

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Crl R No. 25/2026
CrIM No. 625/2026

Reserved on: 16.09.2026
Pronounced on: 25.09.2026
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Whether the operative part of Judgment is
Pronounced? **FULL**

Directorate of Enforcement

..... Petitioner(s)

Through: Mr. S. V. Raju, Additional Solicitor General
(Through Virtual Mode)
Mr. Umar Rahid Wani, Advocate
Mr. Zoheb Hussain, Special Counsel for ED
(Through Virtual Mode)

V/s

Md. Saleem Khan and Others

..... Respondent(s)

Through: Mr. Syed Faisal Qadri, Sr. Advocate with
Mr. Mir Adnan Zahoor, for R-5
Mr. Shariq J. Reyaz, Advocate for R-2 & 3
Mr. N. A. Ronga, Advocate for R-4
Mr. A. Hanan, Advocate for R-6
Mr. Faizan Ahmad Ganie, CGC for R-7

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR-JUDGE

J U D G M E N T

1. The present petition lays challenge to the order dated 22.03.2026 passed by the Court of Chief Judicial Magistrate (CBI Cases), Srinagar (hereinafter referred to as the "Trial Court"), whereby the application, preferred by the Directorate of Enforcement, Srinagar Office (hereinafter referred to as the "petitioner"), seeking addition of charges for offences punishable under Sections 411 and 424 of the Ranbir Penal Code ("RPC"), came to be dismissed. Challenge is also laid to the order

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dated 30.03.2026, to the extent the aforesaid offences were omitted while charges were framed against the respondents.

2. It is the case of the petitioner that the charge-sheet presented by the Central Bureau of Investigation (“CBI”), arising out of FIR No. 05/2015 registered by CBI, Special Crime-II, New Delhi, for offences under Sections 120-B, 406 and 409 RPC, itself contains sufficient material warranting consideration of charges under Sections 411 and 424 RPC as well. According to the petitioner, although it was not a party to the proceedings and the charge-sheet having been laid by the CBI, its application merely sought addition of charges in respect of offences which, as maintained by it, stood disclosed from the material already forming part of the charge-sheet.
3. It is further contended that this Court as well as the Hon’ble Supreme Court had granted liberty to the petitioner to move the aforesaid application. It is submitted that the Trial Court had, by an earlier order, also upheld the maintainability of the application. In these circumstances, according to the petitioner, it was not open to the Trial Court to subsequently dismiss the application on the ground of maintainability.
4. The petitioner further contends that the finding of the Trial Court that it lacked locus standi to seek addition of charges is contrary not only to the Trial Court’s earlier order but also to the orders passed by this Court and the Hon’ble Supreme Court. Emphasis is placed upon the observation made by this Court permitting the petitioner to proceed “if so permitted”, as also upon the liberty subsequently granted by the

Hon'ble Supreme Court. It is urged that the application seeking addition of charges was moved pursuant to the aforesaid liberty, which, according to the petitioner, has not received due consideration at the hands of the Trial Court.

5. The petitioner, accordingly, assails the impugned order as suffering from illegality. It is further urged that, even assuming that the petitioner was a stranger to the criminal proceedings, it was nevertheless entitled to bring to the notice of the Trial Court that the material placed before it disclosed, apart from offences under Sections 120-B, 406 and 409 RPC, sufficient grounds for consideration of charges under Sections 411 and 424 RPC. It is also contended that, once the Trial Court had earlier recognized the maintainability of the application and the petitioner's locus to move the same, it could not subsequently revisit that determination and dismiss the application on the ground of lack of locus standi, as such a course would amount to an impermissible review of its own order.
6. In support of the aforesaid contention, reliance is placed upon ***Abdul Basit v. Mohd. Abdul Kadir Choudhary*, (2014) 10 SCC 754; *Adalat Prasad*, (2004) 7 SCC 338; and *Subramaniam Sethuraman v. State of Maharashtra*, (2004) 13 SCC 324**, to contend that a criminal court cannot review or recall its own order except where such power is expressly conferred by law. It is further contended that the impugned order suffers from non-application of mind inasmuch as the Trial Court placed reliance upon the judgment rendered in *Prakash Industries*, which, according to the petitioner, subsequently came to be set aside by

the Division Bench of the Delhi High Court in **Enforcement Directorate v. Prakash Industries, 2025 SCC Online Del 8243**.

7. The case, as projected by the petitioner, pertains to the alleged misappropriation of funds received by the Jammu and Kashmir Cricket Association (“JKCA”) from the Board of Control for Cricket in India (“BCCI”) for the development and promotion of cricket in Jammu and Kashmir. It is stated that the BCCI remitted approximately Rs.112.13 crores to the JKCA and that, during investigation, the CBI found approximately Rs.43.69 crores thereof to have been allegedly misappropriated. According to the petitioner, the charge-sheet discloses that respondent Ahsan Mirza, in conspiracy with the then President of the JKCA, Dr. Farooq Abdullah; the then General Secretary, Mohammad Saleem Khan; and bank official, Bashir Ahmad Misger, allegedly diverted funds belonging to the JKCA into personal accounts and thereafter utilized the same for private business dealings. It is alleged that the funds were siphoned off through unauthorized operations and transactions. The petitioner further asserts that such diversion was facilitated through unauthorized resolutions and by obtaining signed cheques on the pretext that payments were to be made to players, whereas the proceeds thereof were allegedly credited to the personal account of accused Ahsan Mirza. The funds in question, according to the petitioner, had been earmarked for the development of cricket.
8. The petitioner further contends that the offences contemplated under Sections 411 and 424 RPC arise from, and are intrinsically connected with, the alleged offences under Sections 406 and 409 RPC. Reference

is made to Section 410 RPC, which defines “stolen property” so as to include property in respect of which criminal misappropriation or criminal breach of trust has been committed. Placing reliance upon *Mir Nagvi Askari v. CBI*, (2009) 15 SCC 643, it is argued that Sections 410 and 411 RPC would be attracted where funds obtained or diverted through criminal breach of trust are subsequently received by another accused with the requisite knowledge. It is further contended that the alleged participation of the accused persons in the conspiracy and the attendant circumstances constitute material from which the requisite knowledge regarding the character and source of the property could be inferred for the limited purpose of consideration of charge.

9. *Per contra*, learned counsel for the respondents has opposed the petition and submitted that the proceedings had their genesis in FIR No. 27/2012 dated 10.03.2012, initially registered against two persons, namely, Mohammad Saleem Khan and Ahsan Mirza, for offences punishable under Sections 120-B, 406 and 409 RPC. During the pendency of the investigation, a Public Interest Litigation, being *Majid Yaqoob Dar and Another v. State of J&K and Others*, PIL No. 08/2014, came to be instituted before this Court. By order dated 03.09.2015, this Court transferred the investigation of the aforesaid FIR to the CBI. Pursuant thereto, the CBI re-registered the case as RC-5(S)/2015-CBI/SCU-V/SC-II/New Delhi dated 21.09.2015, in respect of offences under Sections 120-B, 406 and 409 RPC.
10. According to the respondents, the investigation conducted by the CBI did not disclose commission of offences under Sections 411 or 424 RPC. The investigation ultimately culminated in presentation of a

charge-sheet before the Trial Court against the respondents, wherein respondent No.5 was arrayed as an accused for the first time. It is submitted that during the pendency of the proceedings arising out of the said charge-sheet, the Directorate of Enforcement registered ECIR No. SRZO/01/2018 on the basis of the CBI case. According to the respondents, the petitioner proceeded on the premise that Section 120-B RPC constituted a scheduled offence under the Prevention of Money Laundering Act, 2002 (“PMLA”) and, on that basis, assumed jurisdiction to register the ECIR and initiate proceedings under the PMLA.

11. It is further submitted that one of the accused, Ahsan Ahmad Mirza, challenged the proceedings initiated by the petitioner by filing CRM(M) No. 160/2020 before this Court. The said proceedings were quashed by this Court upon holding, *inter alia*, that in absence of a scheduled offence, the petitioner lacked jurisdiction to register the ECIR and launch prosecution under Section 3 of the PMLA. While doing so, however, liberty was reserved to the petitioner to approach the Trial Court for alteration of charge, if otherwise permissible in law.
12. Learned counsel for the respondents further submits that while quashing the proceedings initiated by the petitioner, this Court had specifically adverted to the question of applicability of Sections 411 and 424 RPC. It was observed that the Trial Court, on the basis of the material collected during investigation and placed before it, would be free to determine what offences were disclosed against the accused apart from Sections 120-B, 406 and 409 RPC, and whether offences under Sections 411 and 424 RPC could also be said to have been made

out. According to the respondents, this Court had further made it clear that the petitioner could not be permitted to pre-empt the outcome of the exercise which the competent criminal court was required to undertake at the stage of consideration of charge/discharge. It is, therefore, contended that, on the basis of the charge-sheet presented by the CBI, the offences disclosed were confined to Sections 120-B, 406 and 409 RPC, none of which, according to the respondents, constituted a scheduled offence for the purposes of the PMLA in the circumstances of the case.

13. Learned counsel for the respondents has also placed reliance upon ***Pavana Dibbur v. Directorate of Enforcement*, 2023 SCC OnLine SC 1586**, to contend that an offence under Section 120-B IPC would constitute a scheduled offence for the purposes of the PMLA only where the criminal conspiracy alleged is directed towards commission of an offence which is itself included in the Schedule to the PMLA. It is further contended that neither the investigation conducted by the CBI nor the proceedings undertaken by the petitioner had, at any earlier stage, disclosed commission of offences under Sections 411 and 424 RPC. According to the respondents, it was only after the pronouncement of the judgment in ***Pavana Dibbur*** (supra) that the petitioner moved an application dated 18.09.2024 before the Trial Court, invoking Section 216 CrPC and seeking addition of charges under Sections 411 and 424 RPC.

14. Learned counsel submits that the timing of the application is significant. According to the respondents, the application was not occasioned by discovery of any fresh material in the predicate-offence proceedings

pending before the Trial Court, but was moved after the legal basis upon which the petitioner had asserted jurisdiction under the PMLA was affected by the law declared in *Pavana Dibbur* (supra). It is, therefore, contended that recourse to Section 216 CrPC was intended to overcome the jurisdictional impediment faced by the petitioner under the PMLA by securing addition of offences which are stated to be scheduled offences. On this premise, it is argued that Section 216 CrPC cannot be employed as a collateral mechanism to reopen or effectively seek reconsideration of the investigation already conducted by the CBI. Supporting the impugned order passed by the Trial Court, learned counsel submits that the petitioner had failed to sustain the proceedings initiated against Ahsan Mirza before this Court and that, in the absence of any scheduled offence forming part of the CBI prosecution, the Trial Court rightly declined to entertain the petitioner's application. It is further contended that, in such circumstances, no proceeds of crime within the meaning of the PMLA could be attributed to the respondents, particularly respondent No. 5.

15. Learned counsel further contends that the petitioner cannot supplant or override the investigative and prosecutorial discretion exercised by the CBI merely with a view to securing the addition of a scheduled offence which, according to the respondents, is otherwise not disclosed from the material on record. It is submitted that, while disposing of the PIL, the Division Bench of this Court had entrusted the investigation of the entire matter to the CBI, which, after conducting investigation, concluded that offences under Sections 120-B, 406 and 409 RPC alone were made out. The applicability of Sections 411 and 424 RPC is also

disputed on merits. It is argued that the said provisions contemplate offences distinct from the principal offence by targeting persons who receive, retain, deal with or otherwise assist in dealing with property having the character of stolen property, rather than the principal offender who is alleged to have committed theft, criminal misappropriation or criminal breach of trust in respect of such property.

16. On the aforesaid premise, it is contended that the respondents, having been arraigned as principal offenders for the alleged commission of offences under Sections 406 and 409 read with Section 120-B RPC, cannot simultaneously be brought within the ambit of Sections 411 and 424 RPC in respect of the very same property and on the same factual foundation. In this regard, learned counsel for the respondents has also referred to *Mir Nagvi Askari* (supra), which has been relied upon by the petitioner itself. Particular emphasis is placed upon paragraph 181 of the said judgment to contend that the principle enunciated therein does not advance the petitioner's case and, on the contrary, supports the respondents' contention regarding the distinct nature and ingredients of the offence of receiving stolen property vis-à-vis the principal offence, from which such property derives its character.

17. Heard learned counsel for the parties and examined the record.

18. The Trial Court, in terms of the impugned order, has proceeded to frame charges against the respondents for offences punishable under Sections 120-B, 406 and 409 RPC. It has, at the same time, observed that any addition or alteration of charge, if warranted, can be undertaken by the Court *suo motu* at any stage of the trial and at any time before

pronouncement of judgment, particularly after the statements of the material witnesses have been recorded.

19. The principal challenge urged by the petitioner against the impugned order is that the Trial Court has negated its locus standi to maintain an application seeking addition of charges, without taking into account the orders passed by this Court as well as by the Hon'ble Supreme Court, whereby liberty had been reserved in favour of the petitioner to avail the remedy in accordance with law.

20. Attention of this Court has also been invited to the order dated 19.08.2025 passed by the Trial Court. On that occasion, the petitioner had sought deferment of consideration of its application for addition of offences on the ground that the main matter was itself listed for consideration on charge/discharge. In the attending circumstances, the Trial Court had observed that it could not be said "that the application of the applicant is not maintainable, when leave has been granted to the petitioner to apply before this Court for addition of charges". The aforesaid observation assumes significance while examining the subsequent conclusion of the Trial Court that the petitioner lacked locus standi to maintain such an application.

21. At this stage, it would be apposite to notice the settled principles governing consideration of a case at the stage of framing of charge. In ***Union of India v. Prafulla Kumar Samal***, AIR 1979 SC 366, the Hon'ble Supreme Court has delineated the parameters within which the Court is required to exercise its jurisdiction at the stage of charge/discharge. The Court is required, for the limited purpose of determining whether a prima facie case has been made out, to consider the material

placed before it and is vested with the power to sift and weigh such material for that limited purpose. Where the material gives rise to grave suspicion against the accused, the Court would be justified in framing the charge. Conversely, where two views are reasonably possible and the material gives rise merely to suspicion, as distinguished from grave suspicion, the Court would be justified in discharging the accused. The Judge, while exercising such jurisdiction, is not expected to act merely as a post office or as the mouthpiece of the prosecution. The Court is required to consider the broad probabilities of the case and the overall effect of the material and documents placed before it. This exercise, however, does not extend to undertaking a roving or meticulous enquiry into the merits and demerits of the prosecution case, which is a matter for trial.

22. Tested against the aforesaid principles, the manner in which the Trial Court has dealt with the application preferred by the petitioner requires consideration. During the course of arguments, learned counsel appearing for the respondents fairly conceded that, even if the petitioner were to be regarded as a stranger to the predicate-offence proceedings, its position could, at the least, be examined from the standpoint of furnishing information relevant to such proceedings. Reference in this regard was made to Section 66 of the PMLA to submit that where the Directorate of Enforcement comes into possession of information or material which may have a bearing upon investigation of the predicate offence, such information may be communicated to the investigating agency concerned. Viewed from this limited perspective, and particularly when the petitioner had been permitted to move the Trial

Court, the application could, at the very least, be treated as bringing to the notice of the Court the petitioner's contention that the material already forming part of the CBI charge-sheet disclosed offences under Sections 411 and 424 RPC as well.

23. The Trial Court was, therefore, required to examine that contention on its own merits and determine whether the material placed along with the charge-sheet prima facie disclosed the ingredients of the additional offences sought to be invoked. The impugned order, however, merely records a prima facie conclusion regarding the existence of offences under Sections 120-B, 406 and 409 RPC without specifically examining the petitioner's contention as to whether the very same material also disclosed the ingredients of Sections 411 and 424 RPC. The issue raised in the application, therefore, did not receive a specific determination on merits.

24. When confronted with the aforesaid aspect, learned counsel for the respondents fairly conceded that the Trial Court ought to have considered the application on its merits and dealt with the contention regarding applicability of Sections 411 and 424 RPC. The failure to address this aspect, therefore, renders the impugned order vulnerable to that extent. During the hearing, the parties were also put to notice that one possible course available to this Court was to remit the matter to the Trial Court for fresh consideration of the aforesaid issue. Mr. S. V. Raju, learned Additional Solicitor General of India, as also learned Senior Counsel Mr. Syed Faisal Qadri and learned counsel Mr. Shariq J. Reyaz and Mr. N. A. Ronga, however, fairly submitted that, instead of remanding the matter, this Court may itself examine the issue and

correct the error, if any, committed by the Trial Court, particularly as the material on the basis whereof the question is required to be determined, is already before the Court.

25. It is in the aforesaid backdrop that this Court proceeds to examine the petitioner's contention on merits. There is, however, a preliminary aspect which requires to be clarified. Once the Trial Court had earlier recorded that the application moved by the petitioner was maintainable, having regard to the liberty reserved in its favour by the orders passed by this Court and the Hon'ble Supreme Court, it could not have subsequently declined to consider the application merely by holding that the petitioner lacked locus standi, without addressing the effect of those orders and its own earlier determination regarding maintainability.

26. The learned ASGI appearing for the petitioner went a step further and contended that the orders passed by the superior Courts had, in effect, recognized the petitioner as an interested and necessary party in proceedings relating to the scheduled offence. It is, however, unnecessary to pronounce upon that wider proposition for adjudication of the present controversy. The limited question requiring consideration is whether, once the petitioner had been permitted to approach the Trial Court and had placed before it a contention that the material contained in the CBI charge-sheet disclosed additional offences, the Trial Court was required to examine that contention in accordance with the settled principles governing framing or alteration of charge.

27. The answer to that limited question has necessarily to be in the affirmative. The grant of liberty to approach the Trial Court did not, by

itself, establish that offences under Sections 411 and 424 RPC stood made out, nor could it compel the Trial Court to frame such charges. It did, however, require the Trial Court to consider the contention placed before it and independently determine, on the basis of the material forming part of the record, whether the ingredients of the offences sought to be added were prima facie disclosed. The matter must, therefore, now be examined on its substantive merits, bearing in mind that the CBI charge-sheet presently attributes to the respondents' offences under Sections 120-B, 406 and 409 RPC and that the question before this Court is whether the material underlying that charge-sheet additionally furnishes sufficient basis, at the stage of charge, for attracting Sections 411 and/or 424 RPC.

28. Admittedly, the offences punishable under Sections 406 and 409 RPC do not find place in Part A of the Schedule to the Prevention of Money Laundering Act, 2002 ("PMLA"). The significance of the existence of a scheduled offence as a jurisdictional foundation for proceedings under the PMLA is no longer *res integra*. In ***Vijay Madanlal Choudhary v. Union of India*, 2022 SCC OnLine SC 929**, the Hon'ble Supreme Court has explained that the authorities under the PMLA cannot proceed against a person on a notional or presumptive basis that a scheduled offence has been committed. The scheduled offence must be registered with the jurisdictional police or be the subject matter of an enquiry or trial, including proceedings arising out of a criminal complaint before a competent forum. Equally, where a person is finally discharged or acquitted of the scheduled offence, or the criminal proceedings relating thereto are quashed by a court of competent

jurisdiction, the foundation for proceeding against such person for money laundering in relation to property linked to that scheduled offence would cease to survive.

29. In the present case, the petitioner has questioned the judgment rendered by a Coordinate Bench of this Court in *Ahsan Mirza's case*, whereby the proceedings initiated by the petitioner under Sections 3 and 4 of the PMLA came to be quashed. The said judgment is stated to be under challenge before the Hon'ble Supreme Court. It is, however, not disputed that there is no stay of the operation of the said judgment as on date. Consequently, unless altered or stayed by a superior forum, the judgment continues to operate and its legal consequences cannot be ignored in the present proceedings. The matter has also to be viewed in the light of *Pavana Dibbur v. Directorate of Enforcement*, 2023 SCC OnLine SC 1586, wherein the Hon'ble Supreme Court has explained the circumstances in which an offence of criminal conspiracy under Section 120-B IPC can constitute a scheduled offence under the PMLA. Merely because Section 120-B finds mention in Part A of the Schedule would not, by itself, render every offence of criminal conspiracy a scheduled offence; the conspiracy must relate to commission of an offence which is itself a scheduled offence. Thus, on the basis of the offences presently forming the subject matter of the CBI prosecution, namely Sections 120-B, 406 and 409 RPC, the petitioner cannot derive jurisdiction under the PMLA merely by treating Section 120-B RPC, in isolation, as the scheduled offence.

30. It is in this backdrop that the application seeking addition of offences under Sections 411 and 424 RPC assumes significance. The effect of

the relief sought by the petitioner is that, if either of the offences sought to be added is found prima facie disclosed and forms part of the predicate-offence proceedings, the same may have a consequential bearing upon the petitioner's jurisdiction under the PMLA. That consequence, however, can neither constitute a ground for adding a charge nor, by itself, furnish a ground for refusing to add one. The question must be determined solely on the basis of the material forming part of the predicate-offence proceedings and the ingredients of the offences sought to be invoked. The jurisdictional consequences which may thereafter follow under the PMLA are distinct from the exercise which the criminal court is required to undertake while determining whether the material before it warrants framing or alteration of charge.

31. Viewed thus, the locus of the petitioner, at least for the limited purpose of bringing relevant material or information to the notice of the Trial Court, could not have been altogether negated. This is particularly so when the petitioner had earlier been granted liberty to approach the Trial Court and the Trial Court itself had treated its application as maintainable. The Trial Court, therefore, adopted an unduly restrictive approach in rejecting the application merely on the ground of absence of locus standi. Once the application had been entertained as maintainable, the appropriate course was to examine whether the material relied upon therein, which essentially formed part of the CBI charge-sheet itself, prima facie satisfied the ingredients of Sections 411 and/or 424 RPC. The Trial Court having failed to undertake that exercise, its order, to that extent, cannot be sustained. This conclusion, however, does not dispense with the necessity of independently

examining whether the additional offences sought by the petitioner are in fact disclosed from the material on record.

32. The stand taken by the CBI in its objections to the present petition also assumes relevance. The CBI has maintained that its investigation disclosed commission of offences under Sections 120-B, 406 and 409 RPC and that the Trial Court has accordingly framed charges against the respondents for those offences. It has further maintained that the investigation did not disclose material warranting incorporation of charges under Sections 411 and 424 RPC. The CBI has also adverted to the observation of the Trial Court that the power to alter or add a charge can be exercised suo motu at any stage of the trial before pronouncement of judgment, should the evidence subsequently brought on record justify such a course. Thus, according to the investigating agency which conducted the predicate-offence investigation, the material presently available warranted charges under Sections 120-B, 406 and 409 RPC alone, without foreclosing the statutory power of the Trial Court to alter or add a charge at an appropriate subsequent stage.
33. The prosecution case, as emerging from the CBI charge-sheet, is essentially one of criminal misappropriation and criminal breach of trust in respect of funds received by the JKCA from the BCCI. It is alleged, inter alia, that Ahsan Ahmad Mirza was illegally permitted to function as Treasurer of the JKCA during the relevant period and was extended undue favour by the other accused. It is further alleged that he acted in collusion with Bashir Ahmad Misger, then Senior Executive Manager of the concerned bank, who facilitated the operation of existing JKCA bank accounts and the opening and operation of

additional accounts in an unauthorized manner, thereby causing wrongful gain to Ahsan Ahmad Mirza and others and a corresponding wrongful loss to the JKCA. The amount alleged to have been misappropriated has been quantified at approximately Rs.43.69 crores. Upon completion of investigation, the CBI presented the charge-sheet on 16.07.2018. The accusation therein was that the concerned accused had entered into a criminal conspiracy and, in furtherance thereof, committed criminal breach of trust and misappropriation of JKCA funds. The offences found by the investigating agency to be disclosed were accordingly under Section 120-B read with Sections 406 and 409 RPC against Mohammad Saleem Khan, Ahsan Ahmad Mirza, Mir Manzoor Gazanfar, Bashir Ahmad Misger, Dr. Farooq Abdullah and Gulzar Ahmad Beigh. It is also borne out from the record that accused Mir Manzoor Gazanfar (A-3) and Gulzar Ahmad Beigh were tendered pardon by the competent Magisterial Court vide order dated 10.07.2018.

34. During the course of hearing, learned ASGI sought, in particular, to rely upon the role attributed to Bashir Ahmad Misger to contend that the material disclosed receipt of misappropriated or stolen property. The charge-sheet, however, attributes to him participation in and facilitation of the alleged conspiracy itself. His alleged role, as projected by the CBI, was in facilitating the operation and opening of bank accounts and thereby assisting the diversion or misappropriation of the funds. It is on that factual premise that he has been arraigned as a participant in the principal conspiracy. The distinction is material because the question under Section 411 RPC is not merely whether the property can answer

the description of “stolen property”, but whether the person sought to be charged under Section 411 received or retained such property with the requisite knowledge or reason to believe that it was stolen property, as distinguished from being a principal participant in the very offence through which the property acquired that character.

35. Section 410 RPC gives an extended meaning to the expression “stolen property” and brings within its ambit, inter alia, property in respect of which criminal misappropriation or criminal breach of trust has been committed. Property subjected to criminal breach of trust may, therefore, acquire the character of stolen property for the purposes of the succeeding provisions. That proposition, however, does not by itself attract Section 411 RPC against every person implicated in the underlying criminal breach of trust. Section 411 addresses the distinct offence of dishonestly receiving or retaining stolen property with knowledge or reason to believe that the property is stolen. The distinction between the principal offender and the receiver of stolen property assumes importance in this regard.

36. The judgment in *Mir Nagvi Askari* (supra), relied upon by the petitioner, itself elucidates this distinction. In that case, the property which had become stolen property by reason of criminal breach of trust committed by the principal offenders was transferred to and received by another accused. It was in that factual setting that the ingredients of Section 411 were found established against the recipient. The decision recognizes that the provisions relating to receiving stolen property are directed against a class of offenders distinct from the principal thief, robber, misappropriator or person committing criminal breach of trust.

The principal offender in respect of the offence by which the property becomes “stolen property” does not, merely on that account, become a receiver of such stolen property. For attracting Section 411 RPC, therefore, the material must prima facie disclose, apart from the stolen character of the property, its receipt or retention by the person concerned and his knowledge or reason to believe, at the relevant time, that the property was stolen. There must consequently be material indicating a receipt or retention distinguishable from the very act of misappropriation or criminal breach of trust through which the property acquired its character as stolen property.

37. When the material in the present case is tested against the aforesaid principles, the reliance placed by the petitioner upon *Mir Nagvi Askari* (supra) does not advance its case. The respondents have been projected in the CBI charge-sheet as participants in the principal conspiracy through which the JKCA funds were allegedly misappropriated or subjected to criminal breach of trust. The case against Bashir Ahmad Misger, in particular, is that he facilitated the unauthorized banking operations which enabled the alleged diversion of funds. The material, as presently placed, does not disclose a distinct subsequent receipt by him of property which had already acquired the character of stolen property through an antecedent act of criminal misappropriation or criminal breach of trust committed by another. In other words, the allegation against him is of participation in and facilitation of the principal offence and not of subsequently receiving or retaining the property as stolen property. The same distinction applies to the other respondents who, on the prosecution case itself, have been arraigned as

participants in the conspiracy to commit criminal breach of trust and misappropriation.

38. The essential factual foundation necessary for invoking Section 411 RPC is, therefore, absent at this stage. A person cannot, merely because he is alleged to have participated in the criminal breach of trust by which the property acquired the character of “stolen property”, be treated on that very factual foundation as a receiver of such stolen property. Such an approach would obliterate the distinction maintained by Sections 410 and 411 RPC between the principal offence and the subsequent receipt or retention of the property derived therefrom. Consequently, on the material presently forming part of the CBI charge-sheet, no prima facie case for addition of a charge under Section 411 RPC is made out against the respondents. The mere fact that the alleged misappropriated funds would answer the statutory description of “stolen property” under Section 410 RPC does not, without satisfaction of the independent ingredients of Section 411 RPC, justify framing of a charge for dishonestly receiving stolen property.

39. At the cost of repetition, it needs to be noticed that the material placed before the Court does not disclose a distinct money trail demonstrating receipt or retention of the allegedly misappropriated funds by any of the respondents in the character of a receiver of stolen property. During the course of arguments, learned counsel for the petitioner fairly conceded that what emerges from the CBI charge-sheet is the transfer of JKCA funds into certain personal accounts in furtherance of the alleged scheme of misappropriation. Such transfer, however, forms part of the very transaction constituting the alleged criminal breach of trust and

misappropriation attributed to the principal offenders. It does not, without something more, establish a subsequent and distinct receipt or retention of property in the character contemplated by Section 411 RPC.

40. Learned counsel for the petitioner sought to emphasize that an amount of Rs.50.00 lakhs was parked, at the instance of Bashir Ahmad Misger, in the account of Nisar Ahmad Sultan and was thereafter transferred to the personal account of Ahsan Mirza. Reference was also made to the personal account of Gulzar Ahmad Beigh, into which JKCA funds were allegedly transferred and thereafter passed on to Ahsan Mirza. Even if the aforesaid allegations are taken at their face value for the limited purpose of consideration of charge, the role attributed to Bashir Ahmad Misger is essentially that of facilitating the diversion and misappropriation of JKCA funds by the co-accused. The allegation, therefore, is of his participation in the common design to misappropriate the funds and not of his subsequently receiving or retaining property which had already acquired the character of stolen property independently of his participation in the principal offence. Significantly, no material has been pointed out to show that any part of the allegedly misappropriated amount was received in his personal account as stolen property.

41. The knowledge attributed to Bashir Ahmad Misger regarding the unauthorized diversion of JKCA funds may have relevance to the allegation of conspiracy and his participation in the principal transaction, but such knowledge cannot, by itself, substitute the essential requirement of dishonest receipt or retention of stolen property

contemplated under Section 411 RPC. Knowledge that property is being misappropriated and participation in such misappropriation are conceptually distinct from receiving or retaining property, already rendered stolen property, with knowledge or reason to believe that it bears such character. It is in this backdrop that the stand taken by the CBI in its objections assumes significance. The investigating agency has categorically maintained that its investigation did not yield material warranting invocation of Sections 411 and 424 RPC. The material referred to by the petitioner does not prima facie disclose a distinct act of receipt or retention so as to attract Section 411 RPC against the respondents.

42. The petitioner has, nevertheless, invoked Section 216 CrPC in support of its plea for addition of charges and has contended that a charge may be added or altered at any stage of the proceedings. The proposition, stated in such broad terms, requires qualification. Section 216 CrPC undoubtedly confers wide power upon a criminal court to alter or add to any charge at any time before judgment is pronounced. The statutory power, however, vests in the Court and its exercise must be founded upon material on record which prima facie discloses the offence sought to be added. An application filed by a party or an informant may bring relevant material or an omission to the notice of the Court, but the jurisdiction exercised under Section 216 remains that of the Court. The provision cannot be understood as conferring upon a party an independent right to insist upon addition of a particular charge irrespective of whether its ingredients are disclosed from the material before the Court.

43. In this regard, reference may appropriately be made to *Anant Prakash Sinha v. State of Haryana and another*, (2016) 6 SCC 105. In that case, an application was moved by the informant seeking addition of a charge under Section 406 IPC on the basis of allegations relating to criminal breach of trust in respect of her *stridhan*. The accused had initially been charge-sheeted for offences under Sections 498-A and 323 read with Section 34 IPC and charges had been framed accordingly. During the course of trial, the informant moved an application under Section 216 CrPC pointing out that her statement recorded under Section 161 CrPC contained specific allegations regarding misappropriation of *stridhan*. The Magistrate examined the material already forming part of the record, including the allegations relating to *stridhan*, and found that a prima facie case for addition of a charge under Section 406 IPC was disclosed.
44. The matter eventually reached the Hon'ble Supreme Court, where the exercise of jurisdiction under Section 216 CrPC was examined in the context of the material available before the Trial Court. The Hon'ble Supreme Court held, in substance, that an application by an informant bringing an omission or defect in the charge to the notice of the Court cannot be rejected merely because the statutory power under Section 216 is exercisable by the Court. Such an application may serve the purpose of drawing the Court's attention to material warranting alteration or addition of a charge, whereupon the Court is required to exercise its own independent judgment.
45. The principles emerging from *Anant Prakash Sinha* (supra) make it clear that the power under Section 216 CrPC is intended to enable the

Court to correct a defect in, or omission from, a charge whenever the material before it so warrants. Thus, where an offence is prima facie disclosed from the material already produced before the Court but a charge in respect thereof has inadvertently not been framed, the Court is not rendered powerless merely because the trial has commenced. Equally, if evidence subsequently recorded during trial discloses the necessity of altering or adding a charge, the Court may exercise the power at that stage as well, subject to the safeguards prescribed by law. The controlling consideration is, therefore, whether the charge proposed to be added or altered accords with the material available before the Court. The power cannot be exercised merely because an application seeking such addition has been filed; nor can the Court decline to consider relevant material merely because the omission is brought to its notice by a person other than the prosecuting agency. What ultimately governs the exercise is the existence of material furnishing a prima facie foundation for the proposed charge.

46. It would also be incorrect to construe Section 216 CrPC as meaning that a charge already framed can be altered or supplemented only after further evidence has been recorded during trial. The expression “at any time before judgment is pronounced” is of sufficient amplitude to permit alteration or addition of charge even on the basis of material already forming part of the record, where the Court discovers that a charge which ought to have been framed has been omitted or that the charge as framed requires correction. At the same time, the exercise of such power is circumscribed by the requirement of fairness to the accused. Whenever a charge is altered or added, the Court must ensure

that the accused is afforded an adequate and effective opportunity to meet the altered accusation and that the course adopted does not occasion prejudice or failure of justice. The procedural safeguards accompanying the power of alteration of charge are intended precisely to preserve the right of the accused to a fair trial.

47. Thus, *Anant Prakash Sinha* (supra) does not support the proposition that the filing of an application under Section 216 CrPC necessarily warrants addition of the charge sought therein. What the decision recognizes is that an informant or other person having a permissible basis to approach the Court may bring an omission to its notice; thereafter, it is for the Court, upon an independent consideration of the material on record, to determine whether the ingredients of the proposed offence are prima facie disclosed. Applying the aforesaid principles to the present case, the application moved by the petitioner could not have been rejected solely on the ground that the petitioner lacked locus standi, particularly in view of the liberty earlier reserved in its favour. To that limited extent, the approach adopted by the Trial Court cannot be sustained. The application was required to be considered as bringing to the notice of the Trial Court an alleged omission in the charges framed by it.

48. That, however, does not carry the petitioner any further on merits. The decisive question remains whether the material forming part of the CBI charge-sheet prima facie satisfies the essential ingredients of Sections 411 and 424 RPC. Section 216 CrPC is a procedural source of power to alter or add a charge; it cannot supply substantive ingredients of an offence which are otherwise absent from the material on record. Insofar

as Section 411 RPC is concerned, for the reasons already recorded hereinabove, the material presently available does not disclose a distinct receipt or retention of stolen property by the respondents in the capacity contemplated by that provision. Their alleged acts form part of the principal transaction of conspiracy, misappropriation and criminal breach of trust itself. The mere movement of funds through different accounts in furtherance of the alleged conspiracy cannot, without material disclosing the requisite distinct receipt or retention of stolen property, justify addition of a charge under Section 411 RPC.

49. Reverting to the facts of the present case, and having regard to the material available before the Trial Court as also the stand taken by the CBI, this Court finds no infirmity in the conclusion of the Trial Court that, at this stage, there exists sufficient material for proceeding against the respondents for offences punishable under Sections 120-B, 406 and 409 RPC. The Trial Court has, at the same time, kept the issue of alteration or addition of charge open by observing that, should the evidence recorded during the course of trial disclose commission of any other offence, the Court would not be denuded of its power to alter or add to the charge in accordance with law.

50. The mere insistence of the petitioner that charges under Sections 411 and 424 RPC ought also to have been framed cannot, in the absence of material prima facie satisfying the ingredients of those offences, furnish a basis for their incorporation. As discussed hereinabove, the material forming part of the CBI charge-sheet does not, at this stage, prima facie disclose the essential ingredients necessary for framing charges under Sections 411 and 424 RPC.

51. It cannot, therefore, be said that the Trial Court acted merely as a mouthpiece of the CBI or abdicated its judicial function while proceeding to frame charges under Sections 120-B, 406 and 409 RPC. The conclusion of the Trial Court regarding the absence of locus standi of the petitioner to move the application was undoubtedly erroneous and, for the reasons already recorded, cannot be sustained. That error, however, does not ipso facto entitle the petitioner to the substantive relief of addition of charges under Sections 411 and 424 RPC.

52. The petitioner has not been able to point to sufficient material which, even when treated as information brought to the notice of the Trial Court, would prima facie warrant addition of the aforesaid offences. Section 411 RPC contemplates dishonest receipt or retention of stolen property with the requisite knowledge or reason to believe as to its character, whereas Section 424 RPC requires the existence of material satisfying its distinct ingredients relating to dishonest or fraudulent concealment or removal of property, or assistance in such concealment or removal. On the material presently forming part of the charge-sheet, the necessary factual foundation for attracting either provision has not been demonstrated. The accusations emerging from the CBI charge-sheet are essentially founded upon the alleged criminal misappropriation and criminal breach of trust committed pursuant to a conspiracy amongst the principal offenders. On the material presently available, the ingredients necessary for framing additional charges under Sections 411 and 424 RPC are not prima facie made out.

53. This conclusion, however, cannot be construed as placing any fetter upon the statutory jurisdiction of the Trial Court under Section 216

CrPC. Should any material emerge during the course of trial which prima facie discloses commission of an offence under Sections 411 or 424 RPC, or any other penal provision, it shall remain open to the Trial Court to exercise its power of alteration or addition of charge, strictly in accordance with law and after observing the procedural safeguards available to the accused.

54. In view of the foregoing discussion, the petition is **partly allowed**. The impugned order passed by the Trial Court, insofar as it holds that the petitioner had no locus standi to move the application seeking addition of charges, is **set aside**.

55. The prayer of the petitioner seeking addition of charges under Sections 411 and 424 RPC, however, does not merit acceptance on the basis of the material presently available and is, accordingly, **rejected**. It is clarified that the rejection of the petitioner's prayer for addition of charges under Sections 411 and 424 RPC is confined to the material presently available before the Trial Court and shall not operate as an impediment to the exercise of powers under Section 216 CrPC if, at any subsequent stage of the trial, further material or evidence emerges warranting alteration or addition of charge. Any such exercise shall be undertaken independently by the Trial Court, on its own merits and in accordance with law, uninfluenced by the rejection of the petitioner's present prayer.

(SANJAY PARIHAR)
JUDGE

SRINAGAR

25.09.2026

"Imtiyaz"

Whether the order is speaking: Yes

Whether the order is reportable: Yes