IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07-08-2017

DELIVERED ON : 28-08-2017

CORAM:

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

Crl.R.C.No.865 of 2017
and Crl.M.P.No.8074 of 2017

R. Mani ... Petitioner/Accused 7

Vs.

State Rep. by
Deputy Superintendent of Police
Vigilance & Anti Corruption
Dharmapuri. ..Respondent/Complainant

Prayer: This Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code to call for records in Crl.M.P.No.430 of 2017 in C.C.No.18 of 2008 on the file of the Chief Judicial Magistrate cum Special Judge, Dharmapuri, dismissing the petition for the relief of discharge, to reverse the findings in the order passed in Crl.M.P.No.430 of 2017 dated 29.5.2017, discharge the petitioner.

For Revision Petitioner	:	Mr.A. Ramesh Senior Counsel for B.A.Sujay Prasanna
For Respondents	:	Mr.R.Ravichandran, Government Advocate (Crl.Side)

ORDER

These Revision Petition is filed against the impugned order dated 29.05.2017, in Crl.M.P.No.430 of 2010 in Special C.C.No.18 of 2008, on the file Chief Judicial Magistrate cum Special Judge, Dharmapuri.

2. The case of the prosecution is that the Government of India have taken a policy decision to provide loan assistance through Tamil Nadu Government to provide Housing and Employment assistance to the Srilankan Repatriates who have settled in Tamil Nadu. The implementation of the scheme was entrusted by the Government of India with the Commissioner of Rehabilitation, Chennai, for over all State and State level monitoring officer. While implementing the scheme, the Government of Tamil Nadu delegated the task to the District Collector, who in turn sub-delegated the said task among their Revenue Divisional Officers within their respective revenue districts as an officer for sanction of loan. The hierarchy for allotment of fund is Government of India, State Government of Tamil Nadu, Commissioner of Rehabiliation, Chennai, District Collector, Revenue Divisional Officer, Tahsildar, Taluk office and to the Sri Lankan Repatriates through Treasury.

3. The case pertains to two taluks in Dharmapuri District and the

Petitioner's case falls within the ambit of Dharmapuri Taluk. While implementing the scheme in Dharmapuri Division, the District Collector, Dharmapuri allotted INR.31,17,500/- towards housing loan and INR.8,10,000/- towards self-employment loan. The funds were to be routed to the Sri Lankan Repatriates through the Tahsildar of the concerned taluk. However, on investigation, it was found that the funds allocated by the District Collector, Dharmapuri, were not disbursed to the Sri Lankan repatriates by the concerned Government officials.

4. The main allegation is that the officials entrusted with power to disburse the allocated funds have entered into a criminal conspiracy and disbursed the allocated funds to fictitious persons by abusing their official positions, thereby causing wrongful loss to the Government of India and wrongful gain to themselves. The petitioner herein being Head Quarters Deputy Tahsildar is alleged to have been the member of the conspirators, hence the petitioner has been arrayed as a co-conspirator. Therefore, the petitioner had committed the offences under Sections 120B, 109 r/w 167, 409, 419,420, 468 r/w 471 I.P.C., and Section 13(1)(c) and (d) r/w 13(2) of Prevention of Corruption Act.

5. After the investigation, the respondent police laid the Charge

Sheet before the learned Chief Judicial Magistrate cum Special Judge, Dharmapuri. The learned Chief Metropolitan Magistrate cum Special Judge has taken the case on file in Special C.C.No.18 of 2008. During the pendency of the case before the learned Chief Judicial Magistrate cum Special Judge, Dharmapuri, the Revision Petitioner/Accused 7, filed a Discharge Petition under Section 239 Cr.P.C. seeking discharge from the case. After considering the material evidence available on record, the Special Judge dismissed the discharge petition on 29.5.2017. Aggrieved over the order passed by the Special Judge, the revision petitioner/Accused-7 has preferred the present revision petition.

6. The learned counsel for the petitioner would submit that the petitioner was working as Head Quarters Deputy Tahsildar and he has no duty and responsibility to verify the beneficiaries. He has only entrusted to verify the register. The duty to very the beneficiaries is entrusted only with the Tahsildar and Zonal Deputy Tahsildar and not this revision petitioner. Further he would submit that the duty of the petitioner as Head Quarters Deputy Tahsildar was to make appropriate entries in MTC 70. As per Rule 33, Madras Treasury Code, all the bills raised by the Gazetted Government Servant should have corresponding entries in the office register. However, bill endorsed in favour of a private party in an exception to this rule. In spite of the

above bonafide conduct of the revision petitioner, he is arrayed as an accused in Special C.C.No.18 of 2008. In the light of the above factual scenario, the revision petitioner preferred Discharge Petition before the trial court. But the learned trial judge, without considering the above facts simply dismissed the discharge petition. The co-accused ranked as A6 who is Personal Assistant to Revenue Divisional Officer, after meeting with unsuccessful attempt before the trial Court for the relief of discharge has preferred revision before this Court and this Court has allowed the Revision and discharged A6 from the case. Against that order, the respondent has filed Special Leave Petition before the Honourable Supreme Court challenging the discharge. The Honourable Supreme Court has also dismissed the Special Leave Petition filed by the respondent police and confirmed the order of this Court. Therefore, this petitioner is also not liable to verify the beneficiaries and the same benefit granted to A6 has to be extended to this revision petitioner also, since, both A6 and this revision petitioner/A7 are similarly placed as far as the duty and responsibility is concerned. The learned counsel for the revision petitioner further would contend that the offences against this revision petitioner u/s 109, 120(B), 409, 420, 468, 471 of IPC and u/s 13(1)(a)(b)(c)(d) and 13(2) of Prevention of Corruption Act have not been made out and therefore the revision petitioner is entitled to discharge from the case and the revision has to be allowed and the order of the trial court has to be set aside.

7. The learned counsel for the respondent would submit that the duty and responsibility of A6 is entirely different from the revision petitioner/A7. A6 is Personal Assistant to Revenue Divisional Officer and his main duty is only to verify the records and put up the papers to his superior. Whereas this revision petitioner's duty is not similar to A6. Since, this revision petitioner is Head Quarters Deputy Tahsildar, his duty is to verify the genuineness of the applicants and the particulars entered in the bills. But this revision petitioner/A7 willfully omitted to discharge his duty enjoined upon him in course of discharging his official duty. Therefore, the order passed by this Court in favour of A6 and also confirmed by the Honourable Supreme Court in SLP will not be applicable to this revision petitioner. On perusal of the materials available on records, the trial court has come to the conclusion that there is a *prima facie* case made out against this revision petitioner/A7 and there is sufficient materials to proceed further against him and dismissed his discharge petition. The learned counsel for the respondent would further submit that the trial court has correctly dismissed the petition filed by the petitioner u/s.239 of Cr.P.C., and proceeded further for framing of the charges considering all the materials and records carefully. The trial court has found that there are strong grounds to frame the charges against this revision

petitioner.

8. Heard both sides and perused the records. The main allegation against this revision petitioner is that the Government officials entrusted with power to disburse the allocated funds to Sri Lankan repatriates settled in the State of Tamil Nadu, have entered into a criminal conspiracy and disbursed the allocated funds to fictitious persons by abusing their official positions, thereby causing wrongful loss to the Government of India and wrongful gain to themselves. According to the prosecution, they have not allotted loan to the beneficiaries and disburse the allocated funds to fictitious persons by abusing their official positions. The revision petitioner being Head Quarters Deputy Tahsildar alleged to have been the member of the conspirators, has been arrayed as a co-conspirator. Therefore, the revision petitioner has been arrayed an accused for the offences under Sections 120B, 109 r/w 167, 409, 419,420, 468 r/w 471 I.P.C., and Section 13(1)(c) and (d) r/w 13(2) of Prevention of Corruption Act.

9. In a catena of cases, the Honourable Apex Court as well as this Court, time and again held that whether there is a *prima facie* allegation and *prima facie* case is made out against the accused and whether there is incriminating material against the accused, then the

court should proceed further. It is clear that at the initial stage, if there is strong suspicion which leads to court to think that there is a ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. At the stage of framing of charge, the court cannot go into the probative value of evidence and the genuineness of the witnesses. The trial Court has taken into consideration of all documents filed by the prosecution and come to the conclusion that there is a *prima facie* case. While considering the revision, this court has to see whether the order of the trial court suffers from any perversity or infirmity. If there is no infirmity or perversity in the trial Court's order then this court need not to interfere it.

10. At the stage of framing of charge, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. The court has to find out whether there is sufficient grounds to proceed against the accused as it is not required to appreciate evidence to conclude whether there are adequate materials for convicting the accused. At the time of framing of charge, what the trial court is required to and can consider are only

the police report referred to under Section 173 (2) Cr.P.C. and the documents sent with it. The accused has right to be heard and the court can also examine it where it finds it necessary. While framing charge, the Magistrate is expected to apply his mind to the facts of the case keeping in view of the essential ingredients of the offence for which the accused is sought to be charged.

11. On a careful perusal of this case, the documents placed before this court such as charge sheet, statement of witnesses and documents annexed to that, discharge petition filed by the revision petitioner before the trial court, counter filed by the respondent police before the trial court, the order passed by the trial court and the grounds of the revision submitted by the revision petitioner before this Court, reveals that there is *prima facie* allegations against this revision petitioner/A7. The statement of witnesses especially L.W.10, L.W.11 and L.W.12 have spoken about the involvement of this revision petitioner in the alleged crime. As already stated, the discharge of A6 from the case cannot be equated with this revision petitioner, since the duties and responsibilities of A6 and A7 are entirely different. The statements of witnesses speak about the involvement of the petitioner in the commission of offence and from the documentary evidence there is certain allegations which made out a *prima facie* against the revision petitioner and there are incriminating materials against this

revision petitioner to proceed further. Therefore, there is no infirmity or illegality in the order passed by the trial Court, which does not warrant any interference from this Court. In view of the same the revision has to fail and the same is liable to be dismissed.

12. In the result, this Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

28.08.2017

Index: Yes/No
Internet: Yes/No
ggs

To

1. Chief Judicial Magistrate cum Special Judge,
   Dharmapuri.

2. Deputy Superintendent of Police
   Vigilance & Anti Corruption
   Dharmapuri.

3. The Public Prosecutor,
   High Court, Madras.

P.VELMURUGAN,J.

ggs

Pre-delivery Order in:

Crl.R.C.No.865 of 2017
and Crl.M.P.No.8074 of 2017

28.08.2017