

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Orders reserved on : 17.08.2016)

Date : 26.09.2016

CORAM:

THE HON'BLE MR.JUSTICE R.SUBBIAH

Crl.R.C.Nos.47 to 51 of 2016

and

Crl.M.P.Nos.297 to 301 of 2016

M.Saibudeen

..Petitioner in all the above
Crl.R.Cs/ Accused-1

Vs.,

State represented by
Inspector of Police,
Central Bureau of
Investigation,
ACB, Chennai.

..Respondent in all the above
Crl.RCs./Complainant

Prayer: Criminal Revision Cases filed under Sections 397 & 401 of the Criminal Procedure Code, against the orders dated 26.11.2015 made in Crl.M.P.No.1310 of 2014 in C.C.No.9661 of 2014, Crl.M.P.No.1308 of 2014 in C.C.No.10189 of 2014, in Crl.M.P.No.1078 of 2014 in C.C.No.1270 of 2014, Crl.M.P.No.1079 of 2014 in C.C.No.1271 of 2014 and Crl.M.P.No.1312 of 2014 in C.C.No.9681 of 2014 passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai and to set aside the same and to discharge the petitioner/A1 from the said cases.

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
for Mr.N.Viswanathan

For Respondent : Mr.K.Srinivasan, Spl. PP for CBI

ORDER

These Criminal Revision Cases have been filed by the petitioners against the orders dated 26.11.2015 made in Crl.M.P.No.1310 of 2014 in C.C.No.9661 of 2014, Crl.M.P.No.1308 of 2014 in C.C.No.10189 of 2014, in Crl.M.P.No.1078 of 2014 in C.C.No.1270 of 2014, Crl.M.P.No.1079 of 2014 in C.C.No.1271 of 2014 and Crl.M.P.No.1312 of 2014 in C.C.No.9681 of 2014, respectively, passed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, in and by which the petitions filed by the petitioner/A1 to discharge him from the said cases were dismissed.

2.Since the accused named in all the above cases are one and the same and the facts are also identical to each other, the present Revisions are disposed of by way of this common order.

3.The brief facts of the prosecution case, which would cover the issues involved in the present five Revisions, are as follows:-

The petitioner herein has been arrayed as the 1st accused in all the above said cases. He is the proprietor of the concern viz., M/s.Majestic Impex, Pudukkottai. The petitioner/A1 entered into a criminal conspiracy with his two brothers-in-law viz., J.Sheik Parith(A2) & J.Basheer Ahmed (A4) for the purpose of evading customs duty and in pursuance to the said conspiracy, the petitioner/A1 executed a Power of Attorney dated 03.06.2010 authorizing the 2nd accused to transact business in the name of the said firm, by handing over Importer-Exporter Code (for short IEC) and Ozone Depleting Substance License (for short 'ODS License') issued by the Assistant Director General of Foreign Trade (in short 'ADGFT'), knowing fully well that those documents are not transferable. It is further alleged by the prosecution that in pursuance of the said conspiracy, the accused 2 & 4 fabricated the original invoices and the original packing lists sent by the exporter viz., M/s.Super Soft Pvt. Ltd., Singapore, in the form of soft copy/electronic form to the e-mail id "acshaik@yahoo.com" of the 2nd accused Sheikh Parith. The 4th accused used to amend the quantity, description and value of the goods in the soft copy/electronic data of the said documents contained in the e-mails received from M/s.Super Soft Pvt Ltd., Singapore, for their convenience and take printouts in the purported blank letter-heads of M/s.Super Soft Pvt Ltd. They forged the signatures of the exporter and affixed the purported rubber stamps in the name of M/s.Super Soft Pvt Ltd. After fabricating the invoices and packing lists, purportedly in the name of M/s.Super Soft Private Ltd, the accused 2 & 4 had given the said forged documents to the Customs House Agent (CHA) viz., one Shri M.Radhakrishnan (A5) to be submitted to Customs Department, Chennai. Knowing fully well that the said documents are forged, the 5th accused Radhakrishnan submitted the said forged documents to the Customs Department and thereby, they evaded the actual Customs Duties due to the Customs Department, Chennai. By adopting the said modus operandi, the accused 1 to 4 had imported various electronic goods viz., O'General Air Conditioners, Sony LCD Televisions, Sanyo Music systems, etc. of different models from M/s.Super Soft Pvt Ltd., Singapore by undervaluing the imported goods; thereby they cheated the Customs Department, Government of India, in the matter of Customs Duty evasion to the tune of Rs.11 crores on 84 Bills of Entries of past/already cleared consignments. By the above said acts, the accused persons committed offences punishable under Sections 120B r/w 420, 468 and 468 r/w 471 of

IPC and the substantive offences thereof. Hence, the cases have been registered against the accused persons. After the completion of investigation, chargesheets have been filed before the concerned Court. Before the trial Court, the petitioner herein/A1 filed petitions to discharge him from the cases; but, the said discharge petitions were dismissed by the Trial Court by the impugned orders. Aggrieved over the same, the petitioner has filed the present Revisions before this Court.

4.It is the submission of the learned senior counsel appearing for the petitioner that originally the final report was filed by including the customs authorities also and they had been arrayed as A1 & A2, by invoking the provisions of the Prevention of Corruption Act; but on further investigation, their names were dropped as no prosecutable evidence to substantiate the allegation against them(public servants) could be obtained. So far as the petitioner herein/A1 is concerned, he is the proprietor of M/s.Majestic Impex and he has got Import-Export Code (IEC) bearing No.0140010961, dated 22.06.2010 and ODS license bearing No.0450000720 dated 27.04.2010. The accused 2 & 4 are the brothers-in-law of the petitioner herein/A1. The petitioner/A1 had executed a Power of Attorney dated 03.06.2010 in favour of the 2nd accused, his brother-in-law. But, by taking advantage of the said Power of Attorney, the 2nd accused along with the 4th accused conspired and started to import the electronic goods such as Air Conditioners, Music Systems, Pioneer DVD td., from M/S.Super Soft Pvt Ltd., Singapore. The petitioner has only executed a Power of Attorney in favour of the 2nd accused appointing him as his agent for doing lawful business and besides that there is no agreement for doing any criminal act. Hence, for the criminal act committed by the A2 & A4, this petitioner can not be held responsible. In other words, the prosecution is only attempting to create a vicarious criminal liability on the part of the petitioner/A1 for the only reason of his executing the Power of Attorney in favour of the 2nd accused, which could only lead to the creation of civil liabilities, if any, arising on account of such execution of Power of Attorney on his part and certainly it will not put the criminal vicarious liability on the petitioner/A1.

5.The learned senior counsel for the petitioner submitted that even according to the prosecution, the entire allegations are only as against the accused 2 & 5. Further, the petitioner herein has been roped in the case under Section 120B IPC for criminal conspiracy, stating that the petitioner had executed a Power of Attorney in favour of A2 and thereafter, obtained IEC and ODS licenses, which are not transferable, as per the Policy circular issued by the DGFT authorities marked as Doc.No.27. In order to substantiate the allegation of criminal conspiracy as against the petitioner herein/A1, the respondent/CBI has relied upon two bank transactions; one involving transfer of Rs.16,225/- on

20.07.2007 from the bank account of the petitioner to the personal bank account of the 4th accused and another one, payment of Rs.45,000/- through cheque on 28.09.2010 from the petitioner to the personal bank account of the 4th accused. Assailing the said two transactions pointed out by the respondent/CBI to rope the petitioner herein into the case under Section 120B IPC, the learned senior counsel for the petitioner submitted that on a close reading of the final report, it would clearly show that the accused 2 & 4 alone are involved in the fabrication and forgery of the documents, which resulted in alleged evasion of customs duty, which shows that the charges under Section 420, 468 and 468 r/w 471 IPC admittedly have not been made out against the petitioner/A1.

6.As regards the allegation that the petitioner/A1 has handedover the IEC & ODS license in favour of the 2nd accused, which according to the prosecution are not transferable, it is the submission of the learned senior counsel for the petitioner that the said act of providing IEC and ODS license to third parties is per se not an offence under any of the provisions of the Foreign Trade (Development & Regulation) Act, 1992 and the Rules made thereunder. In this regard, the learned counsel for the petitioner has also relied upon the decision of the Kerala High Court reported in 2012 (276) E.L.T. 505 (Ker.) [Proprietor, Carmel Exports & Imports Vs. Commr. of Cus. Cochin], wherein it has been held as follows:-

"15.Coming to the submission that the appellant is only a "name lender" for the import of goods by one Anwar, We shall presume for the time being that the appellant is only a name lender, but the actual beneficiary of the import is one Anwar. We called upon learned counsel for the respondents to place the relevant provision which prohibits such an activity on the part of an Import Export Code Number holder. Learned counsel for the respondents categorically made a statement that he is not able to place any such prohibition in law except Section 7 of the Foreign Trade (Development and Regulation) Act, 1992, which reads as follows

"7.Importer-exporter Code Number-
No person shall make any import or export except under an Importer exporter Code Number granted by the Director General or the officer authorised by the Director General in this behalf, in accordance with the procedure specified in this behalf by the Director General."

The expression "import" occurring in the said section means bringing into India of goods as defined under Section 2(e). There is nothing in the law which requires an importer to be either the consumer or even the buyer of the goods also. Even otherwise, we are of the

opinion that it is a matter of common sense that no importer would consume all the materials imported. Necessarily, the goods imported are meant for sale to the consumer, in which case, if an importer who enjoys the 'facility of I.E. Code imports certain goods in the normal course of business on the strength of a contract entered by such importer with either a consumer or a trader who eventually sells the imported goods to consumers. We do not understand what can be the legal objection for such a transaction especially where the import of such goods is otherwise not prohibited by law. At any rate, if the respondents have any tenable legal objection on that count, the respondents must pass an appropriate order indicating the legal basis on which the action is proposed and also the nature of the action proposed for such perceived violation of law on the part of the respondents after giving a reasonable opportunity to the importer to meet the case against him. Instead of proceeding to determine the duty leviable on the imported goods by following the appropriate procedure or passing an order of confiscation if they believe that they are justified in the facts and circumstances, the respondents, it appears, are indefinitely detaining the goods without any appropriate order being passed thereon. Such a course of action, in our opinion, is absolutely illegal."

By relying upon the above passage of the judgment, the learned counsel for the petitioner submitted that there is no prohibition under law to transfer the IEC and ODS license. Even assuming for a moment that even if the above act on the part of the petitioner were to be treated as a contravention, even then the only course open for the foreign trade authorities is to initiate action against him either for suspension or cancellation of IEC & ODS license, and certainly it cannot lead to maintaining the criminal charge against him. However, in the instant case, the IEC & ODS license were not transferred by the petitioner to the 2nd accused,.

7. With regard to the two money transactions pointed out by the prosecution, from the statement of L.W.19, one involving Rs.16,225/- from the bank account of the petitioner/A1 to the personal account of the 4th accused; another transaction of Rs.45,000/- through cheque from the petitioner to the personal account of A4, it is the submission of the learned senior counsel for the petitioner that a thorough reading of the statement of L.W.19 would show that the 4th accused is having only personal savings account and

absolutely there is no foreign remittance in the bank account of the 4th accused. Moreover, the first transaction of Rs.16,225/- took place in the year 2007 and it has no relevance to the alleged offence, as the transaction happened much earlier to the period involved in this case. The second transaction of Rs.45,000/- made through cheque in favour of the 4th accused, who had deposited the said cheque in his account, could not also in any way link the petitioner/A1 with the alleged offence. The petitioner/A1 is not the beneficiary of the alleged imported goods. Further, it is admitted fact that the 2nd accused had only opened and operated the current account with SBT Main Branch at Chennai and that account did not show any transfer of money from any other account to the petitioner/A1. Further more, the customs authorities (DRI) initiated criminal prosecution only against the accused 2 & 4 in R.R.No.41/2011 before E.O.-II Court, Egmore, Chennai and not against the petitioner herein/A1. Therefore, absolutely there is no material to rope this petitioner into the case under Section 120B IPC. In this regard, the learned senior counsel for the petitioner has also drawn the attention of this Court to Section 120 IPC and submitted that to attract criminal conspiracy under Section 120A of IPC, it requires the basic ingredients of an agreement between two or more persons, relating to the doing or causing to be done an illegal act or an act which is not illegal by illegal means. Thus, meeting of minds of two or more persons to do illegal acts is a sine qua non for charging a person with criminal conspiracy. The language of Section 120B saying whoever commits also makes it abundantly clear that unless a person is prima facie shown to have committed the offence of conspiracy, he cannot be put to trial on the aid charge. Thus, the learned senior counsel for the petitioner submitted that in the instant case, the prosecution has not brought in any evidence to show that the petitioner/A1 had even knowledge of the imports being made by A2. It is, therefore, submitted by the learned senior counsel for the petitioner that none of the contention raised by the prosecution even remotely satisfies the above basic ingredients to bring the petitioner/A1 to be charged with criminal conspiracy; whereas on the other hand, it only raises the possibilities of two views in the matter.

8. In this regard, the learned senior counsel for the petitioner relied upon the judgment reported in (1979) 3 SCC 4 [Union of India Vs. Prafulla Kumar Samla and another] and submitted that in the said case, it has been held by the Hon'ble Apex Court that the Special Judge should not act as a trial Judge, but should weigh evidence and form opinion only on the limited question of whether a prima facie case has been made out. Further, the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. If two views are

equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. For the same proposition, the learned senior counsel for the petitioner has also relied upon the following decision_

i) 2002 (2) SCC 135 [Dilawar Balu Kurane Vs. State of Maharashtra]

ii) (2008) 10 SCC 394 [Yogesh Vs. State of Maharashtra].

By relying upon the above said decision, the learned senior counsel for the petitioner submitted that in the instant case, there is no material to proceed against the petitioner; thus, he sought for discharge of the petitioner.

9. Countering the submissions made by the learned senior counsel for the petitioner, the learned Special Public Prosecutor appearing for the respondent-CBI, by filing detailed counters, would contend that there is a prima facie case against the petitioner herein to frame the charges. The circumstance of the execution of Power of Attorney by the petitioner/A1 in favour of the 2nd accused indicates that with a view to keep himself away from the legal complications, the petitioner/A1 executed the Power of Attorney, knowing fully well that with the said Power of Attorney, the accused 2 & 4 would be committing the said offence. The materials produced by the prosecution are sufficient to frame charges against the petitioner herein/A1. The petitioner/A1 and other co-accused had cheated the Customs Department, Government, in the matter of customs duty evasion to the tune of Rs.11 crores. It is further contended by the learned Special Public Prosecutor that the petitioner/A1 had not only given Power of Attorney in favour of his brother-in-law (A2-Sheikh Parith) for using his Importer-Exporter Code number, but also had filed the application before DGFT, New Delhi on 12.07.2010 for issue of license for import of Air Conditioner Split/Window containing HCFC (R-22) of various models. While submitting application, the petitioner has also enclosed Sales Contract dated 02.07.2010 issued by Super Soft Pvt Ltd., Singapore in favour of Majestic Impex, Pudukottai. The payment was done by Electronic Fund Transfer vide BID No.709165508 on 09.07.2010 for Rs.50,000/- through HDFC Bank. The importer has also filed a request for issue of the said license manually on 13.07.2010 in the office of ADGFT, Shastry Bhawan, Chennai and enclosed the E-Com hard copy of the EFT, Profile of the applicant firm details with address as H-II, 39, Poonga Nagar, Railway Station Road, Rajagopalapuram Post, Pudukottai, ANF-2 B, Copy of IEC No.0410010961, Copy of Pan Allotment Letter No.AKZPS1505 M, Copy of VAT No.33254105479 issued by AC-CT/Pudukottai, Copy of Proforma Invoice dated 02.07.2010 of Super Soft Pvt Ltd., Singapore. Director General of Foreign Trade vide letter No.01/53/8/196/AM11/M-17/I C, dated 07.09.2010 conveyed clearance of import of restricted items by Exports Facilitation Committee in its meeting held on

26.08.2010 to the applicant ie., M/s.Majestic Impex for grant of import authorization of import of 7915 numbers of Air Conditioners containing R-22 Gas. Even R-22 Gas licence issued by Foreign Trade Department is not transferable. Knowing fully well that the said licenses are not transferable, the petitioner/A1 has given Power of Attorney to his brother-in-law (A2) in order to facilitate to commit illegal activities.

10.The learned Special Public Prosecutor has further contended that the evidence on record establishes that the petitioner/A1 and his brothers-in-law (A2 & A4) used to come to the office of A5 for filing Bills of Entry in question. It is well known and an accepted fact, that a criminal conspiracy is hatched in darkness and executed in secrecy and the same has to be inferred from the circumstances and overt acts of the accused. It is also settled in law that the conspirators may not be known to each other, but still the thread of conspiracy can pass through the various accused. The plain reading of the chargesheet of this case would show that the period of conspiracy was between 2010 and 2011. The essence of criminal conspiracy is an agreement to do an illegal act and as far as this case is concerned, it is an agreement to cheat the customs department, by submitting forged/fabricated invoices and packing lists and thereby, the accused persons evaded customs duty. Such an agreement can be proved either by direct and circumstantial evidence or by both. It is not necessary that there should be express proof of the agreement. From the acts and conduct of the parties, the agreement can be inferred. In the instance case, the existence of criminal conspiracy can be inferred on the basis of overt acts committed by the accused.

11.Further, the learned Special Public Prosecutor, by drawing the attention of this Court to the Power of Attorney executed by the petitioner in favour of the 2nd accused, submitted that the said Power of Attorney does not contain any clause authorising the 2nd accused to deal with the IEC & ODs license issued to the petitioner. Therefore, it is clear that the Power of Attorney executed by the petitioner in favour of the 2nd accused is one of the indications to prove the criminal conspiracy between the petitioner and the 2nd accused. Now, with the help of the said Power of Attorney, the petitioner is trying to wriggle out of the charges.

12.It is the contention of the learned Special Public Prosecutor that the petitioner/A1 and other co-accused, by criminal conspiracy, had cheated the Customs Department, Government of India, in the matter of Customs Duty evasion to the tune of about Rs.11 crores on 84 Bills of Entries of past / already cleared consignments and it is evident from the seizure mahazars. Therefore, the submissions made by the learned senior counsel for the petitioner may be taken as a defence during the trial and the same cannot serve as a ground

to discharge the petitioner. Further, the learned Special Public Prosecutor submitted that the judgments relied upon by the learned senior counsel for the petitioner are relating to Section 227 of Cr.PC and not under Section 239 of Cr.P.C. Under Section 239 of Cr.P.C., only if the charge against the accused is groundless, then only the accused is entitled for discharge. In support of his contention, the learned Special Public Prosecutor has also relied upon a decision of the Hon'ble Apex Court reported in AIR 1970 SC 45 [Mohd. Hussain Umar Kochra etc., Vs. K.S.Dalipsinghji and another etc], wherein it has been held that in order to constitute a single general conspiracy there must be a common design and a common intention of all to work in furtherance of the common design. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or the means by which the common purpose is to be accomplished. The evil scheme may be promoted by a few, some may drop out and some may join at a later stage, but the conspiracy continues until it is broken up. The conspiracy may develop in successive stages. There may be a general plan to accomplish the common design by such means as may from time to time be found expedient.

13.By relying upon the above decision, the learned Special Public Prosecutor submitted that in the instant case, there is ample material to show that the petitioner is also involved in hatching the criminal conspiracy. Thus, the learned Special Public Prosecutor sought for dismissal of the revision.

14.Heard both sides and perused the materials available on record.

15.In order to bring the petitioner/A1 into the case for the alleged offence under Section 120B IPC, the prosecution has indicated two incidents. Firstly, the petitioner/A1 executed the Power of Attorney in favour of his brother-in-law (2nd accused) and permitted the 2nd accused to transact the business of M/s.Majestic Impex by using the IEC and ODS license issued in favour of the petitioner/A1. Secondly, the two bank transactions, involving transfer of Rs.16,225/- on 20.07.2007 from the account of the petitioner to the personal bank account of the 4th accused and another, involving payment of Rs.45,000/- through cheque on 28.09.2010 from the petitioner to the personal account of the 4th accused.

16.According to the learned senior counsel for the petitioner, the petitioner had executed a Power of Attorney in favour of his brother-in-law (2nd accused) and appointed him as Agent for doing lawful business, besides that there is no agreement for doing any criminal act; hence, the prosecution cannot create a vicarious criminal liability on the part of the petitioner.

17. So far as the two money transactions are concerned, it is submitted by the learned senior counsel for the petitioner that one transaction involving Rs.16,225/- took place on 20.07.2007, which is much earlier to the relevant period. The other transaction involving Rs.45,000/- was made through cheque from the petitioner to the person account of the 4th accused. But, even according to the prosecution, there is no foreign remittance to the accounts of the accused persons. Therefore, according to the learned senior counsel for the petitioner, absolutely there is no material to frame charge against the petitioner herein.

18. But, on a perusal of the chargesheet, I find that the entire transaction was done by the accused 2 & 4 only in the name of M/s. Majestic Impex. According to the learned senior counsel for the petitioner, by misusing the Power of Attorney executed by the petitioner in favour of the 2nd accused, the accused 2 & 4 were involved in the alleged offence; hence, as the principal, the petitioner cannot be held liable. But, as contended by the learned Special Public Prosecution, I find that the said Power of Attorney does not contain any clause authorising the 2nd accused to deal with the IEO & ODS license issued in favour of the petitioner by the Foreign Trade Authorities. Moreover, the said Power of Attorney was given a month prior to the obtaining of license by the petitioner from the Foreign Trade Authorities. According to the prosecution, by the acts of the accused persons, they have caused loss to the tune of Rs.11 crores to the Government. Therefore, in the absence of any specific power authorising the 2nd accused to deal with the IEO and ODS license issued in favour of the petitioner, I am of the opinion that the contention of the petitioner that for the act of his agent, the petitioner cannot be held responsible, cannot be accepted. In this regard, it would appropriate to place a reference in the judgment reported in AIR 2013 SC 52 (Sheoraj Singh Ahlawat and others Vs. State of U.P. and another) wherein, in paragraphs 10 to 12, the Apex Court held as follows:

"10. The case at hand being a warrant case is governed by Section 239 of the Cr.P.C. for purpose of determining whether the accused or any one of them deserved to be discharged. Section 239 is as under:

"239. When accused shall be discharged:

If upon considering the police report and the documents sent with under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

11. A plain reading of the above would show that the Court trying the case can direct discharge only for reasons to be recorded by it and only if it considers the charge against the accused to be groundless. Section 240 of the Code provides for framing of a charge if, upon consideration of the police report and the documents sent therewith and making such examination, if any, of the accused as the Magistrate thinks necessary, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX, which such Magistrate is competent to try and which can be adequately punished by him. The ambit of Section 239 Cr.P.C. and the approach to be adopted by the Court while exercising the powers vested in it under the said provision fell for consideration of this Court in Onkar Nath Mishra and others Vs. State (NCT of Delhi) and another, (2008) 2 SCC 561. That was a case in which a complaint under Sections 498-A, 406 read with Section 34 of the IPC was filed against the husband and parents-in-law of the complainant-wife. The Magistrate had in that case discharged the accused under Section 239 of the Cr.P.C., holding that the charge was groundless. The complainant questioned that order before the Revisional Court which directed the trial Court to frame charges against the accused persons. The High Court having affirmed that order, the matter was brought up to this Court. This Court partly allowed the appeal qua the parents-in-law while dismissing the same qua the husband. This Court explained the legal position and the approach to be adopted by the Court at the stage of framing of charges or directing discharge in the following words:

" 11. It is trite that at the stage of framing of charge the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

12. Support of the above view was drawn by this Court from earlier decisions rendered in State of Karnataka Vs. L.Muniswamy, 1977 Cri.L.J. 1125, State of Maharashtra and others Vs. Som Nath Thapa and others, 1996 Cri.L.J. 2448 and State of M.P. Vs. Mohanlal Soni, 2000 Cri.L.J. 3504. In Som Nath's case (supra) the legal position was summed up as under:

"If on the basis of materials on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record by the prosecution has to be accepted as true at that stage."

From the above said decision it is clear that if the charge to be framed as against the accused is groundless, then the discharge petition can be entertained. If there is strong suspicion founded on the materials placed before the Court with regard to the offence committed by the accused, that would justify framing of charge against the accused. In the instant case, the statement of L.W.13 & 18 and the documents produced on the side of the prosecution would show that there are sufficient materials against the petitioner herein to frame charges. Further more, the alleged transactions had taken place continuously for a period of one year. It is also the case of the prosecution that the petitioner/A1 has also accompanied the accused 2 & 4 to the office of the A5 for the purpose of filing the subject Bills of Entry. Therefore, the contention of the petitioner that he is not aware of the offence committed by the accused 2 & 4, cannot be accepted at this juncture. Therefore, the innocence of the petitioner cannot be adjudicated in the discharge petition.

19. Moreover, while discussing the pros and cons of the case at the time of framing charges, the Court is not required to go deep into the probative value of the materials on record. It needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence. But, it should not evaluate the sufficiency of evidence to convict the accused. In this regard, it is worthwhile to notice the judgment of the Hon'ble Supreme Court reported in 2013(11) SCC 476 (Sheoraj Singh Ahalwat Vs. State of U.P), wherein it has been held that while framing charges, Court is required to evaluate the materials and documents on record to

decide as to whether the facts emerging therefrom taken at their face value, would disclose existence of ingredients constituting the alleged offence; at this stage, the Court is not required to go deep into the probative value of materials on record; it needs to evaluate as to whether there is a ground for presuming that the accused had committed the offence; but, it should not evaluate the sufficiency of evidence to convict the accused; even if there is a grave suspicion against the accused and it is not properly explained or Court feels that the accused might have committed the offence, then framing of charges against the accused is justified and it is only for conviction of accused that the materials must indicate that the accused had committed the offence, but for framing of charges, if the materials indicate that the accused might have committed the offence, then framing of charge is proper.

20. In the instant case, the Court below after considering the materials available on record and the witnesses, particularly L.W.16, has rightly come to the conclusion that there are materials to frame charge against the petitioner herein and that after examination of the witnesses only, the question as to whether the petitioner has committed the offence or not can be decided. Hence, I do not find any valid ground to interfere with the impugned orders passed by the Court below.

For the foregoing reasons, the Revisions are liable to be dismissed and accordingly, the same are dismissed. However, the petitioner is at liberty to raise all his grounds during the course of trial before the Court below by adducing oral and documentary evidences. The trial Court is directed to complete the trial as early as possible.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ssv
To,

The Additional Chief Metropolitan Magistrate,
Egmore, Chennai.

+ 1 cc to Mr.N. Viswanthan, Advocate Sr.54936

CrI.R.C.Nos.47 to 51 of 2016
and
CrI.M.P.Nos.297 to 301 of 2016

SR(CO)

En 18/10/16

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