

## Important Judgments & Rulings

### ***Framing of charge : Court to consider whether there is ground for proceeding; not to evaluate evidence***

In a significant judgement, (*State of M.P Vs. S.B. Johari and others - 2000 SCC(Cri) 311*) the Supreme Court has held that at the stage of framing the charge, the court has to prima facie consider whether there was sufficient ground for proceeding against the accused. It cannot appreciate evidence to arrive at a conclusion in the matter.

The prosecution alleged that the Dean, the Superintendent, the Medical–Officer-in-Charge of the Stores, and the Accountant of S.G. Cancer Hospital, Indore, in criminal conspiracy with M/s. Allied Medicine Agency, Indore, purchased medicines for the hospital by misusing their official position and using forged documents and caused wrongful loss to the Government. It was further alleged that on the basis of bogus vouchers, payments were made for even those items which were not actually purchased. On the basis of material on record, it was pointed out that some medicines were purchased at Jabalpur at roughly half the price.

The Sessions Judge framed the charge after considering the material on record. However, that charge was quashed by the High Court by accepting the contention raised by the respondents and considering the details of the material produced. According to the High Court, the role of the Medical Officer-in-Charge was limited to the preparation of comparative statements of tenders and the other two persons were members of the Purchase Committee. They arrived at a conclusion that comparison of variation in prices at different places at different periods on the basis of separate transactions between different persons could not straight away be made the basis for alleging corruption charges against the accused. The Court held that as the medicines were purchased from two places at different periods, there would be a possibility of price difference. With regard to the Dean and the Superintendent, the Court observed that they were not shown to have any control over the purchase of the items and, therefore, they could not be saddled with the criminal prosecution. The quotations given by the accused firm were genuine. With regard to the Accountant, the High Court observed that he prepared the bills for making payment to the company as per the instructions of his superiors. He was neither empowered to place orders nor competent to make payment thereof, unless the same was approved by the doctors who were actually incharge of the hospital. Therefore, the High Court allowed the appeal as according to them, there was no sufficient material available for framing the charge.

The Supreme Court held that the entire approach of the High Court was illegal and erroneous and it appeared as if the Court was deciding the case as to whether the accused were guilty or not. It was done without considering the allegations of conspiracy relating to the charge under section 120B. In most of the cases, it was only from the available circumstantial evidence that an inference of conspiracy was to be drawn. Further, the High Court failed to consider that the medicines were normally sold at a fixed price and in any set of circumstances, it was for the prosecution to lead necessary evidence at the time

Of trial to establish its case that purchase of medicines for the Cancer Hospital at Indore was at a much higher price than the prevailing market rate. Moreover, non-joining of two remaining members to the purchase committee could not be a ground for quashing the charge. They further observed that the High Court erroneously considered the alleged statement of the manufacturing company that quotations given by them were genuine without there being any cross examination. The High Court ignored the allegation that many of the items were purchased and the amount was paid on bogus vouchers. The Supreme Court observed that the High Court instead of considering the prima facie case, appreciated and weighed the material on record for coming to the conclusion that charge against the respondent could not have been framed. It is a settled law that at the stage of framing charge, the Court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court was not required to appreciate the evidence and arrive at the conclusion that the materials produced were sufficient or not for convicting the accused. Therefore, the Supreme Court held that there was no justifiable reason for the High Court to quash the charge framed by the trial court.