



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 17.07.2018	Pronounced on: 25.07.2018
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Coram

The Honourable Dr.Justice G.JAYACHANDRAN

Criminal Revision Petition Nos.671, 682 to 684 of 2018

State through The Deputy Superintendent of Police,
CBI, STF,
NEW Delhi.

... Petitioner
in all the cases

/versus/

1. K.B. Brahmadathan,
The then Chief General Manager BSNL,
Chennai. ... Petitioner/Accused No.1
Crl.M.P.No.4482/2017
2. M.P.Velusamy,
the Then Chief General Manager, BSNL,
Chennai. ... Petitioner/Accused No.2
Crl.M.P.No.4485/2017
3. Dayanidhi Maran
The then MOCIT. ... Petitioner/Accused No.3
No Discharge Petition filed
4. Vedagiri Gowthaman,
The then Additional PS to MOCIT, ... Respondent/Accused No.4
Crl.M.P.No.4483/2017
5. K.S.Ravi,
The then Electrician, SUN TV. ... Respondent/Accused No.5
Crl.M.P.No.4484/2017
6. S.Kannan,
The then CTO, SUN TV, ... Respondent/Accused No.6
No Discharge Petition filed

7. Kalanidhi Maran,
CMD, SUN TV.

... Respondent/Accused No.7
No Discharge Petition filed

PRAYER : Criminal Revision Petitions are filed under Section 397 and 401 of Criminal Procedure Code, to set aside and quash the order dated 14.03.2018 passed by Learned XIV Additional Special Judge for CBI Case, Chennai in C.C.No.12 of 2017 arising out of RC DST 2013 A 0019/CBI/STF/DLI in CBI Vs. Dayanidhi Maran and others whereby the learned Trial Court discharged all the respondents. b).Direct the learned XIV Additional Special Judge for CBI Cases, Chennai in RC DST 2013 A 0019/CBI/STF/DLI in CBI Vs.Dayanidhi Maran and others to frame the charges against the respondents in view of charge sheet and also documents filed thereof along with charge sheet and proceed in accordance with law. c). Summon the record in the case of in RC DST 2013 A 0019/CBI/STF/DLI in the matter of CBI Vs.Dayanidhi Maran and others, the learned XIV Additional Special Judge for CBI Cases, Chennai in RC No. DST 2013 A 0019/CBI/STF/DELHI in the matter of CBI Vs.Dayanidhi Maran and other in C.C.No.12 of 2017.

For Petitioner : Mr. G.Rajagopalan,
in all the cases Additional Solicitor General

Asst. by K.Srinivasan,
Special Public Prosecutor (C.B.I)

For R-1 & R-2 : Mr.Vikas Singh, Senior Counsel
for Mr.V.KrishnaKumar

For R-3 : Mr.A.Ramesh, Senior Counsel
for M.Sneha

For R-4 : Mr.Masilamani, Senior Counsel
for D.Ravichander

For R-5 : Mr.Ranjeet Kumar, Senior Counsel
for S.Rajasekar

For R-7 : Mr. P.S.Raman, Senior Counsel
for J.Ravindaran

For R-6 : Mr.A.Selvendran

C O M M O N O R D E R

In these batch of Criminal Revision Petitions filed against the order of discharge by the trial court, this court is called to determine whether the order of discharge is legally sustainable.

2. The facts which are relevant to determine the point for consideration:

Based on reliable information, C.B.I after conducting preliminary enquiry found commission of cognizable offence, to wit, Mr. Dhayanithi Maran (Former Union Minister for Communication and Information Technology) and others conspired to commit breach of trust, fabricated documents, used the forged documents as genuine and falsified accounts detrimental to the exchequer. They registered First Information Report on 23.07.2013. In the course of the investigation they collected materials, which according to them sufficient to frame charge and try the named accused. Hence filed the final report for prosecuting the respondents herein.

3. The conclusion of the final report in short is that, the 3rd Accused [Dayanidhi Maran] respondent herein, while he was the Minister for Communication and Information Technology (MOC&IT) in the Government of India during 2004 to 2007 abused and misused his office in connivance with the other accused A-1 [Brahamadathan], A-2 [M.P.Velusamy] (both were Senior Officials of BSNL (Chief General Manager), A-4 [V.Vedagiri Gowtham], Private Secretary. A-5 [K.S.Ravi] Electrician and A-6 [S.Kannan] CTO, SUN TV and his brother A-7 [Kalanithi Maran] CMD of SUN TV and had obtained pecuniary advantage and caused the exchequer a loss of Rs 1.78 crores by installing a private telephone exchange at his residences in Boat Club and Gopalapuram at Chennai, Tamil Nadu, which he used for business transactions involving the Sun Network. More than 700 high-end Telecom lines, having PRA/BRA/ISDN/leased line, were installed at the third accused residences in the Boat Club area and Gopalapuram area of the Chennai city. They were installed under the service category and bills were not raised for its utilisation. Besides, illegal installation of Landlines with ISDN facilities, on the instruction of the 3rd accused, additional SIM cards for use of mobile phones with fancy numbers were blocked for SUN TV and distributed to private individuals connected with SUN TV Network. The facilities given to A-3 was excessive, without authority and not in consonance to the Rules and entitlement of Minister or Member of Parliament. Records were fabricated and used as genuine to cover up the misdeed. Based on fabricated

documents, accounts were falsified to show as if no outstanding dues from A-3.

4. To substantiate the above allegations, C.B.I had relied upon 124 documents most of them are files maintained in the course of transaction of the BSNL in their day to day activities and the statements of 73 witnesses recorded under section 161 Cr.P.C.

5. After furnishing the material records relied by the prosecution to the persons accused of the offences, as contemplated under section 207 of Cr.P.C, the trial court has heard the petitions for discharge filed by four of the accused persons. After hearing the petitioners/accused and the learned Public Prosecutor, the trial court by virtue of the power conferred under Section 239 Cr.P.C has discharged all the seven accused holding that there is no ground to try the persons accused of the offences alleged.

6. The said order is impugned before this court by the aggrieved prosecution. This court, on the day of admission heard the Learned Special Public Prosecutor for C.B.I and found that the materials pointed out by the Special Public Prosecutor indicates trace of perversity in the impugned order. Therefore, notice for hearing the respondents was ordered. On receipt of the notice the petitioners appeared through their counsels.

7. The Learned Additional Solicitor General Mr.G.Rajagopalan appearing for C.B.I submitted that, after taking cognizance of an offence under Section 190 Cr.P.C which is the result of application of a judicial mind, the trial judge is supposed to frame charges against the persons accused of the offence(s) under section 240 of the Code if there is ground for presuming that the accused has committed an offence triable under Chapter XIX of the Code. If the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, recording reasons for doing so. In this case even though materials are adequately enough to frame charges against the accused persons, the trial court has discharged them for extraneous consideration.

8. The learned counsel for C.B.I contented that in this case the Magistrate had ignored the limitations prescribed in sections 239 and 240 of the Code and also the law laid down by the Supreme court. He had delivered the impugned order as if he is empowered to pass judgment arbitrarily. His order is perverse

for the reason that the order of discharge passed without testing the evidence placed before it, which if proved through a full-fledged trial, will be sufficient to convict the persons accused of the offences. The following judgments were relied by the Learned Special Public Prosecutor for CBI to buttress his submissions.

9. Paragraphs 4 and 5 in *Nadir Khan -vs- State (Delhi Administration)* reported in AIR 1976 SC 2205 :

"4. It is well known and has been ever recognised that the High Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal-justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounded duty to suo motu act where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. The High Court in a given case of public importance e.g. is now too familiar cases of food adulteration reacts to public concern over the problem and may act suo motu on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders. This position was true and extant in the old Code of 1898 and this salutary power has not been denied by Parliament under the new Code by rearrangement of the sections. It is true the new Code has expressly given a right to the State under Section 377 Cr.P.C. to appeal against inadequacy of sentence which was not there under the old Code. That however does not exclude revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court. This Court will be slow to interfere with exercise of

such discretion under Article 136 of the Constitution.

5. Section 401 expressly preserves the power of the High Court, by itself to call for the records without the intervention of another agency and has kept alive the ancient exercise of power when something extraordinary comes to the knowledge of the High Court. The provisions under Section 401 read with Section 386(c) (iii), Cr.P.C. are clearly supplemental to those under Section 377 whereby appeals are provided for against inadequacy of sentence at the instance of the State Government or Central Government, as the case may be. There is therefore, absolutely no merit in the contention of the learned counsel that the High Court acted without jurisdiction in exercising the power of revision, suo motu, for enhancement of the sentence in this case. The application stands rejected."

10. Amit Kapoor -vs- Ramesh Chander and others reported in 2012 (9) SCC 460

Para 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."

Para 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."

Para 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 :

Para 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.

27.4) Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loathe to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5) Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6) The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7) The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8) Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.

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.

27.10) It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by

the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11) Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12) In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed with by the prosecution.

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*.

27.14) Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.

27.15) Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that interest of justice favours, otherwise it may quash the charge. The power is to be exercised *ex debito justitiae*, i.e. to do real and substantial justice for administration of which alone, the courts exist."

11. The learned counsels for the respondents in unison commented upon the Revision Petitioner C.B.I, for arraying all the seven accused as respondents in the above revision petitions filed against the common order of discharge passed by the trial court in four different Miscellaneous Petitions filed individually by four of the accused persons (A-1, A-2, A-4 and A-5).

12. It is submitted by the learned senior counsels that, though only four out of seven accused filed revision petitions, the trial court has discharged all the seven accused by a common order. Three of them are not parties to the CrI.MP's. So, the prosecution if aggrieved by the common order, ought to have filed separate revision petitions against the accused (A-1, A-2, A-4 and A-5) individually who succeeded in their discharge petitions and separate revision petitions against the accused (A-3, A-6 and A-7) who did not file any formal petition for discharge but gained the benefit of discharge through the common order. By arraying co-accused as respondents, individually they are gravely prejudiced.

13. The Learned Counsels to demonstrate how the procedural error will prejudiced them, submitted that, the trial court after considering the materials place before it and hearing the parties had found each one of the accused not guilty and had individually established that the charge alleged against them are groundless. While so, in the revision petition by clubbing all the accused as respondents, they are forced to fend the co-accused also. Further, if in the event this court decides against them, they have to prefer appeal, and in the appeal so filed, it should be not only against CBI, but also against all other co-accused, since they are now arrayed as party respondent in the revision, though not in the original miscellaneous petition. Technically, it will cause hardship to the accused.

14. The next limb of the submission on behalf of the accused/respondent is that, while exercising the power under Section 401 of the Code, the revision court has to first call for the records, Furnish copies of all the documents relied by the prosecution to the respondents. Thereafter, opportunity to file reply to be afforded and then hear them. The above procedure would be in the true spirit of section 397 of Cr.P.C. Any lapse in this procedure will amount to failure of justice.

15. The learned Senior Counsel Mr.Vikas Singh would state that, the order of discharge is akin to acquittal. The code while mentioning the powers of the court under section 401 Cr.P.C say it includes powers conferred under section 386 of the code to the court of appeal. When the trial court has discharged the persons accused of offences, though there may be two views possible, the view in favour of the accused persons resulted in discharge has to be upheld and need not be substituted with the other view.

16. The Learned Senior Counsel Mr.Ranjith Kumar would state that opportunity to be heard is an in-built safeguard for an accused person against arbitrary exercise of power. The said opportunity is deprived by arraying each and every accused in the revision petitions as respondents, unmindful of the fact that except one all others were not parties in the respective original petitions before the trial court. He submitted that, the allegation against them is they conspired with each other to do illegal act by illegal means or legal act by illegal means. Two of the accused were CGM of BSNL (A-1 [K.B.Brahmadathan] and A-2 [M.P.Velusamy]), one of the accused Mr.Dayanidhi Maran was former Minister for Communication and Information Technology (A-3), One of the accused Mr.Vedagiri Gowthaman who was the Personal Secretary (A-4) and yet another accused Mr.Kalanidhi Maran (A-7) is the brother of A-3 [Dayanidhi Maran], two other accused (A-5 [K.S.Ravi] and A-6 [S.Kannan]) are the paid servants of a company incorporate by name SUN TV Net Work in which A-7 [Kalanidhi Maran] is the Chairman cum Managing Director. Each one of them have their own defence, which may have incriminating other accused. Unless those accused who were not parties to the petition before trial court are deleted from the cause title, the revision petition as it is framed cannot be maintainable. Further, the learned counsel would also submit that the case of the prosecution against this accused A-5 [K.S.Ravi] and other accused A-6 [S.Kannan] is based on the principle of vicarious liability without arraying the principal SUN TV net work as accused, which is unheard in Indian Criminal Jurisprudence.

17. To demonstrate, the learned senior counsel would submit that his client A-5 [K.S.Ravi] was an electrician. He had nothing to do with the alleged conspiracy between the Minister and Chief General Managers of BSNL. For that matter, he had not committed any offence or had knowledge of any offence. For installing the equipments at the premises of the Minister or at SUN TV premises, he cannot be called upon to face criminal trial.

18. The learned Senior Counsel Mr.P.S.Raman would submit that, the benefit of diversion of service category telephone is alleged to have accrued to "SUN TV" net work. While so, the body corporate namely "SUN TV" network is a necessary party. Without arraying "SUN TV" network as accused, no charge against A-7 [Kalanidhi Maran] could be framed just because he is the Chairman and Managing Director of "SUN TV" network or just because he happen to be the elder brother of A-3 [Dayanidhi Maran], the Minister for Communication and Information Technology. He would submit A-5 [K.S.Ravi] to A-7 [Kalanidhi Maran] could not be put to trial holding them vicariously liable

for the alleged benefit accrued to "SUN TV" without accusing the principal namely "SUN TV" network.

19. They relied upon the following two judgments:

(i). In Sidhartha Vashishat Alias Manu Sharma vs. State (NCT of Delhi) reported in (2010) 6 SCC 1 paragraph 220 is extracted below:

"220. The right of the accused with regard to disclosure of documents is a limited right but is codified and is the very foundation of a fair investigation and trial. On such matters, the accused cannot claim an indefeasible legal right to claim every document of the police file or even the portions which are permitted to be excluded from the documents annexed to the report under Section 173(2) as per orders of the Court. But certain rights of the accused flow both from the codified law as well as from equitable concepts of constitutional jurisdiction, as substantial variation to such procedure would frustrate the very basis of a fair trial. To claim documents within the purview of scope of Sections 207, 243 read with the provisions of Section 173 in its entirety and power of the Court under Section 91 of the Code to summon documents signifies and provides precepts which will govern the right of the accused to claim copies of the statement and documents which the prosecution has collected during investigation and upon which they rely."

(ii). In Dilawar Balu Kurane Vs. State of Maharashtra reported in (2002) 2 SCC 135 is extracted below:

"12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; by and large 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 justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial."

20. Heard the counsels. Records were called from the trial Court for perusal. The Statutes relevant and declaration of law by the Supreme Court and High Courts on the points canvassed by the respective parties were given due consideration.

21. On perusal of the records this Court find, based on the material documents relied by the prosecution, A1 [K.B.Brahmadathan], A2 [M.P.Velusamy], A4 [Vedagiri Gowthaman] and A5 [K.S.Ravi] have preferred discharge petitions which are CrI.M.P.Nos.4482, 4485, 4483 and 4484 of 2017 respectively. The rest of the accused arrayed as A3 [Dayanidhi Maran], A6 [S.Kannan] and A7 [Kalanidhi Maran] have also participated in the proceedings while hearing the discharge petitions, though they have not filed any formal petition for discharge.

22. For any prosecution instituted on a police report and tried as warrant case, the procedures regarding framing of charge, discharge, revision against the order of discharge could be culled out from combined reading of under Sections 239, 240, 397 and 401 of the Code. In nutshell, the course of action could be as under:

a). The Magistrate, upon considering the police report and the documents sent with it.

i). shall frame charges, if he is of the opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XIX of the Code. (subject to his opinion about his competency to try the offence and adequacy to punish)

(or)

ii). He shall discharge the accused persons, if he considers the charge against the accused to be groundless. Before exercising the power to discharge, he should afford opportunity of being heard, to the prosecution and the accused.

b). Nowhere in the Code, it is stated that the exercise of the above power shall be at the instance of the parties to the proceedings. In fact, it is mandate on the part of the Magistrate to consider (Final report and documents sent along with the report), Examine (accused, if he thinks necessary) and hear (giving prosecution and the accused an opportunity of being heard) to form opinion on whether there is ground for presuming that the accused has committed offence or the charges are groundless.

What is mandated is, if the Magistrate decides to discharge, he should record the reasons for doing so. If he decides to frame charge it must be in writing, read and explained to the accused.

c). High court by virtue of its power conferred under section 401 of the Code, may, in its discretion, exercise any of the powers conferred under section 386, 389, 390 and 391 of the Code in respect of the proceedings of the court below. This power can be exercised by the High Court to satisfy itself as to the correctness, legality or propriety of the finding of the criminal court inferior to it. For exercising this power, it is not always necessary for the high court to call for records from the court below. Even otherwise, if it comes to the knowledge of the High Court that the criminal court inferior to it has passed an order which is not correct, legal or proper then the High Court can exercise its revision power suo-motu.

23. Now, we have to look at the facts of this case, in the light of the above legal position. The Magistrate had considered the final report and documents sent along with it under Section 173 Cr.P.C. He after hearing the prosecution and the accused, had discharged the accused persons recording reason for doing so. It is a common order where the entire case of the prosecution held as groundless and all the proposed accused were discharged. This order is under challenge before this Court by way of revision petitions. As pointed out earlier, the High Court can even suo-moto exercises its revisional jurisdiction if any illegality in the order of the inferior criminal court is brought to its knowledge. The duty cast upon court is to peruse

the necessary records, give opportunity of being heard either personally or by pleader and to arrive at just conclusion.

24. In this case, in compliance with section 207 of the Code, the trial court has supplied to the accused persons the copy of documents which are relied by the prosecution. Based on those documents accused persons have successfully canvassed before the trial court for discharge. In the revision petition, records relevant for the prosecution by them are produced along with the revision petition. To counter, documents relied were produced by the respondents in the course of arguments. In addition, to satisfy itself, this court has summoned from the trial court the records pertainings to the revision petition and had carefully perused.

25. Law does not say in the revision petition, entire copy of documents to be furnished to the accused once again. It will only be a duplication and futile exercise. Neither the Code nor the Rules framed by this High Court under the Code contemplates such a requirement. Therefore the strange request made by the counsels for the respondents that entire records must be called from the trial court and copy of entire documents must be furnished to each of them carry no merit.

25. The records from the trial court disclose the fact that apart from filing discharge petition, in support of their petition written arguments were filed by them and same form part of the court records. This Court have the privilege of considering their written arguments also. While all the materials necessary to decide the revision petitions are before the court, the content of the revision petition which has brought to the notice of this court illegality and perversity in the impugned order alone matters and not the format.

26. Therefore, none of the points raised by the respondents in this regard are legally sustainable. Further the irregularity or error pointed out by the counsels for the accused/ respondents about the array of all the accused persons as respondents in the revision petitions is nothing but a fruitless argument based on hypothetical ground. The impugned order though common to all the accused, if it is tested in respect of each accused individually, then there can be no prejudice to them.

27. Submission of the prosecution/Revision Petitioner

The Learned Special Public Prosecutor for CBI would submit that though all infirmities, illegalities and perversity in the impugned order have been pointed out in the revision petitions in detail, it is suffice to see few grounds which would be enough to arrive at an irresistible conclusion that the order of the trial court is totally perverse. Despite adequate grounds to presume that the accused have committed triable offences, the trial judge had illegally discharged them, instead of framing charges.

28. Few grounds for revision pointed out by the prosecution are extracted below:

9.12. The learned Court has also erroneously held that sanction under Section 197 of Cr.P.C is required to prosecute the accused Dayanidhi Maran [A-3], K.B.Brahamathan [A-1] and M.P.Velusamy [A-2]. Prosecution sanction under Prevention of Corruption Act was not required as no accused persons were not in service at the time of taking cognizance by the Learned Court. As far as the requirement of prosecution sanction under 197 of Cr.P.C is concerned, there are number of decisions pronounced by the Hon'ble Supreme Court that it is not the duty of the public servant to involve in the Criminal Cases while discharging their official duty and the public servants those who are while discharging their official duty are getting involved in the above such offences are not to get the protection under Section 197 of Cr.P.C.

9.17. The learned Judge has also wrongly held that the 10 bills were inadvertently generated by BSNL and it had power to cancel the bills. It appears that the learned Judge has acted in this case in a pre-decided manner and with the sole intention to discharge the accused persons by ignoring the rules and regulations of BSNL, by not appreciating the evidence produced by the prosecution/CBI and by finding faults (Whether genuine or not) in the prosecution, he has erred and come to wrong conclusion. The

above contentions can be challenged on the following grounds.

a. There is no LW-60 by name of Srinivasan cited by CBI in the list of witnesses. Copy of the list of relied upon witnesses are enclosed herewith and marked as Annexure-5.

b. In fact as per the list of witness the name of LW-60 is V.Raghuraman and he has not made any such statement as reflected in para 58 of the judgment, rather he has spoken about the telephone connections provided to SUV TV.

c. There is only one witness by name Srinivasan in the list of witnesses filed by CBI (Vide LW-39 not 60) and he has also not made any such averments.

d. The other witness (LW-35) cited in the order is N.Badrinath, and he has also nowhere stated in his statement about the cancellation of bills and powers of BSNL officials in cancelling bills. In fact, the witness was functioning as Protocol Officer, O/o CGM, BSNL, Chennai and has sated about the phone/number/email Ids of CGM which relates to the forgery angle and the learned judge has not taken any note of such statement.

e. The learned Judge purposefully did not appreciate the fact that it was A-3, who has produced 10 bills (under his signature/initials) to CBI (cited as D-122) in support of his claim that he had made payment of bills as and when raised by BSNL. However, he could not produced any receipt, when this was enquired from BSNL, Chennai it was gathered that no payment was received and all the bills produced by A-3 were subsequently cancelled. In support, BSNL had provided the copies of cancelled bills through one of its Staff, Mrs.B.Anuradha, the then AOTR-I, SE, BSNL, Chennai and it was not that Smt.Anuradha had inadvertently raised those bills.

9.21. Finally, while reaching on conclusion and while dealing the issue related to Sh Kalanidhi Maran (A7) the learned Judge has wrongly concluded as follows:-

The whole crux of the charge sheet is that the A3 entered into Criminal conspiracy with

A1 and A2 and obtained one phone connection with malafide intention to use for SUN TV, it is the view of the Court, that without adding SUN TV as accused, as ultimate beneficiary, the prosecution against A3 also becomes unsustainable.

29. In the order under challenge, some of the reasons given by the trial court for the discharge of the accused persons are extracted below:

Para 36. The Salary and Allowances and Pensions of Ministers Act, 1952 is a small legislation containing 11 sections only. The Principal Act not deals about the phone facility entitled to the Hon'ble Union Ministers. But, the phone facility was introduced in "The Salaries and Allowances and Pensions of the Ministers Amendment act, 17 of 2000", by amending Sec.8, and wherein the phone facilities shown as independent amenity. It is pertinent to mention herein, the Amendment Act 17 of 2000, not contains any limits for the entitlement of phone facilities to the Hon'ble Union Ministers. Therefore, after 2000, as per the amended Section 8 of "The Salaries and Allowances and Pensions of the Ministers Amendment Act" being the Union Cabinet Minister, the A3 has entitled of have any number of phone lines connections depending upon the demands raised by him. Therefore, it is decided the prosecution has mis-quoted the Rule 4 of "The Housing and Telephone Facilities (MP's) Rules 1956" which is not applicable regarding telephone entitlement for the Union Ministers.

Para 40. The S.No.3, of the chart is also PRA number and 28285422 is the pilot number with child numbers, 28285400 and 28285429. It is also a single connection, but again wrongly shown as 30 phone connections. The note orders for this connection was find place in Doc.No.12. It is stated that this PRA line was provided suo moto by BSNL to ensure uninterpreted service to A3, the then Hon'ble MCOIT. The S.No.4 is the BRI/BRA line with pilot number 28119696, and baby numbers 28119697 and 28119698 and note order for this connection find place in Doc.No.4. The S.No.5 is BRI/BRA connection

28119800 is the pilot number with two baby number 28119801 and 28119802 and note order for this connection find place in Doc.Nos.8,53 and 97. Likewise S.No.6 to 10 are iSDN/BRA connections with one pilot number and two baby numbers and these connections and the note order approval was find place in Doc.No.4 to 10,12,26,28,38 & 97.

Para 41. The careful perusal of the above documents, it is revealed that every note order was approved by A1 as CGM and also approved by other BSNL officers of DGM, GM, SDE and approval was grated to provide the above connection under service category and it shows that the A1 alone not independently approved the note order to provide the above phone connections under service category. Moreover, the file routed to all concerned section officers for approval and none of opposed to effect land-line phone connection with ISDN/PRA/BRA facilities. The perusal of file also proved the note order approval process was done in open manner and nothing was done secretly. The L.W.6,16,24 & 59 stated about the note order approval by all level of BSNL officers to proved phone connections to the Gopalapuram residence of A3.

Para 56. The main contention of the prosecution is, the A1 and A2 have not obtained approval of the DoT, for providing phone connection to the residence of the A3. In this case, it is very clear A1 and A2 have not forwarded any request to the DoT for approval of the phone connection provided to Gopalapuram and Boat Club Road Residences of A3. The learned Senior Counsel appeared for A1 to A3 argued that failure to apply for approval from the DoT to the phone connection provided to A3's residence at Chennai, could not consistute criminal offence and such a failure may be a ground to initiate Departmental proceedings against A1 and A2. This Court is also of the view, the mere failure to get approval from the DoT could not amount ciriminal offence, and they have been dealt purely under departmental proceedings. Therefore, it is decided, the failure to get approval from the DoT by A1 and A2 cannot be considered as substantial

evidence for the conspiracy between A1 to A3. The NIC officials supplied the equipment for video conferencing to the Delhi and Chennai residence of A3 and also demonstrated the functioning and also nominated officers for the proper functioning and maintenance of the video conferencing system. All the above process were carried out officially and openly and with the approval of the various level higher BSNL officers, Chennai. Admittedly, as per the case of prosecution the A3 is entitled for 4,50,000 free unit calls, for the period May 2004 to May 2007. Whereas, as per the prosecution collected documents, the A3 used below 2,00,000 free units calls only from the phone connection provided to the Gopalapuram and Board Club Road residence and the lesser usage of free call units also revealed the said phone connections were not used for SUN TV. Therefore, it is decided, there was no sufficient material directly or with circumstantial nature to show A1 to A3 entered into a criminal conspiracy to get more phone connections to the residence of A3 with mala fide intention to use the same for SUN TV. It is already decided, there was no OFC connectivity to the SUN TV office from BSNL and also there was no direct or circumstantial evidence to show the phone connections provided to the residence of A3 were used for the SUN TV. It is known fact, every call provider company stored the call history in main server. The computer footage is the best evidence, since it contains all the call history. The dialed phone number and receiver phone numbers were also stored in Main server. Likewise, the BSNL also has main server to store the call history details. The call history may contains more information about dialled number and receiver number. The prosecution could have get details about the phone connection provided to SUN TV from BSNL office or from any other phone provider. The prosecution ha not produced the call history details for the phone connected to the A3's residence. LW57 Mr.V.Narasimhan stated in 161 Cr.P.C statement that at the request of the CBI, he issued the compact disk containing all the call details and the relevant portion of

statement reads as follows:

"....."I further state that the billing data pertaining to the exact usage is available with the billing section on the basis of available metered call units present in the server and the same is being forwarded to you in a compact disc for the relevant period i.e. 2004-2008".

However, compact disk was not produced by the CBI before this Court along with the charge-sheet. The said C.D contains all the call details of the phone connection provided to the residence of A3. The prosecution has not offered any explanation that why the CD was not produced along with charge sheet. As already mentioned, the CD contained all the call history about the dialed numbers and receiver numbers. Considering the CBI has not collected any evidence regarding the phone connections provided to Sun TV from BSNL and calls history to the said numbers from the phone connection provided to A3, this Court has come to the conclusion that the prosecution has not placed sufficient material to establish the allegation that A3 get more phone connections with mala fide intention to use the same for SUN TV."

Para 58. It is known fact the A3 was allowed to contest 2009 and 2014 Lok Sabha Election and it revealed the BSNL issued " No Due" certificate, and so that his nomination was accepted. It is pointed out that, so far, the BSNL has not raised any bill for making payment. The learned Senior Counsel for A3, argued that if the BSNL considered that phone connections were provided against the Rule, they have every right to raise bills and A3 is already to pay any amount, if claimed by the BSNL. This Court is also of the view, even assuming for argument sake, the phone connections were provided against the Rule, it will not attract criminal prosecution and the BSNL is entitled to start recovery proceedings either under Arbitration

and Conciliation Act or under Common Civil Law. Therefore, it is decided there was no conspiracy in cancellation of the bill and there was no sufficient material to frame charges for the offence under Section 409 of IPC.

Para 59. The prosecution contended the A1 and A2 conspired and in furtherance of the conspiracy, the reply dated 06.05.2009 was fabricated by the A2 suppressing the actual phone connections provided to A3 and LW.56 was forced to sign dated 06.05.2009. The LW.56 also suppressed other phone connections provided to A3 while he has MCOIT. Based upon the letter, the official note was prepared and wherein LW.56 signed with dated as 06.05.2009. The doc.No.33 contains the note order proceedings and it is very clear all the higher officials including LW.56 were signed on 06.05.2009 itself and it is clear LW. 56 falsely stated that she has received A3's letter only on 11.05.2009 and reply also issued on 11.05.2009 with putting Anti date. The CBI not produced any document, that A2 manipulated the concerned Register as if only one phone connection provided to A3 residence and no document produced showing actual entries relating to phone connections provided to A3 residence. In fact, the CBI seized and produced bills containing note orders to provide phone connections to A3 residence on several dates. Therefore, it is decided the prosecution not placed sufficient materials showing the A2 tampered the A3's letter with an intention to nullify the document and to support that he has manipulated public records showing as if only one connection was provided to A3. Therefore, it is decided, the prosecution not placed sufficient materials to frame charge for offence under Section 467, 471 and 477-A of IPC.

Para 100. Admittedly, in this case, the "SUN TV" not made as accused by prosecution. The prosecution also not placed any materials showing the A7 alone is vicariously liable for the offence committed by the company. The careful reading of the above ruling, it is very clear the prosecution against A7 as

Chairman cum Managing Director of "SUN TV" is not maintainable, since the "SUN TV" not made an accused and no material was produced showing statutory liability against A7 alone. Admittedly, the A5 is working as Electrician in "SUN TV". The A6 working as Chief Technical Officer, in "SUN TV". The A6 has placed supply order for purchase of EPABX equipment/exchanges worth about Rs.50 lac on behalf of the "SUN TV". It is the view of this Court, without "SUN TV" made as accused, the prosecution against A5 and A6 also not maintainable. Therefore, it is decided the prosecution against A7 is not maintainable and further decide the A5 and A6 are being the servants of "SUN TV", the prosecution against them also unsustainable.

30. This court is conscious of the law holding this field. The object of section 397 r/w 401 of the Code is to set right a patent defect or an error of jurisdiction or law. Under these sections, High Court cannot interfere with the order of the inferior criminal court unless the decision under challenge is grossly erroneous, no compliance with the provisions of law or the finding recorded is based on no evidence, material evidence is ignored or judicial discretion exercised arbitrarily or perversely. The power of the trial court to discharge and the power of the High court under revisional jurisdiction upon such discharge order is vividly explained by the Hon'ble Supreme Court in Amith Kapoor case and the relevant portion of the judgment already extracted above. This court has to put the impugned order to the litmus test laid in Amith Kapoor case to find out whether there is any patent defect or error of law, in the impugned order to set at right.

31. The trial Court, on considering the rival submissions, have taken all the pains to look at the materials placed before it and had given the reasons for why in his opinion the charges are ground less. While holding so, he has weighed evidence and examined the facts and given his opinion on the material particulars relied by the prosecution. The order clearly indicates the parameters laid down by Hon'ble Supreme Court Amit Kapoor vs Ramesh Chander cited supra has been grossly violated by the trial Court. This Court, on its revisional jurisdiction finds that this is a case where the order of the trial Court is perverse, illegal and to be set right for multiple reasons.

32. Instead of exhaustively pointing out all the statements and documents which are sufficient to frame charges against the accused persons, this Court will only point out

illustratively few material errors which by itself is sufficient to set aside the order of the trial Court and direct to frame charge against this persons and leave the matter for the trial Court to appreciate the evidence during trial and come to appropriate decision.

33. For the above said purpose, few statements of witnesses and documents upon which the prosecution rely to prove conspiracy between the accused persons, fabrication of record, used of forged documents and falsification of accounts are necessary and relevant so extracted below:-

34. The statement of Shri.Mohan Lal Sindhi (L.W-34), ADG in Phone Priority Section (PHP), 516, Sanchar Bhawan, New Delhi runs as under:

I, as above on being asked hereby state that I joined as a Technician at DoT, Baswara (Rajasthan) on 18-04-1985. Presently, I am working as ADG in Phone Priority Section (PH) 516- Sanchar Bhawan, 20 Ashoka Road, New Delhi. During the period 2004-2007, I was working as in various capacities in PG Section, Sanchar Bhaswan, New Delhi.

The PHP Section (Phone on Priority) basically deals with the requirement and sanctions of telephone connections under Service Category to the departmental employees and others including Ministers. Without the approval of PHP Section no connection can be issued to anybody under "Service-Category". I deal with the office/residential phones of Officers and Minister and Department of Telecommunications. I issue sanction for service category phones. Even for installing a phone at Chennai or Delhi -our sanction is required. If a Minister, want telephone/Mobile phone connection, all sanctions must be issued by our section. Earlier the Section is headed by DDG(PG) now days, it is headed by DDG(PHP).

Regarding the procedure for issuance of telephone connection to a Minister, I wish to state that usually the office of Minister sends a written request for installing phones at his office or residence. The same is processed and approved in the concerned file and after approval by DDG(PG) the sanction send to the concerned service provider i.e.MTNL, BSNL, etc., along with a copy to

the Ministers office.

Now, you have shown me a letter dated 06.01.2015 bearing UO No.460/Dir(PHP) Dated 11.12.2014 along with its Annexure. This letter was written by me in response to the DoT Vigilance Wing Communication and bears my signature, which I identify. In this reply, Rule 435 of Indian Telegraph Rules 1951 has been quoted in response to the query, raised by the CBI, about the entitlement of MOCIT under "Service Category". On being asked, I further state that during 2004 to 2007, there were no specific guidelines regarding the entitlement of service telecom facilities to Hon'ble Minister of Communication & Information Technology and his office. It is also to add that in past, with respect to the queries raised by Director, Cabinet Secretariat, Rashtrapati Bhawan vide letter No.Cab.Sectt.ID No.071/1/1/2010-Cab-III dated 09.08.2010, on telecom facilities provided to Ministers/officers/employees relating to the activities handled by Department of Telecommunications, PHP section had given reply with the approval of Secretary(T), Inter-alia-stating that "Telecom facilities are provided to Hon'ble MoC&IT and Hon'ble MoS(C&IT) and their officers in accordance to the demand raised by them." Later on some guidelines were framed, vide circular No.3-1/2013-PHP dated 12/2/13, consolidated entitlements for the various levels of officers/officials are given in the Annexure, in which it is mentioned that Telecom facilities will be provided to the Minister and his office in accordance to the demand raised by them. Copy of the letter circular is also enclosed with the letter.

Today, I have produced before you a file bearing No.27/01/04 PHP of PHP-1 Section, Department of Telecommunications, containing approval of DoT for Telephone connection provided to Sh.Dayanidhi Maran the then MOC&IT during the period 2004 to 2007. The file was taken into possession vide a separate memo, copy of which have been provided to me. On the basis of sanction letter conveyed by DoT vide letter No.27/01/04-PHP dated 30/07/2004 following connections were provided to Shri Dayanidhi Maran, Hon'ble MOC &IT at 31 Aurangzeb road,

New Delhi.

- 1.2301-9191 (bedroom office)
- 2.2301-9020 (bedroom office)
- 3.2301-7242 (Internet at office)
- 4.2301-9160 (Internet at office)
- 5.2379-5151 (Bed Room)
- 6.2379-5353 (Fax at Residential Office)

These connections were already provided by the DE(O/D) Sena Bhawan, MTNL, New Delhi. A post facto approval was accorded to cover the provisions of RSTCs (Residential Service Telephone Connections) at 31, Aurangzeb Road, vide sanction dated 30/7/2004 by Shri Misha Bajpai, the then ADG(PHP), the same was approved by DDG(PG) on the note. At that time, Smt. RajniTajneja was DDG(PG).

Similarly, a post facto approval was accorded to cover the provisions of RSTCs (Residential Service Telephone Connections) at the residence of Shri.Dayanidhi Maran, Hon'ble MOC&IT at 6 Akbar Road, New Delhi for the following numbers vide letter No.27-01/04-PHP dated 03/05/2005 under the signatures of Shri Misha Bajpai, ADG(PHP).

- 7.230188-18 (ADSL)
- 8.230188-38 (ADSL)
- 9.230188-97 (ADSL)
- 10.2379-9696 (Local/STD/ISD)
- 11.2307-9696 (Local/STD/ISD)
- 12.2379/2077 (Local)
- 13.2301-2700 (Casual)

These connections were approved by the DDG(PG) in file on 30.04.2005. The above connections were permanently disconnected vide order No.27-01/2004-PHP. I dated 13/07/2007, under the signatures of Shri Misha Bajpai. In this order dated 13/07/07, six mobile numbers have also been shown. I am not aware how these mobile numbers were allotted to the Minister. "

35. It is the contention of the accused persons that, even if there was any violation in granting service connection, it can at the most be a matter for Departmental Enquiry and not for Criminal Prosecution. The trial Court has also accepted the said contention. When the prosecution has placed before the Court, materials to show that top officials of BSNL had violated blatantly the Rules prescribed for extending privilege to the Minister and it was in pursuant to conspiracy, criminal prosecution is inevitable.

36. The Document Nos.5 and 6 would indicate that while providing one service connection bearing No.28122222, it has been treated as a pilot number and 30 individual baby numbers were given. The advantage of 30 individual baby numbers is to call and receive simultaneously at any given point of time. From these 30 baby lines 300 different numbers have been allotted further.

37. Admittedly, the allowances regarding telephone for a Member of Parliament and for a Minister is one and the same. It is now placed before the Court that A1 while serving as the Chief General Manager of BSNL, Chennai, had provided single PRI line along with 7 land line numbers as service connection on the verbal order of the Minister of Communication (A3). 12 SIM cards were sanctioned to A3 based on his verbal order. The commercial file No.28119856 CAT/ISDM/Service/BRA/88 relied as Doc.No.5 and the file No.DE(C&A) MS MOC/2005-2006 regarding mobile services MOC cases as Doc.No.37, contains materials to substantiate the above allegations.

38. Further, the statements of LW-33 (Shri.Misha Bajpal) and the statement of LW-34 (Shri.Mohan Lal Sindhi) disclose that immediately after A3 assumed office at Minister of Communication and Information Technology, his residential telephone connection has been converted into Service Category. He had been enjoying ISDN facility as a private individual. His personal phone connection bearing No.2819696 had been converted into service category with ISDN facility and brand band facility. They are not part of allowance provided to the Member of Parliament or Minister. However, A1 on the request of A4, the Additional Personal Secretary to A3 and oral instruction of A3 had converted the residential phone with ISDN brand band facility under service category resultant, A-3 had enjoyed additional facility free of cost without entitlement.

39. As pointed out, a Member of Parliament entitle to have a service connection at his Delhi Residence. A3 had availed this facility from MTNL Delhi, which has provided him 13 telephone connections and one lease line circuit. From 26.5.2004 to December 2006, A3 was residing at No.18, Second Street, Gopalapuram, Chennai-86. Later, he shifted his residence to No.3/1, 1st Avenue, Boat Club Road, Alwarpet, Chennai-18. A1 while working as Chief General Manager, had ensured that telephone connections with ISDN /PRA/BRA facilities and 4 leased circuits given under Service Category to A3 at Gopalapuram residence. A2, who succeeded the office of CGM after A1 had ensured ISDN/PRA/BRA facility and four brandband connection under Service Category given to A3 at the residence of A-3 at Boat Club Road. All these facilities were not in consonance with the Salaries and Allowances of Ministers Act, 1952 or The Salaries,

Allowances and Pension of Members of Parliament Act, 1954 (Act 30 of 1954) or the Rules framed thereunder.

40. A4, who was working as a Personal Secretary to A3 on Deputation from State Government had converted his personal BSNL land line connection No.23766464 with brand band facility into Service Category. The order has been passed by A1. A4 had played a pivotal role in the conversion of the Private Category into Service category, without the approval of DoT, in connivance with A1 and had retained ISDN facility, which is not provided for service category line.

41. In the discharge petition, this petitioner [A-4] claims that he bonafidely believed that RSTC (Residential Service Telephone Connection) facility provided to him is well within the ambit of Official Memorandum issued by the Ministry of Finance, Department of Expenditure dated 07.06.1985. This Official Memorandum only speaks about the entitlement of service telephone facility to the Additional Private Secretary of the Minister. When there is a specific restriction in respect of the facilities like ISDN and broadband, which is not provided free of cost, it is the evident from the material collected during the course of investigation that along with the Minister, the Additional Private Secretary has also enjoyed telephone connections with ISDN and BroadBand under Service Category, excessively without legal entitlement.

42. On perusal of the Statement of LW-44 (K.Hariharan), we find that the Investigation Officer had shown him File No.32, DE C&A MS/MOC/2005-2006 pertaining to the MOC cases-Mobile Services. After perusing, he has stated that 12 mobile numbers were converted into Service Numbers in the billing system by removing it from prepaid category and converted it into Postpaid Category. Out of 12 numbers, which he converted from pre-paid to post-paid and further into Service Category, 9 numbers were vanity numbers, which require vanity number charge Rs.10,000/- each. The said vanity charge has been waived and the 12 numbers were issued in the name of A3 with STD and National roaming facility. The conversion has been accorded by A1. The statement of this witness PW-44 further discloses that based on the fax messages received from C.S.Palani the Then PA to A-3 addressed to the CGM on 24.12.2004, 30 mobile numbers were blocked. One such number 94444 44444 was later converted from Service Account to Private Account with ISD and IRST facility and issued to Shril Nicholas Paul Company, C/o JJ Marketing, Food and Beverages (P) Ltd., as per the CGM order, the vanity charge was not collected. PW-44(Shri.S.K.Hariharan) was informed by the DGM that the Hon'ble Minister of Communication (A3) will waive the vanity charge. When he addressed to A4(Shir.Gautam), Additional PS to MOS and Shri.Nicholas Paul in respect of vanity charge and deposit for availing mobile service to the number 9444444444,

there was no response from them. His statement also makes some damning disclosure about securing vanity mobile numbers by A3 under the guise of service connection and thereafter, distributing it to private person de-listing it from Service Category thereby, depriving the Department the requisite vanity charges as well as deposits. His statement further reveals that from the file No.32, he could see that 10 mobile numbers were reserved for Sun TV upon the request received from A4.

43. By way of question and answer the following information has also been obtained from LW-44.

"Question: Do you know the rules for providing mobile connections to the MPs and its billing procedure.

Answer: I know the Rule. A MP is entitled only for 2 mobile connections and its billing is done through the Liaison Officer Parliament. This Note was placed by me knowing that the act of seeking approval is beyond the rule. However, the CGM had instructed me to put up the Note and accordingly, the same was put up.

Question: As per the endorsement at P.No.27 of the file, certain remarks are made for reserving certain numbers for Sun TV. What was the further follow up as per this file?

Answer: In this file, the said endorsement was made as per the directions given by the senior officers; no other endorsement is available on file regarding these numbers. They might have been handed over to the Minister or Sun TV.

44. From perusal of the statement given by Shri.Upendar Bhatnagar, Assistant Manager, ABS India(P) Ltd., (LW-55), we find that Sun TV has placed purchase order with M/s ABS India Private Limited, Bangalore on 20.09.2005. On perusal of the records, viz., purchase order and the installation detail, he has stated that the following systems were installed at the given 7 Locations:

Sl. No.	Location	Configuration
1.	SUN HO	Migration to OXE Rel 6.1 with all software license 1 No's, IP Extensions 5 No's, Cellular Clients 5 No's, IP Trunk 30 No's, Party CNF 29 No's, Soft Phone Users 10 No's, Management 4760 for Network 1 No's, Necessary IP links & Software for interfacing other sites as indicated, Integrated in-skin Alcatel centralized 8 port voice mail system with 40 hours storage, centralized maintenance, call billing and topology.
2.	GEMINI TV	Analog, Extensions wired 32 Nos. UA Extensions wired 20 No's, Analog Trunk 8 No's, Attendant 1 No's, PR Trunk 1 No's, IP Trunk (with management 4760) 5 No's Necessary Hardware & Software for interfacing with SUN HO PBX,
3.	SURYA TV TRIVANDRUM	Analog Extensions 48 No's, IP Users 8 No's, Analog Trunk 4 No's, Attendant 1 No's, PRI Trunk 1 No's, IP Trunk (With management 4760) 5 No's, A4035 1 No's, A4010 4No's.
4.	MP RESI NEW DELHI	Analog Extensions wired 24 No's, UA Extensions wired 32 No's, IP Users 20 No's, DECT Base Stations, wired, with 20 Users 4 No's, Analog Trunks wired 16 No's, PRI Trunk wired 4 No's, BRI Trunk wired 4 No's, IP Trunk (with management 4760) 5 No's, Necessary Hardware & Software for interfacing with SUN HO PBX
5.	MP RESI CHENNAI	Analog Extensions wired 24 No's, UA Extensions wired 32 No's, IP Users 20 No's, DECT Base Stations, wired with 20 Users 4 No's, Analog Trunk wired 16 No's, PRI Trunk wired 4 No's, BRI Trunk wired 1 No's, IP Trunk 10 No's, Necessary Hardware & Software for interfacing with SUN HO PBX.
6.	MD RESIDENCE	Analog Extensions wired 20 No's, UA Extensions wired 28 No's, DECT Base stations, wired with 16 users 8 No's, Analog Trunk wired 4 No's, PRI Trunk wired 4 No's, IP Trunk 5 No's, Necessary hardware & Software for interfacing with SUN HO PBX.

Sl. No.	Location	Configuration
7.	MURASOLI	Analog Extensions wired 20 No's, UA Extensions wired 88 No's, Attendant 1 No's, Analog Trunks wired 2 No's, PRI Trunk wired 1 No's, BRI Trunk wired 1 No's, IP Trunk 5 No's, Necessary Hardware & software for interfacing with SUN HO PBX.

45. He has further explained in his statement that the difference between the exchanges installed at the Member of Parliament residence at Chennai and Delhi and MD resident at Chennai. A descriptive illustration about the different facility and usage of the exchange has also been demonstrated in his statement.

46. Shri.S.Subramanian(LW-48), Nodal Officer posted for the connection to be given at the Union Minister at Gopalapuram and R.A.Puram residence, in his statement, had reiterated the fact that a Member of Parliament is entitled for three simple DEL connections and 2 mobile phones connections under 'service category'. There is no provision in the rule for allocation of ISDN connection/leased lines under Service category. As a Nodal Officer in-charge of the connections given to the Union Minister (A3) he used to attend fault in the connection. He used to repair/install connection on the instruction of the CGM or some time on the request from PS to MOCIT (A4). Further, he has stated that;

"I do not hesitate to say that some of the lines were used for video conferencing. I used to attend the said call in 2007 even though frequently was lesser after 2006. The BRI lines were being used by the Minister for Video conferencing. I remember that the Minister used to use these lines for Video Conferencing. Here I would like to clear that one Smt.Geeta Tikku of NIC, Sh.Gowtham, PS to the Minister and one Ravi from SUN TV were the main inner circle persons to the Minister's residence. They were having the entry upto the last room of the Minister. In case of any fault, which is beyond repairable at their level then only they used to call me for rectification. Very categorically I state that said Ravi of SUN V always used to be present in the Minister's residence whenever I used to go there for rectification/repair of fault. After

rectification as per the advice of Sh.Gowtham, PS to Minister, I used to report to Sh.Ravi of SUN TV. The above statement has been correctly recorded as per my version.

Further, on being asked about PRI/PRA lines, BRI/BRA lines, PRA connections as well as BRA connection etc., in this regard, I state that PRI lines means Primary Rate Interface/Access. Technically, PRI/BRA lines 30B+D i.e, 30 telephone lines in a single pair. Similarly, BRI/BRA lines means Basic Rate Interface/Access. Technically, BRI/BRA means 2B+D meaning thereby two connections in one pair. Further, I would like to clear here that NT Box means Network Terminal Box. It is to be provided for BRI lines. It helps converting two lines through single pair. Further, ISDN connection means Integrated Service Digital Network. Both PRI lines and BRI lines are called as ISDN."

47. The following portion of his statement indicates the role of the accused persons in the alleged crime.

"Today, I have been shown file No.1, pertaining to landline No.28119797 (PRI) lines. This file was initiated by me on the instructions of Mr.Kannan, the then Divisional Engineer, who has now since been retired from service. The said file was initiated from providing the facilities of ISDN-PRI lines to the Hon'ble Minister for Communication at his Gopalapuram residence. I have identified my writings as well as signatures. Similarly, I have identified the writings of Mr.Kannan on this noting. This file also contains photocopy of a note sheet bearing page No.N/2 wherein the then CGM has accorded his approval for installation of this line. The then CGM Sh.Brahmdathan has also recorded a note on the file "this is as per the MOCIT's verbal order PS to Hon'ble MOCIT has written to DoT/BSNL for this. This is to be treated as Service Connection only". This note is in the handwriting of Sh.K.B.Brahmdathan, the then CGM, BSNL, Chennai. I identify his handwritings and signatures as I am acquainted with the same as I had worked under him for long.

I have gone through the file No.4 which relates to additional set of ISDN-BRI lines at the residence of Minister at Gopalapuram.

Page No.6 of this file is containing my writing in which I have recommended for closure of three lines i.e., 28119856, 28119928 and 28119990. Further, I have identified my writings at page No.6 of file No.8, which relates to disconnection and closure of the telephone lines i.e., 28112233, 28112244, 28112255, 28119800, 28119720 and 28119544. Further, I have gone through the file No.9-A which is relating to provision for alternative route for Tel.No.28122222. It is the ISDN-PRI connection at the residence of Sh.Dayanidhi Maran at Gopalapuum residence. At page No.4/N is my noting in which I have very categorically mentioned that it is possible to give one more PRI line but simultaneous mapping of the other PRI lines to the same extension is not possible in the said EPABX because the Exchange ID differ. I have also identified the writings of Mr.Kannan on the said noting page i.e 4/N.

Now, you have shown me file bearing No.3,4,5 which contains approval of Sh.K.B.Brahamdathan on different occasions for different telephone connections. The file bearing Sl.No.3 and 4 only contains photocopy of the approval. However, the file bearing Sl.No.5 contains original note sheet portion wherein at page No.2 Sh.K.B.Brahmdathan has accorded his post-facto approval for the provision of 3 ISDN BRI lines with STD and 02 numbers of Data one connections on 17.01.2005. I identify the signature and handwriting on the said files of Sh.Brahamdathan as I am acquainted with the same having worked under him for long."

48. LW-56 (V.Meenalochiny) the General Manager(OP), BSNL in her statement had spoken about her role in processing the conversation of personal No.28119696 into Service Category vide office order No.AGM(PG)/MOCIT & IT/14LS/RS/2004/8 dated 16.09.2004. On perusal of the file, she has identified that while she was working as DGM(OP), at the request of A.Mahalingam, Additional PS to the then MOCIT (A3), she has processed the request of converting the personal residential No.28119696 (working at the camp residential office of Sh.Maran) into Service Category. She has also identified the signature of the then CGM (A1). A similar request was received from A.Mahalingam, the Additional PS to the then MOCIT (A3) for converting the personal number of Sh.V.Gowthaman [A-4],

Additional PS to the then MOCIT into Service Telephone Connection and as per his request, the existing telephone number working at the residence of A4 (Sh.Gowthaman) was converted into Service Telephone Connection with effect from 14.07.2004. She has also disclosed in her statement that two numbers 24371515 and 24361616, were child numbers of 24371500, which was an ISDN/PRA with 300 extensions. These numbers were sought to be regularised by this subscriber through the General Manager Operation, BSNL. Technically, regularisation of child numbers is not feasible without closure of main number i.e, 24371500. Therefore, it was decided to sanction No.24371515 as main number in MP Category and close the main PRA lines having pilot number as 24371500. Accordingly, the said line was closed. She has also stated that an oral request was received from the Minister/his Private Secretary for providing ISDN/PRA facility with indicator No.24371616. A letter from LOP advising to act according to Rule 4 of MSA Act, 1956 was also received and accordingly, an order dated 13.09.2007 was issued for taking action(i.e.) ISDN/PRA on chargeable basis after collecting due rent and deposits. She has identified the file containing all these communications. This witness has mentioned about the letter to A3 perpetrated to have been written in response to the letter of A3 dated 04.05.2009, where she had categorically stated that the response to this letter was anti-dated on the instruction of A2 and the response does not reflect the true state of affairs. The portion of her statement is extracted below:

"Now you have shown me a DO letter bearing No.AGM(PG) MP CORR/14th LS/2009-10 dated May, 06, 2009, issued by me and addressed to Sh.Dayanidhi Maran MP. This letter is purported to have been written in response to letter dated 04th may 2009 wrote by Sh.Maran. According to this reply only one BSNL telephone connection ie., 24371500-ISDN-PRA was provided to him while the latter was the Union MOCIT. No other BSNL telephone connection was provided to the above premises till date. The letter further contains that out of MP's 4,50,000 eligible metered call units for 03 years, he used only 173698 metered call units and he has not acceded his eligible metered call units. In this regard, I wish to state that all the outset this is an incident of 11.05.2009 and not of 06.05.2009. I wish to further state that on 11.05.2009, I was present in my office and was called by Sh.M.P.Velusamy, the then CGM, BSNL, Chennai Telephones to his chamber. He handed over a letter received from the

Hon'ble MP Sh.Dayanidhi Maran dated 04.05.2009 and requested for reply immediately. I have prepared a draft mentioning the two numbers i.e 24371515 and 24371616 which were provided under my knowledge and submitted for his perusal. However, the CGM insisted that only one number i.e 24371500 should be mentioned in the reply. He went out from his office and after sometimes called me from somewhere and asked me to open his e-mail box. He then provided me his password and user ID and told that a draft reply has been sent and further directed me to take a printout of the reply. Accordingly I opened his mail box and downloaded a draft reply which was found in the inbox as per his instructions. In the said draft, I found that only one telephone No.24371500-ISDN PRA was mentioned. I also forwarded the said e-mail to my e-mail ID i.e lochiny@hotmail.com and meenalochiny@yahoo.com. A copy of this was also provided to Sh.Satyamoorthy, Inspector, CBI, ACB, Chennai during the pendency of enquiry conducted by him. The said reply was put up to Sh.Velusamy on his arrival at office on the same day i.e 11.05.2009. Sh.Velusamy instructed me to prepare a fair copy on my own letter head and sign it antedated i.e 06.05.2009 and hand over to him. Accordingly, I prepare an antedated fair reply showing the date 06.05.2009 signed the same and handed over it to Sh.Velusamy at about 05.30 p.m on 11.05.2009 in his chamber. Sh.Velusamy immediately faxed the reply to some unknown number.

In support of my claim, today I have shown to you a draft reply bearing No.AGM(PG) MP CORR/14th LS/2009-2010 dated 11th May 2009 at Fax Log for CGM telephone No.26414600 dated 12.05.2009 for the period from 07.05.2009 to 11.05.2009 and handed over the above original documents vide Seizure Memo dated 25.10.2013. Apart from that I have also provided the self attested photocopies of news cutting dated 12.05.2009 published in "Dinakaran" Tamil Newspaper and print out of my email inbox mail forwarding the original mail dated 11.05.2009 along with his attachment's printout."

under: 49. The Statement of Sh.Hansraj Saxena LW.17 reads as

Q.4 Whether these High end telephone connections were used for SUN TV in any manner?

Ans. I don't exactly tell number of lines but it is true and in my knowledge that a number of high end connection including broadband connections were installed at the residence of Sh.Dayanidhi Maran by BSNL., Chennai.

Q.7 Whether any of these mobile SIMs were used by you, other senior functionaries of SUN TV or anybody else in your knowledge?

Ans. To the best of my knowledge a number of mobile SIMs were also obtained from BSNL. One such SIM was provided to me. I do not know exactly number, I will provide the same as early as possible. To the best of my knowledge the BSNL mobiles SIMs were mainly provided to the reporters and the account of which maintained by Kannan, CTO with the assistance of Mr.Jyothiswaran the then Manager (Prog.). To the best of my knowledge, they might have used these SIM cards. Rather I do not remember these numbers now.

under: 50. The Statement of LW.44 S.K.Hariharan reads as

"Today I have been shown the file DEC&A MS/MOC/2005-2006 pertaining to the MOC cases-Mobile services (File No.32). After going through this file minutely I state that at page number 2 there is a letter 08.12.2004 of Shri. K.Chandran, the then DGM B,CC&IT (Billing Customer Care & IT) addressed to the Divisional Engineer IN (Intelligent Network) where in pursuant to a fax received from CGM dated 07.12.2004, he had requested for conversion of 12 prepaid mobile numbers mentioned therein from prepaid to postpaid connections. Based on this letter I had given instructions to the DE, NSS (Network Switching System) for removal of the said numbers from prepaid

category and convert it into post paid vide note on this letter itself. There was a further instruction given to SDE C & A (Commercial & Admin.) vide further note following on this letter wherein it was instructed to create 12 service numbers in the billing system. The numbers mentioned are 9444422728, 9444421515, 9444423535, 9444412345, 9444456789, 9444494444, 9444411111, 9444422222, 9444433333, 9444444444, 9444455555, 9444466666. The said fax dated 07.12.2004 referred in the letter is at page no.1

On being asked about the above numbers being converted to Service category I state that the approval of the competent authority i.e., CGM was obtained after the conversion of the said numbers to post paid and then service Nos. It was put up by me. Shri.Chandran had put a note regarding following three points viz.,

1. For conversion in the service category
2. Nine out of 12 numbers were vanity numbers and Rs.10,000/- was charged for Vanity number charges and waiver of the vanity charges was required to be sanctioned.
3. For issuing the same in the name of the Hon'ble MOC and extending STD and National roaming facility

At page No.5 is my note sent to DE C&A dated 13.12.2004 requesting for creation of the above said 12 postpaid numbers in service category. The approval for the said conversion was accorded by the then CGM Shri Brahmadathan on 30.12.2004. It is placed at page no.6 in the said file. I identify my note and my signatures. I further identify the signatures of Shri Chandran and the signatures of the CGM

On being asked I state that further there is a FAX note dated 24.12.2004 at page No.7 put up by C.S.Palani, the then P.A to MOC to the CGM on 24.12.2004 sent by fax from his camp office where in it requested for blocking/reserving 30 mobile numbers.

The said fax has the approval of CGM. These 30 numbers are different from the 12 numbers mentioned above.

At page no.9 is my letter dated 16.06.2005 where by the list of 9 nos (Viz.9444453737, 9444453738, 9444453786, 9444453335, 9444453883, 9444453999, 9444452555, 9444421011, 9444422021) The letter was sent by FAX on 16.05.2005 to Fax No.28112255. Again at page No.10 is my note Hariharan wherein the mobile No.94444 44444 was converted from service account to private account with ISB and IR facility and the same was issued to Shri Nicholas Paul C/o JJ Marketing, Food and Beverages (P) Ltd., 11/1, Mahalings, Chetti Street, Mahalingapuram, Chennai 34 as per CGM instructions. On being asked about the CGM/DGM instructions I state that there I was given verbal instructions by the DGM who was my immediate supervisory officer in this regard. The said number being a vanity number attracts Rs.10,000/- as vanity charges. It is mentioned therein that the Hon'ble MOC will waiver the collecting of Rs.10,000/- in this respect I had sent a letter dated 18.08.2005 (at Page No.23), addressed to Shri Paul with copy to Shir Gautam, Add. PS to Hon'ble MOS for submission of a filed postpaid connection from with photographs and a letter from the Hon'ble MOS for waiver of the vanity charges and deposit of Rs.7500/- for availing IR (International Roaming) facility. However, no communications was received from Sh.Nicholas Paul to the best of my memory. I also did not raise this issue further as the case was referred from the Minister.

Question: Do you know the rules for providing mobile connections to the MPs and its billing procedure.

Answer: I know the rule. A MP is entitled only for 2 mobile connections and its billing is done through the Liaison Officer Parliament. This Note was placed by me knowing that the act of seeking approval is beyond the rule. However, the CGM had instructed me to put up the Note and accordingly the same was put up.

51. The statement of LW.16 G.Selvam, General Manager (o) Customer Care, BSNL, Chennai holding additional charge of operation in his 161 of Cr.P.C Statement had said that, "after going through the files I state that the following lines were provided at the Gopalapuram Residence of the Hon'ble MOS&IT

S.No.	Phone No.	Category	Date of installation
1.	28122222	PRA	15.10.2004
2.	28119720	BRA	01.05.2005
3.	28119800	BRA	01.06.2005
4.	28119856	BRA	29.12.2004
5.	28119928	BRA	29.12.2004
6.	28119990	BRA	30.04.2006
7.	28119696	BRA	01.06.2004
8.	28119544	BRA	09.11.2004
9.	28112233	BOADBAND	22.03.2005
10.	28112244	-do-	22.03.2006

The above lines consisted of 7 Nos. of ISDN (Integrated Switching Digital Network) and BRA connections (Basic Rate Access), One ISDN PRA (Primary Rate Access) Connection and two DEL connections with Broad Band facility. The above connections were also provided with CLIR (Caller Line Identification Restriction) facility, so that on the receiving side, the originating number would not be known.

I further wish to state that similarly the following lines were provided at the Boat Club Residence of the Hon'ble MOS & IT.

S.No.	Telephone numbers	Type	Period
1.	24372211	ISDN BRA	09.12.2006 to 20.08.2007
2.	24372212	ISDN BRA	-do-
3.	24372213	ISDN BRA	-do-
4.	24372222	DEL Analog	-do-
5.	24372233	DEL Analog	-do-

S.No .	Telephone numbers	Type	Period
6.	24372244	ISDN BRA	-do-
7.	24372245	ISDN BRA	-do-
8.	24372246	ISDN BRA	-do-
9.	24372255	ISDN BRA	-do-
10.	24372256	ISDN BRA	-do-
11.	24372257	ISDN BRA	-do-
12.	24372266	ISDN BRA	-do-
13.	24372267	ISDN BRA	-do-
14.	24372268	ISDN BRA	-do-
15.	24372277	ISDN BRA	-do-
16.	24372278	ISDN BRA	-do-
17.	24372279	ISDN BRA	-do-
18.	24372288	ISDN BRA	-do-
19.	24372289	ISDN BRA	-do-
20.	24372290	ISDN BRA	-do-
21.	24372299	ISDN BRA	-do-
22.	24372300	ISDN BRA	-do-
23.	24372301	ISDN BRA	-do-
24.	24371500	ISDN PRA (from 24371500 to 24371799-300 lines)	-do-

Besides, these high end connections, 04 leased lines circuits and 19 post paid mobiles were also provided to Sh.Dayanidhi Maran. All these facilities were provided under service category and no bills were raised."

52. He has identified his notings in DW.26 and circumstances under which the said communication providing ISDN/PRA facility to the resident of A3 at Boat Club Road, Chennai was given.

53. Reasons to hold the reasoning of the trial Court is bad:

Error, illegality and perversity all could be pointed out in the impugned order of the trial Court. To start with,

the trial Court has concluded that the whole crux of the charge sheet is that A3 [Dayanidhi Maran] entered into criminal conspiracy with A1 [K.B.Brahamdathan] and A2 [M.P.Velusamy] and obtained one phone connection with malafide intention to use for SUN TV, it is the view of the Court that, without adding SUN TV as a accused the ultimate beneficiary, the prosecution against A3 [Dayanidhi Maran] also becomes unsustainable.

54. First of all, the crux of the prosecution case as recorded by the trial Court is factually wrong. It is not one phone connection malafidely used by SUN TV. The case of the prosecution is that in violation of Rules/Regulation/Guidelines as seen from the Salary allowance and pension of the Member of Parliament Act, 1954 and the rules made there under several phone connections and add on benefits were given to A-3 and A-7 business establishment illegally.

55. The combine reading of The Salaries and Allowances of Ministers Act, 1952, The Salaries, Allowances and Pension of Members of Parliament Act, 1954 (The Act 30 of 1954) and the Rules framed thereunder would clearly indicate that The Salaries and Allowances of Ministers Act which came into force in the year 1952 was followed by the Salaries, Allowances and Pension of Members of Parliament Act, 1954 and came into force on the first day of June 1954. After enactment of the Act, 1954, the Parliament has thought fit that certain allowances and privileges, which are not mentioned in the Salaries and Allowances of Ministers Act, 1952 shall be referred to the later Act namely, The Salaries, Allowances and Pension of Members of Parliament Act, 1954 (The Act 30 of 1954). Therefore, Section 3 (1) and 3(2) of The Salaries and Allowances of Ministers Act, 1952 had been inserted with the following effect:

"3(1) Each Minister shall be entitled to receive a salary per mensem, and an allowance for each day during the whole of his term as such Minister at the same rates as are specified in Section 3 of the Salaries, Allowances and Pension of Members of Parliament Act, 1954 with respect to Members of Parliament with respect to Members of Parliament.

3(2) Each Minister shall be entitled to receive a Constituency Allowance at the same rate as is specified under Section 8 of the said Act with respect to Members of Parliament".

56. The Housing and Telephone Facilities (Members of

Parliament) Rules, 1956, which has been amended time and again would indicate that at the relevant point of time, certain exemptions were given in respect of telephone charges, which would indicate that a Member of Parliament shall have 3 simple telephones and 2 mobile connections under service category one at his office situated at his resident in Delhi or New Delhi, one for his constituency and one for Broadband connectivity and out of two mobile phone one connection with National Roaming facility for utilisation of his Constituency.

57. As far as A3 [Dayanidhi Maran] is concerned, has abused his official position to obtain advantage of having telephone connections over and above he is entitle for. He has conspired with the other accused and had obtained excess telephone lines under Service Category at his residence at Delhi, residence at Gopalapuram and residence at Boat Club, Chennai. While conversion of personal number into service category, the approval of Department of Telecommunication (DoT) is required. The Telephone facilities to the Ministers are restricted by numbers and calls. As far as A3 is concerned, he as a Member of Parliament and Minister for Communication and Information Technology was entitled to have 3 landline and 4 mobile phone only. Whereas, the material placed before the Court indicates that more than 3 pilot lines were provided to A3 on the advice of A1 and A2. The request to provide multiple Telephone connections under Service Category either by virtue of conversion of personal connection into Service Category or New Service Category had been originated from A3 or his Personal Secretary Vedagiri Gowthaman (A4). The mobile SIM cards with fancy numbers were blocked under 'Service Category' and later allotted to individual without collected Vanity number or deposits. The Child numbers 24301515 and 24301516 of the pilot lines 24371500, were later converted into pilot numbers contrary to the procedures. By procuring high end equipments and engaging private operators to lay exclusively lease line to premises of SUN TV, the facility availed from BSNL under the garb of service category had been diverted to SUN TV to exploit commercially. For the said purpose, A5, A6 and A7 had joined with A3 along with A1 and A2, alleged to have entered into conspiracy, to breach trust, fabrication documents, use the forged document as genuine to falsify accounts.

58. The trial Court has held that sanction under Section 197 Cr.P.C is a prerequisite to prosecute A3 [Dayanidhi Maran] which is absent in this case. In this connection, the trial Court Judge has observed that even though the counsel for A-3 not canvassed this issue, in the interest of justice, he decide that A3 [Dayanidhi Maran] was Hon'ble Cabinet Minister for MCIOT during the relevant point, and as per charge sheet averment he has committed offences while discharging official duties, and he could have been removed from the post only by

order of Hon'ble President of India, the sanction under Section 197 of Cr.P.C is mandatory to prosecute him for offences under Section 120 (B) r/w 409, 467, 471, 477 (A) of IPC and hence the prosecution against A3 is not maintainable.

59. This Court is forced to mention at this juncture, no where in the charge sheet (final report) this Court could find that the prosecution has averred that A-3 committed offence while discharging his official duties or any material to infer the offence was committed while discharging official duty.

60. The trial Court, while discharging A5 had considered the statement of LW.60 V.Raghuraman, Commercial Officer, BSNL about installation of ISDN/BRA at Gopalapuram residence and Boat Club residence of A3 and about the telephone No.24301515 which was shifted from No.4, 2nd Avenue, Boat Club Road, Chennai to No.22, Adyar Greater Club Road, Raja Annamalaipuram, Chennai. The trial Court has presumed that, the shifting of telephone was based on the application filed by A5 [K.S.Ravi] on 09.05.2011. Therefore, the crime alleged had taken place much earlier (i.e) between May 2004 to May 2007, therefore the subsequent request by A5 [K.S.Ravi] regarding shifting of Telephone No. 24301515, no way connects A5 [K.S.Ravi] with the alleged crime of conspiracy.

61. In this regard, it is pertinent to mention it is not the statement of LW.60 V.Raghuraman alone has to be looked into, but the statement of S.Subramanian [LW-48] who had stated about the attempt to convert the child line No.24301515 into pilot line and its successful conversion of the same at the intervention of A3 Office.

62. The trial Court has observed that, defence counsel has argued that there was no violation of rule in providing phone connection to A4 [Vedagiri Gowthaman] under service category. Even assuming the said phone connection was provided in violation of rules, it could not attracted criminal liability. At best the BSNL could have been raised bill for payment for used call units. So far in this case, the BSNL not issued any notice, to A4, to pay call charges of Rs.66,506/- for wrongful use of phone under service category. The perusal of witnesses statement and documents reveals that there was no sufficient materials and prima face case not made out against A4 to frame charges. Hence, it is decided, there was no prima facie case against A4 to frame charges under Section 120 B r/w 409, 467, 471 and 477-A of IPC and sections 13(2) r/w 13(1) (c) & (d) of P.C.Act, 1988. The trial Court while holding so had failed to consider the violations alleged are not procedural to take departmental action. When illegal act which attracts penal action is alleged, departmental action can be in addition to

penal action and not a substitute to penal action.

63. As far as A6 (Kannan), who was Chief Technical Officer, SUN TV, the Trial Judge after referring the Statement of LW.3, LW.5, LW.7, LW.9, LW.11, LW.17, LW.36, LW.55 and list of documents D.42, D.43, D.45, D.47 and D.93 would say that LW.5, Shri B.Surya Kumar is the Accounts Officer, Billing, Mobile Service BSNL and he has generally speaking about the non-payment of vanity charges and bills raised for the phone provided to A3 [Dayanidhi Maran] under Service category. He has not specifically stated anything about his accused and his role in the alleged conspiracy.

64. The trial Judge concludes that, in the statement of LW.17 Shri.Hansarj Saxena has stated in his statement that BSNL Mobile SIM provided to this accused. He was not stated anything against this accused. Even though LW.17 stated one SIM card was used by this accused, the prosecution has not placed any material about the particular SIM card number allegedly used by this accused. The prosecution not taken effort to conduct demonstration with the Assistance of technical experts and explained the equipment purchased from Alcatel Lucent Company was used to connect the ISDN/BRA line through EPABX equipment. Except the supply order placed to ABS India Ltd., no other document was produced to connect this accused also part of the conspiracy with A1 to A3. Therefore, it is decided there was no prima facie case to frame the charge against A6 under Section 120 (b), 409, 467, 471, 477-A of IPC and section 13(2) r/w 13(1) (c) & (d) of P.C. Act,1988. It is to be noted that apart from LW.17, there are statements of other witnesses implicating A-6, which has missed the eye of the trial Judge.

65. As far as Kalanidhi Maran [A7] is concerned, the trial Court has gone on the footing that A7 has roped in the prosecution, in his capacity as Chairman-cum-Managing Director, SUN TV. Holding him vicariously liable for offence committed by SUN TV Company without prosecuting SUN TV is bad. Admittedly, in this case, presently "SUN TV" is not a accused. The prosecution case is also not that at the request of SUN TV or its representation, illegal connections were given. The alleged offence is not by the Company. Close reading of the final report [along with the statements], it is very clear that the prosecution against A7 is because the material collected during investigation indicates he had conspired along with other accused, particularly his brother A-3 and his Private Secretary [A-4] to divert the telephone facilities given under service category by installing equipments procured from ABS India (P) Ltd. This facility is utilised by SUN TV in which A-7 is Chairman-cum-Managing Director.

66. If the material placed before the Court are proved, all the accused shown in the final report will be held guilty

and be punished for the offences mentioned in the final report. The trial Court had extracted very few portions of the statements and documents selectively and had arbitrarily arrived at a conclusion that the violations pointed out are only matter for departmental enquiry and rest of the materials does not disclose any criminality against the accused persons.

67. It is also very saddening to note that the trial Court even without canvassing, the trial Court has discharged A3 on the ground that, the prosecution agency has not obtained sanction under Section 197 Cr.P.C to prosecute A3 [Dayanidhi Maran].

68. The provisions under Section 197 of Cr.P.C is to protect public servants from criminal prosecution for any act done by them in discharge of his Official duty which may otherwise attract criminal prosecution. This protection is not an omnibus protection but should satisfy two conditions. The first and prime most condition is that, the said public servant must be of the rank not removal from office saved by or with the sanction of the Government. The 2nd condition is that the Act perpetrated to have been done should be in discharge of his official duty.

69. A1 [K.B.Brahamdathan], A2 [M.P.Velusamy] and A4 [Vedagiri Gowthaman] were public servants but none of them are public servants removal from office by or with the sanction of the Government. Further, the allegation against them is nothing to do with the discharge of their official duty. A1 [K.B.Brahamdathan] and A2 [M.P.Velusamy] are Chief General Manager of BSNL are not suppose to give telephone connections to A3 [Dayanidhi Maran] more than the entitlement of the Member of Parliament under Service Category. Further, the facilities for the Service Category does not included ISDN, Broadband, lease line connection and Video conference facilities.

70. Permitting A3 [Dayanidhi Maran] to have more than 3 landlines under Service Category and reserving 10 mobile SIM numbers with fancy number for the use of SUN TV without collecting fancy number charge and allotting the same under Service Category is nothing to do with the public duty on the part of A1 [K.B.Brahamdathan] and A2 [M.P.Velusamy] or on the part of A3 [Dayanidhi Maran]. While so, Section 197 of Cr.P.C has no application in the present case. In respect of the including A3 [Dayanidhi Maran] he was not in the office while taking cognizance of the offence and the specific charge against him is for abuse of his official position conspiring with other

accused and making pecuniary advantage of availing free Telephone connections and mobile facility which attracts penal provisions of Prevention of Corruption Act, 1988, also.

71. The submission of the learned counsel appearing for the appellant is that A5 to A7 are held vicariously liable for the alleged offence committed by the SUN TV has no force. It is not the case of the prosecution that SUN TV committed offence where A5, A6 and A7 are its representatives. It is their overtact, which has been spoken by the prosecution witnesses and documents indicating they have enriched themselves through the crime they conspired has made them to face trial. The non examination of certain witnesses pointed out by the trial Court and not arraying SUN TV as one of the accused is not at all a ground to discharge the accused, since even if there are some omissions, law takes care of it under Section 311 and 319 Cr.P.C which gives power to the Court to cure such omission in order to meet the ends of justice.

72. Here the prosecution case is that Kalanidhi Maran [A7] through his brother A-3 and Vedagiri Gowthaman [A4], P.S to A-3 directed A-1 and A-2, to provide SIM Cards and landline connections to the persons connected with SUN TV. The evidence of LW.3 (A.Prabhakar), LW.6 (P.Balachandar), LW.55 (Upender Bhatnagar) coupled with the document Nos.93, 94, 95 and 96 would go to show that by availing the landlines and broadband facility under Service Category, and through the equipments purchased from ABS India Private Limited, the facility has been diverted to the SUN TV Network.

73. The statement of LW.17 (Sh.Hansraj Saxena), the former Chief Operator Officer of 'SUN Picture' would indicate that number of IP connections including broadband connections were installed at the residence of A-3 [Dayanidhi Maran].

74. The statements of Hansraj (LW.17) reveals that Kannan [A6], Vice President, Technical SUN group used to coordinate the facilities for uplinking programmes of SUN TV. He was assisted by Gowtham, Palani, Anand to coordinate the activities of SUN group. Whether high end telephone connections were used for SUN TV and how these lines were used for benefit of SUN TV are the queries which form part of question No.4 and 5 in his statement recorded on 09.06.2014. The listed witness PW.17 had said that, "to the best of my knowledge, some connections were initially used for SUN TV programmes i.e. Pepsi Ungal Choice, Mirinda Comedy Time, Talk to your popular artist and certain contest based programmes. All

these were based on dialin facilities. The SUN TV used to get huge revenue from advertisements during the said programmes, while their expenditure was very minimum in comparison to incurred by them. These lines could have also been used by Maran's brother for interacting each other and other senior functionaries of SUN Groups including myself. In fact, both the Maran brothers were used the impression that Sh.Karunanidhi, the CM of the State of Tamil Nadu, was getting their phone tapped due to fallout between the family and to avoid this they installed some specific instrument (perhaps Erieson made) at their residences and the residence of Senior functionaries of SUN Group including myself. The cables were also laid specifically for this purpose. All these cables were fiber cables and laid overhead/underground. The overhead cables were camouflage with the local cables run by SCV network owned by SUN Group. This work was executed by Sh.S.Kannan and one person name Ravi, who was an electrician in SUN Group. After putting these lines anybody could talk directly with each other like an intercom connection."

75. Without considering the other corroborate materials placed by the prosecution which lends support to the statement of LW.17. Just taking note of the subsequent animosity developed between Maran brothers and this witness, the trial Court has disbelieved the statement of LW.17.

76. LW.60 Shri.V.Raghuraman, who was Commercial Officer, BSNL, Chennai in his 161 Cr.P.C statement, he had spoken about the installation of ISDN/BRA line at Gopalapuram residence and Boat Club residence of A3 and further stated about the telephone number 24301515 was shifted from No.4, 2nd Avenue Raja Chennai, to the House No.22, Adayar Gater Club Road, Raja Annamalaipuram, Chennai and this application was filed by A5 on 09.05.2011. As per the charge sheet the alleged occurrence took place from May 2004 to May 2007. But the alleged letter was given by A5 after occurrence period i.e., on 09.05.2011, and hence that letter no way useful to A5 to escape from the allegation of criminal conspiracy and misappropriation of public fund.

77. For the submission of the prosecution that the trial Court has extracting a paragraph as if one Srinivasan LW.60 has said something which does not form find in any of the witnesses statement recorded under Section 161 Cr.P.C, the learned Senior Counsel Mr.Masilamani appearing for one of the respondents counter it by referring document No.35, the file which contains a statement of one P.V.Srinivasan where the paragraph mentioned in the judgment of the trial Court is found.

This statement is not part of 161 Cr.P.C statement recorded by the police. It is a statement recorded by the Vigilance Office of BSNL and form part of documents relied by the prosecution and copy also furnished to the accused under Section 207 Cr.P.C. Therefore, nothing wrong in relying upon this document by the trial Court while deciding the discharge petition, but the perversity in the judgment of the trial Court is that while relying upon this statement he has not considered the earlier portion of the statement given by P.V.Srinivasan to the JTO Vigilance during the Vigilance enquiry on 14.03.2011. He has taken out this paragraph and had read in isolation without appreciating other portion of the statement. Though prosecution has not examined any person by name P.V.Srinivasan or listed him as witness for prosecution, the statement of Mr.P.V.Srinivasan form part of the file LD.35 relied by the prosecution and the passage found in the judgment paragraph 58 is found in the said statement.

78. Since, the trial Court has relied upon a small passage from the statement of P.V.Srinivasan given to Vigilance enquiry on 14.03.2011. For proper appreciation of record, the entire statement alleged to have been recorded by JTO Vigilance on 14.03.2011 by P.V.Srinivasan is extracted below:-

" I, P.V.Srinivasan, (HR No.198209077) now working as A.O. CTO Chennai, the then A.O.TR 1 South East, do hereby state the following in response to Vigilance enquiry on 14.03.2011. The present case relates to provision of Telephone lines to Shri.Dayanidhi Maran, Ex.MOC & MP in the level 2437 numbering 10 lines and the period concerned is October 2007 onwards. At the out set, I would write to mention that the present case dates back to October 2007 and hence I could not remember exactly what had happened at that time. All the connected records were not traceable. This was evident when I had searched the records in the presence of JTO Vigilance. Records of all the sections were dumped in the room where the AO TR I (my room) had functioned till my transfer to CTO. The billing for new telephone connections are done at Computer Billing Centre automatically on the basis of the Advice Notes issued by Commercial Officer. The first bill of a customer would come to the notice of A.O.TR after the issued of first bill and if it remains unpaid. In

the present case viz, the telephone connections of Sh.Dayanaidhi Maran, Ex.MOC, the issue of bills came to my notice on receipt of a letter dated 06.08.2007 of AGM/PG, a copy of which faxed to AO TR SE-1 in September 2007. On the instructions of the higher authorities, Manual bills were raised thro. system. This case was discussed at all higher authorities level viz, CAO/TR, DGM/TR. DGM/SE, GM/TR, GM(O) and the file was shown to CGM before the issue of bills. The manual bills were prepared for the period from 09.12.2006 to 31.08.2007.

In this connection, it is stated that the connection was under the category ISDN DEPT up to 31.05.2007. After the issue of bills through speed post, one of the telephone Nos of Ex.MOC was contacted and reminded to clear the outstanding payments. One of the TRIs viz. Shri.Ramalingam or Palani was sent but he was detained at the entrance saying that payment will be made in due course. Some reminders were issued but the files relating to the same are not traceable. Even the file which was found and given to Vigilance now (March 2011) was in a bunch of dumped records [emphasis added]. Records of all the sections were dumped in the room where AO TRI sat during 2007.

As this case dates back to more than 3 ½ years what ever I am stating now is based on my vague remembrance and not exact. At the time of target review, under the instructions of higher authorities, these bills have been cancelled in a routine manner. We were under great pressure of work to perform to achieve target. We have to work very hard at odd hours and that must have caused the mistake. The recovery/realization of payment might have been thought to be remote which could have prompted cancellation. If instructed/required, the bills could be regenerated manually again now and submitted again for making payment."

79. The reading of this statement in entirety it appears, will to enhance the case of the prosecution to the further establish that bills were raised belatedly in respect of

telephone services given to A3 and later BSNL had decided to withdraw the bills since the recovery has been become remote. This statement is recorded during the Vigilance enquiry conducted by BSNL, should be read along with the communications referred by LW.56(Meenalochini) if both put together the criminal conspiracy between A1, A2 and other accused will be established. P.V.Srinivasan is not cited as witness for prosecution. The truncated statement referred by the trial Court is not part of Section 161 Cr.P.C Statement. Anyhow it is part of material relied by the prosecution and reading the text as a whole along with the statement of other witness, it fully incriminates the accused person.

80. The request of the learned counsel for the respondents to furnish all the documents relied by the prosecution and afford opportunity to them to file reply are not consonance with the provisions of Criminal Procedure Code. They all were furnished with the documents relied by the prosecution in the trial Court itself in compliance with under Section 207 Cr.P.C. Based on those records they were able to file discharge petition and also succeed. Now the prosecution has thought that the order of the trial Court discharging all the accused for want of material to charge them is perverse. So they have preferred the above Revision Petitions. Before this Court prosecution had placed the documents which in their point of view sufficient to frame charge. However, this Court has called for records from the trial Court and had verified to satisfy itself whether material available to frame charge. This Court is fully satisfied that heaps and heaps of material are available to frame charge against all the accused. None of the reasons given by the trial Court to discharge them is sustainable under law. The trial Court had treated petitions for discharge as a case for appreciating evidence with the decree of proof beyond reasonable doubt. He had totally forgotten the fact that he should only weigh the probability of the case for framing.

81. The final report concludes the result of investigation as under:

"For the Land line facilities, ISDN-PRA and BRA lines, Broadband connections, MLLN-Leased Circuits, Mobile connections, OFC laid at the residences, Shri Dayanidhi Maran, BSNL, Chennai Telephones, did not raise any bills and Shri Dayanidhi Maran also did not pay any amount during the period from May 2004 to September 2007. The investigation has also indicates that Shri.Dayanidhi Maran was not entitled to avail these facilities free of cost, bills for availing these facilities, as applicable

to the normal customers, including rental, usage charges, tax, etc, were got worked out through the concerned Divisions of BSNL, Chennai/MTNL Delhi and NIC Delhi. The details are as under:-

S.No.	Nature of Facility	Amount	Remarks
1.	ISDN-PRA/BRA Lines and Broadband facilities at No.12, Gopalapuram, Chennai	Rs.6,37,104	Rs.4,48,604/- calculated by AO-TR excluding 2 Broad Bank charges Rs.85,434/- and Rs.103066/- taken from the enquiry report of BSNL Vigilance.
2.	ISDN-PRA/BRA Lines and Broadband facilities at No.3/1, 1 st Avenue Boat Club Road, Alwarpet		
3.	Leased circuits/internet leased lines	Rs.94,89,626/-	Provided by BSNL, Chennai
4.	Post paid mobile connections	Rs.13,81,739/-	As calculated by BSNL, Chennai
5.	OFC laid	Rs.5,18,565/-	As per records of BSNL
6.	Landlines connection to Gowthaman	Rs.66,506/-	As calculated by BSNL Chennai
7.	Video Conferencing System	Rs.17,20,722/-	Obtained from NIC file
8.	ISDN Telephone connection provided by MTNL	Rs.2,46,458/-	Provided by MTNL, New Delhi. Only billing amount of ISDN connection has been taken as the remaining connections were under "Service Category"

S.No.	Nature of Facility	Amount	Remarks
9.	8+7 mbps leased line circuit provided by MTNL	Rs.36,00,000/-	Provided by MTNL, New Delhi.
	Total	Rs.1,78,71,391/-	

82. The statements recorded under Sub Section (3) of Section 161 of the code other documents make out prima facie case that, Shri.Dayanidhi Maran while functioning as a Public Servant in the capacity of Union Minister of Communication and Information Technology from May 2004 to May 2007 entered into criminal conspiracy with Shri.K.B.Bramdatham and M.P.Velusamy both the then CGM, Chennai and obtained 764 telephone numbers at his Chennai and Delhi residences under service category without his entitlement and by violating all said down procedures and norms and thereby caused an undue loss to the tune of Rs.1,78,71,391/- to Government Exchequer and undue gain to Sh.Kalanidhi Maran, (owner of M/s SUN TV), Sh.Vedagiri Gowthaman. Sh.K.S.Ravi and Sh.S.Kannan were also part of the criminal conspiracy and had played crucial roles in obtaining and maintaining these illegal telephone connections Sh.M.P.Velusamy in furtherance of the criminal conspiracy, also generated anti dated a false reply to help Sh.Dayanidhi Maran to falsify that no dues recoverable from him towards telephone charges.

83. This conclusion is for sure not without basis or groundless, to discharge exercising power under Section 239 Cr.P.C. Contrarily, the statements and documents extracted above are adequate to form opinion and sufficient to presume that the accused have committed the offences charged.

84. As closing remarks of their submissions, one of the Senior Counsel said that the man who had brought the Broad Band facility to every corner of the Country is now haunted by C.B.I for political reasons.

85. For sake of rhetoric one may make such submissions, but the records before us speaks otherwise. A-3 [Dayanidhi Maran] by virtue of the office, might have been instrumental for popularising broad band facility. It does not mean that he can claim privilege of unlimited usage of that facility for him, for

his brother and his business establishment free of costs. In a democratic country, an elected representative can never think like that. Nor the judicial system tolerate and entertain such thought.

86. Yet another Senior counsel submitted that while the Defence Minister is permitted to enjoy exclusive Air Force Aircraft for her journey and Railway Minister exclusive Saloon for his travel in the train, why not the Minister for Telecommunication have exclusive exchange. To this argument the logical answer could be, "Yes, If law permits." The corollary will be, if law does not permit, they are liable for prosecution. It is amply shown in this case that law does not permit to have the facilities enjoyed by the accused under service category, hence they are liable for prosecution.

87. Before concluding, this Court is tempted to quote again the Amith Kapoor case where the learned Judge have said,

"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."

" The legality, propriety or correctness of an order passed by a court is the very foundation of exercise of jurisdiction under Section 397 but ultimately it also requires justice to be done."

88. Considering the police report and the documents, only opinion any judicial mind could form is that, there are grounds to presume all the 7 accused have committed offence and not otherwise.

89. In the result, the Criminal Revision Petition Nos:671, 682 to 684 of 2018 are allowed, the trial Court is directed to frame charge and complete the trial within a period of 12 months. Registry is directed to send back the records to the trial Court forthwith.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Deputy Superintendent of Police,
CBI, STF,
NEW Delhi.
2. The learned XIV Additional Special Judge [C.B.I], Chennai.
3. The Special Public Prosecutor, [C.B.I]
High Court, Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.K.Srinivasan, Advocate sr.no.49689(Spl PP for CBI)
+4cc to Mr.J.Ravindran, Advocate sr.no.49761 to 49764
+4cc to Mr.A.Selvendran, Advocate sr.no.49765 to 49768
+4cc to M/s.M.Sneha, Advocate sr.no.49757 to 49760
+4cc to Mr.D.Ravichander, Advocate sr.no.49753 to 49756

Criminal Revision Petition Nos.671, 682 to 684 of 2018

rji(co)
nr 06/08/2018