

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**

**Cr. Rev. No. 402 of 2019**

Anup Kumar Lakhota, aged about 43 years, son of Sri Ashok Kumar Lakhota, resident of 241/16, G.T. Road, P.O. Liluah, P.S. Belur, District Howrah 711 204, West Bengal, being Director of M/s Bhawani Constructions Private Limited and M/s Bhawani Alumina Products Private Limited.

... .. **Petitioner**

Versus

The Union of India through Central Bureau of Investigation

... .. **Opposite Party**

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**CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY**

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For the Petitioner : Mr. Indrajit Sinha, Advocate  
Mr. Amit Sureka, Advocate  
For Opposite party- C.B.I. : Mr. Rohit Sinha, Advocate

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**C.A.V. on 03/09/2021**

**Pronounced on 23/12/2021**

1. Heard the learned counsel for the petitioner.
2. Heard the learned counsel appearing for the opposite party.
3. The present revision application was originally filed against the order dated 16.03.2019 passed by learned Special Judge, CBI, Ranchi in Cr. Misc. Application No.758 of 2018 and 280 of 2019, whereby two petitions for discharge, praying for the same relief, have been rejected in connection with R.C. Case No.03(A)17/D dated 10.07.2017. The alleged offence against the petitioner is under Sections 120(B), 511 of the Indian Penal Code and under Sections 7, 12 and 13(2) read with Sections 13(1)(d) and 15 of Prevention of Corruption Act, 1988.
4. During the pendency of this petition, one interlocutory application was filed by the petitioner being I.A. No.7123 of 2019 challenging the framing of charge against the petitioner by the learned court below vide order dated 26.04.2019. I.A. No 7213 of 2019 was allowed by a coordinate bench of this Court vide order dated 01.08.2019. The charge has been framed for the offence punishable under Section 120(B) of Indian Penal Code read with Sections 7, 12 and 13 (2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and also under Section 15 of the Prevention of Corruption Act, 1988 read with Section 511 of the Indian Penal Code.

5. This Court also finds from the order-sheet of the present case that while allowing the aforesaid I.A. No.7123 of 2019 and directing it to form part of the main application of the present case. It is important to note that it has been recorded in order dated 26.06.2019, that one witness was already examined and accordingly the trial has commenced.

**6. Arguments of the petitioner**

- a. Materials on record as have been placed by CBI and supplied to the petitioner as Police Papers, do not in any manner disclose any link /attachment / nexus / connection either directly, indirectly or in any circumstantial manner that the transfer of PAN from Kolkata to Ranchi / Hazaribagh was done by the petitioner in a preplanned manner and in conspiracy with the principal accused person namely, Tapas Kumar Dutta, the then Principal Chief Commissioner of Income Tax and that there is conspiracy in setting aside the assessment orders passed under Kolkata Jurisdiction and / or other co-accused in the case. Neither any material has been brought on record nor any allegation has been made by the CBI that the transfer of PAN was done in criminal conspiracy with the other accused persons and for this reason having regard to the number of officials involved in the process of transfer of PAN, the CBI has not made the officials at Kolkata or, for that matter, many of the officials posted at Hazaribagh / Ranchi as 'accused' persons. Therefore, 'PAN transfer' which is legally permissible, cannot be considered an act of illegality or conspiracy, by the petitioner, as alleged.
- b. The application for transfer of PAN was filed with PCIT-Kolkata and only after getting an NOC from ITO Kolkata, necessary report from DCIT -Range Kolkata and further report / NOC from transferee jurisdiction, PAN was transferred. The statement of Pradeep Kumar Mondal (P.W. 21) also indicates that transfer of PAN ought to have been objected by the ITO or the concerned PCIT at Kolkata and, that having not been done in this case, no criminality or malafide can be alleged to the transfer of PAN solely on the assumption that a 'No Objection' was issued from Hazaribagh. Such inference is completely inappropriate, mainly for being devoid of any legal and actual foundation.

- c. Investigation has established that during the period of Tapas Dutta many companies had got their PAN transferred from Kolkata to Ranchi / Hazaribagh and despite this the officials at Kolkata to Ranchi / Hazaribagh had not objected to such purported large scale transfer of PAN which makes it clear that the officials of Kolkata cannot be said to be hand in glove with the accused persons and if that be so, then the question of criminally conspiring to get PAN transferred does not arise, as most of the people involved in the said process, are not part of the purported design.
- d. After the transfer of PAN, the filing of the revision under Section 264 of Income Tax Act and the disposal thereof does not run contrary to any provisions of law. At best, even if assuming though not admitting, the Revisional Authority can be said to have committed an error of jurisdiction upon misconstruction of the CBDT Circular dated 26.07.1983. The Department never questioned the final order passed by Shri Tapas Dutta (co-accused) in the revisions filed by Bhawani Construction and Bhawani Alumina before a higher forum and having allowed it to attain finality, no one including the CBI can be permitted to question the legality and propriety of the said orders. Moreover, in a criminal trial the question of correctness of the orders passed by Sri Tapas Dutta cannot be adjudicated. Even otherwise from bare perusal of the orders passed by Sri Tapas Dutra, it would transpire that the said orders do not suffer from any kind of perversity. No prejudice can be said to have been caused to the Income Tax Department by passing of the said orders. Likewise, no benefit was conferred on the petitioner by the said orders. The assumption of the CBI and also the Learned Court below that the demands against the petitioner's companies were reduced to NIL is contrary to the materials on record.
- e. No material has been brought on record which would indicate that the petitioner had paid any illegal gratification to any public servant or he had in any manner influenced a public servant either himself or through anyone else and in absence of such material, which is the most important and relevant factor, the petitioner cannot be charged and tried for any offence far less the offences for which

charge has been framed i.e. Section 120B of IPC read with Sections 7, 12, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Section 15 of the Prevention of Corruption Act read with Section 511 of Indian Penal Code.

- f. In this case, investigation has revealed that the other co-accused persons, such as Shri Bishwanath Agarwal and Santosh Shah were in touch with principal accused Shri Tapas Dutta, whereas in absence of any such material qua the petitioner, it cannot be said or even presumed that the petitioner has indulged in any conspiracy to pay illegal gratification or far-less abet to do so. No witness in their statement recorded under Section 161 Cr.P.C. has also alleged that the petitioner ever met or came in contact with the principal accused or any other co-accused for the purposes of getting a favourable order from Sri Tapas Dutta. No voice, data, extraction, transcription, as supplied in Vol-91 suggests the connection of the petitioner remotely or in any other manner with commission of the alleged offence. There is no specific reference to the company of the petitioner and no assumption from the said conversation against the petitioner can be drawn. CBI has not claimed any relation / link of the petitioner on documents series D-3 D-4, D-D11, D-16, D-112, D-115 to D-136.
- g. Admittedly, the accused-petitioner is not a public servant and, therefore, he cannot be tried for an offence allegedly committed under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. The moot question which arises for consideration is whether a person, who is not a public servant can be charged and tried for an offence of criminal conspiracy to commit an offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act (hereinafter referred to as "PC Act").
- h. It is submitted that assuming, though not admitting, that the petitioner had entered into an agreement with other co-accused persons to get the PAN transferred from Kolkata to Hazaribagh and consequent thereto filed a revision to have the assessment orders set aside, all the above acts do not constitute an illegal act because the same were within the legal framework provided by the Income Tax Act. Thus, in that view of the matter also, the purported

agreement between the petitioner and the other co-accused, which is being inferred by the CBI as well as the Learned Court below without any material, cannot constitute an offence of criminal conspiracy. From the facts disclosed in the police papers, it is evident that there is no material far less any admissible evidence to show that this accused had agreed to do or caused to be done, an illegal act or an act which is not legal, by illegal means. In view of the aforesaid factual and legal position, it is submitted that no offence of criminal conspiracy can be said to be made out, as against the present accused.

- i. In connection with the issue whether a person, who is not a public servant can be charged and tried for an offence under Section 120(B) of Indian Penal Code read with Section 13(2) read with Section 13(1)(d) of the PC Act, it is submitted that from the scheme of the PC Act, 1988, it appears that the legislature never intended that a person can be so charged and tried.
- j. Sections 7 and 11 of the PC Act provide for the circumstances, in which a public servant can be held to be liable thereunder. Section 12 provides for the punishment for abatement of the offences defined in Sections 7 and 11 of the PC Act. Section 8 of the PC Act provides for punishment, when a person accepts gratification by corrupt or illegal means to influence a public servant and Section 9 provides for punishment, when a person takes gratification for exercising personal influence with a public servant. A person other than a public servant can be tried and convicted under Section 8 and 9 of the PC Act. Section 10 of the PC Act provides for punishment for abetment by a public servant of offences defined in Sections 8 or 9 of the PC Act. Section 13(2) of the PC Act provides for punishment of a public servant, who commits criminal misconduct in terms of Section 13(1). An attempt to commit an offence under Section 13(1)(c) or (d) is punishable under Section 15 of the PC Act.
- k. In order to fall within the definition of "criminal conspiracy", there must be an agreement to commit an 'offence' by two or more persons.

- l. At best, in view of the aforesaid submissions, it can be said that if a person has committed criminal conspiracy by agreeing with a public servant to commit an offence under Section 13(1) of the PC Act, then the same can only be made punishable under Section 120-B (2) of the Indian Penal Code read with Section 13(2) read with Section 13(1)(d) of the PC Act.
- m. The petitioner not being a public servant cannot be charged with an offence under Sections 7 and 13 of Prevention of Corruption Act and in order to establish an offence of conspiracy in regard to offence under Prevention of Corruption Act, the prosecution is required to apply the same legal principles, as are required for establishing criminal misconduct against the accused. In order to even prima facie make out an offence under the provisions of Sections 7 and 13 of the Prevention of Corruption Act, proof of demand has been held to be indispensable essentiality and permeating mandate, which is absent in the case at hand. Thus, it is submitted that in absence of material/evidence showing proof of demand by public servant, a private person cannot be accused to have committed a criminal conspiracy to commit an offence under Sections 7 and 13 of the Prevention of Corruption Act.
- n. In the instant case, the learned Court below has not at all considered the materials which are in favour of the petitioner, such as the note prepared by Pradeep Kumar Mondal which shows that even in his opinion, the assessment order appeared to have been passed in a hurried manner. Similarly, the ultimate outcome of the revisional order dated 29.12.2016 and order dated 30.12.2016 clearly show that on technical grounds the assessment orders dated 31.03.2015 and 29.03.2015 respectively have been set aside and the matter remanded with certain observations.
- o. Interestingly, the Court has framed charge under one head without setting out the contents of charge as required under Section 211 of Cr.P.C. This approach of the Trial Court is wholly illegal and without jurisdiction. The Court has also framed charge under Section 15 of the Prevention of Corruption Act read with Section 511 of Indian Penal Code, which is unfathomable. A private person by no stretch of imagination can be accused of attempting to

attempt an offence of criminal misconduct by a public servant. This reflects total non-application of mind by the learned court below.

- p. The manner in which charges have been framed against the petitioner on 26.04.2019 is contrary to the procedure established by the Code of Criminal Procedure, 1973 and also does not satisfy the requirement of Section 228 or 240 of Cr.P.C. which mandates application of mind by the court.
- q. From a cumulative reading of the materials collected by the Central Bureau of Investigation, at best be said (though denied) that transfer PAN of the companies of the petitioner were bogus and was with an object to file a revision before a particular officer, but, to say that there was any criminality involved in the process in absence of any foundational facts in this regard, would be a travesty of justice. In criminal law the moral notions of the Investigating Authority or a Trial Judge have no place and the law has to be construed and applied in a very strict and restrictive manner. Inferences cannot be based on surmises and conjectures. Merely alleging that the acts constitute an offence of criminal conspiracy would not suffice unless the same are supported by cogent and acceptable evidence. Furthermore, the circumstances proved before or after the occurrence must be incapable of any other reasonable explanation so as to attract the offence of criminal conspiracy. The Court framing charge must be satisfied that the constituents of an offence exist and the facts leading to that offence must be on record to even form a presumption that an accused had committed an offence and consequently framed charge against him. In other words, the non-existence of such facts and ingredients must only yield in discharge of an accused and failure to do so, would amount to failure to exercise jurisdiction vested in a court and thereby amount to a jurisdictional error which ought to be corrected by the court in exercise of its judicial power.

#### **7. Arguments of the opposite party -CBI**

- I. The learned counsel appearing on behalf of the opposite party has vehemently opposed the prayer of the petitioner and has submitted that there is enough material on record to frame charge against the petitioner and accordingly the petition for discharge has been

rightly rejected and charge has been rightly framed. He further submits that there is no illegality or perversity or material irregularity in the impugned orders calling for any interference in revisional jurisdiction of this Court. The learned court below has passed a well-reasoned order refusing to discharge the petitioner and has rightly framed charge against the petitioner. He submits that the points argued by the petitioner are devoid of any merits and it is the petitioner and other such companies whose PAN were illegally transferred as a result of evil design and conspiracy by giving fake office addresses within the jurisdiction of the prime accused Tapas Kumar Dutta, the then Principal Chief Commissioner of Income Tax at Hazaribagh and Ranchi and thereafter assessment orders were set-aside by the said prime accused Tapas Kumar Dutta, resulting in huge loss of revenue as the demand arising out of orders of assessment passed under Kolkata Jurisdiction have been set-aside. The learned counsel has referred to the counter affidavit to submit that summary of the entire case has been given and the case relates to deep rooted conspiracy. He also submits that sanction for prosecution has already been obtained against Tapas Kumar Dutta, the then principal chief commissioner of income tax at Hazaribagh and Ranchi vide sanction order dated 06.11.2017 and the trial has already commenced. The points raised by the petitioner are matters of trial. He also submits that there are volumes of transcripts of communication amongst the accused persons which cannot be appreciated in revisional jurisdiction of this court.

- II. The learned counsel submits that on the basis of evidences collected during investigation, charge-sheet against Anup Kumar Lakhota and 13 other accused persons were filed and the investigation against other accused was still continuing. The learned counsel has referred to the counter-affidavit filed in the present case, wherein the summary of the evidences collected against the petitioner has been recorded and submits that there are enough materials collected during investigation to sustain the impugned order refusing to discharge the petitioner and also the impugned order framing charge against the petitioner.



## **8. REPLY TO THE SUBMISSION MADE ON BEHALF OF THE COUNSEL OF THE CBI**

- A. The contention that further investigation in this case is undergoing is wholly irrelevant, as the Learned Court as also this Court has to decide on the issue of framing charge on the basis of the record of the case and the documents submitted therewith and not in contemplation of any further evidence being collected.
- B. The contention of the CBI that the petitioner is a part of criminal conspiracy can be said to be a rhetoric and a red herring which is completely unfounded and devoid of any materials on record.
- C. The argument that the appeal filed by the petitioner before the Appellate Authority at Kolkata was not withdrawn and, therefore, the subsequent filing of the revision and the same being entertained by the principal accused Sri Tapas Dutta in revisional jurisdiction was improper, is untenable and otherwise irrelevant. As stated above, the correctness of the orders passed by Sri Tapas Dutta cannot form a subject matter of a criminal trial. Admittedly, the petitioner had given a letter of withdrawal of appeal, but, the Appellate Authority, on a complete misconstruction made certain observations while disposing of the appeal. Such observations cannot be said to be an order on merits.
- D. The Income Tax Department having accepted the order passed by Sri Tapas Dutta by not impugning the same before any higher forum combined with the fact that there is no evidence direct or indirect to show that the petitioner had paid any illegal gratification or any demand was made by or on behalf of the concerned public servant i.e. Sri Tapas Dutta, the prosecution cannot at this stage question the correctness of the said order and the order passed by the quasi-judicial authority is not open to scrutiny in any proceeding far less a proceeding which is not even collateral in nature. The initiation of this criminal case or even at the conclusion of the trial, the legality and propriety of the revisional orders are completely inconsequential. The prosecution, in order to bring home its charge or even at this stage to make out a prima facie case, has to indicate any material which would suggest that the

order was obtained pursuant to a demand and acceptance of illegal gratification.

E. In view of the aforesaid facts and circumstances, it has been prayed that the order dated 16.03.2019 by which the application for discharge has been rejected and consequently the order dated 26.04.2019 whereby charges were framed against the petitioner, be quashed and set-aside.

### **FINDINGS**

9. Before we proceed to examine the facts of the present case, it would be appropriate to consider the ambit and scope of the powers of the Court at the time of considering the discharge application. Section 227 of Cr.P.C. provides 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 so doing.

10. In the judgement 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 Cr.P.C. 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.”*

11. In the judgement passed by the Hon’ble Supreme Court in the case of **“Asim Shariff v. NIA”** reported in **(2019) 7 SCC 148**, it has been held 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.

12. In the judgement 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 of the report are 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.”*

**13.**The present case has to be examined keeping in view the aforesaid principles of law in the matter of discharge.

**14.**As per the prosecution, during search on 12.07.2017, at the residence of accused Tapas Kumar Dutta, Principal Commissioner Income Tax, Ranchi, cash to the tune of Rs. 3.715 crore and gold/jewellery 6 kgs (approx.) were recovered. The investigation revealed that during the assessment year 2012-13, Income Tax Authorities at Kolkata conducted scrutiny of income tax returns filed by several companies selected by Computer Aided Scrutiny Selection (CASS) and during such scrutiny, huge undeclared income was found and accordingly addition in the income tax were made against such companies. The companies controlled by co-accused Shri Bishwanath Agarwal and Shri Santosh Shah also figured in these proceedings. It is alleged that in order to get rid of the additions made by Income Tax, Kolkata, they contacted Shri Tapas Kumar Dutta, Principal Commissioner, Income Tax, Ranchi, known to them since his earlier posting in Kolkata. The allegation is that Shri Bishwanath Agarwal and Shri Santosh Shah along with other accused persons entered into criminal conspiracy with Shri Tapas Kumar Dutta for obtaining favourable orders under Section 264 of the Income Tax Act., by getting PANs and records of such companies transferred to the jurisdiction of Ranchi and Hazaribagh so that Shri Tapas Kumar Dutta in lieu of illegal gratification may entertain petitions under section 264 of Income Tax Act and pass favourable orders.

**15.**It is alleged that in pursuance of the conspiracy, Shri Bishwanath Agarwal and Shri Santosh Shah arranged addresses of Ranchi and Hazaribagh for the companies so that the business operation and books of accounts can be shown to have been shifted to these addresses. The allegation is that these companies either did not exist on the given addresses or had taken the premises on rent for only three months and never functioned or had

any business/office activity on the so-called changed addresses of Ranchi/Hazaribagh.

- 16.**After arranging the above-mentioned addresses, accused persons got the PANs/Assessment files transferred from respective ITO wards of Kolkata to Ranchi/Hazaribagh by filing applications through Directors of the assessee companies and soon after the transfer of the PANs, accused persons, in furtherance of the criminal conspiracy, filed petitions u/s 264 of Income Tax Act, before Shri Tapas Kumar Dutta, who was the Principle Chief Commissioner of Income Tax at Ranchi and Hazaribagh. Shri Tapas Kumar Dutta in pursuance of the criminal conspiracy abused his official position and set aside the assessment orders passed by the Income Tax Officers /Deputy Commissioners of Income Tax of Kolkata in lieu of illegal gratification.
- 17.**It is the case of the prosecution that the assessing officers of Kolkata had discussed the issues in detail before passing the assessment orders and the major issue involved in all these cases is introduction of huge share capital through shell/paper companies in the books of the assessee companies. During the assessment proceedings at Kolkata, notices were issued under Section 142(1) of the Income Tax Act, 1961 from time to time and specific queries were raised from the assessee companies. These companies were asked to establish the identity and creditworthiness of the share applicant companies and genuineness of the transactions. However, the assessee companies failed to provide those specific details. The assessing officers at Kolkata had also issued notices under Section 133(6) and summons under Section 131 of the Income Tax Act, 1961 to the share applicant companies, but either they did not appear before the assessing officers or notices/summons returned unserved during the proceedings at Kolkata. Consequently, assessment order at Kolkata was passed fixing huge tax liability against the assessee companies. The Assessee companies thereafter filed appeal before Commissioner of Income Tax (Appeals) under Section 264A of the Income Tax Act within Kolkata jurisdiction. However, in the meantime, the prime accused Shri Tapas Kumar Dutta, Principal Commissioner of Income Tax, Ranchi in collusion with operators of these assessee companies entered into criminal conspiracy to reduce the huge tax liabilities arising out of assessment orders at Kolkata and transfer of PANs and records from Kolkata to the

jurisdiction at Ranchi/Hazaribagh was a part of conspiracy. Upon transfer of PANS / records, Shri Tapas Kumar Dutta passed orders under Section 264 of the Income Tax Act ignoring the issues raised by the original assessing officers in their assessment orders.

**18.**The learned counsel has also submitted that arising out of the conspiracy, Shri Bishwanath Agarwal on demand of Shri Tapas Kumar Dutta booked certain flats in the name of M/s Jharna Liquor Pvt. Ltd., a company controlled by him as Director and these flats were later to be transferred in the name of wife of Shri Tapas Kumar Dutta by transferring shares of one holding company of M/s. Jharna Liquor Pvt. Ltd. It has also been pointed out that on 07.07.2017, Shri Tapas Kumar Dutta and Shri Bishwanath Agarwal visited the office of the Mani Group and obtained keys of the above referred flat vide acknowledgement dated 07.07.2017 and soon after, while obtaining the keys, Shri Vishwanath Agarwal handed over the same to Shri Tapas Kumar Dutta. The acknowledgement dated 07.07.2017 was recovered from the house of Shri Tapas Kumar Dutta on 12.07.2017. Further Shri Bishwanath Agarwal made payment of Rs. 4.10 crores for the aforesaid flats from the illegal gratification obtained by him in collusion with Shri Santosh Shah on behalf of Shri Tapas Kumar Dutta, in lieu of the favourable orders under Section 264 of the Income Tax Act, in the matters of PAN of the companies of the petitioner transferred from Kolkata to Ranchi and Hazaribagh.

**19.**The learned counsel submits that on the basis of evidences collected during investigation, charge-sheet against Anup Kumar Lakhotia (petitioner) and 13 other accused persons were filed and the investigation against other accused was still continuing.

**20.**The summary of the evidences collected against the petitioner has been mentioned in the counter affidavit from para 31 onwards as under: -

*“31. That, as per the information received from Registrar of Companies Kolkata through document no. D-113 & 114, Shri Anup Kumar Lakhotia present petitioner is the director of M/s Bhawani Construction Pvt. Ltd. and M/s Bhawani Alumina Products Pvt. Ltd., both having its registered office at GT Road, Liluah Howrah.*

*32. That, document no. D-15, assessment file of M/s Bhawani Construction Pvt. Ltd. contain assessment order dated 31.03.2015 passed by Shri Manu Chaurasia, DCIT, Circle 13(1), Kolkata vide which the return filed by the assessee for assessment year 2012-13 was scrutinized. The assessing officer during the scrutiny proceeding could*



*not verify the share capital introduced during the previous year, due to the non-compliance of the summons issued to the assessee. Therefore, creditworthiness and genuineness of the transaction could not be established and accordingly the assessing officer concluded the assessment proceedings by raising demand of Rs. 2,98,00,455/-. Soon thereafter, the assessee company filed appeal to the Commissioner of Income Tax, (Appeals)-5, Kolkata challenging the aforesaid assessment order.*

**33.** *That, similarly document no. D-13, in case of M/s Bhawani Alumina Products Pvt. Ltd. revealed that the assessing officer could not verify the share capital introduced in the previous year due to non-compliance of summons by the assessee due to which creditworthiness and genuineness of the transaction could not be established. Consequently, the assessing officer concluded the proceedings and issued a demand of Rs. 1,02,32,402/- vide assessment order dated 29.03.2015. In this case also soon thereafter, the assessee company filed appeal to the Commissioner of Income Tax, (Appeals)-5, Kolkata challenging the aforesaid assessment order.*

**34.** *That, during the pendency of the appeal before Commissioner Income Tax, Kolkata the accused petitioner entered into a criminal conspiracy with other co-accused persons and in order to get rid of the huge tax, filed application dated 08.02.2016 (D-15) in case of M/s Bhawani Construction Pvt. Ltd. and application dated 08.02.2016 (D-13) in case of M/s Bhawani Alumina Products Pvt. Ltd. requesting Pr. CIT, Kolkata to transfer their PANs to Hazaribagh under jurisdiction of accused Tapas Kumar Dutta. In the applications it has been mentioned that the assessee companies had shifted their business and operation/books of account to new office at 186, Lepo Road, Bowden Bazar, Hazaribagh, Jharkhand. It is pertinent to mention here that both the documents filed for transfer of PAN from West Bengal to Jharkhand have been signed by the Petitioner, which is enough to prove that the Petitioner had entered in criminal conspiracy for his benefit. Consequently, vide order dated 22.03.2016 (D-14), under section 127(2) of the IT Act the PANs of the assessee companies were transferred from Kolkata to Hazaribagh.*

**35.** *That, in furtherance of the criminal conspiracy accused petitioner as Director of M/s Bhawani Constructions Pvt. Ltd. and M/s Bhawani Alumina Products Pvt. Ltd. filed revision petitions dated 31.03.2016 (D-14 and D-12) u/s 264 of the IT Act to the Pr. CIT, Hazaribagh Shri Tapas Kumar Dutta, keeping the appeals at Kolkata pending.*

**36.** *That, it is pertinent to mention here that the earlier appeals filed by accused petitioner before Commissioner Income Tax, Kolkata were pending adjudication. In this regard kind attention is invited to statement u/s 161 Cr. PC of Shri Manu Chaurasia, PW-5 who has stated that as per Section 264 (4) of IT Act, simultaneous proceeding before CIT (Appeals) and before the Administrative CIT u/s 264 of the IT Act cannot be proceeded. In spite of this revision petitions u/s 264 of*



*the IT Act filed by accused petitioner were entertained by accused Tapas Kumar Dutta, the then Pr. CIT. Ranchi/Hazaribagh. In this regard kind attention is also invited to the statement of Shri Ram Bilas Meena (PW-37) working as CIT (Appeals), Kolkata. He has stated that during pendency of the appeal application u/s 264 is not maintainable and no cognizance of the same is required to be taken.*

*37. That, it is submitted that accused petitioner after filing of Revision u/s 264 of the IT Act before accused Tapas Kumar Dutta, Pr. CIT Ranchi in furtherance of criminal conspiracy filed an application dated 29.06.2016 before the Commissioner of Income Tax (Appeals)-5 requesting for permission to withdraw his appeal dated 08.05.2015. While making such request, the petitioner had specifically mentioned that he do not want to contest the assessment order and would be solely liable of the consequence of such withdrawal of the appeal. The petitioner tried to withdraw his appeal after three months of filing the revision because by then he was sure that his revision u/s 264 of IT Act would be favourably considered by accused Tapas Kumar Dutta. The Commissioner while dismissing off the appeal vide order dated 09.09.2016 (D-12) had held that;-*

*"3. The said letter requesting to withdraw the appeal indicates that the appellant has nothing in its possession to support various grounds of appeal raised by way of form N. 35 filed no. 08.05.2015.*

*3.1 The A.O. has added share capital contribution U/s 68 of I.T. Act. 1961. The amount of Rs. 2,06,50,000/- added included premium @ Rs. 90/- per share of face value of Rs. 10/-. The appellant could not prove the genuineness of the credit entry as discussed in the assessment order."*

*From the above it is clear from that the Commissioner of Income Tax, Kolkata had dismissed the appeal filed by the accused petitioner and found the assessment order of AO Kolkata in order. Thus, the assessment order passed by the AO Kolkata is found justified by the Commissioner IT Kolkata and in spite of that accused Tapas Kumar Dutta passed favourable order u/s 264 of the IT Act causing undue benefit to the accused petitioner.*

*38. That, during investigation Shri Nageshwar Ram (PW-28) has stated that M/s Bhawani Constructions Pvt. Ltd. and M/s Bhawani Alumina Products Pvt. Ltd. never existed at their given address 186, Lepo Road, Bowden Bazar, Hazaribagh.*

*39. That, it is further stated that Shri Aditya Vikram Lakhotia (PW-23) brother of accused petitioner in his statement u/s 161 Cr. P.C. has stated that the day to day work of M/s Bhawani Constructions Pvt. Ltd. and M/s Bhawani Alumina Products Pvt. Ltd. was looked after by accused Anup Kumar Lakhotia. As per his statement both these companies were based in Kolkata and their business/books of accounts were never shifted to Hazaribagh. Similarly, another witness Shri Manik Chand (PW-27) owner of Shanti Complex, 186, Lepo Road, Bowden Bazar,*

*Hazaribagh in his statement u/s 161 Cr. P.C has stated that he had never rented any shop to M/s Bhawani Constructions Pvt. Ltd. or M/s Bhawani Alumina Products Pvt. Ltd. and no such company had ever performed any business or had run any office from the said address.*

*40. That, accused Tapas Kumar Dutta vide order dated 29.12.2016 (D-14) in case of M/s Bhawani Constructions Pvt. Ltd. disposed off the petition under Section 264 of the IT Act filed by accused petitioner and set aside the assessment order dated 31.02.2015 passed by assessing officer of Kolkata saving the assessing from paying sum of Rs. 2,98,00,445/- as additional tax. Similarly in case of M/s Bhawani Alumina Products Pvt. Ltd. he set aside the assessment order passed by AO, Kolkata, vide his order dated 30.12.2016 (D-12) saving the assessee from paying Rs. 1,02,32,420/- as additional tax.”*

**21.**The records of the case reveal that the Deputy Commissioner of Income Tax at Kolkata namely Manu Chaurasia (P.W-5) had passed assessment order in relation to M/s Bhawani Constructions Private Limited under Section 143(3) of Income Tax Act, 1961 on 31.03.2015 wherein it has been recorded that during the course of assessment proceedings, it was found that the assessee received share application money to the tune of Rs. 6,75,00,000/- from one Samsung Estates Private Limited representing 90,000 shares of Rs. 100/- each at a premium of Rs. 650/- per share. The assessee was asked to provide details in response of such application along with credential and justification of premium and in spite of repeated opportunities the assessee failed to explain the source of share application money by establishing the share holders' identity, genuineness of transaction and creditworthiness of shareholders and the list of 18 shareholders was furnished, but they were not available at address given and they were not filing their ITRs with the concerned officers. To verify the genuineness and credibility of the said share application money, the assessee was asked to produce director/principal officer of the investing company, but the assessee failed to do so. In the light of the facts mentioned in the said order, the credit amounting to Rs. 6,75,00,000/- in the form of share capital was held to be bogus and was added back under Section 68 of the Income Tax Act. It was also observed that from the perusal of the documents submitted by the assessee, it was found that said Samsung Estates Private Limited had received money through various entities which was paid towards the aforesaid share application on the same day or the subsequent day.

- 22.** Similar was the situation with the other company namely M/s Bhawani Alumina Products Private Ltd. wherein share application money to the tune of Rs. 2,06,50,000/- was received from Samsung Estates Private Limited and the assessee was asked to produce the director/principal officer of the investing company, but the assessee failed to do so and the assessee submitted details of 18 shareholders, but they were not found available at the address and they were not filing their ITRs and consequently, the said credit amounting to Rs. 2,06,50,000/- in the form of share capital was found to be bogus and added back under Section 68 of the Income Tax Act.
- 23.** Said Manu Chaurasia stated in his statement that as per the provisions of Section 264(4) of the Income Tax Act, simultaneous proceedings before CIT Appeal and before the administrative CIT under Section 264 of the Income Tax Act cannot be proceeded. He has also stated that generally in case of PAN transfer, the assessee files the application before the principal commissioner of Income Tax of the transferrer charge as per the transferee charge to additional CIT and DCITs of the respective charges. After receiving the application, the CIT calls for no objection from the CIT to whose jurisdiction the assessee proposes to get the PAN transferred and the report from the concerned ITO is called by the CIT and on the basis of report, reply is sent. As per the general practice, the ITO concerned checks form 18 from the MCA website and if the new address figures from the site, he issues no objection. The aforesaid person Manu Chaurasia, in his statement, has further stated that in spite of repeated opportunity granted to the assessee, it failed to produce the sole applicant for share capital which had made huge investment i.e. the director or principal officer of the investing company Samsung Estates Private Limited. He has also stated that based on the assessment order, notice of demand under Section 156 of IT Act was issued to the assessee company and thereafter, the then Principal Chief Commissioner of Income Tax, Kolkata vide order dated 17.06.2015, had reviewed his assessment order and agreed with the same. He has further stated that in response to the demand notice, communication dated 18.05.2015 was received that an appeal has been preferred against the assessment order and the then Deputy Commissioner of Income Tax, vide letter dated 09.06.2015 intimated the assessee that the petition for stay of demand was

rejected and directed the assessee to pay the demand within a period of 5 days from the date of receipt of the said letter. The assessee, vide letter dated 06.10.2015, informed the DCIT that the application for stay of pending demand was pending before the Commissioner of Income Tax and a prayer was made to keep the recovery proceeding pending. However, vide notice under Section 226(3) of the IT Act dated 20.01.2016, the Branch Manager of ICICI Bank was issued tin order to recover the money from the assessee's account maintained with them and the responses received from the bank in this regard were available in the file. The assessee made a request to PCIT, Kolkata to transfer his PAN under Section 127 of the Income Tax Act to Hazaribagh and a copy of the said letter was marked to ITO circle, PCIT Hazaribagh and ITO Ward -I (2) , Hazaribagh and the said request was accompanied by a copy of receipt and form no. AOC – 5 of Companies Act. The said document showed that the assessee was maintaining books of account at 186 Lepo road, Bowden Bazar, Hazaribagh. The assessee filed petition under Section 264 of Income Tax Act before PCIT Hazaribagh. The ITO, Hazaribagh vide letter dated 06.05.2016 directed ITO ward – 2 Hazaribagh to submit a report on the assessee's revision petition and vide order dated 29.04.2016, the assessment record of the company was transferred to Hazaribagh. The appeal under Section 143(3) filed by the assessee against the assessment order dated 31.03.2015 passed by Manu Chaurasia was decided by CIT Appeal, Kolkata and the appellant could not prove the genuineness of the credit entries and had not demonstrated anything to prove otherwise in the appeal proceedings and by filing the withdrawal application, applicant expressed inability to prove the grounds of appeal and therefore, the appeal was dismissed. PCIT, Hazaribagh Shri Tapas Kumar Dutta vide order under Section 264 of IT Act dated 29.12.2016 set-aside the assessment order and ordered for re-assessment. Similar was the situation with the other company of the petitioner.

- 24.**Statement of Shri Ram Bilash Meena of the Income Tax Department under Section 161 of Code of Criminal Procedure has also been produced. He was the person who had dismissed the appeal working as CIT (Appeal)- 2 at Kolkata who has also supported the prosecution case.
- 25.**The learned court below, while considering the petition for discharge considered the scope of Section 227 of Cr.P.C. and recorded that hearing

the submissions of the accused as postulated by Section 227 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 is to be granted to the accused. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police. The learned court below recorded its prima-facie findings on the materials collected by the investigating officer as follows:-

“..... it appears that *petitioner being a Controller and Director of M/s Bhawani Construction Pvt. Ltd, filed Income Tax Return dt. 28.9.12 for assessment year 2012-13 showing gross total income of Rs. 2,99,77,990/-*. The return was selected for scrutiny under CASS and DCIT, Circle 13(1) during the scrutiny proceeding found that verification of the share capital introduced during the previous year could not be made due to complete non compliance of the summons on the part of assessee. The creditworthiness and genuineness of the transactions could not be established by the assessee and therefore, the said proceeding concluded by raising a demand of Rs. 2,98,00,445/- vide demand notice dt. 25.2.15. This petitioner in furtherance of criminal conspiracy with co-accused Bishwanath Agarwal and Santosh Shah intentionally showed to have shifted his business operation and books of accounts to new office at 186, Lepo Road, Bowden Road, Hazaribag. Consequently, the PAN was got transferred from ITO Circle 13(1) Kolkata to ITO Ward 1(2) Hazaribag. Soon thereafter this petitioner in furtherance of the said criminal conspiracy filed petition u/s 264 of the I.T. Act for revision of assessment order dt. 31.3.15. Vijay Kumar, ITO (Tech), Hazaribag, on the directions of Pr. CIT, Tapas Kumar Dutta, issued notice of hearing dt. 14.7.16 to the Pr. Officer of M/s Bhawani Construction Pvt. Ltd. to appear before PCIT on 28.7.16. Tapas Dutta heard the case on 21.12.16, attended by Bishal Agarwal, C.A. and in pursuance of the conspiracy, the co-accused Tapas Kumar Dutta abused his official position and ignored the observations made by DCIT Kolkata and passed order dt. 29.12.16 setting aside the assessment order dt. 31.3.15 saving the assessee from paying the income tax imposed by Assessing Officer, Kolkata. Further this petitioner being a controller and director of M/s Bhawani Alumina Products Pvt. Ltd., filed Income Tax Return dt. 28.9.12 for assessment year 2012-13 showing total income of Rs. 54,22,660/-. The return was selected for scrutiny under CASS and DCIT Circle 13(1) during the scrutiny found that verification of the share capital introduced during the previous year could not be made due to complete non compliance of the summons on the part of assessee.



*The creditworthiness and genuineness of the transactions could not be established by the assessee petitioner and therefore, the proceeding was concluded and a demand of Rs. 1,02,32,420/- vide demand notice dt. 29.3.15 was raised. This petitioner in furtherance of said conspiracy with Co-accused Bishwanath Agarwal and Santosh Shah intentionally showed to have shifted his business operation and books of accounts to new office at 186, Lepo Road, Bowden Road, Hazaribag, Consequently the PAN was got transferred from ITO Circle 13(1) Kolkata to ITO Ward 1(2) Hazaribag. Thereafter he filed petition u/s 264 of the I.T. Act for revision of assessment order dt. 31.3.15. Vijay Kumar, ITO (Tech), Hazaribag, on the directions of Pr. CIT, Tapas Kumar Dutta, issued notice of hearing dt. 14.7.16 to the Pr. Officer of M/s Bhawani Alumina Pvt. Ltd. to appear before PCIT on 28.7.16. Tapas Dutta heard the case on 21.12.16, attended by Bishal Agarwal, C.A. and in pursuance of the conspiracy, abused his official position by ignoring the observations made by DCIT, Kolkata and passed order dated 30.12.16 setting aside assessment order dt. 29.3.15, saving the petitioner from paying the income tax imposed by Assessing Officer, Kolkata.”*

**26.** The learned court below also considered certain documents submitted by the petitioner and recorded as under:-

*“Further during the argument the learned counsel for this petitioner submitted a bunch of documents for showing the company of this petitioner as above are not a shell company and on conclusion of de-novo assessment of the relevant period he had paid all the tax liabilities and on going through the all aforesaid documents, certainly there found all aforesaid belongs to the company of this petitioner as above running much before the institution of this case but the tax liability of the relevant period which was paid by this petitioner as submitted and the documents also reveals the same were paid by this petitioner after submission of charge sheet in this case against the petitioner which also supports the prosecution story and amounts his admission of the alleged offence and it is clear that admittedly mere transfer of PAN, exercise of power u/s 264 of I.T. Act is not an offence but at the same it is established by the materials collected by the investigating agency that during the investigation there were recovery of huge bribe approx. Rs. 4 crores in cash along with other immovable properties were made from the co-accused Tapas Kumar Dutta which is the circumstances against this accused and it has come through the evidence that during the investigation, his huge tax liability was set aside by co-accused for reassessment which are the circumstances attribute conspiracy of this petitioner with co-accused and it is admitted fact by this petitioner also that after investigation de-novo reassessment of his tax liability of the aforesaid companies*

*were increased and same were deposited which is the subsequent development after submission of charge-sheet in this case which also supports the prosecution story.”*

- 27.**The learned court below found that exercise of power u/s 264 of I.T. Act as well as transfer of PAN were used with malafide and ill intention and thus there is sufficient material against this accused petitioner for the purpose of framing of charge for the alleged offence.
- 28.**Thus, the materials which been collected during investigation prima-facie reveal that the assessment orders resulting in huge addition of income interalia, against the companies of the petitioner on account of unverifiable investors in the companies through shell companies were passed by the income tax authorities at Kolkata, appeals were also filed, but in absence of stay, orders for attachment of bank accounts were passed. The allegation is that a number of accused persons including the petitioner who is director of the two assessee companies as well as Tapas Kumar Dutta , the Chief Commissioner of Income Tax having jurisdiction for Ranchi and Hazaribagh conspired with each other to get rid of the demand raised at Kolkata in assessment proceedings and in furtherance thereof, the PANs and the records were transferred from Kolkata to Jharkhand , Revision petitions were filed under section 264 of Income Tax Act before Tapas Kumar Dutta during pendency of appeals at Kolkata. Thereafter, pending appeals at Kolkata were sought to be withdrawn by the petitioner but instead of permitting withdrawal, the appellate authority dismissed the appeals. Thereafter in furtherance of conspiracy the accused Tapas Kumar Dutta allowed the revision under section 264 of Income Tax Act and remanded the matter. There are materials regarding receipt of illegal gratification by the co-accused Tapas Kumar Dutta through the other co-accused. Thus, it is alleged that the petitioner could get rid of the demand which was created against his companies in the orders of assessments passed in Kolkata. There are materials on record to show that the transfer of PANs and records from Kolkata to Jharkhand was itself a part of the conspiracy as no business or office of the companies actually existed in the place of their transfer to Jharkhand and the transfer was itself a device to facilitate the co-accused Tapas Kumar Dutta to enable him to pass orders in favour of the companies of the petitioner in which the petitioner was a director. The

allegations reveal that huge investments were made in the companies of the petitioner by non-existing parties / shell companies.

29. There is prima-facie material to show that in the criminal conspiracy Sri Tapas Kumar Dutta, Principal Commissioner of Income Tax, Ranchi, Sri Arvind Kumar, Additional Commissioner of Income Tax, Ranchi; Sri Ranjit Kumar Lal, I.T.O. (Tech), Ranchi; Sri Subir Kumar Ganguly, Officer, Income Tax Ranchi; many businessmen, chartered accountants and others were involved and it is not in dispute that investigation is still going on.

30. Volumes of transcripts of recorded conversations have been collected which reveal conversation amongst the accused persons although it has been argued by the learned counsel for the petitioner that the conversations do not involve the petitioner. This court is of the considered view that this is not the stage for scrutinizing the transcripts of recorded conversations in order to record any direct or indirect links of the petitioner with the alleged offence. Suffice is to say that there are sufficient incriminating materials and circumstances, collected against the petitioner during investigation, to constitute prima-facie case indicating involvement of the petitioner in the alleged offence.

31. The learned counsel for the petitioner has relied upon following judgements: -

*a. Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao; (2012) 9 SCC 512* wherein the law relating to conspiracy has been stated as follows: -

*"24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after occurrence have to be considered to decide about complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only*



*when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence."*

Upon prima-facie consideration of the materials on record, this court is of the considered view that there is enough material to frame charge of conspiracy against the petitioner with the co-accused persons. This judgement does not help the petitioner in any manner at this stage of the case.

- b. *State of Madhya Pradesh vs. Sheetla Sahai and Others; (2009) 8 SCC 617 and State through Central Bureau of Investigation vs. Dr. Anup Kumar Srivastava; (2017) 15 SCC 560* to submit that the petitioner not being a public servant cannot be charged with an offence under Sections 7 and 13 of Prevention of Corruption Act and in order to establish an offence of conspiracy in regard to the alleged offences under Prevention of Corruption Act, the prosecution is required to apply the same legal principles, as are required for establishing criminal misconduct against the accused [*State of Madhya Pradesh v. Sheetla Sahai, (2009) 8 SCC 617*]. In order to even *prima facie* make out an offence under the provisions of Sections 7 and 13 of the Prevention of Corruption Act, proof of demand has been held to be indispensable essentiality and permeating mandate, which is absent in the case at hand [*State through Central Bureau of Investigation v. Dr. Anup Kumar Srivastava, (2017) 15 SCC 560*]. This Court is of the considered view that there is enough material on record to prima-facie make out a case of demand of illegal gratification by the co-accused namely Tapas Kumar Dutta and payment to him by other co-accused in criminal conspiracy with the petitioner for passing orders favorable to the petitioner after getting the PANs of the two companies of the petitioner transferred to the jurisdiction of Tapas Kumar Dutta against whom sanction for prosecution under section 19 of the Prevention of Corruption Act has already been given by the competent authority. Thus, the judgement relied upon by the petitioner does not help the petitioner at this stage of the case.

- c. *C.K. Jaffer Sharief v. State*, (2013) 1 SCC 205 (paras-14, 16, 17 & 18), *A. Shivaprakash v. State of Kerala*, (2016) 12 SCC 273 to submit that it is equally well settled that a violation or breach of departmental instruction by itself does not constitute an offence of criminal misconduct or conspiracy to commit such an offence, unless there are some materials to show that there was a dishonest intention.

This judgement does not help the petitioner in any manner whatsoever as in the present case there is prima-facie sufficient material to show criminal conspiracy with dishonest intention amongst the accused persons including the petitioner which has caused loss to the public exchequer.

- d. *Deepakbhai Jagdishchandra Patel v. State of Gujarat & Anr.*, (2019 SCC Online SC 588), to submit that the Learned Trial Court has committed an error of jurisdiction while passing the impugned order and has acted merely as post office and the impugned order reflects complete non application of mind. It has been held by the Hon'ble Supreme Court of India that the strong suspicion must be founded on some material which can be translated into evidence at the stage of trial and such suspicion cannot be the pure subjective Satisfaction on the moral notions of the judge that there is a case where it is possible that the accused has committed an offence.

This judgement also does not help the petitioner under the facts and circumstances of this case as the case against the petitioner is not of mere suspicion but there is enough material on record to prima-facie show criminal conspiracy amongst the accused persons for commission of the alleged offence.

- e. *State of Madhya Pradesh v. Sheetla Sahai*, (2009) 8 SCC 617 has again been relied to submit that though the defence of the accused cannot be considered, but the court at the time of framing of charge cannot confine itself to the materials upon which the prosecution intends to rely ignoring the other materials which are in favour of the accused lest the provisions of Section 173(5) Cr.PC. would be rendered meaningless.

This court finds that the learned court below has considered the totality of the materials collected during investigation to find

prima-facie case against the petitioner. The petitioner has argued that the Tapas Kumar Dutta had acted as per the Income Tax Act and only remanded the case vide order passed under Section 264 of the Income Tax Act. This court is of the considered view that material on record prima-facie show that Tapas Kumar Dutta had misused his office and the official position to give undue favour to the petitioner in conspiracy with others and is a co-accused in this case for which sanction for prosecution has also been granted. The orders of remand passed under Section 264 of the Income Tax Act have the effect of nullifying the demand raised pursuant to the orders of assessments.

- 32.**The sanction for prosecution of Sri Tapas Kumar Dutta, the then Chief Commissioner of Income Tax, Ranchi has been granted under Section 19 of the Prevention of Corruption Act and a copy of the same has been produced by the opposite party before this court. It is not in dispute that the trial has already commenced.
- 33.**This court does not find any illegality or perversity or material irregularity in the impugned order of refusing to discharge the petitioner and also the impugned order framing charge against the petitioner. This court finds that the impugned orders are well reasoned orders based on materials on record and do not call for any interference in revisional jurisdiction of this court.
- 34.**As a cumulative effect of the aforesaid findings, the present revision petition is dismissed.
- 35.**Interim order, if any, stands vacated.
- 36.**Pending Interlocutory applications are closed.
- 37.**It is made clear that any observations/findings recorded in this order will not prejudice the case of the parties before the learned court below in any manner whatsoever and it will be open to the parties to raise all points as per law.
- 38.**Let this order be communicated through FAX to the learned court below.

**(Anubha Rawat Choudhary, J.)**