

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2017

PRONOUNCED ON : 31.07.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1630 of 2016
and Crl.MP.No.13395 of 2016

N.Periyasamy ... Petitioner/Accused-1

Vs.

1) State rep.by the Inspector of Police,
Central Bureau of Investigation,
Chennai.

(R.C.No.7/S/12)

.. Respondent

PRAYER : Petition filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records of the order dated 28.09.2016 in Crl.MP.No.638 of 2014 in C.C.No.77 of 2013 passed by the Chief Judicial Magistrate, Puducherry and set aside the same.

For Petitioner : Mr.K.Prabhakaran

For respondent : Mr.K.Srinivasan,
Special Public Prosecutor
for CBI cases.

O R D E R

The Criminal Revision Case is directed against the order dated 28.09.2016, passed by the learned Chief Judicial Magistrate, Puducherry made in Crl.MP.No.638 of 2014 in C.C.No.77 of 2013 in dismissing the discharge petition filed by the petitioner.

2. The brief facts of the case are as follows:

i) The case in Cr.No.2 of 2012 dated 27.01.2012, on the file of the Yanam Police Station, was re-registered as R.C.No.6/S/2012 by CBI, SCB, Chennai on 30.05.2012 for the offences punishable under Section 176 Cr.P.C at the request of the Government of Puducherry, Home Department and was taken up for investigation. The allegation made therein is that one

Matcha Murali Mohan, Labour Union Leader of M/s.Regency Ceramics Station Pvt. Ltd., Yanam and 9 others were taken on custody in connection with Cr.No.11/2012 on the file of Yanam Police Station. He developed chest pain while in custody. Though, he was sent to the Government Hospital, Yanam for treatment, the Medical Officer declared him as brought dead. The wife of the deceased Matcha Murali Mohan, filed petitions in CrI.O.P.Nos.3902 to 3907 of 2012 before this Court and the same were ordered to take up the investigation of the case in Cr.No.11 of 2012 dated 27.01.2012 relating to attack of one Velaga Kasi Viswanathan and the case in Cr.No.11 of 2012 was re-registered as RC.No.9/(S)/2012/CBI/SCB/Chennai and case in Cr.No.12 of 2012 dated 27.01.2012 on the file of Yanam Police Station, Puducherry relating to assault of A.Senthamizh Selvan, Sub Inspector, IRBN, Yanam was re-registered as RC.No.10/S/2012/CBI/SCB/Chennai and both the cases were taken up for investigation. At that time, it was revealed that Velaga Kasi Viswanathan was attacked inside the factory at about 8.45 p.m. only after the death of Matcha Murali Mohan.

ii) Similarly, a separate case in Cr.No.15/2012 on the file of Yanam Police Station, was re-registered as R.C.No.12/(S)/2012 by CBI, SCB, Chennai relating to attack of the workers and damages to the properties of M/s.Regency Ceramics Limited, Yanam. During the course of investigation, it was revealed that a false case was registered by the petitioner viz., N.Periyasamy (A1) and P.Veerabadhraswamy (A2) in connection with Cr.No.11 of 2012 and the same was re-registered as R.C.No.9/(S)/2012 by CBI, SCB, Chennai, which was clubbed with R.C.No.6/(S)/2012 of CBI, SCB, Chennai.

iii) The case in Crime No.12 of 2012 of Yanam Police Station was re-registered as R.C.No.10/(S)/2012 of CBI, SCB, Chennai in connection with attack of A.Senthamizh Selvan, Sub Inspector, IRBN, Yanam. It was alleged therein that a sharp edged weapon like knife was used to attack A.Senthamizh Selvan by the deceased Matcha Murali Mohan and his uniform shoulder flap was torn off. During the investigation, it was revealed that a false case was registered by the petitioner viz., N.Periyasamy (A1) and Veerabadhraswamy (A2) in connection with Cr.No.12/2012 and the same was re-registered as R.C.No.10/(S)/2012 by CBI, SCB, Chennai which was also clubbed with R.C.No.6/(S)/2012 of CBI, SCB, Chennai. Thus, according to the respondent / complainant, the petitioner registered a false case and manipulated the records.

iv) The complainant viz., Velaga Kasi Viswanathan, Junior Manager, Regency Ceramics Limited, Yanam was assaulted by the deceased Matcha Murali Mohan and 9 others in Regma Junction on 27.01.2012 at 6.00 a.m. while entering the factory for the

morning shift. The case was registered against the deceased Matcha Murali Mohan, Chodi Ramakrishna, Kondamuri Hari and 17 others. They were brought to Yanam Police Station on the same day at 7.20a.m. in connection with FIR in Cr.No.11 of 2012 relating to the alleged assault of Velaga Kasi Viswanathan. But the place of occurrence did not mention in the FIR. On 27.01.2012, the deceased Matcha Murali Mohan and others were actually brought to the said police station at 6.45 a.m. As he developed chest pain, he was taken to Government General Hospital, Yanam at 7.55 a.m., where he was declared brought dead. Hence, the agitated workers and supporters of the deceased Matcha Murali Mohan got furious and went on rampage and attacked the workers and caused damages to the properties of Regency Ceramics Pvt.Ltd. In this circumstance only, the complainant viz., Velaga Kasi Viswanathan got injured at about 8.45 a.m. The said complainant came to Yanam Police Station at about 9.30 a.m. to lodge a complaint against the persons who attacked him in the factory. However, the petitioner/A1 Circle Inspector along with Veera Bhadrasamy/A2, Sub Inspector, who was present in the office of Circle Inspector, dictated a complaint to Velaga Kasi Viswanathan, in which he has mentioned the names of deceased Matcha Murali Mohan, Kondamuri Hari, Chodi Ramakrishna and others. This was done due to conspiracy hatched with each other by N.Periyasamy/A1, Circle Inspector and Veera Bhadrasamy/A2, so as to make it appear that the deceased Matcha Murali Mohan was brought to Yanam Police Station in connection with the complaint given by Velaga Kasi Viswanathan, who was actually attacked inside the factory premises at about 8.45 a.m. After the death of Matcha Murali Mohan, he lodged the complaint.

v) The deceased Matcha Murali Mohan died on his way to Government Hospital from Police station and the police got panic and in order to escape from the criminal liability for having brought the deceased Matcha Murali Mohan to police Station without any basis, they created false documents including the above complaint i.e. complaint lodged by Velaga Kasi Viswanathan, as if the same was lodged before Matcha Murali Mohan and others were brought to the police station. Hence the petitioner herein and A2-Veerabadraswamy were arrayed as accused in the cases, since the persons/employees who were arrayed as accused in Cr.No.11/2012 of Yanam Police Station were not found at fault.

vi) The allegations in the FIR in Cr.No.12/2012 of Yanam Police Station are that a sharp edged weapon like knife was used to attack Senthamizh Selvan, Sub Inspector of IRBN by the deceased Matcha Murali Mohan and the uniform shoulder flap of Senthamizh Selvan was torn off. The Yanam Police recovered a knife about 19 cms length with 4 1/2 cms handle. Whereas, the

fact remains that the petitioner and A2 have falsely implicated the deceased Matcha Murali Mohan for a cognizance offence and seizure itself is an after thought because the incident took place on 27.01.2012 at about 6.00 a.m. Whereas, the seizure was effected on 28.01.2012 at 3.00 p.m. at a different scene of crime. Moreover, the scene of crime was shown as the main gate of M/s.Regency Ceramics Ltd., whereas, the incident actually took place near Regma Gate which is about 300 meters away from the main gate of M/s.Regency Ceramics Pvt.Ltd. On 28.01.2012, the statement of the Head Constables and Constables was recorded and the signatures of Kamalakannan were verified and found that it was forged. As per the First Information Report, the petitioners entered into a criminal conspiracy at Yanam Police Station and being the public servants, created false records with criminal intention to get conviction for 50 innocent accused persons. The petitioner and A2 were being the public servants, charged with preparation of records or writing in a manner which they knew to be incorrect i.e. false General Dairy Entries, false FIRs in Cr.Nos.11 and 12 of 2012 of Yanam Police Station and creation of false records.

vii) The petitioner has committed the offence punishable under Section 120 (B) r/w 218 I.P.C. The report under Section 173 Cr.P.C. was filed in R.C.No.6/(S)/2012 of CBI, SCB, Chennai before the Chief Judicial Magistrate, Puducherry, by dropping the FIR in respect of the named accused persons in RC.Nos.9 and 10 of 2012 and recommending closure of those cases, because no case was made out in the FIR against the named accused persons in the original FIRs in Crime Nos.11 and 12 of Yanam Police Station. Since the jurisdictional court for CBI cases is the Chief Judicial Magistrate, Puducherry, a final report was filed under Section 173 Cr.P.C. in R.C.No.6/(S)/2012. The concerned Magistrate perused the final report and took cognizance of the case in C.C.No.77 of 2013. The Chief Judicial Magistrate alone is a competent authority, to take cognizance of the investigation by the CBI. During the course of the investigation by CBI, it is clearly stated that the petitioners being the public servants, conspired together with criminal intention, after sudden death of Matcha Murali Mohan and in order to convict the innocent persons, they were arrayed as accused persons. Further, they created false records and registered case against the innocent persons. Hence, prima facie materials are available to frame charges against the petitioner under Section 120B r/w 218IPC.

3. During the pendency of the criminal case before the learned Chief Judicial Magistrate, Puducherry, the petitioner herein filed CrI.M.P.No. 638 of 2014 in C.C.No.77 of 2013 to discharge them from the charges.

4. The learned Chief Judicial Magistrate, Puducherry sent notice to the respondent/CBI and considering the materials placed before him, came to the conclusion that there was a prima facie material available to frame the charges. Accordingly, the trial court dismissed the discharge petition filed the petitioner on 28.09.2016. Aggrieved with the said orders, the petitioner is before this Court.

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

6. The learned counsel for the petitioner would submit that there is no prima facie material available to proceed with the case against the petitioner under Section 120 B r/w 218 IPC and the ingredients of the offence under Section 218 of IPC are not at all attracted. In order to attract the offence of criminal conspiracy, the following essential ingredients must be present :

- i) that there must be an agreement between the persons who are alleged to conspire;
- ii) that the agreement should be
 - a) for doing of an illegal act, or
 - b) for doing by illegal means an act which may not itself be illegal.

The prosecution has failed to prove the charge of criminal conspiracy against the petitioner herein. The prosecution has miserably failed even to state when and where the accused have met during 2012 and entered into an agreement and hatched the conspiracy. The petitioner is the Inspector of Police. The events have happened on that date swift and fast and there was no chance for conspiracy and the petitioner being the public servant, had done their duty, for which, he was penalized.

7. In order to attract Section 218 IPC, the following three essential ingredients of that Section must be present:

- (i) The Public servant must be charged with the preparation of any record or other writing.
- ii) They must frame that record or writing in a manner, which he knows to be incorrect; and
- iii) They have done it with intent to cause or knowing it to be likely that they will thereby cause loss or injury to public or to any person.

8. The case in Cr.Nos.11 & 12 of 2012 relating to Yanam Police Station, referred charge sheet has to be filed before the learned Judicial Magistrate, Yanam. No notice was sent to the complainants before filing the referred charge sheet and that

due to abovesaid reasons, the learned Chief Judicial Magistrate, Puducherry has no jurisdiction to try the case. The documents and the police report did not make out the cases for framing charges against the petitioner herein and that the charges are groundless, as far as the petitioner is concerned. No sanction was obtained by the prosecution, even though the revision petitioner and A2 were the public servants and they cannot be prosecuted under Section 218 IPC, unless sanction for prosecution has been obtained under Section 197 Cr.P.C. The sanction being a condition precedent for his prosecution and no sanction having been obtained, the petitioner cannot be prosecuted.

9. Learned counsel for the petitioner would further submit that the Indian Penal Code does not have the provision of criminal conspiracy initially, but Section 120 (B) came to be inserted only by way of Amendment Act, 1931 to silence or oppress the power of freedom fighters, where it came to be applied only when offence is committed in a heinous manner by the freedom fighters and but not for every type of activity. In fact, the offence of criminal conspiracy cannot be applied in the present case, when the Criminal Law Amendment Act, 1913 was made, the object of the same as dissent by Pandit Madan Mohan Malaviyaa, it is an instrument of Government oppression as emergent piece of legislation and this measure was motivated by political expediency and no efforts were made to deal with the matter in the ordinary and regular way.

10. Section 218 of IPC is under Chapter - False Evidence Offences against Public Justice. The Public servants especially the police officials cannot be prosecuted for mere registration of FIR. FIR is not substantiated piece of evidence and it is only credible source of primary information as held by the Supreme court in the case of State of Haryana vs. Bhajanlal. When information regarding commission of cognizable offence is given, the police official concerned is duty bound to register the FIR. The petitioner did not register the FIR and the same was registered by the Sub Inspector of Police. Under Article 41 and 142 of the Constitution of India, the law declared and made by the Supreme Court shall be enforceable by the police officials and non-compliance of the direction would attract contempt. Now, for complying with the direction and the law laid down by Hon'ble Supreme court, fulfilling the procedural requirement of registering the FIR under Section 154 of Cr.P.C., wrong case has been foisted against the petitioner, as if he forged the records.

11. The learned counsel for the petitioner in support of his contentions relied on the decisions of the Apex Court and other High Court as follows :-

1. Empress vs. Mazhar Husain - (1883) ILR 5 All 553
2. Barindra Kumar Ghose Vs. Emperor - (1909)
3. Pulin Behari Das Vs. King Emperor - (1911-12) 16 CWN 1105

Calcutta HC

4. Moti Ram Vs. Emperor AIR - AIR 1925 Lah 461
5. Palagani Veeraraghavulu Vs. State - AIR 1958 AP 301
6. Century Spinning Vs. State of Maharashtra AIR 1972 SC 545 (SC)
7. Subash Chander Vs. State (Chandigar Administration) and Others)
8. Gubaksh Singh Vs. Vir Bhan 1980 CrL LJ 1154 - P & H
9. State of U.P. Vs. Jitendra Kumar Singh 1987 CrL LJ 1768
10. State of Karnataka Vs. G. Lakshman ILR 1987 Kar. 2223
11. Niranjana Singh Vs. Jitendra Bhimraj AIR 1990 SC 1961
12. State of U.P. Vs. Dr. Sanjay 1994 SCC (CrL) 701
13. State of Maharashtra Vs. Som Nath Thapa 1996 III AD (SC) 502
14. Arun Vyas Vs. Anita Vyas 1999 (2) Acr 1456 (SC)
15. K. Ramakrishna Vs. State of Bihar 2001 SCC (CrL) 27
16. T. T. Anotny Vs. State of Kerala 2001 (2) ACR 1510 (SC)
17. State of Orissa Vs. Debendra Nath Padhi 2005 (1) Acr 71 (SC)
18. Kuriachan Chacko Vs. State of Kerala 2007 CrL LJ 4458
19. State of M.P. Vs. Mohanlal 2000 (3) Acr 2123 (SC)
20. Smt. Rumi Dhar Vs. State 2009 (2) ACR 1875 (SC)
21. Surjit Kaur Vs. Jaimat Rai 2011 (1) RCR (CrL) 563 P & H
22. Padal Venkata Rama Reddy Vs. Kovvuri Satyanarayana Reddy 2011 (3) ACR 3156 (SC)
23. Surender Kaushik & State of U.P. 2013 (3) Acr 2590 (SC)
24. Issac Isansa Musumba Vs. State of Maharashtra (2014) SCC 357
25. Balwant Rai Vs. State of U.P. Manu/UP/0757/2016
26. Union of India Vs. Prafulla Kumar Samal and Anr. (1979) 3 SCC 4,
27. State of Karnataka Vs. L. Muniswamy - AIR 1977 SC 1489
28. T. S. Rajan Vs. State of Kerala - ILR 2016 (1) Kerala 348
29. Vijayachandran K. K. & Anr. Vs. The Supdt., Police & Anr - 2006 SCC Online Ker 242 : (2008) 2 KLJ 751
30. Laila Jhina Mawji and another Vs. The Queen (1957) 2 W.L.R.

12. The learned counsel for the petitioner would further submit that the registration of FIR cannot be considered as committing a legal act by illegal means. Hence the charge under Sections 120 (B) and 218 of IPC against the petitioner shall not have any application. There is no prima facie case made out against the petitioner. The learned Chief Judicial Magistrate failed to consider the documentary evidences and also statement of witnesses and without application of mind, mechanically dismissed the discharge petition filed by the petitioner.

Hence, learned counsel prays that the order of the trial Court has to be set aside and the criminal revision has to be allowed.

13. The learned Special Public Prosecutor for CBI Cases would submit that from the statement of witnesses and documentary evidences collected during the course of investigation and the statements submitted along with the final report, it is to be clearly seen that there is a prima facie case against the petitioner to frame charges and to proceed further. There are incriminating materials available against the accused in the documents filed along with the charged sheet. The petitioner herein has to face the trial and prove his innocence at the time of trial. The trial Court after duly considering all the documentary evidences produced before it, correctly found that there was prima facie case made out against the accused to proceed further and rightly dismissed the discharge petition filed by the petitioner. The learned Special Public Prosecutor submits that there is no necessity to interfere with the order of the trial Court and prays for dismissal of the revision petition.

14. Heard the rival submissions made on both sides and perused the discharge petition filed by the petitioner before the Special Court and the Counter statement filed by the prosecution and the order passed by the Special Court in the discharge petition in 638 of 2014 in C.C.No.77 of 2013 and also perused the statements and the documentary evidences annexed with the charge sheet.

15. On perusal of the entire records, it is the specific charge leveled against the petitioner that he being the public servant, entered into a criminal conspiracy at Yanam and other places during 2012 and in pursuance of the same, both the persons created incorrect records with criminal intention to get conviction for innocent persons and thereby committed offences under Section 120 B r/w 218 of I.P.C.

16. When he approached the learned Chief Judicial Magistrate and filed the petition in CMP.No.638 of 2014 in C.C.No.77 of 2013 seeking discharge, the trial court dismissed the petition filed by the petitioner. Now, the moot point is that at the time of framing of charge, the court has to see whether a prima facie case is made out to proceed against the accused.

17. As per the law laid down by the Hon'ble Supreme Court in the various decisions, it is to be seen as to whether the charges leveled against the petitioner are groundless. According to the petitioner, N.Periyasamy/A1 working as Circle Inspector at Yanam on 20.07.2012 along with Veerabhadraswamy/A2, Sub Inspector of Police, registered FIRs in Cr.Nos.11 & 12 of 202 as

indicated above. As evident from the materials, viz., Section 161 Cr.P.C statement and the FIR of the above said cases, it was mentioned that on 27.01.2012 at 08.45 a.m. deceased Matcha Murali Mohan was brought to police station and have been under police custody at the relevant time. Further, it seems that he developed chest pain at police station and when he brought to hospital for treatment where he was declared as brought dead. This incident had taken place at 08.45 a.m. Now, the petitioner/A1 has been charge sheeted that he has created false records and fabricated documents as if the deceased was alive at 08.45 a.m. But, he died prior to the alleged incident said to have taken place. With reference to the case registered in Cr.No.12 of 2012, the complainant was the Sub-Inspector of Police of IRBN, viz., Senthamizh Selvan. Upon his complaint, a case was registered under Sections 147, 148, 341, 353, 307, 324 r/w 149 of I.P.C. against the accused viz., 1) Kondamuri Har, 2) Murali Mohan 3) Chodi Ramakrishna 4) Uppana Eswara Rao, 5) Nakkala Prasad Rao and 45 others. During the investigation, the Investigation Officer recorded the statement of the said defacto complainant viz., Senthamizh Selvan, who, in his statement, has specifically narrated that "he does not know the names of the local persons mentioned in the FIR and moreover, they never assaulted him at Regency Gate, while discharging his official duty; that Subbarao, Police Constable 212 IRBN was not deployed to do the bandobust duty in the early hours of 27.01.2012; that he proceeded to Pondicherry from Yanam on Earned leave from 13.04.2012 to 27.04.2012; that he was not physically present on 13.04.2012; that firstly, he gave a written complaint in English to Veerabhadraswamy/A2, Sub Inspector of Police, which is a simple one and without specifying any body and that, later the said A2 himself dictated a complaint written by one Rangadurai, Head Constable of IRBN and also obtained his signature.

18. With reference to the case registered in Cr.No.11 of 2012, the defacto complainant gave a statement to the effect that the complaint was given by him on 27.01.2012 at around 09.30 a.m. as dictated by A2 in the presence of A1; that in the complaint, it was mentioned that he was obstructed by Matcha Murali Mohan, Chode Ramakrishna, Kondamuri Hari and others at Rigma junction on 27.01.2012 at 6.00 a.m., is totally false ; that he came to the factory only around at 07.30 a.m. for the general shift which starts from 08.00 a.m.; that even at that time in Rigma junction, no union members of Regency Ceramics Limited were blocking the workers entering into the factory premises and that, he never seen the above said persons. Further, the statement of A2 proceeded to state that the petitioner/A2 directed him to sign the seizure form and he has not seized any cycle at any point of time. But the fact remains that Velga Kasi Viswanathan came to yanam Police Station

at 09.30 a.m. to file a complaint against the persons who attacked him in the factory, whereas, the petitioners dictated the complaint to the defacto complainant in Cr.No.11 of 2012 and he mentioned the names of the deceased Matcha Murali Mohan and other persons. Further, they included incorrect persons as accused in the FIR after the death of Matcha Murali Mohan by deliberately showing the time of complaint at 06.30 a.m. instead of 09.30 a.m. This incident occurred at 08.45 a.m. at the alleged place. Velga Kasi Viswanathan has stated that inside the factory at about 08.45 a.m. Only after the death of Matcha Murali Mohan. Further, it is alleged that both the accused created false records to protect themselves from legal punishment and also to get punishment to innocent accused persons, those who are not involved in the offence. Therefore, the petitioner and other accused have committed offence under Section 120 (B) and 218 IPC.

19. On perusal of the entire records placed before this Court, this Court finds that there are prima facie case made out against the petitioner and there are incriminating materials available against the petitioner to proceed further. There is no quarrel with the proposition laid down by the Hon'ble Apex Court in various decisions referred to by the learned counsel for the petitioner. But at the same time, the learned counsel for the petitioner cannot deny that each case has got its own merits. At the time of deciding a petition u/s. 239 or 227 Cr.P.C., the Court has to see whether a prima facie case as against the petitioner has been made out or not, from the final report filed by the prosecution under Section 173 of Cr.P.C. It is for the Court to find out prima facie case depending upon the allegation levelled against the accused in each case and in this case, the materials on record disclosed that prima facie case is made out against the petitioner. Therefore, the authority submitted by the learned counsel for the petitioner is not applicable to the present case on hand.

20. At this stage, it is relevant to place reliance on the recent decision of our Apex Court in the case of State of Rajasthan Vs. Fatehkaran Mehdu 2017 2 M.LJ(crl) wherein the Apex Court has held as

"26. The scope of interference and exercise of jurisdiction under Section 397 of Cr.P.C., has been time and again explained by this Court. Further, the scope of interference under Section 397 Cr.P.C., at a stage, when charge had been framed, is also well settled. At the stage of framing of a charge, the court is concerned not with the proof of the allegation rather it has to focus on the material and form an opinion whether there is strong suspicion that the accused has committed an

offence, which if put to trial, could prove his guilt. The framing of charge is not a stage, at which stage final test of guilt is to be applied. Thus, to hold that at the stage of framing the charge, the court should form an opinion that the accused is certainly guilty of committing an offence, is to hold something which is neither permissible nor is in consonance with scheme of Code of Criminal Procedure.

27. Now, reverting to the limit of the scope of jurisdiction under Section 397 Cr.P.C., which 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 or the perversity which has crept in the proceeding.

28. It is useful to refer to judgment of this Court in Amit Kapoor and Ramesh Chander and Another, (2012) 19 SCC 460, where scope of Section 397 Cr.P.C., have been sufficiently considered and explained. Para 12 and 13 are as follows:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of 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 it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

"13. Another well-accepted norm is that the

revisional jurisdiction of the higher court is a very limited one and cannot 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 aforesaid. Even framing of charge is a much advanced stage in the proceedings under the Cr.P.C.,”

29. The Court in para 27 has recorded its conclusion and laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in context of quashing of charge framed under Section 228 Cr.P.C. Para 27, 27(1), (2), (3), (9) (13) are extracted as follows:

“27. Having discussed the scope of jurisdiction under these two provisions, i.e., Section 397 and Section 482 of the Code and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2) The Court should apply the test as to whether the uncontroverted allegation as made from the record of the case and the documents submitted therewith prima facie establish the

offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3) The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge 27.9) Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13) Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied. The Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records but is an opinion formed prima facie."

21. On careful perusal of the materials placed before this Court especially the final report filed by the respondent along with the oral and documentary evidence annexed therewith, under Section 173 of Cr.P.C., would disclose a prima facie case and also there are sufficient incriminating materials available against the petitioner to proceed further.

22. Upon hearing the arguments of both sides and on perusal of the materials placed before it, the trial Court comes to a conclusion that the prosecution has shown that there are prima facie materials available to proceed the case against the petitioner and hence, the trial Court rightly dismissed the discharge petition filed by the petitioner. Considering the entire facts and circumstances of the case, this Court also comes to the conclusion that prima facie materials are available. The allegations shown in the charge sheet and from other documents produced with the final report under Section 173 Cr.P.C, there are materials available to proceed the case against this petitioner. This Court finds that there is no illegality, infirmity or perversity in the orders passed by the

learned Additional Chief Metropolitan Magistrate, Chennai, in dismissing the discharge petition filed by the petitioner and the same does not warrant any interference by this Court.

23. In the upshot, the criminal revision case is dismissed, by confirming the order dated 28.09.2016 made in CMP.No.638 of 2014 in C.C.No.77 of 2013 on the file of the Chief Judicial Magistrate, Puducherry. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

- 1.The Chief Judicial Magistrate,
Puducherry.
- 2.The Inspector of Police,
Central Bureau of Investigation,
Chennai.
- 3.The Public prosecutor, High Court,
Madras.

+1cc to M/S. Prabhakaran, Advocate Sr. 54287

Pre - Delivery Order in
Crl.R.C.No. 1630 of 2016
and
Crl.MP.No. 13395 of 2016

SVI (CO)
VR(11/8/2017)

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