REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 224 OF 2019
(Arising out of SLP (Crl.) No.6068 of 2017)

STATE OF GUJARAT …Appellant

VERSUS

AFROZ MOHAMMED HASANFATTA …Respondent

J U D G M E N T

R. BANUMATHI, J.

Leave granted.

2. This appeal arises out of the order of the High Court of Gujarat dated 03.05.2017 allowing the Criminal Revision No.264 of 2017 in and by which the High Court has set aside the order dated 15.11.2014 passed by the Chief Judicial Magistrate at Surat by which the Magistrate had taken cognizance of the offences punishable under Sections 420, 465, 467, 468, 471, 477A and 120-B IPC on the basis of the second supplementary charge sheet filed by the police in Criminal Case No.62851/2014 and ordered issuance of process to the respondent-accused.

3. Brief factual matrix of the case is that a complaint was filed by the Manager of ICICI Bank against M/s R.A. Distributors Pvt. Ltd. alleging that they hatched a conspiracy and as a part of this conspiracy, stated that their company is importing rough

diamonds and polished diamonds from the foreign market and selling the same in the local market of Surat and Mumbai and by so stating, opened a current account on 13.12.2013 in ICICI Bank, Shyam Chambers, opposite to Sub-jail, Surat. On verification of Bills of Entry produced by M/s RA Distributors, 17 Bills of Entries were found to be bogus. It was alleged that M/s RA Distributors prepared false and bogus signature and stamp of Custom Officers and knowing fully well that those Bills of Entry are bogus, fraudulently submitted the same as if they are true and genuine and produced them in ICICI Bank, Shyam Chambers, Opp., Sub-jail, Surat between 13.12.2013 to 24.02.2014 and had forwarded Rs.104,60,99,082/- to (01) MABOOK TRADING FZE, DUBAI (02) NIPPON INCORPORATION LTD HONG KONG (03) CORNELL TRADING (HK) LTD HONG KONG (04) AL ALMAS FZE LTD. HONG KONG, (05) S. AL SABA GENERAL TRADING FZE, DUBAI, (06) DAIMUR GEMS JEWELLRY (LLC) LTD HONG KONG and thereby committed the offence of cheating the Government of India.

4. Based on the aforesaid complaint, FIR No.16/2014 dated 11.04.2014 was registered against M/s R.A. Distributors Pvt. Ltd & its Directors, namely Shailesh Rameshbhai Patel and Aniket Ashok Ambekar under Sections 420, 465, 467, 468, 471, 477A and 120B IPC. The complainant, in his complaint had stated that the accused mentioned in the complaint, had hatched a criminal conspiracy and in all, deposited 17 bogus and fabricated Bill of

Entries and had presented the said forged Bills of Entries before the ICICI Bank, Surat and thus illegally transferred Rs.104,60,99,082/- through Hawala to Dubai and Hong Kong to different companies and had cheated with Government of India. The said FIR did not contain the name of the respondent herein.

5. During the course of investigation, statement of one Prafulbhai Mohanbhai Patel was recorded under Section 161 Cr.P.C. on 01.08.2014 and as per the prosecution, the said statement of Prafulbhai Patel implicates respondent-accused Afroz Mohammed Hasanfatta and the other accused persons namely Madanlal Manikchand Jain and Amit @ Bilal Haroon Gilani. Case of the prosecution is that the aforesaid accused along with others hatched a criminal conspiracy to cheat the Government of India by siphoning off huge amounts of money through Hawala.

6. Statement of other witnesses viz. Babubhai Kanjibhai Patel, partner of S. Babulal Angadiya and Pravinbhai Jethabhai Patel, Manager of Babulal Angadiya was recorded on 11.08.2014. Charge sheet was filed under Section 173 Cr.P.C. in Criminal Case No.47715/2014 on 18.08.2014 against two persons namely Sunil Agarwal and Ratan Agarwal. In the said charge sheet, the respondent-accused was referred to as a '*suspect*'. The respondent-accused Afroz Hasanfatta was arrested by the police officers of DCB Police Station, Surat on 20.08.2014 for investigation in connection with FIR No.16/2014. The first

supplementary charge sheet was filed under Section 173(8) Cr.P.C. in Criminal Case No.55259/2014 against Madanlal Manikchand Jain on 30.09.2014. According to the appellant, in the said first supplementary charge-sheet, the respondent-accused was not added as an accused as the statutory period for filing charge sheet in the case of respondent-accused had not expired.

7. During the course of further investigation, statement of witnesses C.A. Surendra Dhareva, Amratbhai Narottamdas Patel and elder brother of the respondent-accused Jafar Mohammed Hasanfatta, was recorded under Section 161 Cr.P.C. As per the prosecution, the said statement of Jafar Mohammed Hasanfatta, elder brother of respondent-accused shows that the respondent has arranged to transfer Rs.3,00,00,000/- into the account of his brother Jafar Mohammed Hasanfatta through RTGS from Natural Trading Company, owned by co-accused Madanlal Jain. The respondent-accused is the sole proprietor of the Nile Industries Pvt. Ltd. Statement of Samir Jiker Gohil, Manager of the said Nile Industries Pvt. Ltd. was recorded on 18.10.2014. According to the prosecution, bank statement of account of respondent-accused in the Union Bank of India, Nanpura Branch from 31.12.2013 to 25.03.2014 reflects crores of money having been transferred from Natural Trading Company account to respondent's Company-Nile Trading Corporation. Further bank statement of Nile Trading Corporation also reflects credit of huge amount into its account

from Gangeshwar Merchantile Pvt. Ltd. owned by Madanlal Jain. Based on further investigation, namely statement of witnesses, bank transactions and copy of Call Details Record between respondent and Madanlal Jain and other accused, second supplementary charge sheet was filed arraigning the respondent as accused No.1 and Amit @ Bilal Haroon Gilani as accused No.2. Based on the second supplementary charge sheet, cognizance was taken of the offences under Sections 420, 465, 467, 468, 471, 477A and 120B IPC in Criminal Case No.62851/2014 on 15.11.2014 and the Magistrate ordered issuance of summons against the accused arraigned thereon including the respondent-Afroz Hasanfatta.

8. The High Court granted bail to the respondent accused in FIR No.16/2014 vide order dated 05.03.2015. The respondent-accused filed Criminal Revision Application No.264 of 2017 before the High Court of Gujarat assailing the order dated 15.11.2014 passed by the Chief Judicial Magistrate, Surat. The High Court *vide* order dated 24.03.2017 condoned the delay of 766 days in filing the revision. By the impugned order dated 03.05.2017, the learned Single Judge allowed the criminal revision and set aside the order of the Chief Judicial Magistrate, Surat taking cognizance of the offences based on the second supplementary charge sheet No.62851/2014 dated 15.11.2014 and directing issuance of summons to the respondent-accused under Sections 420, 465,

467, 468, 471, 477A and 120B IPC. The High Court held that there is no material either direct or circumstantial to point out any connection of the respondent-accused with alleged offences of forgery, cheating, conspiracy etc. The High Court further held that there was no material to show that the respondent was fraudulently sending his undisclosed cash income abroad through Hawala nor any material to show that he was receiving cash from any person fraudulently and sending the same in foreign exchange to foreign companies through Hawala to earn any commission. The High Court held that roping in of the accused with the aid of Section 120B IPC is also not substantiated by any material.

Contentions:-

9. Mr. Pritesh Kapur, learned counsel for the appellant-State submitted that time and again, it has been laid down that while issuing summons, the Magistrate is to be satisfied that *"there is sufficient ground for proceeding"* and on the basis of the materials filed along with the second supplementary charge sheet, the Magistrate took cognizance of the offences and directed issuance of summons to the respondent and Amit @ Bilal Haroon Gilani and the same ought not to have been inferred. The learned counsel further submitted that issuance of summons, being an interlocutory order, the High Court in exercise of its revisional jurisdiction ought not to have set aside the order of issuance of summons. The learned counsel further submitted that the learned

Single Judge erred in proceeding under the footing as if it is a simple case of forgery of the Bills of Entry and did not keep in view that the present case is a complex economic offence of sending foreign exchange abroad to foreign companies in Dubai and Hongkong through "*hawala*" by setting up a web of companies. Placing reliance upon number of decisions, the learned counsel for the appellant-State submitted that at the stage of issuance of the summons, the Court is not to examine the merits and demerits of the case and the possible defence are not to be examined.

10. Per contra, Mr. Mukul Rohatgi, learned senior counsel for the respondent submitted that summoning an accused is a very serious step and there should be strict examination of the materials on record and the summoning order must reflect the application of mind by the Magistrate. It was further submitted that the alleged statement of Praful Patel dated 01.08.2014 relied upon by the prosecution was rightly held to be in the nature of hearsay and inadmissible qua the respondent. The learned senior counsel further submitted that Angadiyas as well as Praful Patel who is alleged to have transferred the cash by RTGS to the companies in ICICI Bank would form a vital link in the alleged flow of money and they have not been shown as accused and the contention of the State with regard to the statement of Praful Patel is bereft of any merits. The learned senior counsel further submitted that absolutely there is no evidence to connect the

respondent with the companies in ICICI Bank and other foreign companies based in Hong Kong and Dubai to whom the foreign exchange is alleged to have been sent and in the absence of any material, learned Single Judge rightly held that there was no sufficient ground in proceeding against the respondent and the impugned order of the High Court warrants no interference.

11. Mr. Neeraj Kishan Kaul, learned senior counsel appearing for the respondent has placed reliance upon number of judgments and submitted that the Magistrate to take cognizance of an offence, irrespective of the fact that the cognizance is based upon a police report or on a complaint. Placing reliance upon ***Pepsi Foods Ltd. and Another v. Special Judge Magistrate and Others*** (1998) 5 SCC 749, the learned senior counsel submitted that summoning of an accused in a criminal case is a serious offence and the order of the Magistrate is bereft of reasons indicating the application of mind and the impugned order was rightly quashed by the High Court.

12. We have carefully considered the contentions and perused the impugned judgment and materials on record, the following points arise for consideration:-

- While directing issuance of process to the accused in case of taking cognizance of an offence based upon a police report under Section 190(1)(b) Cr.P.C., whether it is mandatory for the court to record reasons for its

satisfaction that there are sufficient grounds for proceeding against the accused?

- In exercise of revisional jurisdiction under Section 397 Cr.P.C., whether the learned Single Judge was right in setting aside the order of the Magistrate issuing summons to the respondent-accused?

While taking cognizance of an offence under Section 190(1)(b) Cr.P.C., whether the court has to record reasons for its satisfaction of sufficient grounds for issuance of summons:-

13. The charge sheet was filed in Criminal Case No.47715/2014 on 18.08.2014 against the accused persons namely Sunil Agrawal and Ratan Agrawal. In the first charge sheet, the respondent-Afroz Mohammad Hasanfatta (Afroz Hasanfatta) was referred to as a suspect. In the second supplementary charge sheet filed on 15.11.2014 in Criminal Case No.62851/2014, the respondent-Afroz is arraigned as accused No.1 and Amit @ Bilal Haroon Gilani as accused No.2. In the second supplementary charge sheet, prosecution relies upon the statement of witnesses as well as on certain bank transactions as to flow of money into the account of the respondent-Afroz Hasanfatta and his Company-Nile Trading Corporation. The order of taking cognizance of the second supplementary charge sheet and issuance of summons to the respondent-Afroz Hasanfatta reads as under:-

> "I take in consideration charge sheet/complaint for the offence of Section 420, 465, 467, 468 IPC etc. Summons to be issued against the accused."

14. The first and foremost contention of the respondent-accused is that summoning an accused is a serious matter and the summoning order must reflect that the Magistrate has applied his mind to the facts of the case and the law applicable thereto and in the present case, the order for issue of process without recording reasons was rightly set aside by the High Court. In support of their contention that the summoning order must record reasons showing application of mind, reliance was placed upon ***Pepsi Foods Ltd.*** The second limb of submission of the learned senior counsel appearing for the respondent-accused is that there has to be an order indicating the application of mind by the Magistrate as to the satisfaction that there are sufficient grounds to proceed against the accused irrespective of the fact that whether it is a charge sheet by the police or a private complaint.

15. It is well-settled that at the stage of issuing process, the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and the Magistrate is only to be satisfied that there are sufficient grounds for proceeding against the accused. It is fairly well-settled that when issuing summons, the Magistrate need not explicitly state the reasons for his satisfaction that there are sufficient grounds for proceeding against the accused. Reliance was placed upon ***Bhushan Kumar and another v. State (NCT of Delhi) and another*** (2012) 5 SCC 424 wherein it was held as under:-

“11. In *Chief Enforcement Officer* v. *Videocon International Ltd.* (2008) 2 SCC 492 (SCC p. 499, para 19) the expression “cognizance” was explained by this Court as “it merely means ‘become aware of’ and when used with reference to a court or a Judge, it connotes ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.” It is entirely a different thing from initiation of proceedings; rather it is the condition precedent to the initiation of proceedings by the Magistrate or the Judge. Cognizance is taken of cases and not of persons. Under Section 190 of the Code, it is the application of judicial mind to the averments in the complaint that constitutes cognizance. At this stage, the Magistrate has to be satisfied whether there is sufficient ground for proceeding and not whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction can be determined only at the trial and not at the stage of enquiry. If there is sufficient ground for proceeding then the Magistrate is empowered for issuance of process under Section 204 of the Code.

12. A “summons” is a process issued by a court calling upon a person to appear before a Magistrate. It is used for the purpose of notifying an individual of his legal obligation to appear before the Magistrate as a response to violation of law. In other words, the summons will announce to the person to whom it is directed that a legal proceeding has been started against that person and the date and time on which the person must appear in court. A person who is summoned is legally bound to appear before the court on the given date and time. Wilful disobedience is liable to be punished under Section 174 IPC. It is a ground for contempt of court.

13. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issuance of summons. It clearly states that if in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, then the summons may be issued. This section mandates the Magistrate to form an opinion as to whether there exists a sufficient ground for summons to be issued but it is nowhere mentioned in the section that the explicit narration of the same is mandatory, meaning thereby that it is not a prerequisite for deciding the validity of the summons issued.” [**underlining added**]

16. After referring to ***Bhushan Kumar, Videocon International Limited*** and other decisions, in ***Mehmood Ul Rehman v. Khazir Mohammad Tunda and others*** (2015) 12 SCC 420, it was held as under:-

> **"20.** The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in *Pepsi Foods Ltd. and another v. Special Judicial Magistrate and others* (1998) 5 SCC 749 to set in motion the process of criminal law against a person is a serious matter."

The above observations made in para (20) is in the context of taking cognizance of a complaint. As per definition under Section 2(d) Cr.P.C., complaint does not include a police report.

17. The learned senior counsel appearing for the respondent-accused relied upon various judgments to contend that while taking cognizance, the court has to record the reasons that prima facie case is made out and that there are sufficient grounds for proceeding against the accused for that offence. The learned senior counsel appearing on behalf of the respondent-accused relied upon judgments in the case of ***Pepsi Foods Ltd.*** and ***Mehmood Ul Rehman*** to contend that while taking cognizance, the Court has to record reasons that *prima facie* case is made out and that there are sufficient grounds for proceeding against the

accused for that offence. On the facts and circumstances of those cases, this Court held that the order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. However, what needs to be understood is that those cases relate to issuance of process taking cognizance of offences based on the complaint. Be it noted that as per the definition under Section 2(d) Cr.P.C, 'complaint' does not include a police report. Those cases do not relate to taking of cognizance upon a police report under Section 190(1)(b) Cr.P.C. Those cases relate to taking cognizance of offences based on the complaint. In fact, it was also observed in the case of ***Mehmood Ul Rehman*** that "under Section 190(1)(b) Cr.P.C., the Magistrate has the advantage of a police report; but under Section 190(1)(a) Cr.P.C., he has only a complaint before him. Hence, the code specifies that "a complaint of facts which constitutes an offence".

18. Section 190(1)(a) Cr.P.C. provides for cognizance of complaint. Section 190(1)(b) Cr.P.C. deals with taking cognizance of any offence on the basis of police report under Section 173(2) Cr.P.C. Complaint is defined in Section 2(d) Cr.P.C. which reads as under:-

> "**2. Definitions.**
> ....
> (d) "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has

committed an offence, but does not include a police report.”

The procedure for taking cognizance upon complaint has been provided under *Chapter XV – Complaints to Magistrates* under Sections 200 to 203 Cr.P.C. A complaint filed before the Magistrate may be dismissed under Section 203 Cr.P.C. if the Magistrate is of the opinion that there is no sufficient ground for proceeding and in every such case, he shall briefly record his reasons for so doing. If a complaint is not dismissed under Section 203 Cr.P.C., the Magistrate issues process under Section 204 Cr.P.C. Section 204 Cr.P.C. is in a separate chapter i.e. *Chapter XVI – Commencement of Proceedings before Magistrates.* A combined reading of Section 203 and Section 204 Cr.P.C. shows that for dismissal of a complaint, reasons should be recorded. The procedure for trial of warrant cases is provided in *Chapter XIX – Trial of Warrant Cases by the Magistrates. Chapter XIX deals with two types of cases – A – Cases instituted on a police report and B – Cases instituted otherwise than on police report.* In the present case, cognizance has been taken on the basis of police report.

19. In a case instituted on a police report, in warrant cases, under Section 239 Cr.P.C., upon considering the police report and the documents filed along with it under Section 173 Cr.P.C., the Magistrate after affording opportunity of hearing to both the accused and the prosecution, shall discharge the accused, if the Magistrate considers the charge against the accused to be

groundless and record his reasons for so doing. Then comes Chapter XIX-C – Conclusion of trial - the Magistrate to rendering final judgment under Section 248 Cr.P.C. considering the various provisions and pointing out three stages of the case. Observing that there is no requirement of recording reasons for issuance of process under Section 204 Cr.P.C., in ***Raj Kumar Agarwal v. State of U.P. and another*** 1999 Cr.LJ 4101, Justice B.K. Rathi, the learned Single Judge of the Allahabad High Court held as under:-

> "…….As such there are three stages of a case. The first is under Section 204 Cr. P.C. at the time of issue of process, the second is under Section 239 Cr. P.C. before framing of the charge and the third is after recording the entire evidence of the prosecution and the defence. The question is whether the Magistrate is required to scrutinise the evidence at all the three stages and record reasons of his satisfaction. If this view is taken, it will make speedy disposal a dream. In my opinion the consideration of merits and evidence at all the three stages is different. At the stage of issue of process under Section 204 Cr. P.C. detailed enquiry regarding the merit and demerit of the cases is not required. The fact that after investigation of the case, the police has submitted the charge sheet, may be considered as sufficient ground for proceeding at the stage of issue of process under Section 204 Cr. PC., however subject to the condition that at this stage the Magistrate should examine whether the complaint is barred under any law, ……… At the stage of Section 204 Cr. P.C. if the complaint is not found barred under any law, the evidence is not required to be considered nor the reasons are required to be recorded. At the stage of charge under Section 239 or 240 Cr. P.C. the evidence may be considered very briefly, though at that stage also, the Magistrate is not required to meticulously examine and to evaluate the evidence and to record detailed reasons.
>
> 8. A bare reading of Sections 203 and 204 Cr.P.C. shows that Section 203 Cr.P.C. requires that reasons should be recorded for the dismissal of the complaint. Contrary to it, there is no such' requirement under Section 204 Cr.P.C. Therefore, the order

for issue of process in this case without recording reasons, does not suffer from any illegality." [**underlining added**]

We fully endorse the above view taken by the learned Judge.

20. In para (21) of ***Mehmood Ali Rehman***, this Court has made a fine distinction between taking cognizance based upon charge sheet filed by the police under Section 190(1)(b) Cr.P.C. and a private complaint under Section 190(1)(a) Cr.P.C. and held as under:-

> **"21.** Under Section 190(1)(*b*) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(*c*) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(*a*) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(*a*) CrPC. The complaint is simply to be rejected."

21. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 Cr.P.C. is not the same at the time of framing the charge. For issuance of summons under Section 204 Cr.P.C., the expression used is "*there is sufficient ground for proceeding…..*"; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "*there is ground for presuming*

that the accused has committed an offence.....". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 Cr.P.C., detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 Cr.P.C.

22. In so far as taking cognizance based on the police report, the Magistrate has the advantage of the charge sheet, statement of witnesses and other evidence collected by the police during the investigation. Investigating Officer/SHO collects the necessary evidence during the investigation conducted in compliance with the provisions of the Criminal Procedure Code and in accordance with the rules of investigation. Evidence and materials so collected are sifted at the level of the Investigating Officer and thereafter, charge sheet was filed. In appropriate cases, opinion of the Public Prosecutor is also obtained before filing the charge sheet. The court thus has the advantage of the police report along with the materials placed before it by the police. Under Section 190 (1)(b) Cr.P.C., where the Magistrate has taken cognizance of an offence upon a police report and the Magistrate is satisfied that there is sufficient ground for proceeding, the Magistrate directs issuance of process. In case of taking cognizance of an offence based upon

the police report, the Magistrate is not required to record reasons for issuing the process. In cases instituted on a police report, the Magistrate is only required to pass an order issuing summons to the accused. Such an order of issuing summons to the accused is based upon subject to satisfaction of the Magistrate considering the police report and other documents and satisfying himself that there is sufficient ground for proceeding against the accused. In a case based upon the police report, at the stage of issuing the summons to the accused, the Magistrate is not required to record any reason. In case, if the charge sheet is barred by law or where there is lack of jurisdiction or when the charge sheet is rejected or not taken on file, then the Magistrate is required to record his reasons for rejection of the charge sheet and for not taking on file. In the present case, cognizance of the offence has been taken by taking into consideration the charge sheet filed by the police for the offence under Sections 420, 465, 467, 468, 471, 477A and 120B IPC, the order for issuance of process without explicitly recording reasons for its satisfaction for issue of process does not suffer from any illegality.

Whether revision under Section 397(2) Cr.P.C. against order of issue of process is maintainable:-

23. In the case of ***Amar Nath and Others v. State of Haryana and Another*** (1977) 4 SCC 137, it was held by this Court that the term "interlocutory order" in Section 397(2) Cr.P.C. denotes orders of purely interim or temporary nature which do not

decide or touch the important rights or liabilities of the parties and any order which substantially affects the right of the parties cannot be said to be an 'interlocutory order'. In ***K.K. Patel and Another v. State of Gujarat and Another*** (2000) 6 SCC 195, this Court held as under:-

> "**11.** ………. It is now well-nigh settled that in deciding whether an order challenged is interlocutory or not as for Section 397(2) of the Code, the sole test is not whether such order was passed during the interim stage (vide *Amar Nath and Others* v. *State of Haryana and Another (*1977) 4 SCC 137, *Madhu Limaye* v. *State of Maharashtra* (1977) 4 SCC 551, *V.C. Shukla* v. *State through CBI* 1980 Supp. SCC 92 and *Rajendra Kumar Sitaram Pande and Others* v. *Uttam and Another* (1999) 3 SCC 134). The feasible test is whether by upholding the objections raised by a party, it would result in culminating the proceedings, if so any order passed on such objections would not be merely interlocutory in nature as envisaged in Section 397(2) of the Code………".

24. The question whether against the order of issuance of summons under Section 204 Cr.P.C., the aggrieved party can invoke revisional jurisdiction under Section 397 Cr.P.C. has been elaborately considered by this Court in ***Urmila Devi v. Yudhvir Singh*** (2013) 15 SCC 624. After referring to various judgments, it was held as under:-

> **"14.** ………. On the other hand in the decision in *Rajendra Kumar Sitaram Pande and Others v. Uttam and Another* (1999) 3 SCC 134, this Court after referring to the earlier decisions in *Amar Nath and Others v. State of Haryana and Another* (1977) 4 SCC 137, *Madhu Limaye v. State of Maharashtra* (1977) 4 SCC 551 and *V.C. Shukla v. State through CBI* 1980 Supp. SCC 92 held as under in para 6: (*Rajendra Kumar Sitaram Pande case*, SCC pp. 136-37)
>
> > "*6*. … this Court has held that the term 'interlocutory order' used in the Code of Criminal Procedure has to be given a very liberal

> construction in favour of the accused in order to ensure complete fairness of the trial and the revisional power of the High Court or the Sessions Judge could be attracted *if the order was not purely interlocutory but intermediate or quasi-final*. This being the position of law, it would not be appropriate to hold that an order directing issuance of process is purely interlocutory and, therefore, the bar under sub-section (2) of Section 397 would apply. *On the other hand, it must be held to be intermediate or quasi-final and, therefore, the revisional jurisdiction under Section 397 could be exercised against the same*. The High Court, therefore, was not justified in coming to the conclusion that the Sessions Judge had no jurisdiction to interfere with the order in view of the bar under sub-section (2) of Section 397 of the Code."

This decision makes it clear that an order directing issuance of process is an intermediate or quasi-final order and therefore, the revisional jurisdiction under Section 397 CrPC can be exercised against the said order. This view was subsequently reiterated by this Court in *K.K. Patel and Another v. State of Gujarat and Another* (2000) 6 SCC 195."

25. After referring to various judgments, in ***Urmila Devi***, this Court summarised the conclusion as under:-

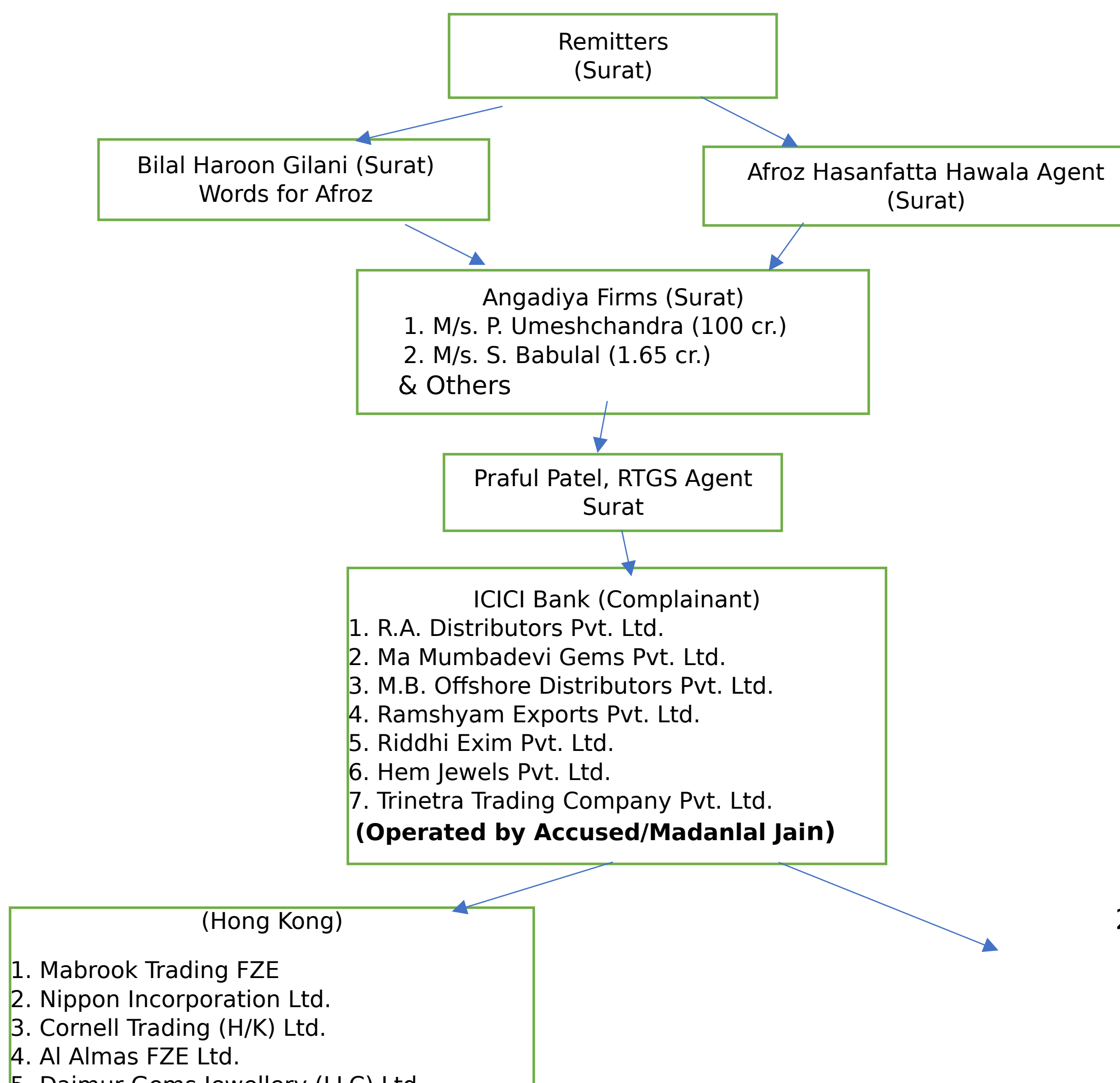
> **"21.** Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in *Rajendra Kumar Sitaram Pande and Others v. Uttam Singh and Another* (1999) 3 SCC 134 as well as the decision in *K.K. Patel and Another v. State of Gujarat and Another* (2000) 6 SCC 195, it will be in order to state and declare the legal position as under:
>
> **21.1.** The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediatory or quasi-final in nature and not interlocutory in nature.
>
> **21.2.** Since the said position viz. such an order is intermediatory order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.

> **21.3.** Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 CrPC, can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 CrPC.
>
> **…**........
>
> **23.** Therefore, the position has now come to rest to the effect that the revisional jurisdiction under Section 397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons."

In a catena of judgments, it has been held that the aggrieved party has the right to challenge the order of Magistrate directing issuance of summons.

26. The Single Judge has proceeded to examine the case as if it is a simple case of submission of forged Bills of Entry by observing that "*the instant case is not related to any import or export of diamonds but relating to submitting forged Bills of Entry for making remittance....*". In our view, the learned Single Judge was not right in proceeding under the footing as if the case was a simple case of presenting forged Bills of Entry. The case of prosecution is a complex economic offence of sending foreign exchange to companies based in Dubai and Hong Kong through Hawala by setting up a web of companies; alleged collection of cash in rupees from the persons wishing to send money abroad, transfer of this cash through Angadia firms-couriers S. Babulal Angadias and others to Prafulbhai Patel who in turn deposited the cash via RTGS through a chain of companies which ultimately reached a chain of companies (vide chart infra) operated by

accused Madanlal Jain. These companies approached the ICICI Bank and other banks and opened Letters of Credit and by presenting fake Bills of Entry on the fraudulent misrepresentation that these Bills of Entry were genuine and that there had been genuine import of diamonds. The ICICI Bank and other banks were fraudulently induced to remit this amount in foreign exchange to foreign companies (vide chart infra) in Dubai and Hong Kong. The offence alleged to have been committed is a complex economic offence of sending foreign exchange to Dubai and Hong Kong and not a simple case of forged Bills of Entry. The trail of the cash from India and remittance of the same in foreign exchange to the foreign companies is depicted as under:-



(Dubai)

1. Mabrook Trading FZE
2. Al Almas FZE Ltd.
3. Al Saba General Trading FZE
(**Operated by Accused/Madanlal Jain**)

27. In para (15.4), the learned Single Judg *respondent-accused is neither director nor any authorized person for any of these seven companies, and there is neither any allegation that any of these companies were formed and controlled by the respondent-accused, nor that the bank accounts of any of these companies were managed by the respondent-accused*". Here again, the learned Single Judge erred in proceeding under presumptive footing that the entire transaction is a simple case of presentation of fake Bills of Entry and fraudulently inducing the ICICI Bank to remit the foreign exchange to foreign companies for import of diamonds. Though, presenting forged and fake Bills of Entry would be an important last leg of the transaction, the respondent-accused is allegedly involved in the earlier part of collection of money i.e. by collecting money from remitters and the respondent-accused and his person Amit @ Bilal Haroon Gilani sending it to Prafulbhai Patel through Angadias who in turn transferred the money by RTGS to chain of companies operated by Madanlal Jain in ICICI Bank. Case of prosecution is that the persons who played any role in this conspiracy to fraud and cheat the government and banks is equally liable for the offence and not merely the persons who actually forged the

signature or stamp of the Custom Officers in preparing the fake Bills of Entry.

28. The learned senior counsel for the respondent-accused Mr. Mukul Rohatgi submitted that Angadias as well as Prafulbhai Patel would form a vital link in this flow of money and therefore, they should have been charged. It was submitted that the very fact that the Angadias and Prafulbhai Patel are not shown as accused in any of the charge sheet would show that the prosecution case is concerned only about fake Bills of Entry and not ‘Hawala’ as alleged or a complex/economic as alleged.

29. Refuting this contention, learned counsel for the appellant Mr. Pritesh Kapur submitted that the role of Angadias is only a courier service i.e. carrying the cash and the role of Prafulbhai Patel is to convert black money in cash into white. It was submitted that Angadia as well as Prafulbhai Patel were certainly participating in the tax fraud by facilitating tax evasion but they may not have been involved in the remittance of the amount in foreign exchange to the foreign companies. It was submitted that if and when any evidence of their involvement in the entities controlled by Madanlal Jain emerged, they would form part of the larger conspiracy and fraud involved in the present case.

30. **Statement of Prafulbhai Patel:-** The statement of Prafulbhai Patel dated 01.08.2014 shows that he received cash of over Rs.500,00,000,00/- and deposited the same through RTGS

which money found its way to the imported companies operated by Madanlal Jain and then transferred abroad on the specific instructions to Madanlal Jain and the respondent-accused. The statement of Prafulbhai Patel reads as under:-

> "…..while going there for recovery, Madanlal jain used to talk about the business. On one day, Madanlal Jain had called me at his office and introduced me with Afroz Hasan Fatta and Amit @ Bilal Gilani and stated that, "Afroz Fatta and Amit @ Bilal Gilani are residing at Surat and we are doing business of importing and exporting of diamond. Like Narendra Jain handles my work; Amit @ Bilal Gilani handles work of Afroz Fatta; for doing business of export an dimport my company is having account in the Axix and ICICI Bank; he also stated that he, his person Narendra Jain, Afroz Fatta and Amit @ Bilal Gilani gives whatever the cash to me will be transferred through RTGS/NEFT in their account of ICICI and Axis Bank through my financier and for that commission of 0.10 paise per 100 paise will be given to me." Since on account of my business I knew some financial, I agreed to do business with them.
>
> Thereafter, as asked by Madanlal Jain and Afroz's person Amit @ Bilal Gilani, I did make balance of approximately Rs.500 crore in the Bank account of Axis Bank and ICICI Bank during the period from September, 2013 to February, 2014 through RTGS/NEFT. Whatever the cash amount comes to me, I deducted 0.10 paise as commission and thereafter deposited that cash amount through RTGS/NEFT by that financier and I paid them commission 0.5 paise, 0.8 paise and 0.10 paise and whatever the difference remains is my commission. Accordingly, in the above business, I got commission of Rs.9 lakhs.
>
> Whatever the cash amount, I have transferred through RTGS/NEFT by financier in the bank account of Madanlal jain of Axis and ICICI Bank, out of which some amount was sent by Narendra Jain, person of Madanlal Jain; Amit @ Bilal Gilani person of Afroz Fatta; though P. Umesh Firm and through S Babulal Firm. Sometimes, Johan, person of Amit also used to come with cash at my office situated at U-7, Abhinandan Complex, Magob Patiya and this cash was given by me to my known persons Dipak Suchak and Harshadbhai Modi, financiers who are doing business of commission and RTGS. And that cash amount will be deposited by me through RTGS/NEFT in the

following bank accounts of Madanlal Jain and Afroz Fatta of Axis Bank.

Sl. No.	**Name of Firm**	**Account No.**
1.	Arzoo Enterprises	913020027784571
2.	G T Traders	913020029778091
3.	Vandana & Company	913020029007616
4.	Jash Traders	913020034680329
	ICICI Bank	
1.	Trinetra Trading Co. Pvt. Ltd.	085005500849
2.	Ramshyam Export Pvt. Ltd.	085005500850
3.	MB Offshore Distributors Pvt. Ltd.	085005500828
4.	Riddhi Exhim Pvt. Ltd.	085005500829
5.	RA Distributors Pvt. Ltd.	624605501750

31. The above statement of Prafulbhai Patel prima facie shows that the respondent-accused participated in the collection of cash and also acted as a facilitator for the illegal transfer of cash abroad. After extracting the statement of Prafulbhai Patel, the learned Single Judge held that the "*statement of Prafulbhai Patel no way shows the role of the petitioner in any cheating, forgery, falsification of accounts, conspiracy, making foreign remittance on the strength of fake Bills of Entry, dealing of the petitioner in cash with cheque discounters or Angadias to arrange for remittances against forged Bills of Entry.*" In our view, the learned Single Judge erred in observing that the statement of Prafulbhai Patel no way shows role of the respondent-accused. A reading of the statement of Prafulbhai Patel prima facie shows that the respondent-accused was collecting cash and sending it to Prafulbhai Patel through couriers and thereby acted as a conduit for the illegal transfer of cash abroad.

32. The learned Single Judge then proceeded to examine the evidentiary value of the statement of Prafulbhai Patel and observed that the statement of Prafulbhai Patel is in the nature of hearsay and is inadmissible in evidence. The learned Single Judge observed that the statement of Prafulbhai Patel with reference to the respondent’s business and accounts is only hearsay and he never stated that he had directly or indirectly dealt with the respondent.

33. The learned senior counsel for the respondent submitted that the statement of Prafulbhai Patel which is in the nature of hearsay is inadmissible *qua* the respondent. It was submitted that there was no contemporaneous exposition which corroborates the statement of Prafulbhai Patel to make it fall under Section 6 of Evidence Act so as to make it admissible as ‘*res gestae’*. It was submitted that the statement of Prafulbhai Patel being in the nature of hearsay and in the absence of any material to bring it under Section 6 of the Indian Evidence Act, there is no basis for the allegation against the respondent-accused and the learned Single Judge rightly held that there is no ground for proceeding against the accused.

34. The learned counsel appearing for the State of Gujarat has submitted that at the stage of issuance of summons, the court is not required to examine merits and demerits of the evidence relied upon by the prosecution and its evidentiary value. It was further

submitted that the statement of Prafulbhai Patel was made in the presence of Madanlal Jain, respondent-Afroz Hasanfatta and his person Amit @ Bilal Haroon Gilani and therefore, the statement of Prafulbhai Patel would definitely fall under Explanation II of Section 8 of Indian Evidence Act which would certainly be admissible in evidence. In support of his contention, learned counsel relied upon ***Balram Prasad Agrawal v. State of Bihar and others*** (1997) 9 SCC 338.

35. Whether the statement of Prafulbhai Patel is in the nature of hearsay and whether it is supported by 'contemporaneous exposition' and whether it would fall under '*res gestae*' and whether it is admissible or not is to be seen only at the time of trial. We are not inclined to go into the merits of the contention of either party as the same is to be raised and answered only at the time of trial. Observing that before summoning the accused, the facts stated will have to be accepted as they appear on the very face of it, in ***Bhaskar Lal Sharma***, it was held as under:-

> "11. .....The appreciation, even in a summary manner, of the averments made in a complaint petition or FIR would not be permissible at the stage of quashing and the facts stated will have to be accepted as they appear on the very face of it. This is the core test that has to be applied before summoning the accused. Once the aforesaid stage is overcome, the facts alleged have to be proved by the complainant/prosecution on the basis of legal evidence in order to establish the penal liability of the person charged with the offence."

36. The learned senior counsel appearing for the respondent submitted that in their statements, Angadias have not stated anything incriminating against the respondent and in the absence of any material emerging from the statement of these witnesses, there is nothing incriminating against the respondent to connect him with the transactions of remittance of foreign exchange to foreign companies. There is no merit in the above contention. The Angadias are yet to be examined in the court. During the time of trial, at the time of examining of Angadiyas, it is open to the prosecution to confront them with the relevant materials linking the respondent with the alleged transactions.

37. For issuance of process against the accused, it has to be seen only whether there is sufficient ground for proceeding against the accused. At the stage of issuance of process, the Court is not required to weigh the evidentiary value of the materials on record. The Court must apply its mind to the allegations in the charge sheet and the evidence produced and satisfy itself that there is sufficient ground to proceed against the accused. The Court is not to examine the merits and demerits of the case and not to determine the adequacy of the evidence for holding the accused guilty. The Court is also not required to embark upon the possible defences. Likewise, 'possible defences' need not be taken into consideration at the time of issuing process unless there is an ex-facie defence such as a legal bar or if in law the accused is not

liable. [*Vide* ***Nupur Talwar v. Central Bureau of Investigation and another*** (2012) 11 SCC 465]

38. The learned Single Judge observed that *"there is nothing in the supplementary charge sheets to even remotely suggest any role of the petitioner in setting up of any of the foreign companies who were recipient of the amounts fraudulently sent abroad or any Indian Entity which fraudulently remitted the amounts out of India .... or of having received the remitted amount out of India directly or indirectly.* The learned Single Judge was not right in saying that there was no material that the respondent has played any role in the conspiracy in making the black money in cash into white and fraudulently inducing the banks based on fake bills of entry and remitting the amount in foreign exchange to foreign banks based in Hong Kong and Dubai. The learned Single Judge erred in brushing aside the materials produced by the prosecution which *prima-facie* indicate the role of the respondent that he used to collect the money from the remitters and respondent and his person Amit @ Bilal Haroon Gilani sending it through Angadiya Firms to Prafulbhai Patel who in turn deposited the same through RTGS in the accounts of the companies operated by Madan Lal Jain which money was transferred abroad by foreign exchange (vide chart supra). We deem it appropriate to refer to some of the evidence and other materials produced by the prosecution along with the charge sheet.

39. Jafar Mohammad-brother of the respondent admitted that Rs.3,00,00,000/- were deposited in his account on the instructions of the respondent-accused from the company controlled by accused-Madanlal Jain. On being asked about the entry of Rs.1,00,00,000/- on 06.01.2014 and Rs.2,00,00,000/- on 31.01.2014 in his current account from the account of M/s Natural Trading Company (company of accused Madanlal Jain), Jafar Mohammed stated that in January, 2014 he needed some money in the share business and therefore, he spoke to the respondent-Afroz Mohammad Hasanfatta about getting him loan and so, the amount was credited in his account through RTGS. He stated that he does not know about the ownership of M/s Natural Trading Company and also does not know Madanlal Jain. The question whether Jafar Mohammad, brother of respondent-accused received money as a genuine loan transaction or whether it was a part of the commission, could be examined only at the stage of trial when the parties adduced oral or documentary evidence.

40. That apart, in the statement dated 18.10.2014, Samir Jiker Godil, Manager of Nile Industries/proprietorship of respondent, stated that he obtained an unsecured loan of Rs.1,15,00,000/- from the respondent-Afroz in February, 2014 and the said amount was credited in the account of his wife with Union Bank of India from the bank account of Nile Trading Corporation. He stated that he took the said amount from the respondent to do business in

share market. He stated that the said amount was given to him by crediting the same in the bank account of his wife Foziya Samir Godil from the bank account of M/s Nile Trading Corporation. He stated that out of the said amount, he repaid Rs.91,00,000/- by depositing the same in the bank account of two persons as per say of respondent from the aforementioned bank account of his wife through RTGS. He stated that he does not know in whose account the said amount was deposited.

41. Further, a perusal of bank statement of the respondent for the period 01.03.2014 to 31.03.2014 shows four transactions dated 06.03.2014 and 07.03.2014 for a total amount of Rs.6,30,00,000/- in the account of respondent from M/s Natural Trading Company. Further, by perusal of the bank statement of M/s Nile Trading Corporation, the proprietorship concern of respondent, for the period 01.10.2013 to 30.11.2014 shows transactions to the tune of approximately Rs.7,00,00,000/- in the account of the firm from one M/s Gangeshwar Mercantile Private Limited which is a business concern of accused Madanlal Jain.

42. Mr. Mukul Rohatgi, learned senior counsel appearing for the respondent submitted that the two companies namely M/s Natural Trading Corporation and Gangeshwar Mercantile Pvt. Ltd. who had remitted an amount of Rs.16,00,00,000/- in the accounts of the respondent and his brother which amount is stated to be as ‘commission’, have not been arraigned as accused nor its

Director/partner Shri Pukhraj Anandmal Mutha has been shown as accused. This contention does not merit acceptance. Only during the time of trial, trail of money from the above two companies to the account of the respondent could be established.

43. The learned counsel for the State submitted that there is a clear evidence of flow back of Rs.16,00,00,000/- to the account of respondent as commission from the company controlled by Madanlal Jain which has not been explained. Insofar as the receipt of over Rs.16,00,00,000/- "as commission" by the respondent-accused for his role in the scam, the learned Single Judge discarded the same on the erroneous ground that *"there is no mens-rea or culpable knowledge on the part of the accused".* Whether the accused-respondent had *mens-rea* or not is not to be established at the stage of issuance of summons. In ***Bholu Ram v. State of Punjab and Another*** (2008) 9 SCC 140, this Court held that *mens rea* can only be decided at the time of trial and not at the stage of issuing summons.

44. Having received a huge amount of Rs.16,00,00,000/-, it is for the accused to establish his defence plea at the time of trial that the money is by way of receipt in the normal course of his business dealings. The bank statement produced by the prosecution showing the deposit of amount in the account of respondent-accused and M/s Nile Trading Corporation and receipt of the amount by the respondent's brother are the prima facie

materials showing that there are sufficient grounds for proceeding against the accused. The evidence and materials so produced by the prosecution cannot be brushed aside on the possible defence which the respondent is taking that such credits are in the regular course of his business dealings.

45. The learned senior counsel for the respondent contended that the receipt of over Rs.16,00,00,000/- by the respondent-accused was “business income from the sale of diamonds”. Learned counsel for the appellant-State submitted that no such explanation has ever been offered by the respondent in the revision petition or before the learned Single Judge and this argument has been made across the Bar. The correctness of the defence plea that the money received by the respondent in the bank account of M/s Nile Trading Corporation (proprietorship of respondent-accused) and by his brother-Jafar Mohammad is to show that the said amount has been received in the regular course of business transaction. The respondent would also have to show that he has declared this receipt as “business income” in his income tax return for the relevant year.

46. Additionally, the prosecution also relies upon Call Detail Records to show that the respondent was in contact with the accused Madanlal Jain, witness Praful Patel and accused Amit @ Bilal Haroon Gilani during the period when these alleged instances of *hawala* took place.

47. The learned Single Judge in the impugned order extensively extracted statement of the witnesses viz. Jafar Mohammed, brother of respondent, Samir Jiker Gohil, Manager of Nile Industries and other witnesses of Angadias Firms, concluded that none of the statements allege anything incriminating against the respondent. The learned Single Judge further observed that "*neither the angadiyas nor the cheque discounters who admittedly were recipients of huge cash payments for further transfer to other companies, alleged any dealing or transaction with the petitioner, much less any incriminating transaction".* There was huge flow of money into the account of the respondent and Nile Trading Corporation and also to his brother Jafar Mohammed. During trial, it is for the prosecution to show how these money transactions are linked to establish that the respondent was collecting money from remitters and transmitting the same to Prafulbhai Patel through Angadias. At the stage of issue of process, the court is not required to go into the merits of the evidence collected and examine whether they are incriminating the accused or not.

48. The learned Single Judge extracted the statement of Angadias in extenso and observed that the representatives of S. Babulal Angadia and P. Umeshchandra whose names are appearing in the statements of Prafulbhai Patel also did not reveal any such transaction with the respondent herein. Likewise, the learned Single Judge also referred to the banking transactions and

observed that the bank statements of the respondent and his brother do not show commission of any offence lodged against the respondent even on prima facie basis. As discussed earlier, at the stage of issuance of process, sufficiency of evidence or otherwise is not to be seen. Meticulous consideration of the statement of witnesses and other materials produced is unfolded. The above materials produced by the prosecution ought not to have been brushed aside by the learned Single Judge to quash the order of issuance of summons to the respondent-accused. As to whether these evidence are sufficient to sustain the conviction of the respondent-accused or whether he has a plausible defence or explanation is the matter to be considered at the stage of trial. The learned Single Judge ought not to have weighed the merits of the case at the initial stage of issuance of summons to the accused.

49. While hearing revision under Section 397 Cr.P.C., the High Court does not sit as an appellate court and will not reappreciate the evidence unless the judgment of the lower court suffers from perversity. Based on the charge sheet and the materials produced thereon when the Magistrate satisfied that there are sufficient grounds for proceeding, the learned Single Judge was not justified in examining the merits and demerits of the case and substitute its own view. When the satisfaction of the Magistrate was based on the charge sheet and the materials placed before him, the

satisfaction cannot be said to be erroneous or perverse and the satisfaction ought not to have been interfered with.

50. As discussed earlier, while taking cognizance of an offence based upon a police report, it is the satisfaction of the Magistrate that there is sufficient ground to proceed against the accused. As discussed earlier, along with the second supplementary charge sheet, number of materials like statement of witnesses, Bank statement of the respondent-accused and his company Nile Trading Corporation and other Bank Statement, Call Detail Records and other materials were placed. Upon consideration of the second supplementary charge sheet and the materials placed thereon, the Magistrate satisfied himself that there is sufficient ground to proceed against the respondent and issued summons. The learned Single Judge, in our considered view, erred in interfering with the order of the Magistrate in exercise of revisional jurisdiction.

51. In our view, the learned Single Judge ought not to have gone into the merits of the matter when the matter is in nascent stage. When the prosecution relies upon the materials, strict standard of proof is not to be applied at the stage of issuance of summons nor to examine the probable defence which the accused may take. All that the court is required to do is to satisfy itself as to whether there are sufficient grounds for proceeding. The learned Single Judge committed a serious error in going into the merits and

demerits of the case and the impugned order is liable to be set aside.

52. In the result, the impugned order passed by the High Court of Gujarat in Criminal Revision No.264 of 2017 dated 03.05.2017 is set aside and this appeal is allowed. The order of the Magistrate taking cognizance of the second supplementary charge sheet dated 15.11.2014 in Criminal Case No.62851 of 2014 for the offences punishable under Sections 420, 465, 467, 468, 471, 477A and 120B IPC and issue of process to the respondent-accused shall stand restored. The respondent-accused is directed to appear before the trial court on 27.02.2019 and the trial court shall proceed with the matter in accordance with law.

..........................J.
[R. BANUMATHI]

.............................J.
[INDIRA BANERJEE]

New Delhi;
February 05, 2019