



**IN THE COURT OF HON'BLE PRINCIPAL DISTRICT &
SESSIONS JUDGE, AHMEDBAD [RURAL] AT
NAVRANGPURA, AHMEDABAD.**

ORDER BELOW EXH. 17

**In
Sessions CaseNo.126 of 2023**

1. The applicant-accused has filed this application under the Provisions of Sec. 227 of the Code of Criminal Procedure, 1973 to discharge him from the Sessions Case No. 126 of 2023 in connection with the Cri. Reg. No. 11191067220154 of 2022 registered with Cyber Crime Police Station Ahmedabad for the offences u/s 406, 420, 465, 468, 471 of IPC and Sec. 66(c), 66(D) of I.T. Act.
2. The applicant-accused stated at length facts of the alleged offence and further stated that present application has been preferred on the basis of the investigation papers filed alongwith the main chargesheet and subsequent final report. It is stated that there are no grounds to even presume about existence of any sufficient grounds as contemplated to

proceed against the applicant. It is stated that no ingredients of the offence as defined in Sec. 405, 415, 463 and 464 of IPC is made out from the 1st report, investigation papers and so question does not arise for framing of any charge u/s 406, 417, 420, 465, 467, 468, 471 of IPC. It is stated that no offence u/s Sec. 66(c), 66(D) of I.T. Act are being made out from the investigation papers. There is no allegation of any element of dishonest misappropriation against the applicant /accused of having committed offence u/s 405 of IPC punishable u/s 406 of IPC.

3. The applicant/accused has stated at length facts of provision of Sec.122 of the Transfer of Property Act and further stated that applicant/accused can lawfully accept donations. The applicant/accused stated at length facts of Paper on regulation of crowd funding circulated by SEBI. The applicant/accused stated at length facts of the definition/meaning of Charity and Donation. It is stated that aspect of entrustment or dominion over monies transferred in the personal Bank account of the accused can never co-exist in the present set of allegations.

4. The applicant/accused has further stated at length facts of claim posted on FaceBook about monetary help by Habeeba Hunaid Mohammed Hussein Bootwala, Sanjay Moreshwar Joshi and Puneet Rameshlal Sheti on Razor Pay link for social work. It is stated that it is evident that none of the said donations were even made on the OurDemocracy.in platform. It is stated that all the above 3 persons were unable to recollect that exact social media post where the applicant-accused had claimed to the effect that monetary help received will not be utilized for personal use nor any such screen shots have been retained.
5. It is further stated that basic ingredients of dishonest misappropriation is not even made out as there is absolutely nothing emerging from the investigation-papers that any of the claims in respect of the work done by the applicant/accused between 2019 to 2021 were false. It appears from the investigation papers that applicant/accused had ended his campaign of Our Democracy.in website by December 2020. It is stated that it emerges from Sec. 164 Cr.P.C. statement of Bilal Zaidi that OurDemocracy.in was using Cashfree Payment gateway and hence Nandita Anand

Nagindas Bihola could not have used RazorPay Payment gateway in the manner that she has alleged. It is stated that the investigation papers contain a part of the applicant/accused Tweet dated 1/1/2022, which reads as "I raised funds for my sustenance- like a salary to be able to do my work full time" and that has been clear as day from day 1". It is stated that investigation does not controvert the fact that the applicant/accused was indeed doing social service or RTI activist prior to the receipt of aforesaid economic help from the donors, whose police statements has been recorded. The applicant/accused has also stated at length facts of his joining political party and getting elected as Member of Rajya Sabha from State of West Bengal in 2023 and about social service/people oriented work done by him before and after being elected as Member of Parliament.

6. It is further stated that ingredients of the offence defined u/s 415 of IPC is clearly absent. It is stated that there is no investigation into those social media posts and paraphrasing of the same cannot be construed for the purpose of determining if there was any dishonest concealment of facts. It is stated that as per settled proposition of law that events

subsequent to the parting of money or property does not constitute an offence u/s 415 of IPC. It is stated that there was no understanding, expressed or implied, either the said platform or the donors to provide utilization details and hence, this fact cannot constitute a dishonest concealment of facts in order to constitute deception of law. It is stated that applicant closed his campaign from the said OurDemocracy.in platform in the year 2020. It is stated that it is not alleged that the donation or the monetary help given was subject to any specific understanding in respect of specific nature of future work which had to be done in any specified manner or was subject to any specified time-line. It is stated that no false documents made by the applicant and has not committed, prima-facie, any forgery as defined u/s 463 of IPC and so has not committed any offence u/s 465, 467, 468, and 471 of IPC. The applicant has also relied on the definition of 'Making False Documents, Dishonestly, Wrongful gain and Fraudulently made in Sec.464, Sec.24, Sec.23 and Section 25 of IPC.

7. It is stated that prosecution has not laid any emphasis on the first part of Section 464 of IPC and the third part of

Sec.464 would come to play if one person dishonestly or fraudulently causes any person to sign, seal, execute or alter a document and by reason of deception practiced upon him, he does not know the contents of the documents. It is stated that essential ingredients for invocation of third part of Sec.464 is absent. It is stated that no ingredients of any offence as defined u/s 66C and 66D of I.T. Act are being made and lastly prayed to discharge the applicant/accused from Sessions Case No. 126/2023 by allow the present application.

8. The Investigating Officer has filed his affidavit vide Exh. 18, wherein, the Investigating Officer has stated at length facts of the alleged offence. It is further stated that applicant claimed himself a RTI Activist and Social worker at his Social media accounts during the Year 2019 to 2021 and further claimed that he was obtaining information under the RTI Act from various Government Offices and doing social activities in the interest of public and for doing such work he needs financial help.
9. It is further stated that applicant for getting crowd funding with the help of online platform Ourdemocracy.in, the

applicant/accused created false/forged electronic documents with regard to show that he is RTI Activist and getting help from the public for doing RTI Work on his Face book page. The applicant/accused obtained Rs.76 lakhs funding in his different Bank accounts by way of Rs.500/- from complainant's wife and different small amounts from other persons. The applicant used the said amount for his personal purpose instead of the object for which it was obtained and thereby committed the alleged offence of cheating and breach of trust.

10. It is stated that during investigation information from Razor Pay was obtained which shows that Razor Pay's merchant I.D. is in the name of the applicant, wherein Rs.32,36,251/- from 1766 except the complainant has been made as Crowd funding, out of which, after gateway charges, amount of Rs.31,63,461/- was got credited in his City Bank A/c No. 5765350118. The said fact has been verified from the Bank account of the applicant/accused.
11. It is further stated that applicant had run three crowd funding campaigns titled as "FightWithRTI", "SaketVersusModi" and "JusticeForSuhasGokhle" and

obtained Rs.54,39,285/- through OurDemocracy.in platform. Out of which, after gateway charges, amount of Rs.49,31,264/- was got credited in his DCB Bank A/c No. 881003749757. The said fact has been verified by Mr. Bilal Jaidi, Administrator of OurDemocracy website.

12. It is further stated that the said Bank Accounts of the applicant/accused were scrutinized/examined by C.A. Durgesh Pandey of government appointed professional Chartered Accountant DKMS and Associates Chartered Accountant and as per his Report instead of social work the said funds were utilized for personal use like Air ticket booking, Hotel Charges, dinning charges, investment in Share Market, transfer of money to his mother and sister. It is stated that Report of the C.A. is produced as evidence. It is stated that statement was made u/s 164 of Cr.P.C by Bilal Zaidi of OurDemocracy (Witness) that the applicant/accused was asked to clarify the purpose of the crowd-funding on the Page but he did not adhere to the request and so the Campaign was closed.

13. It is further stated that ED has also filed offence under money laundering against the applicant /accused. Other two offences are also registered against the applicant/accused.
14. It is stated that there is ample documentary evidence and witnesses supporting the allegations made against the applicant/accused and so the discharge application is required to be rejected.
15. Heard the Ld. Advocate for the applicant-accused and Ld. Public Prosecutor for the State at length on the facts and provisions of law.
16. The Ld. Advocate for the applicant-accused has submitted at length facts of the alleged offence and Charge Sheet Papers and further submitted that investigating agency filed chargesheet for the offences u/s 406, 420, 465, 468, 471 of IPC and Sec. 66(c), 66(D) of I.T. Act.
17. The Ld. Advocate of the applicant-accused further submitted at length facts of intention and purpose of crowd-funding and vehemently argued that no prima-facie case is made out against the applicant/accused of the alleged offences. He further submitted that from the investigation papers there is no allegation or any element of dishonest misappropriation

against the applicant /accused of having committed offence u/s 405 of IPC punishable u/s 406 of IPC.

18. The Ld. Advocate of the applicant/accused further submitted at length facts of the purpose and activities of the applicant/accused and vehemently argued that the applicant/accused ended his campaign of OurDemocracy.in by December 2020. He further submitted that the applicant/accused twitted on 1/1/2022 and clearly stated that funds raised are for his sustenance like salary to be able to do his work full time and that has been clear as day from day one.
19. The Ld. Advocate of the accused further submitted that investigating agency has not denied the fact that the accused is doing social service and RTI activities.
20. The Ld. Advocate of the applicant/accused further submitted at length facts of the ingredients of alleged offence and vehemently argued that prima-facie case is not made out of the alleged offences. The Ld. Advocate of the applicant/accused further submitted at length facts of the meaning of Charity and Donation.

21. The Ld. Advocate of the applicant/accused further submitted at length facts of the statement of the prosecution witness Bilal Zaidi recorded u/s 164 of Cr.P.C and vehemently argued that the applicant/accused stopped the crowd funding by December 2020. The Ld. Advocate of the applicant/accused further submitted following judgments of Hon'ble Supreme Court and Hon'ble High Courts as under and lastly prayed to allow the application:

1. (1998) 7 SCC 337 in the case of Suresh Badharmal Kalani vs State of Maharashtra.
para (6)

"Thus said, we may turn our attention to the confession made by Dr. Bansal and Jayawant Suryarao. Under [Section 30](#) of the Evidence Act a confession of an accused is relevant and admissible against a co-accused if both are jointly facing trial for the same offence. Since, admittedly Dr. Bansal has been discharged from the case and would not be facing trial with Kalani his confession cannot be used against Kalani. The impugned order shows that the Designated Court was fully aware of the above legal position but, surprisingly enough, it still decided to rely upon the confession on the specious ground that the prosecution was not in any way precluded from examining Dr. Bansal as a witness in the trial for establishing the facts disclosed in his confession. This again, was a perverse approach of the Designated Court while dealing with the question of framing charges. At that stage the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may, adduce in the trial, which would commence only after the charges are framed and the accused denies the charges. The Designated Court was, therefore not at all justified in taking into consideration the confessional statement of Dr. Bansal for framing charges against Kalani".

2. (1965) 2 SCR 429 in the case of Velji Raghavji Patel vs State of Maharashtra.
Para(7)

It seems to us that the view taken in Bhuban Mohan Rana's case(1) by the later Full Bench of the Calcutta High Court is the right one. Upon the plain

reading of S. 405, I.P.C. it is obvious that before a person can be said to have committed criminal breach of trust it must be established that he was either entrusted with or entrusted with dominion over property which he is said to have converted to his own use or disposed of in violation of any direction of law etc. Every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property. But it is not dominion of this kind which satisfies the requirements of S. 405. In order to establish "entrustment of dominion over property to an accused person the mere existence of that person's dominion over property is not enough. It must be further shown that his dominion was the result of entrustment. Therefore, as rightly pointed out by Harris C.J., the prosecution must establish that dominion over the assets or a particular asset of the partnership was, by a special agreement between the parties, entrusted to the accused person. If in the absence of such a special agreement a partner receives money belonging to the partnership he cannot be said to have received it in a fiduciary capacity or in other words cannot be hold to have been "entrusted" with dominion over partnership properties. Mr. Chatterjee who appears for the respondent sought to show that there was special agreement in this case. According to him, by virtue of certain decisions taken at a meeting of the partners held on January 7, 1959 the appelland had been entrusted with the duty of making recoveries of monies from the debtors of the firm and, therefore, this was a case of specific entrustment.

3. 2014 SCC online Cal 22693 in the case of Madhab Bhattacharjee vs The State of West Bengal and Anr. (Para 11 and 12)

" 11. With the above legal back ground and factual matrix, I would like to consider whether any prima facie case is made out under Sections 420/406/506/120B of the Indian Penal Code from the petition of complaint treated as FIR and also from the evidence collected by the investigating agency during investigation after taking the same at their face value. On consideration of the contents of the petition of complaint and also the materials available in the case diary, I do not find that any offence is made out under Sections 506 or 120B of the Indian Penal Code, though the charge sheet has been submitted amongst other penal provisions under Sections 506 and 120B of the Indian Penal Code. It appears from paragraph 5 of the petition of complaint that the opposite party no. 2 provided fund of Rs. 31,24,147/- by several account payee cheques during a period of 15 months from 21st December, 2003 to 2nd March, 2005. It also appears from paragraphs 6 and 7 of the petition of complaint that there was progress of development work of each scheduled scheme to some extent till 2nd March, 2005, though no development of the progress of work was noticed in the middle of September, 2005. It also appears from the petition of complaint that the fund was provided by the opposite party no.2 in favour of the Non- Government Organisation of which the petitioner was the General Secretary at the relevant point of time on condition that the petitioner will furnish true and actual accounts of the fund on demand. It appears from paragraphs 10 to 13 of the petition of complaint that the petitioner supplied utilisation certificates and also audit reports of the fund provided by the opposite party no. 2 at the intervention of the Additional District Magistrate (Treasury), North 24 Parganas. It is held by the

Hon'ble Supreme Court in the case of "Anil Mahajan V. Bhor Industries Limited" reported in (2006) 1 SCC (Cri) 746 that a distinction has to be kept in mind between mere breach of contract and the offence of cheating. A culpable intention right from the beginning when the promise was made cannot be presumed from mere failure of a person to keep up promise subsequently. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating, unless fraudulent, dishonest intention is shown at the beginning of the transaction. The Court must decide on the basis of the substance of the complaint and not on the basis of mere use of the expression cheating in the complaint. In view of the above proposition of law, the contents of the petition of complaint treated as FIR must show that the petitioner had fraudulent or dishonest intention at the time of making the promise or entering into the transaction. From the mere failure of the petitioner to keep up promise subsequently, such a culpable intention right at the beginning i.e. when he made the promise cannot be presumed. It appears from the petition of complaint that there was some progress of development work of each scheduled item for which fund was provided by the opposite party no. 2 to the petitioner and the utilisation certificate and the audit reports of the said fund were also supplied to the opposite party no. 2 by the petitioner at the intervention of the Additional District Magistrate (Treasury), North 24 Parganas. The statements of two witnesses who were members of the Non-Government Organisation of which the petitioner was the General Secretary, were recorded by the investigating officer under Section 161 of the Code of Criminal Procedure. Nothing transpires from the statements of those two witnesses available in the case diary to indicate that there was fraudulent or dishonest intention of the petitioner from the very inception of the transaction. The argument advanced by Mr. Ganguly to the effect that the development work of each scheduled item was done by the petitioner during the period from 21st December, 2003 to 2nd March, 2005, intentionally for the purpose of inducing the opposite party no. 2 to part with the balance amount of fund, cannot be accepted, because the opposite party no. 2 has not disclosed in the petition of complaint about the break up of providing the fund and the dates of issuing various cheques in favour of the Non-Government Organisation of which the petitioner was the General Secretary. In view of my above findings, I can safely hold that the contents of the petition of complaint and the materials available in the case diary do not prima facie disclose any offence punishable under Section 420 of the Indian Penal Code.

12. The next question for consideration of this court is whether the contents of the petition of complaint and the materials available in the Case Diary disclose commission of any offence punishable under Section 406 of the Indian Penal Code. To establish an offence under Section 406 of the Indian Penal Code the following ingredients must be furnished by the opposite party no.2: (i) that the petitioner should have been entrusted with property or entrusted with dominion over property, (ii) that the petitioner should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so, (iii) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the petitioner has made, touching the discharge of such trust. It appears from paragraph 5 of the petition of complaint that the opposite party no.2 provided the fund to the petitioner who granted receipts showing the said payment as "donation" to get the exemption from

income tax under Section 80G of the Income Tax Act, 1961. The meaning of "donation" given in page 561 of Black's Law Dictionary (9th Edition) is "a gift especially to a charity" and the word "donated" means "to give (property or money) without receiving consideration for the transfer". "Gift" is also defined in Section 122 of the Transfer of Property Act, 1882 as "transfer of certain existing moveable or immoveable property made voluntarily and without consideration, by one person, called the donor, to another, called the donee and accepted by or on behalf of the donee". According to the above definition of "donation" and "gift", it is crystal clear that the donor cannot retain the ownership of the property after donation and thereby the donor cannot have any right or interest over the said property. In this connection it is relevant to mention the decision cited by Mr. Ganguly reported in (1996) 5 Supreme Court Cases 591. In the case of "Central Bureau of Investigation V. Duncans Agro Industries Ltd., Calcutta" reported in (1996) 5 Supreme Court Cases 591 it is held by the Apex Court that it is necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. According to Mr. Ganguly, the fund was entrusted with the petitioner by the opposite party no.2 for performance of scheduled work and for the benefit of under privileged girls and the said fund was not used for the purpose for which the same was given and as such the petitioner is liable to be prosecuted for the offence punishable under Section 406 of the Indian Penal Code. The contention of Mr. Basu in this regard is that the fund is donated by the opposite party no.2 in favour of the Non-Government Organization of which the petitioner was the Secretary for the purpose of getting the benefit of income tax under Section 80G of the Income Tax Act, 1961 and the opposite party no.2 cannot have any ownership or dominion over the said fund after donation and as such the question of entrustment of the fund with the petitioner by the opposite party no.2 does not arise. I have already observed that the opposite party no.2 provided the fund to the petitioner as his donation, because the opposite party no.2 accepted the receipts showing the payment as his donation to get the exemption from income tax under Section 80G of the Income Tax Act, 1961. Once the fund is donated by the opposite party no.2 in favour of the petitioner or in favour of the Non-Government Organization of which the petitioner was the Secretary, the opposite party no.2 cannot remain as the owner of the said fund or cannot have any dominion over the said fund. The contention on behalf of the opposite party no.2 that the fund was entrusted with the petitioner for the purpose of carrying out the scheduled work for the benefit of under privileged girls, cannot be accepted on the ground that the opposite party no.2 has accepted the receipts provided by the petitioner showing the said fund as his donation for getting benefit under Section 80G of the Income Tax Act, 1961. Since the opposite party no.2 has donated the fund and got the benefit under Section 80G of the Income Tax Act, he cannot be allowed to blow hot and cold and claim that the fund was entrusted with the petitioner for carrying out the scheduled work for the benefit of under privileged girls. In this connection I accept the contention of Mr. Basu that the opposite party no.2 cannot have the ownership or the beneficial interest in the fund after making donation of the same to get the benefit under Section 80G of the Income Tax Act, 1961. Accordingly, the ownership of the fund or the beneficial interest in the ownership of the fund in respect of which the offence is alleged to have been committed was in the petitioner and not in the opposite party no.2 and as such it

cannot be said that the offence of criminal breach of trust is committed. Moreover, there is nothing in the petition of complaint or in the case diary to show that the fund was misappropriated or used by the petitioner for his own benefit. What transpires from the petition of complaint is that the progress or development of work of each scheduled scheme was not up to the satisfaction of the opposite party no.2, but the utilization certificates and the audit reports were supplied to the opposite party no.2 by the petitioner at the intervention of the Additional District Magistrate (Treasury), North 24 Parganas. It is not possible for this court to decide at this stage about the genuineness of the audit reports. Nor has the opposite party no.2 taken any effective step to challenge the genuineness or authenticity of the audit reports before any forum.

On consideration of the statements recorded under Section 161 of the Code of Criminal Procedure, I find that the opposite party no.2 was also a member of the Non-Government Organization of which the petitioner was the Secretary at the relevant point of time. What transpires from the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure is that the opposite party no.2 wanted to take back the fund provided by him on the ground that the fund was not spent for the purpose for which it was given. Since this fund was donated by the opposite party no.2 for the purpose of taking the benefit of the income tax under Section 80G of the Income Tax Act, 1961, the question of refund of the said fund does not arise. In view of the above statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure and other materials available in the Case Diary and in view of the averments made by the opposite party no.2 in the petition of complaint treated as FIR, I cannot persuade myself to hold that a prima facie case under Section 406 of the Indian Penal Code is made out against the petitioner."

4. 2009 SCC Online Guj 10640 in the case of Dr. Satyavatiben Surajmal Zaveri vs State of Gujarat (Para 13 and 14)

" In earlier judgment of the Hon'ble Apex Court in case of Central Bureau of Investigation, SPE, SIU(X), New Delhi v/s. Duncans Agro Industries Ltd., Calcutta (supra), it has been clearly observed;

"The expression "trust" in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledge and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust in trust for such other person or for his benefit."

5. (2018) 7 SCC 581 in the case of Sheila Sebastian vs R. Jawaharaj and Another. (Para 26)

"The definition of "false document" is a part of the definition of "forgery". Both must be read together. 'Forgery' and 'Fraud' are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial Court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that 'false document'. Hence, neither respondent no.1 nor respondent no.2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."

22. *Per-contra*, the Ld. Public Prosecutor submitted at length the facts of the application, charge sheet papers, Record & Proceedings, documentary evidence produced by the prosecution and reply filed the investigating agency.
23. The Ld. Public Prosecutor further submitted that applicant claimed himself an RTI Activist and Social worker at his Social media accounts during the Year 2019 to 2021 and further claimed that he was obtaining information under the RTI Act from various Government Offices and doing social activities in the interest of public and for doing such work he needs financial help.
24. The Ld. Public Prosecutor further submitted at length facts of crowd funding obtained with the help of online platform Ourdemocracy.in. The Ld. Public Prosecutor submitted that applicant/accused obtained Rs.76 lakhs funds in his different Bank accounts and used the said amount for his personal

purpose instead of the object for which it was obtained and thereby committed the alleged offence of cheating and breach of trust.

25. The Ld. Public Prosecutor further submitted that applicant had run three crowd funding campaigns titled as "FightWithRTI", "SaketVersusModi" and "JusticeForSuhasGokhle" and obtained huge amount and the said fact has been verified by Mr. Bilal Zaidi, Administrator of Ourdemocracy.in. Website. The Ld. Public Prosecutor further submitted at length facts of the Bank Accounts of applicant/accused scrutinized/examined by C.A. Durgesh Pandey and referred the documentary evidence i.e. CA Report produced on record.
26. The Ld. Public Prosecutor further submitted that prima-facie case is made out of the alleged offence against the applicant/accused. He further submitted that applicant/accused committed serious offence and obtained crowd funding and also misused the funds for his personal expenses and also invested money in share market and lastly prayed to reject this application.

27. I have gone through the application, Charge Sheet Papers, Affidavit of the I.O., Judgments of the Hon'ble Apex Court and Hon'ble High Court relied by the Ld. Advocate of the applicant/accused as well as, also considered the arguments advanced by the Ld. Advocate for the applicant/accused and Ld.Public Prosecutor for the State on the facts and provisions of law.
28. The Present applicant accused has filed this application under the Provisions of Sec. 227 of the Code of Criminal Procedure, 1973 and hence, it is required to be reproduced as under;

"Sec. 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."

29. Considering the facts and circumstances of the subject matter and on perusal of the Charge Sheet papers, R&P, the prosecution side submitted the list of documentary evidence vide Exh.5 and produced total 43 documents on record. In other words the prosecution side has opened the prosecution case under the provision of Sec. 226 of Cr.P.C. 1973. Thereafter the present applicant/accused filed this

application under the provision of Sec. 227 to discharge him from the alleged offence.

30. Considering the facts and circumstances of the subject matter, in the alleged offence and alleged activity of crowd-funding of the applicant/accused huge amount of innocent public is involved. This fact is required to be considered.
31. Considering the facts and circumstances of the subject matter, it appears that the applicant/accused obtained Rs.76 lakhs with the help of online platform OurDemocracy.in and Razorpay as crowd funding. Further considering the vital documentary evidence produced by the investigating Agency i.e. The C.A. Report, it appears that total expenses made for RTI is just Rs.282/- only. This fact is required to be considered.
32. Considering the seriousness of the alleged offence, prima-facie materials are available on record to frame the charge against the accused person and at this stage, not required detailed inquiry, in other words, at this stage, not required detail appreciation of prosecution evidence produced on record and the contentions raised by the applicant side is a mixed question of facts and law.

33. Further, considering the facts and circumstances of the subject matter, it is required to be referred the recent judgment of Hon'ble Apex Court in the case of State of Rajasthan Vs Ashok Kumar Kashyap reported in 2021 SCC Online SC 314 wherein it is held that :

As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.

34. Considering the facts and circumstances of the case on hand and the above judgments of the Hon'ble Apex Court and Hon'ble High Courts, prima-facie case is made out to frame charge against the applicant/accused of the alleged offence.
35. Considering the facts and circumstances of the subject matter and considering seriousness of the offences and considering the incriminating material available on record, prima-facie case is made out against the present applicant-accused of the alleged offence and therefore, in the interest of justice, following final order is passed.

ORDER

- *. The present **Discharge Application Exh. 17** preferred by the applicant-accused **Saket Suhas Gokhale**, in connection with the alleged offence in Sessions Case No. 126 of 2023 is **hereby rejected**.

Pronounced in the open Court today on this 1st day of March 2024, Ahmedabad [Rural] at Navrangpura.

Dt: 1/3/2024

(D.M. Vyas)
Principal District & Sessions Judge
Ahmedabad (Rural) at Navrangpura.
(Code : GJ00326)

vsb

