

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.05-2017

CORAM

THE HON'BLE JUSTICE T. MATHIVANAN

Criminal Revision Case No.73 of 2017

Against

Crl.M.P.No.6873 of 2015

in

C.C.No.5 of 2015

(On the file of the Special Judge for CBI cases (XII Addl Judge) City Civil Court, Chennai)

Uttamchand Bohra,
S/o .B C Bohra,
Bohra House,
No.37/47 Genedral Muthaiah Street,
Sowcarpet,
Chennai 600 079Petitioner/accused 5

-Vs-

The State, by Superintendent of Police,
SPE,CBI/ACB Chennai
RC5A/2012 ...Respondent/Complainant

Criminal Revision is filed to set aside the impugned order, dated 29.12.2016 and made in Crl.M.P.No.6873 of 2015 in C.C.No.5 of 2015, on the file of the learned XII Additional Special Judge for CBI cases, Chennai.

Appearance

For Petitioner:-Mr.Muralikumaran, for M/s.Mc.Gan
Law firm

For Respondent:-Mr. K.Srinivasan, Spl. Public
Prosecutor for CBI (cases)

COMMON ORDER

Invoking the provisions of Sections 397 and 401 of the Code of Criminal Procedure the petitioner who has been arrayed as 5th accused in the case in C.C.No.5 of 2015, on the file of the Special Judge for CBI cases (XII Addl Judge) City Civil Court, Chennai has preferred this criminal revision, impugning the correctness as well as the legality of the order, dated 29.12.2015 and made in Crl.M.P.No.6873 of 2015 in C.C.No.5 of 2015, on the file of the learned Special Judge (XII Addl Judge). City Civil Court, Chennai, dismissing the

petition filed under Section 239 of the Code of Criminal Procedure for discharging him from the grip of charges.

Heard Mr.Muralikumaran, learned counsel appearing for M/s.Mc.Gan Law firm, who is on record for the petitioner/A5 and Mr. K.Srinivasan, learned Special Public Prosecutor for CBI (cases) appearing for the respondent/complainant. Perused the averments of the final report along with the materials placed on record including the impugned order. Having taken into consideration of the related facts and circumstances arising from the case, which give rise for filing the criminal revision this Court does passeth the following order:

2. Before we go into the merits and demerits of the case, this Court at the first instance would like to place it on record that the learned Special Judge had proceeded to pass the impugned order mechanically without delving deep into the facts of the case which is foisted against the petitioner/A5.

3. The Investigating Officer Mr. L.S.Padmakumar, Superintendent of Police, SPE/CBI/ACB Chennai after completion of his investigation had laid the final report before the learned Special Judge for CBI cases under Section 173(2) of the Code of Criminal Procedure on 20.02.2012 as against five accused out of seven. A3 Mr. Badhe Rathnam Mahesh, son of B.S.Rathnam and A4 Shri Badhe Anandh Chaitanya, son of Mr. B.R.Mahesh were accorded tender of pardon and as such they became approvers. Therefore, they have not been sent for trial.

4. The remaining five accused are: (i) Mr. Andasu Ravindar, son of A.Venkateswara Rao (A1), (ii) Tmt. Kavitha Andasu, wife of Mr. Andasu Ravindar (A2), (iii) Mr. Uttam Chand Bohra, son of late B.C.Bhora (A-5), (iv) Mr. Uday K.Agarwal, son of late Kamal Krishna, (A6), (v) Mr. Pothapragada Srinivas, son of P.Kamala Kumar (A7). It is alleged that they have committed the offences punishable under Sections 120-B IPC and 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 IPC.

5. On perusal of the averments of the final report, this Court finds that the case of the prosecution seems to have been couched under the following four compartments:

(i) Mr.Andasu Ravindar in collusion with other accused persons viz., approver Mr. B.R.Mahesh (A3), approver, Mr.B.A.Chaitanya (A-4), Director of M/s.Sri Raviteja Trading Private Ltd., Hyderabad, Mr. Utham Chand Bohra (petitioner herein), Mr. Uday K.Agarwal (A-6) and Mr. Pothapragada Srinivas (A7), during the period from 01.01.2005 to 29.08.2011 had amassed wealth in his name, as well as in the name of his wife Tmt. Kavita to the tune of Rs.2,32,20,296/- which is disproportionate to his known source of income for which he was not able to account satisfactorily.

(ii) Tmt. Kavitha, wife of Andasu Ravindar is a house wife and filed her income tax returns for the assessment year 2005-06, 2006-07, 2007-08, 2009-10 and 2011 through the approver Mr. B.R.Mahesh, a Chartered Accountant who had acted on behalf of Mr. Andasu Ravindar (A1) and received money from him and the same was returned to Tmt. Kavitha to make it appear, as if she had earned the income through Job contracts/business.

(iii) Mr. A. Ravinder had also purchased properties on several occasions and the Income Tax returns did not declare the properties purchased in Chennai in the name of M/s Raviteja Trading Co., Pvt. Ltd., Hyderabad. The properties were purchased only through the source arranged by Mr. Andasu Ravindar. On the directions of Mr. Pothapragada Srinivas (A7) Rs. 94,82,300/- was transferred through cheques by Mr. Udhay K. Agarwal (A6) through his companies accounts i.e. M/s. Utkarsh Infotech private Ltd., and M/s. Utkarsh staffing Private Ltd., Secunderabad to the current Account of M/s. Raviteja Trading Company Pvt. Ltd., Hyderabad with Standard Chartered Bank, Secunderabad. After receiving the said sum of Rs. 94,82,300/- M/s. Raviteja Trading Co., Pvt. Ltd., represented by approver Mr. B.A. Chaitanya, had acquired the property at Chennai on the directions of Mr. Andasu Ravindar. The sale consideration of Rs. 80,00,000/- was paid through two demand drafts each for the value of Rs. 50,00,000/- and Rs. 30,00,000/- respectively and these two demand drafts were purchased by Mr. B.A. Chaitanya (approver), Director of M/s. Raviteja Trading Co., Pvt. Ltd., Hyderabad through the Current Account of M/s. Raviteja Trading Co., Pvt. Ltd., Hyderabad and the same were handed over to the vendor Mr. Badruzman Khan.

(iv) The sale deed of the property at Flat No. 4/3 (old No. 28/3), measuring 2108 sq.ft in 2nd floor at AIL-Ahad Apartment No. 28 (present No. 4) Nageswara Rao Road (Old No. 13, Krishnamchhari Road, Nungambakkam, Chennai -34) was executed and registered under Document No. 669/2011, dated 13.07.2011 in the name of M/s. Shri Raviteja Co., Pvt. Ltd. Though the property was purchased in the name of M/s. Raviteja Trading Co., Pvt. Ltd., Hyderabad the original sale deed pertaining to the said property was seized from the possession of Mr. Utham Bhora, (5) (the petitioner herein), who is the financier and close associate of Sri Andasu Ravindar.

6. The specific case of the prosecution as against the petitioner (A5) is that even though the property was purchased in the name of M/s. Shri Raviteja Trading Co., Pvt. Ltd., Hyderabad represented by Mr. B.A. Chaitanya the original sale deed pertaining to the said property was seized from the possession of Mr. Utham Bhora (A5) who is the financier and close associate of Sri Andasu Ravindar.

7. It is thus made clear that the petitioner Mr. Uttam Chand Bohra being a financier was found to be in possession of the sale deed bearing document No. 669/2011, dated 13.07.2011.

8. Excepting the allegation of seizure of the sale deed pertaining to the property situate at Flat No.4/3 (old No.28/3), measuring 2108 sq.ft in 2nd floor at AIL-Ahad Apartment No.28 (present No.4) Nageswara Rao Road (Old No.13, Krishnamahari Road. Nungambakkam, Chennai -34) from the possession of the petitioner, nothing is alleged against him.

9. Under this circumstance a curial question arises, as to whether the possession of the sale deed, bearing document No.669/2011, dated 13.07.2011 which is in dispute, by a private financier would constitute an offence? This question would be elaborately given in the later paragraphs.

10. It is the contention of Mr. Muralikumaran, learned counsel for the petitioner, that the first accused Mr. Andasu Ravindar was known to the petitioner already as a debtor and his wife Tmt. Kavitha had availed a loan from him and subsequently repaid the same on account. He has further contended that all his accounts were assessed to income tax and hence there was no illegality in the transaction.

11. The prosecution case, in so far as the petitioner herein is concerned, comprises two dimensions. The first one is relating to the present case on hand i.e. C.C.No.5 of 2015, whereas the second one is relating to the case in C.C.No.3 of 2013.

The first one

The petitioner/A5 is a financier and a close associate of Mr. Andasu Ravindar (A1) and his family. The original sale deed bearing document No.669/2011, dated 13.07.2011 which was executed in the name of M/s Sri Raviteja Trading Private Ltd., Hyderabad found kept in his custody as per the directions of the first accused and thereby he had rendered his active assistance to the first accused to acquire assets in his name as well as in the name of his wife Tmt. Kavitha Andasu and in the name of M/s Sri Raviteja Trading Private Ltd., Hyderabad during the check period from 01.01.2005 to 29.08.2011 which was found to be disproportionate to his known source of income to the tune of Rs.2,32,20,296/-. The percentage of disproportionate assets is calculated at 171.41% and for the total income of Mr. Andasu Ravindar and his wife Tmt. Kavitha Andasu they could not satisfactorily account for. The second one

The petitioner is a co accused (A3) in RC.No.33(A)/2011 (CC.No.3 of 2013) and facing trial in this case. According to the prosecution, his vehicle was intercepted, when he had attempted to help Mr. Andasu Ravindar (A1) to transport the bribe amount of Rs.50 lakhs received by him (A1) to a safer place.

12. It is explicit from the records that the respondent CBI/ACB/Chennai had registered a case in RC.No.5(A)/2012 on 20.02.2012 under Section 109 IPC and 13(1) (e) of the Prevention of Corruption Act, 1988 against Mr. Andasu Ravindar (A1) and his wife Tmt. Kavitha Andasu (A2).

13. After completion of investigation, the Investigating Officer Mr. L.S.Padmakumar, Additional Superintendent of Police, CBI/ACB/Chennai had filed a final report before the learned Principal Special Judge for CBI cases, Chennai and the same was taken cognizance vide C.C.No.5 of 2015 and subsequently it was transferred to the file of XII Additional Special Judge for CBI cases, Chennai for trial. The learned XII Additional Special Judge for CBI cases, Chennai after analysing the role played by Mr. Badhe Rathnam Mahesh, (A3) and Badhe Ananth Chaitanya (A4) with reference to the available case records had found their (A3 and A4) roles in the offence committed by A1 is not significant when compared with the involvement of other accused persons in the alleged offence and further concluded that A3 Mr. Badhe Rathnam Mahesh and A4 Mr. Badhe Ananth Chaitanya would make full and true disclosure of the facts and circumstances of the case during trial and would not resile from the same and therefore, he had accorded tender of pardon to them (A3 and A4).

14. Even from the averments of the final report, it is alleged that the first accused Andasu Ravinder had purchased the property for a consideration of Rs.80 lakhs in the name of M/s Sri Raviteja Trading Private Ltd., Hyderabad, represented by Mr. Badhe Ananth Chaitanya (A4/approver), who is his Chartered Accountant. It is also alleged that the Income Tax returns of M/s Sri Raviteja Trading Private Ltd., Hyderabad did not declare the property purchased in Chennai in the name of the company as assets. The investigation, according to the prosecution discloses, that the property was purchased only through the sources arranged by Mr. Andasu Ravinder (A1) through his friend Mr. Pothapragada Srinivas (A7).

15. It is also alleged that on the reference of Mr. Andasu Ravinder (A1), Mr. Pothapragada Srinivas (A7), Director of M/s.Tidal Data Solutions, Bangalore had supplied unified storage servers to M/s.A.S.Shipping Agencies and to M/s.Aban Offshore Ltd., Chennai, where Mr. Andasu Ravinder (A1) had official dealings through Mr. Udhay K.Agarwal (A6) of M/s.Utkarsh Infotech Pvt. Ltd., Secunderabad. It is also alleged that Mr. Pothapragada Srinivas (A7) had received payments from the said companies more than the invoice value and the excess amounts totalling to the tune of Rs.1,00,22,432/- (Rs.54,04,700/- from M/s.A.S.Shipping Agencies Pvt. Ltd., Chennai and Rs.46,17,732/- from M/s.Aban Offshore Ltd., Chennai) were collected through cheques and the same were deposited into the companies current account of Mr. Udhay K.Agarwal (A6) in Allahabad Bank. It is also the case of the prosecution that on the directions of Mr. Pothapragada

Srinivas (A7) Rs.94,82,300/- was transferred through cheques by Mr. Udhay K.Agarwal (A6) through his companies account i.e. M/s. Utkarsh Infotech Pvt. Ltd., and M/s. Utkarsh Staffings Pvt. Ltd., Secunderabad to the current account of M/s Sri Raviteja Trading Private Ltd., Hyderabad, with Standard Chartered Bank, Secunderabad. After receiving the said amount of Rs.94,82,300/- by M/s Sri Raviteja Trading Private Ltd., Hyderabad the property at Chennai was acquired on the directions of Mr. Andasu Ravinder (A1) by M/s Sri Raviteja Trading Private Ltd., Hyderabad, represented by approver Mr.B.A.Chaitanya (A4).

16. The consideration of Rs.80 lakhs was paid through two demand drafts each for the value of Rs.50 lakhs and Rs.30 lakhs respectively and the demand drafts were purchased by Mr. B.A.Chaitanya (approver/A4) Director of M/s Sri Raviteja Trading Private Ltd., Hyderabad through the current account of M/s Sri Raviteja Trading Private Ltd., Hyderabad and the same were handed over to the vendor Mr. Badruzman Khan.

17. This Court is not able to understand as to how the learned XII Additional Special Judge for CBI cases, Chennai had gone to find that the roles played by Mr. Badhe Rathnam Mahesh (approver/A3) and Mr. B.A.Chaitanya (approver/A4) were not significant in the offence committed by Mr. Andasu Ravinder (A1), when compared with the involvement of other accused persons?

18. As it appears from the final report FIR was registered on 20.02.2012 in RC 5(A)/2012 under Section 109 IPC and under Section 13(1)(e) of the Prevention of Corruption Act, 1988. At the time of registration of the First Information Report the offence under Section 120-B IPC was not incorporated. Only at the time of filing of the final report, Section 120-B IPC was incorporated alleging that the petitioner and other accused had entered into a criminal conspiracy with the first accused Andasu Ravinder and rendered their active assistance to amass wealth in his name as well as in the name of his wife Tmt. Kavitha Andasu. Hence, this petitioner and the other accused have been roped into the criminality alleging that they had committed the offences punishable under Sections 120-B IPC r/w Section 13(2) r/w Section 13(1)(e) of the Prevention of Corruption Act, 1988 and under Section 109 IPC.

19. The case in RC No.33(A)/2011 which is relating to CC.No.3 of 2013 was registered on 29.08.2011. In this case, the petitioner herein is the third accused. The instant case on hand was registered on 20.02.2012 in RC.No.5(A)/2012 i.e one year later than the previous case. Both the cases are interlinked with each other.

20. The facts of this case in RC.No.33(A)/2011 is that the petitioner herein was a co accused, in which Mr. Andasu Ravinder (A1) was trying to transport Rs.50 lakhs of bribe amount received by him to a safer place with the help of the petitioner herein in his car , after he had arrived there for that specific purpose.

21. As it appears from the statements given by Mr. S.Jayaseelan LW 53 before the Investigating Officer under Section 161(3) of the Code of Criminal procedure that during the course of his search at the residential premises of the petitioner herein in respect of the case in RC No.33(A)/2011, he happened to seize three documents, as per the search list, which include the original sale deed in respect of the property purchased at Nungambakkam, Chennai in benami name by Mr. Andasu Ravinder and an amount of Rs.48,20,000/- was also seized from his residence.

22. On coming to the instant case on hand, the crux of the prosecution case against the petitioner is that the original sale deed, bearing document No.669/2011, dated 13.07.2011 which was executed in the name of M/s Sri Raviteja Trading Private Ltd., Hyderabad was found kept in the custody of the petitioner in his residential premises which was seized by L.W. 53 during his search in respect of the case in RC No.33(A)/2011 relating to the case in CC No.3 of 2013. From the above context it is made clear that the original sale deed, bearing document No.669/2011 was seized by LW 53 Jayaseelan Inspector of Police as early as on 30.08.2011 in respect of the case in RC No.33(A)/2011 relating to the case in CC No.3 of 2013. The case in CC No.3 of 2013 (RC.No.33(A)/2011) is pending trial on the file of the learned XII Additional Special Judge for CBI cases, Chennai . The original sale deed bearing document No.669/2011 dated 13.07.2011 is the document pertaining to the case in CC No.3 of 2013. This document has not been seized by him or by any other Police Officer during the course of investigation of the present case viz., RC No.5(A)/2012. The prosecution in this regard has not satisfactorily explained as to what made them to foist a case against the petitioner, after one year for the simple reason that the original document bearing No.669/2011, dated 13.07.2011 was seized from the possession of the petitioner. Since the case in CC No.3 of 2013 RC No.33 (A)/2011 has been pending trial, the petitioner herein is bound to answer in that case, under what circumstance this document was seized from his possession from his residential premises.

23. It is significant to note here that the seizure of the above said original sale deed from his residential premises was not denied by him. The case of the defence is that he is a financier, which is not disputed by the prosecution. The first accused/Andasu Ravinder is also not a stranger to him, as his wife Tmt. Kavitha Andasu had already

availed loan from him and subsequently it was repaid by her and since he is a financier and in such capacity the document was entrusted with him with reference to the financial transaction. According to the petitioner, all financial transactions with A1 & A2 were borne out by records and that he has also filed Income Tax Returns with the authorities concerned and as such he has nothing to do with the alleged offence.

24. In this connection Mr. Muralikumaran, learned counsel appearing for the petitioner has submitted that no person shall be made to face trial twice for the very same offence. He has also sought the assistance of Article 20(3) of the Constitution of India and submitted that no accused shall be compelled to face the ordeal of trial twice for the very same offence and on account of this reason, Mr. Muralikumaran has submitted, that the present case on hand alleging that the petitioner was found to be in possession of the document bearing Registration No.669/2011 dated 13.07.2011 was not sustainable either on law or on facts.

25. Article 20(3) of the Constitution of India envisages that no person accused of any offence shall be compelled to be a witness against himself. In order to avail protection of Article 20(3) of Constitution of India, the following three ingredients must be satisfied:

Firstly, the person must be accused of an offence;
secondly, the element of compulsion should be there &
thirdly, it must be against himself.

All the above three ingredients' must necessarily exist before protection of Article 20(3) of Constitution of India is available. In this case, this court finds that all the three ingredients are fully satisfied.

26. He has also contended that as per the provisions of clause (e) of sub section (1) of Section 13 of the Prevention of Corruption Act, 1988, if a public servant or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income it could be construed that he (public servant) has committed an offence of criminal misconduct.

27. Mr. Muralikumaran has also drawn the attention of this Court to the explanation of clause (e) of sub section (1) of Section 13 of the Prevention of Corruption Act, 1988 which explains :

For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a

28. It is also pointed out that the explanation casts burden on the public servant to intimate the income received from lawful source to the concerned authorities, in accordance with the provisions of any law/rule/order for the time being applicable to a public servant. clause (e) of sub section (1) of Section 13 of the Prevention of Corruption Act, 1988 consists of two parts; the first part casts a burden on the prosecution, while the second part casts a burden on the accused. When Section 13(1)(e) of the Act uses the words 'for which the public servant cannot satisfactorily account' it is implied that the burden is only on such 'public servant' to account for the acquisition of disproportionate assets. (See State Of Maharashtra vs Wasudeo Ramchandra Kaidalwar (AIR 1981 SC 1186: 1981(3) SCC 199)).

29. Therefore, it is for the first accused to explain his lawful source at the time of trial. In so far as the petitioner is concerned, Mr. Muralikumaran, has contended that the document was seized from the residential premises of the petitioner by LW 53 during the course of his investigation and search in respect of the case in RC 33(A)/2011 (CC No.3 of 2013) which was in no way connected with the present case on hand because the case in CC No.3 of 2013 in RC N33(A)/2011 has been pending trial on the file of the learned XII Additional Special Judge for CBI cases, Chennai in which the original sale deed bearing document No669/2011, dated 13.07.2011 was supposed to be marked as one of the documentary evidences.

30. As it was held in M.Krishna Reddy vs State Deputy Superintendent of Police, Hyderabad ((1992) 4 SCC45 : 1992 AIR SCW 3204 : AIR 1993 SC 313: 1993 Cr1.LJ 308:

"An analysis of Section 5(1)(e) of the Act, 1947 corresponds to Section 13(1)(e) of the new Act of 1988 shows that it is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law"

31. Thus as adumbrated supra, the two postulates must combine together for crystallization into the offence, namely, possession of property or resources disproportionate to the known sources of income of public servant and the inability of the public servant to account for it. Burden of proof regarding the first limb is on the prosecution, whereas the onus is on the public servant to prove the second limb. So it is contended that a non-public servant (petitioner herein) has no role in the trial of the said offence and hence he cannot conceivably be tagged with the public servant for the offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988.

32. This Court takes the risk of repetition by reiterating the provisions of clause (e) of sub section 1 of Section 13 of the Prevention of Corruption Act, 1988. The first sentence of clause (e) starts with the word "if he" (public servant) or any person on his behalf, is in possession or has, at any time during the period of his office been in possession...

33. On coming to the instant case on hand, it is the specific case of the prosecution that the sale deed, pertaining to the property purchased by A1/Mr. Andasu Ravinder stands in the name of M/s Sri Raviteja Trading Private Ltd., Hyderabad in which A3 and A4 are directors, was seized from the residential premises of the petitioner/A5.

34. According to the prosecution, money was sourced through A1 for the purchase of the said property as per the confession given by A3 and A4. The prosecution further alleges that the investigation reveals that the petitioner/A5 had facilitated the purchase.

35. It is significant to note here that admittedly the property was purchased in the name of M/s Sri Raviteja Trading Private Ltd., Hyderabad in which A3 and A4 are the Directors. It is manifested from the records that both A3 and A4, in whose name the property was purchased were not brought for trial, instead they have been made as approvers and as such as they have been listed as witnesses on the side of the prosecution.

36. It is to be pointed out that LW 60 Mr. V.Sridhar is an office staff of the petitioner. In his statement under Section 161(3) of the Code of Criminal Code, he has stated that he had signed as a witness in the document bearing No.669/2011. He would further state that the petitioner/A5 had told him that his friend was going to purchase a property and he therefore had asked him to sign the document as a witness.

37. In this connection, Mr. Muralikumaran has contended that, if the property had been purchased out of the fund of the first accused (Mr. Andasu Ravindar) being a public servant, in the name of the petitioner herein, knowing fully well that the funds were derived from illegal sources, then it could be understood that the petitioner might have abetted the first accused Mr. Andasu Ravindar to acquire assets benami which was disproportionate to his known source of income. According to Mr. Muralikumaran, mere asking a person to sign as a witness would not constitute any kind of offence, as alleged in the final report.

38. He has also invited the attention of this Court to the statements of the witnesses, viz., L.W.53 Mr. S.Jayaseelan, Inspector of Police, CBI/ACB, Chennai and LW54, Mr. T.Saravanan, senior Tax Assistant Legal Section, Office of the Commissioner of Customs (Air), Customs House, Chennai.

39. They appear to be the witnesses pertaining to the seizure of the documents. Mr.Muralikumaran has contended that they could not speak anything about the contents of the documents and that the contents of the documents were not referring to anything about the alleged role played by the petitioner. He has continued further that even if those witnesses were examined, they could not speak more than the happenings of seizure.

40. Before the learned Special Judge, the petitioner had contended mainly on the following five grounds:

(a) Out of 74 witnesses cited, and 310 documents produced by the prosecution, none of the witnesses had spoken to about the petitioner to constitute the offence punishable under Sections 120-B IPC and 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 IPC;

(b) To constitute the offence of conspiracy, there should be an agreement to do an illegal act or a legal act by illegal means. There is no such allegation that the petitioner/Accused 5 and the first accused Mr.Andasu Ravindar along with the other accused had agreed or conspired together to commit the offence of criminal misconduct by abusing his (A1) official position being a public servant;

(c) There is no such allegation that during the check period viz., between 01.01.2005 and 29.08.2011 the petitioner/Accused-5 and the first accused had agreed to amass wealth and to commit the offence punishable under the Prevention of Corruption Act, 1988. As could be seen from the final report, the alleged transaction between the petitioner/A-5 and the public servant is pertaining to the period of 2008. The check period ends on 29.08.2011. Therefore, the question of entering into criminal conspiracy or abetting Accused-1 (public servant) to commit the offence punishable under the Prevention of Corruption Act, 1988 does not arise.

(d) The petitioner is a financier and all the transactions were Account transactions and borne out by records and that the records would disclose the fact that the transactions were legal and hence there was no illegality in the transactions;

(e) For argument sake, even if it is accepted without admitting for a moment that, LW60 being an employee of the petitioner had signed in the sale deed, there is nothing wrong in asking a person to sign as a witness for a known person.

if the property has been purchased out of the funds of the

public servant and stands in the name of the petitioner, then only it could be alleged that the petitioner had helped or abetted the first accused to commit the offence punishable under the Prevention of Corruption Act, 1988. Even according to the prosecution, mere asking of a person to sign as a witness would not constitute any of the offences as specified in the final report. &

(f) To constitute the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, the petitioner/Accused-5 should have been in possession of the property of the first accused or he should have been in possession of the property on behalf of the first petitioner and must have kept the property of the first accused in his name.

41. On other hand, the respondent/complainant had resisted the above grounds on the following seven points:

(a) that the investigation has established the possession of assets by the first & second accused to the extent of Rs.2,32,20,296/- which is disproportionate to their known sources of income for which the petitioner and the other accused had rendered their active assistance to amass wealth in the name of the first & second accused.

(b) The petitioner/A-5 was the co accused in RC No.33(A)/2011 in which the case of the prosecution is that a sum of Rs.50 lakhs of bribe amount received by the first accused Mr.Andasu Ravindar was seized when he was trying to transport the bribe amount to a safe place with the help of the petitioner/A-5 in his car.

(c) That on 13.07.2011 the sale deed of the property was executed by the vendor Mr. Faisal Bradrussman Khan in favour of M/s. Shri Raviteja Trading Co., Pvt. Ltd., Hyderabad represented by Mr.B.A.Chaitanya. After the completion of the purchase of the property, the original sale deed was entrusted with the petitioner/A-5 by the A-1 Mr.Andasu Ravindar for safe custody and the same was also seized from his possession in the presence of an independent witness during the investigation of the case in RC No.33(A)/2011.

(d) LW 53 had stated that he had conducted a search at the residential premises of the petitioner in respect of the case in RC No.33(A)/2011, while so he had seized three documents as per the 'search list' which include the original sale deed ,dated 13.07.2011 in respect of the property purchased at Nungambakkam Chennai in benami name by the first accused Mr.Andasu Ravindar and an amount of Rs.48,20,000/- was also seized from the residence of the petitioner/A-5 which was not satisfactorily explained by the petitioner.

(e) To purchase the above property, funds were transferred from Chennai to the Account of M/s. Shri Raviteja Trading Co.,

Pvt. Ltd.

(f) Mr.B.A.Chaitanya (A-4) was accorded tender of pardon, who is not at all claiming the ownership of the above property, as the property was purchased from the funds arranged by the first accused Mr.Andasu Ravindar

(g) The petitioner/accused-5 had facilitated for the acquisition of the said benami property by providing his employee as a witness (LW60).

42. The learned Special Judge, after hearing both sides had proceeded to dismiss the petition with a finding that based on the averments of the final report and on the basis of the statements of the witnesses as well as the documents tagged along with the final report, prima facie case is made out by the respondent/complainant to frame charges against the petitioner and that no grounds are available to discharge him from the clutches of the charges.

43. Having been aggrieved by the impugned order, dated 29.12.2016, present revision petition is filed by the petitioner/accused-5.

44. Here, Mr. Muralikumaran has contended that it was not the case of prosecution that the petitioner had lent his name to purchase the property in his name by the first accused. He has also added that the Explanation for the purpose of clause (e) of sub section 1 of Section 13 of the Act with reference to "known sources of income" explains that the income received from any lawful source and such receipt must be promptly intimated to the concerned authority in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. He has further submitted that the petitioner/A-5 had nothing to do with the offence of Prevention of Corruption Act, 1988 and that the document bearing No.669/2011 was executed by one Mr. Faisal Bradrussman Khan in favour of M/s. Shri Raviteja Trading Co., Pvt. Ltd., Power of Attorney Mr.B.A.Chaitanya (A-4) and hence the petitioner being a stranger had nothing to do with the above said sale deed. Since no evidence was available to show that the petitioner had been holding the property of the first accused (public servant) in his name as benami or on his behalf, no such offence was made out as against the petitioner under Section 13(1)(e) of the Prevention of Corruption Act, 1988.

45. He would further contend that no evidence was also available as against the petitioner to show that he had entered into criminal conspiracy with the first accused to acquire the property in his name or on his behalf. He has also maintained that as per the documents enclosed with the final report, the transaction between the petitioner/A-5 and the first accused (public servant) was pertaining to the period of December, 2008. The check period was ended on 29.08.2011 and therefore, the question of entering into criminal conspiracy with the first accused Mr. Andasu Ravindar

would not arise, as the alleged document bearing No.669/2011 (document No.248) relates to 13.07.2011.

46. Hence, he has urged to set aside the impugned order and to discharge the petitioner from the clutches of the charges.

47. On the other hand Mr. K.Srinivasan, learned Special Public Prosecutor for CBI (cases) has adverted to that the first accused Mr.Andasu Ravindar being a public servant in collusion with the private individuals including the petitioner herein Mr. Uttamchand Bohra/A-5 during the period from 01.01.2005 to 29.08.2011, had amassed wealth in his name as well as in the name of his wife Tmt. Kavitha (A-2) to the extent of Rs.2,32,20,296/- for which he could not satisfactorily account. Mr. K.Srinivasan has also contended that in so far as the petitioner was concerned, he was a financier and closely associated with Mr. Andasu Ravindar (accused-1). The original sale deed bearing No.669/2011 dated 13.07.2011 which was executed in the name of M/s. Shri Raviteja Trading Co., Pvt. Ltd., Hyderabad, was subsequently entrusted with the custody of the petitioner, as per the directions of the first accused. He has also maintained that in RC. No.33(A)/2011, a search was conducted in the office-cum-residence of the petitioner Mr. Uttamchand Bohra/A-5 situate at Sowcarpet, Chennai on 30.08.2011.

48. While so, the original sale deed bearing No.669/2011 dated 13.07.2011 along with a sum of Rs.48,20,000/- was seized. He would further submit that yet another case in RC 33(A)/2011 registered against the petitioner in which he is facing trial. In the above said case the CBI had intercepted his vehicle when he was attempting to help the first accused Mr. Andasu Ravindar to transport the bribe amount of Rs.50 lakhs received by him (Mr. Andasu Ravindar) to a safer place.

49. Regarding the discharge of an accused person, the provisions of Sections 227,228 and 239 of the Code of Criminal Procedure play a vital role. Relevant scope of Sections 227, 228 and 239 of the Code of Criminal Procedure (hereinafter in short it may be referred to as the Code).

Ch. XVIII of the Code contemplates the trial before a Court of Session. It encompasses the Sections 225 to 237.

Ch.XIX of the Code contemplates the trial of warrant cases by Magistrates. It encompasses the Sections 238 to 250.

The old Section 207A (6) is corresponding to new Section 227. Under the old Code, i.e. under Section 207A(6), the Magistrate committing a case for trial to the Sessions Court had the power to discharge the accused upon consideration of the prosecution evidence. Owing to the abolition of the committal proceedings, the Committing Magistrate has lost this

power. Under Section 209 of the new Code, the Committing Magistrate has no power either to discharge or to frame a charge against the accused. His function is only to commit the case for trial to the Sessions Court when he finds a case to be triable exclusively by a Court of Session. Necessarily the power to discharge or to frame a charge has been vested with the Sessions Judge, under Sections 227-228 of the new Code. (See *Union of India v Profulla Kumar Samar*, AIR 1979 SC 366 (para 24): (1979) 3 SCC4 : 1979 CrLJ 154).

Section 227 of the Code enacts that, if upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused, and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused he shall discharge the accused and record his reasons for so doing.

50. The Hon'ble Supreme Court in *Union of India vs Profulla Kumar Samar*, has also held that if two views are equally possible and the Judge is satisfied that the evidence adduced gives rise to some suspicion but not grave suspicion against the accused, the Judge will be within his rights to discharge the accused.

51. Equally in *Sushil Vs State*, (2002 CrLJ 1369 (Del)), the Apex Court has applied the ratio that when the Court is satisfied that there are no chance of conviction of the accused and the trial would be an exercise of futility should discharge the accused.

52. The provisions of Sections 227 and 228 of the Code appear to be common in nature. The materials upon a consideration of which the Judge is to make an order of discharge or to frame a charge under either of the two Sections are common, namely, (a) records of the case including the documents submitted therewith, (b) submissions of the accused and the prosecution.

Section 239 of the Code explains the position as to when an accused shall be discharged. It envisages that if, upon considering the police report and the documents sent with it under Sections 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.

Section 239 of the Code shall have to be read in harmonious with Section 240(1) of the Code which follows, being complementary to each other. Reading the two together, the meaning is that if there is no ground for presuming the accused to have committed an offence, there is no ground for charging under Section 240(1) and the accusation

brought against the accused must in such a case, be held to be a groundless, for the purpose of Section 239. This principle has been laid down by the Apex Court in Century Spinning vs State of Maharashtra, (1972) 3 SCC 282 (para 16): AIR 1972 SC 545: 1972 CrL. L.J. 329)

53. Mr. K.Srinivasan, learned Special Public Prosecutor for CBI cases in support of his contentions has placed reliance upon AMIT KAPOOR Vs RAMESH CHANDER AND ANOTHER (2012) 9 Supreme Court Cases 460), wherein the Apex Court has held that framing of charge was the first major step in a criminal trial where the Court was expected to apply its mind to the entire record and documents placed therewith before the Court. Taking cognizance of an offence has been stated to necessitate an application of mind by the Court, but framing of charge was a major event, where the Court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There were different categories of cases, where the Court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the Court finds that no offence is made out or there was a legal bar to such prosecution under the provisions of Code of Criminal Procedure or any other law for the time being in force, and there was a bar and there exists no ground to proceed against the accused, the Court may discharge the accused.

30. It has also been held that

" Section 397 CrPC 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 this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well- founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of them bear a token of careful consideration and appear to be in accordance with law. Revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there was 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 were merely indicative. Each case would have to be determined on its own merits.

Another well accepted norm is that the revisional jurisdiction of the higher court was a very limited one and could not be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against

an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories afore stated. Even framing of charge was a much advanced stage in the proceedings under the CrPC.

54. Mr. K.Srinivasan, has once again drawn the attention of this Court to paragraph No.21 of the decision cited above, wherein it is held that, it may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions of Sections 397 & 482 of Cr.P.C.) There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to Raj Kapoor [HYPERLINK "https://indiankanoon.org/doc/414931/"&HYPERLINK "https://indiankanoon.org/doc/414931/"](https://indiankanoon.org/doc/414931/) Ors. v. State of Punjab [HYPERLINK "https://indiankanoon.org/doc/414931/"&HYPERLINK "https://indiankanoon.org/doc/414931/"](https://indiankanoon.org/doc/414931/) Ors. [AIR 1980 SC 258 : (1980) 1 SCC 43]}. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections [HYPERLINK "https://indiankanoon.org/doc/1865117/"](https://indiankanoon.org/doc/1865117/) 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-

restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

55. Learned Special Public Prosecutor has also drawn the attention of this Court to paragraph Nos.14 and 16 of the above cited decision, wherein it is categorically observed by the Apex Court as follows:

"14. Right from State of W.B vs Swapan Kumar Guha (1982) 1 SCC 561:1982 SCC (Cri) 283: AIR 1982 SC 949) which was reiterated with approval in State of Haryana Vs Bhajan Lal (1992 Supp (1) SCC 335: 1993 SCC (Cri.) 426) the courts have stated the principle that (Swapan Kumar Case SCC p.577 para 21)

21... If the FIR does not disclose the commission of a cognizable offence, the Court would be justified in quashing the investigation on the basis of the information as laid or received"

65.. The legal position appears to be that if an offence is disclosed, the Court will not normally interfere with an investigation into the case and will permit investigation into the offence alleged to have been committed); If, however, the materials do not disclose an offence no investigation should normally be permitted"

Whether an offence has been disclosed or not, must necessarily depend on the facts and circumstances of each case. If on consideration of the relevant materials, the Court is satisfied that an offence is disclosed, it will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed in order to collect materials for proving the offence."

16. The above stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited."

56. In so far as the petitioner herein is concerned, as

<https://hcservices.secourtstg.gov.in/hcservices/> of prosecution, the original sale deed bearing

document No.669/2011, dated 13.07.2011, pertaining to the flat at Nungambakkam, Chennai which stands registered in the name of M/s. Shri Raviteja Trading Co., Pvt. Ltd., Hyderabad was seized from his possession and that the sale consideration for purchasing the property was sourced by the first accused Mr. Andasu Ravinder.

57. As observed in With reference to possession, the Apex Court in Seksaria Cotton Mills Ltd., & others Vs The State of Bombay (AIR 1953 SC 278) has observed as under :

" Possession is an ambiguous term. The law books divide its concept into two broad categories, (1) physical possession or possession in fact and (2) legal possession which need not coincide with possession in fact. The offending form with which we are concerned draws the same broad line. But even on the factual side of the border niceties creep in and so the possession of a servant is called custody rather than possession. But what of an agent ? If a man lives abroad over a period of years and leaves his house and furniture in charge of an agent who has the keys of the house and immediate access to and physical control over the furniture, it would be difficult to say that the agent was not in physical possession. It is true the legal possession would continue to reside in the owner but the actual physical possession would surely be that of the agent. And so with a del credere agent, because such a person is the agent of the seller only up to a point. Beyond that he is either a principal or an agent of the buyer. This distinction was discussed by one of us in the Nagpur High Court in Kalyanji Kuwarji v. Tirkaram Sheolal (AIR 1938 Nag. 254 (A) and was accepted by the Madras High Court in Kandula -Radhakrishna Rao v. The Province of Madras (AIR 1952 Mad. 718(B))."

58. In Laxmipat Choraria V K.K.Ganguli & Others (Calcutta High Court) (Income Tax Reports Vol 82 page 306), the phraseology " search and seizure" of goods by customs authorities and its validity under Section 132(1) & (5) of the Income tax Act, 1961 have been explained . Besides this, the expressions, 'possession' and 'seizure' have also been unambiguously explained by the Calcutta High Court. In paragraph 7 of this decision regarding the expression 'possession' it is observed that the expression "possession" has not been defined in the Act. Possession is a word of ambiguous meaning and its legal sense does not always coincide with the popular sense. Reference may be made to Halsbury's Laws of England, volume 29, IIIrd edition, Articles 1720-1735, pages 369 to 371.

"Possession again may not always be synonymous with manual detention or physical retention of the goods or moneys. Law dictionaries and text books are unanimous that the expression is incapable of an exact definition.

Without however entering into the complexities either of

language or of jurisprudence and having regard to the nature of the- Act, it appears to me that in this case, when physical custody of the moneys and the goods were with the customs authorities, and that by a legal sanction and authority to have that custody, it would be improper to contend that possession as used in the context of Section 132, was still with the petitioner. It is not necessary for me to decide whether in law the petitioner had some possession or title or not. In this case and in the context of the section it appears to me that the petitioner at the relevant time did not have either physical control or physical power or authority over the said goods or the moneys.

I am not also unmindful of the fact that in some of the Sub-sections of Section 132 the expressions "retention" and "custody" have been used; but reading these expressions in the context they have been used I do not think that where an authority or a person has retention and custody with the legal sanction behind it, it was not the intention of the legislature to say that he was not in possession as contemplated in Section 132 of the Income-tax Act, 1961. On the meaning of the expression "possession" reference may be made to Burrows Words & Phrases Judicial Dictionary, IVth edition, page 306. But there is another aspect which compels me to hold that in this case it could not be said that possession was with the petitioner. The expression used here for the recovery of the possession is "seizure". Seizure is again an expression which implies a forcible exaction or taking possession from either the owner or one who has the possession and who is unwilling to part with possession.

59. In another decision (Supdt. & Remembrancer of Legal Affairs, West Bengal vs Anil Kumar Bhunja & Ors (AIR 1980 SC 52(1))), a three Judges Bench of Hon'ble Supreme Court of India in paragraph 13, with reference to possession, has observed as under :

"Possession" is a polymorphous term which may have different meanings in different contexts. It is impossible to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the contexts of all statutes. Dias & Hughes in their book on Jurisprudence say that if a topic ever suffered from too much the orizing it is that of "possession". Much of this difficulty and confusion is (as pointed out in Salmond's Jurisprudence, 12th Edition, 1966) caused by the fact that possession is not purely a legal concept. "Possession", implies a right and a fact; the right to enjoy annexed to the right of property and the fact of the real intention. It involves power of control and intent to control. (See Dias and Hughes, ibid)"

60. In Black's Law Dictionary VIII Edition the term

has been explained in this way:

One who has the care, custody, or management of something, and who USU is legally responsible for it. The phraseology 'POSSESSION' has also been defined in the following manner:

(1) The fact of having or holding property in one's power, the exercise of domination over property.

(2) The right under which one may exercise, control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object.

(3) Civil Law: The detention or use of a physical thing with the intent to hold it as one's own La. Civ. Code art 3421 (1)

(4) (USU.pl) Something that a person owns or controls; PROPERTY (2) Cf. OWNERSHIP; TITLE (1).

61. Frederick Pollock & Robert Samuel Wright, in their Essay on Possession in the Common Law 1-2 (1988):

As the name of possession is.... One of the most important in our books, so it is one of the most ambiguous. Its legal senses (for they are several) overlap the popular sense, and even the popular sense includes the assumption of matters of fact which are not always easy to verify. In common speech a man is said to possess or to be in possession of anything of which he has the apparent power of excluding others. Any of the usual outward marks of ownership may suffice, in the absence of manifest power in someone else, to denote as having possession the person to whom they attach. Law takes this popular conception as a provisional groundwork, and builds up on it the notion of possession in a technical sense, as a definite legal relation to something capable of having an owner, which relation is distinct and separable both from real and from apparent ownership, though often concurrent with one or both of them.

61A. In John Salmond, Jurisprudence 285 (Glanville V. Williams Ed. X 1947), it is stated as follows:

"In the whole range of legal theory there is no conception more difficult than that of possession, The Roman Lawyers brought their usual acumen to the analysis of it, and since their day, the problem has formed the subject of a voluminous literature, while it still continues to tax the ingenuity of jurists. Nor is the question one of mere curiosity or scientific interest, for its practical importance is not less than its difficulty. The legal consequences which flow from the acquisition and loss of possession are many and serious. Possession, for example is evidence of ownership; the possession of a thing is presumed to be the owner of it, and may put all other claimants to proof of their title."

62. In the present case on hand, LW 53 claims to have seized three documents from the residential premises of the petitioner herein at the time of investigation and search conducted in the case in RC No.33(A)/2011, which includes the

original sale deed, bearing document No.669/2011, dated 13.07.2011. Based on the seizure of this document, the first accused Mr.Andasu Ravinder is presumed to have acquired property in his name as well as in the name of his wife Tmt. Kavitha Andasu. But on perusal of the statements of LW 53 as well as LW 54, this Court would like to say that LW 53, Mr. S.Jayaseelan, Inspector of Police/CBI/ACB, Chennai might have seized the above documents from the custody of the petitioner and not from his possession.

63. As observed in Laxmipat Choraria V K.K.Ganguli & Others (Calcutta High Court) (Income Tax Reports Vol 80 page 306, this Court would like to say that the act of LW53 would be brought under the amplitude of the term seizure. 'Seizure' is again a term which implies a forcible exaction or taking possession from either the owner or one who has the possession and who is unwilling to part with possession. However, it is palpable that at the time of seizure, the document was with the custody of the petitioner/A5. That is not disputed.

64. In Seksaria Cotton Mills Ltd., & others Vs The State of Bombay (AIR 1953 SC 278) cited supra, Hon'ble Mr Justice Vivian Bose with reference to 'possession' speaks on behalf of a three Judges Bench of the Hon'ble Supreme Court in the following manner:

"Therefore the test of the sort of possession which they had in mind was not the control over the goods. But that has always been regarded as one of the tests of physical or de facto possession. Lancelot Hall distinguishing between possession in law and possession in fact says that 'possession' in the popular sense denotes a state of fact of exclusive physical control." See his treatise on Possessory Liens in English Law p.2 See also Pollock and Wright in their Essay on Possession in the Common law P.119. Drawing the same distinction they say that 'physical possession' may be generally described by stating that:

"When a person is in such a relation to a thing that, so far as regards the thing, he can assume exercise or resume manual control of it at pleasure, and so far as regards other persons, the thing is under the protection of his personal presence, or in or on a house or land occupied by him, or in some receptacle belonging to him and under his control. "

65. It is unfortunate to find from the impugned order of the learned Special Judge that mechanically he seems to have dismissed the application filed by the petitioner/A5 for discharging him from the charges holding that the sale deed was seized from the house of the petitioner and this is not even disputed by the petitioner/A5 and he too has admitted and agreed that the sale deed was seized from his residential premises, which was kept in his custody. But the learned Special Judge has observed that the sale deed was the benami

transaction by which the first accused Mr. Andasu Ravinder had purchased the property, according to the prosecution case. He has also observed that in the registered sale deed, an employee of the petitioner/A5 (LW60) had put his signature and that the petitioner/A5 had called his employee and told him that his friend was going to purchase a property and therefore he must sign in the document as a witness. The learned Special Judge has also held that the term 'friend' mentioned by the petitioner would be brought into light only on the examination of Mr. Sridhar (LW60) to find out as to whether it was M/s. Shri Raviteja Trading Co., Pvt. Ltd., or it was Mr. Andasu Ravinder.

66. As discussed in the preceding paragraphs, the only allegation that was found in the final report as against the petitioner/A5 is that he is a financier and a close associate of Mr. Andasu Ravinder. The sale deed pertaining to the said property was said to have been collected from the Sub Registrar's Office by Mr. Davuri Anand, Advocate and that the original sale deed was seized from the possession of the petitioner/A5.

67. This Court has anxiously perused the statements of Mr. B.R.Mahesh (approver/A3) and Mr. B.A.Chaitanya (another approver/A4), Mr. B.R.Mahesh (approver/A3) is the Director of M/s. Shri Raviteja Trading Co., Pvt. Ltd., in whose name the property in question was purchased benami, according to the case of prosecution. Mr. B.A.Chaitanya (another approver/A4) is none other than the son of Mr. B.R.Mahesh, who is the another director of M/s. Shri Raviteja Trading Co., Pvt. Ltd.,

68. On a combined reading of their statements, this Court finds that nowhere they have mentioned about the petitioner/A5 and even no incriminating material facts are found in their statements against the petitioner/A5.

69. It is the Judicial common parlance that accusation or indictment against an individual must be precise and accurate. No allegations should be leveled by mere surmise or gesture and it could not be inferred that the individual against whom the allegation is leveled could have committed the offence.

70. In the counter statement filed on behalf of the respondent/complainant it is stated that the petitioner/A5 was present at the Office of the Sub Registrar at the time of the registration of the sale deed bearing document No.669/2011 and that the sale deed in respect of the property was executed by the vendor Mr. Fasil Badrussman Khan in favour of M/s. Shri Raviteja Trading Co., Pvt. Ltd., represented by Mr. B.A.Chaitanya (approver/A4). It is also alleged in the counter affidavit that after completion of purchase of the property the original sale deed was entrusted with the petitioner/A5 by the first accused Mr. Andasu Ravinder for safe custody.

71. This has been fairly accepted by Mr. Muralikumar, learned counsel appearing for the petitioner. In this

connection, he would contend that LW 53 and LW54 who spoke about the seizure of the sale deed from the office- cum- residence of the petitioner had not stated anything about this and further they did not speak anything about the involvement of the petitioner/A5 either in the conspiracy or in making of a charge against him under Section 13(1)(e) of the Prevention of Corruption Act, 1988. Mr. Muralkikumaran has also pointed out that LW60 had never stated that it was Mr. Andasu Ravinder who was dealing with the property and for that purchase he was asked by the petitioner/A5 to sign as a witness.

72. In so far as this Court is concerned, on perusal of the statements of A-3 & A-4 (approvers), they also did not speak anything about the alleged role played by the petitioner/A5. They also never spoke about the active assistance of the petitioner/A5 rendered to the first accused in relation to the purchase of subject property by him.

73. Mr. Muarlikumaran has also emphasized that the petitioner/A5 had been wantonly and deliberately implicated as a co-accused in the case in CC. No.3 of 2013 (RC No.33(A) of 2011 along with the first accused. On perusal of the charge sheet against the petitioner in C.C.No.3 of 2013, he has contended that there was no such allegations in respect of any offence for which the petitioner was charged after pointing out the statements of the prosecution witnesses in that case viz., LWs, 11,12,13,14,24 and 25. Document No.50 in that case is the sale deed bearing document No.669 of 2011 dated 13.07.2011, which is also the subject matter in the present case on hand.

74. That the case in C.C.No.3 of 2013 (RCNo.33(A) of 2011 has been pending trial before the learned Special Judge and hence it may not be proper on the part of this Court to discuss about the statements of the prosecution witnesses in that case viz., LWs, 11,12,13,14,24 and 25. It is also the Judicial Ethics that this Court must restrict itself from discussing anything about the pending case in CC No.3 of 2013 (RC 33(A) of 2011).

75. Despite this fact, this Court is not able to understand as to how the prosecution could make its comments about the facts of the case in RC No.33(A)/2011. In their counter statement filed in the discharge petition filed by the petitioner/A5, the prosecution has also not explained as to whether this allegation could be reiterated in their counter statement to add additional strength or to create some provocation or to corrupt the minds of the Court to form an adverse opinion against the petitioner/A5.

76. Under these circumstances, this Court has formulated a question, as to whether it would be proper to discuss anything about the facts of the case in RC No.33(A)/2011, which is pending before the trial Court in CC No.3 of 2013?

77. As discussed in the preceding paragraphs, the allegation made against the petitioner herein that the sale deed, dated 13.07.2011 was seized from the custody of the petitioner which is somehow or other is interrelated with the facts in RC.No.33(A)/2011, wherein it is alleged that the petitioner had helped the first accused Mr. Andasu Ravinder to transport the bribe amount of Rs.50 lakhs received by the latter to a safer place in the car of the former after he had arrived there for that purpose.

78. Mr. Muralikumaran has drawn the attention of this Court to page No.25 of the typed set of papers wherein a copy of the letter, dated 27.01.2012 addressed to the Central Bureau of Investigation, Shastri Bhavan, Chennai by Mr. P.M.Chordia and Co., (Chartered Accountants) is found tagged. In this letter, dated 27.01.2012 Mr. P.M.Chordia and Co., (Chartered Accountants) of the petitioner Uttamchand Bohra has stated as follows:

"Respected Sir,

As required by you, we are submitting herewith the following:

1. Copy of balance sheet, profit and loss account, schedule and acknowledgment of

B.G.Bohra, HUF (PAN No.AAAHB2163B) for assessment year 2009-2010 and 2008-2009. Also Ledger copies of A.Kavitha in the books of B.G.Bohra.

2. Copy of balance sheet, profit and loss account, Schedule and acknowledgment of B.U.Bohra HUF (PAN No.AAAHB2770G) for assessment year 2009-2010 and 2008-2009. Also Ledger copies of A.Kavitha in the books of B.U.Bohra.

3. Copy of balance sheet, profit and loss account, Schedule and acknowledgment of Uttam Bohra HUF (PAN No.AAAHU0249R) for assessment year 2009-2010 and 2008-2009. Also Ledger copies of A.Kavitha in the books of Uttam Bohra.

Also a copy of certificate issued dated 05.09.2011 is enclosed herewith. "

79. On perusal of the Income tax Returns form, for the assessment year 2008-2009 along with the alleged account starts from 1st April, 2008 to 31st March, 2009 and from 1st April, 2007 to 31st March 2008, this Court is able to find that Tmt.Kavitha Andasu/A2, wife of Mr. Andasu Ravinder was having financial transaction with the petitioner Uttamchand Bohra . The alleged account for the above said financial years would substantiate the case of the defence that the second accused/Kavitha Andasu was availing loan from the petitioner and that the petitioner had accounted and also furnished proper Income tax Returns with the concerned authorities.

80. On perusal of the additional typed set of papers, this Court is able to find that page Nos.1 to 19 contain the

statements of LWs 11,12,13,14,24 and 25 relating to the case in CC.No.3/2013 (RC No.33(A)/2011).

L.W11 speaks about the interception of the telephonic communications in respect of Mr. Andasu Ravinder bearing Mobile No.9840469166.

LW12 Mr. A.J.Ramalingam D.S.P. CBI/ACB Branch speaks about the information received by him about the handing over of the bribe amount of Rs.50 lakhs by one Mr. Kishore to Tmt. Kavitha Andasu, wife of Mr. Andasu Ravinder to meet out the demand. According to LW 12 in C.C.No.3 of 2013, the residence of the first accused is located at D No.8, Income tax Colony No.12 MG Road, Nungambakkam High Road, Chennai. According to him, he was directed by Mr. Padmabakumar to conduct a search under Section 165 of the Code of Criminal Procedure or wherever he is found to be available while he is handing over his ill-gotten bribe amount, which he had already received to Uttamchand Bohra and recover the said money and also to carry out further action, on this.

81. In this connection Mr. Muralikumaran learned counsel appearing for the petitioner has submitted that nothing was found in his statement to ascertain the fact as to whether he had got prior permission from the concerned Court to conduct the search in respect of the residential premises of the first accused Mr. Andasu Ravinder.

82. According to Mr. A.J.Ramalingam (LW 12) in CC No.3 of 2013 as per the instructions, he along with his team members took position near the building where the residence of Mr. Andasu Ravinder is located in the first floor of D-8 Income Tax Colony at the above campus around 9.00 p.m. on 29.08.2011, he had noticed a Maruti Alto Car bearing Registration No. TN-04-AD-9747 proceeding towards the residence of the first accused Andasu Ravinder. After parking the said Car a person, who was later identified as Mr. Uttam got down from the said car and proceeded towards the stairs which led to the residence of the first accused/Andasu Ravinder located in the first floor. Immediately, he had noticed a person, who was later identified as Mr. Andasu Ravinder was coming down from the stairs of the said building carrying a polythene carry bag in his left hand which appear to contain a square carton box and met Mr. Uttam on the way. Then he had noticed both of them were getting into the car in which Mr. Uttam came. When the said car was about to start, he (LW12) along with his team members had intercepted the said vehicle and found that Mr. Andasu Ravinder was sitting in the front seat of the said car and having a polythene carry bag on his lap. Mr. Uttam was sitting at the driver seat. He then had asked both of them to come out of the vehicle. The polythene bag found in the possession of Mr. Andasu Ravinder was opened by the independent witnesses in which a square carton box approximately 1x1x1 sq.ft. sealed with cellophane tape was found. On his directions, the box was opened by the independent witnesses and it was found to contain several bundles of currency notes

of Rs.1000 denomination. On being questioned both Mr. Andasu Ravinder and Mr. Uttam became perplexed and they could not give any satisfactory explanation. The car bearing Registration No. TN-04-AD-9747 was thoroughly checked. However, nothing incriminating was found. The cash of Rs.50 lakhs and the car bearing Registration No. TN-04-AD-9747 in which the cash was found on the lap of Andasu Ravinder were seized and the proceedings were concluded at 11.30 p.m. on that day.

83. With reference to the above allegations concerned, in RC No.33(A)/2011 (CC No.3/2013) Mr. Muralikumaran has raised the following two questions:

(i) It is not stated as to whether LW 12 Mr. A.J.Ramalingam, Deputy Superintendent of Police, CBI/ACB, Chennai had obtained prior permission from the concerned Magistrate for conducting house search or search in a closed place;

&

(ii) Whether LW 12 Mr. A.J.Ramalingam, Deputy Superintendent of Police, CBI/ACB, Chennai had followed the procedure envisaged under sub section 5 of Section 165 of the Code of Criminal Procedure.

84. Mr. Muralikumaran has also indicated that LW 12 Mr. A.J.Ramalingam, was informed by Mr. L.S.Padmakumar, Additional Superintendent of Police that the first accused Mr. Andasu Ravinder had demanded Rs 50 lakhs from one Mr. Kishore for helping him to evade Income tax. He was also informed that Mr. Kishore had handed over the bribe amount of Rs.50 lakhs demanded by the first accused from Andasu Ravinder to Tmt. Kavitha Andasu wife of Mr. Andasu Ravinder.

85. Mr. Muralikumaran has also added that LW12 had got prior knowledge that the bribe amount of Rs.50 lakhs which was received by Tmt. Kavitha Andasu from Mr. Kishore was available in the residential premises of the first accused Mr Andasu Ravinder. When such being the case why he had not taken any effort along with his team members when he along with them took positions near the building where the residence of Andasu Ravinder was located.

86. He has also maintained that according to the statement of LW12, he knew pretty well already or informed by his superior officer that the bribe amount had to be taken by Mr. Uttam (A3) a close associate of Mr. Andasu Ravinder in that case from his residence to an unknown place. He has contended that the pre-meeting of mind of taking the bribe amount of Rs.50 lakhs to an unknown place which was emanated from the minds of the first accused Andasu Ravinder and Mr. Uttam (A3) in that case, must have been remained in their minds alone and there might not be any chance of disclosure

of the same to any third person. When such being the case, how Mr. L.Padmakumar, Additional Superintendent of Police could have known about their pre-plan.

87. Secondly he would contend that the car bearing Registration No. No. TN-04-AD-9747 had been proceeding towards the residence of Mr. Andasu Ravinder. After parking the said car Uttam (A3) got down from the car and proceeded towards the stairs which led to the residence of Mr. Andasu Ravinder located in the first floor. He had also noticed that Mr. Andasu Ravinder was coming down the stairs of the said building carrying a polythene carry bag in his left hand which appeared to contain a square box and met Mr. Uttam on the way. He had also noticed along with his team members that both of them were greeting each other and coming towards the car.

88. Having noticed everything why LW 12 Mr. A.J.Ramalingam had not made any endeavor to seize the cash, and arrest the first accused Mr. Andasu Ravinder when he was found to be in possession of ill-gotten amount?

89. Mr. Muralikumaran has also contended that all those questions were not answered by the prosecution and therefore those allegations could not have been clubbed along with the allegations made against the petitioner/A5 in the present case on hand.

90. In so far as the contentions made by Mr. Muralikumaran with reference to the case in CC.No.3 of 2013 (RC No.33(A)/2011) are concerned, this Court is of view that as already discussed above, it cannot be discussed in the present case on hand, because those contentions are relating to another case viz., C C No.3 of 2013, which is pending on the file of the learned Special Judge.

91. This Court has thoroughly perused the entire materials along with the impugned order. Having regard to the facts and circumstances of the case, and on considering the submissions made by Mr. Muralikumaran, learned counsel appearing for the petitioner and Mr. K.Srinivasan, learned counsel appearing for the respondent/complainant this Court is of the firm opinion that no adequate grounds are available in the final report to proceed against the petitioner. The averments in the final report with reference to the allegations of conspiracy as well as the role alleged to have been played by the petitioner/A5 in procuring the pecuniary resources or the property disproportionate to the known source of income of the first accused (public servant) do not make out a case as against the petitioner. All that the final report says is that the petitioner/A5 is a financier and a close associate of the first accused Andasu Ravinder and that the original sale deed was seized from the office cum of residence of the petitioner/A5. As already discussed, it should not be described as 'possession', instead it should be described as custody i.e. the seizure of the document is a

forcible exaction from his custody. With reference to the custody of this document, the petitioner/A5 has admitted that he was in custody of the said sale deed because the second accused Mrs. Kavitha Andasu was having financial transactions with him and had been availing of loan from him and subsequently repaid the loan on account which was sufficiently disclosed to the concerned Income tax authorities.

92. As indicated by Mr. Muralikumaran in the additional typed set of papers (page Nos.25 to 59), this Court finds that the learned Special Judge has not gone into the facts of case of prosecution in deep and had he been done so, he would have discharged the petitioner/A5 from the charges. Since the averments in the final report do not make out a prime facie case against the petitioner/A5, no charge could be framed. Even if the learned Special Judge is allowed to frame charges against the petitioner, the chance of conviction is bleak..

93. To support this finding, this Court would like to have reference to the following two decisions of the Apex Court :

(i) State of West Bengal & Ors. Vs Swapan Kumar Guha (1982) 1 SCC 561 : 1982 SCC (Cri) 283 &

(ii) State of Haryana vs Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426

93A. In Swapan Kumar Guha's case cited 1st supra, a three Judges Bench of the Hon'ble Apex Court headed by His Lordship Hon'ble Mr Justice Chandrachud, Y.V. Chief Justice (as he then was) has held that whether an offence has been disclosed or not must necessarily depend on the facts and circumstances of each particular case. In considering whether an offence into which an investigation is made or to be made, is disclosed or not, the Court has mainly to take into consideration the complaint or the FIR and the Court may in appropriate cases take into consideration the relevant facts and circumstances of the case. On a consideration of all the relevant materials, the Court has to come to the conclusion whether an offence is disclosed or not. If on a consideration of the relevant materials, the Court is satisfied that an offence is disclosed, the Court will normally not interfere with the investigation into the offence and will generally allow the investigation into the offence to be completed for collecting materials for proving the offence. If, on the other hand, the Court on a consideration of the relevant materials is satisfied that no offence is disclosed, it will be the duty of the Court to interfere with any investigation and to stop the same to prevent any kind of uncalled for and unnecessary harassment to an individual.

94. The proposition in Swapan Kumar Guha's case was reiterated with the approval in State of Haryana v Bhajan Lal, cited second supra. In this case, a Division Bench of the Apex Court in paragraph 8.1 has observed that "In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate or to give an exhaustive list of myriad kinds of cases wherein such power under Section 482 of the Code for quashing of an FIR should be exercised.

95. The Apex Court has enlisted seven kinds of circumstances where this Court may be justified in exercising such jurisdiction of which circumstances nos. (e) & (g) are very much relevant and more suitable to the present case on hand.

Clause (e) envisages that where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

Clause (g) envisages that where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

96. In the case on hand no ingredients either to constitute an offence of criminal conspiracy under Section 120B IPC or an offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 or an offence under Section 109 of IPC are available as against the petitioner/A5. Hence, this Court finds that even if the allegations made in the final report are taken on their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the petitioner/A5.

97. Under these circumstances, there is no other go for this Court excepting to interfere with the impugned order, dated 29.12.2016 passed by the learned Special Judge for CBI Cases, Chennai and to discharge the petitioner/A5 from the clutches of the charges.

98. Accordingly, Criminal Revision Case No.13 of 2017 is allowed and the impugned order, dated 29.12.2016 and made in Crl.M.P.No.6873 of 2015 in C.C.No.5 of 2015, on the file of the learned Special Judge for CBI cases, Chennai is set aside. The petition in Crl.M.P.No.6873 of 2015 is allowed and the petitioner/A5 is discharged from the clutches of the charges.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

To

1. The XII Additional Special Judge,
CBI Cases, Chennai.
2. The Superintendent of Police, SPE, CBI/ACB, Chennai.
3. The Section Officer, Criminal Section,
High Court, Madras. 104.
4. The Special Public Prosecutor, High Court, Madras.
- + 1 cc to M/s. MCGAN, Law Firm, Advocate SR.38142

Criminal Revision Case No.73 of 2017
Against
Crl.M.P.No.6873 of 2015
in
C.C.No.5 of 2015

SJ(CO)
EU(14/03/2018)

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