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**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE VIJAY KUMAR SHUKLA**

ON THE 9th OF FEBRUARY, 2023

CRIMINAL REVISION No. 4153 of 2022

BETWEEN:-

1. ANOOP S/O TRIYOGINARAYAN MISHRA, AGED ABOUT 50 YEARS, OCCUPATION: BUSINESS R/O 141 SINDHI COLONY LASHKAR GWALIOR (MADHYA PRADESH)
2. SOBHA W/O ANOOP MISHRA, AGED ABOUT 30 YEARS, OCCUPATION: BUSINESS R/O 141, SINDHI COLONY, LAKSHKAR, GWALIOR DIST. GWALIOR (MADHYA PRADESH)
3. ASHWINI S/O ANOOP MISHRA, AGED ABOUT 30 YEARS, OCCUPATION: BUSINESS R/O 141, SINDHI COLONY, LAKSHKAR, GWALIOR DIST. GWALIOR (MADHYA PRADESH)

.....APPLICANTS

(BY SHRI L. SHUNONDO CHANDIRAMANI-ADVOCATE)

AND

1. ALKA W/O SURESH DUBEY, AGED ABOUT 40 YEARS, R/O EMERALD 22 SILVER SPRINGS BYPASS ROAD INDORE (MADHYA PRADESH)
2. DEEP S/O VIRENDER KUMAR DIXIT, AGED ABOUT 45 YEARS, R/O- 54, SHALIMAR TOWNSHIP, A/B. ROAD INDORE (MADHYA PRADESH)
3. SANDEEP S/O LATE RAMKRISHNA SHRIVASTAVA, AGED ABOUT 47 YEARS, R/O- 54, SANJANA PARK, BEHIND AGARWAL PUBLIC SCHOOL, PIPLIYANA INDORE (MADHYA PRADESH)
4. STATE OF M.P. THROUGH P.S. SIMROL DIST INDORE (MADHYA PRADESH)

.....NON-APPLICANTS

**(SHRI AJAY BAGADIA, SENIOR COUNSEL WITH SHRI GAJENDRA SINGH
CHOUHAN, COUNSEL FOR RESPONDENT NOS.1 TO 3)
(SMT. MAMTA SHANDILYA-G.A. FOR RESPONDENT NO.4)**

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This revision coming on for orders this day, the court passed the following:

ORDER

The present petition is filed under section 397 r/w 401 of Cr.P.C. against the order of XII ASJ, Indore dated 11.10.2022 passed in SC PPS No.01/2022 whereby the Court has framed charges against the applicants under section 406, 467 and 120-B of IPC.

2. The applicants filed M.Cr.C.No. 56504/2021 seeking quashment of the complaint filed by non-applicants for commission of offences under sections 406, 467 and 120-B of IPC on the ground that complaint is not maintainable in view of provisions of section 32 and 37 of M.P. Society Registrickaran Adhiniyam, 1973. The aforesaid contention has been repelled and the petition seeking quashment of the complaint i.e. M.Cr.C.No.56504/2021 has been dismissed today by separate order.

3. It is alleged in the complaint that on 18.03.2019 co-accused Anoop Mishra took charge of the Institution as President, Ashwini Mishra as Secretary and present applicant Shobha Mishra as Treasurer along with other members. After assuming the charge, the accused persons started managing the affairs of the Institution in their own way. In this regard, the accused persons forged the minutes of meeting dated 13.5.2019 and in this meeting prepared forged signatures of respondent Nos.1 to 3. On the basis of the said meeting the accused persons vested within themselves the rights to operate the bank accounts of the Institution, appointment of employee, their salary and other allowances along with other rights.

4. It is further alleged that after gaining the rights, applicant No.1 Anoop Mishra received the cash amount of Rs.74,07,606/- from the Accounts Department of the Institution which was deposited by the students of Swami Vivekanand College of Engineering and Swami Vivekanand College of Pharmacy as fees. It is alleged that applicant No.1 Anoop Mishra and applicant No.3 Ashwini Mishra have misappropriated the said funds in illegal manner. It is further alleged that on 24.09.2019 accused persons transferred Rs.35 Lacs from the Axis Bank account of Institution in the account of IPS College Gwalior in which applicant No.1 Anoop Mishra and his family are board members. That, the applicants have forged the agenda of meeting on 13.05.2019 and also forged the minutes of meeting on 28.05.2019 and forged the signatures of members of the society.

5. Against the applicants, the allegation is that applicants were having charge of Swami Vivekanand Takniki Sanstha (hereinafter referred to as Institution) and they have jointly committed fraud by withdrawing a sum of Rs.74,07,606/- from the account of the Society for their personal use and illegally transferred a sum of Rs.35 Lacs in the account of IPS College, Gwalior. It is further alleged that applicants have prepared false and fabricated minutes of the meeting dated 13.5.2019 and 28.05.2019 wherein signature of the complainant have been forged. Complaint was registered for commission of the offence punishable under sections 405, 415, 420, 463, 464, 465, 467 and 120-B of IPC. Trial court after hearing learned counsel for applicants, by the impugned order has framed charges under section 406, 467 and 120-B of IPC. The trial court has prima facie found ingredients of the aforesaid offences and the charges have been framed.

6. Moreover, it is trite to state that at the time of framing of charge, the

material and quality of evidence cannot be gone into. This Court is well aware about the limitation of the Court while exercising the revisional jurisdiction, which does not empower to intervene at an interlocutory stage. Moreover, all that has to be looked into at the time of framing of charge is that whether there was existence of prima facie case. So also it would be profitable to rely on **State of M.P. Vs. S.B. Hohar and others reported in 2002(2) MPLJ 322**, whereby the Court held thus :-

It is settled law that at the stage of framing the 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 the evidence and arrive at the conclusion that the material produced are sufficient or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed.

7. Umar Abdul Sakoor sorathia Vs Intelligence officer, Narcotic Control Bureau reported in (2000) 1 SCC 138 whereby the Court held thus :

It is well settled that at the stage of framing charge, the Court is not expected to go deep into the probative value of the materials on record. If on the basis of materials on record that Court could come to the conclusion that the accused would have committed the offence the Court is obliged to frame the charge and proceed to the trial.

8. State of Maharashtra and others Vs. Som Nath Thapa and others reported in (1996) 4 SCC 659 whereby the Court held thus :

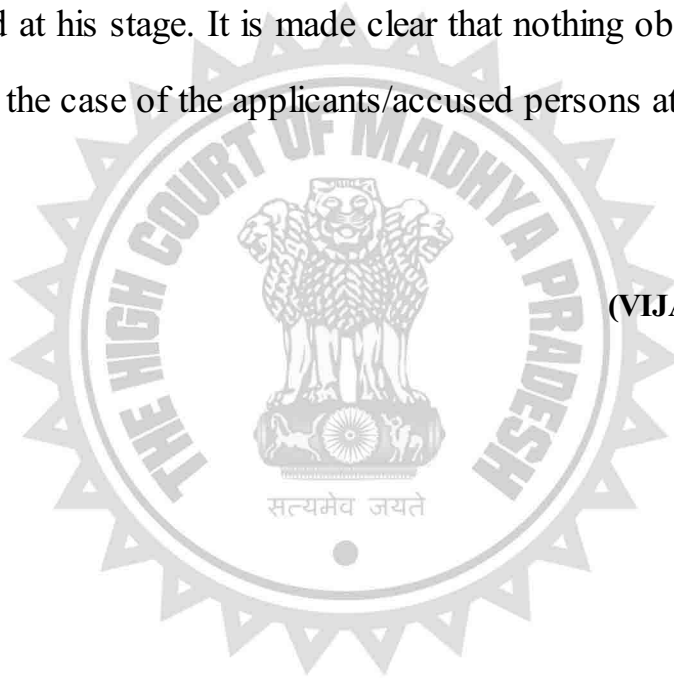
The aforesaid shows that if on the basis of materials on record, a Court could come to the conclusion that commission of the offence is probable consequence, a case for framing of charge exists. To put it differently, it the Court were to think that the accused might have

committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

9. Therefore, no infirmity, irregularity or illegality is found in the impugned order passed by the learned Additional Sessions Judge

10. Accordingly, this revision petition is devoid of merits and hereby dismissed at his stage. It is made clear that nothing observed herein above shall prejudice the case of the applicants/accused persons at the trial.

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(VIJAY KUMAR SHUKLA)
JUDGE