

SUPREME COURT OF INDIA

Umesh Kumar

Vs.

State of Andhra Pradesh

Crl.A.No.1305 of 2013

(Dr. B.S. Chauhan and S.A. Bobde JJ.)

06.09.2013

JUDGMENT

DR. B.S. CHAUHAN, J.

1. Both these appeals have been preferred against the impugned judgment and order dated 11.4.2012 passed by the High Court of Andhra Pradesh at Hyderabad in Criminal Petition No. 12791 of 2011 by way of which the High Court has quashed the charge sheet in C.C. No. 555 of 2011 in respect of the offence under Section 468 of Indian Penal Code, 1860 (hereinafter referred to as 'IPC'). However, it has not quashed the charge sheet in respect of offences punishable under Sections 471, 120-B and 201 IPC. Hence, these cross appeals by both parties i.e. the accused and the State of Andhra Pradesh.

2. Facts and circumstances giving rise to these appeals are that:

A. A letter dated 22.4.2011 was received by the Secretary, Ministry of Home Affairs, Union of India, purported to have been written by one Shri M.A. Khan (Member of Parliament) enclosing a representation of All India Banjara Seva Samithi (hereinafter referred to as the 'Samithi') asking for an impartial enquiry against Shri V. Dinesh Reddy, the then DG (Vigilance and Enforcement) Department – respondent no.2 alleging that he had amassed disproportionate assets in the name of his wife and her power of attorney holders. A large number of documents were annexed in support of the allegations in the complaint. The Joint Secretary, Ministry of Home Affairs forwarded the said complaint to the Chief Secretary, Govt. of A.P. on 5.5.2011 for enquiry into the matter. The said letter was received by the

Chief Secretary, Govt. of A.P. on 23.5.2011. On the same day, a letter purporting to have been sent by Shri M.A. Khan, M.P., was received by Govt. of A.P. through Shri V. Dinesh Reddy – respondent no.2, wherein it had been alleged that the letter sent by the Central Government to the Chief Secretary, A.P. had not been authored by Shri M.A. Khan, M.P.

B. When the Chief Secretary, A.P. was examining the matter, Shri V. Dinesh Reddy, - respondent No.2, the then DG (V & E) wrote a letter to the State Government annexing a copy of the letter of Shri M.A. Khan, M.P., dated 23.5.2011 denying the authorship of that letter and ask a junior police officer to give his report about the genuineness of the Samithi. Upon being informed that it was fictitious, respondent no.2 asked for a detailed enquiry to be conducted to ascertain who had forged the said letter and signature of Shri M.A. Khan, M.P., on the complaint. Meanwhile, Shri V. Dinesh Reddy - respondent no.2, was appointed as Director General of Police, A.P. on 30.6.2011.

C. The State Government asked the Additional D.G.P., Crime Investigation Department, namely Shri S.V. Ramana Murthi to enquire and submit a report to the Government in respect of fabricating the letter and forging the signature of Shri M.A. Khan, M.P. The said officer Shri Ramana Murthi did not conduct any enquiry himself, rather he entrusted the same to one Shri M. Malla Reddy, Deputy SP, CID. After conducting the enquiry, Shri Malla Reddy submitted the enquiry report to Addl.D.G.P., CID on 22.8.2011, pointing out that one Shri T. Sunil Reddy obtained certified copy of the documents from the office of the Sub-Registrar on the instructions of some senior officer. The said certified copies were the same as the ones that had been annexed alongwith the complaint submitted in the name of the Samithi.

D. On the same day, i.e. 22.8.2011, Shri Ramana Murthi, Addl.D.G.P., CID submitted the said report to Shri V. Dinesh Reddy, respondent no.2 seeking directions and further requesting him that the report be forwarded to the State Government.

E. On 24.8.2011, Shri Dinesh Reddy - respondent no.2 himself directed the registration of the First Information Report (in short 'FIR') and that an investigation be conducted by CID. As a consequence, the FIR was registered on 25.8.2011 and one Shri J. Ranjan Ratan Kumar, Dy. S.P. was appointed as the Investigating Officer.

F. During the course of investigation, Shri T. Sunil Reddy was arrested on 26.8.2011. His statement was recorded on 27.8.2011 under Section 161 of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.')

G. The report submitted by Shri Malla Reddy was forwarded by Shri V. Dinesh Reddy - respondent no.2 to the State Government on 27.8.2011. Shri T. Sunil Reddy was remanded to judicial custody on 27.8.2011. It was during that judicial custody on 3.9.2011 that his statement was recorded a second time under Section 161 Cr.P.C. wherein he named Umesh Kumar, appellant. On being enlarged on bail on 5.9.2011, Shri T. Sunil Reddy made an application on 7.9.2011 under Section 306 Cr.P.C. to become an approver.

H. Umesh Kumar, appellant, asked the Govt. of A.P. to hold an investigation on the basis of the certified copy of the sale deeds against respondent no.2. In the meanwhile, on 26.9.2011, the Investigating Officer filed a statement in the court that unless the said Shri T. Sunil Reddy was granted pardon, there would be no evidence against Umesh Kumar. The trial court vide order dated 10.10.2011 accepted the application of Shri T. Sunil Reddy and granted him pardon and made him an approver. However, the said order dated 10.10.2011 was quashed by the High Court vide judgment and order dated 1.4.2012 in Writ Petition No. 31927 of 2011 filed by Umesh Kumar, appellant.

I. After completing the investigation, a charge sheet dated 14.11.2011 was filed naming Umesh Kumar, appellant showing that offences punishable under Sections 468, 471, 120-B and 201 IPC had been committed.

J. Aggrieved, Umesh Kumar approached the High Court under Section 482 Cr.P.C. for quashing the said charge sheet. However, the High Court vide impugned judgment and order dated 11.4.2012 quashed the charge sheet only in part as referred to hereinabove. Hence, these cross appeals.

3. The matter was heard at length and after considering the gravity of the allegations against respondent no.2 and his alleged involvement, this court issued notice to him suo motu and after hearing his counsel he was impleaded as a respondent.

4. Shri Rakesh Dwivedi, learned senior counsel appearing for Umesh Kumar, appellant has submitted that the purported complaint sent by Shri M.A. Khan, M.P., to the Central Government was duly supported by a large number of

documents showing that respondent no.2 had amassed wealth which was disproportionate to his known sources of income. His wife had purchased various benami properties. The certified copies of the said sale deeds are admissible in evidence in court. Even if the allegations against Umesh Kumar, appellant are correct, there could have been a fair enquiry on the said allegations against respondent no.2. However, the State of A.P. discriminated against the appellant and has taken no action whatsoever till today to examine whether the said respondent has acquired disproportionate assets. When the matter was referred by the State Government to the Addl. D.G.P. directly without informing respondent no.2 to hold an enquiry to find out whether the signature of Shri M.A. Khan, M.P. was genuine and about the existence of the Samithi, in such a situation, respondent no.2 had no business to interfere with the matter and pass any order. The enquiry had been entrusted to the Addl. D.G.P. However, the said Addl. D.G.P. further entrusted the same to the Deputy S.P. who arrested one Shri T. Sunil Reddy, made him an approver and got his statement recorded naming Umesh Kumar. Before the report submitted by Shri Malla Reddy could reach the State Government, respondent no.2 directed that an FIR be lodged without waiting for the direction of the State Government. Since by that time, respondent no.2 had been appointed as D.G.P., A.P., unofficially, he had been in contact with Shri M.A. Khan, M.P., and created a situation where the enquiry could be directed only against Umesh Kumar, appellant.

In spite of the fact that this court passed an order on 24.7.2013 directing the Chief Secretary, A.P. to disclose whether any enquiry had ever been made against the said respondent no.2 with respect to disproportionate assets, the Chief Secretary, A.P. had not submitted any clear cut reply to this court. The Chief Secretary gave an evasive reply without disclosing any fact in this regard. The evidence collected illegally is admissible in law. Thus, the Govt. of A.P. should have conducted inquiry against respondent No. 2 on the basis of the sale deeds annexed alongwith the complaint. There is collusion between the State Government and respondent no.2 discriminating against the appellant. The High Court ought to have quashed the whole charge sheet being a product of malafides and illegal activities of the State and respondent no.2. Thus, the appeal filed by Umesh Kumar deserves to be allowed and appeal filed by the State is liable to be dismissed.

5. Shri R. Venkataramani, learned senior counsel appearing for the State has submitted that Umesh Kumar hatched a conspiracy and obtained the certified copies of the sale deeds which were in the name of different persons and filed a complaint in the fictitious name forging the signature of Shri M.A. Khan, M.P.

Such a fact had been disclosed by his accomplice Shri T. Sunil Reddy and other persons like Shri Lokesh Kumar etc. Respondent no.2 being the head of the police department has rightly issued the direction to lodge an FIR and investigate the matter. The High Court committed an error entertaining his petition under Section 482 Cr.P.C. without any ground. As it was at the pre-emptive stage the matter could have been examined by the competent court; issues raised by Umesh Kumar could have been examined at the time of framing of the charges; and he could have filed an application for discharge. As charges can be altered at any stage during the trial, the High Court could not have quashed the charge sheet in respect of only Section 468 IPC. Thus, the appeal filed by Umesh Kumar is liable to be dismissed and the appeal filed by the State deserves to be allowed.

6. Shri U.U. Lalit, learned senior counsel appearing for respondent no.2 has submitted that by filing a complaint in the fictitious name and forging the signature of Shri M.A. Khan, M.P., the reputation of respondent no.2 was put at stake. Admittedly, the complaint was in a fictitious name and with a forged signature. A case had been registered in respect of the same with Delhi Police, however, it could not proceed further. The office of the CID was chosen by the Chief Secretary and an enquiry was entrusted to the said department. Therefore, there could be no malice or malafides so far as respondent no.2 is concerned. More so, the name of Umesh Kumar, appellant, was not disclosed till the respondent no.2 was appointed as D.G.P. His name could be unearthed at a subsequent stage. Shri M.A. Khan, M.P. contacted the said respondent and asked for a preliminary enquiry. The said respondent forwarded the said report. Therefore, there could be no malice against him whatsoever. In view of the above, the appeal of Umesh Kumar, appellant is liable to be dismissed.

7. We have heard the rival submissions made by learned counsel for the parties and perused the record.

8. The facts are not in dispute. The letter dated 22.4.2011 purported to have been written by Shri M.A. Khan, M.P., suggests that various properties had been purchased by respondent no.2 as benami and the copies of the sale deeds etc. filed alongwith the said letter fortify the same. The Government of India wrote a letter to the Chief Secretary, Govt. of A.P. on 5.5.2011 to conduct an enquiry in respect of alleged disproportionate assets made by the respondent no.2 by purchase of huge lands either by himself or in the name of his wife or through benamis. Shri M.A. Khan, M.P. vide letter dated 23.5.2011 pointed out to the Central Government that he had not signed the complaint and his signature had been

forged. Umesh Kumar, appellant had asked the State Government to conduct an enquiry in respect of the disproportionate assets of the respondent no.2.

The memo dated 2.8.2011 issued by the Govt. of A.P. revealed that respondent no.2 had conducted an enquiry in the matter of the letter purported to have been sent by Sh. M.A. Khan, M.P. He reached the conclusion that the complaint had been filed with the forged signature of Shri M.A. Khan, M.P., and made a request to the State Government to order a CID probe into the matter of forgery, criminal conspiracy, and cheating as no such Samithi was in existence and the letter was bogus. It was in view thereof, the Government directed the enquiry on the following issues:

(i) Who forged the letter of Member of Parliament? (ii) Who obtained all the documents running into hundreds of pages from the concerned Sub-Registrar's office?

The Memo further revealed that Addl. D.G.P., Crime Investigation Department would conduct the enquiry into the above issues and submit a report to the Government at an early date. The copy of the same was sent to respondent no.2 and to the Central Government in addition to the Addl. D.G.P.

9. Admittedly, no attempt has ever been made by any person to hold the enquiry relating to the genuineness of the allegations in the complaint purported to have been signed by Shri M.A. Khan, M.P. The letter dated 24.8.2011 makes it clear that before the report could reach the Government, respondent no.2 directed that an FIR be lodged, enquiry conducted and the report of the same be submitted to his office. The documents revealed that the statement made by Shri T. Sunil Reddy after his arrest did not reveal the name of Umesh Kumar. However, when he was in police custody and his statement was recorded a second time he named the appellant. It is also evident that he was made an approver with the help of the public prosecutor and later on the said order of the trial court was set aside by the High Court at the behest of Umesh Kumar.

10. The aforesaid facts clearly reveal the following things:

(I) Even if the said complaint was in a fictitious name with a forged signature, the material annexed with the said complaint revealed that various properties had been purchased by the respondent No.2, in his name or in the name of his wife or her General Power of Attorney holders.

(II) The Central Government had asked the State Government to conduct an inquiry of the allegations in the said complaint which the State Government did not ensure compliance of.

(III) In spite of our order dated 24.7.2013 directing the Chief Secretary to file his personal affidavit as to whether any attempt had ever been made to find out the truth in the said allegations, the Chief Secretary filed a defective affidavit which does not reflect any light on the issue whatsoever.

(IV) When the enquiry was entrusted by the State Government directly to a particular police officer and the officer submitted the report, but before reaching the Government, respondent no.2 directed that an FIR be lodged against Umesh Kumar, appellant and an investigation be conducted. The report was sent to the State Government subsequent thereto, and even on that report the State Government had never taken any decision whatsoever, and in the meanwhile the charge sheet was filed.

(V) The charge sheet was filed under various provisions of the IPC and some of them are exclusively triable by the Court of Sessions and not by the magistrate. There are no committal proceedings till now in the case. Therefore, the stage of framing the charges or considering an application for discharge has not yet arrived.

(VI) Shri T. Sunil Reddy had not disclosed the name of Umesh Kumar, appellant in his first statement. However, subsequently when he was in police custody and his statement was recorded a second time he revealed his name. He was also granted pardon and made an approver by the order of the trial court and the said order has been set aside by the High Court at the behest of Umesh Kumar as referred to hereinabove.

(VII) Various other cases regarding the enquiry against respondent no.2 by the CBI or an independent agency, are reported to be pending before the High Court, and it is pointed out that the learned Single Judge has allowed the said writ petition, but the Division Bench had stayed the operation of the said order at the behest of respondent No.2. The learned Additional Advocate General at the direction of the High Court had placed a large number of sale deeds in respect of land purported to have been purchased by respondent No.2's wife and her sister Smt. S. Nalini between 1998 and

2005, either in her name or her relatives or General Power of Attorney holders.

(VIII) The High Court partly quashed the charge sheet observing that the offence under Section 468 IPC is not made out.

Case against Umesh Kumar – appellant :

11. Allegations against any person if found to be false or made forging some one else signature may affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation. Reputation has been defined in dictionary as “to have a good name; the credit, honor, or character which is derived from a favourable public opinion or esteem and character by report”. Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore, it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. International Covenant on Civil and Political Rights 1966 recognises the right to have opinions and the right of freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is “not only a salt of life but the purest treasure and the most precious perfume of life.” (Vide: Smt. Kiran Bedi & Jinder Singh v. The Committee of Inquiry & Anr., AIR 1989 SC 714; Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni & Ors., AIR 1983 SC 109; Nilgiris Bar Association v. TK Mahalingam & Anr., AIR 1998 SC 398; Dr. Mehmood Nayyar Azam v. State of Chattisgarh & Ors., AIR 2012 SC 2573; Vishwanath Sitaram Agrawal v. Sau Sarla Vishwanath Agrawal, AIR 2012 SC 586; and Kishore Samrite v. State of U.P. & Ors., (2013) 2 SCC 398).

12. In view thereof, if any person has forged in a letter under the name of the Samithi and forged the signature of Shri M.A. Khan, M.P., the matter being of grave nature requires investigation and, in view of above, we cannot find fault with the action initiated against Umesh Kumar, appellant. Once criminal law is put in motion and after investigation the charge sheet is filed, it requires scrutiny in the court of law. However, before the charges could be framed, Umesh Kumar, appellant, approached the High Court under Section 482 Cr.P.C. for quashing of the charge sheet. The scope of Section 482 Cr.P.C. is well defined and inherent powers could be exercised by the High Court to give effect to an order under the Cr.P.C.; to prevent abuse of the process of court; and to otherwise secure the ends

of justice. This extraordinary power is to be exercised *ex debito justitiae*. However, in exercise of such powers, it is not permissible for the High Court to appreciate the evidence as it can only evaluate material documents on record to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceedings against the accused and the court cannot look into materials, the acceptability of which is essentially a matter for trial. Any document filed alongwith the petition labelled as evidence without being tested and proved, cannot be examined. Law does not prohibit entertaining the petition under Section 482 Cr.P.C. for quashing the charge sheet even before the charges are framed or before the application of discharge is filed or even during its pendency of such application before the court concerned. The High Court cannot reject the application merely on the ground that the accused can argue legal and factual issues at the time of the framing of the charge. However, the inherent power of the court should not be exercised to stifle the legitimate prosecution but can be exercised to save the accused to undergo the agony of a criminal trial.

(Vide: *Pepsi Food Ltd. & Anr. v. Special Judicial Magistrate & Ors.*, AIR 1998 SC 128; *Ashok Chaturvedi & Ors. v. Shitulh Chanchani & Anr.* AIR 1998 SC 2796; *G. Sagar Suri & Anr. v. State of U.P. & Ors.*, AIR 2000 SC 754; and *Padal Venkata Rama Reddy @ Ramu v. Kovvuri Satyanarayana Reddy & Ors.*, (2011) 12 SCC 437)

13. In *Rajiv Thapar v Madan Lal Kapoor*, 2013 (3) SCC 330, this Court while dealing with the issue held as follows:

“Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Code of Criminal Procedure:

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?"

14. In *State of Bihar v. P.P. Sharma & Anr.*, AIR 1991 SC 1260, this Court dealt with an issue of whether an application under Section 482 Cr.P.C. for quashing the charge sheet should be entertained before cognizance is taken by a criminal court and held as under:-

“Quashing the charge-sheet even before cognizance is taken by a criminal Court amounts to killing a still born child. Till the criminal Court takes cognizance of the offence there is no criminal proceedings pending. I am not allowing the appeals on the ground alternative remedies provided by the Code as a bar. It may be relevant in an appropriate case. My view is that entertaining the writ petitions against charge-sheet and considering the matter on merit on the guise of prima facie evidence to stand on accused for trial amounts to pre-trial of a criminal trial.... It is not to suggest that under no circumstances a writ petition should be entertained..... The charge-sheet and the evidence placed in support thereof form the base to take or refuse to take cognizance by the competent Court. It is not the case that no offence has been made out in the chargesheets and the First Information Report.”

(Emphasis added)

15. The issue of malafides loses its significance if there is a substance in the allegation made in complaint moved with malice.

In *Sheo Nandan Paswan v. State of Bihar & Ors.*, AIR 1987 SC 877, this Court held as under:

“It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or complainant.”

16. In *Parkash Singh Badal v. State of Punjab & Ors.*, AIR 2007 SC 1274, this Court held as under:

“The ultimate test, therefore, is whether the allegations have any substance. An investigation should not be shut out at the threshold because a political opponent or a person with political difference raises an allegation of commission of offence. Therefore, the plea of mala fides as raised cannot be maintained.”

17. In *State of A.P. v. Goloconda Linga Swamy & Anr.*, AIR 2004 SC 3967, this Court held as under:

“It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of malafides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding.”

(See also: *K. Karunakaran v. State of Kerala*, (2007) 1 SCC 59).

18. Thus, in view of the above, it becomes evident that in case there is some substance in the allegations and material exists to substantiate the complicity of the applicant, the case is to be examined in its full conspectus and the proceedings should not be quashed only on the ground that the same had been initiated with mala fides to wreak vengeance or to achieve an ulterior goal.

19. Scheme for inquiry/trial provided under the Cr.P.C. is quite clear. After investigation, report under Section 173(2) Cr.P.C. is to be submitted before the competent court i.e. magistrate having jurisdiction in the matter and the magistrate may take cognizance under Section 190 Cr.P.C. However, it is still open to the magistrate to direct further investigation under the provisions of Section 173(8) Cr.P.C. If the case is triable by the Court of Sessions, the magistrate would commit the case to the said court under Section 209 Cr.P.C. It is for the court to examine whether there is sufficient material collected during investigation and filed alongwith the charge sheet that a prima facie view can be taken to proceed against the accused and in view thereof, frame charges under Section 228 Cr.P.C. At this stage the remedy available to the accused is to ask for discharge under Section 227 Cr.P.C. In case charges are framed the accused has to face the trial, charges can be added/alterd at any stage of the trial, before the pronouncement of the judgment to suit the evidence adduced before the court, under the provisions of Section 216

Cr.P.C. The only legal requirement is that a witness has to be recalled as provided under Section 217 Cr.P.C. when a charge is altered or added by the court.

20. In the instant case, charge sheet had been filed and the cognizance had been taken by the magistrate concerned; the committal proceedings have not yet taken place; and some of the offences attracted in this case are exclusively triable by the Sessions Court. Umesh Kumar, appellant approached the High Court under Section 482 Cr.P.C. and the charge sheet has been partly quashed observing that the provisions of Section 468 IPC are not attracted.

21. The question does arise as to whether such an order attained finality and in case the evidence is adduced before the court concerned, whether the trial court can still hold that the applicant is required to be tried for the offence under Section 468 I.P.C. and further whether the trial would be competent on the said charge in exercise of its power under Section 216 Cr.P.C.?

22. In *State of Maharashtra v. Salman Salim Khan*, AIR 2004 SC 1189, this Court depreciated the practice of entertaining the petition under Section 482 Cr.P.C. at a pre-mature stage of the proceedings observing as under:

“....The arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise as observed in this case, proceedings get protracted by the intervention of the superior courts....The High Court by the impugned order had allowed the said application quashing the charge under Section 304 IPC against the respondent herein while it maintained the other charges and direct the Magistrate’s court to frame the de novo charges.....We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial Court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial.we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304, Part II, IPC, therefore so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage”. (Emphasis added) The Court set aside the order of

the High Court and left it open to the trial court to modify the charges in accordance with the evidence adduced before it.

(See also: Sohan Lal & Ors. v. State of Rajasthan, AIR 1990 SC 2158)

23. A Constitution Bench of this Court reiterated a similar view in CBI & Ors. v. Keshub Mahindra etc., AIR 2011 SC 2037 observing that when the charges are framed, the court makes an endorsement till that stage. So charges are framed on the materials produced by the prosecution for framing the charges “at that stage”. Such indication is necessary otherwise the provisions contained in Sections 216, 323, 386, 397, 399, 401 etc. Cr.P.C., would be rendered nugatory and denuded a competent court of the powers under those provisions. The court cannot be restrained from exercising its powers either under Section 323 or Section 216 Cr.P.C.

24. The High Court was approached by Umesh Kumar, appellant under section 482 Cr.P.C. at a premature stage. At the said stage the High Court could examine the chargesheet, case diary and other material in the chargesheet which by no means can be termed as substantive evidence. (Vide: Lok Ram v Nihal Singh & Ors. AIR 2006 SC 1892).

25. Thus, in view of above, the order of the High Court impugned before us cannot be termed as a final decision. The order is subject to further order which could be passed by the trial court under Section 216 Cr.P.C., on the basis of the evidence to be led during trial. If the impugned order is dubbed as having attained finality, the provisions of Section 216 Cr.P.C. would render otiose/nugatory. Thus, the same is to be read that the said order had been passed taking into consideration the material which was available “at that stage” and it is still open to the trial court to add or alter the charges according to the evidence produced before it.

Complaint against Respondent No.2:

26. The complaint was initially made in respect of acquiring huge immovable properties by respondent No. 2 in his name and in the name of his wife, and the Central Government had asked the State Government to conduct an inquiry into the said allegations. The complaint may be forged or fabricated, but it is nobody’s case that the copies of sale deeds annexed alongwith the said complaint were not genuine. While issuing direction to hold inquiry/investigation as to who had fabricated the said complaint and forged the signatures of Shri M.A. Khan, M.P., the allegations of acquiring properties by the respondent No.2 have been

abandoned and unattended altogether. Even though the complaint was bogus, however, the sale deeds annexed alongwith the same though illegally collected by someone, have not been found to be fabricated documents.

27. It is a settled legal proposition that even if a document is procured by improper or illegal means, there is no bar to its admissibility if it is relevant and its genuineness is proved. If the evidence is admissible, it does not matter how it has been obtained. However, as a matter of caution, the court in exercise of its discretion may disallow certain evidence in a criminal case if the strict rules of admissibility would operate unfairly against the accused. More so, the court must conclude that it is genuine and free from tampering or mutilation. This court repelled the contention that obtaining evidence illegally by using tape recordings or photographs offend Articles 20(3) and 21 of the Constitution of India as acquiring the evidence by such methods was not the procedure established by law. (Vide: Yusufalli Esmail Nagree v. The State of Maharashtra, AIR 1968 SC 147; Magraj Patodia v. R.K. Birla & Ors., 1970 (2) SCC 888; R.M. Malkani v. State of Maharashtra, AIR 1973 SC 157; Pooran Mal v. Director of Inspection, Income-Tax, New Delhi & Ors., AIR 1974 SC 348; and State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru, (2005) 11 SCC 600).

28. In such a fact-situation if illegally collected material can be examined by the court of law, we fail to understand how the State Government could not examine the contents of the complaint on the basis of the annexed copies of sale deeds etc.

During the arguments of this case, our conscious was shocked as to the manner the State of Andhra Pradesh has misdirected itself and abandoned the most relevant issue i.e. complaint against Shri V. Dinesh Reddy – respondent no.2 and concentrated exclusively against Umesh Kumar, appellant. Thus, vide order dated 24.7.2013, we have asked the Chief Secretary of the State of Andhra Pradesh to disclose as to whether any preliminary/disciplinary inquiry has ever been conducted by the State in respect of the alleged sale deeds in favour of the spouse or her general power of attorney holders or relatives of respondent No. 2.

29. In reply to our order dated 24.7.2013, the Chief Secretary has filed an undated affidavit though attested by a Joint Secretary to Govt. of A.P., and has given numerous explanations in respect of the alleged pseudonymous petition filed with a fictitious name of the Samithi and with the forged signature of Shri M.A. Khan, M.P. The Chief Secretary has taken the plea that the Government of A.P. could not investigate an enquiry about the disproportionate assets of the respondent no.2 in

view of the fact that the High Court of Andhra Pradesh vide order dated 2.5.2013 stayed the operation of the learned Single Judge's order to conduct an enquiry into the allegations. The Chief Secretary to the Govt. of Andhra Pradesh has not revealed whether a preliminary enquiry or a domestic enquiry had ever been conducted till 2.5.2013 when the High Court passed the restraint order. The complaint was filed on 22.4.2011 and more than two years had elapsed when the High Court passed the order. No explanation has been furnished as to why for two years the enquiry could not be held in this regard.

30. Attestation of the undated affidavit is in utter disregard to the provisions of Section 139 of the Code of Civil Procedure, 1908. (hereinafter referred to as the 'CPC'). The Supreme Court Rules 1966 under Order XI, Rule 7 also require adherence to the provisions of Section 139 CPC. Hence, his reply is not worth taking on record and being undated, renders the same to be a piece of waste paper. The definition of 'affidavit' in Section 3(3) of the General Clauses Act 1897 provides that it "shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing". Thus, it is an essential characteristic of an affidavit that it should be made on oath or affirmation before a person having authority to administer the oath or affirmation, and thus, duty to state on oath on the part of the deponent is sacrosanct. Same remains the position in respect of administration of oath as required under the Oaths Act 1873.

(See: Krishan Chander Nayar v. The Chairman, Central Tractor Organisation & Ors., AIR 1962 SC 602; Chhotan Prasad Singh & Ors. v. Hari Dusadh & Ors., AIR 1977 SC 407; and M. Veerabhadra Rao v. Tek Chand, AIR 1985 SC 28).

31. In view of the above, we have no hesitation to hold that the Chief Secretary had the audacity not to ensure the compliance of the order of this court dated 24.7.2013, and we have no words to express our anguish and condemn the attitude adopted by the Chief Secretary. More so, holding such a responsible post in the State, he must have some sense of responsibility and should have been aware of what are the minimum requirements of law, and even if he did not know he could have consulted any law officer of the State before filing the undated affidavit.

32. Be that as it may, facts of the case warranted some enquiry in respect of the allegations of acquiring huge properties by Shri V. Dinesh Reddy – respondent no.2. The State took the courage to flout the order of the Central Government and did not look into the contents of the complaint and misdirected the enquiry against

Umesh Kumar, appellant. In such a fact-situation, this court would not fail in its duty to direct the enquiry in those allegations.

33. In view of the above, the appeals are disposed of directing the CBI to investigate the matter against Shri V. Dinesh Reddy – respondent no. 2 on the allegations of acquiring the disproportionate assets. However, this should not be considered as expressing any opinion upon the merits of the case. The Chief Secretary to the Government of Andhra Pradesh is directed to make the copies of the said sale deeds available to the CBI for investigation.

34. Case of Umesh Kumar – appellant would proceed before the Trial Court as explained hereinabove.

A copy of the judgment and order be sent to the Director, CBI, forthwith. The CBI shall submit the Status Report to this Court within four months.