2026:HHC:45

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Rev. No. 532 of 2024
Reserved on: 25.11.2025
Date of Decision: 1.1.2026.

Pali Diwan ...Petitioner

Versus

Central Bureau of Investigations ...Respondent

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***Yes.***

For the Petitioner	:	Mr N.K. Bhalla, Advocate.
For Respondent No.1	:	Mr Janesh Mahajan, Advocate, Special Public Prosecutor.

Rakesh Kainthla, Judge

The petitioner has filed the present petition for quashing of the order dated 06.7.2024, passed by learned Special Judge (CBI), Shimla (learned Trial Court), vide which the application filed by the petitioner (accused before the learned Trial Court) seeking her discharge was dismissed. (*Parties shall hereinafter be referred to in the same manner as they are arrayed before the learned Trial Court for convenience.)*

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present petition are that the CBI filed a charge sheet stating that the petitioner, Mrs Pali Diwan, Partner of M/s Resource Foods, submitted an application dated 29.9.2010 in the prescribed format along with the relevant documents to avail a non-recurring grant-in-aid for setting up the Integrated Food Chain Project at village Bersa, P.O. Manjohali, Tehsil Nalagarh. The petitioner is a director of M/s Resource Food Private Limited, and she was part of a conspiracy to avail the grant-in-aid; hence, it was prayed that an action be taken against her and the other accused.

3. Learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, she and the other accused filed an application seeking their discharge, asserting that there was insufficient material to proceed against them. The charge sheet did not disclose the commission of any cognizable offence. The chargesheet was based on hearsay evidence. The prosecution suppressed the original document lying in the possession of the Ministry of Food Processing Industry (MoFPI). Witnesses were shown the photocopies, and they expressed their opinions based on the photocopies alone.

The report of the handwriting expert was also based on the photocopies. The photocopies are inadmissible in evidence. The specimen handwriting was taken without following the procedure prescribed under section 311A of the Criminal Procedure Code, 1973 (CrPC). The Investigating Officer was not competent to obtain the signatures of the accused. The officers of MoFPI were not charged, and the charge of conspiracy failed. Hence, it was prayed that the accused be discharged.

4. The application was opposed by the CBI by asserting that the accused had applied for a grant-in-aid in favour of M/s Resource Food Private Limited for setting up an integrated cold chain project from the MoFPI based on the forged and fabricated bills/invoices purportedly issued by different suppliers. The photocopies bear the original signatures of the accused, clearly showing that the photocopies were submitted to the Ministry. There was sufficient material to frame charges against the accused. Hence, it was prayed that the application be dismissed.

5. Learned Trial Court held that the Court has to *prima facie* assess the material collected by the prosecution and determine whether sufficient material existed for framing the

charges. The defence of the accused was not to be seen at the time of framing of charges. The material on record established that photocopies were produced before the Ministry, and such photocopies fall within the definition of the primary evidence. The Investigating Officer stated that the signatures were given voluntarily by the accused, and there is no prohibition on taking the signatures by the Investigating Officer. The accused and other persons had forged various documents and produced them before the Ministry to avail the grant-in-aid. Therefore, the application was dismissed.

6. Being aggrieved by the order passed by the learned Trial Court, the petitioner has filed the present petition asserting that she has nothing to do with the commission of an offence. The petitioner had not submitted any forged documents. The submission of an application for approval of a project to MoFPI cannot be considered a criminal act. The petitioner submitted the application on the prescribed format for sanction of the project on 29.9.2010, along with the required documents. This application was accepted as per the settled guidelines. The charge sheet does not disclose that the petitioner had signed, executed or presented any document in the office of MoFPI. The status of the

petitioner is at par with Smt. Kanan Diwan. She had also signed the loan agreement with the bank as a partner. The charge sheet does not mention that the petitioner had submitted the photocopies of invoices/bills to any Department including MoFPI, at any point in time. The photocopies are not primary evidence and are inadmissible in evidence. The opinion of the handwriting expert based on the photocopies and the report is admissible. No case for framing of charge was made out. Therefore, it was prayed that the present petition be allowed.

7. CBI filed a reply asserting that the petitioner, Smt. Pali Diwan (A3) submitted forged/fake invoices/bills of different vendors, CA and CE Certificates and stamps in connivance with other Directors/Partners. The petitioner Smt. Pali Diwan (A3), her family members and relatives conspired with each other and shifted the plant and machinery from M/s Hillcrest Foods Ltd. to Resource Foods Pvt. Ltd. The staff of the Government of India aided this forgery and caused loss while sanctioning grand-in-aid. The original invoices/bills could not be produced despite the best efforts. Even the MoFPI and the Bank of India, which had sanctioned the loan in favour of the firm, failed to collect the original record and violated the norms and rules to sanction the

grant-in-aid and term loan. The companies that are stated to have issued the invoices and supplied the machines stated that they had not issued any invoices or sold any machinery to M/s Resource Foods Private Limited. Therefore, it was prayed that the present petition be dismissed.

8. A rejoinder denying the contents of the reply and affirming those of the petition was filed.

9. I have heard Mr N.K. Bhalla, learned counsel for the petitioner, and Mr Janesh Mahajan, Advocate, learned Special Public Prosecutor, for the respondent/CBI.

10. Mr. N.K. Bhalla, learned counsel for the petitioner, submitted that, as per CBI, the petitioner had applied for a grant-in-aid. There is no allegation that the petitioner had submitted forged certificates/documents after the loan was sanctioned. The criminal law does not recognize vicarious liability. Hence, he prayed that the present petition be allowed and the FIR be quashed qua the petitioner. He relied upon the judgment titled ***Vunna Visali Vs. State of A.P. and others MANU/AP/00979/2001, Proddaturi Shobha Rani and others Vs. State of A.P. and others MANU/AP/0133/2020, State of HP Vs. Pirthi Chand and others***

MANU/SC/0259/1996, Monaben Ketanbhai Shah and another Vs. State of Gujarat and others (2004) 7 SCC 15, Sham Sunder and others Vs. State of Haryana MANU/SC/0494/1989, Ashok Kumar Tyagi Vs. State of HP and others MANU/HP/0283/2015 and ***Jyoti Peris Vs. CBI 2025:HHC:36358*** in support of his submission.

11. Mr Janesh Mahajan, Advocate, learned Special Public Prosecutor, for the respondent/CBI, submitted that the petitioner was a Director/Partner of M/s Resource Foods Limited. She had forged and submitted various documents to MoFPI to avail a grant-in-aid. Her application for discharge was rightly dismissed by the learned Trial Court. Therefore, he prayed that the present petition be dismissed.

12. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

13. It was laid down by the Hon'ble Supreme Court in ***Vishnu Kumar Shukla v. State of U.P., (2023) 15 SCC 502: 2023 SCC OnLine SC 1582*** that the Court framing the charges has to see a *prima facie* case. It is impermissible to examine the material threadbare to determine whether the accused is likely to be convicted or not. It was observed: -

> "**12.** The primary consideration at the stage of framing of charge is the test of the existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the ***State of Maharashtra* v. *Som Nath Thapa*, *(1996) 4 SCC 659*** and the ***State of MP* v. *Mohan Lal Soni*, *(2000) 6 SCC 338*** has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

14. It was held in ***Ram Prakash Chadha v. State of U.P.*, *(2024) 10 SCC 651: (2025) 1 SCC (Cri) 253: 2024 SCC OnLine SC 1709*** that the Court can sift and weigh the evidence to determine if a *prima facie* case exists against the accused. It was observed at page 661:

> "**24.** In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227CrPC, and entering into the scope of power under Section 232CrPC, cannot be ruled out, as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in ***Om Parkash Sharma* v. *CBI*, *(2000) 5 SCC 679: 2000 SCC (Cri) 1014***. Taking note of the language of Section 227CrPC, is in

> negative terminology and that the language in Section 232CrPC, is in the positive terminology and considering this distinction between the two, this Court held that it would not be open to the Court while considering an application under Section 227CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232 CrPC, even though the said stage has not reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232 CrPC, available only after taking the evidence for the prosecution and examining the accused.

15. It was held in ***Yuvraj Laxmilal Kanther v. State of Maharashtra, 2025 SCC OnLine SC 520,*** that the Court is not to undertake a threadbare analysis of the material but to see if there is sufficient material to frame charges. It was observed:

> **"16.** Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is 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 are no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the

> prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, the court is only required to consider whether there are sufficient materials that can justify the launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on the benefit of doubt, or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify the launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused."

16. The present petition has to be adjudicated as per the parameters laid down by the Hon'ble Supreme Court.

17. It is undisputed that the petitioner had submitted the proposal to the MoFPI containing various invoices. Ram Pal told the CBI that the invoices shown to him and used for obtaining grant-in-aid were not issued by his firm, but these were forged by promoters of Resource Foods Pvt. Ltd. Vikas Aggarwal stated that he had sent the printed and self-attested copies of the quotation through e-mail ID. The documents submitted by M/s Resource Foods Ltd. were not the same which were sent by him. The price of the quotation was increased from ₹7,80,000/- to ₹1,18,00,000/- by the promoters of the company. This quotation

was sent to Ravi Bhushan Gupta, who sent it to the email ID of Pooja Aggarwal on 3.7.2012. The quotation was edited at the receiver's end. Gautam Jha stated that he had sent the printed self-attested copies of the quotation of Fresh Food Technology in the name of Ms Pooja Aggarwal/Mr. Diwan on the email ID of Pooja Aggarwal. The date of the quotation and the names of the person in whose name the quotations were issued were edited. The amount was also altered from ₹1,72,148.05 to ₹3,95,0000/-. Ravi Bhushan Gupta and Ravish Gagla corroborated this version. These statements show that the quotations sent to Pooja Aggarwal on her e-mail ID were edited and submitted to MoFPI. *Prima facie*, these statements show that the petitioner had submitted a proposal annexing forged documents.

18. It was laid down by the Hon'ble Supreme Court in ***Ram Prakash Chadha*** (supra) that the direct evidence of conspiracy cannot be produced; however, it can be inferred from the circumstances showing that the parties consented to do an illegal act. It has been observed:-

> **32.** There can be no doubt that a conspiracy is hatched in privacy and not in secrecy, and such it would rarely be possible to establish a conspiracy by direct evidence. A few bits here and a few bits there, on which the prosecution

> may rely, are not sufficient to connect an accused with the commission of the crime of criminal conspiracy. To constitute even an accusation of criminal conspiracy, first and foremost, there must at least be an accusation of a meeting of minds of two or more persons for doing an illegal act or an act, which is not illegal in itself, by illegal means.
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> **33.** In ***Ajay Aggarwal v. Union of India, (1993) 3 SCC 609: 1993 SCC (Cri) 961***, this Court characterised the offence of criminal conspiracy as an agreement between two or more persons to do an illegal act or a legal act through illegal means. Furthermore, it was held that commission of the offence would be complete as soon as there is consensus ad idem, and it would be immaterial whether or not the offence is actually committed. It is also held therein that necessarily there must be agreement between the conspirators on the design or object of the conspiracy. As held in the ***R. Venkatkrishnan v. CBI, (2009) 11 SCC 737 : (2010) 1 SCC (Cri) 164***, the quintessential ingredient to attract the offence of criminal conspiracy is agreement between two or more persons. Therefore, the question is whether it was spelt in the final report dated 21-2-2000 or in any of the records of the case and documents submitted therewith, to find a prima facie case of commission of criminal conspiracy against the appellant. True that an agreement referred to in Section 120-AIPC may be expressed or implied, or in part express and in part implied. However, no record of the case or documents submitted therewith carries such an allegation/accusation against the appellant."

19. A heavy reliance was placed upon the fact that the original documents were not produced with the charge sheet. This submission will not help the petitioner. The CBI has specifically asserted that the photocopies were submitted to the MoFPI, and the production of the original documents was not

possible. It is a matter of trial whether the original documents were submitted to the MoFPI or the photocopies were submitted. However, the petitioner cannot be discharged because the original documents were not submitted without allowing the CBI to prove the plea taken by it.

20. It was submitted that the CBI was not competent to take the specimen signatures. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***Dara Singh v. Republic of India*, *(2011) 2 SCC 490 : (2011) 1 SCC (Cri) 706: 2011 SCC OnLine SC 219*** that the procedure of taking the specimen handwriting adopted by the CBI cannot be faulted. It was observed at page 525:

> **75.** Another question which we have to consider is whether the police (CBI) had the power under CrPC to take the specimen signature and writing of A-3 for examination by the expert. It was pointed out that during the investigation, even the Magistrate cannot direct the accused to give his specimen signature at the asking of the police, and only after the amendment of CrPC in 2005, power was given to the Magistrate to direct any person, including the accused, to give his specimen signature for the purpose of investigation. Hence, it was pointed out that, taking of his signature/writings being per se illegal, the report of the expert cannot be used as evidence against him.
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> **76.** To meet the above claim, the learned Additional Solicitor General heavily relied on an eleven-Judge Bench decision of this Court in ***State of Bombay v. Kathi Kalu Oghad***

> *[AIR 1961 SC 1808 : (1961) 2 Cri LJ 856 : (1962) 3 SCR 10]*. This larger Bench was constituted in order to re-examine some of the propositions of law laid down by this Court in **M.P. Sharma v. Satish Chandra [AIR 1954 SC 300: 1954 Cri LJ 865: 1954 SCR 1077**].
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> xxxxx
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> **78.** In view of the above principles, the procedure adopted by the investigating agency, analysed and approved by the trial court and confirmed by the High Court, cannot be faulted with. In view of the oral report of Rolia Soren, PW 4 which was reduced into writing, the evidence of PW 23, two letters dated 1-2-2002 and 2-2-2002 addressed by Mahendra Hembram (A-3) to the trial Judge facing (*sic* confessing) his guilt coupled with the other materials, we are unable to accept the argument of Mr Ratnakar Dash, learned Senior Counsel for Mahendra Hembram (A-3) and we confirm the conclusion arrived at by the High Court.

21. Madras High Court also held in ***Babitha Surendran v. State, 2015 SCC OnLine Mad 14003,*** that the police have the power to take specimen signatures during the investigation. It was observed:

> "**8.** X", an high ranking official, receives a handwritten letter in the letter head of "Y", containing serious insinuations and also handing out death threat to him. "X" hands over the letter with a complaint to the police, based on which an FIR is registered against "Y" and an investigation is taken up. During the course of the investigation, police summon "Y", who accepts that the letterhead belongs to him, but denies the authorship of the contents. So, the next step for the police should be to ask "Y" to give his specimen signatures and handwriting. When asked by the Police, "Y" voluntarily gives his specimen signatures and handwriting. Police do not arrest "Y", and they allow him to leave. During the investigation, the police suspect one

"Z" and they examine him, and in the course of examination, they ask "Z" to give his specimen handwritings and signatures, which he gives. Specimen handwritings and signatures that were obtained from "Y" and "Z" are sent to the Handwriting Expert along with the subject letter received by "X", for opinion. The Handwriting Expert opines that the subject letter has been written by "Z" and not by "Y". Police consciously take a decision not to arrest "Z", but after completing the investigation, they file a Final Report before the Court against "Z" for the offence of criminal intimidation, etc.

9. Can we say that the police have committed an illegality by obtaining the specimen handwritings and signatures of "Y" and "Z" and therefore, the prosecution should fail? The answer is an emphatic "No". The power of the police to obtain handwriting and signatures during the course of investigation from witnesses, suspects and accused has never been questioned, because it was considered a concomitant power of investigation that inheres in the police.

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> **11.** From the aforesaid texts themselves, it is abundantly clear that it is an inclusive definition and not an exhaustive definition. As long as there is no constitutional or statutory prohibition inhibiting the Police from obtaining specimen handwritings and signatures from an accused, it cannot be stated that the police are denuded of this power. The mere obtaining of specimen signatures or handwriting from the accused cannot, by itself fasten any criminal liability on him, because the same has to be compared by an Expert with the disputed one for fastening criminal liability, unlike a statement to a Police Officer which, proprio vigore may mulct the suspect with criminal liability if it is in the nature of a confession. The handwriting or signatures obtained from an accused cannot, by itself, fasten any criminal liability, unless it is sent to an expert to

> be compared with the disputed one and an opinion is obtained.
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> **Xxxx**
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> **17.** To say that Section 311-A is the only repository of the power to obtain signatures and handwriting from the accused during investigation would amount to denuding a power that always existed with the police. Section 311-A was introduced in the Statute nearly 25 years after the Supreme Court made a suggestion in *State of Uttar Pradesh* v. *Ram Babu Misra* [(1980) 2 SCC 341] : (AIR 1980 SC 1522).
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> **18.** In my considered opinion, Section 311 A, Cr. PC. is an enabling provision which comes to the aid of the Investigating Agency, when a suspect or accused refuses to give his specimen signatures or handwriting.

22. Hence, it is difficult to agree with the submission that the CBI had no jurisdiction to take the specimen signatures.

23. The judgments cited on behalf of the petitioner deal with the vicarious liability of the Director/Partner, and they do not apply to the present case because the petitioner is not being implicated because of her position, but because of the submission of an application annexing forged documents.

24. Therefore, the plea of the petitioner that the learned Trial Court erred in dismissing her application for discharge cannot be accepted. Learned Trial Court had rightly held that a *prima facie* case exists for framing charges against her, and no

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interference is required with the order passed by the learned Trial Court.

25. In view of the above, the present petition fails, and the same is dismissed.

26. The observation made herein before shall remain confined to the disposal of the petition and will have no bearing, whatsoever, on the merits of the case.

(Rakesh Kainthla)
Judge

1st January, 2026
(Chander)