IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16-08-2017

DELIVERED ON : 06-09-2017

CORAM:

THE HONOURABLE MR.**JUSTICE P.VELMURUGAN**

Crl.R.C.No.1374 of 2014

State represented by
The Additional Superintendent of Police,
Special Investigation Cell,
Vigilance and Anti-Corruption,
R.A.Puram, Chbennai-28.
Cr.No.4 of 2003 ... Petitioner/Complainant

Vs.

Thiru K. Ponmudi ..Respondent/Accused-1

Prayer: This Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code to set aside the order of discharge passed by the Hon'ble III Additional Sessions/Special Court, Chennai in Crl.M.P.No.3259 of 2007 in C.C.No.22 of 2004 on 26.04.2007

For Revision Petitioner : Mr.R. Rajarathinam
State Public Prosecutor
Assisted by Mr.R. Ravichandran
Govt. Advocate (Crl. Side)

For Respondent : Mr.R.Shanmugasundaram
Senior Counsel for
Mr.L. Baskaran,

ORDER

This Revision Petition is filed to set aside the order dated 26.04.2007, in Crl.M.P.No.3259 of 2007 in C.C.No.22 of 2004 pending on the file of the III Additional Sessions/Special Court, Chennai.

2. The following is the brief account of the prosecution case:

2.(a) During the course of investigation in Cr.No.4/AC/2002/CL Vigilance and Anti Corruption of Cuddalore Detachment, the investigating officer got an information that the respondent Tr.K.Ponmudi, during his tenure as Minister for Transport, Government of Tamilnadu, had illegally grabbed the land bearing Plot No.108, measuring 3630 sq.ft. At North Avenue, Srinagar Colony, Saidapet, Chennai-15, by means of fabricated documents in the name of his mother-in-law Tmt.P. Saraswathi in Document Nos.1730/98 and 630/99 of the SRO Adyar, Chennai-20, as if the plot was sold to Tmt.P.Saraswathi by one Tr.K. Kannan @ Kannappan for about Rs.8 lakhs. Subsequently, the respondent constructed a house building worth about Rs.35 lakhs on the plot and has been residing in the said house. Based on the information, after observing the due process of law a case in Vigilance and Anti Corruption, Head Quarter Cr.No.4/AC/2003/HQ, u/s 120-B, 466, 467, 468, 471 r/w 467, 471 r/w 468 IPC and also r/w Sec.13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 was registered on 27.8.2003 against the respondent Tr.K. Ponmudi, former Minister for Transport, Government of Tamil Nadu and 9 others and investigation was taken up by the Deputy Supeintendent of Police, Vigilance and Anti Corruption Special Investigation Cell-II, Chennai 600028.

2.(b) After completing the investigation and getting sanction from the then Speaker, Tamil Nadu Legislative Assembly, Chennai, the Charge Sheet was laid against the respondent/Accused (A1) Tr.K.Ponmudi and 9 others on 2.9.2004, before the Honourable Principal Sessions and Special Judge, Chennai. The brief charge against A-1 to A-10 is that the Respondent /Accused (A1) Tr.K.Ponmudi with the intention of illegally acquiring the Government land in Plot No.108, measuring 3630 sq.ft.(338 Sq.mts.) Door No.13, T.S.No.12/13, Block No.4, Venkatapuram Village, Mambalam-Guindy Taluk i.e., at North Avenue, Sri Nagar Colony, Saidapet, Chennai-15, by abusing his official position and adopting corrupt and illegal means, and by driving away Tr.K.Kannan @ Kannappan who had put up a hut and resided thereon illegally, entered into criminal conspiracy with A2 to A10, being the parties to the conspiracy have agreed among themselves to commit and abet one another to commit such acts, which would facilitate to achieve their object of illegally acquiring the said Government land for the use of A1 Tr.K. Ponmudi, such as forcible eviction of Tr.Kannappan from the said land, creation of forged sale deeds and their registration in the office of the Sub-Registrar, Adyar, Chennai, by personating Tr.K. Kannappan to show as if he had sold the plot to A-3 Smt.P. Saraswathi, cheating the Government and Chennai Corporation by using the forged documents as genuine, commission of criminal misconduct by public servants, etc., and thereby committed the offence u/s 120 B r/w 419, 466, 467, 468, 471 r/w 467, 471 r/w 468 IPC and r/w 13(1)(d) r/w 13 (2) of Prevention of Corruption Act, 1988. The Charge Sheet was taken on file in C.C.No.22 of 2004 on the file of the Principal Sessions and Special Court, Chennai and made over to the III Additional Sessions Court, Chennai, for trial.

2.(c) There was another case against the respondent in Spl.C.C No.7 of 2003 on the file of the Chief Judicial Magistrate cum Special Judge Court, Villupuram, wherein the charges against the respondent/ accused-1 was that he had acquired properties in the names of his wife, sons and monther-in-law Tmt.Saraswathi, which were disproportionate to the known sources of the income, wherein all the others were included as benamies. In this case, all the accused filed discharge petition u/s 239 Cr.P.C., before the Chief Judicial Magistrate cum Special Judge, Villupuram and after hearing both sides, the trial Judge discharged all the accused on 21.07.2004 on the ground that the other accused were in possession of sufficient funds for acquiring their properties and the same was reflected in their Income Tax

Returns. Aggrieved over that order, the State preferred revision before the High Court, but the order of the trial court was upheld by this Court on 11.8.2006. Against the order of this Court, the State filed SLP before the Honourble Supreme Court and the same was admitted by the Honourable Supreme Court of India and assigned SLP (Crl) Nos.134-146 of 2013 on 3.1.2013 and the same are pending before the Honourable Supreme Court.

2.(d) During the pendency of C.C.No.22 of 2004 Tr.K. Ponmudi filed a discharge petition u/s 239 Cr.P.C.on 09.04.2007 before the III Additional Sessions cum Special Judge, Chennai and the trial Court passed orders on 26.04.2007 allowing the petition vide Crl.M.P.No.3259 of 2007 in CC.No.22 of 2004 and discharged the respondent/A1 by mentioning "it was charged that the property situated at Saidapet, Sri Nagar Colony, belongs to the respondent herein and that the said Saraswathi was a benami for the petitioner herein. The petitioner has nothing to do with the property standing in the name of Saraswathi/A3. When the petitioner had been charged u/s 13(1)(e) of the Prevention of Corruption Act and discharged, he cannot be again prosecuted for an offence u/s 13(1)(d) of the P.C.Act. Both are opposed to each other. The prosecution having contended that Saraswathi was a benami for the petitioner in Special Case No.7 of 2003 and the petitioner having been discharged of the same, he cannot again be charged for the same offence u/s 13(1) (d) of the Prevention of Corruption Act. It is significant to note that the property involved in this case was also one of the property mentioned in the said earlier case."

2.(e) The above view of the trial court is not correct. This case is of the nature of acquiring the said property by means of forged documents and abusing his official position. Whereas the earlier case in Spl.C.C.No.7 of 2003 was in the nature of acquisition of assets, disproportionate to the known sources of income of the respondent. Both are separate and distinct offences and there is no overlapping between them except for the fact that the property illegally acquired in this case has been shown in the list of assets acquired by the Accused/Respondent in the name of his mother-in-law in the other case of possession of disproportionate assets. Based on the information received during the course of investigation in CC.No.7 of 2003 that the respondent acquired the said Government Property by means of forged documents in the name of his mother-in-law Tmt.Saraswathi, the latter case was registered, investigated and charged. Hence, the order of the trial court has to be set aside

3. In the counter filed by the respondent/A1 it is averred as follows:-

3.(a) It is the case of the prosecution that the respondent by abusing his position as a public servant, illegally acquired the property by entering in the conspiracy with other accused, which would facilitate to achieve their object of illegally acquiring the Government land for the use of A1 Tr.K.Ponmudi, such as forcible eviction of Tr.Kannappan from the land; creating forged sale deeds and their registration in the office of the Sub-Registrar, Adyar, Chennai, by personating Tr.K.Kannappan to show as if Tr.K.Kannappan had sold the plot to A3 Smt.P. Saraswathi; cheating the Government and Chennai Corporation by using the forged documents as genuine; commission of misconduct by public servants, etc., and thereby A1 to A10 have committed offences punishable u/s 120-B r/w 419, 466, 467, 468, 477, 471 r/w 109 I.P.C. and Sec.13(2) r/w 13(1)(d) of the P.C. Act 1988 r/w 109 I.P.C.

3.(b) There is not even a modicum of evidence even suggesting that the Respondent was in any way instrumental or connected even remotely with the execution and obtaining the two registered sale deeds in the name of Saraswathi or in obtaining the enjoyment certificates or in obtaining the house building approval plan or the electricity services connection or the construction of the building. There is no material in the records to connect the Respondent that he had in any way prompted or promoted the said commission of the offences alleged, that even if the material furnished by the prosecution is fully accepted before it is challenged in the cross examination or rebutted by the defence evidence, it will not show that the respondent committed any offences and that there is no sufficient ground for proceeding with the trial or framing of charges, that the case has been foisted on mere presumptions, surmises, conjectures and fertile imagination which would not advance the case of the guilt of the Respondent.

3.(c) The above case was registered at the instance of the then Government out of political animosity and that the respondent has nothing to do with the property concerned. The prosecution has to produce independent evidence as to the existence of conspiracy and that the visit of the respondent will not make a reasonable ground to believe that all of them have conspired together. Admittedly no other witness except Kannappan, to speak about the presence of the respondent and hence no reliance can be placed on his statement to infer conspiracy.

3.(d) The prosecution relied upon the 164 statement of the deceased Sub-Registrar Puru Babu, who is co-accused in this case and it is trite law that the confession of the co-accused is not substantive evidence and it can be looked into as against the other accused only to lend assurance if there are other circumstances. The said Sub-registrar has not whispered that the said sale deed is for the benefit of the respondent. Thus the 164 statement of the sub-registrar would also not advance the case of the prosecution to prove the conspiracy. Apart from the said Kannappan, there is no other material to connect the respondent with regard to the other aspects viz., the execution of documents, sale deed, the construction of the building, obtaining the enjoyment certificate or the permission from the corporation or obtaining the electricity services connection. None of the witnesses state that the respondent had instructed other accused to do the acts alleged. There is no incriminating material to suggest that there was any conspiracy to acquire the property for the benefit of the respondent.

3.(e) There is no material available on record to show that as a follow up action of the visit of the respondent and in pursuance of the conspiracy between the respondent and the other accused, there was forcible eviction of Kannappan, that the two forged sale deeds had been prepared as if Kannappan was selling the said land in two parts in favour of the Mother-in-law of the respondent that the respondent abused his position and sent words to the Sub-Registrar Puru Babu through A4 and A3 on 29.12.1998 and through A5 and A8 on 15.4.1999 for registering the sale deeds that there was impersonation of the said Kannappan that the respondent abused his position and obtained the approval through A6 without producing the necessary valid documents but by forged documents including a forged enjoyment certificate that the said approval was obtained by showing the land as a vacant site while there was a building. None of the witnesses speak that the eviction was at the instance of the respondent. There is no material to suggest that the other accused were acting as per the instructions of the accused either in forging the document or impersonating kannappan or obtaining the approval on forged documents. Equally, there is no material available on recored to suggest that this respondent at any point of time directed any of the witnesses to act on his behalf.

3.(f) The prosecution is not able to provide any material or incriminating statement connecting the respondent with regard to the alleged conspiracy or the acquisition of the property in the name of Saraswathy for his benefit. Hence, it has to be held that the charge u/s 120(B) is not made out. Once it is held that there is no ground to frame a charge for conspiracy then the entire edifice of the prosecution for other charges also fail. When the respondent filed application u/s 239 Cr.P.C for discharge before the trial Court, the petitioner herein had filed a detailed counter wherein he had alleged that the disproportionate assets case has nothing to do with the present case and it is on a different footing and it is a totally different offence and thereby contested the said application.

3.(g) The petitioner herein has filed a criminal Revision along with condone delay petition to condone the dealy of 2232 days preferring the revision against the order of Discharge passed in Crl.M.P.No.3259 of 2007 in CC.No.22 of 2004. During the course of argument in the condone delay petition, this Court has expressed its view that the petitioner has not specifically mentioned the nature of steps taken to file revision atleast soon after the present ruling party came into power. AS it is mentioned that the present Government came into power in May 2011, they could have taken steps within a reasonable time. But the present Revision Petition along with condone delay petition came to be filed only on 16.09.2013.

3.(h) The respondent filed an application u/s 239 Cr.P.C.for discharge and the learned III Additional Sessions Judge by his order dated 26.04.2007 in Crl.M.P.No.3259 of 2007 in C.C.No.22 of 2004 had allowed the said application and discharged the respondent on the ground that the alleged sale deed in fovour of Saraswarhi is void and that the private person Kannan @ Kannappan had not preferred any complaint to the police and that the criminal conspiracy had not been proved. Hence, this Court may be pleased to dismiss the revision filed by the State as devoid of merits.

4. In support of the contention of the respondent, the following citations of the Honourable Supreme Court in ***(1998) 7 SCC 337 [Suresh Budharmal Kalani Alias Pappu Kalani v. State of Maharashtra], (2002) 5 SCC 659 [Jagannath Choudhary and others v. Ramayan Singh and another]*** and ***(2012) 9 SCC 460 [Amit Kapoor v. Ramesh Chander and Another]*** have been referred.

5. According to the prosecution/the revision petitioner herein, the respondent by abusing his position as a public servant, illegally acquired the property by entering in the conspiracy with other accused, which would facilitate to achieve their object of illegally acquiring the Government land for the use of A1 Tr.K.Ponmudi, such as forcible eviction of Tr.Kannappan from the land; creating forged sale deeds and their registration in the office of the Sub-Registrar, Adyar, Chennai, by personating Tr.K.Kannappan to show as if Tr.K.Kannappan had sold the plot to A3 Smt.P. Saraswathi; cheating the Government and Chennai Corporation by using the forged documents as genuine; commission of misconduct by public servants, etc., and thereby A1 to A10 have committed offences punishable u/s 120-B r/w 419, 466,467,468,477,471 r/w 109 I.P.C.and Sec.13(2) r/w 13(1)(d) of the P.C. Act 1988 r/w 109 I.P.C.

6. Further the case of the prosecution is that during the course of the investigation in Cr.No.4/AC/2002/CL the investigating officer got an information that the respondent Tr.K. Ponmudi, during his tenure as Minister forTransport, Government of Tamilnadu, had illegally grabbed the above mentioned, as if the plot was sold to Tmt.P.Saraswathi by one Tr.Kannan @ Kannappan for about Rs.8 lakhs. Subsequently, the respondent constructed a house building worth about Rs.35 lakhs on the plot and has been residing in the said house. Based on the information, after observing the due process of law a case in Vigilance and Anti Corruption, Head quarters registered a case in Cr.No.4 of 2003 on 27.8.2003 against the respondent, A2 to A10 and an unknown person and that A1 to A10 being the parties to the conspiracy, have agreed among themselves to commit and abet one another to commit such acts which would facilitate to achieve their object of illegally acquiring the said Government land for the use of the respondent/A1 Tr.K.Ponmudi, such as forcible eviction of Tr.Kannappan from the said land, creation of forged sale deeds and their registration, in the office of the sub-registrar, Adyar, Chennai, by personating Tr.K.Kannappan to show as if Tr.K.Kannappan had sold the plot to A-3 Saraswathi, cheating Government and Chennai Corporation by using forged documents as genuine, commission of Criminal misconduct by public serevants, etc., and thereby A1 to A10

have committed offences. After the completion of investigation, the prosecution has filed charge sheet and the same was taken on file in C.C.No.22 of 2004 by the Principal Sessions and Special Court. During the pendency of the case, the present Respondent/A1 has filed the discharge petition in M.P.No.3259 of 2007 before the trial Court.

7. It is also the case of the prosecution that there was another case against this respondent in Spl.C.C.No.7 of 2003 on the file of the Chief Judicial Magistrate cum Special Judge, Villupuram wherein the charges against the respondent/accused was that he had acquired properties in the names of his wife, sons and mother-in-law Tmt.Saraswathi, which were disproportionate to the known sources of his income, wherein all others were included as benamies. In that case, all the accused filed discharge petition u/s. 239 Cr.P.C. Before the Chief Judicial Magistrate, Villupuram, and the learned Chief Judicial Magistrate, Villupram discharged all the accused on 21.07.2004. The State preferred revision before this Court against that order and the order of the lower court was upheld by this Court on 11.8.2006. After that the State preferred SLP before the Honourable Supreme Court against the revision case and the same is pending before the Honourable Supreme Court.

8. Heard Mr.R.Rajarathinam, State Public Prosecutor assisted by

Mr.R.Ravichandran, Government Advocate (crl.side) for the petitioner and Mr.R.Shanmugasundaram, learned Senior Counsel for Mr.L.Baskaran appearing for the respondent/accused 1. Perused Charge Sheet, 161 Statements, documents annexed with, the discharge petition filed by the Petitioner, counter filed by the Respondent/Accused1, the order passed by the trial court and the grounds of the revision.

9. On careful perusal of the final report, there is specific allegation against the petitioner that the petitioner, with the intention of illegally acquiring the Government land by abusing his official position and adopting corrupt and illegal means, and driving away Tr.K. Kannan @ Kannappan who had put up and resided therein illegally, entered into criminal conspiracy with A2 toA10 and an unknown person at Chennai during the period between 1998 and 2001 and that A1 to A-10 being the parties to conspiracy, have agreed among themselves to commit and abet one another to commit such act, which would facilitate to achieve their object of illegally acquiring the said Government land for the use of A1 Tr.K.Ponmudi, such as forcible eviction of Tr.Kannappan from the said land creating forged sale deeds and their registration in the office of the Sub-Registrar, Adyar, Chennai, by personating Tr.K.Kannappan to show as if Tr.K.Kannappan had sold the plot to A3 Smt.P. Saraswathi; cheating

the Government and Chennai Corporation by using the forged documents as genuine; commission of misconduct by public servants, etc., and thereby A1 to A10 have committed offences punishable u/s 120-B r/w 419, 466,467,468,477,471 r/w 109 I.P.C. and Sec.13(2) r/w 13(1)(d) of the P.C. Act 1988.

10. Further, on a careful perusal of 161 Cr.P.C. Statement of witnesses L.W.9 Kannappan, L.W.11 N. Srinivasan, L.W.30 Tr.S. Raghunathan, Assistant Engineer (Highways), L.W.33 Tr.V.Adaikkam, Superintending Engineer, Bus Route Department, Chennai Corporation, have spoken about the involvement of the respondent/accused. On the face of the records and statements of witnesses, particulary the 161 Cr.P.C.statements of L.W.9, 11, 30 and 33 it is clearly show that there is sufficient ground which makes prima facie to proceed against the respondent/A1. But, the learned trial judge has discussed the merits of the case beyond the scope of 239(1) Cr.P.C, and discharged the respondent. It is settled law that at the stage of framing the charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed. At the stage of framing the charge,

inquiry must necessarily be limited to deciding if the facts emerging from such materials constitute the offence with which the accused could be charged. The court may pursue the records for that limited purpose, but it is not required to marshal with a view to decide the reliability thereof.

11. At the stage of framing the charge, the court is not expected to go deep into the probative value of the 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. The court has to find out whether there is sufficient grounds to proceed against the accused as it is not required to appreciate evidence to conclude whether there are adequate materials for convicting the accused. At the time of framing of charge, what the trial court is required to and can consider are only the police report referred to under Section 173 (2) Cr.P.C. and the documents sent with it. The accused has right to be heard and the court can also examine it where it finds it necessary. While framing charge, the Magistrate is expected to apply his mind to the facts of the case keeping in view of the essential ingredients of the offence for which the accused is sought to be charged and the Magistrate cannot go into the merits of the case beyond the scope in considering the discharge petition.

12. This case is of the nature of acquiring the Government property by means of forged documents and abusing the official position of the respondent/A1. Whereas the earlier case in Spl.C.C.No.7 of 2003 was in the nature of acquisition of assets, disproportionate to the known sources of income of the respondent. Both are separate and distinct offences and there is no overlapping between them except for the fact that the property illegally acquired in this case has been shown in the list of assets acquired by the Accused/Respondent in the name of his mother-in-law in the other case of possession of disproportionate assets. Based on the information received during the course of investigation in CC.No.7 of 2003 that the respondent acquired the said Government Property by means of forged documents in the name of his mother-in-law Tmt.Saraswathi, the present case was registered, investigated and charged. From the above, it is clear that there is a prima facie material to frame the charge against the respondent and proceed the case. The other facts which were put forth by the respondent/A1 are all to be decided only after the completion of trial. The judgement of the Honourable Supreme Court, cited by the respondent/Accused-1 are not applicable to the facts of the present case. Further, the defence taken by the accused and documents relied on by the accused need not be considered at this stage. The same may be considered only after the

trial, not at the stage of framing of charge.

13. A perusal of the final report filed u/s 173(2) Cr.P.C. and documents sent with it would disclose a prima facie case against the respondent. It is settled law that the magistrate can discharge the accused only when a prima facie case is not made out against the accused.

14. While applying the above legal position to the facts of the present case, it is clear that the order passed by the trial Court is not in consonance with the well settled proposition of law. The learned trial judge has discussed the merits of the case beyond the scope of 239(1) Cr.P.C, which warrants interference of this court. Hence, the order of the trial court is liable to be set aside and accordingly it is set aside.

15. In fine, the Order passed in Crl.M.P.No.3259 of 2007 in CC.No.22 of 2004 on 26.04.2007 by the learned III Additional Sessions Special Court, Chennai, is set aside and the Criminal Revision Case is allowed.

06.09.2017

Index: Yes/No
Internet: Yes/No

ggs

To

1. III Additional Sessions/Special Judge,
   III Additional Sessions/Special Court, Chennai

2. The Additional Superintendent of Police,
   Special Investigation Cell,
   Vigilance and Anti-Corruption,
   R.A.Puram, Chennai-28.

3. The Public Prosecutor,
   High Court, Madras.

P.VELMURUGAN,J.

ggs

Pre-delivery Order in:
Crl.R.C.No.1374 of 2014

06.09.2017