** It has further been clarified that if a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime, in that case, he can be held guilty of committing an offence under Section 3 of the PMLA. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence.
- 108.** Further, the legal presumption under Section 24(a) of the Act 2002, would apply when the person is charged with the offence of money-laundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime, is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money- laundering to rebut the legal presumption that the

proceeds of crime are not involved in money-laundering, by producing evidence which is within personal knowledge of the accused.

109. Adverting to the instant case, the assertion has been made by the learned counsel for the petitioner that the agreement dated 19.07.2004 does not bear the Petitioner's signature is appears to be irrelevant defence because the Petitioner was admittedly a Director of M/s KIDCL, the company that was the party to the contract and the sole beneficiary of the payments, including the proceeds of crime and as a Director, he cannot absolve himself of the responsibility for the company's actions, which were undertaken for his benefit.

110. Further, the primary contractual obligation to the RCD, Govt. of Jharkhand, rested solely with M/s KIDCL. This liability cannot be outsourced or absolved through an internal arrangement. The undisputed fact remains that the Proceeds of Crime were received into the bank accounts of M/s KIDCL, a company controlled by the Petitioner. Thus, in the instant case, *prima facie*, the investigation has clearly revealed that the petitioner played an active role in placement and layering of proceeds of crime.

111. Further, the argument that there was no criminal intent (*mens rea*) is not tenable because the submission of 26 forged invoices and the subsequent laundering of the funds derived therefrom are clear indicators of a criminal and dishonest intent to cause wrongful gain and further at this stage criminal intent (*mens rea*) cannot be appreciated and the same can be appreciated in the full blown trial by leading the evidences by the parties.

- 112.** It needs to refer herein that the offence of money laundering under Section 3 of the PMLA is extremely wide and includes not just 'acquisition' but also possession', 'use', or projecting the proceeds of crime as untainted. The Petitioner's company used these very forged invoices to acquire proceeds of crime and the Petitioner, its director, was knowingly a party to this activity. The statement of the then Executive Engineer that bills were submitted by Mr. Nagwant Pandey does not exonerate the Petitioner, when he was the controlling and ultimate beneficiary of the transaction.
- 113.** Further, from the ECIR it is evident that the money trail established by the ED is not based on conjectures but on hard, documentary evidence from banking channels and financial statements of the companies themselves. The Petitioner's attempt to muddy the waters by disputing the amount paid to the sub-contractor is a diversionary tactic. The amount (1,08,95,583/-) is unequivocally linked to the 26 specific forged invoices and the subsequent investment of these funds into subsidiary companies, also controlled by the Petitioner, immediately after the crime demonstrates a case of layering. Further, the argument that the subsidiary companies were not named in the predicate offence FIR is irrelevant, as the PMLA investigation is independent and can charge any person or entity found involved in the laundering of proceeds of crime as per the mandate of *Pavna Dibbur v. Directorate of Enforcement (supra)* wherein it has been stipulated that the accused need not be part of the initial crime to be held liable for laundering the proceeds. The money laundering law focuses on the act of concealing or converting proceeds of crime, and those who facilitate this process, even if they were not involved in the original criminal activity, can still be prosecuted for money laundering.

114. Further, on the basis of ECIR, it is considered view of this Court that the submission of the learned counsel for the petitioner that there are no 'proceeds of crime' is a desperate argument in the face of overwhelming evidence. 'Proceeds of Crime' amounting to 1,08,95,583/- have been clearly identified, being the exact amount received by the Petitioner's company against 26 specific invoices that the CBI investigation and evidence from the oil companies established to be forged and fake and to claim this amount is not proceeds of crime is to ignore the very definition under Section 2(1)(u) of the PMLA.

115. At this juncture, it needs to refer herein that the Hon'ble Apex Court in the case of *Pradeep Nirankarnath Sharma Versus Directorate of Enforcement and Another*, 2025 SCC OnLine SC 560 has observed that as established in multiple judicial pronouncements, cases involving economic offences necessitate a thorough trial to unearth the complete chain of events, financial transactions, and culpability of the accused, therefore the material submitted by the respondent, coupled with the broad legislative framework of the PMLA, indicates the necessity of allowing the trial to proceed and not discharging the appellant at the nascent stage of charge framing and discharging the appellant at this stage would be premature and contrary to the principles governing the prosecution in money laundering cases, for ready reference the relevant paragraphs are being quoted as under:

“30. The PMLA was enacted with the primary objective of preventing money laundering and confiscating the proceeds of crime, thereby ensuring that such illicit funds do not undermine the financial system. Money laundering has far-reaching consequences, not only in terms of individual acts of corruption but also in causing significant loss to the public exchequer. The

laundering of proceeds of crime results in a significant loss to the economy, disrupts lawful financial transactions, and erodes public trust in the system. The alleged offences in the present case have a direct bearing on the economy, as illicit financial transactions deprive the state of legitimate revenue, distort market integrity, and contribute to economic instability. Such acts, when committed by persons in positions of power, erode public confidence in governance and lead to systemic vulnerabilities within financial institutions.

31. The illegal diversion and layering of funds have a cascading effect, leading to revenue losses for the state and depriving legitimate sectors of investment and financial resources. It is settled law that in cases involving serious economic offences, judicial intervention at a preliminary stage must be exercised with caution, and proceedings should not be quashed in the absence of compelling legal grounds. The respondent has rightly argued that in cases involving allegations of such magnitude, a trial is imperative to establish the full extent of wrongdoing and to ensure accountability.

32. The PMLA was enacted to combat the menace of money laundering and to curb the use of proceeds of crime in the formal economy. Given the evolving complexity of financial crimes, courts must adopt a strict approach in matters concerning economic offences to ensure that perpetrators do not exploit procedural loopholes to evade justice.

*33. The present case involves grave and serious allegations of financial misconduct, misuse of position, and involvement in transactions constituting money laundering. The appellant seeks an end to the proceedings at a preliminary stage, effectively preventing the full adjudication of facts and evidence before the competent forum. **However, as established in multiple judicial pronouncements, cases involving economic offences necessitate a thorough trial to unearth the complete chain of events, financial transactions, and culpability of the accused.***

*34. **The material submitted by the respondent, coupled with the broad legislative framework of the PMLA, indicates the necessity of allowing the trial to proceed and not discharging the appellant at the nascent stage of charge framing. The argument that the proceedings are unwarranted is devoid of substance in light of the statutory objectives, the continuing***

nature of the offence, and the significant financial implications arising from the alleged acts. Discharging the appellant at this stage would be premature and contrary to the principles governing the prosecution in money laundering cases.”

116. Thus, from perusal of case record, statements of witnesses, materials available on record and in view of law laid down by the Hon’ble Apex Court as referred hereinabove, this Court is of the considered view that *prima-facie* sufficient materials are available on record for framing of charge against the present petitioner.

117. It needs to refer herein that the Hon’ble Apex Court in the case of ***Munna Devi v. State of Rajasthan, (2001) 9 SCC 631*** has observed that the revisional power under the Code of Criminal Procedure cannot be exercised in a routine and casual manner. While exercising such powers the High Court has no authority to appreciate the evidence in the manner as the trial and the appellate courts are required to do. Revisional powers could be exercised only when it is shown that there is a legal bar against the continuance of the criminal proceedings or the framing of charge or the facts as stated in the first information report even if they are taken at the face value and accepted in their entirety do not constitute the offence for which the accused has been charged.

118. Thus, it is evident that the revisional power can only be exercised to correct patent error of law or procedure which would occasion unfairness, if it is not corrected. The revisional power cannot be compared with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged.

119. The Hon'ble Apex Court in the case of *Asian Resurfacing of Road Agency (P) Ltd. v. CBI, (2018) 16 SCC 299* has held that interference in the order framing charges or refusing to discharge is called for in the rarest of the rare cases only to correct the patent error of jurisdiction.

120. The Hon'ble Apex Court in the case of *State of Tamil Nadu v. R. Soundirarasu, (supra)* has held at paragraphs-81 to 83 as under:

“81. The High Court has acted completely beyond the settled parameters, as discussed above, which govern the power to discharge the accused from the prosecution. The High Court could be said to have donned the role of a chartered accountant. This is exactly what this Court observed in Thommandru Hannah Vijayalakshmi [CBI v. Thommandru Hannah Vijayalakshmi, (2021) 18 SCC 135]. The High Court has completely ignored that it was not at the stage of trial or considering an appeal against a verdict in a trial. The High Court has enquired into the materials produced by the accused persons, compared with the information compiled by the investigating agency and pronounced a verdict saying that the explanation offered by the accused persons deserves to be accepted applying the doctrine of preponderance of probability. This entire exercise has been justified on account of the investigating officer not taking into consideration the explanation offered by the public servant and also not taking into consideration the lawful acquired assets of the wife of the public servant i.e. Respondent 2 herein.

82. By accepting the entire evidence put forward by the accused persons applying the doctrine of preponderance of probability, the case put up by the prosecution cannot be termed as “groundless”. As observed by this Court in C.S.D. Swami [C.S.D. Swami v. State, AIR 1960 SC 7] that the accused might have made statements before the investigating officer as to his alleged sources of income, but the same, strictly, would not be evidence in the case.

83. Section 13(1)(e) of the 1988 Act makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences

charged and never shifts on the accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of properties disproportionate to his known sources of income but the term “known sources of income” would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239CrPC. At the stage of Section 239CrPC, the court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless.”

121. It requires to refer herein that the ambit and scope of exercise of power of discharge, are fairly well settled which has been elaborately discussed in the preceding paragraphs and as per settled proposition of law, no comprehensive assessment of the materials or meticulous consideration of the possible defence need to be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage. The only deliberation at the stage of discharge is “*as to whether prima facie case was made out or not and whether the accused is required to be further tried or not*”.

122. Further, it is well settled that the revisional power cannot be paralleled with appellate power. The Revisional Court cannot undertake meticulous examination of the material on record as is undertaken by the Trial Court or the Appellate Court.

123. From perusal of the impugned orders, it is evident that the learned Special Judge has duly considered the rival submissions, examined the documents and statements placed on record, and thereafter, passed a reasoned order. The discharge application filed by the Petitioner was rejected only after

satisfaction that sufficient grounds exist to proceed against him and consequently, order for framing of charge has also been passed.

124. Hence, on the basis of discussion made hereinabove and taking into consideration the settled position of law as discussed and referred hereinabove and further taking into consideration the ratio of the judgment rendered by the Hon'ble Apex Court in the case of *Pradeep Nirankarnath Sharma Versus Directorate of Enforcement and Another (supra)*, this court is of the considered view that there is no illegality in the impugned orders dated 17.02.2025 and 03.03.2025 passed by the learned Addl. Judicial Commissioner-XVIII-cum-Special Judge, PMLA, Ranchi, in connection with ECIR Case No. 03 of 2023, arising out of ECIR/05/PAT/2012.

125. Accordingly, this Court do not find any justifiable reason to interfere with the impugned orders dated 17.02.2025 and 03.03.2025,

126. In view thereof, the instant criminal revision petitions are hereby, dismissed.

127. Pending Interlocutory Applications, if any, also stand disposed of.

(Sujit Narayan Prasad, J.)

Dated: 07/01/2026

Rohit/-

A.F.R.

Uploaded on 08.01.2026