IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.01.2017

DELIVERED ON : 15.11.2018

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Revision Case Nos.793 of 2014 and 1278 of 2016

Criminal Revision Case No.793 of 2014:-

Chandramurthy ..Petitioner/Accused No.4

Vs.

State Rep by Inspector of Police,
CBI/ACB Chennai
RC.MA1/2004A/0010/CBI/ACB/CHENNAI
… Respondent/Complainant

Criminal Revision Petition No.1278 of 2016:-
State
Rep. By Deputy Superintendent of Police
CBI/ACB,
Chennai ..Petitioner/Complainant

Vs

T.N.R.Gopal ..Respondent/Accused No.2

PRAYER in Crl.R.C.793 of 2014 : Criminal Revision filed by the 4th accused against the order passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, dated 11.06.2014 in Crl.M.P.No.93 of 20-11 in C.C.No.3219 of 2010.

PRAYER in Crl.R.C.1278 of 2016:- Criminal Revision filed by the complainant against the order passed by the Additional Chief Metropolitan Magistrate, Egmore, Chennai, dated 23.04.2014 in Crl.M.P.No.1432 of 2010 in C.C.No.3219 of 2010.

For Petitioner
in Crl.R.C.No.793 of 2014 : Mr.K.S.Dhinakaran,
for Mr.S.Kartthikeyan
Senior Counsel

For Respondent
in Crl.R.C.No.1278 of 2016: Mr.N.R.Elango,
Senior Counsel
for Mr.R.Priyakumar

For Respondent
in Crl.R.C.No.793 of 2014
and Petitioner
in Crl.R.C.No.1278 of 2016 ::Mr.K.Srinivasan
Public Prosecutor for CBI Cases.

COMMON ORDER

1.Facts of the Case:-

Originally First Information Report was registered against accused Mrs.Kalpagam Bhaskaran, Commissioner and No.1 appropriate Authority Income Tax Department, Chennai (A1), Dev Verman, Commissioner and Formerly member-2, appropriate authority Income Tax Department, Chennai(A2), S.K.Dhawan, formerly Chief Engineer and Member-3, appropriate authority Income Tax Department, Chennai (A3), Kanagaraj Mudaliar (A4), T.N.R.Gopal (A5) for the offences under Section 120(B) r/w 420, 467, 478, 471 of IPC, Sec 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988. On completion of the investigation, a charge sheet was filed before the Principal Special Judge for CBI Cases, Chennai, against the above said A1 to A5 and also against K.E.Varadharajan (A6), Chandramurthy (A7), S.R.Rajendran (A8) and P.V.Krishnan (A9) alleging that during 2002 A1 to A3 entered into a criminal conspiracy with A4 to A9 to cheat the Government of India and in pursuance of said criminal conspiracy, the public servant A1 to A3 abused their official position by corrupt or illegal means fradulently and dishonestly issued a pre empty purchase order dated 27.06.2002 for making a pre emptive purchase of 1.3 Acres of land in s.No.557/1(part), 557/2(part) at Mogapair Village for a consideration of Rs.3,24,51,432/- without making verification about the validity of the titles and genuineness of the documents and knowing very well that the Tamil Nadu Housing Board has acquired the said property in 1984 and in pursuance of the criminal conspiracy A6 who was then Thasildar Land Acquisition, Tamil Nadu Housing Board, removed (stolen) the sale deeds pertaining to the said property from the office of the Tamil Nadu Housing Board and A4 who has been fraudulently shown as the power of attorney of Smt. GangaBai, the purported seller submitted the same to the Income Tax Department. Further it is alleged that A9 was shown as the buyer to make it appear as a genuine transaction and A5 represented both A4 and A5 an advocate by professions and a practicing lawyer before the Income Tax Department gave a favourable legal opinion on the title of Smt.Ganga Bai, knowing fully well that the same land was acquired by the Tamil Nadu Government in 1984 and that she is no more owner of the said property and A6 to A8 arranged for forged documents like patta, chitta and adangal in respect of the said land which was then submitted to the Income Tax Department by A4 knowing fully well that these documents are forged and based on the pre empt purchase order issued by A1 to A3 a cheque for Rs.2,82,08,497 in the name of Smt.Ganga Bai and another cheque for Rs.5,00,000/- was issued in the name of A9 on 31.07.2002 and a total amount of Rs.2,87,08,497/- was released by the Income Tax Department against the pre empty purchase order issued by A1 to A3 and A4 opened an account in the name of Smt.Ganga Bai at Bharath Overseas Bank, Main Branch, Chennai, on 31.07.2002 and A5 also opened an account in the same bank on the same day and A4 posing as the Power of Attorney of Smt.Ganga Bai operated the account and out of Rs.2,82,08,497/-, a sum of Rs.70,00,000/- was paid to A5 and credited into A5's savings bank account of Bharath Overseas Bank, Main Branch, Chennai, and Rs.10,00,000/- was paid to A7 and Rs.40,00,000/- was paid to A8 and A4 withdraw a sum of Rs.1,00,00,000/- from the account and paid money to A6 and other expenditures and thereby A1 to A9 committed offences punishable under Section 120(B) r/w.467, 468, 471,380 IPC and Section 13(2) r/w.13(10 (d) of Prevention of Corruption Act, 1988.

2. A1 to A3 moved discharge petition before the Principal Special Judge for CBI cases, Chennai, and the said trial court discharged A1 to A3 by the order dated 03.04.2007. The complainant preferred revision before this court against the discharge of A1 and A3 and this court dismissed the revision in Cr.R.C.No.707 of 2007 on 24.03.2010. Consequent to the discharge of A1 to A3, the case was transferred from the Principal Special Judge for CBI Cases, Chennai, to the court of Additional Chief Metropolitan Magistrate, Egmore, Chennai, and cognizance was taken in C.C.No.3219 of 2010 against the remaining accused and the rank of the said numbers of the accused were re-arranged as A4 Kanagaraj Mudaliar as A1, A5 T.N.R.Gopal as A2, A6 K.E.Varadharaj as A3, A7 Chandramurthy as A4, A8 S.R.Rajendran as A5 and A9 P.V.Krishnan as A6.

3.1 A4 Chandramurthy, the Revision Petitioner herein in Crl.R.C.No.793 of 2011 filed Petition u/s.239 of Cr.P.C., in Crl.M.P.No.93 of 2011 in C.C.No.3219 of 2010 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai, to discharge him from the charges and after hearing both sides, the same was dismissed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, by its order dated 11.06.2014. Aggrieved by the above dismissal order, the Petitioner, A4 Chandramurthy preferred the present Criminal Revision Petition No.793 of 2014.

3.2 As well as A2 T.N.R.Gopal, the respondent in Crl.R.C.No.1278 of 2016 filed a petition u/s.239 of Cr.P.C., in Crl.M.P.No.1432 of 2010 in C.C.No.3219 of 2010 on the file of Additional Chief Metropolitan Magistrate, Egmore, Chennai, to discharge him from the charges and after hearing both sides, the same was allowed by the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, by its order dated 23.04.2014. Aggrieved over the above discharge order, the complainant preferred this present Crl.R.C.No.1278 of 2016.

4. The contention of the revision petitioner in Crl.R.C.No.793 of 2014/A-4 in Crl.M.P.No.93 of 2011 before Additional Chief Metropolitan Magistrate is that there is no material to connect A-4 in conspiracy and finding of the Court that the title of the Income Tax Department is legal clearly defy the case of the prosecution: the only material against the accused is that he had received a sum of Rs.10,00,000/- through cheque from Kanagaraj (A1) which fact will not be enough to make the offense alleged and mere suspicion is not sufficient to try the accused and the 4th accused had no role to play in the transaction with the Income Tax Department and the money received by A4 was only a bonafide payment which the drawer of the cheque was due and the drawer of the cheque also is still due a sum of Rs.14,00,000/- as A-4 as a Power of Attorney of Smt.Ganga Bai entered into agreement with A1 and advanced a sum of Rs.24,00,000/- to purchase the same property. Subsequently, he found that the property belonged to TNHB and he demanded for the repayment of money advanced for which a cheque for Rs.10,00,000/- was issued by A-1 and apart from that the 4th accused filed a suit for recovery of balance amount of Rs.14,00,000/- from A-1 and the prosecution did not investigate the case based on the above aspects and further the co-accused A-2 revision petitioner in Crl.R.C.No.1278 of 2016 was on the same footing who received a sum of Rs.70,00,000/- was discharged from the charges alleged against him and these circumstances, there is absolutely no prima facie case is made out against the 4th accused and the 4th accused may be discharged and the present revision may be allowed.

5. The contention of the 2nd accused in Crl.M.P.No.1432 of 2010 before Additional Chief Metropolitan Magistrate is that the 2nd accused is practicing advocate in the High Court of Judicature at Madras since 1985 and he provided services only as an advocate in Arbitration and conciliation between the parties and the matter was complete with conciliation proceedings with the Income Tax Department by executing a indemnity bond in favour of the Income Tax Department and the Income Tax Department had issued no objection certificate withdrawing its own order to invoke indemnity against A-1 calling for the refund of the money and it is the case of civil nature and criminal court has no jurisdiction to try this case. The transactions between the parties were real and genuine and the lands were excluded by the TNHB declaring the land has fringe of the scheme low laying area 2 ½ feet below the surface. The beneficial owner handed over the possession to Income Tax Department which denotes re-conveys and the property vested with the Government free from all encumbrances. Further, a sum of Rs.70,00,000/- was received from his client as advance towards the sale of his land at Thirukachoor Village, Maraimalai Nagar and the Petitioner had

40% undivided share of land in the property bearing s.No.542/2 and 543/2 and the petitioner has not received any benefit out of this transaction. Neither any witnesses speak nor any material is available before this court to implicate A2 got wrongful gain in the deal and mens rea was absent and no motive can be attributed against A2 and this accused is no way connected with the commission of offence and there is not even an iota of link or nexus to connect this accused with the commission of the offence and the 2nd accused neither directly nor indirectly involved with the commission of offence at any point of time and the 2nd accused may be discharged.

6. The contention of the respondent/complainant is that A1 to A6 knowing very well that the procedure of getting no objection certificate for sale of property transactions above Rs.25,00,000/- and that of pre-empty purchase of immovable property was being repealed and it was to be come into effect on 30.06.2002 for getting the said land purchase by the department and in order to make it genuine looking transactions and agreement was entered into between a1 and A6 and the form under Section 37(1) was filed to make it appear as they wanted to obtain no objection certificate and it was shown that Rs.5,00,000/- advance was paid for a fixed price of Rs.3,39,00,000/- along with the application and they enclosed their photo copy of the title deed in favour of Smt.Ganga Bai and encumbrance certificate for the said property for the period from 01.04.1969 to 2002 was obtained fraudulently with false particulars with forged power of attorney, legal opinion dated 24.02.1996 was issued by the 2nd accused and sale agreement between A1 and A6 is showing payment of Rs.5,00,000/- as advance for the sale consideration of Rs.3,39,00,000/-. A-3 who was working as a Thasildhar, Land Acquisition, Veeranam Project and earlier worked as a Thasildhar of Land Acquisition of TNHB had unauthorizedly removed/stolen the sale deed No.3688 of 1999 pertaining to the above mentioned land from the land acquisition cell, in the office of the TNHB and the same was submitted to the Income Tax Department by the Accused along with fabricated documents and the 2nd accused had received huge amount of Rs.70,00,000/- which was transferred to his bank account in BOB, Chennai Main Branch, as his share out of the defrauded amount and there is ample evidence in the form of documentary and oral evidence to establish the prima facie to role of A-2 in the conspiracy in the offences. As against the claim of his duty being to only to advise his client the prospective buyer of the property is in question and A-6 furnished legal opinion dated 24.02.1996 issued by A-2 addressed to Income Tax Department in which there is a mention of power of attorney dated 26.07.1997 executed in favour of A-1 and A-2 who represented both the transferor and transferee in response to the show cause notice issued by the Income Tax Department on 26.07.2002 and more over the cheque in respect of the funds released by the Central Board, direct

access in favour of Smt.Ganga Bai was received by A-2 on behalf of the transferor and transferee which clearly was not his duty which was done with a malafide intention and A-2 through the role as legal advisor to client, he exceeded his limit and acted in a manner which was beyond just legal advice. As per the statement of L.W.1 Bhadrachalam, Executive Engineer of Valuation Cell A-2 was also present at the time of inspection of the site. The claim of A-2 is that a sum of Rs.70,00,000/- was received from the client A-1 for sale of his land at Thirukattur Village was after thought and A-2 did not have the ownership of the land which is supposed to have been sold to A-1 since this land belonged to T.G.Veeraraghavan and after his demise, it was bequeathed to his wife Smt.Saroja who had executed a power of attorney to A-2 and she had revoked in the year 2004 and the said land was acquired by Tamil Nadu Government and a suit was filed for recovery of the land by L.W.No.5 Smt Saroja Veeraraghavan and this fact also speaks by L.W.13 and these facts also supported by L.w.37 R.Sekar Assistant HRO, T.Nagar, Chennai. So these are more than sufficient materials are available about the involvement of A-2 and A-4 in the above said offences. The discharge of 3 accused who were Public Servants which was confirmed by this court will not any way affect this case and all the present accused are to be tried for the offences alleged against them.

7. The learned counsel for the revision petitioner in Crl.R.C.No.793 of 2014 submits that only material put up by the prosecution in respect of receipt of a sum of Rs.10,00,000/- from the bank account of A1 is not enough to make out a case of offences as alleged by the prosecution and in fact the revision petitioner has not any role to play in the transaction with the Income Tax Department and the money which was received was a bonafide payment which the drawer of the cheque was due and the balance is still due to him. In respect of the agreement entered into between this revision petitioner with A-1 as Power of Attorney of Smt.Ganga Bai was cancelled in view of the fact, later came to the knowledge of this petitioner that Smt.Ganga Bai was not having title over the property since it was acquired by the TNHB and Rs.10,00,000/- cheque was issued to this petitioner in respect of the repayment of part of advance money and this petitioner filed a suit to recovery of the balance amount a sum of Rs.14,00,000/- and the same is pending and these aspects have not been considered by the trial court. Further when A-5 who received to the tune of Rs.70,00,000/- in his account from the account of A-1 found to be not an offence, on the same footing, this petitioner/accused received a sum of Rs.10,00,000/- that is towards the repayment of part of advance money is no way invoking any of the penal provision and in the circumstances the order of the trial court has to be set aside and this petitioner is to be discharged from all the charges alleged against him.

8. The learned Special Public Prosecutor for CBI cases would submit that there are sufficient materials viz., documentary and statement of witnesses to show that this petitioner involved in the commission of the offence of cheating the Central Government by committing conspiracy of creating false and forged documents and to induce to delivery of a total sum of Rs.2,87,08,497/- in respect of the pre emptive purchase of land by the Income Tax Department knowing fully well that the land was already acquired by TNHB. The agreement and the suit filed by him was after thought and created in order to escape from the clutches of law and in this aspect, L.W.2, 3, 19 statements clearly show A-4's commission and involvement in the offences alleged against him and the trial court correctly discussed and came to conclusion that the revision petition is dismissed.

9.1. In revision case No.1278 of 2016, the learned Special Public Prosecutor would submit that the respondent herein/A-2 actually participated in the commission of offence and in this aspect, A-1's wife who was examined as L.W.3 gave a statement that her husband and two other accused went to the house of this respondent/A-2 and the alleged power of attorney of Smt.Gangabai namely A-1 who created the forged Power of Attoreny deed with the connivance of this respondent and other accused in respect of the land which was already acquired by the TNHB for which award amount to Smt.GangaBai was paid and without the knowledge of the said Smt.Gangabai, all the accused fabricated forged document of power of attorney and with help of A-3 then Thasildhar of Land Acquisition took out the title Deed from the Office of TNHB and caused to preempt purchase order and induced to deliver a cheque for Rs.2,82,08,497/- in favour of Smt.Gangabai and the amount was shared by this petitioner to the tune of Rs.70,00,000/-. Further, the allegation of the respondent herein /A2 is that he obtained advance money for sale of his property of Thadukkur Village of his 40% share is concerned, it is after though version placed before the trial court and in fact that the said property did not belong to this respondent. Further L.W.1 and 2 statement would categorically establish the interest shown by A-2 in opening the account with dishonest and fraudulent intention and in the circumstances, the trial court's finding that no prima facie case against this respondent is made out is erroneous and in circumstances, this revision may be allowed and the trial court order may be set aside.

9.2. Whereas the learned counsel for the respondent submit that this petitioner is advocate by profession who represented for his client with the documents produced before him and gave opinion and acted behalf of his client, the amount of Rs.70,00,000/- received was in respect of advance money of his property in Thakkur Village agreed to be sold to A-1 and so there is no nexus between this respondent and A-1 or other accused to the alleged commission of offence and in fact it is only civil dispute and no criminal action could be entertained and no material is available against this respondent to the alleged offences and the trial court has elaborately discussed and came to the correct conclusion that there is no material available against this respondent to connect him to the offence and the same cannot be interfered with and the revision may be dismissed.

10. Points for consideration in both revisions are

1) Whether there are sufficient materials to make out a prima facie case against petitioner in Crl.R.C.No.793 of 2014 and respondent in Crl.R.C.No.1278 of 2016.

2)Whether the revision Crl.R.C.No.793 of 2014 is to be allowed.

3) Whether the revision Crl.R.C.No.1278 of 2016 is to be allowed.

11.1 The prosecution case is that 1.3 acres of land in S.No.557/1(Part) and 557/2(Part) at Mogappair Village was acquired by the Tamil Nadu Housing Board and the 1st accused with the connivance of the other accused created false documents of Power of attorney of Smt.Ganga Bai who was the then owner of the same land and received award amount for the acquisition of her land in the year 1984 and in the circumstances, without the knowledge of Smt.Gangabai A1 created false power of attorney and approached the Income Tax Department to sell the land to Income Tax Department and the authority of Income Tax Department ranked as A-1 to A-3 before their discharge from the charges levelled against them who abused their official position by corrupt or illegal means fraudulently and dishonestly issued a pre emptive pruchase order dated 27.06.2002 for a consideration of Rs.3,24,51,432/- and on the basis of the preemptive purchase order issued by A-1 to A-3, the Income Tax Department issued a cheque for Rs.2,82,08,497/- in the name of Smt.Gangabai and another cheque for Rs.5,00,000/- was issued in the name of A-9 and total sum of Rs.2,87,08,497/- was released on 31.07.2002 and on the same day an account was opened in the BOB Main Branch, Chennai, in the name of Smt.Gangabai by A-1 as a Power of Attorney of A-1 and he transferred Rs.70,00,000/- from the above said amount to A-2 into his savings account of BOB, Main Branch, Chennai, which was also opened on the same day. From the Balance amount, a sum of Rs.10,00,000/- was paid to the 4th accused by A-1.

11.2. On perusal of the statement of L.W.1 Gangabai, wife of V.Sambandan, she stated that in 1984, TNHB acquired her land in S.No.557/1 and 557/2 and compensation was initially received at Rs.29,900/- and subsequently enhanced compensation of Rs.4,20,836.75 was received and some time during 1997 and 1998 and one Ponnudurai brought Sri.Kanakaraj Mudaliar (A1) who gave a proposal that he would be able to get the reconveyance of the land in S.No.557/1 and 557/2 measuring 1.3 acres and sought her consent for the same, but L.W.1 and her husband did not agree for the proposal and categorically told him that as the lands were acquired by TNHB and they received enhanced compensation they would not be interested in getting the re-conveyance and subsequently after receipt of letter from TNHB, she went to TNHB office and she has gone through some papers shown to her in respect of her land and power of attorney said to have been executed in favour of A-1 by her she stated that she did not give any representation not give any authorization to deal in this land and she denied her signature on those documents. So from her statement, it is clear that the land was already acquired by TNHB and compensation was given to her and the power of attorney produced by A-1 is prima facie false and forged one. Based on this documents and original title deed of Smt.Gangabai which was kept in the cell of TNHB was stolen away by A-3 the then Acquisition Thasildhar and the same was produced before the Income Tax Department and obtained pre-emptive purchase order. From this aspect, prima facie forged power of attorney which was not executed by Smt.Gangabai and the land which was already acquired by TNHB was again sold to Income Tax Department without any title of Smt.GangaBai and also induced the Income Tax Department to deliver a huge amount of Rs.2,87,08,497/- after deducting TDS from the sale consideration of Rs.3,24,51,432/-. So it is apparently shows that it is clear act of cheating and fabrication of documents enumerated under the various provisions of IPC alleged. In these aspects, A-2 who is the advocate represented before the Income Tax Department for A-1. Apart from that A-1 as a Power of Attorney of Smt.Gangabai opened an account in the Bharath Overseas Bank, Main Branch, Chennai, and presented the cheque issued by the Income Tax Department and the same was honoured in the above account of A-1. Further, A-2 also on the same day i.e. 31.07.2002 opened an account in the very same bank and a sum of Rs.70,00,000/- was transferred from the account of A-1 into the account of A-2 for which evidence are available including documents. The receipt of above huge amount was accepted by A-2. But he gave some explanation for the receipt of the amount, as he received the same as advance money for sale of A-2's property to A-1. This aspect is denied by the complainant as A-2 is not having such property. Since the receipt of Rs.70,00,000/- is admitted by A-2 and it is alleged by A-2 that it is not for legal remuneration and the same is for sale of his land for which documentary evidence in respect of title of A-2's property is necessary and the same is to be proved in the trial only and not at the stage of discharge petition.

11.3. As far as A-4 is concerned, that the receipt for cheque for Rs.10,00,000/- from A-1 is accepted but also given an explanation as stated above. This aspect also is to be decided only in the trial and not at this stage.

12. The further contention of the respondent/Accused/A-5

is that there is no incriminating material against the respondent/A-5 in the FIR and he has only done his duty as an Advocate. It is further contended that A-5 who is a practicing Advocate only discharged his duty by representing his client/A-4 before the Authority and submitted documents. It is also pointed out that the trial court has considered in detail the statement given by the witnesses and found that no incriminating material is found against A-5 in the statement of L.W.2, L.W.7, L.W.9, L.W.11, L.W.12, L.W.15, L.W.23, L.W.30 to L.W.33, L.W.44 and L.W.46. The trial court further held that as per the charge sheet, A-1 to A-3 allegedly entered into criminal conspiracy with A-4 to A-9 to do the illegal acts viz., cheat the Government of India. But A-1 to A-3 was discharged from the case and as such, the allegation of criminal conspiracy against A-5 is to fail. Thus, the trial court held that charge against A-5 is groundless. It is also held that the evidence of L.W.3, L.W.5 and L.W.7 does not disclose any act of fraud, forgery or cheating committed by A-5. The trial court, after analysing the statements of all the above said prosecution witnesses, held that A-5 who is an Advocate has not committed any illegal act as alleged by the prosecution and discharged him.

13. On the other hand, disputing the conclusion of the trial court, it is pointed out by the learned Special Public Prosecutor that the trial court has not considered the statements of witnesses properly and erred in discharging the accused/A-5. He also pointed out that if the statement of L.W.1 and L.W.2 has taken together, the same clearly proves the interest taken by A-5 in opening the Bank Account with fraudulent intention in the name of Smt.Ganga Bai without her knowledge or consent with a view to appropriate to themselves the proceeds of crime as alleged in the Final Report. The learned Special Public Prosecutor also pointed out that the statement of L.W.1 and L.W.2 is corroborated by L.W.30, 31 and L.W.44. The statement of these witnesses was not considered by the trial court properly.

14. The learned Special Public Prosecutor also pointed out that L.W.3 who is the wife of A-4 has stated in detail that her husband was taken to A-5 who arranged everything in the Income Tax Department. The learned Special Public Prosecutor also pointed out that the statement of L.W.5 will clearly reveal that Rs.70,00,000/- received by A-5 from A-4 by way of two cheques issued from the current account of Smt.Ganga Bai, opened without her knowledge at the Bharat Overseas Bank was not the consideration for the sale of land at Thirukatchur Village as claimed by A-5. It is also pointed out that the evidence of L.W.7 and L.W.15 will establish the mens rea on the part of A-5. The learned Special Public Prosecutor also pointed out that the trial court is not justified in concluding that A-5 only performed his duty as Advocate. The learned Special Public Prosecutor pointed out that A-5 being an Advocate was fully aware that

NOC from the Appropriate Authority would not be required from 01.07.2002. But with dishonest and fraudulent intention to cheat the Income Tax Department, he represented A-4 and A-9, the transferor and the transferee and made a false representation that the land in question was a genuine site owned by Smt.Ganga Bai (LW-1) and that HUDCO offered Rs.19,00,000/- per ground for the said land. He was a party to opening the account in the name of Smt.Ganga Bai at Bharath Overseas Bank where the crime proceeds was deposited. He was also present at the time of inspection of the land by L.W-15 Shri K.R.Patnaik, the then Junior Engineer and team and intending to misguide them, falsely represented that the Board showing the name of Tamil Nadu Housing Board found on the site was erected only to prevent encroachment of the land by public while in fact it was to indicate that the site belonged to Tamil Nadu Housing Board and they are the bonafide purchasers of the land. He received Rs.70,00,000/- out of the sale proceeds received from the Income Tax Department. None of the above acts of A-5 can be construed as an act done in the course of discharge of his duties as an Advocate.

15. The learned Special Public Prosecutor also pointed out that the trial court wrongly concluded that there is no forgery or cheating committed by the accused. It is pointed out that A-4 has fraudulently fabricated documents to deceive the Income Tax Department to make to appear that the land in question was owned by Ganga Bai and there was a genuine transaction between herself and A-9. Thus, it is contended that there is sufficient evidence on record to prove the guilt of the accused/A-5 in the case.

16. As stated earlier, there are issues which can be considered only on the basis of evidence let in at the trial stage. At this stage, as rightly pointed by the prosecution, the material produced on the side of prosecution alone is to be taken into consideration to find out whether any prima facie case is made out or not. As stated earlier, there is sufficient material to establish a prima facie case against the accused as rightly pointed out by the prosecution.

17. From the foregoing discussion, I find that there is a prima facie case against A-2 and A-4 is made out to presume that they have committed offence as alleged against them and Point No.1 is answered accordingly. In view of the finding of Point No.1, the finding of the trial court in respect of A-4 is to be sustained and in respect of A-2 is set aside and Point Nos.2 and 3 are answered accordingly.

18. In fine,

(i) Crl.R.C.No.793 of 2014 is dismissed, confirming the order of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, made in Crl.M.P.No.93 of 2011 dated

11.06.2014.

(ii) Crl.R.C.No.1278 of 2016 is allowed, setting aside the order of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, made in Crl.M.P.No.1432 of 2010, dated 23.04.2014.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

nvsri

To
1. The Inspector of Police,
CBI/ACB, Chennai.

2. The Deputy Superintendent of Police,
CBI/ACB, Chennai.

3. The Additional Chief Metropolitan Magistrate,
Egmore, Chennai,

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

+1cc to Mr.K.Srinivasan, Advocate SR.No.77966

+1cc to Mr.S.Karthikeyan, Advocate SR.No.77756

Criminal Revision Case
Nos.793 of 2014
and 1278 of 2016

RR(CO)
GMY(20/12/2018)