



Crl.R.C.(MD).Nos.11, 79 and 613 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	25.04.2024
Pronounced On	:	16.08.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.RC(MD). Nos.11, 79 and 613 of 2022

and

Crl.M.P(MD).Nos.1394 and 1395 of 2022

Crl.R.C(MD).No.11 of 2022:

A.Geetha

... Petitioner/Accused No.2

Vs.

The State of Tamil Nadu,
Rep. by The Inspector of Police,
Vigilance and Anticorruption Unit,
Nagercoil,
Kanyakumari District.

... Respondent

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to pass an order to revise the order of the learned Special Judge cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District dated 21.10.2021 of dismissing the discharge application filed by the Petitioner made in Crl.M.P.No. 3973 of 2021 in Special Sessions Case No.1 of 2020 forthwith.



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For Petitioner : Mr.G.Thalaimutharasu

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

CrI.R.C(MD).No.79 of 2022:

M.S.Sankar

... Petitioner/Accused No.1

Vs.

State of Tamil Nadu,
Represented by the Inspector of Police,
V & AC Unit, Kanyakumari District,
Nagercoil.
(In Crime No.6/2015)

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the impugned order dated 21.10.2021 passed by the learned Special Judge cum Chief Judicial Magistrate, Nagercoil in CrI.M.P.No.3973 of 2021 in Spl.S.C.No.1 of 2020 and set aside the same and discharge the petitioner by allowing the Revision Petition.

For Petitioner : Mr.S.Palani Velayutham,

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor



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Crl.R.C(MD).No.613 of 2022:

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S.Sundarraaj

... Revision Petitioner/Accused No.3

Vs.

The State of Tamil Nadu,
Rep. by The Inspector of Police,
Vigilance and Anti-corruption Unit,
Nagercoil,
Kanyakumari District.

... Respondent/Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the entire records relating to the impugned order passed in Crl.M.P.No.3974/2021 in Spl.S.C.No.1/2020 dated 21.10.2021 on the file of the learned Special Judge cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District and set aside the same.

For Petitioner : Ms.T.Sathya Selvi

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

COMMON ORDER

These revisions cases have been filed by the Accused No.1 to 3 in Spl.C.C.No. 1 of 2020 on the file of the Learned Special Judge Cum Chief Judicial Magistrate, Nagercoil, Kanyakumari specially constituted to try the offence under the prevention of Corruption Act 1988, to set aside the impugned



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order passed in Crl.M.P.Nos.3973 and 3974 of 2021 in Spl.S.C.No.1 of 2020 dated 21.10.2021 by the learned Special Judge cum Chief Judicial Magistrate, Nagercoil, Kanyakumari District.

2.The petitioners are accused Nos. 1 to 3 and they are said to have committed offence under Sections 120B, 167, 409, 465, 471, 477A and 13 (2) r/w 13(1) (c) and (d) of Prevention of Corruption Act 1988. The Criminal Revision petitioner in Crl.R.C.(MD).No.79 of 2022 was the Assistant Executive Engineer, Rural Development, Thuckalay Panchayat Union and he was arrayed as A1. The Criminal revision petitioner in Crl.R.C.(MD).No.11 of 2022 was the Assistant Engineer of the Rural Development, Thuckalay Panchayat Union and she was arrayed as A2. The Criminal revision petitioner in Crl.R.C.(MD).No.613 of 2022 was the Contractor and he was arrayed as A3. A3 was entrusted with the construction of the retaining wall at Pillaikuzhikulam, Maruthakuruthi Panchayat, Thuckalay, Kanyakumari District. It is duty of A1 and A2 to supervise and disburse the amount after the completion of the work as per the contract. But, the work had not been completed as per the terms of the contract and there was substandard construction of the work and hence they misappropriated panchayat fund to the tune of Rs. 1,22,794/-. Hence, vigilance



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department registered the case in Crime No. 6 of 2015 and investigated and filed the final report before the special Court for the offence under section 120 –B, 167, 409, 465, 471, 477A and 13 (2) r/w. 13(1) (c) and (d) of Prevention of Corruption Act 1988 and the same was taken on file in Spl.C.C.No. 1 of 2020 on the file of the Learned Special Judge Cum Chief Judicial Magistrate, Nagercoil, Kanyakumari.

3. The revision petitioners filed the discharge petition and the same was dismissed by the impugned orders. Challenging the same, the present revisions have been filed.

4.Mr. G.Thalaimuthuarasu, Learned counsel appearing for the accused officers No. 1 and Mr.S.Palanivelayutham, Learned counsel appearing for accused Officer No. 2 and M/s. T.Sathya Selvi learned counsel appearing for the contractor / accused No. 3 made the following submissions :

4.1. The allegation of the respondent vigilance department that without construction of the retaining wall at Pillaikuzhikulam, Maruthakuruthi Panchayat, Thuckalay, Kanyakumari District, the accused did substandard work is not materially substantiated by the respondent through the collected material



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in the course of the investigation. They examined number of witnesses and even one of the witnesses specifically stated that during their visit, due to the filling of the water, they were unable to find out the base concrete of the said retaining wall and other witness stated that the loss was calculated without adopting scientific method and therefore on the basis of the material furnished to the accused under section 207 of Cr.P.C., even suspicious circumstance is not available to frame the charges. Therefore they seek to discharge them from the prosecution. They relied the following judgments of the Hon'ble Supreme Court:

4.1.1. In the case of ***Yogesh v. State of Maharashtra***, reported in **2009 (1) SCC (Crl) 51**.

4.1.2. In the case of ***Kanchan Kumar v. State of Bihar***, reported in **2022 (9) SCC 577**.

5. Mr.S.Ravi, Learned Additional Public Prosecutor appearing for the State made the following submissions :

5.1. The investigating agency collected material to prove that all the accused conspired together and misappropriated the funds of the government without executing the said work of construction of the retaining wall at the Pillaikuzhikulam, Maruthakuruthi Panchayat, Thuckalay, Kanyakumari District



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to the 62.14 cubic meter. They executed 21.10 cubic meter only. But they had obtained the entire amount for the 62.14 cubic meter. In the said circumstances, the above factual aspects argued by the counsel can be agitated during the course of the trial. This court has no jurisdiction to conduct the mini trial. From the prosecution evidence and materials, as held by the Hon'ble Supreme Court in the case of *State of Gujarat vs. Dilipsinh Kishorsinh Rao* reported in *2023 SCC Online SC 1294*, a strong suspicion is enough to frame the charges. In this case, the investigating agency collected enough materials to frame the charges beyond the strong suspicion. Therefore he seeks to dismiss the revision.

6. This Court considered the rival submissions and perused the records and the impugned order and the precedents relied by them.

7. The sum and substances of the final report filed by the investigating agency against the revision petitioner is that A3 is the contractor entrusted with the :

(i). Construction of retaining wall at Pillaikuzhikulam (0/015-0/030) in Maruthakuruthi Village Panchayat of Thuckalay Panchayat Union in Kanyakumari District Est. Rs.4.00 Lakhs.



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(ii). Improvements to Bathing Ghat, Retaining wall and Ramp in Pillaikuzhikulam Tank in Maruthakuruthi Village Panchayat of Thuckalay Panchayat Union in Kanyakumari District Est. Rs.3.00 Lakhs.

7.1. According to the prosecution, they have not constructed the retaining wall to the entire stretch and they constructed only to the extent of 21.10 cubic meter but they obtained the amount for the entire 62.14 cubic meter. Even in the said construction of 21.10 cubic meter, the same was not constructed as per the specification and there was a substandard work and therefore there is a loss to the Government and there is misappropriation of the government fund. On the basis of the measurement and entry in the M book made by the A1 and A2, the above amount was disbursed to A3 contractor.

7.2. Now, the argument of the accused is that to prove the same the available materials are not sufficient. Sufficiency and adequacy to convict the accused is not within the realm of the jurisdiction of this Court under Section 397 r/w. 401 of Cr.P.C. jurisdiction and the Learned Trial Judge correctly dismissed the discharge petition filed by the accused.



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7.3. The Hon'ble Supreme Court issued the following guidelines to consider the discharge petition. The Hon'ble Supreme Court in the case of ***State of Gujarat vs. Dilipsinh Kishorsinh Rao*** reported in ***2023 SCC Online SC 1294*** has held as follows:

DISCUSSION AND FINDINGS

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



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opinion, after such consideration of the material there are grounds for presuming that accused has committed the offence which is triable, then necessarily charge has to be framed.

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

9. If the accused is able to demonstrate from the charge-sheet material at the stage of framing the charge which might drastically affect the very sustainability of the case, it is unfair to suggest that such material should not be considered or ignored by the court at that stage. The main intention of granting a chance to the accused of making submissions as envisaged under Section [227](#) of the [Cr. P.C.](#) is to assist the court to determine whether it is required to proceed to conduct the trial. Nothing in the Code limits the ambit of such hearing, to oral hearing and oral arguments only and therefore, the trial court can consider the material produced by the accused before the I.O.



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10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of Tamil Nadu v. N. Suresh Rajan, [\(2014\) 11 SCC 709](#) adverting to the earlier propositions of law laid down on this subject has held:

“29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would



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not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.”

11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression “the record of the case” used in Section [227 Cr. P.C.](#) is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

17. The plea or the defence when requiring to be proved during course of trial is itself sufficient for framing the charge. In the instant case, the learned Trial Judge has noticed that explanation provided by the respondent accused pertaining to purchase of shop No. 7 of Suman City Complex of plot No. 19, Sector-11 from the loan borrowed and paid by the respondent was outside



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the check period and hence the explanation provided by respondent is a mere eye wash. This is an issue which has to be thrashed out during the course of the trial and at the stage of framing the charge mini trial cannot be held. That apart the explanation offered by the respondent accused with regard to buying of Maruti Wagon-R car, Activa scooter, purchase of house etc., according to the prosecution are all the subject matter of trial or it is in the nature of defence which will have to be evaluated after trial.

18. In the afore-stated circumstances we are of the considered view that High Court had committed a serious error in interfering with the well-reasoned order passed by the trial court. Hence, the impugned judgment dated 11.01.2018 passed in Criminal Revision Application No. 387 of 2016 setting aside the trial court order dated 13.04.2016 requires to be set aside and accordingly it is set aside and appeal is allowed. The trial court shall proceed with the trial having regard to the fact that charge-sheet has been filed in the year 2015 and shall conclude the trial expeditiously and preferably within a period of one year.



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7.4. Applying the above principles, this Court finds no merit in the contention of the petitioner at this stage. The investigating agency collected sufficient materials to show the misappropriation. In the said materials, the accused relied the portion of the 161 (3) of Cr.P.C. statement of the witnesses to show that the same was not sufficient to convict the accused. At this stage this Court can only look into whether the materials are sufficient to frame the charges. Therefore, the contention of the revision petitioner relying on a portion of the statement of the witness without reading the entire portion of the statement to discharge the accused cannot be accepted. It is the duty of the court to read the entire statement and the entire materials. In this aspect, this Court finds that there are sufficient materials to frame the charges namely the work was carried out only for minimum extent and bill was prepared and sanctioned for the uncarried work also i.e., they received the fund for the entire 62.14 cubic meter, whereas they have completed only 21.10 cubic meter. The other allegations are concerned, this Court is not going to the factual discussion in this case since the same amounts to conducting the mini trial. Therefore, this Court is not inclined to entertain this revision.



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7.5. Accordingly, these criminal Revision Cases are dismissed with direction to the Learned trial judge to consider the submission of the learned counsel appearing for the accused No.1 to 3 at the time of the trial without being influenced by the discussion made in these revisions. Consequently, the connected criminal Criminal Miscellaneous Petitions are also closed.

16.08.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
sbn

To

1. The Special Judge cum Chief Judicial Magistrate,
Nagercoil, Kanyakumari District.
2. The Inspector of Police,
Vigilance and Anti-corruption Unit,
Nagercoil, Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
4. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

sbn

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