

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.11.2016

PRONOUNCED ON : 21.02.2017

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.Nos.955, 956 and 1026 of 2016

and Crl.MP.Nos.7526 to 7529 and 8428 & 8429 of 2016

P.Nagarajan Petitioner in Crl.RC.955 of 2016/Accused
Johnson Devakumar Petitioner in Crl.RC.956 of 2016/Accused
Vijay Kanna Petitioner in Crl.RC.1026 of 2016/Accused

Vs.

State represented by
The Inspector of Police
CBI/ACB, Chennai. ...Respondent in all the cases/Complainant

PRAYER : Petitions filed under Section 397 and 401 of the Criminal Procedure Code, to set aside the orders dated 04.05.2016 in CMP.Nos.2420, 3156 and 4411 of 2015 in CC.No.7 of 2014 passed by the XII Additional Special Judge for CBI Cases, Chennai.

For Petitioners : Mr.N.Chandrasekaran for
Mr.R.Maheswari.
in Crl.RC.Nos.955 & 956 of 2016
Mr.A.S.Narasimhan
in Crl.RC.1026 of 2016

For respondent : Mr.K.Srinivasan, Spl.PP for CBI
in all the cases.

COMMON ORDER

All the Criminal Revisions are directed against the orders passed by the learned XII Additional Special Judge, CBI Cases, Chennai made in CMP.Nos.2420, 3156 and 4411 of 2015 in CC.No.7 of 2014 dated 04.05.2016, in dismissing the discharge petitions filed by the petitioners.

2. The case of the petitioners is that the respondent alleged commission of offences under Section 120B of IPC and

Sections 7, 12 & 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988 by the petitioners and filed CC.No.7 of 2014 on the file of the XII Additional Special Judge for CBI Cases, Chennai.

3. The case alleged against the petitioners evolves from the purchase of 2464 numbers of Coat Combat to the Central Reserve Police. Accused1 & 2/petitioners 1 and 2, followed the procedure laid down for procuring coat combats for the department. Even in the charge sheet, it has been admitted by the prosecution for the purchase of the above materials. The due process for the said purchase was laid down by calling for tender from the various parties and the meeting of the purchase committee with the superiors of the petitioners 1 and 2 have been done in accordance with the procedure laid down under the law. The tender processing committee comprises of (1)IG southern Sector (2)DIG GC Avadi (3)Deputy Commandant GC Avadi (4)Member of Internal Finance Audit. The petitioners 1 and 2 have a limited role to play in the procurement of the said materials. Since, the financial bid exceeded a sum of Rs.10Lakhs and the financial power vested solely with IG Southern Sector. The petitioners 1 and 2 have no role in the sanction of payment or in the release of payment. During the course of investigation, the CBI has examined 16 witnesses and produced 62 documents and on 10.04.2014, the Investigating Officer filed final report against all the three petitioners/accused and submitted the same before the Court under Section 120B IPC and Sections 7, 12 & 13(2) r/w.13(1)(d) of the Prevention of Corruption Act, 1988, the same was taken on file by the trial Court in CC.No.7 of 2014 and the same is pending before the Special Court.

4. During the pendency of trial, the petitioners herein filed CMP.Nos.2420, 3156 and 4411 of 2015 respectively in CC.No.7 of 2014 under Section 239 Cr.PC seeking to discharge from the charges levelled against them. The said petitions were dismissed by the Special Judge on 04.05.2016. Aggrieved against the said orders of dismissal passed by the Special Judge, the accused 1 to 3/petitioners have preferred the present revisions before this Court. The main grounds raised by the revision petitioners are that the trial Court without considering the legal proposition and ignoring the law laid down by the Hon'ble Apex Court in various decisions and dismissed the discharge petitions filed before it.

5. The case of the prosecution is that during the relevant period 2012-2013, the petitioner in CrI.RC.No.955 of 2016/P.Nagarajan (A1) was working as DIG, Group center, CRPF Avadi, Chennai; the petitioner in CrI.RC.No.956 of 2016/H.Johnson Devakumar (A2) was working as ASI, Group center,

CRPF Avadi, Chennai and the petitioner in CrI.RC.No.1026 of 2016/M/s.Madhur Enterprises Pvt Ltd, Kanpur (A3) who is the successful bidder of Group center, CRPF Avadi, Chennai. The entire conspiracy for demanding illegal gratification by A1 and A2 for the expeditious release of payments of bills of A3 by abusing their official capacity and obtained undue pecuniary advantage to themselves. Based on the information, the respondent registered the case in FIR.No.RC MA1 2013 A 0013 dated 22.03.2013 against the accused 1 to 3 for the offences stated supra.

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

7. The learned counsel for the petitioners would submit that A1 and A2 do not have any control over the payment of bills to A3, the bill amount is more than Rs.10lakhs and the power to settle such bill is vested with the Inspector General, CRPF, Hyderabad. As alleged by the respondent, A1 has no role in passing of the bill submitted by A3, the evidence of LW5 do not reveal anything about the purpose for which the employee of A3 deposited a sum of Rs.30,000/- in the account of A1 and A2. Further, the learned counsel would submit that there is no evidence regarding demand and acceptance of the bribe amount by A1 and A2 from A3. As per the judgments of the Hon'ble Supreme Court P.Sathyanarayana Murthy v. District Inspector of Police, State of Andhra Pradesh and another reported in 2015 (10) SCC 152 and Sujit Biswas v. State of Assam reported in 2013 (12) SCC 406 to prove the culpability of the petitioners under Section 7, 13(1)(d)(i)&(ii) of PC Act no inferential deduction can be made from the evidence and according to judgements cited above, the same is impermissible in law.

8. The learned counsel further would submit that the prosecution relied on the telephonic conversations between the accused is not in accordance with Section 65A and 65B of the Indian Evidence Act. The reliance made by the prosecution on the telephonic conversations is directly against the mandatory provisions, as per the Judgments of the Hon'ble Supreme Court Anwar P.V. v. P.K.Basheer reported in 2014 (10) SCC 473 and Sanjaysinh Ramrao Chavan V. Dattatray Gulabrao Phalke and others reported in 2015 (3) SCC 123.

9. Further, the learned counsel would submit that the prosecution has not obtained any sanction under Section 197 Cr.PC for proceeding against the accused 1 and 2 for the charges under Section 120B IPC, which goes to the root of the case and taking cognizance itself of the charge sheet is directly against the judgment of the Hon'ble Supreme Court reported in 2016 (2)

SCC 143 - N.K.Ganguli V. CBI. The trial Court failed to consider the above submissions, the trial Court without considering the legal proposition and ignoring the law laid down by the Hon'ble Supreme Court mechanically dismissed the petition filed by the petitioners.

10. Per contra, the learned Special Public Prosecutor would submit that the FIR was registered only on source information on 22.03.2012 and during the course of investigation, the transactions made between A3 and A1 were found on 03.12.2012, 22.01.2013 and 25.02.2013, i.e, before the registration of the FIR on 22.03.2013. LW5 - employee of A3 in his statement deposed that he deposited a sum of Rs.10,000/- on three occasions, on the instruction of his employer/A3. The Bank officials also established the transactions between A3 and A1 & A2. The mobile numbers were intercepted and recorded the conversations, LW3 also identified the recorded voice conversation between A1, A2 and A3. The CD containing the conversation was also produced in a sealed cover before the Special Judge. The prosecution has produced numerous materials in the form of oral and documentary evidence suggesting prima facie involvement of the accused 1 to 3 in the alleged offence.

11. The prosecution has filed 16 statements of witnesses and 62 documents along with charge sheet to prove the offence against the accused 1 to 3. The witness LW2/K.Thamizh Vendhan in his statement has stated that the conversations reveals that the demand of amount by the petitioners 1 and 2 from A3 and the telephonic conversation asking account number of the petitioners 1 and 2 by A3. A1 and A3 made conversation in which A3 was telling A1 that A1 SMS was incomplete and he asked for more details about the name of the account holder of the account number sent already in the SMS. A1 replied that the said account was in his name. On 03.12.2013, A3 deposited Rs.10,000/- as part of demanded bribe by the A1 in his SB account through his employee LW5.

12. He would further submit that on 06.12.2012, the conversation between A2 and A3 regarding furnishing of bank account details of A2. The statement of LW5, employee of A3 that he deposited Rs.10,000/- in the account of A2 on 15.12.2012 and 23.01.2013, the bank officials also furnished the documents regarding the transaction, which clearly establishes the charges levelled against A2. Therefore, the trial Court has rightly held that the prima facie case is made out against A1 to A3 and rightly dismissed the discharge petition filed by the petitioners.

13. The learned Special Public Prosecutor would further submit that the President of India has accorded sanction for prosecution of the accused 1 and 2 under Section 19(1)(a) of the Prevention of Corruption Act, 1988 for the offences committed by the accused 1 and 2 and other offences punishable under the provisions of law in respect of the acts aforesaid and for taking cognizance of the said offence by the Court of Competent jurisdiction and there is no necessity for separate sanction for prosecution under Section 197 Cr.PC for the offence under Section 120B IPC is not necessary, the larger bench of the Hon'ble Apex Court already held that "A public servant can only be said to act or to 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".

14. On perusal of the records and considering the rival submissions made by the learned counsel for the petitioners and the learned Special Public Prosecutor, it is the specific case of the prosecution is that A1 and A2 demanded illegal gratification for expeditious release of payments for the bills raised by A3.

15. The documents and statement of witnesses attached to the final report reveal that A1 to A3 entered into criminal conspiracy agreeing to demand illegal gratification in the supply of Coat Combat Disruptive with Detachable Lining for expediting the payment for the bills to A1 and A2 and abetted by A3. In pursuant to the above said criminal conspiracy A1 and A2 demanded illegal gratification and had furnished their bank account details to A3 for depositing the bribe amount. A sum of Rs.10,000/- was deposited on 03.12.2012, 21.01.2013 and 25.02.2013 in the SB.No.074010100119160, Axis Bank, Ramapuram Branch, Chennai belongs to A1, as a motive of reward for processing and expediting the bills, A1 abused his official position. The said amounts were subsequently withdrawn by A1 through SBI ATM at HVF, Avadi, Chennai.

16. Likewise, A2 also demanded and accepted a sum of Rs.10,000/- on 15.12.2012 and 23.01.2013 in the SB.AC.No.11103034455 at SBI, Gumti Branch, Kanpur, UP maintained at Pollachi branch, the first instalment was deposited on 15.12.2012, on the day of dispatch of initial consignment (Coat Combat) to Group Center, CRPF, Avadi, Chennai. The final consignment was dispatched on 08.02.2013, prior to deposit on 23.01.2013 at SBI, Lajpatnagar Branch, Kanpur maintained at Pollachi Branch. A2 was functioning as Quarter Master Clerk dealing with the correspondence between the supplier company and the Group Center, CRPF, Avadi Chennai, as a motive of reward for processing and expediting the bills, A2

abused his official capacity. The said amounts were subsequently withdrawn by A2.

17. After the telephonic conversation A3 through his employees deposited the bribe amount in the accounts of A1 and A2 and thereby, A3 committed the offence of abatement. Thus, the A1 to A3 committed the offences punishable under Section 120B IPC and Sections 7, 12 and 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988.

18. The question of sanction under Section 197(1) of the Cr.PC for the charges under Section 120B may be taken up first for consideration, as it goes to the root of the matter. In this regard, the learned counsel for the petitioner 1 and 2 would submit that it goes to the root of the case and the cognizance of the charge sheet is against the judgment of the Hon'ble Supreme Court reported in 2016 (2) SCC 143 - N.K.Ganguly V. CBI.

19. The learned counsel for the petitioners further would submit that no prior sanction was obtained under Section 197 Cr.PC to prosecute the accused 1 and 2 for the alleged offence under Section 120B IPC. In this regard, the learned counsel for the petitioners placed his reliance on the following judgments :-

1. 2016 (2) SCC 143 - N.K.Ganguly V. CBI.
2. (1993) 3 SCC 339 - State of Maharashtra V, Budhikota Subbarao.
3. Unreported judgment of this Court dated 23.09.2015 in Crl.OP.No.8851 of 2014 - T.R.Narayanan v. State rep by the Inspector of Police, Central Bureau of Investigation, SBI, Chennai.

For which, the learned Special Public Prosecutor relied on the sanction accorded by the President of India for prosecuting against A1 and A2 under Section 19(1)(a) of the Prevention of Corruption Act, 1988 for the offences committed by A1 and A2 and for taking cognizance by the competent Court and separate sanction for prosecuting the accused 1 and 2 under Section 120B IPC is not necessary.

20. In the judgment relied upon by the learned counsel for the petitioners reported in 2016 (2) SCC 143 - N.K.Ganguly V. 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 in any other way, and held as under: (Shreekantiah case [Shreekantiah Ramayya Munipalli v.State of Bombay, AIR 1955 SC 287 : 1955 Cri LJ 857])

"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 supplied)

23. Mr Gopal Subramaniam, the learned Senior Counsel on behalf of some of the appellants has further rightly placed reliance upon the judgment of a three-Judge Bench of this Court in *Amrik Singh v. State of Pepsu* [Amrik Singh v. State of Pepsu, AIR 1955 SC 309 : 1955 Cri LJ 865] to buttress the contention that the issue of requirement of prior sanction under Section 197 CrPC can be raised at any stage of the proceedings, and not just at the stage of framing of charges. The decision in *Hori Ram Singh* [Hori Ram Singh v. Crown, 1939 SCC OnLine FC 2 : AIR 1939 FC 43] was also quoted with approval, especially the categorisation of situations in three scenarios, as under: (*Amrik Singh* case [Amrik Singh v. State of Pepsu, AIR 1955 SC 309 : 1955 Cri LJ 865])

(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 Amrik Singh case [Amrik Singh v. State of Pepsu, AIR 1955 SC 309 : 1955 Cri LJ 865] that:

"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 under Section 197 CrPC; 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 investigated at the trial, and could not arise at the stage of grant of sanction, which must precede the institution of the prosecution."

(emphasis supplied)

24. The position of law, as laid down in Hori Ram Singh [Hori Ram Singh v. Crown, AIR 1939 FC 43] was also approved by the Privy Council in H.H.B. Gill v. R. AIR 1948 PC 128, 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."

21. The learned Special Public Prosecutor appearing for the State has placed reliance upon the following judgments :-

Unreported judgment of this Court dated 05.08.2016 in CrI.OP.No.12802 of 2016 - Dr.M.Manuneethi Cholan v. State rep by the Deputy Superintendent of Police, SPE:CBI:ACB:Chennai.

In the said case, this Court has reiterated the aforesaid decision.

22. A reading of the above all the decisions would go to

show that it is not in every offence committed by a public servant that requires sanction for prosecution under Section 197 of Cr.PC. The sanction is required only if the offence is committed by the accused while they are engaged in their official duty. If the offence is committed by the accused, while they are not engaged in their official duty, the sanction is not mandatory. In the instant case, the allegation against the accused 1 and 2 is that they received illegal gratification from the 3rd accused. Receiving illegal gratification is no way connected with the discharging of official duties by the accused 1 and 2, therefore, the sanction under Section 197(1) Cr.PC is not mandatory to prosecute the accused 1 and 2 for the offence under Section 120B IPC.

23. Further, the learned Special Public Prosecutor would place reliance on *Amit Kapoor v. Ramesh Chander* and another reported in (2012) 9 SCC 460, wherein it is held as follows :-

"11. Before examining the merits of the present case, we must advert to the discussion as to the ambit and scope of the power which the courts including the High Court can exercise under Section 397 and Section 482 of the Code.

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 scrutinise 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."

"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

18. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this Court under Article 136 of the Constitution of India. Normally, a revisional

jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

19. At the initial stage of framing of a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in *State of Bihar v. Ramesh Singh* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533] : (SCC pp. 41-42, para 4)

"4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If, on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which- ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to

adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the court to think 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 not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to 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. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory

of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227."

24. The learned counsel for the petitioners would contend that no proof for demand, acceptance and recovery was established, as per the decisions laid down by the Hon'ble Apex Court, the Court cannot record conviction, therefore, there is no need for the petitioners to face the trial. Even, if they face the trial, the prosecution will not be in a position to prove the demand, acceptance and recovery of the bribe. Hence, the revision petitioners are liable to be discharged at this stage itself.

25. In this regard, there are sufficient materials are available for demand and acceptance. As far as recovery is concerned, the transaction are made through bank accounts and not by way of cash, the deposited amount in the accounts of A1 and A2 are withdrawn by them respectively. At this stage, it is well settled proposition of law, the materials produced by the prosecution to be true and there is no necessity for conducting roving enquiry. Further, at the stage of framing of charges, the Court has to look into the materials placed by the prosecution and need not go into the defence taken by the accused. Once the materials shows that the public servants have demanded, accepted and any recovery was made or otherwise this can be proved only during trial and not at this stage. This Court, has no quarrel with the proposition of law laid down by the Hon'ble Supreme Court in the authorities referred by the counsel for the petitioners. The cases cited above have got its own facts and merits, therefore, the authorities submitted by the learned counsel for the petitioners in this regard are not applicable to the facts of the present case on hand. The contention raised by the learned counsel for the petitioners in this regard is liable to be rejected.

26. Further, the learned counsel for the petitioners would submit that the contention raised by the learned Special Public Prosecutor that the prosecution relied on the telephonic conversations of the accused 1 to 3 is not in accordance with Section 65A and 65B of the Indian Evidence Act. The reliance made by the prosecution on the telephonic conversations of the accused 1 to 3 are directly against the mandatory provisions, as per the Judgments of the Hon'ble Supreme Court Anwar.P.V. v. P.K.Basheer reported in 2014 (10) SCC 473 and

Sanjaysinh Ramrao Chavan V. Dattatray Gulabrao Phalke and others reported in 2015 (3) SCC 123.

27. The learned Special Public Prosecutor would vehemently contend that after obtaining necessary permission from the Ministry of Home Affairs, Government of India vide Order No.14/3/97-CBI dated 09.11.2012 and 03.01.2013. The said documents were listed as Document Nos.56 and 57 in the charge sheet, to intercept the Mobile No.98390-29979 and recorded the conversations. The conversation was recorded in CD and produced the same before the Special Judge, the said document was taken on record. During the above said conversations, A1 and A2 demanded bribe for settling the bill amount of A3 relating to supply of Coat Combats, for which A1 furnished his savings banks account number to A3 for depositing the bribe amount. Thus, A3 deposited the bribe amount in the account of A1, thereafter, the same was withdrawn by the A1. After obtaining permission from the Special Judge, the sample voice recorded in the presence of independent witness was forwarded to CFSL, New Delhi through the Special Judge for obtaining Voice Spectrograph Analysis opinion and the opinion was also received by the Special Court.

28. As already stated, at the stage of framing charges, the Court need not conduct a roving enquiry and there are sufficient prima facie evidence are available to frame charges. Further, the facts and circumstances of the case involved in the judgments referred to by the learned counsel for the petitioners are entirely different from the present case on hand. In this case, the steps taken by the prosecution has been recorded from the statement of the witnesses, therefore, the validity of the same can be tested only at the time of trial. As already stated, at the stage of framing of charges, the Court has to look into as to whether there are sufficient prima facie materials are available against the accused and need not conduct roving enquiry. Therefore, the documents 56 and 57 are in accordance with law under Sections 65A and 65B of the Indian Evidence Act, validity and admissibility of the same can be looked into at the time of trial and not at this stage.

29. The above decisions cited by the counsel for the petitioners is not applicable to the present case on hand, the facts and circumstances of the case on hand is clearly different from the cases referred by the counsel for the petitioners. Therefore, the submissions made by the counsel for the petitioners cannot be accepted. At the time of framing of charges, the trial Court has to look into materials produced by the prosecution alongwith the charge sheet filed under Section 173 Cr.PC. This Court has not found any illegality, infirmity or perversity in the order passed by the learned XII Additional Special Judge for CBI Cases, Chennai and the same does not

warrant any interference. Viewing from any angle, the revision petitions filed by the petitioners are liable to be dismissed and the same are hereby dismissed.

30. In fine, all the revision petitions are dismissed, by confirming the orders dated 04.05.2016 made in CMP.Nos.2420, 3156 and 4411 of 2015 in CC.No.7 of 2014 on the file of the XII Additional Special Judge for CBI Cases, Chennai. 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

//True Copy//

Sub Assistant Registrar

To

- 1 The XII Additional Special Judge for CBI Cases, Chennai.
- 2 The Special Public Prosecutor, CBI Cases, High Court, Madras.
- 3 Do Thro The Special Judge, CBI Cases, Chennai

+2cc to Mr.R. Mageshwari, Advocate, S.R.No.11037
+1cc to Mr.A.S. Narasimhan, Advocate, S.R.No.10999
+1cc to SGP. Advocate Sr.No.10901

rsi(CO)
md(02/03/2017)

CrI.R.C.Nos.955, 956 and 1026 of 2016

WEB COPY