



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
Dated: 29.11.2019

**CORAM**

WEB COPY

**THE HONOURABLE MR. JUSTICE B.PUGALENDHI**

**Crl.R.C. (MD)Nos.514 & 849 of 2019**

**Crl.R.C. (MD)No.514/19:**

Dr.Patchirajan, M.S.(Ortho)  
S/o.(Late) Dr.S.Murugesan,  
No.25, 21<sup>st</sup> Cross Street,  
Maharaja Nagar,  
Tirunelveli - 11. .. Petitioner/Respondent/Defacto complainant

Vs.

1.State Rep. by  
The Inspector of Police,  
Vigilance & Anti Corruption,  
Tirunelveli.  
(Investigated by the Deputy Superintendent of Police,  
Vigilance & Anti Corruption, Virudhunagar District.)  
.. Respondent / Respondent /Complainant

2.C.Radhakrishnan .. Respondent / Petitioner / 2<sup>nd</sup> Accused

**PRAYER:** Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records in Cr.M.P.No.141 of 2016 in Spl. Case No.5 of 2015, on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, dated 24.06.2019 and set aside the same and consequently to direct the learned Judge to frame the charges mentioned in the said case as against the 2<sup>nd</sup> respondent.

For Petitioner : Mr.R.Anand  
For Respondents : Mr.K.K.Ramakrishnan  
Additional Public Prosecutor  
for R.1  
Mr.T.Lajapathi Roy  
for R.2

**Crl.R.C. (MD)No.849/19:**

State Rep. by  
The Deputy Superintendent of Police,  
Vigilance & Anti Corruption,  
Tirunelveli Detachment.  
(Crime No.01/2014) .. Petitioner / Complainant



Vs.

C.Radhakrishnan

.. Respondent / 2<sup>nd</sup> Accused

**PRAYER:** Criminal Revision Case filed under Section 397 r/w 401 of the Criminal Procedure Code to call for the records in Cr.M.P.No.141 of 2016 in Spl. Case No.5 of 2015, on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, dated 24.06.2019 and set aside the order of discharge.

For Petitioner : Mr.K.K.Ramakrishnan  
Additional Public Prosecutor  
For Respondent : Mr.T.Lajapathi Roy

**COMMON JUDGMENT**

These Revision Cases are filed by the defacto complainant as well as the State in Crime No.1 of 2014 on the file of the Inspector of Police, Vigilance and Anti Corruption, Tirunelveli, as against the order dated 24.06.2014, passed by the learned Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, in Cr.M.P.No.141 of 2016, discharging the second accused.

2. Since both the revision cases are filed as against the order of discharge of the second accused, they are heard together and are disposed of by way of this common order.

3. For the sake of convenience and clarity, the parties are being referred to as per their rank before the trial Court.

4. The case in Crime No.1 of 2014 was registered under Section 13(1)(d) of the Prevention of Corruption Act, 1988. The Deputy Superintendent of Police, Vigilance and Anti Corruption, Virudhunagar District, conducted the investigation and filed the final report before the Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, as against the accused nos.1 & 2, for the offence under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act and Section 120(b) IPC and the same was taken on file in Spl. Case No.5 of 2015.

5. The second accused has filed a discharge application as against the final report filed against him and the trial Court, by order dated 24.06.2019 in Cr.M.P.No.141 of 2016 discharged the second accused from the charges made against him. Aggrieved over the same, the defacto complainant as well as the State have filed the instant revision cases.

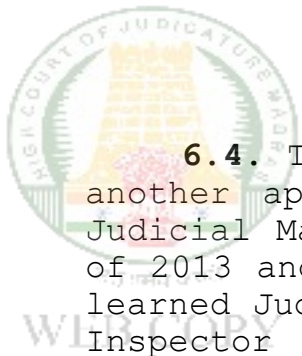


**6.** The facts of the case, as projected by the prosecution, are as follows:

**6.1.** The second accused owns a piece of land in S.No.820/1C & 820/1B1, to an extent of 23.465 Cents, in Kulavanigarpuram Village and he mortgaged the same in the UCO Bank, Tirunelveli, for a sum of Rs.90,00,000/-. The second accused had entered into an agreement with one Dr.Murugesan [LW3] / father of the defacto complainant to sell that land for a sale consideration of Rs.1,52,52,250/- and a sale deed was also executed between the second accused and Dr.Murugesan [LW3] on 14.12.2009 at the Sub Registrar Office, Melapalayam, vide sale deed number 9366 of 2009.

**6.2.** Three years after the agreement, the second accused filed a complaint before the Commissioner of Police, Tirunelveli City, on 22.03.2012 that Dr.Murugesan [LW3] has paid the loan amount of Rs.90,00,000/- (Rs.41,00,000/- through a Cheque, bearing No.886693 and Rs.49,00,000/- by cash), lying with the UCO Bank at the time of executing the sale deed in the year 2009, in the presence of the Manager, UCO Bank and collected the documents from the Bank and thereafter, informed that the area in which the property was situated falls under the green belt scheme notified by the Government. As there was a chance for acquisition by the Government to an extent of 5.5 Cents from the total extent of 23.465 Cents, he withheld a sum of Rs.36,52,250/- for the 5.5 Cents and paid a sum of Rs.26,00,000/- (Rs.5,00,000/- through a Cheque, bearing No.886694 and Rs.21,00,000/- by cash). Therefore, according to the second accused, Dr.Murugesan [LW3] has settled a sum of Rs.1,16,00,000/- (Rs.90,00,000/- + Rs.26,00,000/-), for 17.965 Cents and assured that he would pay the balance of Rs.36,52,250/- for 5.5 Cents, within three months, after ensuring that the property does not fall within the green belt scheme. Based on the assurance given by Dr.Murugesan [LW3], the sale deed was effected on 14.12.2009, however, Dr.Murugesan [LW3] did not pay the amount as assured and therefore, the second accused collected details through Right to Information Act, from the Urban Development Department on 22.12.2010 that there was no proposal to acquire any part of the land comprised in S.No.820 under the green belt scheme.

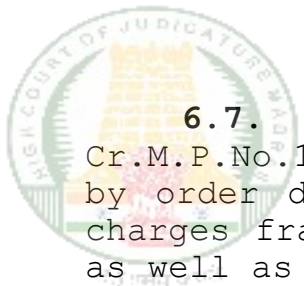
**6.3.** Based on this information collected, the second accused has approached Dr.Murugesan [LW3] and demanded the balance amount withheld by him. Since LW3 refused to part with that amount, he lodged a complaint. The Commissioner of Police forwarded the same to the City Crime Branch, Tirunelveli City and the Assistant Commissioner of Police has conducted the enquiry on 27.03.2012 & 28.03.2012 and closed the complaint that there was no such condition found in the sale deed dated 14.12.2009. After obtaining the opinion of the Government Advocate, the Assistant Commissioner of Police, City Crime Branch, Tirunelveli City has passed a detailed order that the second accused's complaint is not maintainable and he can work out his remedy before the competent civil Court.



**6.4.** Thereafter, in the year 2013, the second accused filed yet another application on the same set of facts before the learned Judicial Magistrate No.1, Tirunveli, on 08.02.2013 in Cr.M.P.No.909 of 2013 and sought for a direction under Section 156(3) Cr.P.C. The learned Judicial Magistrate, by order dated 13.02.2013, directed the Inspector of Police, Perumalpuram Police Station to register and investigate the case. Accordingly, the Inspector of Police, Perumalpuram Police Station / first accused registered the case as against Dr.Murugesan [LW3] and the defacto complainant / Dr.Patchirajan in Crime No.143 of 2013 for the offence under Sections 406, 420 & 506(ii) IPC.

**6.5.** Pursuant to the registration of the case, the first accused / Inspector of Police, directed the Station Sub Inspector of Police, namely, Senthil Thangudurai to bring Dr.Murugesan [LW3] to Perumalpuram Police Station on 15.03.2013 and it is alleged that he has made him to sit on the floors of Perumalpuram Police Station. The defacto complainant, Dr.Patchirajan / Son of Dr.Murugesan [LW3] went to the Police Station and tried to convince the first accused that the case is civil in nature and also produced the documents in support of his case. But, the first accused intimidated Dr.Murugesan [LW3] and directed the subordinate Police to prepare a remand report and also to handcuff Dr.Murugesan [LW3]. On the threat of handcuff and jail, the defacto complainant paid a sum of Rs.36,52,250/- to the second accused and the second accused has also issued a receipt as if he received the amount at Perumalpuram Police Station on 15.03.2013. In view of the settlement made by Dr.Murugesan [LW3], the Inspector of Police / first accused closed the case in Crime No.143 of 2013 on 15.03.2013.

**6.6.** The defacto complainant, thereafter, lodged a complaint before the Director, Vigilance and Anti Corruption Department, on 18.06.2013, about the commission of offence carried out in Perumalpuram Police Station on account of a criminal conspiracy between the accused nos.1 & 2 to extract money from his father / Dr.Murugesan [LW3] under threat and coercion. Alleging that no enquiry was conducted, the defacto complainant has approached this Court by filing Crl.O.P.(MD)No.730 of 2014 and this Court, by order dated 20.02.2014, directed the respondent Police to conduct a preliminary enquiry on the complaint dated 18.06.2013. Accordingly, a preliminary enquiry was conducted by the Vigilance and Anti Corruption Department on 20.02.2014 and on the *prima facie* materials collected by the investigation agency during the preliminary enquiry, a case was registered as against the then Inspector of Police, Perumalpuram Police Station / first accused in Crime No.1 of 2014 for the offence under Section 13(1)(d) of the Prevention of Corruption Act, 1988. In conclusion of the investigation, final report was filed on 09.06.2015 as against the accused nos.1 & 2 in Spl. Case No.5 of 2015 for the offence under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act and Section 120(b) IPC.



6.7. The second accused has filed an application in Cr.M.P.No.141 of 2016 to discharge him and the learned trial Judge, by order dated 24.06.2014, discharged the second accused from the charges framed against him. Aggrieved, both the defacto complainant as well as State have preferred the instant Criminal Revision Cases.

WEB COPY

7. Heard Mr.R.Anand, learned Counsel appearing for the defacto complainant; Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the State; and Mr.T.Lajapathi Roy, learned Counsel appearing for the second accused.

8. The learned Counsel appearing for the defacto complainant as well as State, in unison, have raised the following points for the consideration of this Court:

8.1. The Magistrate, while deciding the application under Section 227 Cr.P.C., has discussed the evidence and tested the probative value of the statements, without a trial and extended the benefit of doubt to the second accused.

8.2. The trial Court has discharged the second accused that the time, date and place where the amount was transacted between the defacto complainant and the second accused were not established by the prosecution and the trial Court has also extended the benefit in favour of the second accused that though there was a suspicion on the conduct of the second accused, it was not a grave suspicion and therefore, there was no necessity to frame the charge. The trial Court has also taken note of the contradictions found in the statements recorded u/s 161(3) Cr.P.C of the two witnesses and discussed the same and took out a ground to discharge the second accused. In other terms, the trial Court conducted a mini trial in deciding the application u/s 227 Cr.P.C.

9. Mr.T.Lajapathi Roy, learned Counsel appearing for the second accused would submit that the offence under Sections 13(1)(d) & 13(2) of the Prevention of Corruption Act would not arise in this case as there was no demand or receipt, which is a basic requirement for the offence under the Act. Therefore, the offence under the Prevention of Corruption Act cannot be fastened as against the second accused. Relying upon the statements of the witness, recorded u/s. 161(3) Cr.P.C., who attested the sale agreement, the learned Counsel would submit that Dr.Murugesan [LW3] refused to mention the green belt scheme in the documents. He also relied upon the impugned order and would submit that the trial Court empowered under Section 227 Cr.P.C. has considered the materials placed before it and has rightly concluded that there is no evidence to frame the charge as against the second accused. Moreover, Sections 397 & 401 Cr.P.C pertaining to revision jurisdiction cannot be exercised when two views are possible and he has also relied upon the decision of the Hon'ble Supreme Court reported in **(2017) 3 SCC 198**, in the case of **State of Rajasthan vs. Fatehkaran Mehdu**, regarding the scope of interference u/s. 397 Cr.P.C.



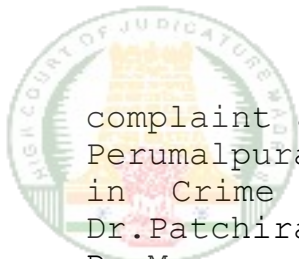
**10.** This Court has paid it's anxious consideration to the rival submissions and also to the materials placed on record.

**11.** The second accused has filed a complaint before the learned Judicial Magistrate No.1, Tirunelveli, on 08.02.2013, in Cr.M.P.909 of 2013 and the same was referred by the learned Magistrate under Section 156(3) Cr.P.C. The order of the learned Magistrate was received by the first accused / Inspector of Police, Perumalpuram Police Station on 11.03.2013 and he also registered the case in Crime No.143 of 2013 as against Dr.Murugesan [LW3] and Dr.Patchirajan / defacto complainant under Sections 406, 420 and 506 (ii) IPC. During the course of investigation in Crime No.143 of 2013, Dr.Murugesan [LW3] came forward to settle the amount of Rs.36,52,250/-, which was due to the second accused and accordingly, the said amount was given by Dr.Murugesan [LW3] and his son Dr.Patchirajan / defacto complainant on 15.03.2013 in Perumalpuram Police Station and a receipt was also issued by the second accused on 15.03.2013.

**12.** The main grievance of the second accused in his complaint in Crime No.143 of 2013 is that Dr.Murugesan [LW3], who purchased the property from him on 14.12.2009, withheld a sum of Rs.36,52,250/-, as if an extent of 5.5 Cents out of 23.465 Cents would be acquired by the Government under the green belt scheme. However, it was not acquired by the Government and when it was informed to Dr.Murugesan and his son, they refused to part with that amount and therefore, he lodged the complaint.

**13.** The second accused, on the very same set of facts, has filed a separate complaint before the Commissioner of Police, Tirunelveli City, on 22.03.2012 and the same was referred for enquiry by the Commissioner of Police to the Assistant Commissioner of Police, City Crime Branch, Tirunelveli. The Assistant Commissioner of Police has also conducted enquiry and found that the averment made by the second accused in his complaint dated 22.03.2012 was not found in any of the recitals on the sale deed dated 14.12.2009 as well as in the sale agreement dated 22.11.2009. Since there was no material to substantiate that any amount was withheld by the purchasers at the time of purchase, the Assistant Commissioner of Police has passed a detailed order by closing the complaint and directing the party to approach the civil Court.

**14.** The second accused has not filed any protest petition as against the final report filed by the Assistant Commissioner of Police, City Crime Branch, Tirunelveli. However, after seven months, he has filed a complaint before the learned Judicial Magistrate No.1, Tirunelveli, in Cr.M.P.No.909 of 2013 on 13.02.2013 and the learned Magistrate has also referred the same to the Inspector of Police, Perumalpuram Police Station [first accused] to register the



complaint and to investigate. Accordingly, the Inspector of Police, Perumalpuram Police Station / first accused has registered the case in Crime No.143 of 2013, as against Dr.Murugesan [LW3] and Dr.Patchirajan under Sections 406, 420, 506(ii) IPC. On 15.03.2013, Dr.Murugesan [LW3] was taken to the Police Station through a Trainee Sub Inspector of Police, namely, Senthil Thangadurai and in the Police Station, on the very same day, a sum of Rs.36,52,250/- was settled to the second accused and a receipt was also issued by the second accused that he received a sum of Rs.36,52,250/- in the Perumalpuram Police Station.

**15.** Dr.Patchirajan has filed the present complaint in Crime No.1 of 2014 before the Director, Vigilance and Anti Corruption that Dr.Murugesan [LW3] was taken to the Police Station on 15.03.2013 [Friday] and was intimidated that he would be handcuffed and remanded. Under the threat of handcuff and arrest, the Inspector of Police / first accused extracted a sum of Rs.36,52,250/- from Dr.Murugesan [LW3]. According to the defacto complainant, the second accused, having failed in his attempt before the Assistant Commissioner of Police, City Crime Branch, Tirunelveli, has filed the present complaint in pursuant to a conspiracy with the first accused.

**16.** Perusal of the records filed in support of this petition would disclose a *prima facie* case as against the accused on the following aspects:

**i)** The complaint on which the case in Crime No.143 of 2013 was registered by the Inspector of Police, Perumalpuram Police Station [A1] is that Dr.Murugesan [LW3] and Dr.Patchirajan / the purchasers have retained a sum of Rs.36,52,250/- towards 5.5 cents of land that it was about to be acquired by the Government under the green belt scheme. But, there was no such recital in the sale deed dated 14.12.2009 as well as in the sale agreement dated 22.11.2009.

**ii)** The second accused made an attempt with a similar complaint before the Commissioner of Police, Tirunelveli City on 22.03.2012 and the same was enquired by the Assistant Commissioner of Police, City Crime Branch, Tirunelveli City on 28.03.2012 and he closed the complaint that it is purely a civil matter and they have to exhaust their remedy only before the competent civil Court. The complaint dated 08.02.2013 was filed by the second accused, suppressing his earlier complaint dated 22.03.2012 and it appears, the same was also mechanically forwarded by the learned Judicial Magistrate, without ascertaining the nature of cognizable offence made out on the complaint.

**iii)** Police Standing Order-562(B) specifically prohibits the investigation by any police official on a complaint of civil in nature. The complaint dated 13.02.2013 of the second accused is of civil in nature, however, the same was referred under Section 156(3)



Cr.P.C and was also registered in Crime No.143 of 2013 and Dr.Murugesan [LW3] was also taken to the police station through a trainee Sub-Inspector of Police, namely, Senthil Thangadurai.

iv) The Hon'ble Supreme Court, in **Lalitha Kumari and others vs. State of U.P.**, has held that preliminary enquiry has to be conducted in cases of commercial in nature. But, it appears, in the present case, the complaint was registered in Crime No.143 of 2013 by the then Inspector of Police, Perumalpuram Police Station [A1], without holding any such preliminary enquiry.

v) Dr.Murugesan [LW3], an Ortho Medical Practitioner, aged about 72 years was taken to the police station and as per the statement of witnesses LWs 2 & 3, he was made to sit on the floors of the police station and was also intimidated that he would be remanded to judicial custody and he would also be handcuffed. In order to avoid the handcuff, they were forced to pay the sum of Rs.36,52,250/-, on the same day.

vi) Admittedly, Dr.Murugesan [LW3] was taken to the police station by a trainee Sub-Inspector of Police, namely, Senthil Thangadurai, on 15.03.2013 [Friday] and on the same day, a sum of Rs.36,52,250/- was settled by Dr.Murugesan [LW3] in the police station and a receipt was also issued by the second accused in this regard.

vii) Section 41(A) of the Criminal Procedure Code contemplates the procedure to be followed by police officers in certain cases where arrest was not required. It appears, the procedures under Section 41(A) Cr.P.C has not been followed in this case. The Hon'ble Supreme Court in **Arnesh Kumar vs. State of Bihar and another** has passed a detailed order in this regard. It appears Dr.Murugesan [LW3] was taken to the police station without any summons / notice and there is no arrest card and the procedures contemplated in **D.K.Basu and another vs. State of West Bengal and another** was not complied with in this case.

viii) The Deputy Inspector General of Police, Tirunelveli Range, Tirunelveli, after examining thoroughly all the materials and records in S.C.No.5 of 2015, has resolved that the accused nos.1 & 2 have entered into a criminal conspiracy to extract a sum of Rs.36,52,250/- by abusing the first accused's official power and in pursuance of the said criminal conspiracy, the first accused, by abusing his official power and with dishonest intention, has collected a sum of Rs.36,52,250/- at Perumalpuram Police Station from the defacto complainant. Therefore, the Deputy Inspector General of Police has accorded sanction for prosecuting the then Inspector of Police, Perumalpuram Police Station [A1] that he has committed the offence by abusing his official position by colluding with the private individual, namely, the second accused and have



committed the offence under Section 13(1)(d) of the Prevention of Corruption Act r/w Section 120(b) IPC.

17. In **Rajiv Kumar vs. State of Uttar Pradesh and another**, reported in **(2017) 8 SCC 791**, the Hon'ble Supreme Court has held as follows:

"10. Section 13 of the P.C. Act in general lays down that if a public servant, by corrupt or illegal means or otherwise abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage, he would be guilty of 'criminal misconduct'. Sub-section (2) of Section 13 speaks of the punishment for such misconduct. Section 13(1)(d) read with Section 13(2) of P.C. Act lays down the essentials and punishment respectively for the offence of 'criminal misconduct' by a public servant. Section 13(1)(d) reads as under:

"13. Criminal misconduct by a public servant.— (1) A public servant is said to commit the offence of criminal misconduct,

(d) if he, — \* \* \*

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

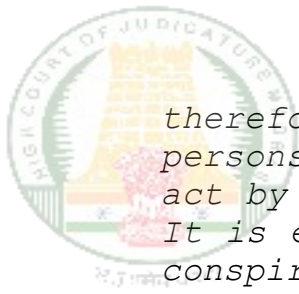
(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or"

A perusal of the above provision makes it clear that if the elements of any of the three sub-clauses are met, the same would be sufficient to constitute an offence of 'criminal misconduct' under Section 13(1)(d). Undoubtedly, all the three wings of clause (d) of Section 13(1) are independent, alternative and disjunctive. Thus, under Section 13(1)(d)(i) of P.C. Act obtaining any valuable thing or pecuniary advantage by corrupt or illegal means by a public servant in itself would amount to criminal misconduct. On the same reasoning under Section 13(1)(d)(ii) of P.C. Act "obtaining a valuable thing or pecuniary advantage" by abusing his official position as a public servant, either for himself or for any other person would amount to criminal misconduct.

... ..

45. The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is,



therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself.

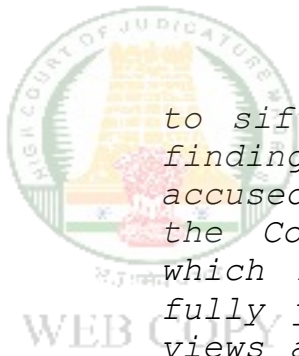
46. After referring to *Yash Pal Mittal v. State of Punjab* [(1977) 4 SCC 540] and *Ajay Aggarwal v. Union of India and Others* [(1993) 3 SCC 609], in *State of Maharashtra and Others v. Som Nath Thapa and Others* [(1996) 4 SCC 659] in para (24), it was held as under:-

"24. The aforesaid decisions, weighty as they are, lead us to conclude that to establish a charge of conspiracy knowledge about indulgence in either an illegal act or a legal act by illegal means is necessary. In some cases, intent of unlawful use being made of the goods or services in question may be inferred from the knowledge itself. This apart, the prosecution has not to establish that a particular unlawful use was intended, so long as the goods or service in question could not be put to any lawful use. Finally, when the ultimate offence consists of a chain of actions, it would not be necessary for the prosecution to establish, to bring home the charge of conspiracy, that each of the conspirators had the knowledge of what the collaborator would do, so long as it is known that the collaborator would put the goods or service to an unlawful use."

18. The charge made as against the accused are under the Prevention of Corruption Act and under Section 120(b) IPC. To attract an offence under Section 120(b) IPC, there must be two or more persons. In this case, the accused nos.1 & 2 are conspirators and if the second accused is discharged, it would automatically facilitate the first accused to escape from the clutches of law.

19. In ***Asim Shariff vs. National Investigation Agency*** (decided on 01.07.2019), the Hon'ble Supreme Court has held that while considering a discharge application filed under Section 227 Cr.P.C., the trial Judge has to exercise the judicial mind so as to determine whether a case for trial has been made out or not. For better appreciation, the relevant portion is extracted as under:

"19. Taking note of the exposition of law on the subject laid down by this Court, it is settled that the Judge while considering the question of framing charge under Section 227 Cr.P.C. in sessions case (which is akin to Section 239 Cr.P.C. pertaining to warrant cases) has the undoubted power

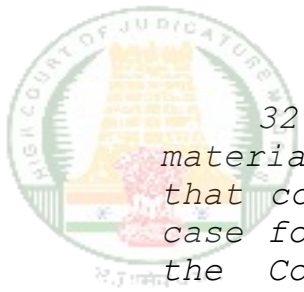


to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 Cr.P.C., it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record."

**20. In *State of Maharashtra and others vs. Somnaththapa and others*, reported in (1996) 4 SCC 659, the Hon'ble Supreme Court has held that if there is a ground for presuming that the accused has committed the offence, then it can be said that a prima facie case has been made out against him. For better understanding, the relevant portion is extracted thus:**

"30. In *Antulay's case* [(1986) 2 SCC 716], *Bhagwati, CJ.*, opined, after noting the difference in the language of the three pairs of section, that despite the difference there is no scope for doubt that at the stage at which the Court is required to consider the question of framing of charge, the test of "prima facie" case has to be applied. According to *Shri Jethmalani*, a prima facie case can be said to have been made out when the evidence, unless rebutted, would make the accused liable to conviction. In our view, better and clearer statement of law would be that if there is ground for presuming that the accused has committed the offence, a court can justifiably say that a prima facie case against him exists, and so, frame charge against him for committing that offence.

31. Let us note the meaning of the word "presume". In *Black's Law Dictionary*, it has been defined to mean "to believe or accept upon probable evidence". (emphasis ours). In *Shorter Oxford English Dictionary*, it has been mentioned that in law "presume" means "to take as proved until evidence to the contrary is forthcoming", *Stroud's Legal Dictionary* has quoted in this context a certain judgement according to which "A presumption is a probable consequence drawn from facts (either certain, or proved by direct testimony) as to the truth of a fact alleged." (Emphasis supplied). In *Law Lexicon* by *P. Ramanath Aiyer* the same quotation finds place at page 1007 of 1987 edition.



32. The aforesaid shows that if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the Court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

**21. In *Tarun Jit Tejpai vs. State of Goa and another* (decided on 19.08.2019),** the Hon'ble Supreme Court has held as follows:

"9.4. At this stage the decision of this Court in the case of *Stree Atyachar Virodhi Parishad* (supra) is also required to be referred to. In that aforesaid decision this Court had an occasion to consider the scope of enquiry at the stage of deciding the matter under Section 227/228 of the CrPC. In paragraphs 11 to 14, observations of this Court in the aforesaid decision are as under :

"11. Section 227 of the Code of Criminal Procedure having bearing on the contentions urged for the parties, provides:

"227. Discharge. - If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

12. Section 228 requires the Judge to frame charge if he considers that there is ground for presuming that the accused has committed the offence. The interaction of these two sections has already been the subject-matter of consideration by this Court. In *State of Bihar v. Ramesh Singh* [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257], *Untwalia, J.*, while explaining the scope of the said sections observed: [SCR p. 259 : SCC pp. 41-42 : SCC (Cri) pp. 535-36, para 4]

Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously Judged. Nor is any weight to be attached to the probable defence of the accused.

It is not obligatory for the Judge at that stage of



the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage 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 accused.

13. In *Union of India v. Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229], *Fazal Ali, J.*, summarised some of the principles: [SCR pp. 234-35 : SCC p. 9 : SCC (Cri) pp. 613-14, para 10]

"(1) That the Judge while considering the question of framing the charges under Section 227 of the Code 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 had been made out.

(2) 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.

(3) The test to determine a *prima facie* case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however 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 right to discharge the accused.



(4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 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 evidence as if he was conducting a trial."

14. These two decisions do not lay down different principles. Prafulla Kumar case [(1979) 3 SCC 4 : 1979 SCC (Cri) 609 : (1979) 2 SCR 229] has only reiterated what has been stated in Ramesh Singh case [(1977) 4 SCC 39 : 1977 SCC (Cri) 533 : (1978) 1 SCR 257] . In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."

**22.** When there are *prima facie* materials available, the learned Magistrate, without appreciating the materials on record, has discharged the second accused on flimsy grounds, as if there is no material as against the second accused. The scope under Sections 227 & 239 Cr.P.C. is to find out whether a *prima facie* case is made out as against the accused or not. The materials placed on record would disclose that there are *prima facie* materials as against both the accused and it also disclose grave suspicion against them.

**23.** In view of the foregoing reasonings and the aforesaid decisions *supra*, this Court is inclined to interfere with the impugned order and accordingly, the order passed by the learned Judge, Special Court for Trial of Cases under the Prevention of Corruption Act, Tirunelveli, in Cr.M.P.No.141 of 2016 in Spl. Case No.5 of 2015, dated 24.06.2019, is set aside.



WEB COPY

Crl.R.C.(MD)No.514/19:

24. In fine, both the criminal revision cases are allowed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar(CS )

gk

To

- 1.The Judge,  
Special Court for Trial of Cases  
under the Prevention of Corruption Act,  
Tirunelveli.
2. The Chief Judicial Magistrate Court,  
Tirunelveli
3. The Judicial Magistrate No.1,  
Tirunelveli
- 4.The Deputy Superintendent of Police,  
Vigilance & Anti Corruption,  
Tirunelveli Detachment.



5.The Inspector of Police,  
Vigilance & Anti Corruption,  
Tirunelveli.

6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

7.The Section Officer, Criminal Section,  
Madurai Bench of Madras High Court,  
Madurai. (2 copies)

**Crl.R.C. (MD) Nos.514 & 849 of 2019**  
**29.11.2019**

MK (11.02.2020) 16P 9C