CBI Case No. 26/2020
RC No.DAI-2017-A-0042/
ACB/CBI/NEW DELHI
CBI Vs. Sunil Kumar & Ors.

23.03.2026

ORDER ON CHARGE

1) The allegations in brief are that a complaint dated 01.05.2015 was filed by one Sh. Atul Bhatia, before Director Vigilance, Directorate of Vigilance alleging that a scam was going inside DSIIDC Department, by Executive Engineer (Electrical) Sunil Kumar. It was alleged that Sunil Kumar was manipulating the tenders and taking bribes in respect of awarding works to the contractor, even though, they were not satisfying the terms and conditions of the tender.

2) He made complaint against two tenders one regarding "Electrical work for Extra Ordinary repair of UT Bhawan at Plot no. 16, Tenzing Norgey Marg, State Guest House Area, Chankya Puri, New Delhi (Civil & Electrical works), S/H: Repair and Renovation of Toilets to prevent seepage and finishing work" and the second with respect to tender work of "Design, Manufacture, Supply, Installation, Test & Commission of Hydraulic Car Lift at Halfway/Long Stay Home for social Welfare Department at Rohini Sector-3, Rohini Sec-22, Dwarka Sec-3 and IFC Narela". He alleged that both the tenders were allotted to one M/s Hari Om Electronics, even though, the said firm did not satisfy the terms and conditions of the tender and for the said purpose, Executive Engineer (Electrical) Sunil Kumar had taken bribe and awarded the tender to M/s Hari Om

Electronics. He further stated that he had conducted a sting operation of Sunil Kumar, where he is confessing and discussing the bribe taken by him. Besides, he (complainant) was also having documentary proof which indicated that an ineligible contractor got the work. He further alleged that since Sunil Kumar was having good relations with highly influential people, hence despite several earlier complaints, no action was taken against him by DSIIDC Department.

3) The said complaint was registered at ACB, GNCT Delhi, vide FIR No. 18/15 dated 21.05.2015. Thereafter, Ministry of Home Affairs, Govt. of India vide its letter dated 23.10.2017, directed CBI to further investigate the said FIR. Accordingly, CBI registered this case vide RC-DAI-2017-A-0042 u/S 7 & 13 of PC Act on 29.12.2017 and took up investigation.

4) As per the charge sheet, investigation revealed that DSIIDC Limited carries out construction/ renovation / maintenance work of various departments of GNCT of Delhi and any other department on their request, as per the provisions of CPWD Manual. Further in the year 2013, CPWD Manual 2012 was in force. The matters of tender, detailed estimate was prepared by the concerned J.E. or A.E.E. and it was put up before the competent authority for approval through proper channel, for the administrative approval and estimate sanction. The technical sanction was also accorded by the competent authority as per the CPWD Manual. Then, draft Notice Inviting Tender (NIT) was prepared and after approval of the competent authority, NIT was uploaded on the website of DSIIDC and published in newspapers. As per the NIT conditions, the eligible contractors quoted their rates as per the bid system. On the particular date, the quotations are to be downloaded and opened by the concerned Executive Engineer or the committee made by him. Thereafter, technical bids of the contractors which is found eligible as per the NIT conditions, are opened and thereafter financial bids are opened. The lowest bidder (L-1) is awarded contract by the competent authority.

5) Investigation further revealed that for the work at Chankya Puri (Civil + Electrical Works), the administrative approval was given at estimated cost of Rs.7,85,64,699/-, by the administration of Daman & Diu and the work was to be executed by DSIIDC Limited. After going through the formalities, the IT department of DSIIDC Limited, uploaded an NIT No.5/2013-14 on its website on 21.01.2014. As per the NIT, the main criteria of eligibility for submission of tender documents were as follows:

(i) The intending tenderers were eligible to submit the tender provided they had definite proof from the appropriate authority, having satisfactorily completed similar works of magnitude as below:-

(a)(i) Three similar works each costing not less than Rs.222.30 Lacs or two similar works each costing not less than Rs.277.85 Lacs or one similar work costing not less than Rs.444.56 Lacs in last 7 years ending 31.12.2013.

(ii) One work of any nature (either part of (a) above or a separate one costing not less than Rs.222.30 Lacs with some Central / State Government / Central

Autonomous body / Central Public Sector Undertaking.

(b) The value of executed works shall be brought to current costing level by enhancing the actual value of work at similar rate of 7% per annum, calculated from the date of completion to the last date of submission of tender.

(ii) Either applicant himself shall have the requisite experience and / or shall associate with electrical contractor having desired experience, for execution of electrical installations of the work.

6) Technical bids were called and five bidders were found eligible whose bids were approved by Sh. Shashi Kant Tyagi, the then Chief Engineer on 17.02.2014. On the same day, price / financial bids were opened by Sh. Shree Gopal, CPM and Sh. R.L. Saxena, AAM. M/s Mathura Dass Ahuja & Sons was found L-1, who quoted Rs.4,71,24,150/- (15.197% below the estimated cost) and his bid was approved by Sh. Shashi Kant Tyagi on 21.02.2014.

7) As per the charge sheet, that there were certain pre-requisites for electrical work. The tender being a composite contract, the electrical works were essentially to be executed by registered licensed electrical contractors, registered in appropriate category/class with CPWD, DDA, MCD, NDMC and MES as electrical contractors. It also states that the main contractor shall enter in agreement with the contractor associated by him for execution of electrical works. No change in the electrical agency shall be permitted without prior approval of the department. In case, the main contractor intended to change any of the agency during the operation of the contract, he was required to obtain prior approval of respective Engineer In-charge. The new agency shall also have to satisfy the laid down eligibility criteria. In the instant case, accused Sunil Kumar, Executive Engineer (Elect.) was Engineer-in-charge.

8) Investigation further revealed that M/s Cholia Electricals, who was engaged by M/s Mathura Dass Ahuja & Sons to carry out the electrical work, regretted to execute their electrical work. Hence, Praduman Ahuja (A-2), partner of M/s Mathura Dass Ahuja & Sons, wrote a letter dated 23.04.2014 to the Chief Project Manager (ED-IV), DSIIDC Ltd., Delhi mentioning that he would like to associate M/s Hari Om Electronics for electric work and also attached the eligibility documents pertaining to M/s Hari Om Electronics alongwith the letter.

9) It is alleged that accused A-1 Sunil Kumar, CPM (ED-KBI&H), DSIIDC Ltd. by entering into a criminal conspiracy with A-2 Pradyuman Ahuja, A-3 Sunil Choudhary (since deceased), proprietor of M/s Hariom Electronics and A-4 Anurag Malik, Director of M/s Tarishi Facilities Pvt. Ltd., vide its letter dated 23.04.2014, dishonestly permitted A-2 Parduman Ahuja to associate M/s Hari Om Electronics in place of M/s Cholia Electricals, despite the fact that M/s Hari Om Electronics was not eligible for execution of electrical work at Chanakya Puri, as per the eligibility criteria mentioned in the NIT. Accused Sunil Kumar knowingly and dishonestly issued letter dated

23.04.2014, falsely mentioning that M/s Hari Om Electronics was eligible to execute the electrical work.

10) Investigation further revealed that as per Office Order No. 8/2011(Elect.) dated 13.06.2011, M/s Hari Om Electronics was eligible to submit tenders only up to the limit of Rs. Thirty Lacs, however, in the instant matter, the approximate cost of electrical work was to the tune of Rs.1,73,91,611/-. It was further found that A-4 Anurag Malik, Director of M/s Tarishi Facilities Pvt. Ltd., dishonestly and fraudulently in furtherance of criminal conspiracy with other accused persons, issued a false certificate dated 10.08.2013 in favour of M/s Hari Om Electronics, since it was found that M/s Hari Om Electronics had not executed the electrical work of Rs.1,74,86,206/- at the Shopping Mall at Muzaffarpur, UP which was reflected in the completion certificate dated 10.08.2013. Moreover, M/s Tarishi Facilities Pvt. Ltd. dealt in the work of cleaning machines and did not deal in electrical works.

11) Investigation further revealed that accused Sunil Choudhary (A-3) himself alongwith complainant Sh. Atul Bhatia, visited the office of A-1 Sunil Kumar and handed over the letter dated 23.04.2014 of accused Parduman Ahuja. At the relevant time, complainant Sh. Atul Bhatia was employed by A-3 Sunil Choudhary (proprietor of M/s Hari Om Electronics) as a Business Development Associate. It was A-3 who introduced the complainant to A-1. Further, on the direction of A-3, complainant paid bribe of Rs. Two Lacs in March 2014 and again that of Rs. Four Lacs on 05.05.2014 to A-1 Sunil Kumar. The cash for the same was arranged by A-3.

12) Further, complainant alongwith his brother in law Sh. Himanshu Prabhakar, had visited the house of accused Sunil Kumar on 14.09.2014 and recorded the conversations held between the three of them, by using his Samsung mobile phone. The face of accused Sunil Kumar is visible at the end of the conversation in the said video recording. In the said video recording, accused Sunil Kumar had admitted having received Rs. Five Lacs in lieu of approving the name of M/s Hari Om Electronics, for execution of the aforesaid electrical work.

13) Further, during house search of A-1 Sunil Kumar, an amount of Rs.13,40,000/- in cash, was seized from his house in the presence of independent witnesses, which he could not account for and was the bribe amount.

14) Investigation further revealed that the original Samsung mobile phone alongwith its memory card was sent to CFSL, Rohini and subsequently to FSL, Hyderabad but the video recording could not be retrieved. However, the complainant had prepared the DVD of the video recording, which he had supplied to the investigating agency. The questioned voices in the DVD of the video recording and the specimen voices, were sent to FSL, Rohini, which has opined that the voices in the DVD were the possible voices of A-1 Sunil Kumar and complainant Sh. Atul Bhatia. The IO also got the statement of Himanshu Prabhakar recorded u/S 164 CrPC.

15) During investigation, the specimen handwriting and signatures of A-1 to A-4 was also obtained voluntarily, in the presence of independent witnesses and was sent to CFSL, New Delhi, alongwith the questioned documents for comparison and expert opinion. A supplementary charge sheet was filed later on alongwith the report of CFSL Expert as per which the standard/ specimen handwriting of A-1, A-3 and A-4 matched with the questioned handwriting and signatures on the documents.

16) Lastly, it is stated that the investigation had revealed that accused persons had entered into a criminal conspiracy and used forged/ false experience certificate as genuine and on the basis of the said false/ forged experience certificate, A-1 abused his official position as public servant and approved the name of M/s Hari Om Electronics for execution of electrical component of the work at Chanakya Puri, as an associate of M/s Mathura Dass Ahuja & Sons, in violation of conditions of NIT. Further, A-1 had demanded and obtained bribe amount from A-3 through the complainant, for associating M/s Hari Om Electronics in the tender work awarded to M/s Mathura Dass.

17) Accordingly, after obtaining sanction for prosecution against A-1, this charge sheet was filed for the offences punishable u/S 120-B IPC r/w Section 420, 468, 471 IPC and Section 7 & 13 (2) r/w Section 13(1) (d) of PC Act against the accused persons.

18) Cognizance of offences were taken and after compliance of Section 207 Cr.PC, arguments on charge were heard from both sides.

19) Ld. PP, CBI has argued in favour of framing charge against all the accused persons contending that accused Sunil Kumar, who was working as E.E.(Elect.) of DSIIDC, took bribes from M/s Hari Om Electronics, a firm of accused no.3 Sunil Choudhary (since deceased) and awarded the tender work to him despite the fact that M/s Hari Om Electronics did not fulfill the requisite criteria. He further submitted that the main tender was awarded to M/s Mathura Dass Ahuja & Sons, a firm of A-2 and it had engaged one M/s Cholia Electrical Works for execution of the electrical component of the tender. However, later on in conspiracy with A-1 and A-3, A-2 informed DSIIDC that he would like to associate M/s Hari Om Electronics for electric work instead of M/s Cholia. The eligibility document pertaining to M/s Hari Om Electronics was also attached by A-2 alongwith his letter dated 13.04.2014 addressed to DSIIDC. As per record, M/s Hari Om Electronics were eligible to submit tenders only to the limit of Rs.Thirty Lacs but the electrical work which was assigned to it by A-2 was to the tune of Rs.1,73,91,611/-.

20) Further the eligibility document i.e. one copy of completion certificate dated 10.08.2013 issued by A-4 in favour of A-3, was found to be false as A-4 being Director of M/s Tarishi Facilities Pvt. Ltd., had mentioned in the completion certificate that M/s Hari Om Electronics had executed electrical work worth Rs.,174,86,206/- at Muzaffarpur, UP which was found to be false. Further, M/s Tarishi Facilities Pvt. Ltd. dealt in the work of cleaning machines and did not dealt in electrical works. All these facts clearly show that above accused persons in criminal conspiracy with each other, had fraudulently obtained electrical work of the tender for M/s Hari Om Electronics, by cheating DSIIDC, pursuant to illegal consideration. He further submitted that complainant Sh. Atul Bhatia was employed by A-3 at the relevant time as a Business Development Associate and on the direction of A-3, he had paid bribe of Rs.Two Lacs in March 2014 and later om, further Rs.Four Lacs to A-1 and had also made a video recording of the transaction. All these facts establish the involvement of all the accused persons and accordingly, there were liable to be charged.

21) On behalf of accused persons, written submissions were also filed. It was argued on behalf of A-1 that A-1 had no authority to award contracts and the tender was awarded to M/s Mathura Dass Ahuja & Sons, by the competent authority. Further, it was M/s Mathura Dass Ahuja & Sons which had engaged M/s Hari Om Electronics for completing the electrical component of the work. Infact, M/s Mathura Dass Ahuja & Sons had the requisite work experience to carry out even the electrical component of the tender but it still associated M/s Hari Om Electronics. Further, no payment was made by DSIIDC to M/s Hari Om Electronics and all the payment was released to M/s Mathura Dass Ahuja & Sons.

22) It was further argued that the role of A-1 as executive engineer was limited to supervision and co-ordination and not tender evaluation or award, which rested with CPM-SWD and Tender Committee.

23) With respect to alleged forged certificate issued by A-4 in favour of A-3, it was submitted that A-1 had no role in the creation or verification of the said certificate. Infact the physical verification of Certificate was not even the duty of DSIIDC. A-1 did not verify or approve the certificate. The copies of eligibility documents submitted by the applicant/ contractor had only to be matched with the original to check for any discrepancy. In the present matter, A-3 provided the document to A-2 after which the said document was uploaded by A-2. Moreover, the certificate is also not addressed to DSIIDC. Therefore, it was the responsibility of accused persons who forwarded the same to verify and scrutinize them, before submission.

24) The evidentiary value of the sting operation which was contained in DVD, was also challenged being illegal and unreliable. It was further argued that the alleged Rs.13,40,000/- seized from the house of A-1 was not a bribe money and it belonged to an advocate, which was also confirmed by IO, CBI in their reply. The said money was withdrawn by the said advocate who was closely associated with A-1 and kept at the resident of A-1, as the advocate had to visit Vaishno Devi, Jammu. Reliance was placed on order dated 30.12.2016 of the Ld. Predecessor of this court whereby the court had purportedly acknowledged that the amount of Rs.13,40,000/- was belonging to the advocate and the same was released to him against bank guarantee.It was further contended that no misappropriation of govt. fund was established, even as per the charge sheet.

25) It was further submitted that no prosecution sanction u/S 197 CrPC was taken by the IO, CBI for the IPC offences charged against the accused u/S 120B r/w Section 420/ 468/471 IPC, which was a mandatory requirement. Lastly, it was submitted that the CBI had failed to establish even a prima facie case of criminal misconduct u/S 13(1) (d) of PC Act against A-1 as no pecuniary advantage, corrupt means or abuse of position was proved and so, A-1 was entitled to be discharged.

26) On the other hand, it was argued on behalf of A-2 that he had no concern with the present offences and there is no inculpatory evidence produced on record to prove the guilt of A-2 or its firm. It was contended that the experience certificate/ disputed document pertaining to the eligibility of M/s Hari Om Electronics, had been handed over to A-1 by the complainant himself as per record. Further, the original of the said document was not available in the office of A-1 and was seized from possession of A-3. So, there was no question of involvement of A-2 in the whole incident.

27) With respect to A-4, it was argued that there was absolutely no material on record to show that there was any knowledge on the part of A-4 of the alleged forged completion certificate (stated to have been issued by A-4), in their DSIIDC tender process. Further, the prosecution has not produced any material to show that there was any intent on part of A-4 to defraud, cheat or forge or any communication, co-ordination or meeting of minds with co-accused or DSIIDC officials or any role in the tender award or sub-contractor engagement. The chargesheet was completely silent on any direct nexus with A-4 and the award process or any alleged fraudulent gain or loss. There was no iota of existence of any criminal conspiracy as there was no documentary or oral evidence such as e-mails, call records, meetings, Whatsapp chats, financial transaction, showing any nexus between A-4 and co-accused persons. Mere suspicion or remote association was insufficient to prove the charge.

28) The allegations of forgery were also baseless as the prosecution failed to prove any *mens rea* or dishonest intent. Moreover, the alleged document was not even addressed to DSIIDC and no wrongful loss was caused to DSIIDC or any gain to A-4. Accordingly, it was prayed that no case of framing of charge was made out against A-4 and he was entitled to be discharged.

29) Ld. Counsel for A-1 and A-4 has relied upon the following judgments in support of his case:- **(i)** C. K. Jaffer Sharief Vs. State, (2013) 1 SCC 205, **(ii)** Sheila Sebastian Vs. R. Jawaharaj (2018) 7 SCC 581, **(iii)** Mohd. Ibrahim Vs State of Bihar, (2009) 8 SCC 751, **(iv)** Anvar P.V. Vs P.K. Basheer (2014) 10 SCC 473 **(v)** A. Sreenivasa Reddy Vs. Rakesh Sharma, (2023) **(vi)** Surendra Dhariwal Vs State of Rajasthan, (2025) and **(vii)** G. C. Manjunath Vs. Seetaram (Crl. Appeal No.1759/2025).

30) In support of his case, Ld. Counsel for A-2 has relied upon the judgments in case titled as **(i)** Rajesh Gupta Vs State through CBI, (2022) 2 SCR 864, **(ii)** Rupin Bora Vs State, 2011 Law Suit (Del.) 4358,**(iii)** Dasrath Singh Chauhan Vs CBI, AIR 2018 SC 4720 and **(iv)** P. Satyanarayan Murthy Vs District Inspector of Police, State of Andhra Pradesh & Anr., (2015) 10 SCC 152.

31) I have heard arguments from both the sides and also perused the record and judgments filed in support thereof.

32) At the outset, it is pertinent to mention that Ld. Counsel for A-1 & A-4 has mentioned in his written submissions that they were liable to be discharged u/S 227 Cr.PC and some judgments have also been filed on the same. However, it is pertinent to mention that as per provisions of PC Act, the cases tried under this Act are not warrant cases triable by a court of Sessions. Rather, it is specifically mentioned in Section 5 (1) of PC Act that a Special Judge may take cognizance of offences without the accused being committed to him for trial and in trying the accused persons, shall follow the procedure prescribed by Cr.PC for trial of warrant cases by the Magistrates. As per the provisions of Cr.PC, Section 227 deals with warrant cases triable by a court of Sessions and it is the provision u/S 239 Cr.PC which prescribes for procedure of trial by Magistrates for warrant cases. Hence, the provision of Section 239 Cr.PC would be applicable to the case in hand not Section 227 Cr.PC, as mentioned.

33) There is some difference in the language used in the aforesaid two provisions of Cr.PC i.e. 227 & 239 Cr.PC. While Section 227 Cr.PC lays down that an accused may be discharged, if the Sessions court is of the opinion that there is not sufficient ground for proceeding against the accused. While as per Section 239 Cr.PC, an accused may be discharged when the Magistrate after hearing both the parties considers the charge against the accused to be groundless.

34) As far as Section 239 Cr.PC is concerned, it has been held in the case titled as State of Tamil Nadu by Inspector of Police, Vigilance and Anti-Corruption vs. N. Suresh Rajan and others, (2014) 11 SCC 709 by Hon'ble Supreme Court as follows:-

> **"It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction.** In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."
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> (emphasis supplied)

35) In a recent judgment, the Hon'ble Apex Court in the case of State Through Deputy Superintendent of Police) v. R. Soundirarasu etc., 2022 (INSC) 915, has succinctly clarified the scope and object of section 239 of Cr.P.C. as under:-

> "53. The aforestated Sections indicate that the CrPC

contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it, cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. The three Sections contain somewhat different provisions in regard to discharge of the accused. As per Section 227, the trial judge is required to discharge the accused if "the Judge considers that there is not sufficient ground for proceeding against the accused". The obligation to discharge the accused under Section 239 arises when "the Magistrate considers the charge against the accused to be groundless". The power to discharge under Section 245(1) is exercisable when "the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted would warrant his conviction". Sections 227 and 239 respectively provide for discharge being made before the recording of evidence and the consideration as to whether the charge has to be framed or not is required to be made on the basis of the record of the case, including the documents and oral hearing of the accused and the prosecution or the police report, the documents sent along with it and examination of the accused and after affording an opportunity to the parties to be heard. On the other hand, the stage for discharge under Section 245 is reached only after the evidence referred to in Section 244 has been taken.

54. Despite the slight variation in the provisions with regard to discharge under the three pairs of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary one and the test of "prima facie" case has to be applied - if the trial court is satisfied that a prima facie case is made out, charge has to be framed.

55. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in Onkar Nath Mishra and others v. State (NCT of Delhi) and another, (2008) 2 SCC 561, and referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659, and the State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows:-

> "11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging

therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

56. Then again in the case of Som Nath Thapa (supra), a three-Judge Bench of this Court, after noting the three pairs of Sections i.e. (i) Sections 227 and 228 resply in so far as the sessions trial is concerned; (ii) Sections 239 and 240 resply relatable to the trial of warrant cases; and (iii) Sections 245(1) and (2) qua the trial of summons cases, which dealt with the question of framing of charge or discharge, stated thus: (SCC p. 671, para 32).

> "32**...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."

57. In a later decision in Mohanlal Soni (supra), this Court, referring to several of its previous decisions, held that: (SCC p. 342, para 7)

> "7. **The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."**

58. Reiterating a similar view in Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another, (2013) 11 SCC 476, it was observed by this Court that while framing charges the court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom

taken at their face value would disclose existence of ingredients constituting the alleged offence. At this stage, the court is not required to go deep into the probative value of the materials on record. It needs to evaluate whether there is a ground for presuming that the accused had committed the offence and it is not required to evaluate sufficiency of evidence to convict the accused. It was held that the Court at this stage cannot speculate into the truthfulness or falsity of the allegations and contradictions & inconsistencies in the statement of witnesses cannot be looked into at the stage of discharge.

59. In the context of trial of a warrant case, instituted on a police report, the provisions for discharge are to be governed as per the terms of Section 239 which provide that a direction for discharge can be made only for reasons to be recorded by the court where it considers the charge against the accused to be groundless. It would, therefore, follow that as per the provisions under Section 239 what needs to be considered is whether there is a ground for presuming that the offence has been committed and not that a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offences alleged would justify the framing of charge against the accused in respect of that offence, and it is only in a case where the Magistrate considers the charge to be groundless, he is to discharge the accused after recording his reasons for doing so.

60. Section 239 envisages a careful and objective consideration of the question whether the charge against the accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But if the Judge, upon considering the record, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for the framing of the charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See : V.C. Shukla v.

State through CBI, AIR 1980 SC 962).

> **61. Section 239 of the CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word 'groundless' used in Section 239 of the CrPC means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the accused."**
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> **(emphasis supplied)**

36) However it is also settled law that although the words used under section 227 and 239 are different but their meanings are one and the same. Hon'ble Supreme Court in the case of State of Tamil Nadu Vs Suresh Rajan (2014) 11 SCC 709 held that notwithstanding the difference in language in sections 227 and 239 CrPC, the approach of the court concerned, is to be common under both provisions.

37) I will proceed to dispose off the issue of charge in the light of ratio and observations made by Hon'ble Supreme Court in the judgments referred as above.

38) The present case is a peculiar case wherein the allegations against a public servant are of having received bribe from a co-accused in order to give favour to him, illegally. No trap has been laid against the accused public servant but rather, the present FIR was registered on the complaint of one Sh. Atul Bhatia, who himself happened to be employee of one of co-accused Late Sunil Choudhary/A-3, proprietor of M/s Hari Om Electronics. He had alleged that at the instance of A-3, he had handed over the bribe amount to A-1, so that A-3 could carry out the electrical work, even though he was not eligible for the same. The complainant had also allegedly made one video recording of the incident wherein A-1 was accepting having received the bribe amount, through his mobile phone and had also provided one CD containing the video file of the recording. However, the said mobile phone when sent for forensic examination, was not found containing any such video file and this court vide its order dated 02.02.2026 held that the video file contained in the CD, cannot be treated as a secondary evidence and had dismissed the application of CBI to treat it as secondary evidence since it was not proved from which source the alleged video footage had been obtained and copied in the CD. Hence, it would be pertinent to make it clear at this stage itself that there is no admissible video or audio recording or electronic evidence against the accused persons.

39) The prosecution's case is that M/s Mathura Dass Ahuja & Sons were awarded the electrical work for Extra Ordinary repair of UT Bhawan at Plot no. 16, Tenzing Norgey Marg, State Guest House Area, Chankya Puri, New Delhi (Civil & Electrical works). It is an admitted fact that M/s Mathura Dass Ahuja & Sons, whose partner is A-2 Parduman Ahuja, was itself eligible to carry out the mechanical work as well as the electrical work. However, as per the Notice Inviting Tender (NIT), either the applicant of the tender himself shall have the requisite experience and / or shall associate with electrical contractor having desired experience for execution of electrical installations of the work. M/s Mathura Dass Ahuja & Sons was found L-1 and was awarded the tender and though it was itself eligible to carry out the entire work of tender, it informed DSIIDC that it would like to associate M/s Cholia Electrical Works for the execution of electrical component.

40) However, subsequently A-2, partner of M/s Mathura Dass Ahuja & Sons addressed a letter dated 23.04.2014 to the Chief Project Manager (ED-IV) DSIIDC Ltd. mentioning that he would like to associate M/s Hari Om Electronics for carrying out the electrical work. A-2 also attached the eligibility documents pertaining to M/s Hari Om Electronics with the said letter. It is pertinent to mention that the approximate cost of the electrical work was to the tune of Rs.1,73,91,611/-, however, M/s Hari Om Electronics had been enlisted as contractor in Class-III (Electrical Category) of CPWD, for the period of five years as per order dated 13.06.2011 issued by then Finance Officer, Office of Chief Engineer (E) CPWD, Delhi. In view of the same, M/s Hari Om Electronics was eligible to submit tender only upto the maximum limit of Thirty Lacs. Hence, M/s Hari Om Electronics was ineligible to carry out the electrical work of the tender. It is further stated that during the relevant time, the CPWD Manual was being followed in the working of DSIIDC Ltd.

41) Furthermore, as per the terms of the contract, no change in the electrical agency was permitted without prior approval of the department. In case, the main contractor (herein M/s Mathura Dass Ahuja & Sons) intended to change any of the agency during the operation of the contract, he had to obtain prior approval of respective Engineer In-charge. Further, the new agency was also required to satisfy the laid down eligibility criteria. However, ignoring the fact that M/s Hari Om Electronics was not an eligible firm to carry out the electrical component of the tender, A-1 Sunil Kumar, then Executive Engineer (Elect.), who was also Engineer In-charge gave approval to M/s Hari Om Electronics.

42) As far as the role of A-1 is concerned, the prosecution has alleged that he was part of a conspiracy with A-3 Sunil Choudhary (proprietor of M/s Hari Om Electronics). The prosecution has relied upon the statement u/S 161 CrPC of the complainant as well as statement of his brother in law Sh. Himanshu u/s 161 and 164 Cr.PC regarding the meeting wherein A-1 had admitted having accepted bribe of Rs. Five Lacs. This alleged confession by A-1, falls in the category of extra judicial confession and that too made before the registration of FIR. It is settled law that extra judicial confession is a weak piece of evidence until and evidence it is corroborated but it is also worth mentioning that conviction of an accused can be based on the extra judicial confession, if the court is satisfied that the same is voluntary and true. Hence, the prosecution is required to be given a chance to prove the same even though there is no direct evidence of payment of any bribe amount to A-1.

43) As per A-1, his role as Executive Engineer was limited to supervision and co-ordination not tender evaluation and award, which rested with CPM-SWD and Tender Committee and that the sub contract to M/s Hari Om Electronics was awarded by M/s Mathura Dass Ahuja & Sons and not by A-1. These contentions are defences of the accused A-1 and are a matter of trial to be proved by him, later on.

44) It has been further alleged by the prosecution that the completion certificate dated 10.08.2013 was relied upon by A-3 which was purportedly issued by A-4 Anurag Malik, Director of M/s Tarishi Facilities Pvt. Ltd. whereby it was stated that M/s Hari Om Electronics had executed the electrical work of Rs.1,74,86,206/- at Shopping Mall “Grande Plaza, Phase-I” Bhopa Road, Muzaffarnagar, UP. However, upon investigation, it was found that M/s Tarishi Facilities Pvt. Ltd. dealt in the work of cleaning machines and did not dealt in electrical works. Despite this, A-4 issued a false work completion certificate dated 10.08.2013, in favour of M/s Hari Om Electronics. At this stage, this court cannot take the view that the said completion certificate was not issued by A-4.

45) The defence on the part of A-4 was that the charge sheet was silent on any direct nexus between A-4 and the award process or any alleged fraudulent gain/ loss. No payments were made by DSIIDC to M/s Hari Om Electronics or money trail or receipt of bribe is alleged against A-4. In this regard, it is settled law that criminal conspiracies are hatched in secrecy and very seldom there would be direct evidence of the same. The fact that there existed any criminal conspiracy between the accused persons, can be proved by circumstantial evidence.

46) Infact, one of the defence taken by A-4 is that even for the purpose of argument, it is presumed that A-4 had issued the said completion certificate but there was no evidence whatsoever that A-4 had any knowledge of the documents intended or actual use (if any) in the DSIIDC tender / sub contract process. Further, the alleged document was not addressed to DSIIDC, M/s Mathura Dass Ahuja & Sons or any other relevant authority in the tender chain. Further, no material shows that the document was ever acted upon or relied upon by DSIIDC or its Committee in awarding the contract or approving the sub contract. Further, no wrongful loss was caused to DSIIDC or unlawful gain to A-4 as alleged or evidenced. In my considered view, it is for A-4 to prove for what purpose he had issued a false completion certificate in favour of A-3. It is quite naive to believe the contention on behalf of A-4 that he was not aware or had no apprehension that his false certificate would be mis/used by M/s Hari Om Electronics at any place, whether as a sub-contractor in the above case or at some other place. Whether the said completion certificate was addressed to DSIIDC or M/s Mathura Dass Ahuja & Sons, is completely irrelevant at this stage of framing of charge in view of the fact that the said certificate has actually been used in this case, to prove the eligibility of Hari Om Electronics.

47) Further as per the prosecution, when search was conducted at the residence of A-1, an amount of Rs.13,40,000/- was recovered, which was an ill-gotten money. The defence of A-1 is that in reply to the application of an advocate, who was related to A-1 claiming the above amount and seeking its release, the CBI had submitted a reply stating that it was revealed that the aforesaid amount recovered from the house of A-1 had been withdrawn from the account of applicant (the advocate concerned). However, the said order dated 12.10.2015 reflects that the then Ld. Predecessor refused to rely upon the submissions of the CBI and did not direct the release of the aforesaid amount in favour of the said applicant advocate. Bank Guarnatee was prepared since the seized currency notes had been demonetized. So, the reliance being placed by Ld. Counsel on the said reply, which is also not part of the chargesheet, is completely misplaced. It is for A-1 to explain as to how he was in possession of the said cash amount of Rs.13,40,000/- on the date of search of his house.

48) It was also contended on behalf of A-1 that the prosecution has not obtained Sanction u/S 197 CrPC for his prosecution under IPC offences. Even this contention is not sustainable since as per Section 197 Cr.PC, sanction is required only if a public person commits an offence, acting under the colour of his office however, to enter into a criminal conspiracy with another person and to use or permit to be used a forged and fabricated document as genuine, to assist a particular accused person, cannot be said to be an act which a public servant does under the colour of his office. Hence, in my considered opinion, no sanction was required u/S 197 Cr.PC for prosecution of A-1 under IPC offences.

49) As regards the role of A-2 Parduman Ahuja is concerned, there does not appear to be any evidence with respect to him being part of any criminal conspiracy with A-1, A-3 & A-4. The only allegation against him is that he had not verified the work certificate issued by A-4 in favour of A-3, while submitting the name of A-3 as the new sub-contractor for electrical works, in furtherance of the criminal conspiracy. One may argue that this fact shows the involvement of A-2 in the present case but the same remains only a suspicion or an apprehension but does not give rise to any grave suspicion against him. The prosecution has further failed to show as to what benefit, if any, had accrued to A-2 by naming A-3 as the sub-contractor for electrical works. Hence, A-2 is entitled to benefit of doubt as there is no substantial evidence against him of his involvement in the present case.

50) Hence, prima facie it does appear that A-1, A-3 & A-4 had entered into a criminal conspiracy whereby the said manipulated experience certificate was used as genuine and on the strength of the said manipulated document, A-1 abused his official position as a public servant and dishonestly & fraudulently helped A-3 in the grant of work of sub-contractor for electrical works, in the aforesaid tender.

51) However, since the questioned work certificate bears the signature of A-4 himself, it cannot be termed as forgery since the document in question does not fall in the category of "false document" as laid down u/S 464 IPC. However, it is quite clear that the said document was used for the purpose of cheating DSIIDC and is an offence u/S 420 IPC.

52) Since A-3 Sunil Chaudhary has expired, no charges can be framed against him. However, A-1 Sunil Kumar is liable to be prosecuted for the offences punishable u/S 120B IPC r/w

420 IPC for cheating and Section 7 & Section 13(2) r/w Section 13(1) (d) of PC Act and the substantive offences thereof. Further, A-4 Anurag Malik is liable to be prosecuted for the offences punishable u/S 120B IPC r/w 420 IPC and the substantive offence thereof. A-2 Parduman Ahuja stands discharged from the offences alleged in the present case.

53) Ordered accordingly.

ATUL KRISHNA AGRAWAL Digitally signed by ATUL KRISHNA AGRAWAL Date: 2026.03.23 16:29:21 +0530

(Announced in the open court on 23.03.2026)

(Atul Krishna Agrawal)
Special Judge, CBI-19 (PC Act)
RADC/New Delhi