

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE C.T.RAVIKUMAR

THURSDAY, THE 26TH DAY OF MARCH 2015/5TH CHAITHRA, 1937

Crl.Rev.Pet.No. 345 of 2015 ()

(AGAINST ORDER DATED 18.12.2014 IN CRL.M.P.NO.72/2013 IN C.C.36/2011 OF
THE COURT OF SPECIAL JUDGE (SPE/CBI), THIRUVANANTHAPURAM

REVISION PETITIONER(S)/ACCUSED NOS.1-3.:

1. G.S.NARAYAN,
S/O.GANAPATHY SUBRAMONY, RAM NIVAS, 5/93 KONCHERY ROAD
MULANGUNNATHU KAVU POST, THRISSUR.
2. M.B.CHANDRASHEKHARAN,
S/O.M.BALAKRISHNAN NAIR, PALLATH HOUSE, MANAKODAM
CHENDAMANGALAM, N.PARAVUR, ERNAKULAM DISTRICT
(FLAT NO.406, AKASHDEEP, NEAR BAHUBALI
KALA NALA, BHAVNAGAR, GUJARATH)
3. VIJAYAKUMAR P.NAIR,
S/O.PANKAJAKSHAN NAIR, MAVILETH HOUSE, NEAR WATER TANK
KALLARAKADAVU, PATHANAMTHITTA, (B 234 SAPNA NAGAR,
GANDHIDHAM, KACHCH
GUJARATH)

BY ADVS.SRI.P.P.THAJUDEEN
SRI.MANSOOR.B.H.

RESPONDENT(S)/COMPLAINANT:

SUPERINTENDENT OF POLICE,
CENTRAL BUREAU OF INVESTIGATION, BSFC, BANGLORE.

BY ADV. SRI.P.CHANDRASEKHARA PILLAI, C.B.I.

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON
26-03-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.T. RAVIKUMAR, J.

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CRL.R.P. No.345 OF 2015

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Dated this the 26th day of March, 2015

ORDER

This revision petition is directed against order dated 18.12.2014 in CrI.M.P.No.72 of 2013 in C.C.No.36 of 2011 passed by the Special Judge (SPE/CBI), Thiruvananthapuram. The said CrI.M.P. was filed seeking discharge of the revision petitioners who are accused 1 to 3 in C.C.No.36 2011 of all the offences alleged against them. The revision petitioners along with three others stood charge sheeted for offences punishable under section 120(B) read with section 409, 420, 467, 468, 470, 471 and 477 A IPC and section 13 (2) read with section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. The learned Special Judge after considering the grounds raised by the revision petitioners for discharging them of the offences found that prima facie case exists against them and in such circumstances, dismissed the

petition.

2. I have heard the learned counsel for the petitioners and also the learned standing counsel for the CBI.

3. A perusal of the impugned order would reveal that the petitioners sought for their discharge from all the offences alleged against them on eight grounds. Since those grounds have been specifically mentioned in the impugned order I do not think it necessary to restate those grounds. A perusal of the impugned order would further reveal that each and every ground raised by the revision petitioners for their discharge had been dealt with in detail and in accordance with law by the learned Special Judge. A perusal of the impugned order would reveal that petitioners 1 and 2 are facing a charge for forging letters of credit and issuance of the same to the benefit of private accused persons without recording in the books of accounts of the branch, without collecting bank charges and without

ensuring margin money and thereby causing loss to the bank on account of margin money and commissions. The learned Special Judge perused the documents and found that they would reveal the role played by each and every petitioners in perpetrating fraud. It was also found that the charge sheet filed by the CBI is supported by oral and documentary evidence produced along with the same. Paragraph 10 of the judgment would reveal that the learned Special Judge has perused the said documents. The Hon'ble Apex Court had occasion to consider the role and scope and meaning of the word 'perused' (See the decision in Shyam Deo Pandey and others v. The State of Bihar reported in 1971 (1) SCC 855). It has been held by the Hon'ble Apex Court that a mere usage of the expression 'perusal' would not satisfy the legal requirement and the order passed by a court would reflect the indications of perusal of records. In this case, evidently, a scanning of the impugned order would reveal that there is sufficient indication in the order that the learned Special Judge have actually perused the records in arriving at the conclusion that there are sufficient materials

to hold that a prima facie case exists against each of the petitioners. In the contextual situation, it is relevant to refer to a decision of the Hon'ble Apex Court in **Sherish Hardenia and others v. State of Madhya Pradesh and another** reported in **2015(1) SCC Crl.381**. It was held therein that while considering an application for discharge, a Judge should consider whether the collected materials or evidence is indicative of existence of a prima facie case. The corollary is that when materials are there indicating existence of a prima facie case the courts would not be justified in discharging the accused. In such circumstances, charge has to be framed against the accused concerned. In **R.S Naik v.A.R.Anthulay [AIR 1986 SC 2045]** the Hon'ble Apex Court had occasion to consider the circumstances under which a discharge could be granted. Obviously, cases instituted upon the police report are covered by sections 227 and 239 Cr.P.C. The Hon'ble Apex Court held that it is a fact that section 227 and 239 Cr.P.C provides for ordering discharge before recording of evidence and consideration in such cases is as to whether charge has to be

framed or not and that has to be made on the basis of the records of the cases including documents sent with it under section 173 and making such examination of the accused after affording an opportunity of being heard. The Hon'ble Apex Court held that in a case where discharge is sought for either under section 227 or 239 the test of prima facie case has to be applied before framing of charge. In this case after perusing the documents with application of mind the learned Special Judge arrived at the finding that prima facie case exists against the revision petitioners. When that be the circumstances, in exercise of the revisional jurisdiction, an order dismissing the application for discharge cannot be interfered with. In short, I do not find any merit in this revision petition and it is liable to fail. Accordingly, it is dismissed.

Sd/-
C.T. RAVIKUMAR
(JUDGE)

spc/

C.T. RAVIKUMAR, J.

JUDGMENT

September, 2010