

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

TUESDAY, THE 13TH DAY OF JANUARY 2015/23RD POUSHA, 1936

Crl.Rev.Pet.No. 45 of 2015 ()

(AGAINST ORDER DATED 11.11.2014 IN CRL.M.P.NO.87/2013 IN
C.C.NO.57 OF 2011 OF THE COURT OF ENQUIRY COMMISSIONER &
SPECIAL JUDGE, THRISSUR)

REVISION PETITIONER/PETITIONER:

ROY J. VELLANIKKARAN
VELLANIKKARAN HOUSE, KUMARANASAN NAGAR,
KADAVANTHARA.

BY ADVS.SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN
SRI.V.S.SHIRAZ BAVA
SRI.JOSEPH KURIAN VALLAMATTAM

RESPONDENTS/RESPONDENTS:

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1. STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA-682 031.
 2. DEPUTY SUPERINTENDENT OF POLICE,
V.A.C.B., ERNAKULAM- 682 031.

BY PUBLIC PROSECUTOR SRI.N.SURESH

THIS CRIMINAL REVISION PETITION HAVING COME UP
FOR ADMISSION ON 13-01-2015, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE-A1: THE TRUE COPY OF THE RELEVANT PAGES OF THE
AUDIT NOTES SUMMONED BY THE HONOURABLE
COURT.

ANNEXURE-A2: TRUE COPY OF THE COMMUNICATION NO.A6-
821/06 DATED 27/03/2014 ISSUED BY THE PUBLIC
INFORMATION OFFICER UNDER THE RIGHT TO
INFORMATION ACT, 2005.

ANNEXURE-A2(a): TRUE COPY OF THE COMMUNICATION DATED
18/12/2003 ISSUED BY THE EXECUTIVE
ENGINEER.

// TRUE COPY //

TKS

P.S. TO JUDGE

C.T.RAVIKUMAR, J.

Crl.R.P.No.45 of 2015

Dated 13th January, 2015

ORDER

This revision petition is filed challenging order dated 11.11.2014 in Crl.M.P.No.87 of 2013 in C.C.No.57 of 2011 passed by the Court of Enquiry Commissioner and Special Judge, Thrissur. The revision petitioner herein is the 5th accused in the said calendar case and he is indicted therein for offences punishable under Sections 13(1) (c) & (d) read with Section 13(2) of the Prevention of Corruption Act and Sections 468, 471, 477A and 120B of the Indian Penal Code. The said allegations which ultimately led to the registration of the aforesaid case pertain to the construction of Kothamangalam bye-pass undertaken by the 4th accused under agreement dated 17.8.2000. Subsequently, certain extra items of work became necessary and supplemental agreement No.II was also executed on 21.5.2001. In that agreement which was executed on 21.5.2001 a provision for supplying 200 reflectors more, at the rate of ₹ 200/- each was incorporated. That agreement was executed by the then Superintending Engineer viz., Sri.Abdul Jabbar with the approval of the Chief Engineer and the work was completed on 29.5.2002. Thereafter,

the 2nd accused took the measurement and found that 1153 reflectors were installed and based on such report a final bill was prepared and submitted to the Executive Engineer. The case of the prosecution is that finding variation on audit of the bill a deviation statement was prepared and based on which supplemental agreement No.III was executed by the petitioner on 21.12.2003. Evidently, the charge against the petitioner is that he had approved the revised estimate without any specification regarding the quality of reflectors and obtained undue pecuniary advantage to the tune of ₹ 2,15,380/-. The petitioner filed a petition for discharge under Section 239, Cr.P.C. taking up the contention that it was the Executive Engineer who passed the bill for payment and in his capacity as the Superintending Engineer he had no role to play at the relevant point of time in the matter of auditing and passing the bill. Evidently, the petitioner has relied on Annexure A2(a) to substantiate his contention. He relies on two documents namely, Annexure A2 and A2(a). Annexure A2 is the communication to the revision petitioner from the Public Information Officer attached to the office of the Executive Engineer. Annexure A2(a) is the communication addressed to the Superintending Engineer by the Executive Engineer. After hearing the learned counsel for the petitioner and the learned Public Prosecutor and also perusing the records and statements of the witnesses the learned Special Judge found that the prosecution had not made out a prima facie case. The court further observed that at the stage of consideration of a

petition under Section 239, Cr.P.C. the primary consideration is whether the prosecution has made out a prima facie case. For deciding that question the court is not expected to look into pros and cons of the case of the prosecution and also the court is not supposed to weigh the evidence. The court also found that in the charge sheet, regarding the role of the petitioner there is mistake that cannot be taken as a ground for discharge. In that context, it is to be noted that a person has to face trial only after the court frames charge based on the final report and other documents produced along with the final report. Evidently, in such circumstances, the court need only to look into the question whether there is any material to be proceeded with. The discussion in the impugned order would make it clear that the learned Special Judge definitely arrived at the prima facie satisfaction regarding the existence of materials 'sufficient to proceed' against the petitioner. The term 'sufficient to proceed' is different and distinct from the term 'sufficient to prove and establish guilt'. See the decision of the Hon'ble Apex Court in Nupur Talwar v. Central Bureau of Investigation (2012 (3) KLT SN 8 (Case No.10) SC). A scanning of the order passed by the learned Special Judge rejecting the prayer of the petitioner for discharge would undoubtedly reveal that the learned Special Judge had gone through the records and also the oral testimonies of the witnesses and took note of the fact that the petitioner had been the Superintending Engineer in Aluva Circle Office during the period 18.6.2001 to 2.12.2004 and the

work in question was completed only on 29.5.2002. I do not find any illegality in the conclusion of the Special Judge that in a petition under Section 239, Cr.P.C. the primary consideration is whether the prosecution has made out a prima facie case. To ascertain what exactly is the prima facie case one need only to look into the decision of the Hon'ble Apex Court in R.S. Nayak v. A.R. Antulay and another (AIR 1986 SC 2045). It is held by the Hon'ble Apex Court therein that the test of "prima facie case" has to be applied before framing charge and the expression "prima facie" means a case established by prima facie evidence which in turn means evidence sufficient in law to raise a presumption of a fact or to establish the fact in question, unless rebutted. Evidently, the charge and the entire records and also the oral testimonies of the witnesses were perused by the learned Special Judge for the purpose of arriving at the conclusion as to whether the prosecution has made out a prima facie case and once the court found that there is a prima facie case the court has to frame a charge and proceed with the case. As noticed hereinbefore, the contention of the petitioner that he was rather implicated in the case is founded on two documents namely Annexure A2 and A2(a). As noticed hereinbefore, they are only two communications from the then Executive Engineer. Annexure A2 is the communication to the revision petitioner from the Public Information Officer attached to the Office of the Executive Engineer and Annexure A2(a) is the communication to the Superintending Engineer by the Executive

Engineer. According to the petitioner, the procedures to be followed in such matters have been elaborately dealt with in Annexure A2(a) report. Whether the said documents are admissible in evidence and even if such documents are admissible in evidence, whether it would outweigh the other evidence are certainly matters of evidence and at any rate, this Court cannot convert this proceedings as a trial for the purpose of deciding the pros and cons of the case and that certainly is outside the scope of revisional jurisdiction. When once it is found that the finding of the learned Special Judge while considering the application filed by the petitioner under Section 239, Cr.P.C. is that the prosecution has succeeded in making out a prima facie case and when once it is found that the said conclusion arrived at by the learned Special Judge cannot be said to be absolutely unfounded in view of materials revealing prima facie case I am of the view that there is no scope for invoking the revisional jurisdiction. In that view of the matter this revision petition is liable to fail and accordingly, it is dismissed. It is made clear that this Court has not made out any observation regarding the admissibility or otherwise of Annexures A2 and A2(a).

Sd/-
C.T.RAVIKUMAR
Judge

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