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(2023) 17 Supreme Court Cases 688

2J

(BEFORE S. RAVINDRA BHAT AND ARAVIND KUMAR, JJ.)

STATE OF GUJARAT .. Appellant;

Versus

DILIPSINH KISHORSINH RAO .. Respondent.

Criminal Appeal No. 2504 of 2023†, decided on October 9, 2023

A. **Criminal Procedure Code, 1973 — S. 227 r/w S. 228 — Charge/discharge — Examination of defence — When and extent to which permissible at stage of — Law clarified**

— Held, defence of accused cannot ordinarily be gone into by the court while considering prayer for discharge — Further held, expression "the record of the case" used in S. 227 is to be understood as the documents and articles, if any, produced by the prosecution — Thus, CrPC does not give any right to the accused to produce any document at the stage of framing of the charge

— Further held, application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial, it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed — Thus, at the stage of charge/discharge, the trial Judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge-sheet material — Further, while considering prayer for discharge the court must proceed on an assumption that the material brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged

— However, if the accused demonstrates from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, such material should be considered and not ignored by the court at that stage — Further held, main intention of granting a chance to the accused of making submissions as envisaged under S. 227 is to assist the court to determine whether it is required to proceed to conduct the trial — Therefore, nothing in CrPC limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, trial court can consider the material produced by the accused before the IO (Paras 7 to 12)

State of T.N. v. *N. Suresh Rajan*, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721; *State of Maharashtra* v. *Som Nath Thapa*, (1996) 4 SCC 659 : 1996 SCC (Cri) 820; *State of M.P.* v. *Mohanlal Soni*, (2000) 6 SCC 338 : 2000 SCC (Cri) 1110; *Amit Kapoor* v. *Ramesh Chander*, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986, *relied on*

† Arising from the Judgment and Order in *Dilipsinh Kishorsinh Rao* v. *State of Gujarat*, 2018 SCC OnLine Guj 408 (Gujarat High Court, Criminal Revision Application No. 387 of 2016, dt. 11-1-2018) **[Reversed]**

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B. **Criminal Procedure Code, 1973 — S. 227 r/w S. 228 — Framing of charge or allowing prayer for discharge — When becomes necessary — Held, nature of evidence recorded or collected by investigating agency or documents produced in which prima facie it reveals that there are suspicious circumstances against accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge — However, if there is no sufficient ground for proceeding against accused necessarily, accused would be discharged, but if court is of the opinion, after such consideration of material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed (Para 7)**

C. **Criminal Procedure Code, 1973 — Ss. 227, 228, 397 and 401 — Discharge — Rejection of prayer — Scope of interference in revision — Law clarified**

— Held, revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely — Further, the revisional jurisdiction, held, cannot be exercised against an interim or interlocutory order and, thus, the revisional court, held, cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and, further, High Courts, held, ought to be cognizant of the fact that trial court was dealing with an application for discharge (Paras 14 to 17)

D. **Criminal Procedure Code, 1973 — S. 482 and Ss. 228 and 397 — Framing of charge — Quashing by High Court — Principles need to be kept in mind, reiterated (Para 16)**

Dilipsinh Kishorsinh Rao v. *State of Gujarat*, 2018 SCC OnLine Guj 408, *reversed*

E. **Criminal Procedure Code, 1973 — Ss. 227, 228, 397 and 401 — Discharge — Allowing prayer in revision after considering defence of accused, held, improper and unjustified in present case — When and extent to which defence case may be considered by court — *See* Shortnote *A***

— Discharge claimed in case relating to possessing property disproportionate to known source of income — Charge-sheet filed after considering written submissions filed by the accused before the investigating authority which included the documentary evidence tendered by accused — Though, discharge declined by trial court, same allowed in revision by placing reliance on statements of accused's friends and acquaintances from whom, he claimed to have borrowed loans of large amounts — This held nothing but short of accepting the same as defence evidence and examining the truthfulness of its contents even before trial could be commenced

— Further, High Court also committed error in examining the pros and cons of defence by weighing the defence-evidence and probabilities of the

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conclusion that may ultimately be arrived at — Further, not only plea of borrowing loans could be gone into only during trial, but the explanation relating to borrowing of large sums, held, also raised a reasonable suspicion, which termed by the investigating agency as strong material to file the charge-sheet — Further, based on such material the sanctioning authority also recorded its satisfaction under sanction order to prosecute the accused

— Further, raising reasonable suspicion, held, cannot be construed at the primary stage for discharging the accused and even explanation offered by accused with regard to buying of certain items can be gone into during trial — Further held, plea or the defence when requiring to be proved during the course of trial is itself sufficient for framing the charge — Resultantly, the impugned discharge order, held, not sustainable and set aside — Public Accountability, Vigilance and Prevention of Corruption — Prevention of Corruption Act, 1988, Ss. 13(1)(e) and 19 (Paras 12, 17, 18 and 19)

Appeal allowed SK-D/70498/SR

Advocates who appeared in this case :
Ms Swati Ghildiyal (Advocate-on-Record), Ms Devyani Bhatt and Ms Neha Singh, Advocates, for the Appellant;
Shamik Shirishbhai Sanjanwala (Advocate-on-Record) and Shantanu Parmar, Advocates, for the Respondent.

Chronological list of cases cited ***on page(s)***

1. 2018 SCC OnLine Guj 408, *Dilipsinh Kishorsinh Rao* v. *State of Gujarat* **(reversed)** 691*a*, 693*b*, 698*b-c*
2. (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721, *State of T.N.* v. *N. Suresh Rajan* 694*b*
3. (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986, *Amit Kapoor* v. *Ramesh Chander* 695*d*, 696*a-b*, 696*b*
4. (2000) 6 SCC 338 : 2000 SCC (Cri) 1110, *State of M.P.* v. *Mohanlal Soni* 695*a-b*
5. (1996) 4 SCC 659 : 1996 SCC (Cri) 820, *State of Maharashtra* v. *Som Nath Thapa* 695*a*

The Judgment of the Court was delivered by

ARAVIND KUMAR, J.— The proceedings initiated under the Prevention of Corruption Act, 1988 (hereinafter referred to as "the Act") against the respondent herein came to be questioned by him by filing an application for discharge on the ground of investigating officer (hereinafter referred to as "IO") having failed to consider the written explanation offered by him with supporting documents and the conclusion reached by the sanctioning authority was also without considering the same reflecting non-application of mind and thereby the conclusion reached by the sanctioning authority that the respondent-accused possessed assets disproportionate to his known source of income is erroneous and the charge-sheet material does not reveal any circumstances or evidence to arrive at a conclusion that the accused had disproportionate source of income. The said application having been rejected by the trial court by order dated 13-4-2016, the respondent moved the High Court under Section 397 read with Section 401 CrPC by filing Criminal Revision Application No. 387 of

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2016 and same having been allowed by the impugned order dated 11-1-2018[1], the State has approached this Court.

2. The sole question that arises for our consideration is: whether the order of the sanctioning authority dated 5-3-2015 is liable to be set aside and consequently, the charge-sheet filed by Anti-Corruption Bureau, Anand Police Station on 17-6-2015 is liable to be quashed?

3. The case of the prosecution as laid in the charge-sheet filed against the respondent is to the effect that during the period 2005 to 2011 the respondent by misuse of his power while discharging his duties as Sub-Inspector of Borsad Town Police Station and based on corrupt practices had acquired assets in his and his wife's name to the tune of Rs 1,15,35,319 which was beyond his known source of income and it was disproportionate to the tune of Rs 32,68,258 which is more than 40% of his known source of income.

4. An application for discharge (Annexure P-29) came to be filed under Section 227 read with Section 228 CrPC contending inter alia that during investigation, the IO had failed to consider the written statement dated 13-8-2014 and the permission obtained by him to visit Australia and also the details of the purchase of movable and immovable properties furnished to the department on every occasion of his investment, and yet, the IO had failed to consider the same in proper perspective. It was also contended that sanction granted by the department for purchase of the property has also not been taken into account by the IO. It was further contended, that error in calculation of disproportionate asset though brought to the notice of the investigating agency, same had not been considered as also the statement of the witnesses who had loaned amounts to the respondent. It was further urged that the sanctioning authority had failed to consider the documentary proof furnished for purchase of properties from various sources of income and the investigating agency had failed to take into consideration the amount which was obtained under loans from friends and family members which was duly supported by documentary evidence. Hence, contending that charge-sheet material does not disclose the commission of offence alleged, the respondent pleaded in the application for being discharged.

5. The trial court taking into consideration the principles enunciated by this Court in a catena of judgments and applying the ratio laid down to the facts on hand observed as under:

> "(4) * * *
>
> Thus, from the aforestated settled principles and record of the case, the following aspects emerge from the record.
>
> (*a*) Whether the accused has taken loan from his brother, mother and father is a question of fact which is to be decided during the trial.

1 *Dilipsinh Kishorsinh Rao* v. *State of Gujarat*, 2018 SCC OnLine Guj 408

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(*b*) The fact of Rs 10 lakhs as loan from friends is also a question of fact which is to be decided during the trial.

(*c*) Other two friends, namely, Iliyashbhai and Niteshbahai who have given amount to the accused as loan is also a question of fact which is to be decided during the trial.

(*d*) The fact of the accused informing with regard to purchase of property to the department under the Gujarat Civil Services Rules does not give him a clean chit with regard to his income. This can merely be said to be complying with the rules and regulations of service, however, this does not give him a seal of authenticity with regard to the value of consideration which is disproportionate to the known source of income.

(*e*) The explanation given by the accused with regard to disproportionate income is also taken into consideration while filing the charge-sheet against the accused and also while granting sanction.

(*f*) Necessary sanction has been obtained and hence, the question where sanction is given without application of mind is also a question of fact to be decided at the time of trial.

(*g*) The bulk of records placed on record by way of charge-sheet papers prima facie shows that if they are taken at their face value, it discloses all the ingredients of disproportionate income with the known source of income.

(*h*) Even considering the broad principles whatever defence the accused is taking, even if the same are considered, it cannot be said that the ingredients constituting the alleged offence are not attracted.

(*i*) There does not seem to be any basis infirmities prima facie on record which nullifies the case of prosecution. Even if two views are possible, present case papers clearly creates grave a suspicion against the accused with regards to the loan amount taken from his brother, father, mother and other friends and also with regards to the income of his son, who was residing at Australia and his agricultural income and there are sufficient grounds for proceeding against the accused.

(5) Considering the facts recorded hereinabove emerging from the documents on record, it cannot be said that the accused is liable to be discharged since this court is not required to make roving inquiry into pros and cons of the matter and weighing the evidence as if the trial is conducted. Even otherwise the allegations with regard to the disproportionate assets against the known source of income is a subject-matter which cannot be decided at the outset without conducting full-fledged trial, more particularly, when it is the accused who has the knowledge with regard to the source of income from while purchase of the properties both movable and immovable are made by him and the court at this juncture is able to

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see prima facie case against the accused. Under the circumstances, the application is substance less and hence the following order is passed."

and for the aforesaid reasons dismissed the application by order dated 13-4-2016 (Annexure P-30).

6. Being aggrieved by the abovesaid order the respondent herein carried the same in revision before the High Court. As already noticed hereinabove the High Court by the impugned order[1] allowed the revision application by perusing the material on record placed by the respondent-accused and arrived at a conclusion that the trial court had committed an error in dismissing the application and accepting the plea of the respondent which was virtually by way of defence and discharged the respondent.

Discussion and findings

7. It is trite law that application of judicial mind being necessary to determine whether a case has been made out by the prosecution for proceeding with trial and it would not be necessary to dwell into the pros and cons of the matter by examining the defence of the accused when an application for discharge is filed. At that stage, the trial Judge has to merely examine the evidence placed by the prosecution in order to determine whether or not the grounds are sufficient to proceed against the accused on basis of charge-sheet material. The nature of the evidence recorded or collected by the investigating agency or the documents produced in which prima facie it reveals that there are suspicious circumstances against the accused, so as to frame a charge would suffice and such material would be taken into account for the purposes of framing the charge. If there is no sufficient ground for proceeding against the accused necessarily, the accused would be discharged, but if the court is of the opinion, after such consideration of the material there are grounds for presuming that the accused has committed the offence which is triable, then necessarily charge has to be framed.

8. At the time of framing of the charge and taking cognizance the accused has no right to produce any material and call upon the court to examine the same. No provision in the Code grants any right to the accused to file any material or document at the stage of framing of charge. The trial court has to apply its judicial mind to the facts of the case as may be necessary to determine whether a case has been made out by the prosecution for trial on the basis of charge-sheet material only.

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section 227 CrPC is to assist the court to determine whether it is required to proceed to

1 *Dilipsinh Kishorsinh Rao* v. *State of Gujarat*, 2018 SCC OnLine Guj 408

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conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the IO.

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. This Court in *State of T.N.* v. *N. Suresh Rajan*[2] adverting to the earlier propositions of law laid down on this subject has held: (SCC pp. 721-22, para 29)

> "*29*. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

2 (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721

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13. The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in *State of Maharashtra* v. *Som Nath Thapa*[3] and *State of M.P.* v. *Mohanlal Soni*[4] has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

14. The power and jurisdiction of the Higher Court under Section 397 CrPC which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.

15. It would be apposite to refer to the judgment of this Court in *Amit Kapoor* v. *Ramesh Chander*[5], where scope of Section 397 has been considered and succinctly explained as under: (SCC p. 475, paras 12-13)

> "*12*. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.
>
> *13*. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has

3 (1996) 4 SCC 659 : 1996 SCC (Cri) 820
4 (2000) 6 SCC 338 : 2000 SCC (Cri) 1110
5 (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986

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been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much advanced stage in the proceedings under CrPC."

16. This Court in the aforesaid judgment in *Amit Kapoor case*[5] has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 CrPC is sought for as under: (*Amit Kapoor case*[5], SCC pp. 482-83, para 27)

"*27.* Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

* * *

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the

5 *Amit Kapoor* v. *Ramesh Chander*, (2012) 9 SCC 460 : (2012) 4 SCC (Civ) 687 : (2013) 1 SCC (Cri) 986

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case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

* * *

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

17. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge.

18. In the teeth of the above analysis of law when the impugned order of the High Court is perused, it would not detain us for too long to brush aside the contentions raised by the respondent-accused for reasons more than one. *Firstly*, the charge-sheet has been filed after taking into consideration the written submissions filed by the accused before the investigating authority which included the documentary evidence tendered by the respondent-accused. *Secondly*, the statement of friends and acquaintances from whom loans of large amounts had been borrowed by the accused which had been relied upon by the accused to stave off the prosecution in his written submissions filed before the investigating authority and which material had persuaded the High Court to accept the same on its evaluation to be true, is nothing but short of accepting the same as defence evidence and examining the truthfulness of its contents even before trial could be commenced or held. *Thirdly*, the High Court has proceeded to examine the pros and cons of defence by weighing the defence-evidence and probabilities of the conclusion that may ultimately be arrived at, as the basis for exercising the revisional jurisdiction which was impermissible. *Fourthly*, the purported loans said to have been obtained by the respondent-accused from his mother, brother and father are all question of facts which requires adjudication and this could be done only during trial and the explanation relating to borrowing of large sums raises a reasonable suspicion, which has been termed by the investigating agency as strong material to file the charge-sheet and based on such material the sanctioning authority also recorded its satisfaction under sanction order dated 5-3-2015 to prosecute the respondent-accused. Hence, raising reasonable suspicion cannot be held or construed at the primary stage for discharging the accused.

19. The plea or the defence when requiring to be proved during the course of trial is itself sufficient for framing the charge. In the instant case, the learned trial Judge has noticed that explanation provided by the respondent-accused

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pertaining to purchase of Shop No. 7 of Suman City Complex of Plot No. 19, Sector-11 from the loan borrowed and paid by the respondent was outside the check period and hence the explanation provided by the respondent is a mere eyewash. This is an issue which has to be thrashed out during the course of the trial and at the stage of framing the charge mini-trial cannot be held. That apart the explanation offered by the respondent-accused with regard to buying of Maruti Wagon-R car, Activa scooter, purchase of house, etc. according to the prosecution are all the subject-matter of trial or it is in the nature of defence which will have to be evaluated after trial.

20. In the aforestated circumstances we are of the considered view that the High Court had committed a serious error in interfering with the well-reasoned order passed by the trial court. Hence, the impugned judgment dated 11-1-2018 passed in *Dilipsinh Kishorsinh Rao* v. *State of Gujarat*[1] setting aside the trial court order dated 13-4-2016 requires to be set aside and accordingly it is set aside and the appeal is allowed. The trial court shall proceed with the trial having regard to the fact that the charge-sheet has been filed in the year 2015 and shall conclude the trial expeditiously and preferably within a period of one year.

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1 2018 SCC OnLine Guj 408