

STATE OF RAJASTHAN

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v.

FATEHKARAN MEHDU

(Criminal Appeal No. 216 of 2017)

FEBRUARY 03, 2017

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[**RANJAN GOGOI AND ASHOK BHUSHAN, JJ.**]

Code of Criminal Procedure, 1973 – s.397 – Revisionary jurisdiction – Scope of interference at a stage, when charge had been framed – Held: At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt – The framing of charge is not a stage, at which stage final test of guilt is to be applied – In the instant case, allegation against the respondent was that he facilitated a person to carry on illegal mining by which he obtained illegal benefits to the detriment of the State – Special Judge found a clear case of framing charge – High Court exercising revisionary powers set aside the order of Special Judge – High Court failed to advert the substance of allegation against the respondent that he had granted quarry licence for only three bigha gap-land but had issued technical map for an area of 80,000 sq. ft. – High Court did not advert to the technical map which mentioned 80,000 sq. ft. and without advert to that allegation erroneously observed that there was no allegation which may come within the meaning of s.13(1)(d) r/w s.13(2) of the PC Act – Both charge-sheet and order of the Special Judge specifically noted the allegations, which clearly made out an offence u/s.13(1)(d) and s.13(2) of PC Act and s.120B IPC – High Court erred in quashing the charges framed – Prevention of Corruption Act, 1988 – ss.13(1)(d), 13(2).

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Allowing the appeals, the Court

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HELD: 1. While framing the charge, the substance of the allegation against the respondent was that he had granted a quarry licence to ‘K’ on three bigha area, total area of which comes to 52,272 Sq. ft. whereas, he was sanctioned 80,000 Sq.ft. Further allegation was that respondent permitted ‘K’ to indulge in

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A unauthorised mining over the larger area than that granted to
him putting the Government as well as 'S' to loss. The High
Court in its order observed that it has been certified by the
present Mining Engineer that the respondent had never
sanctioned alleged 80,000 Sq.ft. in favour of 'K'. [Para 22] [502-
E-G]

B 2. The respondents brought on record the copy of the quarry
licence granted to 'K' indicating that two quarry licences were
for 12500 Sq. ft each. The High Court failed to advert the
substance of allegation against the respondent that the respondent
although, granted quarry licence only for three bigha gap land
C but technical map issued by the respondent was for an area of
80,000 Sq. ft, which was a source for 'K' to carry on unauthorised
mining over the larger area than that of actually allotted to him.
[Para 23] [503-D-E]

D 3. The Special Judge had observed that final adjudication
of charge cannot be made unless oral and documentary evidence
are received. The High Court did not advert to the technical
map which mentioned 80,000 Sq. Ft. and without adverting to
that allegation erroneously observed that there was no allegation
which may come within the meaning of Sections 13(1)(d) read
with 13(2) of the Act. Both chargesheet and order of the Special
E Judge specifically noted the allegations, which clearly made out
an offence under Section 13(1)(d) and 13(2) of Prevention and
Corruption Act, 1988 and Section 120B I.P.C. [Para 25] [503-G-H;
504-A]

F 4. The scope of interference and exercise of jurisdiction
under Section 397 of Cr.P.C. at a stage, when charge had been
framed, is well settled. At the stage of framing of a charge, the
court is concerned not with the proof of the allegation rather it
has to focus on the material and form an opinion whether there is
strong suspicion that the accused has committed an offence, which
if put to trial, could prove his guilt. The framing of charge is not a
G stage, at which stage final test of guilt is to be applied. Thus, to
hold that at the stage of framing the charge, the court should
form an opinion that the accused is certainly guilty of committing
an offence, is to hold something which is neither permissible nor
is in consonance with scheme of Code of Criminal Procedure.
H [Para 26] [504-B-D]

5. Section 397 Cr. P.C. 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 or the perversity which has crept in the proceeding. The High Court erred in quashing the charges framed. [Paras 27, 30] [504-E; 506-H]

Amit Kapoor and Ramesh Chander and Anr. [2012] 7 SCR 988 : (2012) 9 SCC 460 – referred to.

Case Law Reference

[2012] 7 SCR 988

referred to

Para 28

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 216 of 2017.

From the Judgment and Order dated 16.11.2010 of the High Court of Judicature for Rajasthan at Jodhpur Bench in S. B. Criminal Revision Petition No. 592 of 2009

WITH

Criminal Appeal No. 217 of 2017.

S. S. Shamsbery, AAG., Amit Sharma, Prateek Yadav, Ankrit Raj, Ms. Ruchi Kohli, Advs. for the Appellant.

Jagdeep Dhankar, Sr. Adv., Sunil Kumar Jain, Kaushik Chaudhury, Punya Garg, Anish Kumar Gupta, Chandra Shekhar Sumath, R. K. Rajwanshi, Ms. Deepshikha Bharati, Advs. for the Respondent.

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J. 1. Leave granted.

2. These two appeals have been filed against the common judgment dated 16.11.2010 of the High Court of Judicature for Rajasthan at Jodhpur allowing S.B. Criminal Revision Petition No. 592/2009 Fatehkaran Mehdu versus State of Rajasthan and S.B. Criminal Revision Petition No. 598/2009 Kishan Singh Rawat versus State of Rajasthan. The High Court vide its order, allowing the Criminal Revisions, set aside the order dated 05.05.2009 passed by the Special Judge Anti Corruption Cases, Udaipur, framing charges against both the respondents under Section 13(1)(d) &

A 13(2) of the Prevention of Corruption Act, 1988 read with Section 120B of IPC.

3. The brief facts of the case, as emerged from materials on record, need to be noted for deciding the issues raised in these appeals. Both the appeals having arisen out of First Information Report No. 342/2001 and order dated 05.05.2009 framing charges, the facts being common, it shall be sufficient to refer the facts from Criminal Appeal No.....of 2017 @ SLP(Cr.) No. 3998 of 2011, State of Rajasthan versus Fatehkaran Mehdu.

4. The Respondent, Fatehkaran Mehdu was working as Mining Engineer at Tehsil Bijolia, District Bhilwara, State of Rajasthan in the year 1997-98. One Smt. Sushma Devi had submitted an application for the grant of quarry licence for a mineral (Sand Stone) as per the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as Rule 1986). The application was made for grant of quarry licence for Khatadari land situated at Nayanagar in different plots, including Plot No. 1181/124. She deposited a banker's cheque of Rs. 1,75,000/- dated 23.4.1998 and the quarry licence for 4.95 hectare (30 bigha and 12 biswas) was prepared in the name of Smt. Sushma Devi Dhakad and Shri Manoj Kumar Sandhya on 06.05.1998. On noticing that the quarry licence issued on 06.05.1998 contained various cuttings, she contacted Fatehkaran Mehdu and handed him the licence for issue of fresh licence. Shri Mehdu after taking all papers from Smt. Sushma Devi did not issue her a fresh licence, whereas, Smt. Sushma Devi had started mining operations. On 18.07.1998 one Shri K. K. Boda, inspected the area and stopped the mining activities informing Smt. Sushma Devi that no quarry licence was issued in her favour. On 11.08.1998, Mining Engineer Fatehkaran Mehdu directed Smt. Sushma Devi to stop the mining activities; Fatehkaran Mehdu was transferred in August 1998 out of Tehsil Bigolia.

5. Aggrieved by non-issuance of quarry licence Sushma Devi filed a Writ Petition No. 166 of 1999 before the High Court of Rajasthan which was dismissed by order dated 08.03.1999 due to availability of alternate remedy of filing an appeal under the Rules 1986. Smt. Sushma Devi filed an appeal before the Appellate Authority and Appellate Authority vide order dated 29.04.1999 allowed the appeal and restored the quarry licence of Smt. Sushma Devi.

6. On the other hand, Sri Kishan Singh Rawat, the respondent

was also granted quarry licence on gap-land in Block No. 263A and 264A which contained a condition that the said approval shall not be effective outside Plot No. 1345/1185/124. Plot No. 1185/124 was situated towards South of Plot No. 1181/124, which was included in the quarry licence of Smt. Sushma Devi.

7. Kishan Singh Rawat alongwith certain other persons had filed a suit against the consenting party of Khatedari Land No. 1238/125 on 23.06.1998 for stopping Sushma Devi from carrying on mining operations. Another suit No. 1181/24 was filed on 13.7.1998 by Kishan Singh against the Khatedars of Plot No. 1181/124 restraining them from interfering in mining operation on Plot No. 1345/1185/124 area 3 bigha.

8. After holding a Preliminary Enquiry No. 7 of 2000 against Fatehkaran Mehdu, Deputy Superintendent of Police, Prevention of Corruption Bureau of Udaipur, lodged a First Information Report against the Fatehkaran Mehdu and Kishan Singh Rawat under Section 13(1)(d) and 13(2) of Prevention of Corruption Act, 1988 and Section 120B of IPC.

9. After conducting the investigation, a chargesheet No. 208/2005 dated 24.10.2005 was submitted. The Special Judge, Prevention of Corruption Act, Udaipur vide order dated 05.05.2009 framed charges against both the Respondents under Section 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988 and 120B IPC. Aggrieved by order dated 05.05.2009, Fatehkaran Mehdu filed S.B. Criminal Revision Petition No. 592 of 2009 and Kishan Singh Rawat filed S.B. Criminal Revision Petition No. 598 of 2009. The High Court of Rajasthan vide its judgment and order dated 16.11.2010 set aside the order dated 05.05.2009 allowing the Revision against which these two appeals have been filed by the State of Rajasthan.

10. We have heard learned counsel for the parties and perused the records. Learned counsel for the appellant submits that there were sufficient materials on record against the respondent, relying on which learned Special Judge has framed the charges and the High Court committed an error by interfering with the charges framed, in exercise of revisional jurisdiction. It is submitted that there was no ground made out for exercise of revisional jurisdiction under Section 397 Cr.P.C. for quashing the charges framed. It was proved on the materials on record that the Respondent Mehdu had facilitated Shri Kishan Singh Rawat to

A carry on illegal mining by which, he obtained illegal benefits to the detriment
of State of Rajasthan as well as Smt. Sushma Devi. The quarry licence
granted to Sushma Devi was cancelled by Mehdu to facilitate Kishan
Singh Rawat to carry on illegal mining on the plot, which was included in
the quarry licence of Sushma Devi. Shri Mehdu being a public servant
has committed an offence under Section 13(1)(d) read with Section 13(2).

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11. Learned counsel for the Respondent, refuting the submission
of appellant contends that the High Court on valid grounds has set aside
the order framing the charge, since there was no allegation before the
Special Judge on which, it can be said that any offence under Section
13(1)(d) read with 13(2) and 120B was made out. The allegation against
Shri Mehdu that he has granted quarry licence of 80,000 Sq. ft. to Kishan
Singh Rawat, was factually incorrect since Kishan Singh Rawat was
sanctioned quarry licence of only 25,000 Sq. ft. It is submitted that
cancellation of licence of Smt. Sushma Devi by Shri Mehdu cannot
amount to any offence within the meaning of aforesaid sections and the
order of Appellate Authority, setting aside the cancellation order does
not lead to any presumption that an offence was committed by Shri
Mehdu.

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12. Before we proceed to examine the respective contentions, it
is necessary to look into the chargesheet to find out the nature of
allegations made against the respondents. The chargesheet has been
brought on record as Annexure A-9. It is relevant to note some of the
allegations, as recorded in the chargesheet against the respondent. The
chargesheet notices the following:

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*“whereas it is also pertinent to mention here that area of plot
No. 1345/1185/124 is three bigha 52272 Sq. ft. whereas, Shri
Fatehkaran Mehdu Mining Engineer, Bijolia has granted
sanction of 80,000 Sq. ft. as gap fat. Thus, Shri Fatehkaran
Mehdu Mining Engineer in collusion with Shri Kishan Singh
Rawat granted sanction for 80,000 Sq. ft land as against
52272 Sq. ft. available land, by which obviously proceeding
for giving land to Shri Kishan Singh Rawat out of plot No.
1181/124 of Smt. Sushma Devi situated neighbouring has been
done by collusion.”*

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13. Further, after noticing the facts, pertaining to grant of quarry
licence to Kishan Singh Rawat and Smt. Sushma Devi following was
stated:

“By investigation it was also found that illegal mining was done on plot No. 1185/124 of Shri Kishan Singh Rawat for years. In the year 1997 the Mining Enginner in collusion under gap fat policy with view to provide undue profit by back door got surrendered 3 bigha land out of 5 bigha in favour of State Government and recorded without name so that gap fat could be approved under above policy. Under rules lease can be granted only on land of without name. To land so surrendered plot No. 1345/1185/124 was given rest of two bigha land of khatedar property No. 1185/124 was given which presently is recorded as khatedari land in name Dhiru son of Limbu Bheel R/o Suradiya Tehsil Beawar in khata which is ancestral village of Kishan Singh Rawat. Plot No. 1185/124 combined rakba 2 bigha land is also recorded as khatedari therefore, gap fat permission can not be accorded under gap fat policy but Mining Engineer in files of office accorded approval of plot No. 1345/1185/124 rakba 3 bigha, entry in which regard was made with special stipulation on quarry licence but in technical map told about according approval on plot No. 1185/124 combined so that if anytime measurement is carried out then same could be found according to technical map and according to same Shri Kishan Singh Rawat could get illegal profit. On spot Shri Kishan Singh Rawat in present time is also doing mining work on plot No. 1185/124 com. Rakba 2 bigha land and whenever question for measurement arises then he shows being approval on the basis of department's technical map whereas, in quarry lincence and files permission is accorded only to plot No. 1345/1185/124, total area of which comes to be 52472 Sq.ft whereas, according to technical map area 80,000 Sq. ft is shown. Under khatedari policy Shri Fatehkaran Mehdu only with view to cause loss to tenure holders of plot No. 1181/124 situated in south of plot No. 1185/124, called back issued quarry licence of Smt. Sushma Dhakad in name of correcting same by violating all rules, cancelled quarry licence and information in which regard was not given to licence holders.”

14. There was a clear allegation in the chargesheet that quarry licence to Kishan Singh Rawat was given by Shri Mehdu in furtherance

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A of object and purpose of illegally benefitting Kishan Singh Rawat. It was further stated that although, approval for quarry licence on Plot No. 1345/1185/124 area 3 bigha was granted, total area of which comes to only 52,272 Sq. ft., whereas in the technical map, area was shown 80,000 Sq. ft. dishonestly benefitting Kishan Singh Rawat.

B 15. Considering the chargesheet and other materials on record, the charges have been framed. In Para 1 of the order, the learned Special Judge has noted the following facts:

C *"1. It is worth-mentioning that total area of land No. 1345/1185/124 is total three bigha i.e. 52272 Sq. ft. while Fatehkaran Mehdu issued sanction of 80,000 Sq. ft. in the form of gap fat area and thus, accused Fatehkaran Mehdu connived with Kishan Singh Rawat, he connived in the proceedings for getting allotted more land to Kishan Singh Rawat out of the land of neighbour Sushma Devi, on which on establishing the prima facie case making out, the then*
D *Additional Superintendent of Police of Prevention of Corruption Bureau, Udaipur, sent an First Information Report without numbering to the Headquarter, on which case First Information Report No. 342/01 was registered on 18.09.2001 and was received for investigation."*

E 16. Further in para 2, the order states:

F *"2. From the investigation it was established that Smt. Sushma Devi, Manoj Kumar Sandhya and Jitmal Balai submitted application on 01.05.1998 in prescribed form. Landowners of concerning khasra numbers expressed their consent in favour of applicants, thereafter, on 06.05.1998 Shri Mehdu granted approval for issuing quarry licence and licence were issued. Smt. Sushma Devi checked quarry licence on 08.05.1998, then came to know that serious nature of lacumae were found. At the same time Smt. Sushma Devi contacted*
G *Fatehkaran Mehdu, Mineral Engineer about the abovesaid, then he issued directions for making correction the quarry licence and handed over letters etc. to the Office Assistant Sohanlal. Stating excessive cuttings, Shri Mehdu instead of taking all the papers from Smt. Sushma Devi for issuing new quarry licence, with intentions to get other person Kishan*

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Singh unlawfully benefits, connived with him and malafide and issued licence. A

17. In para 2, it has further been noted:

"2. Under the quarry licence passed by Shri Fatehkaran Mehdu, Shri Kishan Singh undertook unauthorized mining work for years on five bigha land in place of three bigha land due to which State Government suffered loss of annual rent etc. and Kishan Singh earned unlawful profits. On account of conspiracy hatched with him and connivance forgetting Kishan Singh benefitted, it established that Shri Fatehkaran Mehdu allotted land to Kishan Singh Rawat contrary to rules or in the form of gap & fat due to which the present charge sheet under section 13(1)(d) read with section 13(2) Prevention of Corruption Act, 1988 and section 120 Indian Penal Code was filed in which Kishan Singh Rawat, beneficiary was also made accused." B
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18. The Special Judge after considering the contention putforth by the learned counsel for the parties noted the charge that against the total area of 52,272 Sq. ft. available, Shri Mehdu has issued sanction for 80,000 Sq. ft. in the form of 'gap area' to Kishan Singh Rawat to unduly benefit him, and the same can be decided after recording oral and documentary evidence. The Special Judge found, a clear prima facie case of framing charges. It is relevant to extract the findings from Para 6 of the order. In Para 6 of the order, following has been stated: E

"Prima facie charge has been framed against accused persons that with the intentions to cause loss to Khatedaras of land No. 1181/124 situated in the southern side of land No. 1185/124, on which licence issued to Smt. Sushma Dhakar, Shri Fatehkaran Mehdu called for the same in the name of rectifying the same, he canceled the quarry licence in violations of all the rules and its information was not conveyed to the licence holders. Shri Mehdu did not try to settle the disputes on the spot rather he issued licence to parties without any acceptable demaraction and canceled without adopting process. Dispute prevailing between land No. 1185/125 and 1181/124 could have been settled earlier by carrying out measurement in detail through the Department of revenue, F
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A *but no any effort was made in this context, consequently,*
Kishan Singh Rawat has undertaken unauthorized mining
work on five bigha area of land No. 1185/124 in place of
three bigha land due to which State Government has suffered
loss of annual rent etc.. it also established in the investigation
B *that Fatehkaran Mehdu had got the intentions behind*
cancelling of quarry licence of Smt. Sushma Dhakar that
Kishan Singh Rawat be benefitted by allotting land to Kishan
Singh Rawat neighbour of Smt. Dhakar in the name of gap
fat and Shri Mehdu has got Kishan Singh Rawat financially
benefitted unlawfully by allotting land in the form of gap fat
C *having misused his post and powers. It is universal principle*
of law that court is supposed to see at the stage of framing of
charge as to whether prima facie case worth triable makes
out on the basis of evidence and the facts putforth by the
prosecution or not. Final disposal of the charges framed
D *against accused on merits does not require at the said stage.”*

19. In view of what has been noted above, whether the High
Court was right in quashing the order framing charges by Special Judge
on 05.05.2009, is the question to be answered in these appeals. What is
the basis for quashing the charges by the High Court, has to be found
out from the order of the High Court, allowing the Criminal Revisions.
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20. The High Court, after noticing the few allegations against the
respondent observed that there was no allegation made by the prosecution
against the respondent to the effect that by any corrupt or illegal means
Shri Mehdu obtained any valuable thing or pecuniary advantage for himself
or for any other person. With regard to alleged allotment of 80,000 Sq.
F *ft. in favour of Kishan Singh Rawat, it was held prima facie not to be*
correct since concerned Mining Engineer had certified that there was
no allotment of 80,000 Sq. ft. by Mehdu to Kishan Singh Rawat. It is
useful to extract para 8 and 9 of the judgement of the High Court which
is to the following effect:

G *“8. Having gone through the aforesaid provision and*
judgments cited at the bar and upon perusal of the order
dated 5.5.2009, this Court does not find any allegation made
by the applicant or prosecution against the present petitioner
that by any corrupt or illegal means he obtained any valuable
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thing or pecuniary advantage either for himself or for any other person. Even alleged allotment of 80,000 Sq. ft. land in favour of petitioner no. 2 Kishan Singh was prima facie found to be incorrect since concerned Mining Engineer himself certified that there was no allotment of 80,000 sq. ft. area by the present petitioner in favour of petitioner No. 2 Kishan Singh and only allotment made was way back in 1997-98 of 25,000 sq. ft. Mere fact that application Smt. Sushma Devi had to file appeal before the competent authority under the Mining Act against the alleged illegal cancellation of her quarry licence and succeeded therein does not amount to any criminal charge against the present petitioner under the purview of Section 13 (1) (d) of the Prevention of Corruption Act, 1988. Obviously, these proceedings are quasi judicial in nature undertaken in exercise of powers conferred upon the Mining Engineer under the said Act and any error which can be corrected by appellate or revisional authority does not amount to a criminal charge established against the said authority. This Court does not find any allegation of taking bribe or any other allegation of that nature which would come within the ambit of words employed in Section 13 (1) (d) namely; "by corruption or illegal means obtains for himself or for any other person any valuable thing or pecuniary advantage."

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"9. In the absence of any such allegation, this court cannot appreciate how the charge under Section 13(1) (d) and 13(2) of Prevention of Corruption Act read with Section 120B IPC has been framed against the present Petitioners."

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21. The High Court based its judgement for quashing the charges on the aforesaid conclusion, as recorded in para 8 and 9. Section 13(1) (d) & 13(2) of the Prevention of Corruption Act, 1988 under which charges have been framed, are to the following effect:

"13. Criminal misconduct by a public servant:

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(1) A public servant is said to commit the offence of criminal misconduct,-

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A (d) if he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

B (ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

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(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

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22. What are the allegations against Mehdu to frame charge under Section 13(1) (d) read with 13(2) has to be found out from the Chargesheet and other materials. We have already extracted the relevant allegations, made against Shri Mehdu in the chargesheet as well as the facts noticed by the learned Special Judge. While framing the charge, the substance of the allegation against Mehdu is that he has granted a quarry licenece to Kishan Singh Rawat on three bigha area of plot No. 1345/1185/124, total area of which comes to 52,272 Sq. ft. whereas, he was sanctioned 80,000 Sq.ft. Further allegation is that Mehdu permitted Kishan Singh Rawat to indulge in unauthorised mining over the larger area than that of granted to him putting the Government as well as Smt. Sushma Devi to loss. The High Court in its order has observed that it has been certified by the present Mining Engineer that Mehdu had never sanctioned alleged 80,000 Sq.ft. in favour of Kishan Singh Rawat for which observation, the High Court based a letter dated 13.11.2009 filed as Annexure A-11 in the appeal, which was also taken on the record by the High Court. The said letter was addressed to Fatehkaran Mehdu in reply to his query, as to whether, Kishan Singh Rawat was granted quarry licence for 80,000 Sq. ft. The answer given in the said letter dated 03.11.2009 is to the following effect:

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“As per the information sought with regard to the captioned

subject, as per the record available in the office no licence of 80,000 Sq. ft. has been granted to Shri Kishan Singh Rawat in Arazi No. 1185/124 Mauza village Nayanagar, Tehsil Bijoliya, District – Bhilwara. In the circumstances, it is not possible to give the copy. In the year 1997-1998, the quarry licence holder in Plot No. 263 A and 264 A of Arazi No. 1185/124 Shri Gopal Singh Rawat S/o Shri Anna Singh Rawat R/o Suradia Tehsil Byawar, District Ajmer (Rajasthan) was granted permission and quarry licence of total 12500-12500 Sq. ft. The said quarry licence was transferred in the name of Kishan Singh Rawat S/o Devi Singh Rawat resident of Suradia, Tehsil Byawar District Ajmer (Rajasthan), which is not effective at present.”

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23. The Respondents have brought on record the copy of the quarry licence granted to Kishan Singh Rawat as Annexure A-3 and A-4 which indicates that two quarry licences were for 12500 Sq. ft each. It appears that the High Court failed to advert the substance of allegation against Shri Mehdu, as we have already noticed from the chargesheet that Shri Mehdu although, granted quarry licence only for three bigha gap land in Plot No. 1345/1185/124, but technical map issued by Shri Mehdu was to an area of 80,000 Sq. ft, which was a source for Kishan Singh Rawat to carry on unauthorised mining over the larger area than that of actually allotted to him.

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24. In the chargesheet following has been specifically noted :

“....On spot Shri Kishan Singh Rawat in present time is also doing mining work on plot No. 1185/124 com. Rakba 2 bigha land and whenever question for measurement arises then he shows being approval on the basis of department’s technical map whereas, in quarry lincence and files permission is accorded only to plot No. 1345/1185/124, total area of which comes to be 52472 Sq.ft whereas, according to technical map area 80,000 Sq. ft is shown.”

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25. As noted above, learned Special Judge had observed that final adjudication of charge cannot be made unless oral and documentary evidence are received. The High Court has not adverted to the technical map which mentions 80,000 Sq. Ft. and without adverting to that allegation, has erroneously observed that there is no allegation which may come

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A within the meaning of 13 (1) (d) read with 13(2) of the Act. Both chargesheet and order of the learned Special Judge have specifically noted the allegations, which clearly makes out an offence under Section 13(1)(d) and 13(2) of Prevention and Corruption Act, 1988 and Section 120B I.P.C.

B 26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C. has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C. at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

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E 27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr. P.C., which 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 or the perversity which has crept in the proceeding.

F 28. It is useful to refer to judgment of this Court in *Amit Kapoor and Ramesh Chander and Another*, (2012) 9 SCC 460, where scope of Section 397 Cr. P.C. have been succinctly considered and explained. Para 12 and 13 are as follows:

G “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 scrutinize the orders, which upon the face of it bears a token of careful

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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 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 aforesaid. Even framing of charge is a much advanced stage in the proceedings under the CrPC."

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr. P. C. Para 27, 27(1), (2), (3), (9), (13) are extracted as follows:

"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:

A *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.*

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C *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.*

D *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.*

E *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 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.*

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G *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."*

30. Applying the above tests, we are of the considered opinion that High Court erred in quashing the charges framed by the order dated

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05.05.2009. In result, both the appeals are allowed. The order of the High Court is set aside and the order dated 05.05.2009 is restored. The learned Special Judge may proceed with the trial in accordance with the law expeditiously.

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Devika Gujral

Appeals allowed.

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