

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRIMINAL REVISION CASE Nos.724 to 733 of 2017
and
Crl.M.P.Nos.6820 to 6829 of 2017

N.Dhanapal .. Petitioner in all Crl.R.C.No.724 of 2017
A.Rajasekaran .. Petitioner in all Crl.R.C.No.725 of 2017
S.Krishnamurthy .. Petitioner in all Crl.R.C.No.726 of 2017
T.S.Mani .. Petitioner in all Crl.R.C.No.727 of 2017
Suguna .. Petitioner in all Crl.R.C.No.728 of 2017
R.Kalyani .. Petitioner in all Crl.R.C.No.729 of 2017
G.Ashok Kumar .. Petitioner in all Crl.R.C.No.730 of 2017
S.Poorna Pushkala .. Petitioner in all Crl.R.C.No.731 of 2017
C.Santhi .. Petitioner in all Crl.R.C.No.732 of 2017
E.Kanniappan .. Petitioner in all Crl.R.C.No.733 of 2017

Vs.

The State
Represented by the Inspector of Police,
SPE:CBI:ACB,
Sastri Bhavan, Chennai. Respondent in all Crl.R.Cs.

Prayer in Crl.R.C.No.724 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5098 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in Crl.R.C.No.725 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5099 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in Crl.R.C.No.726 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned

XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5097 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in CrI.R.C.No.727 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5093 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in CrI.R.C.No.728 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5100 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in CrI.R.C.No.729 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5095 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in CrI.R.C.No.730 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5092 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in CrI.R.C.No.731 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5101 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in CrI.R.C.No.732 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in

M.P.No.5094 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

Prayer in CrI.R.C.No.733 of 2017 : Criminal Revision Petition filed under Section 397 r/w. 401 of Cr.P.C. to call for the records and set aside the order dated 08.02.2017 of the learned XII Additional Special Judge for CBI Cases - Chennai - 104, in M.P.No.5096 of 2015 in C.C.No.14 of 2015, dismissing the discharge petition under section 239 of Cr.P.C. against the petitioner/accused.

For Petitioner in all CrI.R.Cs.: M/s.P.Sivaraman

For respondent in all CrI.R.Cs.: Mr.K.Srinivasan,
Spl. Public Prosecutor
for CBI Cases

COMMON ORDER

These revisions are filed as against the dismissal of the application of discharge of the accused from the case filed by the CBI for various offences. The charge sheet has also been filed in this case under sections 120(B) r/w.409, 420, 468, 471 and Sections 13(2) r/w.13(1)(d) of Prevention of Corruption Act.

2. The crux of the allegation relating to the filing of the charge sheet is that A1 being an agent in the Postal Department had swindled the amount of various depositors to the tune of more than 50 lakhs by forging the signatures of the various depositors in the withdrawal form and the other accused who are officers of the Postal Department have connived with A1 and aided A1 to swindle the amount. These are the basic allegations as against the accused.

3. When the Trial Court took cognizance of the case, the applications are took out by all the revision petitioners herein to discharge them from the charges. The learned trial Judge considered the entire aspects and the materials produced by the prosecution and dismissed the applications.

4. The main contention of the learned counsel appearing for the revision petitioners is that there is no prima facie materials as against the revision petitioners to sustain the charges as against them and the CBI has not produced the

documents to show that the petitioners have forged the signatures of the depositors. Hence, prayed for allowing the revisions.

5. Whereas, the learned Special Public Prosecutor vehemently opposed the petitions by stating that there are many materials available as against the accused and there are prima facie materials against the accused and at this stage, the question of admissibility and veracity of the statements cannot be gone into and prayed for dismissal and also relied upon the judgment of this Court reported in 2007 - 1 - L.W. (Crl.) 493 - A.Govindarajan & 6 others Vs. The Inspector of General of Police, W-5, All Women Police Station, Chennai - 600 040 (Crime No.15 of 2015).

6. In the light of the above submissions, when the materials are perused, the revision petitioners stood charged for the offences under sections 120(B) r/w.409, 420, 468, 471 and Sections 13(2) r/w.13(1)(d) of Prevention of Corruption Act and the learned trial Court took cognizance of the offence as against the accused.

7. It is to be noted that the revisional jurisdiction of this Court can be exercised only when there is irregularity or illegality in the Order of the trial Court. As a matter of right, the revisional jurisdiction cannot be invoked against every order passed by the trial Court. It is the domain of the trial court to apply its mind and after perusal of all the materials produced by the prosecution to come to the conclusion to find out whether there is any prima facie material available against the accused to proceed further in trial. It is also well settled law that for framing of the charges, only prima facie materials or even strong suspicion that the accused have committed the crime itself is sufficient to frame the charges. What has to be seen by the trial court is whether there is any prima facie material which leads to the presumption that the accused has committed the offence. The trial court is not expected to see whether the materials collected by the prosecution is proved beyond reasonable doubt.

8. In this regard it is useful to refer the judgment of the Honourable Apex Court reported in 2012 (9) Supreme Court Cases 460 - AMT Kapoor Vs. Ramesh Chander and another wherein it has been held that

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a

case. The object of the provision is to be set right a patent defect or an error of appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is a ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be a weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code."

9. A perusal of the lower court order reveals that the trial court has analysed the entire aspects in para 12 of its

order and clearly analysed the various materials connecting each and every accused with regard to their complicity of the alleged crime. Therefore, at this stage, this Court is of the view that the admissibility of the materials and evidences and whether the evidence is sufficient to prove the guilt of the accused, cannot be gone into and such roving enquiry is not at all required in exercising revisional jurisdiction. Hence, this Court does not find any irregularity or illegality in the Order passed by the learned trial Judge.

10. Accordingly, these revision petitions are dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

vrc

To

The Inspector of Police,
SPE:CBI:ACB,
Sastri Bhavan, Chennai.

Copy to

The Spl. Public Prosecutor
CBI Cases, High Court, Madras

CrI. R.C. Nos.724 to 733 of 2017

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