IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 18.12.2017	Date of Pronouncing Judgment 02.01.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Criminal Original Petition No.25124 of 2017

1.M.Sankareswaran
2.S.Sundar
...Petitioners
versus
State by Inspector of Police,
Vigilance and Anti-Corruption,
City - II Detachment,
Chennai - 600 035.
...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for records in Special Case No.3 of 2014 and quash the final report dated 03.06.2014 on the file of the Chief Judicial Magistrate Cum Special Judge, Chengalpattu.

For Petitioners: Mr.V.Karthick Senior Counsel
for M/s.T.S.Gopalan and Co.,

For Respondent : Mr.P.Govindarajan,
Additional Public Prosecutor

O R D E R

The Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in Special C.C.No.3 of 2014 and quash the final report dated 03.06.2014 on the file of Chief Judicial Magistrate cum Special Judge, Chengalpattu.

2. The averments made in the petition is extracted below for better appreciation of case.

2.1) The first petitioner was working as Assistant Director in the Town and Country Planning Department in Chengalpattu Region in the year 2008. Subsequently, he was made as Regional Deputy Director (I/C) in the year 2009. The second petitioner was working as Supervisor in Thiruvallur area, Chengalpattu Region and was posted as Additional Charge to Maraimalai Nagar area in the same region on 30.06.2009. Both the Petitioners have been arrayed as Accused in Crime No.04-AC/2011/CC-II, for offences under Section 120B and 420 IPC and Section 13(2) read with Section 13(1)(d) of PC Act 1988. The Respondent has filed a final report before Chief Judicial Magistrate cum Special Judge, Chengalpattu in Special C.C.No.3 of 2014. The charges have been framed and the trial is yet to commence in the said proceedings. The present Criminal Original Petition is filed to quash the

final report filed before the Chief Judicial Magistrate cum Special Judge, Chengalpattu in Special Case No.3 of 2014.

2.2) The Respondent has registered a complaint against the petitioners and one Mr.P.Suresh, Managing Director, M/s.ArunExcello Infrastructure Private Limited and Mr.P.Karthikeyan, Director, M/s.ArunExcello Infrastructure Private Limited alleging that in respect of fixation of infrastructure and amenity charges pertaining to the multi-storied buildings proposed to be constructed by M/s.ArunExcello Infrastructure Private Limited in Maraimalai Nagar Municipality, the petitioners along with the said persons conspired and did not pursue the demand raised in terms of G.O.(MS).No.191 dated 01.06.2007 by fixing the infrastructure and amenity charges at the rate of Rs.1000 per Sq.mt. Instead kept the demand pending for a period of 10 months and raised a fresh demand in terms of subsequent G.O.(MS).No.161 dated 09.09.2009, reducing the infrastructure and amenity charges at the rate of Rs.250/- per sq.mt. The crux of the allegation is that the petitioner in order to ensure M/s.ArunExcello Infrastructure Private Limited derives the benefit from the subsequent G.O.(MS).No.161 dated 09.09.2009 reduced the infrastructure rate and thus caused revenue loss to the Government to the tune of Rs.8,68,41,250/- which was gain to the said M/s.ArunExcello Infrastructure Private Limited.

2.3) In terms of Section 63(b) of the Town and Country Planning Act, inserted by way of Act 34 of 2007 with effect from 01.06.2007, every local authority or Planning Authority while granting building permit (or) planning permission, shall levy charges on the institution of use or change of use of land or building or development of any land or building in the whole area or any part of the planning area in order to meet the impact of the development and for ensuring sustainable development of urban and rural areas at different rates prescribed for different area by following procedures by providing adequate infrastructure and amenities. The Authorities shall levy infrastructure and amenities on any person who undertakes or carries out any such development or institutes any use or changes any such use. In so far as the

Chengalpattu region is concerned, the Director of Town and Country Planning area is vested with the authority to levy infrastructure and amenity charges while according planning permission. In terms of the aforesaid provision the Government of Tamil nadu vide G.O.(MS).No.191 dated 01.06.2007 instructed the Director of Town and Country Planning to collect infrastructure and basic amenity charges for multi-storey building at the rate of not exceeding Rs.1000/- per sq.mt. By way of the said G.O the Director of Town and Country Planning was empowered to fix different rates for different places after taking into account the various aspects of development including the infrastructure needs. Subsequently, by Proceedings dated 01.06.2007, the Director of Town and Country Planning fixed a sum of Rs.1000/- per sq.mt for multi-storey building governing Chengalpattu region as infrastructure and basic amenities charges.

2.4) Pursuant to the aforesaid proceedings the private builders challenged the said proceedings before this Hon'ble Court on the ground that the levy of Infrastructure and Amenity Charges is without any basis as there was no notification by the Government of Tamil Nadu. Only thereafter Section 63(b) was notified in the Town and Country Planning Act on 18.10.2007 with retrospective effect from 01.06.2007. Subsequently, vide G.O.(MS).No.22 dated 25.01.2008, the Infrastructure and Amenity Charges in respect of different categories of buildings was notified in the Government Gazette. In terms of Rule 2(b) and Rule 7, the Planning Authority or Local Authority is empowered to determine whether or not and if so the infrastructure and amenity charges leviable in respect of multi-storied building or commercial building.

2.5) On 01.12.2008 in terms of G.O.(MS).No.22 and 84 a sum of Rs.1000/- was sought to be collected in respect of various Survey numbers pertaining to M/s.ArunExcello to the extent of 3,01,650 sq.mt in Potheri and Vallanjeri Village, Maraimalai Nagar Municipality. In the meantime, the sum of Rs.1000/- fixed as Infrastructure and Amenity charges were challenged before this Hon'ble Court by an Association of Builders namely CREDAI questioning the rate of levy fixed by then Government in addition to various other charges levied for the buildings. On 25.02.2009, the said M/s.ArunExcello Infrastructure Private Limited gave a representation to the Commissioner, DTCP seeking to exclude 1,83,720 sq.mt for which by proceedings dated 29.03.2007 planning permit was accorded to the above said extent of land. Hence, M/s.ArunExcello Infrastructure Private Limited requested to revise the Infrastructure and Amenity Charges after excluding the extent of 1,83,720 sq.mt. On 26.03.2009, the Commissioner, Town and Country Planning, accorded approval to exclude the floor area to the extent of 1,83,720 sq.mt which was granted planning approval even prior to 31.05.2007, before introduction of Infrastructure and Amenity Charges.

2.6) In respect of the demand raised against M/s.ArunExcello Infrastructure Private Limited on 01.12.2008, the then Regional Director - Incharge sent a reminder informing M/s.ArunExcello Infrastructure Private Limited to comply with the two special conditions contemplated in terms of DTCP technical clearance proceedings wherein one of the conditions was to obtain the opinion of Government Pleader in respect of the title and only thereafter planning permission could be accorded and only subsequent thereto the infrastructure and amenity charges could be collected by the Department. On 10.06.2009 in W.P.No.2683 of 2009 filed by Association of Builders namely CREDAI, challenging G.O.No.22 & 84, this Hon'ble Court was pleased to grant Interim Stay of the Collection of I & A charges levied in terms of GO.Ms.No.22 and 84. The said order was communicated by the Director of Town and Country Planning, Chennai on 22.06.2009. In the meantime as the stay was in force, the demand raised against the said M/s.ArunExcello Infrastructure Private Limited could not be pressed into service. In fact, during the said period various Builders Association also requested the Government to reduce the Infrastructure and Amenity Charges on account of slump in the real estate market and also that they faced severe financial crunch. Accordingly, on 09.09.2009 vide G.O.Ms.No.161, the Housing and Urban Development Department reduced the Infrastructure and Amenity charges to the tune of Rs.250 per sq.mt from Rs.1000/- per sq.mt.

2.7) On 16.09.2009, the DTCP Office, Chennai vide circular communicated the same to the Chengalpattu region and was asked to collect infrastructure charges on the revised rate. On 25.10.2009, the then Regional Director -incharge sent another reminder to M/s.ArunExcello Infrastructure Private Limited to comply with the special conditions in terms of Proceedings dated 18.11.2008. Only on 18.01.2010 M/s.ArunExcello Infrastructure Private Limited obtained Government Pleader opinion and submitted the same to the petitioners. Thereafter on 22.01.2010, the first petitioner raised a fresh demand in terms of G.O.Ms.No.161 dated 09.09.2009, as the said G.O superseded the earlier G.O.Ms.No.84. The demand was raised in respect of land area to the extent of 1,83,720 sq.mt. Thereafter the petitioners were transferred to Coimbatore and Villupuram respectively. It would appear that subsequently on 09.02.2011, the then Regional Director raised a fresh demand for the entire rate of Rs.1000/- and demanded a sum of Rs.11,79,30,000/- as per the instructions of DTCP. The said M/s.ArunExcello Infrastructure Private Limited challenged the proceedings before this Hon'ble Court and ultimately the same was set aside by this Hon'ble Court. The Special Leave Petition filed by the Town and Country Planning Department was dismissed and the Hon'ble Supreme Court confirmed that M/s.ArunExcello Infrastructure

Private Limited is liable to pay only Infrastructure and Amenity charges at the rate of Rs.250 per sq.mt.

2.8) On 10.08.2011, the Director of Town and Country Planning gave a complaint before the Respondent alleging that the petitionerss during their tenure in Chengalpattu Region ought to have demanded a sum of Rs.1000/- per sq.mt as Infrastructure and Amenity charges for the property belonging to M/s.ArunExcello Infrastructure Private Limited, that the petitioner demanded Rs.250/- per sq.mt contrary to the instructions of Town and Country Planning Commissioner vide his proceedings dated 18.11.2008 and thus caused a financial loss to the tune of Rs.8,68,41,250/-. Further it was alleged that the action of petitioners was to ensure that M/s.ArunExcello Infrastructure Private Limited derived benefit by causing loss to the exchequer and that the petitioners and the Directors of M/s.ArunExcello Infrastructure Private Limited hatched a conspiracy to cheat the Government. Based on the complaint, the Respondent registered a FIR in Crime No.04-AC/2011/CC-II dated 10.08.2011. Pursuant to the registration of FIR the Respondent filed charge sheet before the Chief Judicial Magistrate-cum-Special Judge, Chengalpattu in Special Case No.3 of 2014 on 03.06.2014.

2.9) The Managing Director and Director of M/s.ArunExcello Infrastructure Private Limited who were arrayed as 3rd and 4th accused filed a discharge application before the Chief Judicial Magistrate-cum-Special Judge, Chengalpattu in Special Case No.3 of 2014. The said application was dismissed and ultimately it was carried to the Supreme Court in Crl.A.Nos.1325 and 1326 of 2017. By order dated 28.07.2017, the Hon'ble Supreme Court held that as the charge sheet against them were laid on the ground that they were required to pay Rs.1000/- per sq.mt and it was ultimately held to be only Rs.250/- per sq.mt and as the foundation of the charge sheet being demolished, they cannot be prosecuted. Accordingly, the Criminal Appeals of both the Accused were allowed. The SLP challenging the order of this Hon'ble Court setting aside the demand in terms of proceedings dated 09.02.2011 and 15.02.2011 were also dismissed and the infrastructure and amenity charges applicable to the said M/s.ArunExcello Infrastructure Private Limited was confirmed at the rate of Rs.250/- per sq.mt which was levied by the petitioner in terms of their demand dated 22.01.2010. The petitioners act of demanding Rs.250/- per sq.mt being upheld by the Supreme Court, no material avail for prosecution to frame charge against these petitioners.

3. The respondent in its counter has stated that,

3.1) Originally Ms.ArunExcello Infrastructure private Limited vide letter dated 08.01.2007 applied to the Director of

Town and Country Planning seeking for Multi Storied Buildings (MSB) declaration for their proposed construction of Information Technology Buildings with 16 floors and a height of 60 mts. M/s.ArunExcello Infrastructure Private Limited had to fulfill 32 conditions specified by the Town and Country planning Department, unless the petitioner completes the said conditions, the Multi Storied Buildings declaration cannot be done.

3.2) Ms.ArunExcello Infrastructure Private Limited having had come to know about the Government initiative to bring levy of Infrastructure and Amenity charges by making necessary amendments to the Town and Country Planning Act and rules and hence withdrawn their request for the multistoried building declaration proposal which was submitted initially on 08.01.2007 and thereafter submitted another application dated 06.03.2007 to Regional Director Chengalpattu Region seeking approval for special buildings consisting of stilt plus 4 floors residential buildings to an extent of 33.92 acres. In the same letter it was made clear by Ms.ArunExcello Infrastructure Private Limited that they are withdrawing the MSB declaration proposal dated 08.01.2007.

3.3) The Regional Director forwarded the same to the Director Town and Country Planning and the proposal was approved vide proceedings ROC.No.5352/07/BA2 dated 26.03.2007 (68 Blocks) (G+3) floor, 1568 dwelling units and FSI area is 1,83,720 sq.mts and vide 237/07/CR7 dated 28.03.2007; the same was approved by the Regional Deputy Director Chengalpattu i/c and the final approval was issued by Executive Officer Maraimalainagar on 29.03.2007. However no construction was put up by Ms.ArunExcello Infrastructure Private Limited based on the above approval.

3.4) At a later period another application dated 24.10.2007 in the name of Ms.ArunExcello Infrastructure Private Limited was again given requesting the Regional Deputy Director Chengalpattu expresing their intention to develop MSB to the height of 60 mts with 20 floors roof slab. It is pertinent to note that in that letter it was made clear that pursuant to the approval in March 2007 no construction was made and the project of special buildings with stilt plus G+3 was abandoned and the authorities were requested to approve once again a MSB declaration which was already applied and cancelled suo moto by the Ms.ArunExcello Infrastructure Private Limited. It is further submitted that the letter dated 24.10.2007 is in its letter and spirit is a fresh application and therefore it is clear that the earlier project was voluntarily abandoned by this fresh application 24.10.2007. So only an application for MSB is alone is pending.

3.5) The approval for the Special building which was granted on 29.03.2007 and the MSB for which fresh application was submitted on 24.10.2007 are two different concepts. Special buildings means a building having more than two floors but not exceeding 4 floors inclusive of ground floor or a building with basement or stilt floor and 4 floors or a residential building having more than 4 dwelling units or a building accommodating commercial or industrial or institutional or combination of such activities with a floor area exceeding 300 square metres and Multistoried building means a building having parking under stilts, then excluding the ground floor. Whose height is 15 metres or more. It is further submitted that the fresh application for MSB covers an area of 3,01,650 sq.mts whereas the already approved Special Building plan covers an area of 1,83,720 sq.mts. Since the MSB and Special Building are two different concepts and Ms.ArunExcello Infrastructure Private Limited have themselves committed in their letter dated 24.10.2007 that they have abandoned the Special Building project.

3.6) It is submitted by the respondent that the petitioners (A1 and A2) have delayed the process of collecting the demanded amount which was raised when the G.O.Ms.84 was in force and prolonged the issue till G.O.Ms.161 came into force and thereby gave the benefit to M/s.ArunExcello Private Limited these aspects have been clearly brought out with connected documents and have been filed in the Trial Court to prosecute the petitioners.

4. Perused the petition and counter. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor.

5. The graveman of the final report against these petitioners, who are public servants and other private individuals is that, the Government had examined the proposal on the fixation of Infrastructure and amenities charges in the context of the rapid developments that are taking place in the State. After detailed discussions on the above proposal, it has been underscored that for ensuring sustainable development leading to the formation of well planned urban areas and growth centers provision of adequate basic amenities like alternative and or additional source for water supply availability of facilities such as broad road connectivity provision of standard infrastructure implementation of schemes for connecting sewerage and drainage to the trunk systems creation of environment friendly atmosphere on long term basis etc., have become essential and it is felt necessary to provide adequate funds by way of establishing an Infrastructure and Amenities Fund with adequate sources of revenue.

6. The Government accordingly in G.O.Ms.No.191 of Housing and Urban development department dated 01.06.2007 has ordered to collect the Infrastructure and basic amenities charges for Commercial & IT Building Multistoried Building Institutions and Industrial use with the rates mentioned below with effect from 01.06.2007.

Infrastructure and Basic Amenities Charges

S.No.	Type of Building	Ceiling of the Rates
1.	Commercial & IT Building	Rs.500/- per sq.m.
2.	Multistoried Building	Rs.1000/- per sq.m.
3.	Institutions	Rs.200/- per sq.m.
4.	Industrial use	Rs.300/- per sq.m.

7. In G.O.Ms.No.22 of Housing and Urban Development Department (UD4-1) dated 25.01.2008 published in the Tamil Nadu Government Gazette No.20 dated 26.01.2008, the Government has fixed the minimum and maximum rates of infrastructure and amenities charges and prescribed the manner of payment which came to effect from 12.11.2007.

8. In G.O.Ms.No.84 Housing and Urban development department (UD4-1) dated 08.04.2008 the Government has defined the percentage of maximum rates for the areas with reference to the Government gazette published in the Tamil Nadu Government Gazette No.20 dated 26.01.2008.

9. In G.O.Ms.No.161 of Housing and Urban Development Department dated (UD4-1) dated 09.09.2009 the Government has revised the rates of infrastructure and amenities charges and mode of payment with reference to the categories of buildings and places.

10. The Regional Deputy Director (I/C) Chengalpattu Letter No.2870/2010/CR2 dated 27.02.2010 Chengalpattu RDD (I/C) has brought the following facts to the notice of the Directorate that M/s.ArunExcello Infrastructure Private Limited has submitted the proposal for approval of construction of Multistoried building for residential project commercial complex and Club House to a height of 60 metres in Vallanchery Village, Chengalpattu Taluk, Kancheepuram District in S.F.Nos.25/2B (part), 25/3, 25/4, 25/6, 26/1B(part) and more and in Potheri Village, Chengalpattu Taluk, Kancheepuram District S.F.Nos.1/1A2 (part), 1/1B(part), 3 part, 154 part thereof to the extent of 41.63 ½ acres vide File No.2552/2007.

11. The DTCP has accepted the proposal vide proceedings Roc.No.5352/07/BA2 dated 26.03.2007 (8 block (G+3) floor, 1568 dwelling units & FSI area is 183720 sq.mt). Then this has been

approved by RDD (I/C) Chengalpattu vide 237/07/CR7 dated 28.03.2007. The Final approval for the site has been issued by Executive Officer, Maraimalainagar Municipality on 29.03.2007 this was done before the implementation of Infrastructure and Amenities Charges by the Government. Again the entire site has been declared as MSB area vide CTCP proceedings Roc.No.9014/08/CP (Special cell) dated 16.07.2008 and it was also published in the Official Gazette dated 30.07.2008 this was done after the implementation of Infrastructure and Amenities Charges by the Government. Then the MSB Building approval for that area has been issued vide CTCP proceedings Roc.No.19432/08/CP (Special Cell) dated 18.11.2008 (1903 dwelling units & FSI area is 301650 sq.mt). In this proceedings RDD (I/C) Chengalpattu was instructed to collect the infrastructure and amenities charges with reference to the Government Order Ms.No.22 of Housing and Urban Development Department (UD4-1) dated 25.01.2008 and G.O.Ms.No.84 of Housing and Urban Development Department (UD4-1) dated 08.04.2008 before issuing the planning permission. In addition to the above two special conditions have been laid down to issue the Planning Permision as given below.

1. To obtain the Legal Opinion from Government Pleader for the numbers S.F.Nos.52, 88(4), 103/3.
2. To get the NOC from concerned department regarding Channel.

12. Since, it was considered as MSB the demand for infrastructure and amenities charges was raised for Rs.30,16,50,000/- (301650 sq.mt @ Rs.1000/- as per the G.O.Ms.No.22 of Housing and Urban Development Department (UD4-1) dated 25.01.2008 vide proceedings 2552/07/CR 7 dated 01.12.2008.

13. In the note file of RDD (I/C) Chengalpattu the CTCP Letter No.3869/09/BA2 dated 26.03.2009 to exclude the floor areas for which approval has been issued by Local Body prior to 31.05.2007 from total area was found.

14. Accordingly, the demand should have been raised for the area 117930 sq.mt @ Rs.1000/- per sq.mt (301650 sq.mt. - 183720 sq.mt.). The applicant also requested for remittance of infrastructure and amenities charges towards that balance area. Contrary to the instruction of CTCP in the proceedings 19432/08/CP (Special Cell) dated 18.11.2008 the demand had been worked at the rate of Rs.500/- sq.mt vide RDD (I/C) proceedings 2552/07/CR 7 dated 22.01.2010 (111805 sq.mt x 250 + 6275 sq.mt (Club House) x 500 = 3,10,88,750/-). It was remitted by the applicant on 25.01.2010.

15. This has caused a financial loss to the tune of Rs.8,68,41,250/- (Rs.11,79,30,000/- - Rs.3,10,88,750/-) (i.e., exclude the previous approval area of 183720 sq.mt from total area of 301650 sq.mt the demand for infrastructure and amenities charges should have been raised for Rs.11,79,30,000/- (117930 sq.mt @ 1000 per sq.mt) to the Government exchequer.

16. A1 and A2 being Government servants had issued a notice dated 01.12.2008 to A3 and A4 instructing to pay an amount of Rs.15,08,25,000/- as infrastructure and amenities Charges at the rate of Rs.1000/- per sq.mt this notice was given a gobye by A1 and A2 while issuing a fresh notice dated 22.01.2010 based on G.O.161 where the rates were revised and only an amount of Rs.3,10,88,750/- at the rate of Rs.250/- per sq.mt was raised and this amount was duly remitted by A3 and A4 ignoring the earlier instructions.

17. Therefore, it is alleged in the final report that in pursuance of G.O.No.191 dated 01.06.2007 the builders are required to pay charges as per the provisions of the Government Order which were prevalent when the planning permission was issued. The Planning permission was issued for Ms.ArunExcello Infrastructure Private Limited on 18.11.2008. Hence the G.O.M.S.No.191 issued on 01.06.2007 G.O.Ms.No.22 dated 25.01.2008 and G.O.M.S.No.84 dated 08.04.2008 and the rates prescribed in these G.O's alone are applicable and the builders are not eligible to any benefit of revision of rates on account of the subsequent orders. Knowing fullywell that the G.O issued subsequently i.e., G.O.Ms.No.161 dated 09.09.2009 is not applicable but in order to obtain wrongful gain and in order to help A3 and A4 the accused A1 and A2 with criminal intention to obtain wrongful gain and caused wrongful loss to the Government to the tune of Rs.8.68 Crores had delayed the process and thereby committed offence of Criminal misconduct.

18. While the allegation against the petitioners in the final report is as above, the Hon'ble Supreme Court considering the quash petition
of the Co-accused, in Crl.A.Nos.1325 and 1326 of 2017 dated 28.07.2017, has held as under.

“i) The First Information Report (FIR) under Sections 420 and 120B of the Indian Penal Code, 1860 (IPC) is registered against the appellants herein for causing wrongful loss to the Government. The allegations in the charge sheet are that the appellants in conspiracy with petitioner nos.1 and 2 in SLP(C) No.26254/2015, anticipating some reductions in Infrastructural and Amenities Charges without paying the amount to the Government; petitioner Nos.1 and 2 in SLP(C)No.26254/2015 being Government Servants abused their official position and helped the appellants to get the benefit of G.O.Ms.161 dated 09.09.2009 as per which the charges were reduced from Rs.1000/- per square meter to Rs.250/- per square meter. The trial Court framed the charges against the appellants. The appellants filed discharge application which was dismissed. Being aggrieved, the appellants filed two Criminal Revisions against the order of the Trial Court, which have been dismissed by the High Court vide impugned Judgment and challenging the order of the High Court these proceedings are filed.

ii) It may be recorded at this stage that the question as to whether the charges were payable by the appellants @ Rs.250/- per square meter or Rs.1000/- per square meter was the subject matter of SLP(C)No.26254 of 2015 which is also listed along with these appeals. In that case, the demand of the State Government calling upon the appellants to pay the charges @ Rs.1000/- was challenged by the appellants in the High Court and the High Court allowed the writ petition. Intra Court appeal preferred by the State Government was also dismissed. SLP(C)No.26254 of 2015 has been filed against the said Judgment of the High Court. By a separate order, the said petition stands dismissed. The effect thereof is that the appellants were required to pay Rs.250/- per square meter only and having held so, the very basis and foundation of the charge sheet in the present case is demolished and they cannot be prosecuted.

iii) In these circumstances, these appeals are allowed and the appellants are discharged in the FIR No.04/AC/2011/CC-II."

19. While, challenging the demand of Rs.1000/- per sq.mt as Infrastructure and amenties charges by the Housing and Urban Development Department, the Apex Court has held that the 3rd and 4th Accused (Promoters) in this case are liable to pay only Rs.250/- per sq.mt and not Rs.1000/- and disposed the connected SLP(C)No.26254 of 2015. Thus, the very fundamental requirement to prosecute the petitioners is lost. The Apex Court had specifically held that the promoter is liable to pay only Rs.250/- per sq.mt. While so, no culpability can be attributed to these petitioners for not collecting Rs.1000/- sq.mt. More so, when the record show that A1 pursuant to G.O.84 had issued demand notice seeking amenities charges at the rate of Rs.1000/- vide his notice dated 01.12.2008, but due to the order passed by the Commissioner, Town and Country Planning on 26.03.2009 and subsequent to the issuance of G.O.161 dated 09.09.2009, the petitioners were not able to collect Rs.1000/- sq.mt as per G.O.M.S.No.84. (Housing and Urban Development Department)

20. Therefore, it is very clear that there was neither deriliction of duty or any criminal intention on the part of the petitioners herein for not collecting Rs.1000 per sq.mt from the promoters. It is due to the administrative delay, they could not enforce the earlier notice dated 01.12.2008 issued pursuant to G.O.(MS).No.84. This cannot be construed as conspiracy to

enable the builder to avail the benefit in anticipation of G.O. (MS).No.161 dated 09.09.2009. The Hon'ble Supreme Court after taking note of all these facts has quashed the criminal case against the other accused. The said reasoning squarely applies to these petitioners also. Hence, following the dictum of the Supreme Court in Crl.A.Nos.1325, 1326 of 2017 dated 28.07.2017, the petition under consideration is allowed.

21. In the result, this Criminal Original Petition is allowed. The Special C.C.No.3 of 2014 pending on the file of the Chief Judicial Magistrate cum Special Judge, Chengalpattu is hereby quashed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To
1.The Inspector of Police,
Vigilance and Anti-Corruption,
City - II Detachment,
Chennai - 600 035.

2.The Chief Judicial Magistrate Cum Special Judge, Chengalpattu.

3.The Additional Public Prosecutor,
High Court, Madras.

+2 Ccs to Mr.T.S. Gopalan & Co, Advocate sr 59,726.

Crl.O.P No: 25124 of 2017

SP(05/01/2018)