

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on:26.06.2025

+ **CRL.M.C. 204/2020 & CRL.M.A. 890/2020**

AAKASH DEEP CHOUHAN

..... Petitioner

versus

CBI & ANR.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vaibhav Dubey, Adv. (through VC)
Mr. Kumar Vaibhav, Mr. Gautam Khazanchi
and Mr. Mohd. Ashaab, Advs.

For the Respondents : Mr. Ravi Sharma, SPP-CBI with Mr.
Swapnil Choudhary, Mr. Ishaan Bhardwaj,
Mr. Shivam Mishra & Ms. Madhulika
Rai Sharma, Advs. for CBI

Mr. Ripudaman Bhardwaj, CGSC with Mr.
Kushagra Kansal and Mr. Amit Kumar Rana,
Advs. for R2 / UOI.

CORAM

HON'BLE MR JUSTICE AMIT MAHAJAN

JUDGMENT

1. The present petition is filed challenging the order on charge dated 19.10.2019 (hereafter '**impugned order**'), passed by the learned Special Judge, Rouse Avenue Courts, New Delhi, in CC No. 02/2018 arising out of RC No. AC-1/2017-A-0008. By the impugned order, it



was found that charge for the offence under Section 120B of the Indian Penal Code, 1860 ('IPC') read with Section 9 of the Prevention of Corruption Act, 1988 ('PC Act') is made out against the petitioner. The petitioner is also seeking directions for expunging/ destruction of telephonic messages/ calls allegedly unlawfully intercepted by CBI.

2. The brief facts of the case are as follows:

2.1. On 22.12.2017, RC No. AC-1/2017-A-0008 was registered by CBI/AC-1 for offences under Section 120B of the IPC and under Sections 9 and 10 of the PC Act.

2.2. It is the case of the prosecution that reliable information was received that M/s. Capacite Structures Limited was trying to get a part of the work on sub contract basis from M/s. Shapoorji Pallonji and Co. (P) Ltd., which had been awarded a contract for redevelopment of ITPO Complex into Integrated Exhibition-Cum -Convention Centre at Pragati Maidan, Delhi by M/s. NBCC (India) Ltd. (a government enterprise).

2.3. It is alleged that the source had informed that the accused Sanjay Kulkarni (the Managing Director of M/s. Capacite Structures Limited) had approached the accused Rishabh, who is a private person with good contacts with various public servants for securing the said work in favour of his company. It is alleged that in furtherance of the conspiracy, the accused Rishabh had contacted the accused Pradeep Kumar Mishra, working as Asstt. Director in IB (on deputation from BSF), who was close to certain senior functionaries of M/s. NBCC (India) Ltd.



2.4. It is alleged that the accused Pradeep had assured that the work could be awarded to M/s. Capacite Structures Limited, through his close contacts and personal influence with Mr. Anoop Kumar Mittal, CMD, M/s. NBCC (India) Ltd. and the accused Pradeep made a demand for a New Royal Enfield Bullet as a part of the illegal gratification. The accused Rishabh conveyed the demand to the accused Sanjay over phone, who agreed to the same.

2.5. The source further informed that under the influence of the accused Pradeep, Mr. Anoop Kumar Mittal directed the Executive Director, M/s. NBCC (India) Ltd. to settle the matter in favour of M/s. Capacite Structures Limited. In furtherance of the conspiracy, on 15.12.2017, a meeting took place between the accused Sanjay, representatives of M/s. Shapoorji Pallonji and Co. (P) Ltd. and some senior level officers of M/s. NBCC (India) Ltd., including its Executive Director. It is alleged that after the meeting, Mr. Anoop assured the accused Pradeep and the accused Sanjay about the work being awarded by M/s. Shapoorji Pallonji and Co. (P) Ltd. to M/s. Capacite Structures Limited and further asserted that if the work was not given to M/s. Capacite Structures Limited, it would not be given to anyone else.

2.6. It is alleged that in furtherance of the conspiracy, the demanded motorcycle was to be delivered as part of illegal gratification by the petitioner, who was an employee of the accused Sanjay, to the accused Pradeep in Delhi.



2.7. During investigation, it was found that the accused Sanjay was interested in obtaining steel work on sub-contract basis from M/s. Shapoorji Pallonji and Co. (P) Ltd. in the project awarded to them by M/s. NBCC (India) Ltd. and had been in touch with M/s. Shapoorji Pallonji and Co. (P) Ltd. since the pre-tender stage. It was found that the accused Sanjay had also submitted his proposal in June, 2017, however, on not getting any proper response, he entered into the criminal conspiracy with the accused Rishabh.

2.8. It was further found that after the accused Rishabh had informed the accused Sanjay about the demand by the accused Pradeep for a New Royal Enfield Bullet Motorcycle. The accused Sanjay had sent cash to his brother- Ajay Kulkarni, which was delivered at the residence of the petitioner. Thereafter, the accused Rishabh had conveyed consent of the accused Sanjay to the petitioner and directed him to purchase the motorcycle and deliver it to the accused Pradeep.

2.9. In pursuance of the conspiracy, the petitioner contacted a Sales Executive and booked Royal Enfield Bullet Motorcycle chosen by the accused Pradeep. The petitioner also allegedly obtained the documents required for the purchase of the motorcycle from the accused Pradeep. On 22.12.2017, the petitioner received delivery of the same and delivered it to the accused Pradeep at the address conveyed by him along with the keys and copies of documents of the motorcycle.

2.10. A CBI trap team along with independent witnesses recovered the motorcycle from the accused Pradeep in the evening of 22.12.2017. It



was found that an amount of ₹1,45,660/- for purchasing the motorcycle was paid from the account of the petitioner.

2.11. The Special Unit, CBI had also intercepted the calls since 01.11.2017 to 22.12.2017 of five mobile numbers, with two numbers belonging to the accused Rishabh and one each of the accused Pradeep, the accused Sanjay and the petitioner. It is alleged that 74 recorded conversations pertaining to the said mobile numbers established the conspiracy between the accused persons for obtaining the subcontract from M/s. Shapoorji Pallonji and Co. (P) Ltd., and in lieu of which, the accused Pradeep had accepted gratification in the form of a new Bullet Motorcycle. It is alleged that the accused Sanjay agreed to give the motorcycle as gratification to the accused Pradeep and the accused Rishabh and the petitioner acted as middlemen in the commission of the crime. The voices of the accused persons were identified by independent witnesses and the voice samples of the accused persons were sent for CFSL for comparison with the voices of intercepted calls/conversations and CFSL has given positive report.

2.12. By the impugned order, the learned Special Judge observed that a *prima facie* case was made out against the accused persons, including the petitioner, for the offence under Section 120B of the IPC and Section 9 of the PC Act.

2.13. Formal charges were framed against the petitioner by order dated 22.10.2019.

2.14. Aggrieved by the same, the petitioner filed the present petition.



3. The learned counsel for the petitioner submitted that the charges have been framed mechanically against the petitioner on the basis of unlawfully intercepted call recordings and conjectures, even though there is no material on record which casts grave suspicion against the petitioner.

4. He submitted the learned Trial Court has failed to appreciate that the petitioner was only an employee acting on instructions of his employer in a routine manner and he had no concern or idea about any alleged sub-contract of M/s. NBCC (India) Ltd.

5. He submitted that the transcripts of the intercepted calls are merely a corroborative piece of evidence and there is nothing on record to show that any influence was ever exercised or even attempted to be exercised on Mr. Anoop Kumar Mittal by the petitioner or any of the other accused persons.

6. He submitted that in one of calls relied upon by the learned Trial Court while framing charge against the petitioner, being call no.41, the petitioner has actually stated to the accused Rishabh Aggarwal that he is awaiting capital for the purchase of the motorcycle from the concerned person in his company. He submitted that there are multiple transcripts on record which show that the petitioner has informed the co-accused persons that the bike shall only be obtained after receiving the necessary official approvals. He submitted that the same belies any allegation of conspiracy as it is inconceivable that any person acting in



conspiracy to attain any illegal objective will seek official approvals and it shows that the petitioner was not part of any conspiracy.

7. He further submitted that the learned Trial Court has failed to appreciate that the intercepted calls, which form the sole basis of the prosecution, were illegally and unlawfully intercepted disregarding the law laid down in the case of ***K.S. Puttaswamy v. Union of India : (2017) 10 SCC 1***, in total violation of the fundamental rights guaranteed to the petitioner and other accused persons.

8. He submitted that as per Section 5(2) of the Indian Telegraph Act, 1885, an order for interception can be issued on either occurrence of any public emergency or in the interest of public safety. He relied upon the judgment in the case of ***People's Union for Civil Liberties v. Union of India : (1997) 1 SCC 301***, where it was held that unless a public emergency has occurred or the interest of public safety demands the same, there will be no basis to direct any interception of calls by exercising the powers under the section 5(2) of the Indian Telegraph Act, 1885.

9. He further submitted that the interception was illegal as there was no mention in the chargesheet to evidence that the interception orders were placed before the Review Committee as per Rule 419A of the Indian Telegraph Rules, 1951.

10. He further placed reliance on the cases of ***Vinit Kumar v. Central Bureau of Investigation : 2019 SCC Online Bom 3155***, ***Jatinder Pal Singh v. Central Bureau of Investigation : 2022 SCC OnLine Del 135***



and *K.L.D. Nagasree v. Govt of India, Ministry of Home Affairs : 2006 SCC OnLine AP 1085*.

11. He submitted that from a bare perusal of the orders of interception and their extension, it appears that no material was relied upon before passing the same and the said orders had been passed in a mechanical manner without considering the relevant law.

12. *Per contra*, the learned Special Public Prosecutor ('SPP') for CBI submitted that the calls were lawfully intercepted and the learned Special Judge has rightly framed the charges against the petitioner.

13. He submitted that the CDRS of the mobile phones and identification of voices *via* CFSL has established the role of the petitioner. He further submitted that the petitioner had full knowledge of the nature of the bribe and he has been rightly charged for the alleged offence. He submitted that several witnesses have stated incriminating facts against the petitioner, including Shiv Kumar (driver of the petitioner) who has stated that on 22.12.2017, the petitioner had driven the motorcycle and delivered the same to the accused Pradeep.

14. He submitted that the interceptions which incriminates the petitioner and his co-accused persons have been procured while in complete adherence of the procedure prescribed under Section 5(2) of the Indian Telegraph Act, 1885. He submitted that the decision for interception was also placed before the Review Board and there is *prima facie* material which warrants framing of charges against the accused petitioner. He submitted that it is well settled that offence of corruption



endangers public safety as economic crimes ultimately affect economic stability of a country.

15. He submitted that the intercepted calls cannot be discarded at this stage and during the course of the trial, the concerned witness will be called for proving the orders of Ministry of Home Affairs.

16. He submitted that even otherwise, it is settled law that the test of admissibility of evidence is to be seen on the basis of its relevancy and a similar contention for expunging of alleged illegally intercepted phone call was rejected by the Hon'ble Apex Court in the case of ***State (NCT of Delhi) v. Navjot Singh Sandhu@Afsan Guru : 2005 11 SCC 600.***

17. The learned standing counsel for Respondent No.2 seconded the submissions made by the learned SPP and submitted that the calls were legally intercepted in view of public safety in the interest of public order for preventing incitement to commission of such acts and the guidelines by the Hon'ble Supreme Court do not bar interception of any calls in relation to illegal acts.

ANALYSIS

18. At the outset, it is relevant to note that the scope of interference by High Courts while exercising revisional jurisdiction in a challenge to order framing charge is well settled. The power ought to be exercised sparingly, in the interest of justice, so as to not impede the trial unnecessarily. It is not open to the Court to misconstrue the revisional



proceedings as an appeal and reappreciate the evidence unless any glaring perversity is brought to its notice.

19. In the case of **Amit Kapoor v. Ramesh Chander : (2012) 9 SCC 460**, the Hon'ble Apex Court had noted that while considering the point of charge, the Court is required to consider the record of the case and discern whether there are grounds to believe that the accused has committed the offence. It was noted that the Court has to satisfy itself as to the existence of elements of the alleged offence. The Hon'ble Apex Court, advertent to a catena of precedents, had also noted that the test for quashing an order on charge in exercise of revisional jurisdiction or inherent jurisdiction is limited to whether the allegations, as made from the record of the case, taken at their highest, are patently absurd and whether the basic ingredients of the offence, for which the charge is framed, are not made out. The relevant portion of the said judgment is reproduced hereunder:

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



judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

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27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4. Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.



27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a “civil wrong” with no “element of criminality” and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the



interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae i.e. to do real and substantial justice for administration of which alone, the courts exist...”

(emphasis supplied)

20. It is the case of the prosecution that the accused persons entered into a conspiracy for securing a sub-contract for steel work from M/s. Shapoorji Pallonji and Co. (P) Ltd. in favour of M/s. Capacite Structures Limited in the project awarded to it by M/s. NBCC (India) Ltd.. It is alleged that the accused Pradeep, a public servant, had demanded a new motorcycle as illegal gratification to exercise his influence with senior functionaries of M/s. NBCC (India) Ltd. The said demand was conveyed by the accused Rishabh, who acted as a middleman to facilitate the transaction, to the accused Sanjay, the MD of M/s. Capacite Structures Limited. It is alleged that the petitioner, who is an employee of the accused Sanjay, had purchased the motorcycle that was to be given as bribe and delivered the same to the accused Pradeep.

21. The petitioner has challenged the order on charge as well as the formal charge on essentially two grounds:

- a. The interceptions were unlawfully and illegally carried out by the investigating agency, in violation of the petitioner's fundamental rights and statutory safeguards, due to which, the call recordings borne out of the interceptions were inadmissible as evidence, and



b. The material brought forth by the prosecution after investigation, including the calls, did not make out a case of “grave suspicion” against the petitioner.

22. Before appraising the evidence and material on record to discern whether the same gives rise to grave suspicion against the petitioner, it is incumbent on this Court to first analyse the legality of the interception and if the intercepted calls can even be read against the petitioner.

23. This Court considers it apposite to note that it is cognizant that the issue of admissibility and reliability of evidence is not one that is to be probed or marshalled in a challenge against order framing charges. Yet, in the present case, it is pertinent to note that the petitioner has also sought for an additional relief of directions for expunging of the intercepted calls, which warrants attention of this Court on the issue of legality of the interceptions.

Legality of the Interceptions

24. It is argued on behalf of the petitioner that the interceptions were unlawful as the same were carried out in flagrant breach of Section 5 of the Indian Telegraph Act, 1885 and the same ought to be destroyed in pursuance of Rule 419A of the Indian Telegraph Rules, 1951 as (a) the condition precedents under Section 5(2) of the Indian Telegraph Act, 1885 were not met; and (b) the procedure under Rule 419A of the Indian Telegraph Rules, 1951 was not followed as the interception orders passed by the Ministry of Home Affairs had not been reviewed by the Review Committee. It is further argued that the intercepted call



recordings are inadmissible as the interceptions were in violation to the petitioner's fundamental right to privacy.

25. Section 5(2) of the Indian Telegraph Act, 1885 reads as under:

“5. Power for Government to take possession of licensed telegraphs and to order interception of messages.—

(2) On the occurrence of any public emergency, or in the interest of the public safety, the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government may, if satisfied that it is necessary or expedient so to do in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence, for reasons to be recorded in writing, by order, direct that any message or class of messages to or from any person or class of persons, or relating to any particular subject, brought for transmission by or transmitted or received by any telegraph, shall not be transmitted, or shall be intercepted or detained, or shall be disclosed to the Government making the order or an officer thereof mentioned in the order: Provided that press messages intended to be published in India of correspondents accredited to the Central Government or a State Government shall not be intercepted or detained, unless their transmission has been prohibited under this sub-section.”

26. Although every person has a fundamental right to privacy, the said right is not absolute and it can be curtailed by procedure established by law. The aforesaid provision empowers the Central Government or a State Government or any officer specially authorised in this behalf by the Central Government or a State Government to legally carry out interception or surveillance in the event of any public emergency or in the interest of public safety. In the case of ***People's Union for Civil Liberties (PUCL) v. Union of India : (1997) 1 SCC 301***, while considering the *vires* of Section 5(2) of the Indian Telegraph Act, 1885,



the Hon'ble Apex Court had expounded upon what comes under public emergency or public safety. The relevant portion of the judgment is as under:

*“28. Section 5(2) of the Act permits the interception of messages in accordance with the provisions of the said section. “Occurrence of any public emergency” or “in the interest of public safety” are the sine qua non for the application of the provisions of Section 5(2) of the Act. Unless a public emergency has occurred or the interest of public safety demands, the authorities have no jurisdiction to exercise the powers under the said section. Public emergency would mean the prevailing of a sudden condition or state of affairs affecting the people at large calling for immediate action. **The expression “public safety” means the state or condition of freedom from danger or risk for the people at large.** When either of these two conditions are not in existence, the Central Government or a State Government or the authorised officer cannot resort to telephone-tapping even though there is satisfaction that it is necessary or expedient so to do in the interests of sovereignty and integrity of India etc. **In other words, even if the Central Government is satisfied that it is necessary or expedient so to do in the interest of the sovereignty and integrity of India or the security of the State or friendly relations with sovereign States or public order or for preventing incitement to the commission of an offence, it cannot intercept the messages or resort to telephone-tapping unless a public emergency has occurred or the interest of public safety or the existence of the interest of public safety requires.** Neither the occurrence of public emergency nor the interest of public safety are secretive conditions or situations. Either of the situations would be apparent to a reasonable person.”*

(emphasis supplied)

27. It is argued on behalf of CBI that destruction of the intercepted calls is not warranted and the condition precedent of public safety, as prescribed under Section 5(2) of the Indian Telegraph Act, 1885, is met in the present case as the allegations pertain to corruption which poses a risk on the economic well being of the country and its people.



28. This Court finds merit in the said argument. The threat posed by corruption cannot be understated. Corruption has a pervasive impact on a nation's economy and the same can impact anything from infrastructural development to resource allocation. Corruption by a public servant has far reaching consequences as it serves to not only erode public trust and cast aspersions on the integrity of public institutions, but also renders the public at large susceptible and vulnerable by threatening the economic safety of the country. The pervasive nature of corruption has been recognised by many Courts and it has been noted that the same undermines the core values of Indian Preambular vision [Ref. **Subramanian Swamy v. Manmohan Singh : (2012) 3 SCC 64**]. In the case of **Sanjay Bhandari v. Ministry of Home Affairs : 2020 SCC OnLine Mad 28021**, the Hon'ble High Court of Madras had dismissed the writ petitions that were filed challenging the order directing interception of certain mobile number. The Hon'ble High Court had elaborated upon the scope of "public safety" as expounded by the Hon'ble Apex Court in **People's Union for Civil Liberties (PUCL) v. Union of India (supra)** in view of the new technology and observed as under:

"12. The five circumstances laid under Section (5)(2) of the Indian Telegraph Act related to the public emergency or interest of the public safety. The authority is within the powers conferred by the Act to order for lawful interception. It would also be seen that not only the bodily injury to the members of the public or the injury to a minimum number of persons would constitute public safety. With the latest communication tools in the form of powerful mobile phones becoming available in every hand in the country which are equipped with applications ensuring encrypted communication. The available avenues with the potential criminals, have increased manifolds and



it is becoming increasingly difficult to prevent and detect crime. Restricting the concept of public safety to the mere “situations that would be apparent to the reasonable persons” will exclude most of the actual threats which present the most grave circumstances like terrorist attacks, corruption at high places, economic and organized crimes, most of which are hatched in the most secretive of manners. In most of the circumstances, threat to public safety is from hidden factor which are neither apparent nor obvious to the general public and members of the law enforcement community and the information about these circumstances and factors cannot be connected by any other reasonable means. In addition, most of such information, is sensitive in nature, which may not be circulated in the public domain. Therefore, the first respondent passed the order to intercept phone messages of the petitioners herein.”

(emphasis supplied)

29. Relying upon the dictum in the case of **Sanjay Bhandari v. Ministry of Home Affairs** (*supra*), a Coordinate Bench of this Court in **Santosh Kumar v. Union of India : (2022) 4 HCC (Del) 697** had dismissed writ petitions challenging orders of Ministry of Home Affairs which permitted interception of telephonic calls of the petitioner therein. It was noted that disclosure of elaborate reasons in interception orders would be against the modified disclosure requirements. The relevant portion of the said judgment is as under:

“48. The disclosure of elaborate reasons for interception orders would be against the modified disclosure requirements of procedural fairness which have been universally deemed acceptable for the protection of other facets of public including the source of information leading to the detection of crime or other wrong doing, sensitive intelligence information and other information supplied in confidence for the purpose of Government or discharge of certain public functions. Furthermore, the Rule 419-A of the Telegraph Rules provide for extreme secrecy, utmost care and precaution in the matter of interception as it affects privacy.

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54. It is pertinent to point that the present matter pertains to corruption and through the order of Sanjay Bhandhary case [Sanjay



Bhandari v. Govt. of India, Ministry of Home Affairs, 2020 SCC OnLine Mad 28021] the same was held to be a matter which endangers public safety since economic crimes ultimately affect the economic stability and safety of the country and its citizens.”

(emphasis supplied)

30. In the present case, the allegations relate to the accused persons seeking to secure a sub-contract, by way of corruption, from a company that was awarded the task of redevelopment of ITPO Complex into Integrated Exhibition-Cum-Convention Centre on the basis of personal influence rather than merit of the bid. The allegations are grave in nature and, if proven, would render dubious the entire process of awarding of tenders and bids on the basis of personal influence with senior officers rather than benefit of the public at large. Although it cannot be generalized that all allegations in relation to corruption would have the capacity of influencing the public at large, the allegations herein don't relate to a trivial project but one that was awarded for ₹2149.93 crores where the work sought by way of influence would have been of a substantial sum as well. The economic scale of the offence, in the opinion of this Court, satisfies the threshold of “public safety”.

31. Insofar as violation of due procedure is concerned, the written submission placed on record by CBI clarifies the same and mentions that the Review Committee in its meeting dated 11.01.2018 and 23.03.2018 had reviewed the interception orders issued by Ministry of Home Affairs for the period from 01.08.2017 to 31.10.2017 and 01.11.2017 to 31.01.2018 respectively. It is mentioned that as per the minutes, the committee concluded that the interception orders issued by



Ministry of Home Affairs in respect of the above-mentioned period were in accordance with the provisions of Section 5(2) of the Indian Telegraph Act, 1885 and did not merit any intervention of the Committee.

32. A bare perusal of the interception orders passed by the Ministry of Home Affairs shows that the same have been passed “*for the reason of public safety*” in the interest of public order to prevent incitement to commission of an offence. As noted in ***Santosh Kumar v. Union of India*** (*supra*), the disclosure of elaborate reasons would defeat the purpose of secrecy as provided for under Rule 419A of the Indian Telegraph Rules, 1951 and would be against the modified disclosure requirements.

33. The petitioner has placed reliance on a number of judgments, however, the cases are distinguishable on facts. The judgment in the case of ***Jatinder Pal Singh v. Central Bureau of Investigation*** (*supra*) is of no benefit to the petitioner as in the said case, the Court had observed that there was no material on record to show that any review of the interception orders was conducted by the Review Committee, which led to the finding that the mandatory requirements laid down by law for placing reliance on the intercepted conversations was not met.

34. Unlike the present case, in the case of ***K.L.D. Nagasree v. Govt of India, Ministry of Home Affairs*** (*supra*) as well, while the interception orders were placed before the Review Committee, however, the Committee had decided to hold another meeting and there



was no material to show that the Review Committee had met. The Hon'ble Andhra Pradesh High Court was also weighed to direct destruction of messages by the fact that the interception orders only repeated the conditions mentioned in Section 5(2) of the Indian Telegraph Act, 1885 verbatim without *any* specific reason.

35. It is important to note that the judgment in the cases of ***Jatinder Pal Singh v. Central Bureau of Investigation*** (*supra*) and ***K.L.D. Nagasree v. Govt of India, Ministry of Home Affairs*** (*supra*) were also considered and distinguished in the case of ***Santosh Kumar v. Union of India*** (*supra*).

36. The petitioner has further sought to place reliance on the case of ***Vinit Kumar v. Central Bureau of Investigation : 2019 SCC Online Bom 3155***. As pointed out by the learned counsel for the respondents, the Hon'ble Apex Court has stayed the aforesaid decision. It is argued by the learned counsel for the petitioner that mere stay of a decision does not restrict its operation. While the said decision may have some persuasive value, in the said case, the Hon'ble Bombay High Court was of the view that the facts of the case did not justify any ingredients of the risk it posed to the public and it was found that the action of issuing successive review orders, without reference to the review committee, was in clear breach of the relevant rules, statute and Constitution of India. In the present case, as discussed above, this Court has expressed its inclination to endorse the view taken by the Coordinate Bench in ***Santosh Kumar v. Union of India*** (*supra*) and taken the view that the interception was within the ambit of Section 5(2) of the Indian



Telegraph Act, 1885 as the allegations pertain to economic crime of corruption for securing a bid of high value, which ultimately affects the economic stability of the country. As noted above, the interception orders were also duly placed before the Review Committee and the allowed by the same.

37. In view of the above, this Court is of the opinion that the interception was carried out in accordance with law, and therefore, no case is made out for destruction of the transcripts.

Admissibility and Reliability of the interceptions

38. Even otherwise, if the case of the petitioner is taken at the highest and it is considered that the interceptions were unlawful, it is relevant to note that the destruction of the recordings is sought as it has prejudiced the petitioner in the present case and it is contended that the unlawfully obtained call recordings cannot be used to incriminate the petitioner. A bare perusal of the conversations on record clearly suggest discussions in relation to demand and delivery of illegal gratification. The same are clearly relevant to the case. As held by the Hon'ble Apex Court in the case of ***State (NCT of Delhi) v. Navjot Sandhu : (2005) 11 SCC 600***, the admissibility of the material is not affected by the non-compliance of the procedural safeguards. The relevant portion is as under:

“Interception of phone calls

153. The legality and admissibility of intercepted telephone calls arises in the context of telephone conversation between Shaukat and his wife Afsan Guru on 14th December at 2009 hrs and the conversation between Gilani and his brother Shah Faizal on the same day at 1222 hrs. ...It is contended by the learned Senior



Counsel appearing for the two accused Shaukat and Gilani, that even Rule 419-A, has not been complied with in the instant case, and, therefore, the tape-recorded conversation obtained by such interception cannot be utilised by the prosecution to incriminate the said accused. **It is the contention of the learned counsel for the State Mr Gopal Subramaniam, that there was substantial compliance with Rule 419-A and, in any case, even if the interception did not take place in strict conformity with the Rule, that does not affect the admissibility of the communications so recorded.** In other words, his submission is that the illegality or irregularity in the interception does not affect its admissibility in evidence there being no specific embargo against the admissibility in the Telegraph Act or in the Rules. **Irrespective of the merit in the first contention of Mr Gopal Subramaniam, we find force in the alternative contention advanced by him.**

154. In regard to the first aspect, two infirmities are pointed out in the relevant orders authorising and confirming the interception in respect of specified telephone numbers. It is not shown by the prosecution that the Joint Director, Intelligence Bureau who authorised the interception, holds the rank of Joint Secretary to the Government of India. Secondly, the confirmation orders passed by the Home Secretary (contained in Vol. 7 of the lower court record, p. 447, etc.) would indicate that the confirmation was prospective. We are distressed to note that the confirmation orders should be passed by a senior officer of the Government of India in such a careless manner, that too, in an important case of this nature. **However, these deficiencies or inadequacies do not, in our view, preclude the admission of intercepted telephonic communication in evidence. It is to be noted that unlike the proviso to Section 45 of POTA, Section 5(2) of the Telegraph Act or Rule 419-A does not deal with any rule of evidence. The non-compliance or inadequate compliance with the provisions of the Telegraph Act does not per se affect the admissibility.** The legal position regarding the question of admissibility of the tape-recorded conversation illegally collected or obtained is no longer res integra in view of the decision of this Court in **R.M. Malkani v. State of Maharashtra [(1973) 1 SCC 471 : 1973 SCC (Cri) 399]**. In that case, the Court clarified that a contemporaneous tape record of a relevant conversation is a relevant fact and is admissible as res gestae under Section 7 of the Evidence Act. Adverting to the argument that Section 25 of the Telegraph Act, 1885 was contravened the learned Judges held that there was no violation. At the same time, the question of admissibility



of evidence illegally obtained was discussed. The law was laid down as follows: (SCC p. 477, para 24)

*‘There is warrant for the proposition that **even if evidence is illegally obtained it is admissible**. Over a century ago it was said in an English case where a constable searched the appellant illegally and found a quantity of offending article in his pocket that it would be a dangerous obstacle to the administration of justice if it were held, because evidence was obtained by illegal means, it could not be used against a party charged with an offence. See Jones v. Owens [(1870) 34 JP 759] . The Judicial Committee in Kuruma v. R. [(1955) 1 All ER 236 : 1955 AC 197 : (1955) 2 WLR 223 (PC)] dealt with the conviction of an accused of being in unlawful possession of ammunition which had been discovered in consequence of a search of his person by a police officer below the rank of those who were permitted to make such searches. The Judicial Committee held that the evidence was rightly admitted. **The reason given was that if evidence was admissible it matters not how it was obtained.** There is of course always a word of caution. It is that the judge has a discretion to disallow evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. That caution is the golden rule in criminal jurisprudence.’ ”*

(emphasis supplied)

39. The admissibility of any piece of evidence rests on its reliability, instead of how that evidence came to be procured. That is not to say that such evidence cannot be disallowed if the evidence is colored by breach of the privacy of the accused, however, even then, the judicial discretion will need to be exercised at the time of stage of adjudication rather than at the time of admitting the evidence on record.

40. Having observed that the interceptions were lawful, the same are reliable and admissible.



41. In the opinion of this Court, the transcripts cannot be discarded and the learned Trial Court rightly perused the same before forming its opinion on whether charges ought to be framed against the petitioner and other accused persons.

Grave Suspicion against the petitioner

42. It will be apposite to succinctly discuss the statutory law with respect to discharge and framing of charge as provided under Sections 227 and 228 of the CrPC. The same is set out below:

“227. Discharge

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of Charge

(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.”



43. It is trite law that the learned Trial Court while framing charges is not required to conduct a mini-trial and has to merely weigh the material on record to ascertain whether the ingredients constituting the alleged offence are *prima facie* made out against the accused persons. The Hon'ble Apex Court, in the case of **Sajjan Kumar v. CBI : (2010) 9 SCC 368**, has culled out the following principles in regards to the scope of Sections 227 and 228 of the CrPC:

“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.

(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.”

(emphasis supplied)

44. In a recent decision in ***State of Gujarat v. Dilipsinh Kishorsinh Rao : 2023 SCC OnLine SC 1294***, the Hon’ble Apex Court has discussed the parameters that would be appropriate to keep in mind at the stage of framing of charge/discharge, as under:

*“7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge sheet material. **The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.***

XXX

*12. **The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into.** This Court by referring to its earlier decisions in the *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659 and the *State of MP v. Mohan Lal Soni*, (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive*



opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.”
(emphasis supplied)

45. In view of the above, it is clear that this Court, at this stage, is not required to reevaluate the evidence or hold a mini trial as the same would tantamount to this Court assuming appellate jurisdiction. Thus, all that has to be seen is whether the learned Trial Court has adequately appreciated the material on record and whether the Court could form an opinion on the basis of the material on record that there is grave suspicion against the accused which is not properly explained.

46. In the present case, the learned Trial Court has framed charges against the petitioner for the offence under Section 120B of the IPC read with Section 9 of the PC Act.

47. Section 9 pertains to the offence relating to bribing a public servant by commercial organization intending to obtain or retain business for such commercial organization or to obtain or retain an advantage in the conduct of business for such commercial organization.

48. The learned Trial Court observed that although it had been argued that Section 9 of the PC Act was not made out, however, the conversation between the accused persons shows that the accused Rishabh had contacted the accused Pradeep to influence higher officials of M/s. NBCC (India) Ltd. to pressurize M/s. Shapoorji Pallonji and Co. (P) Ltd. to award the contract to M/s. Capacite Structures Ltd. It is argued that there is no evidence that Mr. Anoop Kumar Mittal was ever



influenced. As rightly noted by the learned Trial Court, for the purpose of constituting the offence under Section 9 of the PC Act, it is not necessary that the accused who obtains illegal gratification actually succeeds in their attempt to induce the public servant by exercising personal influence. In the present case, there is categorical evidence on record, including recovery of bike bought by the petitioner from the accused Pradeep and the statement of the petitioner's driver (CSW8–Shiv Kumar) who saw the delivery of bike, which shows the transfer of the gratification as bribe. As also noted by the learned Trial Court, it is clear from the record that the accused Pradeep was known to the Chairman of M/s. NBCC (India) Ltd. and the recorded conversations between the accused Pradeep and the accused Rishabh show that the accused Pradeep had assured that he would be able to influence the said official for grant of the sub-contract.

49. It is argued that the petitioner cannot be persecuted merely on the basis of calls as they are corroborative in nature. The learned Trial Court has rightly appreciated that the electronic media corroborates the case of the prosecution by filling the missing gaps as are created by factors like the delivery of motorcycle.

50. It is further argued that the petitioner was merely an employee and he was acting on instructions. It is argued that the calls also show that the accused was waiting for financial approval. A bare perusal of the transcripts of the calls show that while the petitioner did mention financial approvals, however, at this stage, some portions of the call suggest that the petitioner was aware of the reason for giving the bike.



51. As noted by the learned Trial Court, Call Nos. 31, 33, 34, 41, 44 and other calls show that the petitioner was aware of the matter regarding the sub-contract and that the motorcycle was being given to the accused Pradeep, who was the Assistant Director in IB and who was to exercise his influence on higher officials of M/s. NBCC (India) Ltd. The Court is in agreement with the observations of the learned Trial Court in this regard. In particular, reference has been made to call no. 34 where co-accused Rishabh is saying that “*kaam khatam*”, that is, work is done, and that the accused Pradeep had confirmed that black color of bike is fine with him. The said conversation *prima facie* shows that the petitioner was aware that some work was being done by the accused Pradeep, for which, he was receiving the motorcycle. In call no. 31 between the accused Rishabh and the petitioner, there are even specific mentions to the engagement of the accused Pradeep in IB and the nexus of the accused Pradeep with Mr. Anoop Kumar Mittal, CMD, M/s. NBCC (India) Ltd. The nature of the conversation *prima facie* seems to be suggestive of the fact that the bike is being given as a bribe.

52. In a nutshell, at this stage, *prima facie*, the material on record including the calls cast grave suspicion against the petitioner which shows that even though he may not be the ultimate beneficiary to the offence, he was participating in the transfer of bribe despite knowing about the nature of the transaction. While the guilt of the petitioner would be ascertained in trial, at this stage, the conversations and the statement of the petitioner’s driver cast grave suspicion against him.



53. It is also pertinent to note that the present case has been pending before this Court since the year 2020 and the trial has since proceeded. Needless to say, it is open to the petitioner to raise all arguments before the learned Trial Court.

54. In view of the aforesaid discussion, this Court finds no reason to interfere with the impugned order or to order destruction of the intercepted call recordings.

55. The present petition is dismissed in the aforesaid terms.

AMIT MAHAJAN, J

JUNE 26, 2025