

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Crl.R.C.No.748 of 2019
and Crl.M.P.No.10456 of 2019

C. Kaliappan

... Petitioner/A2

Vs.

vs.

The State rep by The Inspector of Police,
Vigilance & Anti-Corruption,
Namakkal District.

.... Respondent

Prayer: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order of dismissal, dated 30.05.2019 passed in Crl.M.P.No.165 of 2018 in Special C.C.No.5 of 2017, by the Special Judge (Special Court for Trail of Cases under the Prevention of Corruption Act), Salem.

For Petitioner : Mr.Ravindran N.A

For respondent : Mr.K. Prabakar, APP

ORDER

- 1.The Civil Revision Petition has been filed, seeking to set aside the order of dismissal, dated 30.05.2019, passed in Crl.M.P.No.165 of 2018 in Special C.C.No.5 of 2017, by the Special Judge (Special Court for Trail of Cases under the Prevention of Corruption Act), Salem.
- 2.The Petitioner/A2 has filed a petition in Crl.M.P.No.165 of 2018 in Special C.C.No.5 of 2017 under Section 239 of Code of Criminal Procedure, seeking to discharge him from the offence punishable under Section 7 of Prevention of Corruption Act, 1988.
- 3.The gist of the case of the Prosecution, as revealed from the final report is that the Petitioner is A2 and one Karthikeyan is A1. Karthikeyan/A1 had committed an offence of criminal misconduct punishable under Section 13(2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 and further in the course of the same transaction, the Petitioner/A.2, who was working as the Revenue Supervisor in the Office of the AE (O&M), Jalakandapuram, had demanded a sum of Rs.4,000/- as illegal gratification from the defacto complainant, Indirani,

on 11.07.2016 at about 10.00 hours at his office for himself and for Karthikeyan/A1 and thereby, the petitioner/A.2 committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988.

4. The learned counsel for the petitioner would submit that originally the complaint was given by the defacto-complainant against one Vadivel for having demanded an amount of Rs.4,000/- and thereafter, the petitioner has been falsely implicated in the First Information Report as if he was the person, who demanded the amount. The learned counsel would further submit that the necessary ingredients to make out an offence according to Section 7 of the Prevention of Corruption Act is lacking and thereby the Petitioner cannot be charged under the said Section and that during the trap proceedings, no money was recovered from the petitioner/A2 and even in the voice recording, during the trap proceedings, the involvement of the petitioner has not been stated by the Prosecution.
5. Per contra, the learned Additional Public Prosecutor would submit that the defacto-complainant had clarified and stated that by mistake, she had wrongly mentioned the name of the Revenue Supervisor as "Vadivel" instead of "Kaliappan" in the complaint. He would further submit that at the time of registering the case, a discreet enquiry was conducted and during verification, it was found that the name of the Revenue Supervisor was wrongly mentioned as "Vadivel" in the complaint and it was the Revenue Supervisor, Kaliappan, who had demanded the illegal gratification and only after confirming the same, his name was implicated in the First Information Report itself. He would further submit that the ground raised by the Petitioner in the discharge petition are factual in nature, which can be tested only at the time of trial and that at the stage of discharge, the Court has to look out whether prima-facie materials are available against the petitioner for framing charges and the Trial Court, finding availability of materials, for framing charges, had rightly dismissed the petition.
6. This Court heard both sides and perused the materials available on record.
7. It is trite that at the stage of discharge petition, the Trial Court cannot conduct a roving enquiry or is not permitted to conduct a mini trial and the Trial Court has to look into whether there are sufficient prima facie materials available for framing of charges against the accused.
8. In the case on hand, the defacto-complainant has wrongly mentioned the name of the petitioner as "Vadivel". However, subsequently, she has clarified the same and further, a discreet enquiry had been conducted and it had revealed that the petitioner was the Revenue Supervisor at the relevant point of time and he is the person, who had demanded money.
9. In the case on hand, the Trial Court having found that there

are sufficient materials to frame charges against the Petitioner/A2 for the alleged offences, had dismissed the discharge petition.

10. Time and again, it had been held by the Honourable Supreme Court, as well as by our Court, in various decisions that no mini trial is contemplated at the stage of framing of charges. For this proposition, it is relevant to refer to the decision of the Honourable Supreme Court reported in 2014 11 SCC 709 (State of Tamil Nadu Vs. N.Suresh Rajan and others), wherein it has been held thus:-

“29. True it is that at the time of consideration of the applications for discharge, the Court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the Court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the Court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

32. While passing the impugned orders, the Court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the Court should have appraised the evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification.”

11. If there is a strong suspicion, which leads the Court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the Court to say

that there is no sufficient ground for proceeding against the the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the Court should proceed with the trial or not, as has been held in 2015 2 SCC 417 (State Vs. A.Arun Kumar).

12. In 2018 13 SCC 455 (State by the Inspector of Police, Chennai Vs. S.Selvi and another), wherein the Honourable Supreme Court has relied on its various decisions, regarding the scope of powers of revision, and has held as under:-

"6. It is well settled by this Court in a catena of judgments, including Union of India v. Prafulla Kumar Samal [Union of India v. Prafulla Kumar Samal, (1979) 3 SCC 4 : 1979 SCC (Cri) 609], Dilawar Balu Kurane v. State of Maharashtra [Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310], Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371], State v. A. Arun Kumar [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505], Sonu Gupta v. Deepak Gupta [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265], State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688], Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya [Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76 : 1991 SCC (Cri) 47] and Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja [Supt. & Remembrancer of Legal Affairs v. Anil Kumar Bhunja, (1979) 4 SCC 274 : 1979 SCC (Cri) 1038], that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) 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 material placed before the court discloses grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing the charge; 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 within his rights to discharge the accused. 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 statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a

roving enquiry into the pros and cons of the matter and weigh the materials as if he was conducting a trial.

7. In Sajjan Kumar v. CBI [Sajjan Kumar v. CBI, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371] , this Court on consideration of the various decisions about the scope of Sections 227 and 228 of the Code, laid down the following principles: (SCC pp. 376-77, para 21)

"(i) The Judge while considering the question of framing the charges under Section 227 CrPC 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. The test to determine prima facie case would depend upon the facts of each case.

(ii) 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.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For

this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

8. This Court in *State v. A. Arun Kumar* [State v. A. Arun Kumar, (2015) 2 SCC 417 : (2015) 2 SCC (Cri) 96 : (2015) 1 SCC (L&S) 505] , *Sonu Gupta v. Deepak Gupta* [Sonu Gupta v. Deepak Gupta, (2015) 3 SCC 424 : (2015) 2 SCC (Cri) 265] , *State of Orissa v. Debendra Nath Padhi* [State of Orissa v. Debendra Nath Padhi, (2003) 2 SCC 711 : 2003 SCC (Cri) 688] and *State of T.N. v. N. Suresh Rajan* [State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709 : (2014) 3 SCC (Cri) 529 : (2014) 2 SCC (L&S) 721] has reiterated almost the aforementioned principles. However, in *State of Haryana v. Bhajan Lal* [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , relied upon by the counsel for Respondent 1 is not applicable to the facts of the case inasmuch as the said matter arose out of the judgement of the High Court quashing the entire criminal proceedings inclusive of the registration of first information report. The said matter was not concerned with the discharge of the accused.

10. If on the basis of the material on record, the Court would form prima facie opinion that the accused might have committed the offence, it can frame charge, though for conviction it is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of charges, the probative value of the material on record has to be gone into and the Court is not expected to go deep into the matter and hold that the materials would not warrant conviction. The Court is required to evaluate the material on record at the stage of Sections 227 or 239 of the Code, as the case may be, only with a view to find out if the facts emerging therefrom taken at the face value discloses the existence of all the ingredients constituting the alleged offence. It is trite that at the stage of consideration of an application for discharge, the Court has to proceed with the presumption that materials brought on record by the prosecution are true and evaluate such material with a view to find out whether the facts emerging therefrom

taken at their face value disclose existence of the ingredients of the offence. "

13. In 2012 9 SCC 460 (Amit Kapoor Vs. Ramesh Chander and another), wherein the order of the High Court, quashing the charges framed was under challenge, the Honourable Supreme Court has held that framing of charge is a kind of tentative view, which is subject to final culmination of the proceedings and that the Court is not expected to form even a firm opinion at this stage, but a tentative view would evoke presumption referred to under Section 228 of Cr.PC. It was finally held that the High Court erred in quashing the charges, by reevaluating and re-appreciating the evidence, which was beyond the jurisdiction, either revisional or inherent, when the High Court itself, was of the opinion that clear facts and correctness of the allegations made can be examined only upon full trial. The Honourable Supreme Court holding so, had set aside the order of the High Court, quashing the charges and directed the Trial Court to proceed with the Trial, in accordance with law.
14. In the case on hand, the Trial Court, finding materials to frame charges against the Petitioner/A2 for the alleged offences, had held that the relief seeking to discharge as claimed by the Petitioner can be decided only after a full fledged trial and accordingly, dismissed the discharge petition. In such view of the matter and applying the above decisions to the case on hand, an irresistible conclusion to be arrived at by this Court is that it is not the stage where the Court can appreciate or evaluate the records and documents filed with it and the claim of the petitioner can be decided only after letting in evidence and hence, this Criminal Revision Petition is to be dismissed.
15. In the result, this Criminal Revision Petition is dismissed. No costs. Consequently, the connected MP is closed. However, it is made clear that any observation made in this order is for the purpose of disposing of these Criminal Revision Petitions and shall have no bearing on the defence raised during Trial and that the Trial Court shall proceed with the Trial, in accordance with law.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar

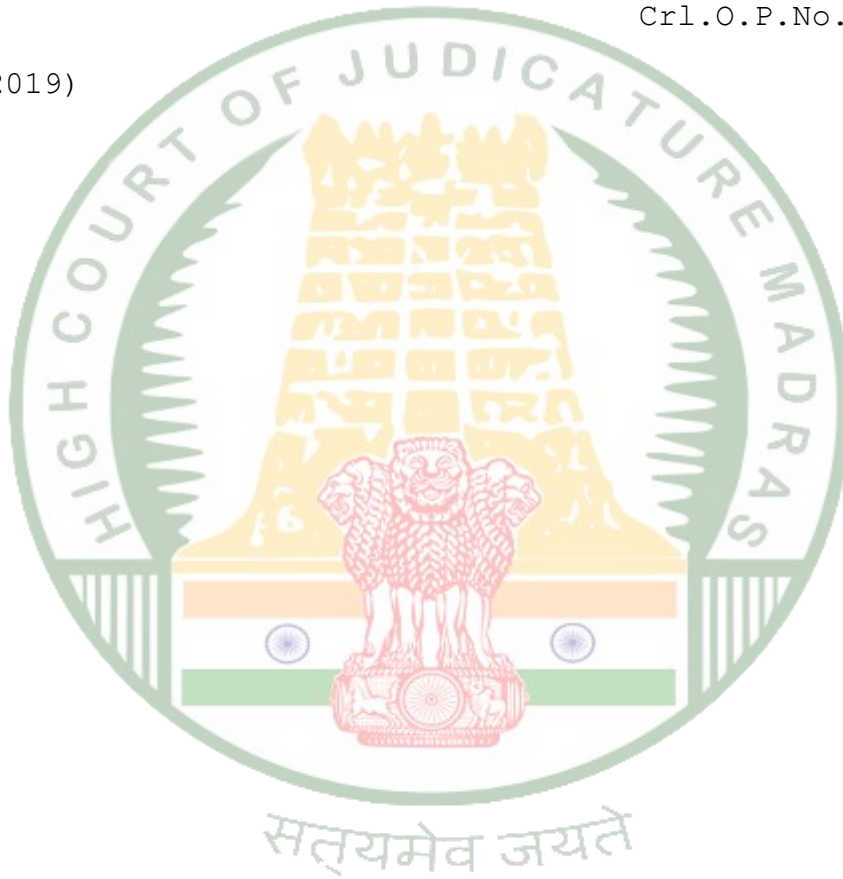
Sr/Srcm

To

- 1.The Special Judge (Special Court for Trail of Cases under the Prevention of Corruption Act), Salem
- 2.The Inspector of Police, Vigilance & Anti-Corruption, Namakkal District. Salem Special Unit.
- 3.The Public Prosecutor, High Court, Chennai.

Cr1.O.P.No.748 of 2019

MP (CO)
CB(10/09/2019)



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