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regardless of the facts and circumstances of each case, could not have been granted.

3. Relying on the decision in *Balbir Singh case*[1] we allow this appeal and reduce the interest from 18% to 12% per annum on the deposited amount. The appeal succeeds to the above extent. There shall be no order as to costs.

(2005) 1 Supreme Court Cases 568

(BEFORE Y.K. SABHARWAL, D.M. DHARMADHIKARI AND TARUN CHATTERJEE, JJ.)

STATE OF ORISSA .. Appellant;

Versus

DEBENDRA NATH PADHI .. Respondent.

Criminal Appeal No. 497 of 2001† with SLP (Crl.) No. 1912 of 2003 and Crl. A. No. 46 of 2004, decided on November 29, 2004

A. **Criminal Procedure Code, 1973 — Ss. 227 & 228, 239 & 240, 91 and 482 — Framing of charge — Trial court whether can consider any material filed by the accused — Held, at the said stage it can consider only the material produced by the prosecution — No provision in CrPC grants to the accused any right to file any material or document at the said stage — That right is granted only at the stage of trial — *Satish Mehra case*, (1996) 9 SCC 766 taking a contrary view, held, not correctly decided — Contention made about production of documents relying upon S. 91 CrPC, rejected — Scheme and object of new CrPC of 1973 which incorporated Ss. 227 and 209 and omitted Ss. 207 and 207-A existing in old CrPC of 1898, taken note of — Submission that the above interpretation of Ss. 227 and 239 would run the risk of those provisions being declared ultra vires Arts. 14 and 21 of the Constitution as it would compel the accused to face trial despite being in a position to produce unimpeachable and unassailable material to show his innocence at the stage of framing of charge, held, not acceptable — Constitution of India, Arts. 226, 14 and 21**

B. **Criminal Procedure Code, 1973 — Ss. 91, 227, 228, 239 and 240 — Summons to produce document or other thing — Accused cannot at the stage of framing of charge invoke S. 91 to seek production of any document to prove his innocence**

C. **Criminal Procedure Code, 1973 — Ss. 227 and 209 — Expression "the record of the case" as used in S. 227 — Meaning of — Held, the record of the case and documents submitted therewith as postulated in S. 227 relate to the case and the documents referred to in S. 209**

D. **Criminal Procedure Code, 1973 — S. 227 — Expression "hearing the submissions of the accused" as used therein — Meaning of — Held, means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith — It cannot mean opportunity to file material to be granted to the accused**

† From the Judgment and Order dated 21-6-1999 of the Orissa High Court in Crl. MC No. 2374 of 1995 : **(2000) 19 Orissa CR 517**

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E. **Criminal Procedure Code, 1973 — S. 91 — Production of document or other thing — Court's power to issue summons for — Scope — Held, a police officer may move the court for summoning and production of a document at any of the stages mentioned in the section but the accused can seek such order only at the stage of defence — No right conferred on the accused to produce document in his possession to prove his defence at the stage of framing of charge — Further held, necessity and desirability of the document is to be examined considering the stage when such a prayer is made and the party who makes it, whether police or accused**

Can the trial court at the time of framing of charge consider material filed by the accused, was the point for determination in these matters.

Answering the said question in the negative, the Supreme Court

Held :

The law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. No provision in the Code of Criminal Procedure, 1973 (for short the "Code") grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial. *Satish Mehra case*, (1996) 9 SCC 766 holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. (Paras 23, 8, 27 and 18)

Satish Mehra v. *Delhi Admn.*, (1996) 9 SCC 766 : 1996 SCC (Cri) 1104, *overruled*

Supdt. and Remembrancer of Legal Affairs, W.B. v. *Anil Kumar Bhunja*, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : (1980) 1 SCR 323; *State of Bihar* v. *Ramesh Singh*, (1977) 4 SCC 39 : 1977 SCC (Cri) 533; *State of Delhi* v. *Gyan Devi*, (2000) 8 SCC 239 : 2000 SCC (Cri) 1486; *State of M.P.* v. *S.B. Johari*, (2000) 2 SCC 57 : 2000 SCC (Cri) 311; *State of Maharashtra* v. *Priya Sharan Maharaj*, (1997) 4 SCC 393 : 1997 SCC (Cri) 584; *State Anti-Corruption Bureau* v. *P. Suryaprakasam*, 1999 SCC (Cri) 373, *relied on*

Minakshi Bala v. *Sudhir Kumar*, (1994) 4 SCC 142 : 1994 SCC (Cri) 1181; *P.S. Rajya* v. *State of Bihar*, (1996) 9 SCC 1 : 1996 SCC (Cri) 897; *State of M.P.* v. *Mohanlal Soni*, (2000) 6 SCC 338 : 2000 SCC (Cri) 1110, *explained* and *distinguished on facts*

Om Parkash Sharma v. *CBI*, (2000) 5 SCC 679 : 2000 SCC (Cri) 1014, *distinguished* and *held obiter dicta*

State of Orissa v. *Debendra Nath Padhi*, (2003) 2 SCC 711 : 2003 SCC (Cri) 688, *referred to*

State of Haryana v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, *cited*

In the old Code of 1898 there was no provision similar to Section 227 of the new Code of 1973. Section 227 was incorporated in the 1973 Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207-A was fairly lengthy. The aforesaid Sections 207 and 207-A have been omitted from the 1973

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Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the 1973 Code with the object of expeditious disposal of cases. Instead of the committal Magistrate framing the charge, it is now to be framed by the Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the 1973 Code is also required to be kept in view while determining the question. Under the 1973 Code, the evidence can be taken only after framing of charge. At the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code of Criminal Procedure. (Paras 9 and 18)

The record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209 CrPC. That is the plain meaning of Section 227 read with Section 209 CrPC. The provision about hearing the submissions of the accused as postulated by Section 227 only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police. (Paras 8 and 18)

Section 91 CrPC does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 CrPC, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. (Para 25)

Om Parkash Sharma v. *CBI*, (2000) 5 SCC 679 : 2000 SCC (Cri) 1014, *relied on*

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Satish Mehra v. *Delhi Admn.*, (1996) 9 SCC 766 : 1996 SCC (Cri) 1104, *referred to*

Ashok Kaushik v. *State*, (1999) 49 DRJ 202, *cited*

The reliance placed by the accused on Articles 14 and 21 is misplaced. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 CrPC and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case*, 1992 Supp (1) SCC 335. (Paras 18 and 29)

State of Haryana v. *Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, *referred to*

W-P-M/AKZ/30863/CR

Advocates who appeared in this case :

Radhashyam Jena, Advocate, for the Appellant in Crl. A. No. 497 of 2001;

Uday U. Lalit, Senior Advocate (Ms Aparajita Singh and Siddhartha Chowdhury, Advocates, with him) for the Appellant in Crl. A. No. 46 of 2004;

R.K. Jain, Senior Advocate (Ajay Bhalla and Anil Kr. Tandale, Advocates, with him) for the Petitioner in SLP (Crl.) No. 1912 of 2003;

U.U. Lalit, Senior Advocate (Uday Gupta, Ms Shivani M. Lal and Manoj Swarup, Advocates, with him) for the Respondent in Crl. A. No. 497 of 2001;

Ajit S. Bhasme and P. Parameswaran, Advocates, for the Respondent in Crl. A. No. 46 of 2004;

B.B. Singh and Kumar Rajesh Singh, Advocates, for the Respondent in SLP (Crl.) No. 1912 of 2003.

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3. (2000) 6 SCC 338 : 2000 SCC (Cri) 1110, *State of M.P.* v. *Mohanlal Soni* 579*b-c*
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8. (1997) 4 SCC 393 : 1997 SCC (Cri) 584, *State of Maharashtra* v. *Priya Sharan Maharaj* 576*a*
9. (1996) 9 SCC 766 : 1996 SCC (Cri) 1104, *Satish Mehra* v. *Delhi Admn.* 572*a*, 572*e*, 572*e-f*, 572*g*, 573*a*, 579*d-e*, 580*d-e*, 580*e*, 580*e-f*
10. (1996) 9 SCC 1 : 1996 SCC (Cri) 897, *P.S. Rajya* v. *State of Bihar* 578*e-f*
11. (1994) 4 SCC 142 : 1994 SCC (Cri) 1181, *Minakshi Bala* v. *Sudhir Kumar* 577*g*
12. 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426, *State of Haryana* v. *Bhajan Lal* 578*h*, 579*a-b*, 581*e-f*
13. (1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : (1980) 1 SCR 323, *Supdt. and Remembrancer of Legal Affairs, W.B.* v. *Anil Kumar Bhunja* 572*c-d*, 575*d*
14. (1977) 4 SCC 39 : 1977 SCC (Cri) 533, *State of Bihar* v. *Ramesh Singh* 572*d*, 575*b-c*

The Judgment of the Court was delivered by

Y.K. SABHARWAL, J.— Can the trial court at the time of framing of charge consider material filed by the accused, is the point for determination in these matters.

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2. In *Satish Mehra* v. *Delhi Admn.*[1] a two-Judge Bench judgment, it was observed that if the accused succeeds in producing any reliable material at the stage of taking cognizance or framing of charge which might fatally affect even the very sustainability of the case, it is unjust to suggest that no such material should be looked into by the court at that stage. It was held that the object of providing an opportunity to the accused of making submissions as envisaged in Section 227 of the Code of Criminal Procedure, 1973 (for short "the Code") is to enable the court to decide whether it is necessary to proceed to conduct the trial. If the materials produced by the accused even at that early stage would clinch the issue, why should the court shut it out saying that such documents need be produced only after wasting a lot more time in the name of trial proceedings? It was further observed that there is nothing in the Code which shrinks the scope of such audience to oral arguments and, therefore, the trial court would be within its power to consider even material which the accused may produce at the stage contemplated in Section 227 of the Code.

3. When the arguments in the present case were heard by a two-Judge Bench, considering various decisions including three-Judge Bench decisions in *Supdt. and Remembrancer of Legal Affairs, W.B.* v. *Anil Kumar Bhunja*[2] and *State of Bihar* v. *Ramesh Singh*[3] it was observed that at the time of framing a charge the trial court can consider only the material placed before it by the investigating agency, there being no requirement in law for the court to grant at that stage either an opportunity to the accused to produce evidence in defence or consider such evidence the defence may produce at that stage. But having regard to the views expressed in *Satish Mehra case*[1] it was directed that the matter should be referred to a larger Bench. The order referring the matter to a larger Bench is reported in *State of Orissa* v. *Debendra Nath Padhi*[4]. Accordingly, these matters have been placed before us to determine the question abovenoticed.

4. The views expressed in *Satish Mehra case*[1] have been strongly supported by learned counsel for the accused on the ground of justice, equity and fairness and also on the touchstone of Article 21 of the Constitution contending that reversal of that view would lead to unnecessary harassment to the accused by having to face the trial for years, waste of valuable time of the court, heavy cost, despite the fact that even at the early stage of framing of charge or taking cognizance the accused is in a position to produce unimpeachable material of sterling quality to clinchingly show that there is no prospect of conviction at the conclusion of the trial. *Satish Mehra case*[1] was further supported on interpretation of Sections 227 and 239 of the Code.

1 (1996) 9 SCC 766 : 1996 SCC (Cri) 1104
2 (1979) 4 SCC 274 : 1979 SCC (Cri) 1038 : (1980) 1 SCR 323
3 (1977) 4 SCC 39 : 1977 SCC (Cri) 533
4 (2003) 2 SCC 711 : 2003 SCC (Cri) 688

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5. On the other hand, it was contended on behalf of the State that the observations made in *Satish Mehra case*[1] run counter to the views expressed by this Court in a large number of decisions, it amounts to upsetting well-settled legal propositions and making nugatory amendments made in the Code of Criminal Procedure from time to time and would result in conducting a mini-trial at the stage of framing of charge or taking cognizance. Such a course would not only be contrary to the object and the scheme of the Code but would also result in total wastage of the court time because of conducting of two trials, one at the stage of framing charge and the other after the charge is framed. It was contended that on true construction of Section 227 of the Code only the material sent by the prosecution along with the record of the case and the documents sent along with it can be considered by the trial court at the time of framing of the charge. The accused at that stage has no right to place before the court any material.

6. At the stage of framing charge, the trial court is required to consider whether there are sufficient grounds to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. These two sections read as under:

Section 227 CrPC

"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."

Section 228 CrPC

"228. *Framing of charge.*—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(*a*) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report;

(*b*) is exclusively triable by the court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (*b*) of sub-section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

7. Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate to consider "the police report and the documents sent with it under Section 173" and, if necessary, examine the accused and after giving the accused an opportunity of being heard, if the Magistrate considers the charge against the accused to

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be groundless, the accused is liable to be discharged by recording reasons thereof.

8. What is the meaning of the expression "the record of the case" as used in Section 227 of the Code. Though the word "case" is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit "the case" to the Court of Session and send to that court "the record of the case" and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

9. Further, the scheme of the Code when examined in the light of the provisions of the old Code of 1898, makes the position more clear. In the old Code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207-A was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207-A. Under Section 207-A in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under sub-section (1), to take evidence as provided in sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in sub-section (6) and to commit the accused for trial after framing of charge as provided in sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in sub-section (14). The aforesaid Sections 207 and 207-A have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the

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commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of the committal Magistrate framing the charge, it is now to be framed by the Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the Code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge.

10. Now, let us examine the decisions which have a bearing on the point in issue.

11. In *State of Bihar* v. *Ramesh Singh*[3] considering the scope of Sections 227 and 228 of the Code, it was held that at the stage of framing of charge it is not obligatory for the judge to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. At that stage, the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion, at the initial stage of framing of charge, is sufficient to frame the charge and in that event it is not open to say that there is no sufficient ground for proceeding against the accused.

12. In *Supdt. and Remembrancer of Legal Affairs, W.B.* v. *Anil Kumar Bhunja*[2] a three-Judge Bench held that the Magistrate at the stage of framing charges had to see whether the facts alleged and sought to be proved by the prosecution prima facie disclose the commission of offence on general consideration of the *materials placed before him by the investigating police officer*. (emphasis supplied) Though in this case the specific question whether an accused at the stage of framing of charge has a right to produce any material was not considered as such, but that seems implicit when it was held that the Magistrate had to consider material placed before it by the investigating police officer.

13. In *State of Delhi* v. *Gyan Devi*[5] this Court reiterated that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons.

14. In *State of M.P.* v. *S.B. Johari*[6] it was held that the charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, cannot show that the accused committed the particular offence. In that case, there would be no sufficient ground for proceeding with the trial.

5 (2000) 8 SCC 239 : 2000 SCC (Cri) 1486
6 (2000) 2 SCC 57 : 2000 SCC (Cri) 311

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15. In *State of Maharashtra* v. *Priya Sharan Maharaj*[7] it was held that at Sections 227 and 228 stage 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 disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

16. All the decisions, when they hold that there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be a well-settled proposition. This aspect, however, has been adverted to in *State Anti-Corruption Bureau* v. *P. Suryaprakasam*[8] where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. *The only right the accused has at that stage is of being heard and nothing beyond that.* (emphasis supplied) The judgment of the High Court quashing the proceedings by looking into the documents filed by the accused in support of his claim that no case was made out against him even before the trial had commenced was reversed by this Court. It may be noticed here that learned counsel for the parties addressed the arguments on the basis that the principles applicable would be same — whether the case be under Sections 227 and 228 or under Sections 239 and 240 of the Code.

17. As opposed to the aforesaid legal position, the learned counsel appearing for the accused contended that the procedure which deprives the accused to seek discharge at the initial stage by filing unimpeachable and unassailable material of sterling quality would be illegal and violative of Article 21 of the Constitution since that would result in the accused having to face the trial for a long number of years despite the fact that he is liable to be discharged if granted an opportunity to produce the material and on perusal thereof by the court. The contention is that such an interpretation of Sections 227 and 239 of the Code would run the risk of those provisions being declared ultra vires of Articles 14 and 21 of the Constitution and to save the said provisions from being declared ultra vires, the reasonable interpretation

7 (1997) 4 SCC 393 : 1997 SCC (Cri) 584
8 1999 SCC (Cri) 373

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to be placed thereupon is the one which gives a right, howsoever limited that right may be, to the accused to produce unimpeachable and unassailable material to show his innocence at the stage of framing charge.

18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. The scheme of the Code and object with which Section 227 was incorporated and Sections 207 and 207-A omitted have already been noticed. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini-trial at the stage of framing of charge. That would defeat the object of the Code. It is well settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well-settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the stage of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.

19. It may also be noted that, in fact, in one of the cases under consideration (SLP No. 1912), the plea of alibi has been taken by the accused in a case under Section 302 read with other provisions of the Indian Penal Code. We may also note that the decisions cited by learned counsel for the accused where the prosecutions under the Income Tax Act have been quashed as a result of findings in the departmental appeals have no relevance for considering the question involved in these matters.

20. Reliance placed on behalf of the accused on some observations made in *Minakshi Bala* v. *Sudhir Kumar*[9] to the effect that in exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence is misplaced for the purpose of considering the point in issue in these matters. If para 7 of the judgment where these observations have been made is read as a whole, it

9 (1994) 4 SCC 142 : 1994 SCC (Cri) 1181

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would be clear that the judgment instead of supporting the contention sought to be put forth on behalf of the accused, in fact, supports the prosecution. Para 7 of the aforesaid case reads as under: (SCC p. 145)

> "7. If charges are framed in accordance with Section 240 CrPC on a finding that a prima facie case has been made out — as has been done in the instant case — the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240 CrPC the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240 CrPC; nor would it be justified in invoking its inherent jurisdiction under Section 482 CrPC to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence."

21. It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing under Section 482 of the Code. In the present case, however, the question involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge.

22. Reliance has also been placed on the decision in the case of *P.S. Rajya* v. *State of Bihar*[10] where this Court rejected the contention urged on behalf of the State that the points on which the accused was seeking quashing of criminal proceedings could be established by giving evidence at appropriate time and no case had been made out for quashing the charge itself. The charge was quashed by this Court. In this case too only on peculiar facts of the case, this Court came to the conclusion that the criminal proceedings initiated against the appellant-accused could not be pursued. Those peculiar facts have been noticed in paras 14, 17, 18 and 19 of the decision. The contention of the accused based on those peculiar facts has been noticed in para 15 and that of the respondent that CBI was entitled to proceed on the basis of the material available and the mere allegations made by the accused cannot take the place of proof and that had to be gone into and established in the final hearing, has been noticed in para 16. After noticing those contentions and the decision in the case of *State of Haryana* v. *Bhajan Lal*[11] laying down the guidelines relating to the exercise of

10 (1996) 9 SCC 1 : 1996 SCC (Cri) 897
11 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426

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extraordinary power under Article 226 or the inherent power under Section 482 of the Code for quashing an FIR or a complaint, this Court, on the peculiar facts, came to the conclusion that the case of the appellant could be brought under more than one head given in *Bhajan Lal case*[11] without any difficulty so as to quash the proceedings. In this background, observations were made in para 23 on which reliance has been placed on behalf of the accused whereby rejecting the contention of the State as noticed in para 16, the Court came to the conclusion that the criminal proceedings deserve to be quashed. In this case too the question was not about the right of the accused to file material at the stage of framing charge but was about quashing of proceedings in exercise of power under Section 482 of the Code. The decision in the case of *State of M.P.* v. *Mohanlal Soni*[12] sought to be relied upon on behalf of the accused is also of no assistance because in that case an earlier order of the High Court wherein the trial court was directed to take into consideration the documents made available by the accused during investigation while framing charge had attained finality since that order was not challenged and in that view this Court came to the conclusion that the trial court was bound and governed by the said direction of the High Court which had not been followed.

23. As a result of the aforesaid discussion, in our view, clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. *Satish Mehra case*[1] holding that the trial court has powers to consider even materials which the accused may produce at the stage of Section 227 of the Code has not been correctly decided.

24. On behalf of the accused a contention about production of documents relying upon Section 91 of the Code has also been made. Section 91 of the Code reads as under:

> "91. *Summons to produce document or other thing.*—(1) Whenever any court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
>
> (2)-(3) * * *"

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is "necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code". The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of

12 (2000) 6 SCC 338 : 2000 SCC (Cri) 1110

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framing of a charge would not arise since defence of the accused is not relevant at that stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

26. Reliance on behalf of the accused was placed on some observations made in the case of *Om Parkash Sharma* v. *CBI*[13]. In that case the application filed by the accused for summoning and production of documents was rejected by the Special Judge and that order was affirmed by the High Court. Challenging those orders before this Court, reliance was placed on behalf of the accused upon *Satish Mehra case*[1]. The contentions based on *Satish Mehra case*[1] have been noticed in para 4 as under: (SCC p. 682)

> "*4*. The learned counsel for the appellant reiterated the stand taken before the courts below with great vehemence by inviting our attention to the decision of this Court reported in *Satish Mehra* v. *Delhi Admn.*[1] laying emphasis on the fact that the very learned Judge in the High Court has taken a different view in such matters, in the decision reported in *Ashok Kaushik* v. *State*[14]. Mr Altaf Ahmed, the learned ASG for the respondents not only contended that the decisions relied upon for the appellants would not justify the claim of the appellant in this case, at this stage, but also invited, extensively our attention to the exercise undertaken by the courts below to find out the relevance, desirability and necessity of those documents as well as the need for issuing any such directions as claimed at that stage and consequently there was no justification whatsoever, to intervene by an interference at the present stage of the proceedings."

27. Insofar as Section 91 is concerned, it was rightly held that the width of the powers of that section was unlimited but there were inbuilt, inherent limitations as to the stage or point of time of its exercise, commensurate with

13 (2000) 5 SCC 679 : 2000 SCC (Cri) 1014
14 (1999) 49 DRJ 202

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the nature of proceedings as also the compulsions of necessity and desirability, to fulfil the task or achieve the object. Before the trial court the stage was to find out whether there was sufficient ground for proceeding to the next stage against the accused. The application filed by the accused under Section 91 of the Code for summoning and production of document was dismissed and order was upheld by the High Court and this Court. But observations were made in para 6 to the effect that if the accused could produce any reliable material even at that stage which might totally affect even the very sustainability of the case, a refusal to look into the material so produced may result in injustice, apart from averting an exercise in futility at the expense of valuable judicial/public time, these observations are clearly obiter dicta and in any case of no consequence in view of conclusion reached by us hereinbefore. Further, the observations cannot be understood to mean that the accused has a right to produce any document at the stage of framing of charge having regard to the clear mandate of Sections 227 and 228 in Chapter 18 and Sections 239 and 240 in Chapter 19.

28. We are of the view that jurisdiction under Section 91 of the Code when invoked by the accused, the necessity and desirability would have to be seen by the court in the context of the purpose — investigation, inquiry, trial or other proceedings under the Code. It would also have to be borne in mind that law does not permit a roving or fishing inquiry.

29. Regarding the argument of the accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of the Constitution is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice within the parameters laid down in *Bhajan Lal case*[11].

30. The result of the aforesaid discussion is that Criminal Appeal No. 497 of 2001 is allowed, the impugned judgment of the High Court is set aside. The trial court is directed to proceed from the stage of framing of charge. Having regard to the fact that the charges were framed about 11 years ago we direct the trial court to expeditiously conclude the trial and as far as possible it shall be held from day to day.

31. Special Leave Petition (Crl.) No. 1912 of 2003 and Criminal Appeal No. 46 of 2004 are dismissed. Since special leave petition relates to an occurrence which took about 3 years back and the offence is under Section 302, Indian Penal Code and in Criminal Appeal No. 46 of 2004 charges were framed about 2 years ago, we direct that the trial in these cases shall also be concluded expeditiously. All the appeals are disposed of accordingly.

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