

1. If on the basis of 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. 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 at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

[Para 11] [329-H; 330-A, B]

2. It cannot be said that no charge could be framed against the appellant as there was no material to show that she was *prima facie* guilty or had any *mens rea*. The facts of the present case disclose that advertisements of six bogus firms had been published and 76 bogus bills worth Rs.30,30,057/- were submitted for payment by signing under fictitious names. Out of these 76 bogus bills 14 were said to be dishonestly processed and verified and signed by the appellant and the co-accused. All the bogus bills were filled by another co-accused who was neither posted in the publicity division nor was authorized to do so. These bogus bills had not been entered in the bills register of the ITPO and no file had been opened or created in respect of these firms claiming to have published the advertisements. The file numbers written on the fictitious bills were also fake. None of these bills bore the initial or signatures of the incharge of the ITPO at the relevant time. [Paras 12 and 13] [330-C, D, E]

3. It cannot be said that the appellant had signed the bills in the normal course of her duty and it was the Accounts section which was negligent in not verifying these bills. Once a person signs on a document he or she is expected to make some enquiry before signing it. In fact, appellant-accused was never assigned any duty in respect of processing or signing the bills for ad hoc advertisements, and she was assigned duty only of regular advertisements. Moreover, these bills were not sanctioned/approved by the competent authority i.e. the Chairman/Executive Director.

[Paras 14 and 15] [330-F, G, H]

4. There are serious allegations of misappropriation of a huge amount of money belonging to the Government, and it cannot be said at this stage that there is no material at all for framing the charge against her.

[Para 16] [331-A]

A 1.1. The Trial Judge did not properly apply its mind in regard to the different categories of accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a *prima facie* finding that there exists some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefor or held to be sufficient for framing charge. [Para 3] [331-E, F]

B 1.2. The courts although may take a strict view of an offence where fraud is alleged against a public servant, but only because it is found to have been committed, the same by itself may not be sufficient to arrive at a conclusion that all officers who have dealt with the files at one point of time or the other would be taking part in conspiracy thereof or would otherwise be guilty for aiding and abetting the offence. It is necessary to deal with the individual acts of criminal misconduct for finding out a case therefor.
[Para 6] [333-D, E]

C 1.3. In a case of this nature, the Special Judge also should have considered the question having regard to the 'doctrine of parity' in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completed exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further considerations was as to whether the applicant before it was similarly situated or not and/or whether the exonerated officer in the department proceeding also faced same charges including the charge of being a party to the larger conspiracy.
[Para 7] [333-F, G]

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[Para 7] [333-F, G]
Union of India and Anr. v. Major J.S. Khanna, Etc., [1972] 3 SCC 873;
State of Maharashtra and Ors. v. Som Nath Thapa and Ors., [1996] 4 SCC 659 and *L.Chandraiah v. State of A.P. and Anr.*, [2003] 12 SCC 670, referred to.

G 2. Ordinarily the matter would have been remitted for consideration of the matter afresh, but as the prosecution has already started examination of witnesses and as there is assurance that all endeavours would be made for early disposal of the matter discretionary jurisdiction under Article 136 of the Constitution of India is not exercised at this point of time.

H [Para 9] [334-D, E]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 710 of 2007. A

From the Final Judgment and Order dated 22.10.2005 of the High Court at New Delhi in Revision Petition (Crl) No. 10 of 2005.

A.K. Ganguli, V. Krishnamurthy, T. Harish Kumar and Prasanth P. for the Appellant. B

A. Sharan, ASG., Amit Anand Tiwari and P. Parmeswaran for the Respondent.

The Judgment of the Court was delivered by C

MARKANDEY KATJU, J. 1. Leave granted.

2. This appeal has been filed against the judgment and order of the Delhi High Court dated 22.10.2005 in Criminal Revision Petition No. 10/2005. D

3. Heard learned counsel for the parties and perused the record.

4. The Criminal Revision Petition was filed in the High Court challenging the order of the Special Judge, Delhi in Case CC No. 63/2001 titled *CBI v. Priya Uppal & Ors.*, by which the appellant and two others had been charged for offences under Section 420 read with Sections 120-B, 429, 468 and 471 of Indian Penal Code as well as under various provisions of the Prevention of Corruption Act. The appellant along with the other accused in this case allegedly entered into a criminal conspiracy and by misusing their official position caused undue pecuniary advantage to themselves to the tune of Rs.30,30,057/- and caused a corresponding loss to the Indian Trade Promotion Organization (ITPO) which is a wing of the Central Government, from whose account money was released against bogus receipts of advertisements which had actually never been carried by any newspaper or other publication. E F

5. The prosecution case is that the publicity department of ITPO was concerned with the release of advertisements in newspapers. There were two types of advertisements; (1) regular advertisement & (2) ad hoc advertisements. Regular advertisements were given to the national dailies and other leading newspapers and magazines, whereas ad hoc advertisements were those which were issued on ad hoc basis from time to time with the specific approval of the Chief Managing Director or Executive Director only. The procedure for release of advertisements on behalf of ITPO was as follows: G H

A 6. Requests were received from Indian and foreign magazines/
newspapers/publications for the advertisements which were processed by the
publicity officer of the rank of Deputy Manager level and were put before the
CMD/ED through the Senior Manager/Deputy General Manager for his
approval. On receipt of the approval from the CMD/Executive Director by the
B publicity Division the concerned manager sent letters/release orders to the
party for publication of the material. After the advertisements were published
the concerned officer of the publicity Division of ITPO had to process and
pass the bills for making payment to the advertising agency. Copy of the
letter sent and copy of the newspapers/magazine were also forwarded or
attached to the bill submitted by the agency.

C 7. The prosecution alleged that at the relevant time Shri Bal Krishan,
Deputy Manager was in charge of the work relating to ad hoc advertisements.
He was the authorized officer to process the bills for such advertisements. It
is alleged that Shri Ajay Uppal, proof Reader/Senior Assistant of ITPO floated
D 6 bogus firms and submitted 76 bogus bills worth Rs.30,30,057/- for payment
by signing under fictitious names like, Sanjay Gupta, Neeraj, Atul, etc. With
these bills he enclosed photocopies of fake advertisements. Out of 76 bogus
bills, 14 were dishonestly processed and verified by the accused Soma
Chakravarty and P. K. Jindal, in connivance with the co-accused to cheat the
E ITPO and give wrongful gain to themselves and to the other accused in this
case. It is stated that the appellant also had the knowledge that Bal Krishan
had been authorized to verify the bills pertaining to ad hoc advertisements.
All the bogus vouchers had been filled in by the co-accused Gyase Ram who
was neither posted in the publicity division nor was authorized to do so. It
is further alleged that the appellant knew that those bogus bills had not been
F entered in the bills register of the publicity Division of ITPO and no file had
been opened/created in respect of these firms claiming to have published
advertisements. The file numbers written on the fictitious bills were also fake.
None of these bills bore initial or signatures of Shri Balkrishan, who was
incharge of the ad hoc advertisements of ITPO at the relevant time. As
regards the other accused, P.K. Jindal, the allegation is that he as Senior
G Manager of Accounts passed bills worth Rs.1,75,000/- related to these
transactions. On these facts, the CBI concluded that there was sufficient
evidence of conspiracy to cheat along with the other evidence of forgery,
cheating and corruption. Accordingly a charge sheet was filed. The trial
court after examining the allegations and evidence collected by the investigation
framed the impugned charges against the appellant Ms. Soma Chakravarty &
H Mr. P.K. Jindal. Against the framing of charges a criminal revision was filed

in the High Court which dismissed the same by the impugned judgment. A

8. On behalf of the appellant it was contended before the High Court that there was no material before the Special Judge entitling him to frame charges against the accused. It was submitted on behalf of the accused Soma Chakravarty that she did nothing more than processing some of those 14 bills and sending them to the accounts division of ITPO from where the payments had been collected by cheques. It was submitted that the appellant was working as Deputy Manager in the publicity division of I.T.P.O. and had signed 13 bills and sanction forms after they had been processed by Gyase Ram and all the 13 bills contained the signatures of Gyase Ram when they were put before her for her signature. She contended that she had signed those bills in the normal course of her duties and the bills were passed by the accounts section. She attributed lack of vigilance to the accounts section which was required to verify those bills with reference to the sanction for the advertisement. She claimed that Bal Krishan, the officer authorized to deal with the ad hoc advertisement, was himself a beneficiary of part of the alleged money cheated out of ITPO. It was claimed on behalf of the appellant Soma Chakravarty that the investigation had failed to reveal any *mens rea* on her part. She contended that she was implicated only because of her failure to take sufficient care while initialing the bills in question. She contended that it was not possible for her to detect at the time of initialing the bills that any fraud was being played on her by co-accused Gyase Ram and others. Accordingly she sought to be discharged from the case. Similarly, the other co-accused P.K. Jindal also denied any involvement in the offence and alleged that there was hardly any allegation against him in the charge sheet. B
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9. The High Court dismissed the Criminal Revision Petition filed by the appellant, and hence this appeal by special leave. F

10. Learned counsel for the appellant relied on the decisions of this Court in *Union of India and Anr. v. Major J. S. Khanna etc.*, [1972] 3 SCC 873, *State of Maharashtra and Ors. v. Som Nath Thapa and Ors.*, [1996] 4 SCC 659 and *L Chandraiah v. State of A.P. and Anr.*, [2003] 12 SCC 670 and contended that before framing the charges the court must have some material on the basis of which it can come to the conclusion that there is a prima facie case against the accused. In our opinion there was such material before the Court while framing the charge. G

11. It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court H

A 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. 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 at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.

C 12. Learned counsel for the appellant contended that in view of the aforesaid decisions no charge could be framed against the appellant as there was no material to show that she was *prima facie* guilty or had any *mens rea*. We cannot agree.

D 13. The facts of the present case disclose that advertisements of six bogus firms had been published and 76 bogus bills worth Rs.30,30,057/- were submitted for payment by signing under the fictitious names like, Sanjay Gupta, Neeraj, Atul, etc. Out of these 76 bogus bills 14 were said to be dishonestly processed and verified and signed by the appellant Soma Chakravarty and co-accused P. K. Jindal. All the bogus bills were filled by co-accused Gyase Ram who was neither posted in the publicity division nor was authorized to do so. These bogus bills had not been entered in the bills register of the ITPO and no file had been opened or created in respect of these firms claiming to have published the advertisements. The file numbers written on the fictitious bills were also fake. None of these bills bore the initial or signatures of Shri Bal Krishan who was incharge of the *ad hoc* advertisement of the ITPO at the relevant time.

F 14. It was contended by the learned counsel for the appellant that the appellant had signed the aforesaid 13 bills in the normal course of her duty and it was the Accounts section which was negligent in not verifying these bills.

G 15. In our opinion once a person signs on a document he or she is expected to make some enquiry before signing it. In fact, accused Soma Chakravarty was never assigned any duty in respect of processing or signing the bills for ad hoc advertisements, and she was assigned duty only of regular advertisements. Moreover, these bills were not sanctioned/approved by the competent authority i.e. the Chairman/Executive Director.

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16. No doubt Soma Chakravarty contended that she signed these fake bills by negligence but without any *mala fide* intention, but this is a matter which, in our opinion, is to be seen at the time of the trial. There are serious allegations of misappropriation of a huge amount of money belonging to the government, and it cannot be said at this stage that there is no material at all for framing the charge against her. Hence, we agree with the view taken by the High Court in this connection.

17. In view of the above, we find no infirmity in the impugned judgment and this appeal is consequently dismissed. However, we make it clear that any observation made by us in this judgment or in the impugned judgment of the High Court will not influence the trial court, which shall decide the case on its merits, as expeditiously as possible.

S.B. SINHA, J. 1. Although I entirely agree with the concluding part of the judgment rendered by my learned Brother, but I would like to state my own reasons therefor.

2. Charges have been framed against the appellant and several others on 25.09.2004. Trial has already started and it is not in dispute that some witnesses have been examined. It is likely that the trial would be over within a few months. Thus, it would not be proper for us to enter into the merit of the matter at this stage.

3. Some of the questions, however, which have been raised by the appellant are of some importance and it may be necessary to deal therewith. The learned Trial Judge, it appears, did not properly apply its mind in regard to the different categories of accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a *prima facie* finding that there exists some materials therefor. Suspicion cannot alone, without anything more, it is trite, form the basis therefor or held to be sufficient for framing charge.

4. In *Union of India and Anr. v. Major J.S. Khanna, Etc.*, [1972] 3 SCC 873, this Court opined:

“22 . It is true that at the stage when the Special Judge drew up charges and decided to proceed with the case on the footing of a conspiracy to defraud the Government, he had only to see that there was a *prima facie* case against the two respondents. That could also

A be the basis upon which the High Court had to try upon two revision
applications. Even so, there had to be some material before the Special
Judge which could point towards a conspiracy in which the two
respondents had joined. Such of the statements which the investigating
officer could procure did not, as the High Court observed, point to
B such a conspiracy. What appears to have been lost sight of by the
Special Judge was the fact that the period during which the orders in
question were placed was an emergency period, when procedure laid
down for such orders could not perhaps be strictly adhered to. He
also appears to have lost sight of the fact that out of the thirteen
C orders in question, four of the value of Rs 32,000 and odd were placed
by Brig. Mani, and orders only for the balance of Rs 8000 and odd
were placed by Res. Khanna. It may be that someone had played fraud
in the matter of quotations in the name of Darrang Transport, United
Motor Works, Auto Stores etc. But unless there was some material at
least to link these two officers with the person who tendered those
D quotations, it is difficult to say that there were conspirators who had
joined with the rest of the accused to defraud the Government. In
these circumstances, we find ourselves unable to agree with the
contention of Mr Mukherjee that the High Court was in error in
coming to the conclusion that no prima facie case had been made out
against either of the two officers.”

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5. In *State of Maharashtra and Ors. v. Som Nath Thapa and Ors.*, [1996]
4 SCC 659, this Court held:

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“30. In *Antulay case* Bhagwati, C.J., opined, after noting the difference
in the language of the three pairs of sections, that despite the difference
there is no scope for doubt that at the stage at which the court is
required to consider the question of framing of charge, the test of
“prima facie” case has to be applied. According to Shri Jethmalani, a
prima facie case can be said to have been made out when the evidence,
unless rebutted, would make the accused liable to conviction. In our
view, a better and clearer statement of law would be that if there is
ground for presuming that the accused has committed the offence, a
court can justifiably say that a prima facie case against him exists, and
so, frame a charge against him for committing that offence.

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31. Let us note the meaning of the word ‘presume’. In *Black’s Law
Dictionary* it has been defined to mean “to believe or accept upon

probable evidence". (emphasis ours). In Shorter Oxford English Dictionary it has been mentioned that in law 'presume' means "to take as proved until evidence to the contrary is forthcoming", Stroud's Legal Dictionary has quoted in this context a certain judgment according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (emphasis supplied). In Law Lexicon by P. Ramanath Aiyer the same quotation finds place at p. 1007 of 1987 Edn.

32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

6. The courts although may take a strict view of an offence where fraud is alleged against a public servant, but only because it is found to have been committed, the same by itself may not be sufficient to arrive at a conclusion that all officers who have dealt with the files at one point of time or the other would be taking part in conspiracy thereof or would otherwise be guilty for aiding and abetting the offence. It is necessary to deal with the individual acts of criminal misconduct for finding out a case therefor.

7. In a case of this nature, the learned Special Judge also should have considered the question having regard to the 'doctrine of parity' in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completed exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/ or whether the exonerated officer in the department proceeding also faced same charges including the charge of being a party to the larger conspiracy.

A 8. In *L. Chandraiah v. State of A.P. and Anr.*, [2003] 12 SCC 670, it was held:

B “...It may be, and as rightly observed by the courts below, that they acted in a negligent manner and if they had taken due care they would have detected the fraud, but they failed to do so. However, that by itself would not constitute an offence under Section 409 IPC though it may expose the appellants to disciplinary action under the relevant rules. The learned counsel also brought to our notice the fact that in respect of the same sub-post office some vouchers prepared and countersigned by A-3 on the reverse side were sent to the head post office at Mancherial. PW 5, the investigating officer has referred to several such vouchers which were sent to the head post office for payment, and the officers of the head post office also sanctioned payment on the basis of such fabricated vouchers. Obviously, the officers at the head post office were also not very careful, and as a result A-3 succeeded in his evil design to fraudulently withdraw a large sum of money. The learned counsel submitted that on the basis of these facts not only the appellants were cheated by A-3 but even the officers of the head post office were similarly cheated by A-3....”

E 9. Ordinarily, we would have remitted the matter to the Special Judge, for consideration of the matter afresh, but as the prosecution has already started examination of witnesses and as we have been assured by the learned Additional Solicitor General that all endeavours would be made for early disposal of the matter, we may not exercise our discretionary jurisdiction under Article 136 of the Constitution of India at this point of time. We, however, keeping in view the fact that a large number of officers of the Union of India are involved and as it is stated at the bar that they have not been promoted because of the pendency of this case, would request the learned Special Judge to dispose of the matter as expeditiously as possible.

K.K.T.

Appeal dismissed.