

IN THE HIGHCOURT OF JUDICATURE AT MADRAS

Date of Reservation : 22.11.2016

Date of Pronouncement : 01.06.2017

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Criminal Revision Case Nos.662 and 841 of 2016
and
C.M.P.Nos.4664 and 6371 & 6372 of 2016

A.Paramasivan
Petitioner/A1 in

Crl.R.C.No.662/2016

Tushar Ranjan Samal Petitioner/A3
in

Crl.R.C.No.841/2016

versus

The Inspector of Police,
Central Bureau of Investigation
Anti Corruption Bureau,
Shastri Bhavan
Chennai - 600 006 ... Respondent
in both

revisions

Prayer in both revisions: Criminal revision petitions filed under Section 397 read with 401 of Cr.P.C., to call for the records and set aside the order dated 06.04.2016 in Crl.M.P.Nos.5745 and 2957 of 2015 respectively in C.C.No.9 of 2015 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai and consequently, discharge the accused/petitioners for the offences under Section 120(B) of I.P.C. and Sections 7, 12 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

For Petitioner in
Crl.R.C.662/16 : Mr.N.R.Elango, senior counsel for
Mr.R.Vivekanandan

For Petitioner in
Crl.R.C.841/16 : Mr.A.Ramesh, senior counsel for
Mr.C.Arun Kumar

For Respondent : Mr.K.Srinivasan, S.P.P. For CBI
in both cases

COMMON ORDER

Both the revision petitions have been filed by the petitioners/A1 and A3 respectively, to call for the records and set aside the order dated 06.04.2016 in Crl.M.P.Nos.5745 and 2957 of 2015 respectively in C.C.No.9 of 2015 on the file of the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai and consequently, discharge the petitioners/A1 and 3 for the offences under Section 120(B) of I.P.C. and Sections 7, 12 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988.

2.The respondent viz., the Inspector of Police, Central Bureau of Investigation, Anti Corruption Bureau, Chennai has registered a case for the offences under Section 120(B) of I.P.C. and Sections 7, 12, 13(2) read with 13(1)d) of Prevention of Corruption Act, 1988 in R.C.MA1/2014 -15 dated 21.04.2014 against the petitioners and other accused.

3.The case of the respondent/prosecution is that on 09.04.2014, the petitioner in Crl.R.C.No.662 of 2016/A1 demanded an amount of Rs.35,00,000/- as bribe to sort out various deficiencies identified during the audit of MIOT Nursing College records from the defacto complainant Shri R.Hariharan, the Liasion Officer for MIOT Hospital at Chennai and A1 entered into a criminal conspiracy with A2 and directed him to accept the bribe money of Rs.5,00,000/- initially from the defacto complainant. Since the defacto complainant and the Management were not willing to give such bribe, he decided to give a complaint before CBI against the petitioners/A1 and A2. Accordingly, a complaint lodged before the Superintendent of Police, CBI, ACB, Chennai on 21.04.2014, based on which, the respondent registered the complaint in RC.15(A)/2014 for the offences under Sections 7 and 12 of Prevention of Corruption Act, 1988 on the same day. Thereafter, a trap was laid on A2 at Mount Manor Hotel, Guindy in Room No.212 at about 1.45 P.M. on the same day. During the trap proceedings, A2 was arrested, while accepting the bribe money of Rs.5,00,000/- as first instalment on the direction of A1 and the tainted currency was recovered from A2 under recovery mahazer. During the course of investigation, the Investigating Officer had examined 49 witnesses and statement of relevant witnesses under Section 161

(3) of Cr.P.C. and collected 46 documents and interrogated A1 to A3 and recorded their statements also, after giving sufficient opportunity to defend themselves and the material objects were sent for scientific analysis and after completion of investigation, a charge sheet was filed against the accused persons for the offences under Section 120(B) of I.P.C. and Sections 7,12 and 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988. The learned Principal Special Judge for CBI Cases has taken cognizance of the offences and taken the charge sheet on file in C.C.No.9 of 2015.

4. Aggrieved by the said charge sheet, the petitioners/A1 and A2 have filed discharge petitions under Section 227 of Cr.P.C. in Crl.M.P.Nos.5745 and 2957 of 2015 respectively in C.C.No.9 of 2015 before the learned Principal Special Judge for CBI Cases, Chennai. After hearing both sides, the learned Principal Special Judge passed orders dismissing the petitions filed by the petitioners/A1 and A2. Against which, the present criminal revision petitions have been filed.

5. Since both the revision petitions have been filed by the petitioners/A1 and A2 and the issue involved in both the revision petition arose out of the same charge sheet in C.C.No.9 of 2015, no prejudice would be caused to the petitioner, if a common order is passed and accordingly, a common order is passed.

6. The learned senior counsel for the petitioners would submit that mere perusal of the charge sheet along with 46 documents and statement of 50 witnesses relied upon by the prosecution would show that there is no case made out against the petitioners much less a prima facie case against them and none of the ingredients for invoking the provisions of Section 120(B) of I.P.C. and Sections 7,12,13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 can be invoked as against the petitioners so as to frame charges by the Principal Special Judge as provided under I.P.C. and Prevention of Corruption Act, 1988. They would further submit that the defacto complainant had filed a false complaint by suppressing several vital information and has used the respondent as a tool so as to divert the several acts of illegalities committed by MIOT Hospitals Ltd. The defacto complainant has no locus standi to file a complaint, since the complainant has nothing to do with the MIOT College of Nursing and it is separate entity which is run by a Trust and which has nothing to do with MIOT Hospitals Ltd., which is a company registered under the Companies Act and the College of Nursing is run by a MIOT Hospital Medical & Educational Trust which is not a profit making organization and hence, in order to escape from the clutches of law, the defacto

complainant has chosen to use the respondent to prevent the authorities from initiating action against their illegal activities.

7.The learned senior counsel for the petitioners would further submit that there is no prima facie case made out against the petitioners for framing charges and there is no evidence against the petitioners to connect with the crime and there is neither any direct evidence nor circumstances available to infer a conspiracy between these petitioners and other accused. The prosecution has not obtained any sanction for initiating criminal prosecution against the petitioners under Section 197 of Cr.P.C., since the petitioners are public servants and prayed for setting aside the order passed by the learned Principal Special Judge.

8.Mr.A.Ramesh, the learned senior counsel would submit that admittedly, the petitioner in CrI.R.C.No.841 of 2016 is a subordinate to A1 and as per the directions of A1, the petitioner had sent audit memo dated 10th and 12th of March 2015 to the Secretary, Indian Nursing Council and this also forms part and parcel of the audit which is being carried on, which is not all an illegal act or an act done by illegal means and in support of his contention, he relied on the judgment of Karnataka High Court in the case of, J.Alexander and Central Bureau of Investigation, Bangalore reported in 2000(3) Kar.L.J.628. He has further submitted that regarding the alleged discussion between A1 and the petitioner in the audit room, the Hon'ble Apex Court have categorically held that merely discussions between the officials cannot be branded or assumed as if they conspired with each other and have committed the offence of criminal conspiracy and in this contention he relied on the decision of the Apex court in the case of Subramanian Swamy V. A.Raja reported in 2012(9) SCC 257. He has further submitted that the petitioner herein did not even make an attempt to receive any pecuniary advantage by abusing his official position. In the absence of the same, no charge can be framed under Sections 7, 13(2) or 13(1)(d) of Prevention of Corruption Act, 1988 and all these commence with a connotation "whoever" which clearly depict that other than the person who commits the offence cannot be prosecuted. He also placed reliance on the judgment of the Apex Court in the case of TGL Groundnut Corporation and others V. The Agricultural Market Committee reported in 1985 XXIV MLJ 608.

9.The learned Special Public Prosecutor for CBI cases would submit that after the completion of investigation only, the respondent had filed the final report under Section 173 of Cr.P.C., before the Special Court against the petitioners and

other accused for the offences under Section 120(B) of I.P.C. and Sections 7, 12, 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 and the Special Court has taken cognizance of the offence in C.C.No.9 of 2015. During the investigation, the prosecution examined as many as 50 witnesses and recorded statements of all the witnesses and 476 incriminating documents were also collected and from all the available materials, oral and documentary evidence, the Special Judge considered all the aspects elaborately and correctly dismissed the discharge applications filed by the petitioners herein and there is no reason to interfere with the order passed by the Special Court.

10. Heard the learned senior counsel appearing for both the petitioners and the learned Special Public Prosecutor appearing for the respondent and perused the materials available on record along with the order passed by the learned Principal Special Judge for CBI Cases.

11. Perusal of the charge sheet filed under Section 173 of Cr.P.C. along with other material documents and dismissal order of the learned Special Judge would show that there are incriminating materials against the petitioners and other accused. It is well settled principles of law that at the time of considering the discharge petition before framing of charges, the Court ought to have seen whether there is any prima-facie case made out for framing of charge and the Special Court need not to conduct any roving enquiry regarding the oral and documentary evidence collected by the prosecution. The Special Court considering all the materials collected during the investigation found that there is prima facie case as against the petitioners and other accused to frame the charges. The validity and admissibility of the oral and documentary evidence can be done only after the trial and not at the stage of framing of charges. Under the aforesaid circumstances, the authorities submitted by the learned senior counsel for the petitioners are not applicable to the present case on hands and their submissions are not applicable at this stage. Therefore, I am of the view that the Special Court has correctly come to the conclusion that there is prima facie case made out as against the petitioners and others to frame charges and at this stage, the order passed by the Special Court cannot be interfered by exercising the revisional jurisdiction under Section 397 read with 401 of I.P.C.

12. At this stage, it is worthwhile to refer the decision of the Hon'ble Supreme Court reported in 2017 CRI.L.J.1433 - State of Rajasthan V. Fatehkaran Mehdu, wherein, the Apex Court has dealt with the same issue and has held in paras 26 to 29 as follows:

"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) 9 SCC 460, where scope of Section 397 Cr. P.C. have been succinctly 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 CrPC."

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 exercise of jurisdiction, particularly, with 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:

27.1) 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 allegations 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 with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie."

13. Considering the facts and circumstances of the present case along with the above said decision, in the present case also, the learned Special Judge had observed that final adjudication of charge cannot be made unless oral and documentary evidence are received and that can be considered only after the trial after recording evidence and from the available materials, the Court found that there are allegations which falls under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act.

14. As far as the sanction of prosecution is concerned, Section 197 of Cr.P.C. gives protection to the Government Employee/public servant, who committed offence during the official duty. But, in the present case, the offence is receiving bribe, which is not an official duty. In this regard, this Court had an occasion to decide the same issue in 2017 CRI.L.J.1370 - M.Manuneethi Cholan V. State, wherein, this Court has held in para 25 as follows:

"25. But, in judgment relied upon by the learned counsel for the petitioner reported in (2016)2 SCC 143 [N.K.Ganguly Vs. CBI], in para 22, there is a fitting answer to this issue. In the said decision it has been observed as follows_

"22. While considering the facts of the case, Bose J. observed that the offence in question, could not have been committed any other way, and held as under:

(Shreekantiah case, AIR p.293, para 19)
19.....If it was innocent, it was an

official act; if dishonest, it was the dishonest doing of an official act, but in either event the act was official because the second accused could not dispose of the goods save by the doing of an official act, namely officially permitting their disposal; and that he did. He actually permitted their release and purported to do it in an official capacity, and apart from the fact that he did not pretend to act privately; there was no other way in which he could have done it. Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it. (emphasis laid by this Court).

23. Mr. Gopal Subramaniam, the learned senior counsel on behalf of some of the appellants has further rightly placed reliance upon the judgement of a three judge bench of this Court in the case of Amrik Singh v. State of Pepsu to buttress the contention that the issue of requirement of prior sanction under Section 197 of Cr.PC can be raised at any stage of the proceedings, and not just at stage of framing of charges. The decision in the case of Hori Ram Singh (supra) was also quoted with approval, especially the categorisation of situations in three scenarios, as under:

(Amrik Singh Case, AIR p.311, para 6)

a) Decision which held that sanction was necessary when the act complained of attached to the official character of the person doing it;

b) Judgments which held that sanction was necessary in all cases in which the official character of the person gave him an opportunity for the commission of the crime; and

(c) Those which held it was necessary when the offence was committed while the accused was actually engaged in the performance of official duties. It was further held in the Amrik Singh case that: (AIR p.312, para 8)

8..... The result of the authorities may thus be summed up: it is not every offence committed by a public servant that requires sanction for prosecution u/s 197 of the Cr.PC; nor even every act done by him while he is actually engaged in the performance of his official duties; but if the act complained of is directly concerned with his official duties so that, if questioned, it could be claimed to have been done by virtue of the office, then sanction would be necessary; and that would be so, irrespective of whether it was, in fact, a proper discharge of his duties, because that would really be a matter of defence on the merits, which would have to be invested at the trial and could not arise at the stage of grant of sanction, which must precede the institution of the prosecution. (emphasis laid by this Court).

24. The position of law, as laid down in the case of Hori Ram Singh was also approved by the Privy Council in the case of H.H.B. Gill v. The King, wherein it was observed as under:

"....A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty."

A reading of the dictum laid down in the above cited decision would show that it is not every offence committed by a public servant that requires sanction for prosecution under Section 197 of Cr.P.C. The sanction is required only if the offence is committed by the accused while he is engaged in his official duty. If the offence is committed by the accused, while he is not engaged in his official duty, the sanction is not mandatory. In the instant case, the allegation against the petitioner is that he received illegal gratification from the 2nd accused. Receiving illegal gratification is no way connected with the discharging of official duties by the petitioner; therefore, the sanction is not mandatory to prosecute the petitioner for the alleged offence under Section 120B IPC. Therefore, the submission made by the

learned senior counsel for the petitioner cannot be accepted."

15. Considering the above decisions along with the facts of the present case, I am of the view that receiving illegal ratification is no way connected with discharging of official duty by the petitioners. Since an amount of Rs.5,00,000/- has been received, no sanction is mandatory under Section 197 of Cr.P.C. to prosecute the petitioners for the allegation under Section 120(B) of Cr.P.C. Therefore, the Special Court has correctly found that there is prima facie case made out as against the petitioners to frame charge. This Court does not find any reason to interfere with the orders of the Special Court and there is no illegality and perversity in the order passed by the Special Court and this Court need not interfere with the orders, by exercising the revisional jurisdiction under Section 397 read with 401 of Cr.P.C. and these criminal revisions fail and the same are liable to be dismissed.

16. In the result, these criminal revision cases are dismissed. Consequently, connected miscellaneous petitions are also dismissed.

-s/d-
Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

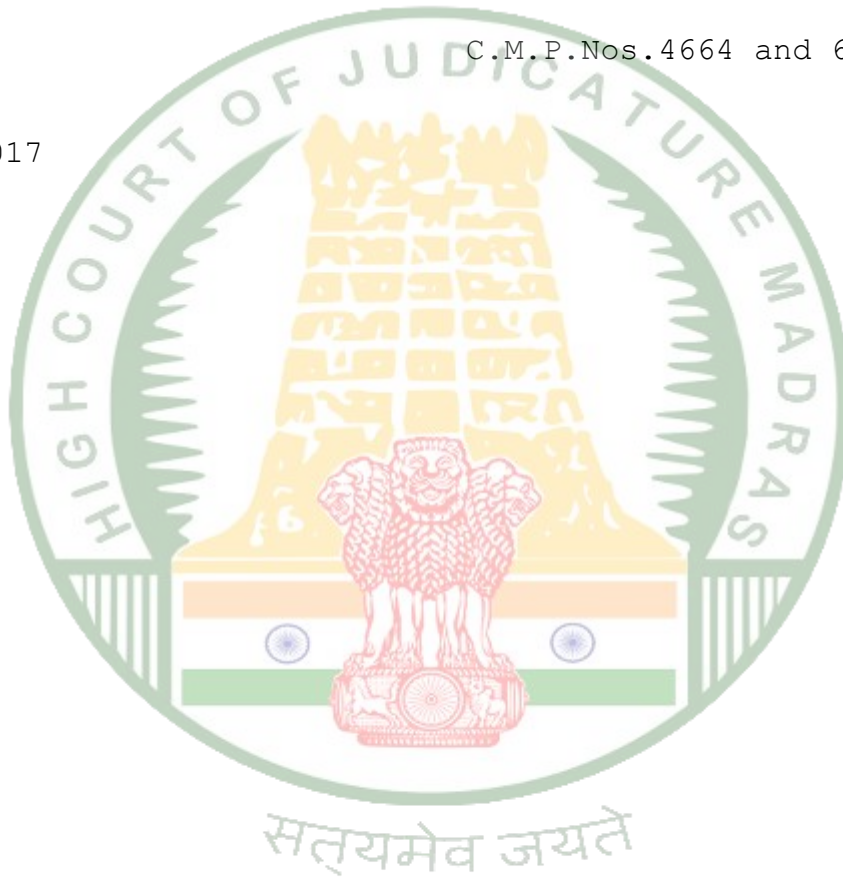
To

1. The Inspector of Police,
Central Bureau of Investigation
Anti Corruption Bureau,
Shastri Bhavan
Chennai - 600 006.
2. The Principal Special Judge for CBI Cases,
VII Additional City Civil Court,
Chennai.
3. The Special Public Prosecutor
for CBI Cases,
High Court, Madras

+2 ccs to M/s.C.Arunkumar Advocate sr 39771
+1 cc to M/s.R.Vivekananthan Advocate sr 39485

order made in
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