

Order below Exhibit-20

- (1) This is an application under Section-239 of Code of Criminal Procedure,1973 filed by the accused No.3 to get order of discharge from this Criminal Case which was registered at Sethvadala Police Station vide Crime Register No.I 07 of 2014 in connection with the offense under Section-120(B),140,170,171,419,465,468,471,472,474 of the Indian Penal Code and section 120 of the Gujarat Police Act.

- (2) Heard learned advocate of the applicant/accused. He has submitted that the applicant is innocent person and there is no prima facie case against him so the applicant is entitled to get order of discharge from this case. He further submitted that the complainant has not given the name of the applicant in complaint and there is no specific allegation against the applicant. He further submitted that the applicant was arrested by police on statement given by the co-accused and there is no direct or indirect involvement of the applicant in this case. He further submitted that the name of the applicant as accused, does not disclose from the statements of the witnesses. He further submitted that the applicant was

arrested only on suspicion. He further submitted that there not recovery of any muddamal in this case from the applicant and it does not disclose from the statement of witnesses and compliant that the applicant had meeting with the other accused so there is no case of conspiracy against the accused. The present applicant had moved before the Hon'ble High Court of Gujarat for quashing the complaint, but meanwhile Chargesheet of the case was filed hence present application is produced. Furthermore it is their submission that the applicant is very old aged person and that he is suffering from heart disease and have also faced one Heart Attack. Moreover one son of Applicant is at America and the second one is at London and hence also have prayed to allow this application and discharge the applicant so that the applicant can involve himself in religious affairs. He relied on the judgment of S.Vardarajan Vs. State of Madras Laws (SC)-1964-9-27, 2002GLR(1) 690, 2000(4) Crime SC 113, 2000(3) Crime 501, 2001(2) Crime 269 and 1993(3) CCR 2054. I have gone through the above produced authorities and do agree with the principles laid therein. But with due respect I submit that every case has its own facts.

- (3) Heard learned Assistant Public Prosecutor on behalf of the State. He submitted that the though the applicant/accused name is not in first information report but

his name was disclose during the course of investigation and therefore his name is in charge sheet. He further submitted that the allegations against the applicant is criminal conspiracy under section-120B of Indian Penal Code. He further submitted that the conspiracy in this case is that the accused No.1 had prepare forged documents and with the help of this false documents had entered into the prohibited place. Hence he prayed to reject the application with cost.

- (4) Now looking to the well settled law relating to discharge the accused under Section-239 of the Code of Criminal Procedure,1973, it is desirable to quote the Section-239 and it is as under:- Section-239. “When accused shall be discharged.—If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.” Further it was held by the Hon'ble High Court of Kerala in case of Kuriachan Chacko v. State of Kerala reported as 2007 CriLJ 4458 (Ker) that discharge under Section 239 of the Cr. P.C. is possible only when the Court entertains the satisfaction that the allegations/charge against the accused is groundless.

No detailed evaluation of the materials or meticulous consideration of the possible defences need to be undertaken at this stage. The exercise of weighing materials in golden scales is certainly not to be undertaken at this stage and has to be postponed to a later date,. Is the allegation/charge groundless? That alone need be considered at the stage of Section 239/240 of the Cr. P.C. Furthermore looking to the law laid down by the Hon'ble Supreme Court in case of "Union of India v. Prafulla Kumar Samal" reported as AIR 1979 SC 366 in para-10 10. Thus, on a consideration of the authorities mentioned above, the following principles emerge: (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to shift 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; (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to

discharge the accused. (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post-Office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

- (5) Furthermore looking to another judgment of the Hon'ble Supreme Court in case of Sanghi Brothers (Indore) Pvt. Ltd. Vs Sanjay Choudhary & Ors. reported as 2009(1) CRIMINAL COURT CASES 827 (S.C.) it was held in para-11 that "The present case is not one where the High Court ought to have interfered with the order of framing the charge. As rightly submitted by learned counsel for the appellant, even if there is a strong suspicion about the commission of offence and the involvement of the accused, it is sufficient for the court to frame a charge. At that stage, there is no necessity of formulating the opinion about the prospect of conviction." Furthermore looking to another judgment relating to law of discharge the accused, of Hon'ble Supreme Court in case of Sheoraj Singh Ahlawat & Ors. Vs State of Uttar Pradesh &

Anr. reported in 2013(1) APEX COURT JUDGMENTS 317 (S.C.) in para-11 it was held that 11. A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Cr.P.C. And the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in Onkar Nath Mishra and Ors. v. State (NCT of Delhi) and Anr. 2008(1) Apex Court Judgments 570 (S.C.) : 2008(1) Criminal Court Cases 536 (S.C.) : 2008(2) SCC 561. That too was a case in which a complaint under Sections 498-A and 406 read with Section 34 of the IPC was filed against the husband and parents-in-law of the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Cr.P.C., holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High

Court having affirmed that order, the matter was brought up to this Court. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words: “11. It is right 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.” (emphasis supplied) Furthermore one another judgment of the Hon'ble Supreme Court is also required to quote to decide this application, it was held by the Hon'ble Supreme Court in Case of *Lalu Prasad @ Lalu Prasad Yadav Vs State of Bihar Through CBI (AHD) Patna* reported as 2007(1) CRIMINAL COURT CASES 386 (S.C.) in para-17 that “ In Kanti Bhadra

Shah and Anr. v. State of West Bengal (2000(1) Apex Court Journal 136 (S.C.) : 2000(1) SCC 722) again the question was examined. It was held that the moment the order of discharge is passed it is imperative to record the reasons. But for framing of charge the Court is required to form an opinion that there is ground for presuming that the accused has committed the offence. In case of discharge of the accused the use of the expression "reasons" has been inserted in Sections 227, 239 and 245 of the Code. At the stage of framing of a charge the expression used is "opinion". The reason is obvious. If the reasons are recorded in case of framing of charge, there is likelihood of prejudicing the case of the accused put on trial. It was ineraliaheld as follows: "It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation he is only required to frame a charge in writing against the accused. Even in cases instituted otherwise than on a police report the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge

the accused. As per sub-section (2) the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both subsections he is obliged to record his reasons for doing so. In this context, it is pertinent to point out that even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.”

- (6) Coming to the facts of the present case it appears from the first information report and statements of witnesses and the documents attached along with the Charge-sheet/chalan that, this case is of conspiracy And by this way the accused also made criminal breach of trust with the Government and by producing forged documents, ID cards etc., had entered into the prohibited place and not being Government Officer had spotted himself to be a government servant by preparing false ID cards and forged documents by pasting false and fabricated rubber stamps. It is also appears that the name of the present applicant is not in First information report, but it was disclosed during the course of investigation and the accused was arrested by investigation officer, an arrest panchnama of the applicant is also prepared by the

investigation officer and the investigation officer has also booked the name of the present applicant/accused in array of the accused that is in column no.-1 of the charge-sheet. It also appears that the name of the present accused was disclosed by the co-accused. Furthermore this is the case of Criminal Conspiracy and that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. The ingredients of the offense of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have committed, it must be clear that they

were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.

- (7) Looking to the facts of this case in this case the accused whose name were initially not given in the first information report but during investigation the name of several accused were disclosed who have helped the Accused No.1 in preparing forged documents bearing round Seals. The present Applicant has taken the order from the Accused No.1 and have prepared the forged seals and with the help of this seals the Accused No.1 has committed the present crime. At this juncture it can be said that there is prima facie case of the prosecution against the accused and there is strong suspicion of involvement of the accused and the applicant of this application. Under the circumstances this court decline to discharge the accused from this case as there is existence of prima facie case against the accused as allegations made in this case. Hence this court hereby passes the following order

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in the interest of justice.

:ORDER:

- Present application filed by the applicant/accused No.-3 under Section-239 of Code of Criminal Procedure,1973 to discharge from this case is hereby ordered to be dismissed.
- There shall be no order as to cost.
- Pronounce today 29 th April,2016 in open Court.

Jamjodhpur
Date : 29-04-2016.

: Anand Harshadbhai Trivedi:
Judicial Magistrate First Class,
Jamjodhpur,
UIC NO. GJ 01325.