



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.08.2018

CORAM :

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

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Crl.R.C.(MD)No.110, 163 and 230 of 2017
and
Crl.M.P.(MD)No.972, 2021 and 2022 of 2017

K.M.A.S.Annamalai Samy ...Petitioner/Petitioner/3rd Accused
in Crl.R.C.(MD)No.110 of 2017

K.Natarajan ...Petitioner/Petitioner/15th Accused
in Crl.R.C.(MD)No.163 of 2017

T.Iyappa Raja ...Petitioner/Petitioner/10th Accused
in Crl.R.C.(MD)No.230 of 2017

Vs.

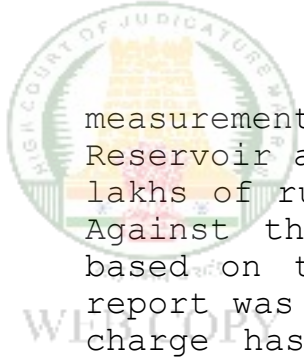
The State,
By the Deputy Superintendent of Police,
Vigilance and Anti corruption Wing,
Thoothukudi. ...Respondent/Respondent/ Complainant
Crime No.3 (in all petitions)

Common Prayer: Criminal Revision Cases - filed under Sections 397 and 401 of the Criminal Procedure Code, praying to call for the records in Cr.M.P.No.361,360,358 of 2015 in Special Case No.6 of 2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli dated 09.12.2016 and set aside the same.

For Petitioner : Mr.D.Venkatesh
(in Crl.R.C.(MD)No.110 and 230 of 2017)
For Petitioner : Mr.Veera Kathiravan
Senior Counsel for M/s.Veera Associates
(in Crl.R.C.(MD)No.163 of 2017)
For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor
(in all petitions)

COMMON ORDER

Heard the learned counsel appearing for the petitioner in Crl.R.C.(MD)No.110, 163 and 230 of 2017. These petitioners are among the 45 accused for the offence under Section 120 (B), 420, 167, 109 r/w 167, 409, 109 r/w 409 and Section 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. An FIR was registered in the year 1995 alleging that there was over estimation in the

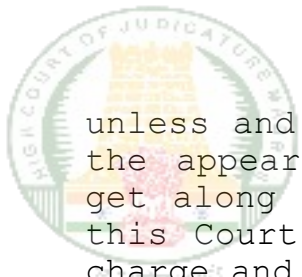


measurement shown in M-book for excavation work in Nambiyar Reservoir and manipulation of M-book led to mis-appropriation of few lakhs of rupees in connivance with the contractor for each voucher. Against the officers, who are in-charge of disbursing the money based on the over estimation, charge has been framed. The final report was filed in the year 2004. No trial has been commenced and charge has not been framed for various reasons and the present petition to discharge has been preferred before the trial Court on the ground that three crucial witnesses, namely, L.W.3, who has filed report after checking and L.W.5, who has filed report on super-checking and L.W.16, Investigating Officer, who is no more. The prosecution, by a stretch of imagination, could prove the charge, even if it is framed against the objections, in the absence of three witnesses.

2. Further, as far as the petitioner in CrI.R.C.(MD)No.110 of 2017 is concerned, he would submit that he was in-charge of the Bridge as Executive Engineer for two spells. One spell was for 15 days and another spell was for 26 days, wherein normal due for A2 and A3 for a sum of Rs.38,870/- and Rs.48,289/-. Since he has issued vouchers in the normal course of discharge duties, which is on the measurement recorded in the M-book, no criminal intention or knowledge of the alleged crime could be attributed to him.

3. Per contra, the learned Additional Public Prosecutor would submit that due to the nature of gravity of the crime and the technical issue involved in the crime, based on the FIR registered in the year 1995, the investigation got implicated in the year 2004 and the final report was filed in the same year. Thereafter, due to reasons, which are not attributable to the prosecution, the case has been delayed. As far as the death of P.W.3, P.W.5 and P.W.16 has no bearing to the facts of the case, dehors in their absence and the death, the prosecution can establish the case relating to other witnesses, since there are overwhelming evidence against them and as far as A3, who is the petitioner in CrI.R.C.(MD)No.110 of 2017, being a quantity two vouchers excess billing, there is material to show the involvement in the crime and if at all, there is any material to prove his innocence, it can be decided only during trial and not by way of filing a discharge petition. Having considered the rival submissions and the impugned order of the trial, which is dealt with at length about the indiscriminating materials available against this petitioner as well as other petitioners to approach the Court by way of discharge petition.

4. This Court is of the opinion that this is not a fit case to discharge the petitioners by invoking Section 239 Cr.P.C., since there is a prima facie material to frame charge against them. However, taking note of the age of the petitioners and delay in proceeding with the case, it is sufficient to direct the trial Court to take up the matter on priority basis and to complete the trial, preferably, within a period of nine months. The presence of the accused, who are almost 70 years and above need not be insisted



unless and until it is required to file a petition to dispense with the appearance. The trial Court shall entertain such petition and get along with the trial. Independent of the observations made by this Court in this discharge petition, the trial Court shall frame charge and proceed with the trial at the earliest.

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5. Accordingly, the Criminal Revision Cases are dismissed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar(CS-II)

To

- 1.The Special Court for Trial of Cases
under the Prevention of Corruption Act,
Tirunelveli.
- 2.The Deputy Superintendent of Police,
Vigilance and Anti corruption Wing,
Thoothukudi.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
- 4.The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(2 copies)**

+1CC to M/s.Veera Associates, Advocate, SR.No.80086

Crl.R.C.(MD).No.110, 163 and 230 of 2017
21.08.2018

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ES/SV/SAR 2/27.09.2018/3P/7C