

**IN THE COURT OF
ASJ/SPECIAL.JUDGE(NDPS)
AT NORTH WEST, ROHINI COURTS, DELHI
(Presided Over by Sh. Vikram)**

**STATE
Vs.
NARESH JAIN AND ANR.**

**SC.NO. 386/2021
FIR No. 179/2018
PS EOW**

25.09.2023

ORDER ON CHARGE

1. Vide this order I shall decide whether any and what are the charges made out against accused persons from the chargesheet. Accused persons have also filed applications under Section 227 Cr.P.C. seeking discharge.

2. Brief facts led by prosecution are that the present FIR was registered on the complaint of Deputy Director HIU, Directorate of Enforcement (*hereinafter referred to as 'complainant'*) alleging illegal activities of money laundering, international *hawala* transactions and FEMA violations etc, carried out by accused Naresh Jain (*hereinafter referred to as 'A1'*) and his associates, on a large scale by using forged documents for creation of shell/dummy companies, in India as well as abroad, to carry out those transactions, through forged and fabricated bills of entries, fake invoices and bogus particulars of travellers.

3. The complainant in its complaint has alleged that ED, on receipt of information regarding large scale money laundering and *hawala*, committed by A1, had kept close watch on activities of A1 and his business. On 01.07.2017 ED carried out searches at several offices as well as residential premises of A1 under the provisions of Foreign Exchange Management Act 1999 (In short FEMA) during which ED seized large number of computer devices containing data of money transfers, documents containing details of various firms and companies, mobile phones and details of mobile numbers and blank but signed cheque books.

4. One of such office raided by ED was 361, Vardhman Grand Plaza sector 3 Rohini. Documents seized from this office revealed that A1 had formed and was running around 95 companies abroad, in the name of his employees used as dummy directors and through his accomplices Pankaj Jain and Punit Jain, was operating around 188 bank accounts of those foreign companies. Documents seized from this office also revealed that in respect of 27 such companies user IDs and login password were kept in diaries and bank accounts of those companies were operational for short period only. The digital record seized from this office after analyzing revealed that there were telegraphic transfers (TTs) worth \$155,000,000 carried out by A1 through his accomplices and most of the transfers were done from those foreign companies accounts which were discovered from this office. Beneficiaries of these transfers were foreign based

exporters and individuals and most of them were from china. The documents also revealed that various imports were done on the bases of false and bogus bills of entries at a very low rate to evade the import duties and substantial amount was paid against those imports through the bank accounts of those foreign companies, online, through DIGIPASS and key obtained from foreign banks. Several Indian individuals as well as tour and travel operators/firms/companies, existing only on papers, were also used to transfer the money to foreign entities managed by A1, through authorized dealers of RBI, under false declarations, which were then transferred to various foreign exporters.

5. Another office which was raided by ED was 105, KG Block, Vikaspuri, New Delhi. From this office, through records seized, it was found that A1 was running around 134 companies and firms with his accomplices Harish Agarwal (hereinafter referred to as A2) and other employees and several crores of Indian rupees were transferred in those entities.

6. ED had also raided head office of M/S Frisco Foods Pvt.Ltd, of which son and nephews of A1 are directors. From raid at Frisco Foods it was revealed that A1 controls the financial affairs of the company and has his exclusive office from where he runs the business of money laundering, with his associates, for commission.

7. From the allegations in the complaint, EOW registered present FIR u/S 419/420/467/468/471/120B IPC. During

investigation IO collected the copies of documents seized by ED. The investigation revealed that A1 had established a network of companies and firms, in conspiracy with others, for providing international money transfer through TT and domestic operation of accommodation entries. For that purpose A1 established a structure of paper entities by incorporating companies and firms in the name of his employees and some fictitious persons, by fabricating identity proofs for getting Pan cards and electoral IDs. Through those IDs several bank accounts in the name of firms were opened. As the ED shared its investigation with IO it was found that a total of 450 entities were incorporated in India and 104 entities were incorporated abroad. Out of these, 102 entities were incorporated on the basis of forged and fabricated documents.

8. As per the investigation of IO modus operandi of A1 was to create paper entities by several persons as employees, whose identities were used for incorporation of those entities and control of several entities already existing were replaced with dummy directors. Multiple firms and companies were registered at single office. The bank accounts of these entities were used for circulation of funds through layering of transactions in order to cover up the layering of actual source and destination of flow of funds. Some tour and travel firms were used to transfer funds through foreign outward remittance to overseas companies and to send forged documents, with invoices and itineraries, relating to fictitious foreign travellers to authorized Forex dealers, for remittance of forex in the name of advance for travel expenses.

9. The scrutiny of documents, during investigation by IO revealed that there was a pattern of transactions for; creation of accommodation entries by circular trading for artificial inflation of turnover of books of accounts, accommodation entries by way of bogus sales, unsecured loans, share purchase etc, purchase of assets/commodities at lower and sale at higher rates to show profit without actual movement of goods with corresponding entries in the bank accounts of these paper entities to actual business entities.

10. The investigation also revealed that for the creation of paper entities, where fictitious persons were made directors, forged identity proofs like voter ID cards, were prepared to get Pan Cards and other documents which were used to for registration of DIN. These documents were then used for incorporation of companies. The investigation revealed that around 15 companies were created by using forged documents of non existing persons.

11. A2 was director in 12 companies involved in the operation and was also looking after about 21 tour and travel firms, accounts of which were used to rout the funds/forex. A1 was, however, not a director in any of company. The employees involved who were examined during investigation stated that they were employed by A1, against salary. Some of these employees, who were made directors in paper entities, traced during investigation, stated in their statement u/S 161 Cr.PC that

A1 used to operate behind the veil of those paper entities which were opened only for maintaining bank accounts. Some of them were not even aware that how many entities were running in their name and they were paid salary only to sign documents. The role of A2, as per investigation is that he was working for A1 from office at 105, Gupta Shopping complex, Vikaspuri Delhi, where operation of domestic accommodation entries was carried. A2 used to arrange dummy directors for paper entities and was issuing bogus bills of sale and purchase and was co-ordinator between A1 and the employees.

12. Before deciding on charge, however, I shall decide if this court can proceed on hearing on charge or not. This objection has been raised by Ld. Defence counsel on the ground that as per charge sheet itself the EOW has not concluded the investigation, therefore, till the investigation is concluded the court cannot proceed on hearing/framing charges against accused persons.

13. Ld. Addl. PP for state and Ld. Defence Counsel were heard separately on this issue and at the same time the defence as well as state were also heard on the merits of charges, whether made out or not, with a rider that the question as to proceeding on charges if permissible or not will be decided first.

14. The word further investigation u/S 173 (8) has been matter of contention between prosecution and defence, broadly in three types of circumstances. It is highly contested when the investigating agency files the charge sheet at the fag end of the

maximum period provided in section 167 (2) Cr.PC, with reserving the right to file supplementary charge sheet. In that circumstance accused always claims that the investigating agency has not completed the investigation but filed the charge sheet of incomplete investigation just to curtail the right of accused, of default bail. For such circumstances Hon'ble Supreme Court in catena of judgments has held that if sufficient material is already available for prosecution of accused, only because further investigation is going on for collection of further material in support of those allegations, the investigation will not be considered incomplete. Therefore as long as there are material sufficient to take cognizance, for cognizance is taken of offence and not of offender, the accused would not be entitled for default bail. ***(See Hitender Vishnu Thakur Vs. State of Maharashtra (1994) 4 SCC 602 and Dinesh Dalmia Versus CBI (2007) 8 SCC 770)***

15. The second circumstance where this section 173(8) Cr.PC becomes a matter of contention is, after filing of charge sheet and taking of cognizance, when either the victim or the accused finds that some crucial and material facts are left out by investigating officer, either deliberately or by omission. In such circumstances accused is less fortunate than the victim as the accused cannot be allowed to dictate the terms of investigation. However, depending on the facts and circumstances of case, if it is shown that the IO, for his malafide or gross negligence/omission, has not brought on record, such clinching and unimpeachable material, existing at the time of investigation, which can

demolish the charge or make an altogether difference case, even accused can demand for further investigation. Similarly, for the victim, if the IO has left some material information or evidence, crucial for the charge, matter can be referred for further investigation. So far as the rights of accused, who is in JC is concerned, In **Vipul Shital Prasad Agarwal Versus State of Gujrat (2013) 1 SCC 197** it was held by Hon'ble Supreme Court that *“the mere undertaking of a further investigation by investigating officer on his own or upon the directions of superior officer or pursuant to a direction by the Magistrate concerned to whom the report is forwarded does not mean that the report submitted under section 173(2) is abandoned or rejected. It is only that either the investigating agency or the court concerned is not completely satisfied with the material collected by the investigating agency and is of the opinion that possibly some more material is required to be collected in order to sustain the allegation of the commission of the offence indicated in the report.”* Thus in such case if the accused is in JC he cannot seek right to default bail.

16. The third circumstance, where section 173(8) becomes the bone of contention between prosecution and accused, is when the matter is taken up for settlement of charges and the chargesheet itself says that some further investigation is also going on. This case is at that third circumstance where for the mention of IO in chargesheet that further investigation is also going on, the defence has contended that till the investigation completes charges cannot be framed.

17. The chargesheet however shows that qua the accused persons there is no further investigation going. Supplementary chargesheet only mentions that “*There will be any clue in future regarding the whereabouts of remaining associates/employees namely Pankaj Arora, Sh. Pankaj jain, Mr. Kuldeep Singh, Sanjeev Kumar Verma and Ahmar Malik investigation will be carried accordingly*”. This, in no circumstance, means that the investigation qua the accused charge sheeted is not complete. What are the offences made out of the investigation and chargesheets is, therefore, the only question remaining.

18. It is settled law that at the stage of consideration of charge, this court is not required to assess, evaluate and to weigh the prosecution evidence in a criminal case as it is done at the final stage. It is not open for this Court to sift and weigh the evidence as if a mini trial is being conducted and charge can be framed on the basis of grave suspicion and the evidential value of the statement of witnesses recorded during the course of investigation is required to be seen at the time of appropriate trial. A roving and fishing inquiry is impermissible and it is sufficient if the prosecution is able to show prima facie the commission of offence and the involvement of the accused persons.

19. In ***Amit Kapoor v. Ramesh Chander*** (2012) 9 SCC 460, the Hon’ble Supreme Court, while explaining the scope of Section 227 and 228 of Cr.P.C., had made the following

observations:

“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 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.”

20. In ***Asim Shariff v. National Investigation Agency*** (2019) 7 SCC 148 also Hon'ble Supreme Court made following observations:

“18. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 CrPC in sessions cases(which is akin to Section 239 CrPC pertaining to warrant cases) 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; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 CrPC, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record.”

21. Further The issue of standard of proof *versus* prima facie view was discussed by Hon'ble Supreme Court in ***Bhawna Bai v. Ghanshyam*** (2020) 2 SCC 217, in the following manner:

"13. ...At the time of framing the charges, only prima facie case is to be seen; whether case is beyond reasonable doubt, is not to be seen at this stage. At the stage of framing the charge, the court has to see if there is sufficient ground for proceeding against the accused. While evaluating the materials, strict standard of proof is not required; only prima facie case against the accused is to be seen.”

22. The allegation against accused persons are that the accused Naresh Jain along with the co-accused persons and his employees incorporated and operated 450 Indian Entities and 104 Foreign Entities, using identity proofs and documents of dummy as well as fake directors and proprietors for opening the bank accounts.

Around 600 bank accounts of around 300 companies were opened to rotate funds approximately to the tune of Rs. 96,000 Crores for providing accommodation entries of approximately Rs. 18,679 Crores to more than 900 beneficiaries. It is on record that during the raids conducted under FEMA certain documents were recovered which revealed that photographs of one Sumit Datta were used to create multiple fake identities through which bank accounts were opened and PAN cards were got issued. Multiple witnesses have stated in their statement that they were employees of accused Naresh Jain who used to run his office through accused Harish Agarwal. These employees who were paid salary were directors in companies, of which they had no information for what business those companies were created.

23. Ld. Defence counsel has contended that all these companies are genuine companies and their records are available with ROC which the IO had deliberately not verified. However, when the witnesses themselves have stated to IO that they were employed for salary the question of verification of status of companies/firms does not arise. In-fact it is the case of prosecution that these companies were floated through dummy directors and on forged identifies.

24. Therefore, from the material available on record it is *prima facie* made out that accused Naresh Jain and Harish Agarwal along with other accomplices, who are not yet arrested, entered into criminal conspiracy to incorporate fake companies and open bank accounts of those fake companies to rotate the funds

derived from activities done in violations of Foreign Exchange Management Act, punishable u/S 120B IPC. It is also *prima facie* made out that for execution of the conspiracy fake identifications documents like voter ID cards, were prepared and those documents, with false marks, were used for floating the companies/firms and opening bank accounts of those firms, punishable u/S 419/420/468/471/476 IPC read with section 120B IPC. The documents, so created and used were, however, not valuable security. Hence charge u/S 467 IPC is not made out against any of accused persons. Accordingly no ground for discharge is made out. The applications u/S 227 Cr.PC, of accused persons, are therefore dismissed.

**VIKRAM
ASJ-II/SPECIAL JUDGE NDPS/
NORTH-WEST/ROHINI COURTS/
DELHI/25.09.2023**