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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 01..12..2021

ORDERS PRONOUNCED ON : 11..01..2022

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

CRIMINAL REVISION CASE NO.37 OF 2021

AND

CRL.M.P.NO.462 OF 2021

Dr.N.M.Veeraiyan [A7]

...Petitioner/Accused

-Versus-

State by

The Inspector of Police,

CBI/ACB/Chennai.

[RC MA 1 2016 A 0002]

...Respondent/Complainant

Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, 1973, praying to call for the records in Crl.M.P.No.311 of 2018 in C.C.No.21 of 2017 on the file of the learned XIII Additional Special Judge for CBI Cases, Chennai and set aside the order dated 12.10.2020 made in Crl.M.P.No.311 of 2018 by the learned XIII Additional Special Judge for CBI Cases, Chennai, dismissing the petition filed by the petitioner seeking to discharge him from the charges.

For Petitioner

: Mr.N.R.Elango,
Senior Counsel for
Mr.Ganesh Rajan

For Respondent

: Mr.K.Srinivasan,
Special Public
Prosecutor for CBI
Cases

ORDER

Against the dismissal of the discharge petition filed under Section 227 of the Code of Criminal Procedure, 1973 (in short, "the Code"), the petitioner is before this court with this revision petition.

2. The case of the prosecution in brief is as follows:-

(a) There are totally seven accused in this case and the petitioner has been arrayed as A7. They have been charged



for offences under Sections 120(B) of IPC r/w 7, 12 and 13(2) r/w 13(1)(d) of The Prevention of Corruption Act, 1988 (in short, "the PC Act"). A1 in the case, one Durga Prasad was working as Regional Commissioner in Employees Provident Fund Organization, Chennai (in short "EPFO"); A2 is a Deemed University by name "Savitha University" which runs various Educational Institutions, like Medical College, Dental College, etc.; A3-G.Ezhumalai and A4-J.Manigandan were working as Enforcement Officers in EPFO at Ambattur in Chennai; A5-Sengottaiyan was the Administrative Officer of Saveetha Dental College, A6-Saravanan was working as Finance Officer in Saveetha Medical College and Saveetha Dental College and A7/the petitioner is the Chancellor of Saveetha University, A2 herein.

(b) In the year 2014, A1 entered into a conspiracy with two of his Subordinate Officers namely, A3 and A4 to obtain a medical seat for his daughter in A2 University by abusing his official position. Pursuant to the same, he instructed one of his Subordinates to conduct an inspection at A2 institution. Accordingly, A3 and A4 along with one Sri.Nilendu Mishra, Regional Provident Fund Commissioner-II, Ambattur, conducted inspection at Saveetha Dental College, Saveetha Medical and Educational Trust, Saveetha Institute of Medical and Technical Services. Thereafter, an enquiry under Section 7-A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 was initiated by the Sub Regional Officer of EPFO at Ambattur on 27.02.2015. Then, A1 approached A7 and requested a medical seat for his daughter, however, he could not get medical seat in A2 University. Thereafter, A1 demanded illegal gratification of Rs.50,00,000/- from A7/the petitioner, A5 and A6 through A3 to close the above proceedings. However, after negotiation, the amount was reduced to Rs.25,00,000/-.

(c) In furtherance of the above said conspiracy, on 11.01.2016, A1 called one Sudalaimuthu, who, later on, turned to be an approver, over phone and gave instructions to collect cash from a college representatives and keep it with him. In pursuance of the criminal conspiracy, on the instructions of the petitioner (A7), on 12.01.20216, A6 took cash of Rs.15,00,000/- from the locker maintained by them with Karur Vysa Bank Limited and on the request of A5, one Dasarathan, a contractor for Saveetha Group of Institution and took A5 and A6 to Ambattur and handed over the cash of Rs.15,00,000/- to one Suriyanarayanan, who also, later on, turned to be an approver, the Manager of Sudalaimuthu. Thereafter, Suryanarayanan handed over the cash to Sudalaimuthu and after handing over the cash, both A5 and A6 informed the same to A4.

(d) In the mean time, based on the source information, the respondent CBI formed a team to nab A1 while accepting the



bribe amount from Sudalaimuthu. On 17.01.2016, A1 came in a car along with his Auditor one Raja to the house of Sudalaimuthu where Sudalaimuthu handed over the cash to A1. At that time, the respondent CBI intercepted the car and seized the amount from A1, then a crime was registered. During investigation, A6 - Saravanan was arrested and during interrogation, he had given a confession that on the instructions of the petitioner (A7), he took Rs.15,00,000/- from KVB Locker and handed over the same to Sudalaimuthu along with A5. During investigation, CBI seized documents like account register maintained by A6 which contained entries for payment of Rs.15,00,000/-. After obtaining permission from the Ministry of Homes, mobile phones used by all the accused were intercepted and the calls were tapped and recorded which revealed that there was a demand by A1 and also by A3 and A4. That apart, the call details collected during investigation also revealed that all the accused had frequently contacted each other.

(e) On completion of investigation, the respondent CBI filed the final report. The petitioner (A7) has been charged with for the offence under Section 120(B) of IPC r/w 12 of the PC Act, 1988. The learned Special Judge took cognizance of the offences alleged and issued process against all the accused. To discharge him from the charges leveled against him, petitioner filed a petition under Section 227 of Cr.P.C. which was dismissed by the learned Special Judge by order dated 12.10.2020. Challenging the same, the present revision petition has been filed by the petitioner.

3. The respondent-CBI has filed a detailed counter affidavit, disputing various grounds raised in the revision petition.

4. Mr.N.R.Elango, the learned senior counsel appearing for the petitioner would contend that the petitioner was the Chancellor of Saveetha University which runs Medical, Dental and Engineering Colleges. The petitioner does not have any administrative control over the day-to-day affairs of the University. The Educational Institutions are being administered by various persons and the petitioner was not in-charge and responsible for the day-to-day affairs of the Educational Institutions. In respect of the charges leveled against the petitioner, except the confession of a co-accused namely, A6-Saravanan, absolutely, there was no material available on record to show that the petitioner was also a part of the conspiracy and he abetted the other accused to commit the crime. Even the call details allegedly collected by the respondent CBI would only reveal that it was the other accused namely, A1, A3, A5 and A6 along with the approvers, who said to have been involved in the commission of the alleged offence and none of



the call recordings would indicate the involvement of the petitioner in the crime. Absolutely, no prima facie material is available on record against the petitioner to show his involvement in the alleged crime. Merely because he was the Chancellor of the A2 University, he cannot be made vicariously liable for the offence committed by A2 University.

5. The learned senior counsel would further submit that, the trial court without considering as to whether the materials so collected during investigation make out any prima facie case as against the petitioner, merely on presumption, that without the instigation of A7, A5 and A6 would not have taken the amount from bank locker and given the same as illegal gratification to A1, dismissed the discharge petition filed by the petitioner and charges cannot be framed only on a presumption which is not at all permissible in law.

6. Per contra, Mr.K.Srinivasan, the learned standing counsel appearing for the respondent CBI would vehemently contend that the petitioner was the Chancellor of A2 University. The materials so collected during the investigation would clearly reveal that only at the instigation of the petitioner (A7), A6, one of the employees of the petitioner took money from the bank locker and went along with A5 and one Dasarathan (L.W.5), a contractor of the A2 University, and handed over the illegal gratification amount for A1. The statement of the other witnesses including the approver - Sudalaimuthu, confession statement of A6 and statement of L.W.5, who was contractor for A2 University would prima facie go to show that the petitioner was also part of conspiracy and he only abetted the other accused to commit the crime. That apart, the phone call details so collected during investigation and the account register seized from the petitioner institution would also clearly reveal the involvement of the petitioner in the crime. The petitioner was not implicated merely on the confession statement of the co-accused. The learned counsel would further submit that at the initial stage of framing of charges, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. The materials available on record would clearly make out a prima facie case against the petitioner and same would give rise to a strong suspicion as to the involvement of the petitioner in the crime. Therefore, the trial court was right in dismissing the discharge petition filed by the petitioner and the same does not call for any interference at the hands of this court.

7. I have considered the rival submissions and perused the records carefully.



8. Sections 227 and 239 of Cr.P.C. provide for discharge before recording evidence on the basis of the final report filed by the police. Even though different languages have been employed in these provisions, the cardinal principle is that at the initial stage of framing of charges, the court is required to see whether there is prima facie case made out for proceeding against the accused.

9. The above provisions have been incorporated in the Code with a view to save the accused from the prolonged harassment, protracted criminal trial and to eliminate the harassment of the accused person when the materials gathered during investigation do not make out a prima facie case against him. It is also the settled principle of law that the evidence which was collected during investigation could not show that the accused has committed the offence, then, the accused deserved to be discharged.

10. The court is empowered to sift and weigh evidence for the limited purpose to find out whether a prima facie case has been made out and the materials placed before the court discloses grave suspicion against the accused person. On considering the materials placed before it, if the court finds some suspicion against the accused person, but such suspicion is not grave, then the court can discharge the accused person. While considering the application for discharge, the court cannot act as a post-office or mouth-piece 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. However, it is needless to say that at the stage of framing of charges, the court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if the court was conducting a trial. In fine, what the court is expected to do is, to find out as to whether any prima facie case is made out against the accused and the materials placed before the court give rise to a strong suspicion against the accused.

11. In *Union of India v. Prafulla Kumar Samal*, (1979) 3 SCC 4, the Honourable Supreme Court has laid down the principles as follows:-

"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(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 has been made out.



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(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."

12. In P.Vijayan v. State of Kerala, (2010) 2 SCC 398 following the above said judgment and after considering various other judgments, the Honourable Supreme Court has further explained the scope of Section 227 of the Code as under:-

"10. Before considering the merits of the claim of both the parties, it is useful to refer to Section 227 of the Code of Criminal Procedure, 1973, which reads as under:

"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 not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be



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empowered to discharge the accused and at this stage he is not to see whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts."

13. Further in *Dipakbhai Jagadishchandra Patel v. State of Gujarat*, (2019) 16 SCC 547, the Honourable Supreme Court has explained the difference between mere suspicion and strong suspicion while discharging the accused from framing of the charges as under:-

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."



14. Coming to the instant case, the petitioner has been charge sheeted for offence under Section 120(B) of IPC r/w 12 of the PC Act, 1988. The petitioner was the Chancellor of A2 University which runs various Educational Institutions in Tamil Nadu. The main allegation against the petitioner is that to settle some issues with the EPFO, he entered into a criminal conspiracy along with A5 & A6 to pay illegal gratification of Rs.15,00,000/- to A1 who was the Commissioner in the Regional Office of EPFO at Chennai and also abetted the other accused to commit the crime.

15. According to the prosecution, A1 in order to get a medical seat for his daughter in A2- University instigated his officials to conduct an inspection at A2 university and initiated a proceedings under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. After having failed to get an admission for her daughter in the petitioner's medical college, in order to settle the issue, A1 demanded illegal gratification through A3 and A4, who were the Enforcements Officers in EPFO and the subordinates of A1. A3 and A4, in turn, contacted A5. Thereafter, the petitioner contacted one Dasarathan (L.W.5), who was one of his contractors and requested him to settle the issue with EPFO and on the instructions of the petitioner, A6 took money from the KVB locker and with the help of A5 and Dasarathan, the money was handed over to A1 through one Sudalaimuthu (approver), who was known to A1. The prosecution strongly relied upon the statement of L.W.5 - Dasarathan and the confession statement of co-accused namely, A6, also the mobile phone conversations between the accused and call details recorded, to establish that the petitioner was also part of the conspiracy and abetted the offence.

16. For the limited purpose of finding out whether any prima facie case is made out against the petitioner, let us consider the statements of witnesses available on record. From the statement of L.W.5- Dasarathan, it could be seen that he was a contractor for house keeping work of the entire Saveetha Group of Institutions and he said to be connected to the officers of the EPFO. A5 & A6 approached L.W.5 to resolve the disputes with the EPFO. According to L.W.5, after the receipt of notice from the EPFO regarding huge evasion of EPF contributions, the petitioner called him and requested his help and to assist A5 to settle the issues with the EPFO. The relevant portion of the statement of L.W.5 is as under:-

"On being asked, I state that after receipt of Notice from EPFO, SRO, Ambattur, for huge evasion of EPF contribution, Dr.Veeraiyan, Chancellor of Saveetha University on receipt of Notice from EPFO, SRO, Ambattur, called me and



Shri. Sengottaiyan and requested me to help in this matter and also assist Shri.Sengottaiyan to settle the issues with SRO Ambattur."

Except the above, there is no allegation against the petitioner.

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17. The next material relied upon by the prosecution against the petitioner is the recorded telephonic conversations among the accused. L.W.46, L.W.47 and L.W.48 had given statements to that effect. L.W.46 was the Senior Executive in AIRCEL Mobile Company. He speaks about the call details of A6 with one Srinivasan and L.W.5 Dasarathan and he did not state anything about the petitioner. L.W.47 was the Nodal Officer in Bharati Airtel Limited. He had stated only about the CDR details of one Elumalai (A3) with the other accused. He also did not say anything about the petitioner. L.W.48 was the Alternate Nodal Officer in Vodafone Mobile Services Limited. He said to have given the call details between the petitioner (A7) and Manikandan (A4). L.W.48 speaks about the mobile phone numbers of the petitioner and A5. The mobile number of the petitioner has been mentioned as "98410 99399". But, the CDR details given by L.W.48 do not tally with the mobile phone number of the petitioner whereas it only tally with the mobiles of A5 & A7. Apart from that, the voice calls recorded by the CBI are related to the conversations held between Sundalaimuthu, approver witness, A1 and the others and in the telephonic conversation recordings relied on by the prosecution, there is no mention about the petitioner.

18. The next strong material relied upon by the prosecution is the confession of a co-accused namely, A6-Saravanan. That statement was recorded by the respondent CBI, when A6 was in the custody of the police, wherein he had stated that the petitioner called him to his chamber and directed him to take Rs.15,00,000/- from KVB locker and go along with A5. Thereafter, A5 informed him that the amount was to be given to A1. The relevant portion of the confession statement of A6 reads as under:-

"On being asked, I further state that, on 12.01.2016, Dr.Veeraian, called me to his Chamber and directed me to take an amount of Rs.15 Lakhs from the locker and to go along with Shri.Sengottian, who is working as Estate Officer with Saveetha Dental College"

These are the materials strongly relied upon by the prosecution against the petitioner. Apart from the above, there is no other material available to connect the petitioner with the crime.

19. So far as the statement of L.W.5 is concerned, he had only stated that he was well connected with the EPFO and the petitioner asked him to assist A5 to settle the issues with the



EPFO and he did not ask him to pay any bribe to EPFO officials. Therefore, from the statement of L.W.5, it could not be inferred that the petitioner conspired with the other accused and abetted them to commit the offence. As already stated, the call details collected by the respondent CBI also do not show the involvement of the petitioner in the crime and they were only between the other accused namely A1, A3 to A6 and with the approver witnesses. On perusal of the Account Register seized by the respondent during investigation, it is seen that it was maintained by A6 and an entry was also made by him for payment of Rs.15,00,000/-. The petitioner used to check the account once in a while and counter sign in the account book. So far as this entry is concerned, it is seen from the account book that the petitioner has not counter signed the entry made in the account book. SO it cannot be presumed that petitioner authorized the payment of bribe.

20. Thus, the only material available against the petitioner is the confession of the co-accused. Now, the question is whether confession of the co-accused alone is sufficient to frame charges against the petitioner and proceed with the trial. Regarding the evidentiary value of the confession statement of co-accused, it is well-settled that, confession statement of the accused is not substantive evidence against the co-accused. The court should not start with the confession of co-accused, it should begin with the other evidence adduced by the prosecution, after the court formed its opinion regarding the guilt with regard to the quality and effect of the said evidence, then it is permissible for the court to turn to the confession of co-accused in order to lend assurance to the other evidence available against the co-accused.

21. In *Kashmira Singh v. State of Madhya Pradesh*, AIR 1952 SC 159, the Honourable Supreme Court extensively considered the scope of confession of the co-accused and held as under:-

"8. Gurubachan's confession has played an important part in implicating the appellant, and the question at once arises, how far and in what way the confession of an accused person can be used against a co-accused? It is evident that it is not evidence in the ordinary sense of the term because, as the Privy Council say in *Bhuboni Sahu v. King* [76 IA 147 at 155] .

"It does not indeed come within the definition of 'evidence' contained in Section 3 of the Evidence Act., It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination."



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Their Lordships also point out that it is

“obviously evidence of a very weak type ... It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities.”

They stated in addition that such a confession cannot be made the foundation of a conviction and can only be used in “support of other evidence”. In view of these remarks it would be pointless to cover the same ground, but we feel it is necessary to expound this further as misapprehension still exists. The question is, in what way can it be used in support of other evidence? Can it be used to fill in missing gaps? Can it be used to corroborate an accomplice or, as in the present case, a witness who, though not an accomplice, is placed in the same category regarding credibility because the Judge refuses to believe him except insofar as he is corroborated?

9. In our opinion, the matter was put succinctly by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerbutty* [ILR 38 Cal 559 at 588] where he said that such a confession can only be used to “lend assurance to other evidence against a co-accused” or, to put it in another way, as Reilly J. did in *In re Periyaswami Moopan* [ILR 54 Mad 75 at 77]

“the provision goes no further than this--where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence”.

10. Translating these observations into concrete terms they come to this. The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it



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is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the Judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the Judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

22. In *Haricharan Kurmi v. State of Bihar*, AIR 1964 SC 1184, the Constitution Bench of the Honourable Supreme court has held as follows:-

"13. As we have already indicated, this question has been considered on several occasions by judicial decisions and it has been consistently held that a confession cannot be treated as evidence which is substantive evidence against a co-accused person. In dealing with a criminal case where the prosecution relies upon the confession of one accused person against another accused person, the proper approach to adopt is to consider the other evidence against such an accused person, and if the said evidence appears to be satisfactory and the court is inclined to hold that the said evidence may sustain the charge framed against the said accused person, the court turns to the confession with a view to assure itself that the conclusion which it is inclined to draw from the other evidence is right. As was observed by Sir Lawrence Jenkins in *Emperor v. Lalit Mohan Chuckerburty* [(1911) ILR 38 Cal 559 at p. 588] a confession can only be used to "lend assurance to other evidence against a co-accused". In *re Periyaswami Moopan* [(1913) ILR 54 Mad 75 at p. 77] Reilly. J., observed that the provision of Section 30 goes not further than this: "where there is evidence against the co-accused sufficient, if believed, to support his conviction, then the kind of confession described in Section 30 may be thrown into the scale as an additional reason for believing that evidence". In *Bhuboni Sahu v. King* [(1949) 76 IA 147 at p. 155] the Privy Council has expressed the same view. Sir John Beaumont who spoke for the Board, observed that "a confession of a co-accused is obviously evidence of a very weak



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type. It does not indeed come within the definition of "evidence" contained in Section 3 of the Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by cross-examination. It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities. Section 30, however, provides that the court may take the confession into consideration and thereby, no doubt, makes it evidence on which the court may act; but the section does not say that the confession is to amount to proof. Clearly there must be other evidence. The confession is only one element in the consideration of all the facts proved the case; it can be put into the scale and weighed with the other evidence". It would be noticed that as a result of the provisions contained in Section 30, the confession has no doubt to be regarded as amounting to evidence in a general way, because whatever is considered by the court is evidence; circumstances which are considered by the court as well as probabilities do amount to evidence in that generic sense. Thus, though confession may be regarded as evidence in that generic sense because of the provisions of Section 30, the fact remains that it is not evidence as defined by Section 3 of the Act. The result, therefore, is that in dealing with a case against an accused person, the court cannot start with the confession of a co-accused person; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence. That, briefly stated, is the effect of the provisions contained in Section 30. The same view has been expressed by this Court in *Kashmira Singh v. State of Madhya Pradesh* [(1952) SCR 526] where the decision of the Privy Council in *Bhuboni Sahu* case [(1949) 76 IA 147 at p. 155] has been cited with approval."

23. Later on, the Honourable Supreme Court while considering the issue of framing of charges against the accused based on the



confession of the co-accused, applying the principles laid down in Kashmira Singh (supra) has held that confession of the co-accused containing incriminating material against other accused cannot be considered, in absence of any evidence, for framing charges and based on the confession of the co-accused alone charges cannot be framed.

24. In Suresh Budharmal Kalani @ Pappu Kalani v. State of Maharashtra, (1998) 7 SCC 337, the Honourable Supreme Court has held as under:-

"7. So far as the confession of Jayawant Suryarao is concerned, the same (if voluntary and true) can undoubtedly be brought on record under Section 30 of the Evidence Act to use it also against Kalani but then the question is: what would be its evidentiary value against the latter? The question was succinctly answered by this Court in Kashmira Singh v. State of M.P. [AIR 1952 SC 159 : 1952 SCR 526] with the following words:

"The proper way to approach a case of this kind is, first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though, if believed, it would be sufficient to sustain a conviction. In such an event the judge may call in aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

The view so expressed has been consistently followed by this Court. Judged in the light of the above principle, the confession of Suryarao cannot be called in aid to frame charges against Kalani in the absence of any other evidence to do so."

25. In Dipakbhai Jagadishchandra Patel (cited supra) at para 24, the Honourable Supreme Court has held as follows:-

"24. Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625] , taken the view



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that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in *Kashmira Singh v. State of M.P.* [*Kashmira Singh v. State of M.P.*, 1952 SCR 526 : AIR 1952 SC 159 : 1952 Cri LJ 839] We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in *Suresh Budharmal Kalani* [*Suresh Budharmal Kalani v. State of Maharashtra*, (1998) 7 SCC 337 : 1998 SCC (Cri) 1625], the Court has proceeded to take the view that only on the basis of the statement of the co-accused, no case is made out, even for framing a charge."

26. From the above principles laid down by the Honourable Supreme Court it is clear that, in the absence of any other evidence, only based on the confession of the co-accused, no charges can be framed against the accused.

27. That apart, in order to constitute an offence under Section 120-B of IPC, the prosecution should necessarily establish that there was an agreement between the parties for doing an unlawful act and there should be a material for meeting of mind between the conspirators to commit the illegal act. The materials placed on record do not show that there was any agreement between the petitioner and the other accused to commit an illegal act and nothing available on record to indicate that there was meeting of mind between the petitioner and the other accused to commit the illegal act. That apart, to bring home the offence under Section 12 of PC Act also, there is no material available on record, except the confession statement of the co-accused to show that the petitioner has abetted the offence.

28. The learned Special Public Prosecutor would vehemently contend that the petitioner being the Chancellor of the University and in-charge and responsible for the day-to-day affairs of the institutions, without his knowledge, A5 & A6, who are all his employees, could not have acted on their own and proceeded to hand over such a huge sum to A1. This would create a strong suspicion against the petitioner which would be sufficient to frame the charges.



29. It is true that a strong suspicion against the accused person would be suffice to frame charges, however, such strong suspicion must be founded on some materials and it cannot be based on a moral notions and presumptions. The suspicion should be based on some materials which should be sufficient to entertain a prima facie view that the accused has committed the offence. Therefore, at the initial stage of framing of charges, there must be some materials which would create a strong suspicion that the accused has committed the offence, which, if put to trial, could prove him guilty. It is settled that mere suspicion against the accused person that he might have involved in the crime is not sufficient to frame the charges.

30. In *Dipakbhai Jagadishchandra Patel v. State of Gujarat* [cited supra] wherein, at para 23, the Honourable Supreme Court has held as under:-

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."



31. In the instant case, except the allegation that the petitioner was the Chancellor of A2-University, there is no other material available on record to show that the petitioner was in-charge and responsible for the day-to-day affairs of the institutions run by the university (A2). In the absence of any such material, it cannot be presumed that the petitioner being the Chancellor of the University might have involved in the transactions, mere suspicion is not sufficient to hold that the petitioner was also involved in the crime. That apart, petitioner also cannot be made vicariously liable for the offence said to have been committed by A2 University, in the absence of any provision in the Act and IPC making him vicariously liable.

32. Considering all the materials available on record, this court is of the considered view that no prima facie case has been made out against the petitioner for framing of the charges and as such continuing the criminal prosecution against him would only amount to abuse of process of law. The trial court, without considering those materials in the light of the settled principles of law, dismissed the discharge petition filed by the petitioner merely on a presumption.

33. For the foregoing discussions, the order of the trial court dismissing the petition filed by the petitioner seeking to discharge him from framing of the charges is liable to be set aside and the revision petition succeeds.

In the result, the revision petition is allowed and the order of the learned Special Judge is set aside and the petitioner is discharged from all the charges. The learned Special Judge shall proceed with the framing of the charges in respect of the other accused and proceed with the trial in accordance with law. Consequently, connected MP stands closed.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kmk

To

1. The XIII Additional Special Judge for CBI Cases, Chennai.
2. The Inspector of Police, CBI/ACB/Chennai.
3. The Spl. Public Prosecutor [CBI Cases], High Court, Madras.



Copy to

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

WEB COPY

+3cc to Mr.Ganesh Rajan, Advocate, S.R.No.2133

+1cc to Mr.K.Srinivasan, Advocate, S.R.No.2107

Cr1.R.C.No.37 of 2021

PCH (CO)

KKV/03/02/2022