IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2016

PRONOUNCED ON : 06.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1179 and 1326 of 2010
and Crl.MP.Nos.1 + 1 of 2010

Dr.Paulson Yesudian ... Petitioner /Petitioner in Crl.RC.1179 of 2010

Smt.Sulo C.Daniel ... Petitioner in Crl.RC.1326 of 2010

Vs.

1. State represented by Inspector of Police
Central Bureau of Investigation and
Anti Corruption Branch
Shastri Bhavan, Chennai - 6.

2. M/s.Reach International Inc
represented by its authorised signatory
Mrs.Cheryl Rose,
Box.No.34, Berrien Springs,
M1 49103, Maryland USA. ...Respondents in both the cases

PRAYER : Petitions filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the order dated 11.10.2010 in CMP.Nos.184 and 186 of 2009 in CC.No.2 of 2008 passed by the Chief Judicial Magistrate, Coimbatore.

For Petitioners: Mrs.Gladys Daniel
for Mr.Ezhil Raj in Crl.RC.1179/10
for Mr.G.Jawaharlal in Crl.RC.1326/10

For respondents: Mr.K.Srinivasan, Spl.PP for CBI
R1 in both the cases
Mr.Vaibhav R.Venkatesh
for Nithyaesh and Vaibhav
for R2 in both the cases.

COMMON ORDER

Both the Criminal Revisions are directed against the order passed by the learned Chief Judicial Magistrate, Coimbatore made in CMP.Nos.184 and 186 of 2009 in CC.No.2 of 2008 dated 11.10.2010, in dismissing the discharge petitions filed by the petitioners.

2. The case of the petitioners are that the first respondent/CBI has filed charge sheet against the petitioners under Section 120B r/w.406 IPC, Section 23(1) and 25 r/w. Section 4, 6 and 13 of the Foreign Contribution Regulation Act, 1976.

3. The main allegations raised in the final report under Section 173 Cr.PC made by the CBI is that Reach in the Niligiris is a registered Society under the Tamil Nadu Societies Registration Act, 1975, the Society has been registered under Foreign Contribution Regulation Act, 1976 in 1992 vide registration No.7597077 entitled to receive and utilize foreign contribution initially in SB.Account No.10609, Indian Bank at Coonoor. The revision petitioner in Crl.RC.No.1179 of 2010 is the first accused/Dr.Paulson Yesudian is the Chief Functionary of the Society from 08.12.2002. The revision petitioner in Crl.RC.No.1326 of 2010 is the second accused/Sulo C.Daniel is stated to be functioning from 08.12.2002 to 25.08.2003 as Treasurer and from 25.08.2003 onwards as Secretary/Treasurer. From December 2002-2005, the petitioners are said to have entered into a criminal conspiracy to commit criminal breach of trust in respect of the Society, violating the provisions of Foreign Contribution Regulation Act, 1976 [herein after referred to as "FCRA"] by obtaining registration for receipt of foreign contribution from Government of India by suppressing facts and misleading the Government and also diverted the funds contrary to the purposes of the Society. In pursuance of the conspiracy, it is alleged that second accused forwarded Form No.FC-8 signed by the first accused to the Ministry of Home Affairs seeking permission to operate the bank Account No.3712 at Punjab National Bank, Selaiyur, Chennai for the receipt of foreign contribution. Further, A1 also said to have given an undertaking in the application dated 12.02.2003 to obtain permission for changing office bearers, if there is a replacement of office bearers of 50% or more. But prior to the said date i.e, from 08.12.2002 itself, the new office bearers are said to have started to represent the Society, knowing fully aware of the same, A1 said to have given a false undertaking to the Government of India, Ministry of Home Affairs which permitted the change of the Bank account, the office bearers and

the registered address on 18.07.2003. But before from 12.02.2003 to 18.07.2003 foreign contribution were said to have been withdrawn from the bank account on 11 occasions. The petitioners/A1 and A2 are said to have transferred funds to the personal SB Account of Sulochand C.Daniel in violation of Section 4 of FCRA and Section 13 of the Foreign Contribution Act, 1976, for the year 2002-2003 FC III return is said to have shown Rs.1,03,10,850/- as the total foreign contribution. Whereas, the actual contribution received through the designated Bank Account No.3712, Punjab National Bank was only Rs.59,52,000/- the balance amount was said to have been received through the SB.Account of N.Jacob former President of Reach in the Nilgiris. It is further alleged that the petitioner did not maintain the accounts in the prescribed manner, during 2002-2003, it is alleged that the petitioner did not maintain the cash book for receipt and utilization of foreign contribution in violation of Section 13 of the FCRA and the petitioner did not maintain proper books of Account for the period from 2002-2003 and 2004-2005, pencil entries and over writings were said to have been made in the ledgers.

4. The prosecution mainly relies upon the statement of accounts received from the Bank, such entries are not relevant for the purpose of providing disbursement of the amounts to such individuals. Unless, those individuals are examined as witnesses under Section 161 Cr.PC and where those persons do not figure as witnesses in the list of witnesses, the prosecution has no materials at all to show that the amounts were sent to these individuals. In the absence of independent evidence, such entries alone are sufficient to prove that the amount were disbursed to such individuals. LW3/Ministry of Home Affairs has stated in his Section 161 Cr.PC Statement that there are no written rules governing change of address and bank account.

5. In the final report, no misappropriation of the funds of the Society against the petitioners is alleged. The petitioners have no control or whatsoever over the receipt of the amount, the foreign contribution is sent by donors in a foreign country, the foreign contribution is transmitted by banking process without any control over the transmission of funds by the petitioners. In fact the amounts are received by the Bank and thereafter the Bank will inform the petitioners at their convenience. The petitioners have no knowledge of the Foreign contribution received in the account till it was informed to the petitioners. Though the amounts were received by the bank without any act of contribution by the petitioner on 11.02.2003, 14.02.2003 and 31.03.2003, the petitioners have not committed any over tact to receive the amounts. It is an act of foreign donor over which the petitioners have no control, the petitioners have not contravened any rule or law. The

transmission of funds through more than three other banks by transfer of funds, the funds are received only through the Bank under the control of RBI which have transferred the amount without any contributory Act by the petitioners.

6. The petitioners have not violated any of the provisions of the FCRA 1976, further the period of punishment is one year imprisonment. The limitation period prescribed under Section 468 Cr.PC for the offences punishable for a term not exceeding one year. The offences are said to have been committed during the period 2002-2005, but the charge sheet was filed before the Court only on 25.12.2007, nearly two years after the prescribed period of limitation. Hence, the charge sheet is barred by limitation and the cognizance of the charge sheet is unsustainable in law.

7. The petitioners have filed discharge petitions before the trial Court, the trial Court after detailed enquiry dismissed the applications without considering the grounds raised by the petitioners and mechanically dismissed the petitions. Aggrieved against the said orders passed by the Chief Judicial Magistrate, Coimbatore in CMP.Nos.184 and 186 of 2009 in CC.No.2 of 2008, the petitioners have filed the present revision petitions before this Court to set aside the aforesaid order.

8. The case of the respondent/prosecution is that the revision petitioner in Crl.RC.No.1179 of 2010 is the first accused/Dr.Paulson Yesudian is the Chief Functionary of the Society from 08.12.2002. The revision petitioner in Crl.RC.No.1326 of 2010 is the second accused/Sulo C.Daniel is stated to be functioning from 08.12.2002 to 25.08.2003 as Treasurer and from 25.08.2003 onwards as Secretary/Treasurer. During the said period, the petitioners have entered into criminal conspiracy to commit breach of trust in respect of the said Society to violate the provisions of FCRA, 1976 by obtaining registration from Ministry of Home Affairs/FCRA department by suppressing facts and misleading the Government and also diverting the funds of the Society which is in violation of the provisions of the Act. On 12.02.2003, the first accused and the second accused signed and submitted an application in Form FC 8, to the Ministry of Home Affairs, New Delhi seeking permission to close the bank account No.10609 at Coonoor and to operate the account No.3712, Punjab National Bank, Selaiyur, Chennai as the designated Bank Account of the Society and requesting to permit the Chief Functionary to record the names of the new office bearers, to change the address of the administrative office of the Society to No.99, Saideep Apartments, VGP Saravanan Nagar, Madambakkam, Chennai-73 and to permit the new office bearers to function and operate the account. In the aforesaid application, the first accused given

an undertaking that not to change the bank or branch of the bank without prior permission from the Ministry of Home Affairs and not to accept any foreign contribution except without prior permission till the permission to replace the office bearers is granted. The said SB.Account No.3712 was opened (i.e, 05.02.2002) much prior to submitting the application in Form FC 8, on 12.02.2003. The account was opened in favour of M/s.Reach in the Nilgiris, signed by one N.Jacob and the second accused, on 11.02.2003, 14.02.2003 and 31.03.2003 received foreign contribution through the said account and without getting any permission for change of office bearers and without getting any permission or FCRA from the Ministry. The amounts received were Rs.12,42,850/- on 11.04.2003, Rs.28,09,250/- on Rs.14.02.2003 and Rs.18,99,900/- on 31.03.2003.

9. On 11.02.2003 itself, a day prior to the filing of the application the accused 1 and 2 received foreign contribution through the Bank account No.3712, knowing fully well aware that the foreign contribution was already received in the designated Bank and given false undertaking in the Column 4(iii) in Form FC 8, that the Association did not receive any foreign contribution without prior permission. At the relevant point of time, changes in the 50% or more of the office bearers were mentioned in the application for registration. But much before submission of application dated 12.02.2003 to Ministry of Home Affairs, from 08.12.2002 itself before getting permission from Government of India and even before applying for change of office bearers, the accused 1 and 2 and one Marshall started to represent on behalf of the Society. The first accused knowing well that the office bearers have already changed and started representing the Society had submitted false undertaking to the Government of India regarding change of office bearers. The Ministry of Home Affairs permitted the Society represented by the accused 1 and 2 vide order dated 18.07.2003 for changing the Bank account, members and registered address. The accused 1 and 2 have withdrawn the funds from Account No.3712 on eleven occasions between 12.02.2003 and 18.07.2003, which is in violation of the provisions of Section 6 of FCRA, 1976.

10. During April 2003 to January 2005, on 26 occasions the funds were disbursed to individuals including G.Abon, Silchar and Jugeshwar Singh, these individuals were no way connected to the Society and they were not declared by the first accused in his application under the categories of Hostels/branches/members/ orphanages connected to the Society in Tamil Nadu. Further, the accused 1 and 2, transmitted the funds to the personal account of second accused. The second accused also withdrawn cash for self, which is in violation of Section 4 of the Act and dishonestly diverted the funds of the Society for more than 26 occasions which are not reflected in the books of

accounts of the Society, which is also violation of Section 13 of FCRA, 1976. From the Foreign Contribution returns submitted during 2002-2003 the first accused had shown the receipt of Rs.1,03,10,850/- whereas the actual funds received by the Society through Account No.3712 was only Rs.59,52,000/- during the said period. The first accused shown the foreign remittances in the personal account No.20069 of N.Jacob, the former President of the Society. The accused 1 and 2 did not maintain any cash book for receipt and utilization of Foreign contribution. Further, the accused 1 and 2 have not maintained any proper book of accounts of the Society for the period from 2002-2003 to 2004-2005, as there is only sketchy cash book reflecting the expenditure at the head office at Chennai and did not maintain proper book of accounts of the Society, as a number of over writings and pencil entries are made and the ledger balances of the Society are not tallying with the figures in income and expenditure account and receipts and payments account for the relevant period, thus the acts of the accused 1 and 2 are in violation of Section 13 of FCRA, 1976.

11. For the aforesaid acts, the petitioners/accused 1 and 2 are charge sheeted under Section 120B r/w.406 IPC and Section 23 (1) and 25 r/w. Section 4, 6 and 13 of Foreign Contribution Regulation Act, 1976 and prays for dismissal of the revisions filed by the petitioners.

12. Heard the rival submissions made on both sides and perused the available records.

13. The learned counsel for the petitioners would submit that the respondent filed charge sheet against the petitioners under Section 120B r/w.406 IPC and Section 23(1) and 25 r/w. Section 4, 6 and 13 of Foreign Contribution Regulation Act, 1976. There is no independent witnesses to prove the offences against the petitioners, the petitioners have not violated any provisions of the FCRA. On the basis of the irrelevant materials, the prosecution has filed the charge sheet without making any effort to find out the truth. Further, he has submitted that the charge sheet ought to have filed within one year from the date of commission of the offence, the alleged commission of the offence have been committed during 2002-2005, whereas the charge sheet was filed only on 25.12.2017, it is beyond the period of limitation, which is barred by limitation. The petitioner/Dr.Paulson Yesudian in Crl.RC.No.1179 of 2010 is aged about 88years, due to his old age and health reasons, he is not practising medicines, it is very difficult for him to face the ordeal of trial and to appear before the Court, there is no evidence of worthy acceptance against him. Whereas, the petitioner/Sulo C.Daniel in Crl.RC.No.1326 of 2010, aged about 70years she is permanent resident of Chennai, suffering from

Chronic Diabetics and High BP and heart problem, it is very difficult for her to travel all the way from Chennai to Coimbatore without a person accompanying her and further she is accustomed to travel long distances and there is no materials available against her to face the trial. The trial Court failed to consider all the above facts, mechanically dismissed the discharge application.

14. On the other hand, the learned Special Public Prosecutor for first respondent would submit that the petitioners have committed the offences under Section 120B r/w.406 IPC and Section 23(1) and 25 r/w. Section 4, 6 and 13 of Foreign Contribution Regulation Act, 1976, by obtaining registration of receipt of foreign contribution from the Government of India, Ministry of Home Affairs department by suppressing the facts and diverting the funds of the Society that was put forth as the purposes of the Society. Further, the limitation is not applicable to the present case, the investigation reveals that there is specific allegations raised against the petitioners and also there are sufficient materials are available to frame charges against the petitioners. The trial Court after considering the entire materials placed before it and rightly came to the conclusion that there was enough materials are available for proceeding the case against the petitioners. Hence, the trial Court rightly dismissed the petitions filed by the petitioners for discharge.

15. The learned Special Public Prosecutor for first respondent submitted the judgment of the Hon'ble Apex court reported in 2001 Crl.L.J. 4280 (SC) - State rep by CBI and another v. M.Kurian, Chief Foundationary of the Cross wherein it is held that :

> Section 23 which is the penal provision, provides thus :
>
> "Section 23 - Punishment for the contravention of any provision of the Act - (1)Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule made thereunder, shall be punished with imprisonment for a term which may extend to five years or with fine or with both.
>
> (2)Whoever accepts any foreign hospitality in contravention of any provision of this Act or any rule made there under shall be punished with imprisonment of a terms which may extend to three years or with fine or with both".
>
> A plain reading of Section 23 would make it clear that any receipt of foreign contribution in

> contravention of the provisions of the Act or Rules made thereunder becomes punishable. Section 30 confers power on the Central Government to make Rules for carrying out the provisions of the Act. In exercise of such powers, the Central Government has framed the Rules called the Foreign Contribution (Regulation) Rules, 1976.

16. In the unreported judgment of the Delhi High Court dated 04.10.2016 - Nemi Chand Jain @ Chandraswami and others V. Central Bureau of Investigation (CBI), wherein in paragraph 10 it is held as follows :-

> 10.The point for limitation raised by Mr.Nayar does not survive. Because I have observed above that the charge under Section 23 read with Section 6 of the said Act has been appropriately framed against the Society, this would carry with it the limitation period of three years. Since the offences under Section 23 and 25 of the said Act are to be tried together, by virtue of the provisions of Section 468 (3) of the Code of Criminal Procedure, 1973, the period of limitation will have to be determined with reference to the period prescribed for the offence under Section 23 (which carries the more severe punishment). Cognizances has been taken within the period of three years. Thus, the plea of limitation is not tenable.

17. After investigation, the prosecution has filed charge sheet against the petitioners under Section 120B r/w.406 IPC and Section 23(1) and 25 r/w. Section 4, 6 and 13 of Foreign Contribution Regulation Act, 1976. The place, time and the agreement to commit the particular offence is clearly mentioned in the second paragraph of the report under Section 173 Cr.PC filed by the investigating officer. The main allegation against the petitioners are that during the period from December 2002 to 2005, the accused 1 and 2 while functioning as Chief Functionary and Treasurer/Secretary of M/s.Reach in the Nilgiris, Chennai entered into criminal conspiracy to commit criminal breach of trust in respect of the said Society to violate the provisions of the Government of India, Ministry of Home Affairs by suppressing facts and misleading the Government and also diverting the funds of the Society that was not put forth as the purpose of the Society.

18. There are specific allegations regarding the violation of the provisions of FCRA, 1976 and the entire materials shows that there are prima facie allegations raised against these petitioners and also in the charge sheet filed under Section 173

Cr.PC, there are incriminating materials available against these petitioners. At the stage of framing of charges, strong suspicious is enough to frame charges, the trial Court need not conduct roving enquiry on the materials placed before it. Further, at the time of framing charges, the Court can only look into the materials placed by the prosecution and need not look into the defence taken by the accused. The trial Court after hearing both sides and upon perusing the documents, has rightly dismissed the petitions for discharge, filed by the petitioners.

19. The laws is fairly well settled that at the stage of framing of charges, the Court is required only to find out whether prima facie material is available to indicate towards the involvement of the accused in the alleged offence. This has to be gathered from the record of the case, the documents submitted therewith.

20. It is clear that at the initial stage, if there is a strong suspicion which lead the Court to thing that there is 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. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

21. Insofar as the limitation is concerned, the authorities cited by the learned Special Public Prosecutor for first respondent reported in 2001 Crl.L.J. 4280 (SC) - State rep by CBI and another v. M.Kurian, Chief Foundationary of the Cross wherein it is held that:

> "..... Section 23 - Punishment for the contravention of any provision of the Act - (1) Whoever accepts, or assists any person, political party or organisation in accepting, any foreign contribution or any currency from a foreign source, in contravention of any provision of this Act or any rule made thereunder, shall be punished with imprisonment for a term which may extend to five years or with fine or with both......"

the judgment of the Hon'ble Apex Court is squarely applicable to the present case in hand.

22. On perusal of records, the commission of alleged offences occurred during 2002-2005, the charge sheet was filed on 25.12.2007, itself. As per the decision of the Hon'ble Supreme Court cited above, the cognization of the offence is not barred by limitation.. The contention raised by the learned counsel for the petitioners in this regard is not acceptable and the same is liable to be rejected.

23. As already, stated that the trial Court after considering the entire facts and provisions of the Act, correctly comes to the conclusion that the petitioners are not entitled for discharging from charges, hence, the petitions filed by the petitioners are dismissed. This Court finds there is no illegality, infirmity or perversity in the order passed by the learned Chief Judicial Magistrate, Coimbatore, in dismissing the discharge petitions filed by the petitioners and the same does not warrant any interference by this Court.

24. In the upshot, both the criminal revisions are dismissed, by confirming the order dated 11.10.2010 made in CMP.Nos.184 and 186 of 2009 in CC.No.2 of 2008 on the file of the Chief Judicial Magistrate, Coimbatore. Consequently, connected miscellaneous petitions are closed. Considering the pendency of the case, this Court directs the trial Court to dispose of the main case preferably within a period of four months from the date of receipt of a copy of this Order.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To
1.The Chief Judicial Magistrate,
Coimbatore.

2.The Special Public Prosecutor,
CBI Cases, High Court, Madras.

+1cc to M/S.Nithyaesh & Vaibhav, Advocate sr.7587
+1cc to Mr.K.Srinivasan, Advocate Sr.7477
+2cc to Mr.Ezhil Raj, Advocate Sr.2651 [9/3/2017]

Crl.R.C.Nos.1179 and 1326 of 2010

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srg 16/2/2017