

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2016

(Orders reserved on 05.07.2016)

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH

Crl.R.C.Nos.825 and 826 of 2015

State represented by:
The Public Prosecutor,
High Court, Madras.
(V & A.C, Tiruvannamalai,
Crime No.3 of 2008)

... Petitioner/Respondent
in both Crl.R.Cs.

Vs.

J.Doraiswamy
of 2015
K.Ramesh

.. Respondent/Accused in Crl.R.C.No.825

.. Respondent/Accused in Crl.R.C.No.826
of 2015

Criminal Revision Case No.825 of 2015 filed under Sections 397 and 401 Cr.P.C. against the order dated 29.06.2015 passed in Crl.M.P.No.113 of 2015 in Special Case No.4 of 2014 on the file of the Special Judge and Chief Judicial Magistrate, Tiruvannamalai.

Criminal Revision Case No.826 of 2015 filed under Sections 397 and 401 Cr.P.C. against the order dated 29.06.2015 passed in Crl.M.P.No.648 of 2014 in Special Case No.4 of 2014 on the file of the Special Judge and Chief Judicial Magistrate, Tiruvannamalai.

For petitioner : Mr.P.Govindarajan,
Addl.P.P. in both Crl.R.Cs.

For respondents : Mr.R.Anand in Crl.R.C.No.825 of 2015
Mr.K.Ramesh, respondent-in-person
in Crl.R.C.No.826 of 2015

COMMON ORDER

These Criminal Revision Cases have been filed by the State against the order dated 29.06.2015 passed in Crl.M.P.No.113 of 2015 and Crl.M.P.No.648 of 2014 in Special Case No.4 of 2014 on the file of the Special Judge and Chief Judicial Magistrate,

Tiruvannamalai, discharging the respondents herein (A1 and A2) from the alleged offences under Section 7 of the Prevention of Corruption Act read with 34 IPC and under Sections 13(1)(d) and 11 of the Prevention of Corruption Act. Since the issue involved in these revision petitions is common, they are disposed of by this common order. The respondent in CrI.R.C.No.825 of 2015 is A1 and the respondent in CrI.R.C.No.826 of 2015 is A2. For the sake of convenience, the respondents/accused will be referred to herein as A1 and A2.

2. The brief case of the prosecution is as follows:

(a) On 12.01.2004 at about 9 a.m., the complainant Sundarrajan, Proprietor of V.B.C.Jewellers, Tiruvannamalai, lodged a complaint before the Police Station stating that when his jewellery shop was opened at about 8.30 a.m., he saw that the jewel boxes were found scattered on the ground and the jewels and cash were stolen. The complainant raised a doubt against one Ezhumalai Achari, Ramesh Achari, Kuppan Achari and Venkatesan Achari with regard to the missing of jewels. A case was registered in Crime No.28 of 2004 under Section 380 IPC on the same day by A1 (the then Inspector of Police, Tiruvannamalai Town Crime Police Station) and he took up the case for investigation. A2 (the then Sub-Inspector of Police, Tiruvannamalai Town Crime Police Station) assisted A1 for the investigation. On the same day, subsequently, the complainant has withdrawn the complaint stating that no jewel or cash was stolen from the shop. Hence, on 15.02.2004, the case was referred as 'mistake of fact'.

(b) While so, on 14.01.2004 at about 8 p.m., the complainant along with cousin brother Sekar appeared before A1 and A2 in Tiruvannamalai Town Crime Police Station as per the instructions of A1 and A2. On their presence, A1 and A2 criminally threatened the complainant/Sundarrajan by stating that a criminal case would be initiated against him for having given false theft complaint and further, A1 and A2 demanded Rs.5 Lakhs as illegal gratification.

(c) In pursuant to the above said demand by A1 and A2, on 15.01.2004 at about 3.30 p.m., the complainant along with his cousin brother Sekar met A1 and A2 in Room No.4 of Arunachala Lodge/Guest House situated in Tiruvannamalai-Chengam Road and the complainant handed over Rs.5 Lakhs to Sekar, who in turn handed over the said amount to A2, who in turn handed over the amount to A1, thereby, the said amount was accepted.

(d) In continuation of the said offence, on 16.01.2004 at about 2 p.m., A1 went to Sekar's Thangamaaligai jewellery shop and asked the complainant Sundarrajan to come to the shop, where A1 served RCS notice in Crime No.28 of 2004 and further demanded

silver articles of 650 grams from him, thereupon, the complainant went to the shop and brought the silver articles as demanded and handed over the same to A1, thereby, A1 obtained 650 grams of valuable silver items without any consideration as illegal gratification. Thus, A1 and A2 have committed the above said offences stated supra.

(e) Thereafter on 29.03.2004, A1 made final report for dropping the criminal action in Crime No.28 of 2004 as "mistake of fact" by getting the opinion of the Assistant Public Prosecutor of Tiruvannamalai on 19.01.2004. While so, on 08.05.2004, A2 arrested two persons, namely Thiyagu @ Thiyagarajan and Dakshnamoorthy with possession of gold jewels at Tiruvannamalai Bus Stand and Chengam Bus Stand respectively on suspicion and registered a case in Crime No.309 of 2004 and 310 of 2004 respectively, under Sections 41 and 102 Cr.P.C. On enquiry, it was found that the gold jewels were connected with the above said Crime No.28 of 2004 under Section 380 IPC.

(f) Thereafter, after a lapse of eight months, a complaint was lodged on 17.09.2004 as against A1 and A2 through one Vadivel, who was the President of Gold, Silver and Diamond Merchants Association with regard to the demand and acceptance of Rs.5 Lakhs from Sundarrajan, Proprietor of V.B.C. Jewellers. Since no action was taken on the said complaint, the said Vadivel filed Crl.O.P.No.8085 of 2006 before this Court praying for a direction to the first respondent therein (the Director, Vigilance and Anti-Corruption, Chennai) - police authorities, to register FIR based on the said complaint, dated 17.09.2004 and to investigate the same. In the said Crl.O.P., this Court, by orders dated 26.07.2007, 24.08.2007 and 30.11.2007, directed the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore to conduct a preliminary enquiry within a period of one week from the date of receipt of a copy of the order and if the allegation contained in the complaint constitutes cognizable offence, register the case on the basis of the complaint as per the mandatory provisions under Section 154 Cr.P.C., investigate into the matter in accordance with law and file a final report within a period of six months thereafter.

(g) Pursuant to the said order of this Court, preliminary enquiry was conducted. On completion of enquiry, regular case was registered in Crime No.3 of 2008 as against A1 and A2 for the offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act. After completion of investigation and after obtaining sanction for prosecution, charge-sheet/final report was filed as against A1 and A2 in Crime No.3 of 2008 before the Special Judge and Chief Judicial Magistrate, Tiruvannamalai, which was taken on file in Special Case No.4 of 2014.

3. On appearance, A1 and A2 filed two discharge petitions under Section 227 Cr.P.C. in Crl.M.P.Nos.648 of 2014 and 113 of 2015 in Special Case No.4 of 2014, before the trial Court, to discharge them from the case. The trial Court, on consideration of the oral and documentary evidence and the submissions made on either side, by the impugned order dated 29.06.2015, allowed the said discharge petitions. Challenging the same, these Crl.R.Cs. have been filed by the State.

4. Learned Additional Public Prosecutor appearing for the petitioner/State, by inviting the attention of this Court to the discussion made in the impugned order, submitted that the trial Court, by conducting a roving enquiry on the statement of witnesses, has discharged the respondents/A1 and A2 and at the stage of discharge, the testimony of witnesses cannot be tested. Based on some infirmities in the statement of witnesses, the petition for discharge cannot be entertained. Learned Additional Public Prosecutor further submitted that the trial Court has rendered a finding that there is no documentary evidence for demand of money. Such a finding is not sustainable, as no one can be expected to make demand or accept bribe through a document or create a document for the same. He further submitted that the statement of the owner of the said Arunachala Lodge/Guest House, namely Arumugham was also recorded to show that A1 was staying in Room No.4 therein during January 2004. Therefore, there is abundant material to frame charges against A1 and A2, but, inspite of the same, for obvious reasons, the trial Court discharged A1 and A2 from the case. Hence, learned Additional Public Prosecutor prayed for setting aside the impugned order of the trial Court.

5. Per contra, learned counsel appearing for the respondent/A1 in Crl.R.C.No.825 of 2015, whose arguments were adopted by the respondent/A2 appearing as party-in-person in Crl.R.C.No.826 of 2015, submitted that the owner of V.B.C. Jewellers, namely Sundarrajan gave a false complaint of theft on 12.01.2004 only with an idea of claiming insurance amount. But, on the very same day, he had withdrawn the said complaint. Later, after a lapse of eight months, he initiated action through Vadivel, President of Gold, Silver and Diamond Merchants Association, who gave complaint and since no action was taken on the same, the said Vadivel filed Crl.O.P.No.8085 of 2006 before this Court. Upon direction of this Court in the said Crl.O.P., as narrated above, a case was registered in Crime No.3 of 2008, i.e. after a lapse of four years from the date of the alleged demand of Rs.5 Lakhs, said to have been made by A1 from the said Sundarrajan (complainant). In this regard, learned counsel for the respondents/accused submitted that departmental action was

also initiated against A1 and A2 in P.R.Nos.37 and 38 of 2004, in which, the enquiry officer (Additional Superintendent of Police) found that the charges framed against them were not proved, as there is no material evidence to frame charges against them and the findings of the enquiry officer were confirmed by the disciplinary authority/Deputy Inspector General of Police). Learned counsel further submitted that the charges in criminal proceedings as well as in the departmental action, are one and the same. The copy of the enquiry reports/files therein, were filed as documents along with the charge-sheet in Cr.No.3 of 2008 before the trial Court. He further submitted that the trial Court, by considering the entire materials, including the enquiry report(s), statements of witnesses, etc., came to the conclusion that there is no documentary evidence and proof to show that A1 and A2 demanded and received Rs.5 Lakhs and also received 650 grams of silver articles, thereby, discharged them from the case.

6. Learned counsel for the respondents/A1 and A2 further submitted that when identical charges were not proved/established in the departmental proceedings, it is unnecessary to proceed against A1 and A2 in the criminal proceedings, and therefore, no infirmity could be found in such finding rendered by the trial Court while discharging A1 and A2.

7. Learned counsel further submitted that by considering the entire materials available on record including the statements of witnesses, the trial Court has come to the specific conclusion that there is no consistency in the statement of witnesses--Sundarrajan/complainant and his cousin brother Sekar and it had not inspired the confidence of the Court to believe them as true witnesses and hence, the trial Court discharged A1 and A2 from the case. Learned counsel therefore submitted that the trial Court, by sound and well-reasoned findings, discharged respondents/A1 and A2 and hence, this Court may not interfere with such findings of the trial Court and prayed for dismissal of the revision petitions.

8. I have given my anxious consideration to the submissions made on either side and perused the materials available on record.

9. From the submissions made on either side, the point that arises for consideration is as to whether the prosecution has made out a prima-facie case warranting the trial Court to frame charges against the respondents/A1 and A2.

10. It is seen that on 12.01.2004, Sundarrajan lodged a complaint alleging that there was a theft of gold jewels and cash from his jewellery shop. On the very same day, he has withdrawn the said complaint. According to the prosecution,

since the complainant Sundarrajan has lodged a false complaint, A1 and A2 criminally intimidated the complainant by stating that for having given a false theft complaint, a criminal case would be initiated against the complainant and in order to avoid such criminal action, A1 and A2 demanded Rs.5 Lakhs from the complainant as illegal gratification. That apart, it is the case of the prosecution that the said amount of Rs.5 Lakhs was given in Room No.4 of the said Arunachala Lodge/Guest House by Sundarrajan along with his cousin brother Sekar. Thereafter, on 16.01.2004, A1 went to the jewellery shop of Sekar, where the complainant Sundarrajan was called and A1 demanded silver articles worth 650 grams, which were also handed over to A1.

11. It is to be further noted that for the same set of allegations, departmental action was also initiated against A1 and A2 and on the basis of the enquiry conducted in P.R.Nos.37 and 38 of 2004 in the departmental enquiry, the charges were found to be not proved. The enquiry report(s) along with the relevant files therein, were also produced as documents along with the charge sheet in the criminal case. The trial Court has gone through the said enquiry report(s) while deciding the discharge petitions and came to the conclusion that since in both the departmental proceedings and criminal proceedings, the charges were identical and the charges having not been established in the departmental proceedings, it is unnecessary to proceed against A1 and A2 in the criminal proceedings.

12. In the above context, learned counsel for the respondents/accused relied on a decision of the Supreme Court reported in 2013 (11) SCC 130 = MANU/SC/0682/2013 (Lokesh Kumar Jain Vs. State of Rajasthan), wherein, the Apex Court observed as follows:

"28. In P.S.Rajya Vs. State of Bihar (1996 (9) SCC 1), this Court noticed that the appellant was exonerated in the departmental proceedings in the light of the report of the Central Vigilance Commission and concurred by the Union Public Service Commission. The criminal case was pending since long, in spite of the fact that the appellant was exonerated in the departmental proceeding for same charge.

29. Having regard to the aforesaid fact, this Court held that if the charges which is identical could not be established in a departmental proceedings, one wonders what is there further to proceed against the accused in criminal proceedings where standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in the departmental

proceedings."

13. From the above dictum laid down by the Apex Court, it could be seen that in criminal proceedings, the standard of proof required to establish the guilt is far higher than the standard of proof required to establish the guilt in the departmental proceedings.

14. That being so, when the charges which are identical, could not be established in the departmental proceedings, for the same set of facts, for framing a charge in the criminal proceedings, chance of conviction would be very remote. At the same time, this Court is also well aware of the legal position that mere exoneration from the departmental proceedings, cannot be taken as a sole ground to allow the discharge petition. Therefore, it is necessary to see as to whether any prima-facie case has been made out by the prosecution to frame charge against an accused. In this case, the case of the prosecution is mainly relied upon the statement of witness/complainant Sundarrajan and his cousin brother Sekar. As observed by the trial Court, there are inconsistencies in the statements of prosecution witnesses. Moreover, as observed by the trial Court, the prosecution has not produced any evidence much less documentary evidence to show that A1 and A2 were present in Room No.4 of the said Arunachala Lodge/Guest House. Though it is the case of the prosecution that the said sum of Rs.5 Lakhs was paid in the said Room No.4 in the said Lodge, in the statement of Sekar recorded under Section 161 Cr.P.C. on 14.09.2010 before Subbiah--Additional Superintendent of Police, DV & AC, Special Investigation Team, Chennai, he has referred to the date of payment of money as 15.01.2004, but in the statement before ADSP-Crime (Vellore)--Juilan on 09.07.2004, he has stated that the said amount was paid one or two days before 15.02.2004. Therefore, there is material contradiction, more particularly with regard to the date of the above said payment of Rs.5 Lakhs to A1 and A2. Except the ipse-dixit statement of the said Sekar, absolutely there is no other material before this Court to prove the demand of money by A1 and A2.

15. That apart, I find that the materials available on record show that, later, on 08.05.2004, A2 arrested two persons, namely Thiyagu @ Thiyagaraj and Dakshnamoorthy with possession of gold jewels at Tiruvannamalai Bus Stand and at Chengam Bus stand respectively on suspicion and registered a case in Crime No.309 of 2004 and 310 of 2004 respectively under Sections 41 and 102 Cr.P.C. and on enquiry, it was found that the gold jewels were connected with Crime No.28 of 2004, which was earlier registered on the complaint of Sundarrajan, which was subsequently alleged to have been withdrawn by him. If it is the case of the prosecution that A1 and A2 have received Rs.5 Lakhs,

then, later, A2 would not have arrested the above said two persons and registered the cases.

16. In the absence of any material before this Court for demand and acceptance of the amount of Rs.5 Lakhs, based on mere ipse-dixit statement of the said Sekar, the charges cannot be framed against A1 and A2 in the criminal proceedings, though the fact remains that the charges have not been proved in the departmental proceedings. Therefore, the finding of the trial Court there are inconsistencies in the statements of the complainant Sundarrajan and his cousin brother Sekar, cannot be found fault with by this Court.

17. When it is not in dispute that the respondents/A1 and A2 were exonerated in the departmental proceedings in view of the charges having not proved therein, this Court also finds that there is no consistent material to frame charge against them in the criminal proceedings, especially for the same set of allegations against them. In this regard, it would be appropriate to place a reliance on the decision of the Supreme Court reported in 2008 (10) SCC 394 (Yogesh Vs. State of Maharashtra), wherein, while interpreting Section 227 Cr.P.C., the Apex Court held as follows:

"15. Chapter XVIII of the Code lays down the procedure for trial before the Court of Session, pursuant to an order of commitment under Section 209 of the Code. Section 227 contemplates the circumstances whereunder there could be a discharge of an accused at a stage anterior in point of time to framing of charge under Section 228. It provides that upon consideration of the record of the case, the documents submitted with the police report and after hearing the accused and the prosecution, the court is expected, nay bound to decide whether there is "sufficient ground" to proceed against the accused and as a consequence thereof either discharge the accused or proceed to frame charge against him.

16. It is trite that the words "not sufficient ground for proceeding against the accused" appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal

application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record, if unrebutted, make a conviction reasonably possible. (See - State of Bihar Vs. Ramesh Singh - 1977 (4) SCC 39 = 1977 SCC (Cri) 533 and Union of India Vs. Prafulla Kumar Samal - 1979 (3) SCC 4 = 1979 SCC (Cri) 609)."

18. Taking note of the above dictum laid down by the Supreme Court and also on an analysis of the materials available on record, this Court is of the view that in view of the inconsistencies in the statements of the main witnesses, namely complainant Sundarrajan and his cousin brother Sekar, I do not find any prima-facie case to proceed against A1 and A-2 to frame charges in the criminal proceedings and thereby, the respondents/A1 and A2 are liable to be discharged from the criminal proceedings. Therefore, I do not find any infirmity in the findings rendered by the trial Court or any warranting incriminating material or circumstance to interfere with the impugned order passed by the trial Court. Accordingly, the CrI.R.Cs. are dismissed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

सत्यमेव जयते

CS

To

1. The Special Judge and
Chief Judicial Magistrate, Tiruvannamalai.

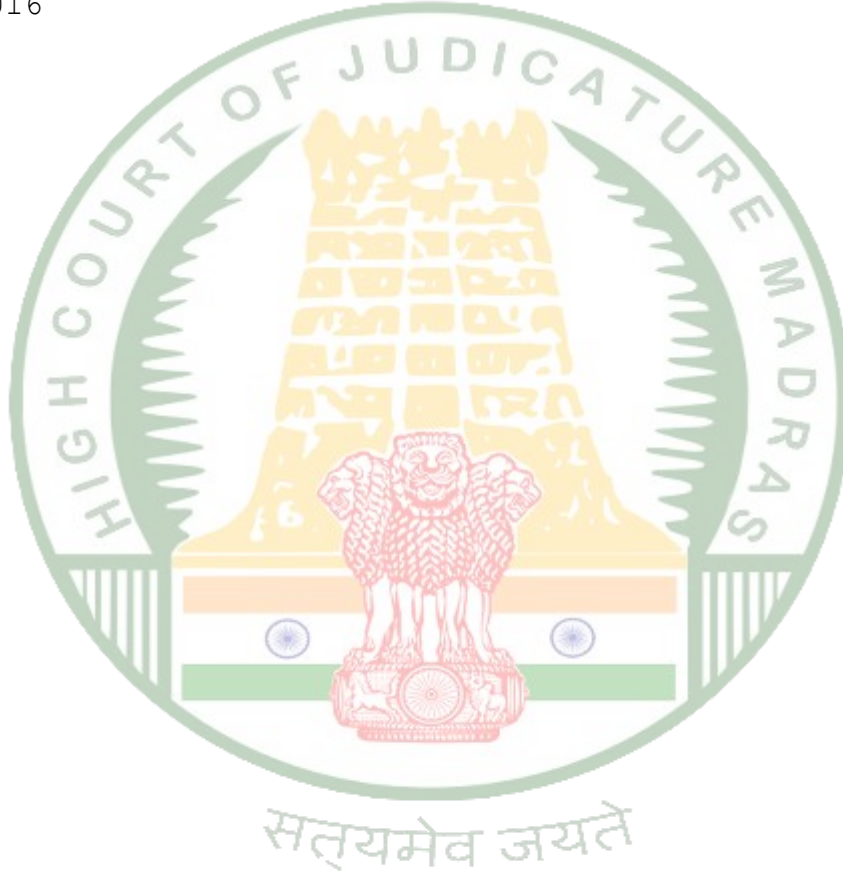
2. The Public Prosecutor, High Court, Madras.
(V & A.C., Tiruvannamalai Crime No.3 of 2008)

3. The Record Keeper,
Criminal Section,
High Court, Madras.

+1 cc to Mr.R.Anand Advocate sr.39378
+2 ccs to Public Prosecutor High Court Madras
sr 39933,39934

Order in
Crl.R.C.Nos.825 and 826 of 2015

aa19/07/2016



WEB COPY