THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVSION CASE No.1505 of 2017

ORDER:

This criminal revision case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code', for short), by the petitioner-A2 is directed against the orders, dated 21.04.2017, of the learned II Additional Special Judge for CBI Cases, Visakhapatnam, passed in Crl.MP.No.1927 of 2016 in CC.No.4 of 2014.

2. I have heard the submissions of *Sri K.R.K.V.Prasad,* learned counsel for the petitioner-A2, and of *Sri K. Surender,* learned Special Public Prosecutor for CBI representing the respondent. I have perused the material record.

3. At the outset, it is to be noted that the Calendar Case No.4 of 2014 (arising out of R.C.No.9(A)/2011) is taken on file against the 1st accused therein for the offences punishable under Sections 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 [the PC Act', for brevity] and against the petitioner-A2 under Section 109 of IPC. During the pendency of the said CC, the petitioner-A2 filed the afore-stated MP under Section 239 of the Code requesting to discharge him from the case. The said petition was resisted by the respondent-CBI. On merits and by the orders impugned in this revision, the learned Special Judge dismissed the petition of the petitioner-A2. Therefore, the petitioner-A2 is before this Court.

4. The case of the petitioner-A2 in support of his request for discharge, in brief, is as follows:

It is alleged by the respondent that A1 while working as Regional Provident Fund Commissioner, Grade-II/Grade-I, during the period 01.07.2000 to 26.09.2011, had acquired assets disproportionate to his known sources of income to the extent of Rs.69,87,702/-. The assets of A1, as per the charge sheet, include the properties not only of the accused acquired in his name and in the name of his wife, during the check period but also in the names of his daughter, Divya, and son, Dinesh. It was claimed by A1, during the course of investigation, that a sum of Rs.14,48,000/- was gifted/financed by M.Yella Reddy, that is, the petitioner herein-A2 at various points of time for acquisition of various movable and immovable properties by his children. A1 also claimed that the entire expenditure incurred towards tuition fee and hostel/mess charges amounting to Rs.3,06,380/- in respect of his daughter was met by the petitioner-A2 by paying the same to M/s.Narayana Medical College, Nellore, when she pursued MBBS Course during the period 2001-06. The officers of CBI did not accept the said claims on the ground that the petitioner-A2 had meagre income by way of pension being drawn from the Government of Andhra Pradesh. The CBI further contended that the other sources of income claimed by the petitioner-A2 were found to be not genuine and as such the petitioner-A2 did not possess surplus funds to give money in the form of gifts to his grand children. Therefore, it is alleged that the petitioner-A2 accommodated A1, a public servant, by lending his name in respect of money purportedly given to the children of A1 for purchase of properties, which were not accounted for by A1. The contentions of the CBI are false and baseless. The allegation of abetment against the petitioner-A2 is on presumptions and assumptions. No evidence was produced before the Special Court to show that the petitioner-A2 lent his name for the money given to the children of A1 or that A2 abetted A1 to commit the offences alleged against him. The analysis of the facts and the evidence produced by the CBI along with the final report discloses the following aspects: - 'The petitioner-A2 had sufficient surplus funds to give to his grand children the gifts, which were utilised for purchase of movable and immovable properties in the names of his grand children. The petitioner-A2 and his wife had only one child. She is the wife of A1. After the marriage of his only daughter, A2 had no other liabilities or necessities to incur any heavy expenditure. The petitioner-A2 worked as head master in a primary school at

Chennur village, and retired from service in the year 1992 and settled at that place. He is living independently with his wife in a small house constructed in the year 1985. He does not possess any motor vehicle. He possesses Ac.3.01 cents of agricultural land and he is cultivating the said land either directly or indirectly or by leasing out the same. He is not incurring any expenditure on purchase of paddy or rice, which is the stapled food. He is raising crops like paddy, turmeric, sunflower, groundnut and sometimes beetle leaf plantations and getting substantial income from the lands. Thus, he was having surplus funds from the pensionary income as well as the income from agricultural lands. He was lending the surplus funds to other villagers who were in need of money at reasonable rates of interest. He has been filing income tax returns regularly from the financial years 1999-2000 (assessment year 2000-2001) onwards wherein the incomes derived from various sources are being reflected. He is filing two sets of returns; one individual return showing income derived out of the monthly pension received from the Government; and, another, HUF return, showing income derived from out of agriculture and the income in the form of interest amounts received from various borrowers to whom he has lent monies. He is filing the list of borrowers along with his said IT returns. Therefore, the allegation of the CBI that the petitioner-A2 is getting meagre income is false. He is having surplus funds from his earnings and savings over the years to give as gifts to his grand children for acquiring movable and immovable properties by them in their names. In the search operations a bunch of promissory notes (16 sheets) were seized. The same evidence the fact that the petitioner-A2 is lending money to others on interest and is, therefore, getting additional income. All executants of promissory notes were paraded before the investigating officer, on 25.03.2013 & 26.03.2013, and their statements were recorded on video camera. Some of the borrowers also filed IT returns before the IT department and they were also paraded before the investigating officer and their statements were recorded in the video camera to confirm the fact that the promissory notes and the names reflected in the IT returns were genuine. Their statements were suppressed by the investigating agency. During the search operations at the premises of A2, the CBI also seized 13 numbers of pattadar pass books and title deed books out of which two books pertain to land held by the petitioner-A2. IT returns for the assessment years 2001-02, 2005-06, 2009-10 and 2010-11 in respect of the petitioner-A2 were also seized from the residential house of the petitioner-A2. The investigating officer collected copies of IT returns for all the years and therefore directed A1 & A2 to parade the persons whose names reflected in the IT returns of the petitioner-A2 and conducted verification of incomes reflected in the IT returns. The petitioner-A2 reflected the gifts given to his grand children in the IT from time to time. Some of the gifts were given through bank challans. The investigating officer did not make a mention of the result of the investigation in his final report. The seized documents are still in the possession of the CBI. Having seized the pattadar pass book showing ownership of agricultural land by the petitioner-A2 and having collected IT returns filed by the petitioner-A2, wherein he had shown income from agricultural land and income from interest, the investigating officer should have verified the genuineness of the claim of the petitioner-A2 but the investigating officer deliberately chose to suppress the information about his conclusions as it evidently supports the case of the petitioner-A2. The investigating officer abruptly concluded by observing that the other sources of income claimed by the petitioner-A2 were found to be not genuine. He did not indicate any reason for arriving at such conclusion and cite the income tax officer and the revenue officer concerned and also the borrowers of money as witnesses to prove the claim of the petitioner-A2 as not genuine. For all the above reasons, the petitioner-A2 is entitled to be discharged. The special investigation team, which conducted search operations at the premises of the petitioner-A2, recovered some receipts issued by Narayana Medical College towards payment of tuition fee in respect of the daughter of A1 by name Divya and the said fact adds credence to the fact that expenditure for pursuing MBBS by daughter of A1 was met by the petitioner-A2. The petitioner-A2 is now aged 81 years and is suffering from various old age ailments and health problems. The prosecution in order to establish the offence of abetment has to establish that the abettor has intentionally aided the commission of the crime. There is no iota of evidence to raise a grave suspicion that the petitioner-A2 abetted the commission of offences by A1, which A1 was alleged to have committed. Hence, the petitioner-A2 may be discharged from the case.

5. The case of the CBI-complainant as stated in the counter, in brief, is as follows:

A2 is a retired teacher. He is receiving pension through his SB account in SBI, Chennuru. His monthly pension being credited into the SB account was less than Rs.10,000/- per month till July, 2010. Thereafter, he drew a maximum amount of Rs.14,508/- as monthly pension till August, 2011. He withdrew substantial amounts every month soon after pension was credited into his account. It shows that the petitioner's main source of income and livelihood was his pension. He filed income tax returns under individual status and also under HUF status. The details of incomes declared by him in the IT returns out of money lending business and agriculture year wise are as under:

Sl.No.	Period of IT Return	Income out of Money lending (individual) Rs.	Income out of Money lending (HUF) Rs.	Agricultural income Rs.
1	01.04.2001 to 31.03.2002	63,599/-	--	--
2	01.04.2002 to 31.03.2003	85,784/-	54,993/-	43,000/-
3	01.04.2003 to 31.03.2004	74,746/-	54,651/-	45,000/-
4	01.04.2004 to 31.03.2005	44,289/-	47,420/-	50,000/-
5	01.04.2005 to 31.03.2006	25,624/-	55,256/-	65,000/-
6	01.04.2006 to 31.03.3007	--	59,330/-	1,75,000/-
7	01.04.2008 to 31.03.2009	--	31,208/- (other sources)	1,75,000/-
8	01.04.2009 to 31.03.2010	--	1,43,418/- (other sources)	1,25,000/-
9	01.04.2010 to 31.03.2011	--	94,995/-	1,40,000/-
		2,94,042/-	5,41,271/-	8,18,000/-

The total income declared in income tax returns works out to Rs.16,53,313/-. He never maintained account books. The agricultural income reflected by the petitioner in his IT returns is abnormally high. Similarly, the interest claimed to have been received by him from various borrowers is not supported by any documentary evidence. Further, it is revealed that from whatever resources that are available with him and from out of his income from pension, he purchased a flat for Rs.7,70,000/- and lent certain amount on promissory notes that works out to Rs.9,40,000/-. The total of said sums works out to Rs.17,10,000/-. The petitioner-A2 is a benami holder of his son-in-law/A1. To shield the ill gotten money of A1 he filed fabricated IT returns which also do not support his case. There are no merits in the petition. The petition is liable to be dismissed.

6. Both the learned counsel made submissions in line with the respective pleaded cases of the parties, which are stated supra.

7. I have given detailed and earnest consideration to the facts and submissions.

8. It is to be noted that A2 is the father-in-law of A1 and that A1 is accused of the offences punishable under Sections 13(2) read with 13(1)(e) of the PC Act. The check period adopted for the purpose of investigation of the case is from 01.07.2000 to 26.09.2011. According to the investigation, A1 was found to be in possession of movable and immovable assets disproportionate to his known sources of income to a tune of Rs.69,87,702/-. The accusation against the present petitioner-A2 is that he committed an offence punishable under Section 109 of the IPC having accommodated A1 by lending his name for the money purportedly given to the children of A1 for the purchase of properties, which were not accounted by A1 and that the petitioner-A2 lent his name for the money given to the children of A1 and thus A2 abetted A1 in the commission of the offences under the provisions of the PC Act, which A1 was

alleged to have committed. It is also the case of the prosecution that the assets which are disproportionate to the known sources of income of A1 include not only his assets and the assets of his wife but also the assets of his daughter, Divya, and son, Dinesh.

9. In this backdrop the core contentions of the petitioner-A2 not only from his submissions but also as discernable from the material record, are as follows: "He retired as a school teacher. He is a pensioner. He constructed a house in the year 1985. His only daughter is the wife of A1. After the marriage of his only daughter, he is not incurring much expenditure. The expenditure is limited to feeding him and his wife. He does not even possess a motor cycle. He is having Ac.3.01 cents of agricultural land. He is raising crops like paddy, turmeric, sunflower, ground nut and beetle leaf plantations and getting substantial income from the said lands. Therefore, from the incomes and savings over the years he is having surplus funds to give as gifts to the children of A1 for acquiring moveable and immovable properties by them in their names. He is lending monies to the villagers in need and getting income in the form of interest on loans. He is filing IT returns under individual category and also HUF category. During searches the investigating officer seized the relevant documents. All the borrowers of loans from the petitioner-A2 were paraded before the investigating officer and they were examined by him. Such examinations were recorded by means of a camera. During course of investigation and searches, promissory notes, copies of IT returns and pattadar pass books including the pattadar pass book in respect of the above said land of the petitioner-A2 were seized." In the counter filed the above said aspects pleaded by the petitioner are not denied by the investigating officer/respondent. The further case of the petitioner-A2 is that the investigating officer suppressed the evidence collected as the evidence if produced would lend support to the claim of the petitioner-A2 and establishes that it is genuine and that the investigating officer has simply stated that the

sources of income of the petitioner-A2 were found to be not genuine. Therefore, the petitioner-A2 contends that there is not even an iota of evidence to raise a grave suspicion that the petitioner-A2 committed the offence of abetment and abetted the commission of offences by A1 and that therefore, the petitioner-A2 is entitled to be discharged. Prosecution version is that the incomes earned and returned under individual and HUF categories by the petitioner-A2 which are tabulated would show that the income from money lending from the period 01.04.2001 to 31.03.2011 works out to Rs.2,94,042/- and that he purchased flat worth Rs.7,70,000- and lent money on promissory notes to a tune of Rs.9,40,000/- and that he filed income tax returns exaggerating the incomes from interest on loans and agriculture and that he is a benami holder of his son-in-law/A1.

10. Coming to the core issue, the following gifts were said to have been given by the petitioner-A2 to his grand children: (1) Rs.1,75,000/- on 31.03.2004 to grand daughter for purchase of residential site admeasuring 266.66 Sq.Yards at Hyderabad *vide* document no.4/05 dated 03.01.2005; (2) Rs.4,00,000/- on 06.03.2005 to grand son for purchase of a residential site admeasuring 447.22 Sq.Yards at Kadapa *vide* document no.8009/05, dated 02.07.2005; (3) Rs.1,00,000/- on 01.04.2006 to grand daughter for purchase of jewellery; (4) Rs.2,98,000/- on 06.09.2006 to grand son for purchase of house site admeasuring 904.4 Sq.Yards *vide* document no.6931/06, dated 06.09.2006; (5) Rs.75,000/- on 10.06.2009 to grand son; and, (6) Rs.4,00,000/- on 01.02.2011 to grand son for purchase of residential flat at Hyderabad *vide* document no.3336/11 dated 18.04.2011. All these gifts are reflected in the IT returns of the respective years is undisputed. In the first place, since the incomes are returned by filing income tax returns over a period of number of years, the contention that the incomes from interest and agricultural land are exaggerated *prima facie* cannot be countenanced. As rightly pointed out, the incomes earned and declared by the petitioner-A2 which are reflected in the IT

returns filed by the petitioner for the assessment years 2000-01 to 2011-12 are not fully/completely reflected in the material submitted to the Court by the investigating agency. The details of incomes earned for the periods 01.07.2000 to 31.03.2001 (AY 2001-02), 01.04.2002 to 31.03.2003 (AY 2003-04), 01.04.2007 to 31.03.2008 (AY-2008-09) and 01.04.2011 to 26.09.2011 (AY 2012-13) under the individual category and incomes pertaining to the period 01.07.2000 to 31.03.2001 (AY 2001-02), 01.04.2001 to 31.03.2002 (AY 2002-03), 01.04.2007 to 31.03.2008 (AY-2008-09) and 01.04.2011 to 26.09.2011 (AY 2012-13) under the HUF Category were not taken into consideration by the investigating officers though the above years are also covered in the check period. No explanation is forthcoming from the investigating agency for not considering the said incomes. Thus, the complete information regarding the income of the petitioner-A2 is suppressed and is not brought on record. Admittedly, not only income tax returns but also pattadar pass books and title deed books and promissory notes were found during searches of the residential premises of the petitioner-A2. The investigating agency also suppressed that the petitioner-A2 sold a residential site and received a sale consideration of Rs.7,99,000/- and this income is also reflected in the balance sheet attached to the IT return for the assessment year 2009-10 filed under HUF category, which is also relied upon by the prosecution for calculating gross income of the petitioner-A2. Further, the promissory notes, which were seized from the residential premises of the petitioner-A2 indicate that the loans advanced under the promissory notes is only Rs.6,40,000/- and not Rs.9,40,000/- as alleged in the prosecution case and that the other promissory notes are not in the name of the petitioner-A2 and that they are in the name of the wife of the petitioner-A2, who is also having agricultural lands and income thereon. If the income received by the petitioner-A2 during the omitted periods as stated by the petitioner-A2 and as borne out by the record is also taken into consideration, the income of the petitioner-A2 would be a much larger sum than being projected by the respondent, as rightly pointed out by the learned counsel for the petitioner. Some incomes are only shown in the table mentioned in the counter of the CBI. In the said table, the individual income out of interest from money lending and HUF incomes from out of money lending and agriculture were shown as Rs.16,53,313/- in all. Further, the income from pension of the petitioner-A2 during the check period is nearly rupees seven lakhs. The petitioner-A2 states that he also received Rs.7,99,000/- from sale of residential site at Kadapa which was also reflected in the IT return of the relevant assessment year 2009-10. If the consideration of Rs.7,99,000/- for the sale of residential site at Kadapa, is also included in income, it is possible to safely conclude that the petitioner-A2 has surplus income or savings over more than Rs.10.00 lakhs from out of his admitted income. In view of the said facts borne out by the record, the contention of the petitioner-A2 assumes significance and fortifies his contentions in support of request for his discharge.

11. Viewed thus, this Court finds that the averments in the charge sheet on the face of it to the effect that 'the petitioner-A2 is having meagre incomes and that the other sources of income claimed by the petitioner-A2 were found be not genuine and, therefore, the source of income is confined to his income from the pension being received by him' are unsustainable and on that score the petitioner-A2 cannot be accused of the offence punishable under Section 109 of the IPC even on consideration of the facts borne out by record on their face value. In the case on hand, the petitioner-A2 is himself an income tax payer and is having sources of income viz., pension, income from agricultural land and income from interest on monies lent to third parties. Therefore, the monies given by him as gifts to his grand children from out of his savings and sources of income, as rightly contended, *prima facie* cannot be considered as assets of the accused and it is not possible to *prima facie* accept and conclude the version of the respondent that the petitioner-A2 has no other means or sources except pension and that the sources of income claimed by the

petitioner-A2 are not genuine and that the incomes returned in individual and HUF returns are exaggerated. As a sequel, the averment in the charge sheet that the source of income is confined to his income in the form of pension being received by him and that he does not possess surplus funds to give to his grand children in the form of gifts is *prima facie* a bald and unsupported statement made without any basis and on the suppression of his sources of income which came to light during the searches made at his residential premises. A careful examination of the entire record reflects that while submitting the charge sheet several important documents and evidence which came to the fore during the course of investigation and searches were with-held by the prosecution. Certainly such documents and evidence collected if produced by the investigating agency would have supported the case of the petitioner-A2. If those documents and evidence collected were to be considered there would be no scope even *prima facie* to come to a conclusion that the income of the petitioner-A2 is meagre and that his income from other sources is not genuine. Be it noted that if the investigating officer, who comes across several important material facts/evidence in support of the claims of a person like the present petitioner-A2, fails to conduct investigation to know the genuineness of the claims despite certain material facts/evidence coming to his knowledge during the course of investigation & searches and fails to take into consideration several important documents, which he comes across and which he collected during the course of investigation and with-holds the same and does not state the result of such evidence including the documents in the final report and that if such evidence when considered makes it obvious that there was no scope to frame charges against an accused like petitioner-A2, the Court would be justified in discharging such accused like the petitioner-A2. (See: State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338]).

12. It is pertinent to note that in Union of India v. Prafulla Kumar Samal and another [1979CriLJ154], the Supreme Court held as follows: "The Judge

while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. In exercising his jurisdiction under Section 227 the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial." On such consideration of the total effect of the documents produced before the Court and the material on record, this Court finds that there is acceptable merit in the contentions of the petitioner-A2 and that the averments in the charge sheet cannot be accepted on fair examination of the broad probabilities of the case and the total effect of the evidence and the documents produced before the Court and on consideration of the basic infirmities appearing in the case including the suppression of material documents and evidence collected during the course of investigation.

13. Before parting, it is to be noted that the learned Spl.Public Prosecutor relied upon the decision in State of Tamil Nadu v. N. Suresh Rajan and others[1] in support of the proposition that the mere fact that the petitioner-A2 has been assessed to income tax and paid income tax cannot be relied upon to discharge him particularly in view of the allegation made by the prosecution that there was no income other than income from pension and that his income from interest earned on loans and income from agriculture are exaggerated and that he has no sources to support the plea of A1-the Accused Officer that the petitioner-A2 gave money in gifts over a period of time to the children of A1 for acquisition of movable and immovable assets in their names. Placing reliance on this cited decision, it is contended that the mere fact that the petitioner-A2 is an income tax assessee cannot itself be a ground to hold that he has sources of income sufficient to give money gifts in huge sums to his grand children. In the cited case, the facts disclose that the money that the Accused Officer has amassed is invested in the names of his relatives and properties were acquired in their names and they eventually filed income tax returns. In that backdrop the Supreme Court held as follows: - 'The property in the name of an income tax assessee cannot be a ground to hold that it actually belong to such an assessee and that in case such proposition is accepted, it will lead to disastrous consequences as it will give opportunity to corrupt public servants to amass property in the names of known persons, pay income tax on their behalf and then be out of the mischief of law.' On facts, the case is distinguishable as in the case on hand, the petitioner-A2 returned his own income and expenditure by filing income tax returns in respect of his own income and HUF income derived by him from his own and HUF sources and properties and it is not the case of the prosecution that the properties in the name of the petitioner-A2 were acquired by A1 with the money he amassed. Further, the petitioner-A2 is

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[1] (2014) 11 SCC 709

able to satisfactorily account for the gifts given by him over a period of time from his savings and incomes to his grand children.

14. This Court examined the issue involved keeping in view the limited scope of interference and the restricted ambit of jurisdiction and also the precedential guidance in the decision in State of Rajasthan v. Fatehkaran Mehdu[2]. On consideration of the broad probabilities of the case, the total effect of evidence including the documents produced before the Court and the basic infirmities in the case like suppression of the material facts and evidence collected during course of investigation and non consideration of the sources of income and actual incomes of the petitioner-A2, this Court finds that this is a case where the entire material on record taken on its face value makes it obvious that there is no material or semblance of evidence *prima facie* to frame a charge and proceed against the petitioner-A2. Viewed thus, this Court finds that there is merit in the revision case and that the petitioner-A2 is entitled to be discharged.

15. Be it noted that the learned counsel appearing for the petitioner-A2 also contended that under Section 17 second proviso of the PC Act, the investigation into the offence shall not be carried out without authorisation by a police officer not below the rank of Superintendent of Police and that in the case on hand, admittedly, the investigation namely searches were conducted by an officer below the rank of Superintendent of Police and that in view of the non obstante clause occurring in the said provision of law it is imperative that the investigation should have been done by an officer not below the rank of Superintendent of Police and that in the case on hand the alleged authorisation produced at a belated stage appears to be not a genuine and reliable document as the said document was not admittedly furnished to the accused and that it was introduced into the record subsequently to get over the statutory mandate

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[2] 2017 (1) ALD (Crl) 842 (SC)

that the investigation shall only be done by a police officer of the rank specified in the provision which is imperative in character. However, in the considered view of this Court the said issue needs no examination in the present case and at this stage, in view of the decision already arrived at by this Court and for the reason that the said aspect has to be examined only after parties let in evidence on the truth/genuineness or otherwise of the said authorisation, dated 23.09.2011.

16. On the above analysis, this Court finds that the order of the learned Special Judge, which was passed without examining the facts correctly and the obtaining legal position in proper perspective, is unsustainable and, therefore, brooks interference.

17. In the result, the Criminal Revision Case is allowed and the order, dated 21.04.2017, of the learned II Additional Special Judge for CBI Cases, Visakhapatnam, passed in Crl.MP.No.1927 of 2016 in CC.No.4 of 2014 is set aside and the said MP is allowed. Accordingly, the petitioner-A2 is discharged from the case. His bail bonds, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

01.09.2017
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