IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2019

PRONOUNCED ON : 24.07.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.22702 of 2018
and
Crl.R.C.No.654 of 2017 and Crl.M.P.Nos.6013 & 13154 of 2017

Crl.O.P.No.22702 of 2018

K.P.P.Panneer Chelvan ... Petitioner/A4

Vs.

State Rep. by,
The Inspector of Police,
Chennai City-I Detachment,
Vigilance and Anti Corruption,
Chennai-600 028. ... Respondent/Complainant

Crl.R.C.No.654 of 2017

K.Mathiyalagan ... Petitioner/Accused 5

Vs.

State rep. by,
The Inspector of Police,
Vigilance and Anti Corruption,
Chennai City-I, Detachment,
Chennai-600 028.
(Crime No.4/AC/2012/CCIII). ... Respondent/Complainant

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PRAYER in Crl.O.P.No.22702 of 2018: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.21 of 2015 on the file of the Special Court for the cases under the Prevention of Corruption Act at Chennai and quash the charge sheet filed against this petitioner (A4).

PRAYER in Crl.R.C.No.654 of 2017: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set-aside the order of dismissal of the discharge petition in Crl.M.P.No.2298 of 2016 in C.C.No.21 of 2015 dated 04.01.2017 on the file of the Special Court for the cases under Prevention of Corruption Act at Chennai and thus allow

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the criminal revision.

For Petitioner
in Crl.O.P.No.22702 of 2018: Mr.N.R.Elango,
Senior Counsel
for Mr.A.John Britto

For Petitioner
in Crl.R.C.No.654 of 2017 : Mr.R.Shanmugasundaram
Senior Counsel for
Mr.D.Veerasekaran

For Respondents
in both cases : Ms.M.Prabhavathy,
Additional Public Prosecutor

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COMMON ORDER

The Criminal Original Petition has been filed by the Petitioner / A4, praying to quash the proceedings in C.C.No.21 of 2015, pending on the file of Special Court for the cases under Prevention of Corruption Act at Chennai and the Criminal Revision has been filed by the Petitioner/A5 praying to set aside the order of dismissal of the discharge petition in Crl.M.P.No.2298/2016 in C.C.No.21/2015, dated 04.01.2017, on the file of the Special Court, for the cases under Prevention of Corruption Act at Chennai.

2.For the sake of clarity, the petitioners are referred as, according to their ranks, as mentioned in the charge.

3.The petitioners are A4/former Registrar of Cooperative Societies (Housing) and A5/Director of M/s.Lamech Engineers Private Limited. Since, the grounds raised by them are similar, by way of a Common Order, both the petitions are taken up together for final disposal.

4.The short facts of the case are as follows:-

(i) On 22.06.2012, the respondent received a confidential report, which revealed that A1 / S.Kalaikarasu, Special Officer / Co-operative Sub Registrar, Raja Annamalaipuram Co-operative Housing Construction Society Ltd., Chennai; A2 / P.Rajendran, Zonal Co-operative Sub Registrar; A3 / Lourdunathan, Deputy Registrar (Housing) and A4 Thiru K.P.Paneerselvam, Registrar of Co-operative Societies (Housing) have committed Criminal misconduct in connivance with A5 / K.Mathiyalagan, Director of M/s.Lamech Engineers Pvt.Ltd., (a private individual) along with A6 P.M.Ahamed Abdul Kathar and A7 R.Govindarajan conspired with

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each other in the sale and purchase of lands belonging to the Raja Annamalaipuram Co-operative Housing Construction Society Ltd., Chennai.

(ii) The said Society was formed in the year 1952, providing housing sites for its members. The Society formed a layout of 389 plots at R.A.Puram, Chennai - 600 028 and allotted to its members, except the unsold plots 134E, 229 and 397. A1 to A4 in connivance with A5 abused their official position by not following the rules and regulations of the said Co-operative Housing Society for obtainment of Pecuniary advantage and sold the said plots for a marginal rate of Rs.3,750/- per sq.ft. instead of market price of Rs.4,150/- per sq ft. without following any procedure for a sum of Rs.4,63,75,000/- and the actual value of the said plots would have fetched more, thereby conspired together and committed criminal breach of trust and criminal misconduct and made unlawful gain and caused unlawful loss to the said society to the tune of Rs.48,40,000/-.

(iii) The act of A1 to A4 caused loss to the Government in the sale of lands. A discreet enquiry disclosed the commission and omission of the accused A1 to A4, which constitute the cognizable offence "criminal misconduct by a public servant" and conspiracy with a public servant along with A5, attracted offence under Section 120(B) of IPC. The prosecution registered the case on 22.06.2012. Subsequently, during investigation it was found that a criminal conspiracy on 20.11.2008, hatched, when A1 proposed to sell the said 3 plots in the pretext of raising funds to maintain the Society. The accused No.3 as head of the Pricing Committee along with A1 and A2, the other members of the Committee by fixing Rs.3,700/- per sq.ft., the upset price and sold the plots for Rs.3,750/- per sq.ft. Instead of market price of Rs.4,150/- per sq.ft without following any procedure and without making any enquiry in respect of the said plots.

(iv) In pursuance of the conspiracy A4 accepted the same, exempted the Society from obtaining the market value of the said plots from the DRO and permitted A1 to A3 to fix the value of the said plots for Rs.3,700/- per sq.ft as upset price on 28.01.2009. A tender was conducted on 01.10.2009 in the office of the said Society. The petitioner in Revision Case / A5 and A6, A7 were facilitated in the calling for e-tender on 18.09.2009 in website by using National informatics Centre, Tamil Nadu State Unit, Government of India. Immediately the entries were removed after taking a print out to show as if e-tender was called. A5 on behalf of M/s.Lamech Engineers Pvt.Ltd., quoted Rs.3,750/- per sq.ft. And he became the highest bidder, subsequently paid

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Rs.4,63,75,000/- as per the conditions stipulated in the tender. The sale deed was executed on 28.10.2009 in favour of the A5's Company by the Society. The prosecution registered the FIR and filed the final report under Section 409 IPC., Sections 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 r/w 120(B) IPC.

5.Mr.R.Shanmugasundaram, the learned Senior Counsel appearing for the Petitioner / A5 in Crl.R.C.No.654 of 2017, would submit that the Petitioner / A5 is not a Government Servant and he is one of the Directors of M/s.Lamech Engineers Pvt.Ltd. The allegation made against the Petitioner / A5 in the final report that a conspiracy hatched on 20.11.2008, along with accused A1 to A4 is without any material. On 18.09.2009, the tender was called through Maalaimurasu, Tamil evening News Paper, about the sale of said plots. The petitioner Company participated in the tender as one of the bidder and quoted Rs.3,750/- per sq.ft above the upset price of Rs.3,700/-. During that time, the guideline value was Rs.2,800/- per sq.ft. far the relevant survey numbers of that area. Totally Rs.4,63,75,000/- was paid to the society at the Sub- Registrar Office, Mylapore, Chennai and a Sale Deed was executed in favour of the petitioner's Company. There is no pecuniary loss, as alleged by the prosecution against the Petitioner / A5. Hence, the offence under Section 409 IPC is not attracted against the petitioner herein. Further there is no material to substantiate the prosecution case of pecuniary loss.

6.The learned Senior Counsel would further submit that the Court below gave importance to the statement of LW-9 that the entries regarding the tender document was removed from the server; when the very same LW-9 has categorically stated that they are maintaining data only for 2 to 3 years. The tender was conducted in the year 2009. FIR registered in the year 2012 and the statement of LW-9 was recorded by the prosecution during the year 2013. Hence, it is clear that NIC server would not contain any data for the year 2009. LW-9 prima facie cannot give any statement regarding the events happened during the year 2009. He further submitted that insofar as pecuniary loss, as per the version of SRO, Mylapore, is concerned, LW-19 / P.P.Sumathi, District Registrar, Mylapore in her statement has stated that the guidelines value of Rs.2,800/- per sq.ft and the market value is Rs.3,750/- per sq.ft for the period 01.11.2008 to 31.09.2009 as per the record of Mylapore Sub-Registrar Office in Survey Nos.3940/36, 3953/58 and 3953/59 in the 7th Main Road, R.A.Puram, Chennai - 600 028. Hence, there is no pecuniary loss. The allegation of pecuniary loss of Rs.48,40,000/- to the Society does not arise and therefore, the offence of misappropriation and the conspiracy against

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the Petitioner / A5 made by the prosecution is wanton and with mala fide intention.

7.The prosecution made an investigation under mala fide intention to investigate against the petitioner for the offence under Section 409 IPC and under Sections 13(2) r/w 13 (1)(c) and (d) of Prevention of Corruption Act, 1988 r/w.120 (B) IPC. However, the same is not attracted against the petitioner on the ground that the petitioner is not a public servant. Further, the tender was conducted in a transparent manner and the tender was published in a widely circulated News Paper and the bidders participated in the tender process. Tender notice were published through e-auction in website, by using National Informatics Centre, Tamil Nadu State Unit, Government of India. In such case, there could be no conspiracy between the officials and any private individual in e-tender. Any individual or any person could have participated in the tender process in e-auction. The final report does not contain any material to prove that the petitioner was in conspiracy with the officials in purchase of the lands. Further, when the statutory authorities gave definite market value of Rs.3,750/- per sp.ft for the plots, the assumption of the prosecution that it would fetch Rs.4,150/- is without any legally acceptable evidence.

8.Further, attributing motive for the demand drafts filed by A6 and A7 for Earnest Money Deposits. Even if such contentions of the prosecution are allowed to be admitted for argument sake, the same cannot be a basis to proceed against the petitioner/A5. The alleged Demand Drafts are filed by A6 and A7, who are not connected in any way with A5 and it is not the case of the prosecution that A5 has connived with A6 and A7 to file such tenders. The respondent implicated the petitioner in the criminal proceedings without implicating the Company M/s.Lamech Engineers Pvt.Ltd., Chennai. The company is the purchaser of the land auctioned by the Raja Annamalaipuram Co-operative Housing Construction Society Ltd., Chennai in the Criminal proceedings. There is no vicarious liability in a criminal case unless the statue prescribes. Hence, the discharge Petition ought to have been allowed with regard to A5. In view of the same, the trial Court order has to be set aside and the petitioner to be discharged from the above case.

9.The learned counsel for the petitioner relied upon the following citations:-

1.Jayalalitha and five others Versus State represented by Additional Superintendent of Police, CBCID, Chennai reported in Current Tamil Nadu Cases 2001 Supplement, in

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which it is held as follows:-

> "39.When we consider the above principles, it is clear that guideline and market value are two different concepts and that the term ?Market value? is vague, uncertain and a matter of guesswork. The market value, in my view, does not lie in the property contemplated to be purchased but lies in the mind of the person contemplating to purchase the said property. From the discussion made above, it could be seen that guideline value and market value being two different concepts, the trial Judge was not justified in taking the market value for arriving at the conclusion that there was a loss, since Explanation to Section 47-A of the Stamp Act, which has been extracted above, states that the market value will be the price the property would have fetched in open market."

2.In the case of The Government of Tamil Nadu rep. By Special Secretary to Government, Commercial Taxes (J1 Department), Secretariat, Chennai and others Versus S.Jayalakshmi and others reported in 2009-1-L.W. 811, in which it is held that "the market value of a land can be fixed only by taking into consideration several factors, like potentiality of a plot for development, shape of the plot, frontage and depth, modification for depth, value in the sense of value of additional cost less depreciation and the most important factors which a valuer should study in respect of a property are (1) advantages to the property and (2) disadvantages to the property."

10.Further, the learned counsel for the petitioner produced layout plan of the society, wherein at 7th main road plot No.229, 134 E, 397 are contiguous. Plot No.397 is adjoining to a temple and plot No.134 E and plot No.397 are appurtenant to the Canal Bank Road and to Buckingham Canal.

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11.Mr.N.R.Elango, the learned senior counsel appearing for the petitioner in Crl.O.P.No.22702 of 2018 would submit that Raja Annamalaipuram Co-operative House Construction Society is a registered Co-operative Society. Earlier it formed a layout for 389 plots and sold the plots to its members. The plots Numbers 134E, 229, and 397 were not sold to its members and it was managed by its Special officer. The Society constructed a small Community Hall with asbestos roof in plot No.229 with an extent of 1890 sq.ft in the year 1995 and rented to its members and others. About 325 sq.ft building was constructed on plot No.397 which was used as office. The Special Officer / A1 considering many issues

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faced by Society, pertaining to Community Hall and about the likely encroachment to the land, gave a proposal to sell the above plots. During the period of one Mr.Bharathan Registrar of Co-Operative Housing Societies, he issued 2 circulars (i) Na.Ka.No.1674/2008/Er, dated 10.03.2008 (D.No.11 of charge sheet) and (ii) Na.ka.No.1674/2008/E4, dated 04.06.2008 (D.No.12 of charge sheet) for the procedures to be followed in selling the Societies land.

12.The Deputy Registrar viz., Lourdunathan / A3, was Head of Price Fixing Committee, A1 and A2 were other members. After inspecting the sites has fixed the upset price as Rs.3,700/- by proceedings, dated 24.11.2008 (D.No.17 of charge sheet) sent the same along with proposal of Special Officer to the Registrar Housing Society seeking exemption to get market value from District Revenue Officer, by letter dated 27.11.2008 (D.No.18 of charge sheet). The proposal sent to the Registrar of Co-operative Housing Societies was on 27.11.2008. That time earlier guideline issued by Mr.Bharathan, Registrar in Circulars Document Nos.11 and 12 to obtain DRO report was in force. The petitioner / A4 was Special officer, Tamil Nadu co-operative Sugar Federation on 27.11.2008. The petitioner was posted as Registrar of Co-operative Societies (Housing) took charge on 10.12.2008 and served till 24.09.2009. On difficulties expressed by the officers, the petitioner/A4, by his Circular in Na.ka.No.1674/2008/E4, dated 22.01.2009 (Doc.No.19 of the charge sheet) modified earlier Circular conditions to fix the upset value by considering the guide line value from SRO, market value, by Fixation Committee headed the Deputy Registrar, which was made applicable to all Co-operative Housing Societies cannot be faulted with. In the Circulars dated 22.04.2009 and 30.04.2009, the petitioner instructed not to get market value from DRO or from Tahsildar due to the difficulties faced and a detail order passed.

13.The learned counsel further submitted that tender was called for by the Special Officer / A1 by auction and Tender Notice in paper publication on 18.09.2009, which was after several months of permission from the petitioner/A4. This petitioner was transferred on 24.09.2009 and reverted back to his parent Department and one Mr.D.P.Yadav. I.A.S., was appointed as Registrar of Housing Societies, by Government Order, dated 24.09.2009. The petitioner have no knowledge about the Tender called by the Special Officer / A1 and subsequent sale of property through A1 because these are to be monitored by the Deputy Registrar of Housing Society. The petitioner was transferred within 6 days from the date of tender notification called by Special Officer. The tender opening was held on 01.10.2009 and only 3 persons participated and one Lamech Engineering Pvt.Ltd., / A5 quoted

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Rs.3,750/-. The society property was registered on 28.10.2009 for the value of Rs.4,53,75,000 to A5/K.Mathiyalagan, Director of M/s.Lamech Engineers Pvt. Ltd., by Doc.No.2206/2009 at SRO, Mylapore, totally 12,100 square feets at the rate of Rs.3,750/- per sq.ft. The petitioner was not the Registrar of Housing Society and one Mr.D.P.Yadav I.A.S. was the Registrar on the date of sale of property and during Registration of sale deed.

14.Contending further the learned senior counsel submitted that Initially the FIR was registered on 22.06.2012 in Cr.No.4/AC/2012/CC III against the Special Officer S.Kalaikarasu A1, Co-operative Sub Registrar P.Rajednran / A2; Deputy Registrar J.Lourdunathan / A3 and Mathiyalagan, Director of M/s.Lamech Engineers Pvt.Ltd., / A5. This petitioner was arrayed as A4 in the FIR for the alleged offence under Section 120-B, Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act. The FIR was registered with delay of 2 years and 8 months. The allegation in the FIR is that, this petitioner / A4 along with A1 to A3 conspired together by not following the rules and regulations of Society and for obtaining pecuniary advantage sold the property for marginal rate Rs.3,750/- per sqft totaling Rs,4,63,75,000/-.

15.Counsel for the petitioner further submits that prosecution sanction order G.O.Ms.No.53, dated 30.03.2015 is interpreted to show Circular issued by this petitioner in Circular Na.ka.No.1674/2008/E4, dated 22.01.2009 is wrong. The circular has not stated anything about getting market value from the District Revenue Officer. The Circular clearly stated that in paragraph 4, that prior to the tender procedure, the guideline value from Sub Registrar has to be obtained and market value fixed by Pricing Committee headed by Deputy Registrar (housing) to be compared and fix the upset price must be fixed. In the sanction order, the Circular dated 22.1.2009 is misinterpreted, as if this petitioner/A4 ordered fixing the upset price, contra to Circular dated 22.01.2009, the petitioner issued second Circular on 28.01.2009, approving upset price of Rs.3,700/-, at the request of A3, dispensing obtaining of market value from DRO. Hence, prosecution based on sanctioned order and subsequent charge sheet against the petitioner are not maintainable in law.

16.The charge sheet is silent about specific overtact against this petitioner regarding misappropriation and wrongful gain. The list of witness LW.11 / the enquiry Officer had stated in his statement that in his enquiry he recommended to cancel the auction, surcharge proceeding

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initiated against the delinquents under Section 87 of T.N.Co-op Societies Act. The surcharge proceedings was initiated against A1 alone for recovery of Rs.2,78,90,500/- and final order was passed by Deputy Registrar (Housing) by proceedings dated 27.11.2012. But the same was set aside in C.M.A.No.3 of 2013 in order dated 30.10.2004 by the Chief Small Causes Court, Chennai and no appeal was filed against that order as on date. There is no loss caused to the society and moreover no steps was taken by the authority to cancel the sale deed executed in favour of A5. No steps was taken through Collector under Section 47-A of Registration Act, for any recovery. The civil Court finding is categorical that there is no misappropriation or loss created to the society. The civil Court finding has not been challenged and it is binding on the criminal Court.

17.He further submitted the Registrar have power under Section 181 of Tamil Nadu Co-operative Societies Act to amend, modify in the interest of public or for the security. Hence, relaxing the earlier circular of his predecessors by the petitioner as Registrar in consideration of the welfare of the Societies cannot be framed as an offence. The petitioner acted within the provisions of the Act and all the documents relied by the prosecution would prove that this petitioner acted as per the Act and law. The petitioner filed a discharge petition under Section 239 of Cr.P.C., before the trial Court, Special Judge for cases under Prevention of Corruption Act, Chennai in Crl.M.P.No.1198 of 2016 in C.C.No.21 of 2015 and the same was dismissed on 30.12.2016. Against that order, this petitioner/A4 preferred Criminal Revision in Crl.R.C.No.159 of 2017 before this Court and the same was dismissed on 23.06.2017. Thereafter, the present quash petition is filed.

18.The learned counsel for the petitioner relied upon the following citations:-

1.P.S.Rajya Versus State of Bihar reported in 1996 (9) SCC 1, in which it is held that "standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. In the instant case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. If the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings." Thus the petitioners falls under more than one head of the guidelines laid down in Bajanlal case for quashing the complaint/FIR.

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2.State of Haryana and Others Versus Bhajan Lal and Others reported in 1992 Supp (1) SCC 335, wherein it is held that seven guidelines have been issued in quashing the complaint. The petitioner case falls under the guidelines.

3.S.P.Ganesan & Another Versus State by the Inspector of Police, City Crime Branch, Trichy and Another reported in 2010 (2) L.W.(Crl.) 1183, in which it is held that disciplinary proceedings quashed earlier on same charges, criminal proceedings to be quashed.

4.G.Sagar Suri and Another Vs. State of U.P. And others reported in 2000 (2) SCC 636 wherein the principles of 482 Cr.P.C are stated as follows:-

> "8.Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code, Jurisdiction- under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

5.Satish Mehra Vs. State (NCT of Delhi) and Another reported in 2012 (13) SCC 614, wherein it is held as follows:-

> "the power under Section 482 Cr.P.C can be exercised not only at the threshold of a criminal proceeding but also at a relatively advanced stage thereof, namely, after framing of the charge against the accused. In fact the power to quash a proceeding after framing of charge would appear to be somewhat wider as, at that stage, the materials revealed by the investigation carried out usually comes on record and such materials can be looked into, not for the purpose of determining the guilt or innocence of the accused but for the purpose of drawing satisfaction that such materials, even if accepted in its entirety, do not, in any manner, disclose the commission of the offence

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alleged against the accused."

19.Ms.M.Prabhavathy, the learned Additional Public Prosecutor for the respondent would submit that based on the Vigilance Report, which was initiated pursuant to the confidential enquiry by the Directorate of Vigilance and Anti-corruption and as per the order of the Government, the case was registered for irregularities and corruption committed by A5 along with other accused in the sale of 3 plots, measuring about 12,100 sq.fts belonging to Raja Annamalaipuram Co-operative House Construction societies Ltd. The accused in criminal conspiracy by illegal act, by illegal means committed the offence. The investigation establishes a prima facie case against the petitioners A4 and A5 and other accused. On completion of investigation, a police report under Section 173(2) Cr.P.C., in the form of charge sheet for the offences under Sections 120-B and 409 IPC, and Sections 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988, against the accused/A1 to A7 was filed. The trial Court on perusal of the materials have taken cognizance of the case in C.C.No.21 of 2015.

20.The Accused were entrusted with the properties of the Raja Annamalaipuram Co-operative Housing Construction Societies, Chennai. A1 to A4 were having dominion over the properties of the said Society viz., Plot Nos.134E, 229 and 397 between May 2008 and October 2009. They had entered into a criminal conspiracy to do an illegal act of selling the above three plots of the said Society under the guise of creating funds to maintain the Society by concealing the fact that the Society was having sufficient funds In pursuance of the above criminal conspiracy, A5 conspired with the other accused got exemption in conditions emphasized by A4 predecessors and permitted the accused A1 to A3 to fix the market value of the plots as Rs.3,700/- per sq.ft vide his letter dated 28.01.2009. In pursuance of the criminal conspiracy, the 4th accused relaxed the condition of obtaining market value from Revenue authorities. Further, Notice inviting Tender in Malaimurasu evening daily was published on 18.09.2009. A1 uploaded the Tender documents in Tamil Nadu Government Web-site viz., www.tender.tn.gov.in with the help of the National Informatics Centre on 18.09.2009. But, the investigation revealed that they did not conduct e-tender through online, which is mandatory, as per the Act. The enquiry conducted with the National Informatics Centre revealed that the tender documents loaded in the Wed-site related to the tender were removed from it, in order to avoid others to participate in the tender.

21.The petitioner / A5 and other accused entered into a

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criminal conspiracy and violated the Bye-Laws 28 and 29 of the Raja Annamalaipuram Co-operative Housing Construction Society Limited, Section 32 of Tamil Nadu Co-operative Societies Act, 1983, Rules 46 to 49 of the Tamil Nadu Co-operative Societies Rules 1988 and Co-operative Registrar (Housing) Circular Nos.1674/2008/E4, dated 25.02.2008, 10.03.2008 and 04.06.2008. In pursuance of the said criminal conspiracy, the 3rd accused by avoiding e-tender, which is a violation of clause 20 of the Tamil Nadu Transparency in Tender Rules 2000, had conducted Tender on 01.10.2009, at the Office of the said Society. Thus, he facilitated A5 to A7 in this case alone to participate in the tender. A5 to A7 have not submitted their tender documents in the prescribed format. A7 and A6 attended the tender, quoted Rs.3,715/- and Rs.3,725/- per Sq.ft respectively and facilitated A5 to purchase the plots and thereby A5 made wrongful gain. Among the participants of tender, Petitioner / A5 K.Mathiyalagan, Director of M/s.Lamech Engineers Pvt.Ltd., quoted the highest bid amount of Rs.3,750/- per sq.ft and he was awarded tender. This fact discloses that there was a conspiracy and in order to give tender to A5, the other participants viz., A6 and A7 have quoted a very minimum difference of Rs.10/- to Rs.25/- per sq.ft.

22.The learned Additional Public Prosecutor further submitted that the public notice for tender notification was given in evening daily with limited circulation. Normally tender notification were advertised in widely circulated morning dailies. The evening publication with less circulation was chosen to avoid wide publicity. Further the general body notice to the members of the society were sent through private courier and not by way of registered post, which is the normal procedure followed. The reason given by the Special Officer of the Society for sale of three plots at one instance is that due to MRTS railway track, the slum dewllers near the Bakingham Canal have been shifted from the area and hence there is no patronage in booking of the community hall and the revenue generated had dwindled. On the other hand the reason given given is that due to the slum dwellers encroached upon the plot, the housing plot ought to be brought for sale. Further the society was facing financial crunch, which is contrary to the balance sheet. The letter sent to the District Revenue Officer was by way of certificate of posting and thereafter, no steps have been taken whether at all the letter had reached the concerned and what steps the society has taken to pursue the same. As per the guidelines, tender notice copy to be sent to the Director of Vigilance and Anti Corruption. In this case the tender notice have been sent after completion of the tender procedure after several months. Thus the petitioner/A1 to A4 had conspired along with A5 to A7 in commission of the above offence.

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23.Further, during the period between 2007-2008, Rs.4,150/- was the Market value, as per the Government Report. But, the investigation revealed that the prevailing market value during the relevant period was nearly Rs.12,000/- per sq.ft. The DRO, Chennai, has officially submitted a report to the Investigating officer stating the market value of the plots during the period was Rs.4,150/- per sq.ft. Even if that rate was considered, it is clear that the Society had sustained a loss to the tune of Rs.48,40,000/- because of the accused concerned in this case. Further, the trial Court, based on the materials both oral and documentary, clearly established that there is a prima facie case against the accused. The accused earlier filed petitions under Section 239 Cr.P.C., to discharge them from this case, the trial Court considering the documents and statements submitted before it in proper perspective finding prima facie case against the petitioners A4 and A5, rightly dismissed the petitions. Aggrieved by the order of the trial Judge, the accused/A5 filed Crl.R.C.No.159 of 2017. This Court dismissed the same finding that there is no valid reason raised by the accused to interfere with the order of the trial Court. Presently A4 has filed a quash petition under Section 482 Cr.P.C without any fresh materials which amount to second revision. Hence, it has to be dismissed in liminie.

24.Considering the rival submissions and on perusal of the materials, this Court finds that A1 is the Special Officer/Cooperative Sub Registrar, Raja Annamalaipuram Cooperative Housing Construction Society Limited, Chennai, A2 is the Zonal Cooperative Sub Registrar, A3 is the Deputy Registrar (Housing), Chennai Zonal Cooperative Department, Chennai and A4 is the Registrar of Cooperative Housing Department. The procedure as per several circulars and guidelines were not followed in safeguarding the interest of the society when the housing society plots are brought for sale. In communication dated 25.02.2008 in Na.Ka.No.1674/2008/E4 (LD10), certain instructions to arrive at correct and proper value of the properties by getting guideline value from the Registration Department, market value from the Revenue Department and to fix upset price by forming a committee with Regional Deputy Registrar of Cooperative Housing. To follow the Tamil Nadu Tender Transparency Act and Rules, to upload the tender documents in Internet after getting approval from the Registrar of Cooperative Housing Society to proceed with the sale were not followed.

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25.Further by communication dated 10.03.2008 in Na.Ka.No.1674/2008/E4 (LD11), the procedure of e-tendering to be followed is stated further, a copy of the tender document to be sent to the Director of Vigilance and Anti Corruption. In another communication dated 04.06.2008 (LD12) again the same is reiterated. It is seen that only on 16.10.2008, a letter has been addressed by the Special Officer of the Cooperative Society to the District Revenue Officer by certificate of posting, thereafter, no steps taken to follow the same. Further on 20.11.2008, a resolution (LD15) has been passed by the Special Officer seeking exemption from the guidelines issued in Na.Ka.No.1674/2008/E4 dated 04.06.2008, which is not approved by General Body. On the same day, the Regional Deputy Registrar Housing recommended the same, which is LD16. On 24.11.2008, the Regional Deputy Registrar Housing had accepted the upset price fixed by the committee, which is LD17. On 27.11.2008, the Regional Deputy Registrar Housing in communication Na.Ka.No.2220/2008/D (LD18) seeks exemption in obtaining market value from the revenue authorities in fixing the upset price. On 22.01.2009, the Registrar Housing Cooperative Society sent a communication (LD19) to the Deputy Registrar Cooperative Society Housing wherein guidelines were issued for processing of the tender as follows:-

> "2)காத்திருப்போர் பட்டியலில் உள்ளோர் அதிகபட்ச ஏலத்தொகையை செலுத்தும் பட்சத்தில் அவர்களுக்கு முன்னுரிமை கொடுத்து ஒதுக்கீடு செய்யப்படல் வேண்டும்.
>
> 3)அனைத்து ஏல நடைமுறையையும் கட்டாயம் பின்பற்றல் வேண்டும்.
>
> ய)(நாளிதழ் விளம்பரம்) Publication in press.
>
> ெ)மூடி முத்திரையிடப்பட்ட ஏலக் கோரிக்னை ளுநயடநன கூநனேநச,
>
> உ)பகிரங்க ஏலம் Open Auction.
>
> 4)ஏல நடைமுறையை மேற்கொள்ளும் முன்பு சார் பதிவாளர் அலுவலக வழிகாட்டி மதிப்பு (Sub Registrar Value) சந்தை மதிப்பு (Market Value) துணைப்பதிவாளர் (வீட்டுவசதி) தலைமையிலான விலை நிர்ணயத் கமிட்டியன் சந்தை மதிப்பு (Market Value) இவைகளை கொண்டு குறைந்தபட்ச விலை நிர்ணயம் (upset price fix) செய்தல் வேண்டும்."

26.Strangely in the above communication, the earlier directions and guidelines issued by the then Registrar of Cooperative Society, insisting about the market value from the District Revenue Officer/Revenue Department is not mentioned. Thereafter on 28.01.2009, the exemption to the market value report from the revenue authorities had been issued (LD20). By communication dated 28.01.2009, the Regional Deputy Registrar Cooperative Society had sent a communication to the Special Officer Society forwarding Na.Ka.No.13/2009/E4 by document No.21.

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27.The Registrar Cooperative Society Housing in his communication dated 17.02.2009 (LD22) finding that getting valuation report from the District Revenue Officer was taking some time and the society was facing difficulty. The valuation certificate was to be obtained from from Tahsildar, a procedure followed in fixing the valuation for lay outs.

28.Thus obtaining of valuation certificate from the revenue authorities was always followed except in the case of Raja Annamalaipuram Society. Thereafter, by communication (LD24) dated 22.04.2009, the Registrar of Cooperative Societies had issued certain guidelines in fixing the upset price for the society properties. In this case, these guidelines have not been followed which points to the criminality against the accused.

29.Further from the statement of witnesses and documents, it is seen that sanctions are obtained to proceed against the accused under the Prevention of Corruption Act. The procedure followed during the tender process are violated. The statements of DRO, Tahsildar, Deputy Tahsildar reveal market value to the land in Survey Nos.3940/36, 3953/58 and 3953/59 shows gross variations. The members of the society have given statement for non receipt of notice, for the general body meeting and they were available, residing in the same address maintained by the society. The officials from the Registration Department state about the guideline value. Apart from the above referred statements and documents, there are several other witnesses and documents to show the involvement of the accused. At this stage no roving enquiry is needed. There are prima facie materials to proceed against the accused. The petitioner /A4 on dismissal of his discharge petition by the trial Court is confirmed by this Court in Crl.R.C.No.159 of 2017 dated 23.06.2017. The report of the collector of Chennai and certain documents obtained by RTI, are to be tested during trial. The points raised and the documents produced are to be brought in evidence in trial.

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30.In view of the above, no merit in the contentions made by the learned counsel for the petitioners and this Court is not inclined to quash the proceedings against the 4^{th} accused and discharge the 5^{th} accused from the above case. In the result, both the petitions are dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Special Court for the cases under
the Prevention of Corruption Act,
Chennai.

2.The Inspector of Police,
Chennai City-I Detachment,
Vigilance and Anti Corruption,
Chennai-600 028.

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.A.John Britto, Advocate, S.R.No.25242

Crl.O.P.No.22702 of 2018 and
and
Crl.R.C.No.654 of 2017

VSN II(CO)
CB(17/08/2020)

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