HIGH COURT OF MADHYA PRADESH,
BENCH AT GWALIOR

DB HON'BLE MR JUSTICE U.C.MAHESHWARI, &
HON'BLE MR JUSTICE SUSHIL KUMAR GUPTA

CRIMINAL REVISION NO.917/2014

(1) Rakesh Singh Narwaria
(2) Shrimati Girja Narwaria

Vs.

State of Madhya Pradesh

AND

CRIMINAL REVISION NO.949/2014

(1) Ahivaran Singh
(2) Chandrabhan Singh
(3) Surendra Singh Narwaria

Vs.

State of Madhya Pradesh

Shri MZ Chowdhary, Shri Pradeep Katare & Shri VD Sharma, learned counsel for the revisionists.

Shri B.K.Sharma, learned Government Advocate for the respondent State.

O r d e r
(Passed on 26th day of August, 2015)

Per U.C.Maheshwari, J.

This order shall govern the disposal of aforesaid both the revisions as the same are preferred against the common order of the Trial Court.

2. These revisions have been preferred on behalf of revisionists under Section 397/401 of Cr.P.C. being aggrieved by the order dated 16/10/2014 passed by the Court of Special Judge constituted under the provisions of *MP Nikshepakon*

Ke Hiton Ka Sanrakshan Adhiniyam, 2000 (for brevity "Adhiniyam of 2000"), Gwalior in Special Case No.02/2013 dismissing their application in part filed under section 227 of Cr.P.C. for discharging them from the offences, charge sheeted and proved the charges made punishable under section 420 of IPC (Twenty times), Sections 3(1)(2) and (4) of the Adhiniyam 2000 and Section 3 r/w 4 and Section 5 r/w 6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (in short "the Act of 1978").

3. Facts giving rise to these revisions, in short, are that the District Magistrate/Collector, Gwalior on receiving the complaints in writing on 3/7/2010 from Total TV National Channel to the effect that M/s Pariwar Dairy and Allied Limited, Ganesh Plaza, Gole Ka Mandir, Gwalior (hereinafter, referred to as "Company"), without having any registration from Reserve Bank of India is collecting money in the shape of FD/RD from the general public, issued show cause notice dated 13/7/2010 to the above-mentioned company directing to produce its registration with the Reserve Bank of India, Registrar of Companies along with the documents relating to the transactions carried out by such company, within seven days in its office. In response to such show cause notice, reply was filed on 17/7/2010 and after going through such reply it was found by the Collector/District Magistrate that the aforesaid company

contrary to law and the interest of the public at large is collecting money without any registration with the Reserve Bank of India for dairy and ago-products while as per section 45(1) (A) of the Reserve Bank of India Act, 1934, any non-Banking Financial Company without having registration from the Reserve Bank of India cannot accept money from the public, on which the Collector/District Magistrate vide letter dated 8/12/2010 (Annexure A/2) directed the Town Inspector, Police Station, Gole Ka Mandir, Gwalior to collect information with respect to the aforesaid subject, enquire, investigate and file its case in the Court of District & Sessions Judge.

4. On receiving such communication, the Station House Officer, Police Station Gole Ka Mandir, Gwalior, initially has filed a complaint case in the Court of Chief Judicial Magistrate, Gwalior against as many as nine accused, *inter alia* in such complaint it was contended that on receiving information in writing by the Collector, Gwalior he had directed the SHO, PS Gole Ka Mandir, Gwalior to enquire, investigate and file appropriate proceedings before the Court. As per further averments, on calling the information from the company through notice in writing, the reply of the same was not filed. On information available, it was established that since last eight years, such company is functioning at Gwalior in which the alleged accused V Abbas

S/o Nisar Abbas was working as AGM and one Amit Shrivastava was working as a Manager. Said company was registered on 31.10.2002 with the Registrar of Companies under Companies Act. Copies of registration as well as Memorandum of Association were also annexed with the complaint. According to such Memorandum of Association, main object of the company was to carry out the business of Animal Husbandary and sale of milk products and some other business. It was also stated that the company was collecting money through its agents from the persons or public, who wanted to contribute their share in the proposed scheme and plans. It is also established that such company is functioning as a Financial Institution without having any registration and permission from Reserve Bank of India under sections 45(I) (A) of the RBI Act, 1934 for which separate information was also sent to the Reserve Bank of India. It was also found that in connection with the alleged business of the company, the requisite information about transactions and collection of money were not given to the District Magistrate or the Collector as per requirement of the provisions of Adhiniyam 2000. As per available papers, such complaint was filed by the SHO, PS Gole Ka Mandir, Gwalior in the Court of Chief Judicial Magistrate, Gwalior on 25/12/2010. At subsequent stage, vide order dated 5/7/2011, such Court, in the lack of jurisdiction to entertain such

complaint, after passing the appropriate order by such court, was returned to the Police Station University, Gwalior with a direction to produce before the competent court in accordance with the procedure prescribed under the law.

5. Apart the aforesaid, on the basis of said letter of Collector/District Magistrate dated 8/12/2010 on establishing the prima facie case against the revisionists for committing the cognizable offences, the First Information Report as Crime No.255/2011 was registered on 28.5.2011 against the revisionists, the Directors, employees and other persons relating to the aforesaid company for the offence made punishable u/s 420 IPC. According to the FIR (Annexure A/4), Rakesh Singh Narwaria and Shrimati Girja Narwariya (revisionists of Cr.R.917/2014) being promoters of company, were Managing Director and Director of the same, while revisionists of Cr.R.949/2014, namely, Ahivaran Singh, Chandrabhan Singh and Surendra Singh Narwaria being Directors of the company were related to the regular transactions and business of the company. As per further averment of the FIR, aforesaid company since last 9 years from 31.10.2002 from the date of its registration has been collecting money from public at large to carry out the aforesaid business of cattle and milk products in consonance of the alleged object of the company, but no documentary or other evidence in that respect was found to be available with

the company. Information regarding utilization of investment of such collected huge money was also not available with the company, even in this regard no accounts were found. As such persistently with some planning to defraud the public by giving them the allurement in the name of different schemes, the huge money was being collected by the revisionists as office bearers of the company and also through other related persons of the company. In fact, the company was working as Non-Banking Financial Institution in a very suspicious manner with no transparency. Even there was no scheme or guarantee to the depositors to return the collected sum. The company was also not registered on financial institution with the Reserve Bank of India under the relevant provisions. The dishonest intention of the officials of the company to defraud the public at large is also established. Such activities were also carried out by the company without giving any intimation regarding its any of the transactions to the District Magistrate/Collector under the concerning provisions of the Adhiniyam 1978 and 2000. As such, the company by showing temptation to give them more benefit with multiplication of their deposits within short period had collected the money. In this connection, on some papers relating to the transactions of the real estates under assurance to give the benefits to the depositors, their signatures were also taken by the company, but in any of

such papers, the description of any real estate was not mentioned. It is also stated that none of such real estate was shown to any of the investors before taking their deposits by the company. In this regard requisite information regarding collection of the sum in the aforesaid manner was not given timely to the Collector/District Magistrate as per mandatory provisions of the Adhiniyam of 2000. Accordingly, the revisionists, being Directors and office bearers of the company collected the money in illegal manner by themselves and through their agents, brokers so also with the assistance of their employees. On such premises the aforesaid crime was registered against the revisionists and other co-accused for the offence of Section 420 of IPC, Sections 3(1)(2)(4) of the Adhiniyam of 2000 and section 45-5/58(B) (5A) of the RBI Act, 1934.

6. After registration and investigation, revisionists herein were arrested. Various documents were seized. Interrogatory statements of various defrauded victims were recorded. On completion of the investigation, the revisionists along with other co-accused were charge sheeted before the Special Court constituted under the Adhiniyam of 2000.

7. At the stage of consideration of charge, on behalf of revisionists, a joint application under Section 227 of Cr.P.C. to discharge them was filed. Besides the aforesaid application of the revisionists, other co-accused Amit,

Gaurav, Sudhindra and Rahul had also filed such application separately to discharge them from the alleged offences. The same was rejected by the impugned order. However, we have not been apprised by any of the parties or by the Registry that any criminal revision at the instance of any of such accused against the impugned order framing charges against them is pending before this Court.

8. In the aforesaid application of the revisionists herein filed in the trial court under section 227 of Cr.P.C. it is contended that on taking into consideration the evidence collected by the investigating agency and submitted with the charge sheet, as accepted in its entirety, even then ingredients of any of the alleged offences are not made out against any of the revisionists. It is further stated that the revisionists being Directors, office bearers or employees of the company in question have not committed any such act comes under the purview of any of the alleged offence.

9. In addition, it is also contended that after registration of the offences, in pendency of investigation, revisionists of Cr.R. 917/2014 namely Rakesh Singh Narwaria and Smt Girja Narwaria approached to the superior authorities of the Police Department with a prayer to carry out fresh and fair enquiry in the matter, on which some senior officials of the Police Department were directed to examine the matter. On such examination, the City

Superintendent of Police (CSP) vide its report dated 27/12/2011 said that none of the alleged offences are made out against such revisionists. Such report of the CSP was approved by the District Prosecution Officer (DPO). Same was also approved by Additional Superintendent of Police (ASP) vide it's report dated 10/7/2012, thus, there is sufficient circumstances to draw the inference that these two revisionists have not committed any of the alleged offence.

10. It was further stated in such application on behalf of all the revisionists that after withdrawing complaint filed by the SHO, Gole Ka Mandir, Gwalior, from the court of Chief Judicial Magistrate, there was no occasion to hold the investigation on FIR and file the charge sheet against them for the alleged offence.

11. In addition to the aforesaid, on behalf of the revisionists of Cr.R.917/2014 namely Rakesh Singh Narwaria and Shrimati Girja Narwaria prayer to discharge them was also made on the ground that before registration of the offences or in any case before the date of the alleged offences they were not remained the Directors of such company. Because revisionist Rakesh Singh Narwaria had resigned from the company on 20/8/2008 while revisionist Shrimati Girja Narwaria had resigned on 10/11/2006 and such resignations were accepted by the Assistant Registrar

of Companies on 31/1/2007. Hence, in any case, revisionists of Cr.R.917/2014, on the date of the alleged offences, were neither remained the Directors of the company nor were related to any business of the company. Thus, in such circumstances also, the alleged charges could not be framed against these two revisionists of Cr.R.917/2014.

12. On consideration, on evaluation of papers of the charge sheet submitted along with the police report filed under section 173 of Cr.P.C. the trial court by holding that besides the papers of investigation, if any report is prepared independently by Senior Officers of the Police Department contrary to the investigation and the interrogatory statements of the victims, recorded by the investigating officer, then such report being not relevant at the stage of framing the charges could not be taken into consideration to discharge the revisionists, the same may be used by the accused in their defence on holding the trial after framing the charges and such application u/s 227 of Cr.P.C. was dismissed in part and the charges under challenge were framed while by allowing such application on technical ground, the revisionists were discharged from the alleged offence of R.B.I. Act, 1934, on which the revisionists have come to this Court with these revisions.

13. Respective counsel of the revisionists Shri Chowdhary and Shri Katare after taking us through the

papers placed on record argued that the impugned FIR was not lodged by any of the victims, defrauded by practicing fraud by the revisionists or any of them. Apart this, none of the victims had made any allegation against the revisionists for committing the alleged offences. Apart this, none of the victims had approached directly to the Police to register the offences against the revisionists. Counsel further said that the prosecution has neither collected nor produced any evidence along with the police report under section 173 of Cr.P.C. to connect the revisionists or any of them with the alleged offence, as such from the charge sheet filed the chain or the ingredients of the alleged offences to connect the revisionists or any of them is not complete, so the impugned charges framed are not sustainable. It was also argued that initially the SHO, PS Gole Ka Mandir, Gwalior had filed a complaint against nine persons/accused and in such complaint, any of the revisionists were not implicated as an accused but after withdrawal/returning such complaint on technical ground of jurisdiction from the court of Chief Judicial Magistrate on the basis of investigation carried out by the SHO of the same Police Station, on the basis of FIR lodged by such SHO, in his name, how the impugned charge sheet could have been filed. Under the existing law, such police officer SHO did not have any authority to investigate the matter and, therefore, entire process of investigation

being carried out contrary to law, the charge sheet is not sustainable. He further said that besides the investigation carried out by the investigating officer on which charge sheet has been filed, at the instance of the revisionists, senior officials of the Police Department were directed by the higher authorities of the State to enquire into the matter, pursuant to that, CSP, Gwalior had given its report dated 27/12/2011 (Annexure A/7) to the Superintendent of Police. According to which, the present revisionists and other named accused have not committed the alleged offence of section 420 of iPC with the further averments that on the facts stated in the FIR of Crime No.255/2011 registered on 28/5/2011, the offence of section 420 of IPC is not made out. The DPO vide his letter dated 01/02/2012 has also opined that the alleged offences are not made out against the revisionists. Besides this, the Additional Superintendent of Police (City) (East), District Gwalior after perusing the aforesaid report of CSP (Annexure A/7) as well as the report of DPO sent his report dated 10/7/2012 (Annexure P/9) to the Superintendent of Police, Gwalior with the recommendation to carry out the proceedings according to the opinion of the DPO, Gwalior and the report of the CSP.

14. In continuation, Shri Chowdhary, by referring to Annexure A/10 a letter dated 7/3/2013 written to the Superintendent of Police by the SHO, PS Gole Ka Mandir

that in the light of the resignations of the revisionists of Cr.R.917/2014 from Directorship of the company before registration of the offence, no offences are made out against them and recommended to exclude the names of such revisionists Rakesh Singh Narwaria and Shrimati Girija Narwaria from the list of the alleged accused, initially, as per his information such recommendation was accepted, but later for the reasons best known to the investigating agencies, the revisionists of Cr.R.914/2014 were also arrested and charge sheeted in the impugned crime.

15. In addition to the aforesaid, by referring the provisions of section 3(1)(2) and (4) of the Adhiniyam of 2000, he said that in such provision, the maximum punishment of three months or fine upto Rs.100/- or both has been prescribed and as per section 468 Cr.P.C., in view of prescribed maximum punishment of such offence the cognizance of the same could have been taken by the Court if the complaint/charge sheet is filed within one year from the date of committing such offence and in the case at hand the aforesaid period of limitation was already over on the date of taking the cognizance, therefore, such charge could not have been framed by the Trial Court. It was also argued that charge of S.3 read with S.4 and S.5 read with S.6 of the Prize Chits and Money Circulation Scheme (Banning) Act, 1978 (for short, the “Adhiniyam of 1978”) is also not

sustainable because under such provisions maximum punishment of three years with fine has been prescribed and in view of such prescribed maximum punishment if the case is examined in the light of section 468 of Cr.P.C., then the cognizance of such offence could have been taken by the Trial Court only if the complaint/charge sheet is filed within three years from the date of the alleged offences. In the case at hand, it is apparent that charge sheet in respect of this offence has not been filed within the aforesaid prescribed period of three years. Thus, such charge could not have been framed because the period of limitation was already over. In such premises, he said that if the ingredients of the alleged offence of section 420 of IPC are not found to be established as argued by him from the charge sheet, then the revisionists ought to have been discharged from these offences also. In any case, the charges of the Adhiniyam of 2000 and the Adhiniyam of 1978 being framed against the revisionists by taking the cognizance beyond the period of limitation are not sustainable.

16. In continuation, by referring to the interrogatory statements of the witnesses, he said that on taking into consideration the same, ingredients of any of the alleged offences are not made out against any of the revisionists. He categorically said that on the basis of these interrogatory

statements, it could not be inferred that any of the alleged offences was committed by the company or its Directors or office bearers, employees or other connected persons with an intention to defraud the public or any of the alleged victims. Apart this, any of the alleged victims had not made any complaint or report to the authorities saying that they have been defrauded by the applicants or their company. With these submissions, he assailed the impugned order of the Trial Court framing charges and prayed to set aside such order and discharge the revisionists from all the alleged charges. He also placed his reliance on some reported cases.

17. On the other hand, responding the aforesaid arguments, Shri BK Sharma, learned GA, by justifying the impugned order as well as the charges framed against the revisionists of both the revisions said that same being framed on proper evaluation of the papers of the charge sheet filed after holding investigation in accordance with the procedure prescribed under sections 154 to section 173 of Cr.P.C. do not require any interference at this stage to discharge any of the revisionists of any revision. He further said that in view of law laid down by the Apex Court in the matter of ***State of Orissa Vs. Debendra Nath Pandhi, AIR 2005 SC 359*** holding that the documents of the defence, which are not the part of the charge sheet, being not the part of the investigation could not be taken into

consideration at the stage of framing charge to discharge the accused. Such documents subject to admissibility under the existing law could be produced in defence while recording the evidence in trial and same be taken into consideration at the stage of appreciation of evidence and not prior to that. In such background, he said that it is apparent from the record that after receiving the information in writing about committing the alleged cognizable offence by the company of the applicants, having knowledge of the same, the District Magistrate/Collector has sent the same to the SHO, PS Gole Ka Mandir with a direction to enquire and investigate the same and file appropriate proceedings before District and Sessions Court. Subsequent to that, in view of some provisions of RBI Act, a complaint was filed by such SHO of such Police Station in the Court of Chief Judicial Magistrate Gwalior and later on coming to known by such Court that it has no jurisdiction to entertain such complaint, thereby closing the proceedings, the complaint was directed to be returned to the police to file before appropriate court having the territorial jurisdiction under the law. He further said that in view of aforesaid report in writing received from the Collector, Gwalior, on enquiry, it was established that the company of the revisionists named above through their Directors (the revisionists), office bearers, agents, brokers and employees

had given the offer to the public at large with temptations to multiply the sum with extra benefit, if the sum is deposited with the company in its any of the schemes. In such offer, no specific warrantee or procedure to refund the deposited sum with benefit was given to the public. Pursuant to this offer of the company, the victims of the case and other various persons had approached the company from whom the huge sum after giving the receipt and policy were collected by the company. But subsequent to promoting the company and accepting the deposits of the victims and others, according to the object stated in the Memorandum of Association, in which project such deposited sums were spent or invested, was neither informed to the victims nor to the authorities. Although, on certain papers, the signatures of the victims/ beneficiaries/depositors without mentioning the descriptions of any property were taken by the company. Accordingly, the revisionists being promoters and/or Directors of the company in question, soon after registration of the company had started illegal offending activities of collecting sums from the public at large with dishonest intention by giving aforesaid temptations. He further said that it is apparent from the papers of investigation that the record showing the investments of the deposited sums of the victims by the company or the papers relating to any such transactions of the property was not found with the company and its

Directors. Apart this, the information with details of deposits and transactions as per requirement of the provisions of “Adhiniyam, 2000” and “Adhiniyam, 1978” were neither sent to the District Magistrate nor any permission in this regard was obtained under such Adhiniyams from the District Magistrate. So, in such premises, it could be inferred that the company (Non-Financial Banking Company) was promoted and got registered by the revisionists/applicants with dishonest intention to defraud the public at large as at the time of registration of the company it was known to the revisionists that their company will neither give any profit of the cattle business or milk products nor any plot or land to its depositors. In spite that, by giving the aforesaid assurance, money was taken from various persons (victims). It is apparent from the available record that from some of the depositors money was taken by the company during the period on which the revisionists of Cr.R.917/2014 were the regular Directors and looking after the affairs and regular business of such company. He further said that on papers if they left the company by tendering resignations and same were accepted by the Registrar of Companies, as argued by the revisionists' counsel, even then, in view of prima facie available evidence in the interrogatory statements of the witnesses recorded under section 161 of Cr.P.C. filed with the charge sheet, in which names of the revisionists

Cr.R.917/2014 are mentioned with their active roles to commit fraud with such depositors victims. Therefore, mere on technical ground that they had resigned from the Directorship of the company before registration of the offence, they could not be discharged from the case unless the depositions of such witnesses are recorded and appreciated in trial and appreciated by the court.

18. Learned State counsel further stated that as per settled proposition, at the stage of framing charges, the Court is bound to evaluate the papers and evidence collected by the investigating agency and filed with the charge sheet under section 173 of Cr.P.C and not the other papers placed or called on the record otherwise at the instance of either parties. In view of such legal position, on examining the case at hand, then it is apparent that in pendency of the investigation and after recording the interrogatory statements of the victims for one reason or the other at the instance and approach of the revisionists of Cr.R.917/14, the senior authorities of the Police Department had given to enquire the matter to other officers and not to the investigating officer of the case on which CSP, Police had separately examined the matter and gave its report, in such process, some opinion was also given by the DPO; later the ASP with certain recommendations sent such report to the SP. Apart this, a letter in the line of the aforesaid report and

opinion was also given by the SHO of the Police Station to the Superintendent of Police to exclude the names of the revisionists of Cr.R.917/14 that on the date of registering the offence they did not remain in the company in question. He said that, in any case, such report being not part of the investigation carried out by the appointed and authorized investigating officer and the charge sheet filed could not be taken into consideration at the stage of framing the charges. After framing the charges, at the appropriate stage of trial, the applicants/revisionists may use such reports and documents in defence. But at the stage of framing the charges those reports of CSP, DPO, ASP and SHO could not be a foundation to discard the evidence and papers produced by the investigating agency along with the police report u/s 173 of Cr.P.C. So, in such premises, opinion of the DPO and reports of the CSP, ASP and other officers being contrary to the investigation of the case carried out by the investigating officer is of no help to the revisionists of Cr.R.917/2014.

19. In support of the contentions, State counsel has also placed his reliance on some reported cases.

20. Having heard the counsel, keeping in view their arguments, we have carefully gone through the papers placed on record along with the copy of the charge sheet and the impugned order.

21. It is an undisputed fact that the revisionists of Cr.R.917/2014 being Promoters of the company remained Managing Director and Director of such company since the date of its registration 31.10.2002. In the directorship of such revisionists, the revisionists of Cr.R.949/2014 also remained in such Non-Banking Financial Company either as Director or otherwise and under their directions, without having any permission of the District Magistrate/Collector or under the relevant laws, since registration of the company, by giving offer to the public to deposit and invest their money for more profit in their company for its business of cattle and milk products so also of real estate, they have collected huge sums from the public (including the victims). It is also apparent from the papers of the charge sheet filed with the police report that while collecting such money from the victims, no scheme was shown or apprised to the investors/depositors that in which manner such money would be returned to such depositors; whether in the shape of plot or money or in any other manner. In the interrogatory statements of the victims recorded under section 161 of Cr.P.C., the names of the revisionists of both the revisions with their alleged offending act are categorically stated. Thus, in view of such prima facie evidence of committing the alleged fraud by the revisionists, the trial court has not committed any error in passing the impugned order.

22. Under section 420 of IPC, the maximum punishment upto seven years or with fine or with both, has been prescribed. Under section 468 of Cr.P.C., in respect of the offence in which maximum sentence of more than three years is prescribed, no period of limitation is prescribed, so, in such premises, the trial court has not committed any error in framing the charges of section 420 of IPC against the revisionists of both the revisions, as from the charge sheet the prima facie ingredients of such alleged offence of section 420 of IPC were made out against the revisionists.

23. So far as the reports of the CSP, DPO, ASP and SHO referred by the counsel for the revisionists are concerned, same being contrary to the investigation process and the available papers, could not be considered at the stage of framing the charges to discharge the accused, because as per settled proposition of law, at the stage of framing charges, only prima facie ingredients of the alleged offences from the charge sheet are to be seen by the Court and not to consider the question whether on holding the trial the case would be culminated into conviction or not. As such, in view of the reports of CSP, DPO, ASP and SHO, on which the revisionists' counsel have relied upon, mini trial of the case at the stage of framing charges being not permissible could not be held. True it is, if there is no evidence against the revisionists in the charge sheet in respect of the alleged

offence, then certainly they deserve to be discharged from the alleged case, but where there is prima facie evidence in the charge sheet and the interrogatory statements of the witnesses against the accused like the revisionists for committing the alleged offences, then there is no option with the Court except to frame the charges of the offences and in such premises, the revisionists could not be discharged from the alleged offence of section 420 of IPC.

24. It is apparent from the impugned order that in the lack of compliance of the mandatory provisions of the Reserve Bank of India Act in filing the impugned charge sheet/complaint as the same was not filed by the competent officer prescribed under such enactment, the charge of the offence of sections 45(1) and 45(5) of the RBI Act has not been framed by the Trial Court and the revisionists have been discharged from such charge and till this extent, the revisionists' impugned applications filed u/s 227 of Cr.P.C. has already been allowed by the Trial Court.

25. So far as charges of the offences framed against the revisionists under the provisions of the Adhiniyam of 2000 and Adhiniyam of 1978 are concerned, it is a settled proposition of law that when a criminal case is initiated on the basis of police report u/s 173 of Cr.P.C. and cognizance is taken in respect of the alleged cognizable offences in which punishment prescribed is more than three years, in

such premises, bar of limitation provided in section 468 of Cr.P.C. does not come in the way. In such premises if, out of the alleged different offences, for one offence, limitation of one year is provided but if cognizance is taken in another offence in which maximum punishment of more than three years is prescribed, then limitation of one year for taking the cognizance in the earlier offence of minor punishment provided u/s 468 of Cr.P.C. does not come in the way to entertain and take the cognizance in the matter to frame the charge of such section of minor punishment. In such premises, the trial court has not committed any error in framing the other charges with the charges of section 420 (twenty times) of IPC.

26. Even otherwise, as per available record, the alleged offences under the Adhiniyam of 2000 and Adhiniyam of 1978 were committed by the revisionists in regular course of business of their company and, therefore, at this stage, the revisionists could not be discharged from such charges of the sections of the Adhiniyam of 2000 and Adhiniyam of 1978 stated above by holding that the cognizance in respect of the offence of aforesaid Adhiniyam was taken beyond the period of limitation prescribed u/s 468 of Cr.P.C.

27. So far as merits of such charges are concerned, we have found sufficient prima facie evidence and

circumstance in the papers of the charge sheet to frame such charges and in such premises, impugned order does not require any interference at this stage.

28. So far as the argument of the counsel for the revisionists of Cr.R. 917/2014 that during the period viz. from the date of registration of the offences till the date of filing charge sheet and taking cognizance by the trial Court the revisionists of such criminal revision were not remained the Directors of the company as they had given their respective resignations from the company on 20/8/2008 and 10/11/2006 respectively and pursuant to such resignations Assistant Registrar of Companies after considering the same issued Form No.32 in this regard on 31/7/2007 are concerned, in the available circumstances, mere on the basis of Form No.32 or information given by the revisionists of Cr.R.917/14 prima facie it could not be inferred that they had left the company, unless such documents are proved by adducing the admissible evidence at trial. In such premises, it could not be assumed that they have left the company on the above mentioned dates and subsequent to that they were no longer connected with the affairs of the company, specifically in the light of the interrogatory statement of the victims, who are as many as 16 in number, wherein such witnesses have categorically made allegations against revisionists of both the revisions for committing the alleged

fraud with them and at the stage of framing charges, such interrogatory statements could neither be ignored nor discarded. Even otherwise, we have also not found any reason to ignore such interrogatory statements of the witnesses wherein they have categorically stated the description of the fraud committed by the revisionists with them. In the interrogatory statements the victim witnesses have categorically stated the name of the aforesaid company along with names and acts of the present revisionists.

29. Although, by referring to para 20 of the decision of the Apex Court in the case of ***Anita Malhotra Vs. Apparel Export Promotion Council, (2012) 1 SCC 496***, revisionists' counsel submitted that at the stage of framing charges, in order to prevent injustice or abuse of process of law, documents of the defence could be looked into by the High Court which have a bearing in the matter even at the initial stage and grant relief to the person concerned by exercising jurisdiction under section 482 of Cr.P.C., but, in view of the aforesaid discussions, according to which there are/were prima facie evidence and circumstances are available in the charge sheet against the revisionists on the date of registration of the offences as well as the date of filing of the charge sheet, thus, such citation is of no help to the revisionists.

30. On the aforesaid question, counsel for the revisionists has also cited decision in the case of ***Harshendra Kumar Vs. Rebatilaa Koley, (2011) 3 SCC 351.*** Such citation, being distinguishable on facts, is not helping the revisionists because such matter is relating to some other type of the offence and not the offence of fraud and of above mentioned Adhiniyams of 2000 and of 1978.

31. Similarly, decision in the case of ***P. Vijayan Vs. State of Kerala, (2010) 2 SCC 398,*** is also of no help to the revisionists because such case was decided taking into consideration the fact that in the papers of the charge sheet themselves, there were two probable views out of which one was in favour of the accused, which is not the situation in the case at hand because from the papers of charge sheet itself filed along with the police report u/s 173 of Cr.P.C., the prima facie ingredients of the alleged offences have been found to be established against the revisionists of both the revisions and the other co-accused and prima facie two views are not found to be established from the papers of charge sheet. So in such premises, contrary to the police report and papers of the charge sheet mere on the basis of above mentioned reports of CSP, DPO, ASP and SHO, which were not prepared in the course of investigation by the authorised investigating officer, the revisionists could not be discharged.

32. Apart from the aforesaid, the cited case law in the matter of ***Yogesh Vs. State of Maharashtra, 2008(10) SCC 394*** is concerned, the same being based on the same principle of availability of two views out of them the favourable to the accused should be adopted, for the reasons mentioned in the earlier para, is not helping the revisionists.

33. In the matter of ***State of Orissa Vs. Debendra Nath Padhi*** reported in ***AIR 2005 SC 359,*** Constitutional Bench of Apex Court prescribed by Hon'ble Three-Judges, has held as under :

> "16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in State Anti-Corruption Bureau, Hyderabad and Another v. P. Suryaprakasam [1999 SCC (Crl.) 373] where considering the scope of Section 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that (emphasis supplied). The judgment of the High

Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned counsel for the parties addressed the arguments on the basis that the principles applicable would be same - whether the case be under Sections 227 and 228 or under Sections 239 and 240 of the Code.

17. As opposed to the aforesaid legal position, the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the court. The contention is that such an interpretation of Section 227 and 239 of the Code would run the risk of those provisions being declared ultra vires of Articles 14 and 21 of the Constitution and to save the said provisions from being declared ultra vires, the reasonable interpretation to be placed thereupon is the one which gives a right, howsoever, limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207 (A) omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused

> cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police."

34. In view of the aforesaid decision, at the stage of framing the charges, only papers filed along with the police report u/s 173 of Cr.P.C., on which the prosecution relies, could be taken into consideration and not the other papers or documents filed by the defence. So we are of the considered view that the Trial Court has not committed any error in excluding the reports of the CSP, DPO, ASP and SHO given in independent process or enquiry, during

investigation process of the impugned crime so also after recording the interrogatory statements of the witnesses by the I.O. in the investigation. It is a settled proposition that after recording interrogatory statements of the witnesses, senior police authorities do not have any authority to verify the recorded interrogatory statements without permission of the Court. It appears in the case at hand that contrary to the procedure of investigation provided between Section 154 to Section 173 of Cr.P.C., in the lack of any existing law, provisions, mere on the whims of the senior officials besides the investigating officer the alleged enquiry was carried out and report was given by the CSP and DPO, the same was recommended by ASP to SP. Such simultaneous process of enquiry is the subject matter of serious enquiry for which appropriate directions may be given by the Trial Court on appreciation of the matter after extending opportunity of hearing to the persons and parties concerned and as such, we are not entering into that arena at this stage and with aforesaid observations, we leave this question open to decide by the trial court first. In view of aforesaid, we are of the considered view that such reports of the CSP, DPO, ASP and SP are not helping the revisionists to discharge them from the alleged charges at this stage.

35. On excluding the aforesaid reports of the authorities of CSP, DPO, ASP and SP at the stage of

framing the charges on the aforesaid reason, there are prima facie circumstances in the charge sheet against the revisionists to frame charges and as per settled proposition where there are prima facie ingredients of the alleged offence are made out against the accused, then at the stage of charge, the Court has not to consider the question whether on framing the charge and holding the trial the case would be culminated in conviction or not. As such in such situation, there is no option left with the court but to frame charges in the matter.

36. Our aforesaid view affirming the impugned order till the extent of framing the charges against the revisionists is fully fortified by a catena of decisions of the Apex Court. In the matter of ***State of Maharashtra Vs. Priya Sharan Maharaj, AIR 1997 SC 2041*** the Apex Court held as under :

> ''8. The law on the subject is now well-settled, as pointed out in Niranjan Singh Punjabi Vs. Jitendra Bijjaya (1990) 4 SCC 76, that at Sections 227 and 228 stage the Court is required to evaluate the material and documents on record with a view of finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, 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. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if

> there is ground for presuming that the accused has committed the offence or that there is not sufficient ground for proceeding against him and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction."

37. Such question is also answered by the Apex Court in the matter of ***Mohd. Akbar Dar Vs. State of Jammu and Kashmir AIR 1981 SC 1548*** in which it was held as under :

> ''3. We have heard counsel for the appellants and have gone through the Judgments of the courts below. Both the trial and the High Court have generally given a brief survey of the evidence sought to be adduced against the appellants. It is true that the High Court has not gone into the details or the pros and cons of the matter. This was obviously because that is not the stage when the Court could enter into meticulous consideration of the evidence and materials. The High Court has clearly observed that after perusing the statement of the witnesses recorded under Section 161, it was unable to find that the charges could be said to be groundless.
>
> 4. We do not find any special reason to interfere with the orders of the courts below. Although, lengthy arguments were advanced by the counsel for the appellants, we refrain from examining these arguments or going into the details of the matter lest any observation which we make might prejudice either party at the trial. This is not a case which calls for our interference with the order of the Special Judge framing the charges. The appeal fails and is accordingly dismissed.''

38. Such question has also been answered by the Apex Court in the matter of ***State of Tamil Nadu,***

Vigilance and Anti Corruption Vs. N Suresh Rajan, 2014 Cri.L.J.1444 in which it was held as under :

> "20. 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. Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

> “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 there from, 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."

39. In view of the principles of law laid down by the Apex Court in above mentioned cited cases, in the available factual matrix as reflected from the evidence collected by the investigating agency and submitted with the charge sheet u/s 173 of Cr.P.C. as discussed in earlier paras of this order, we have found prima facie circumstance against the revisionists of both the revision petitions to frame impugned charges against them by the Trial Court, and in such premises, we have not found any perversity, illegality, irregularity or anything against the propriety of law in the impugned order requiring any interference at this stage. However, all the other questions raised by the counsel of the revisionists in this matter being not relevant at this stage are

left open for consideration by the trial court after recording the evidence at the stage of the appreciation of the same.

40. Consequently, both the revision petitions being devoid of any merit deserve to be and are hereby dismissed at the stage of motion hearing.

(U. C.Maheshwari)
Judge

(Sushil Kumar Gupta)
Judge

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