

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.07.2022

PRONOUNCED ON: 12.10.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)Nos.1326, 1327, 1329, 1331 and 1332 of 2022

and

Crl.M.P.(MD)Nos.964, 966, 967, 968 and 969 of 2022

K.Saravanan : Petitioner/Accused No.2
(in all petitions)

Vs.

State rep by
The Inspector of Police,
Vigilance and Anti Corruption,
Pudukkottai.

Crime No.5 of 2019 : Respondent/Complainant
(in all petitions)

COMMON PRAYER : Criminal Original Petitions have been filed under Section 482 Cr.P.C, to call for the entire records in Spl.C.C.Nos.1, 2, 3, 4 and 5 of 2021 on the file of the learned Chief Judicial Magistrate, Pudukkottai and quash the same as illegal.

(in all petitions)

For Petitioner : Mr.V.Kathirvelu,
Senior Counsel
for Mr.P.Ganapathi Subramanian.

For Respondent : Mr.R.Meenakshi Sundaram,
Additional Public Prosecutor.

COMMON ORDER

These Criminal Original Petitions have been filed invoking Section 482 Cr.P.C., seeking orders to call for the records in Spl.C.C.Nos.1 to 5 of 2021 pending on the file of the Court of Chief Judicial Magistrate, Pudukkottai and quash the same as against the petitioner.

2. The petitioner is the second accused in all the five cases in Spl.C.C.Nos 1 to 5 of 2021, on the file of the Chief Judicial Magistrate Court, Pudukkottai. The respondent registered a case in Cr.No.5 of 2019, under Sections 420, 467, 468 and 471 I.P.C., and Section 13(1)(c), 13(1)(d) r/w 13(2) of Prevention of Corruption Act, 1988 and under Section 109 I.P.C., on 01.03.2019 against six persons including the petitioner. After completion of investigation, the respondent has lodged five final reports and the same were taken on file in Spl.C.C.Nos.1 to 5 of 2021 and the same are pending on the file of the Court of Judicial Magistrate, Pudukkottai. Admittedly, the first accused R.Rameshkumar was the then Assistant Engineer, Town Section, Pudukkottai Sub Division, PWD (C&M); the second accused – K.Saravanan – the petitioner herein was the then Assistant Executive Engineer, PWD (C&M); the third accused R.Senguttuvel was the then Executive Engineer, PWD(C&M), Pudukkottai and the accused 4 to 6 – A.Asaraf Ali, S.Palanisamy and S.Ramasamy are the contractors. The main

case of the prosecution is that the accused 1 to 3 in collusion with the accused 4 to 6 had conspired together, misappropriated and swindled the Government money by entering boosted measurements in the measurement book, prepared forged measurement books and recommended for passing bills for the boosted measurements, claimed excess amount than the actual work executed and thereby criminally misappropriated the Government amount and caused wrongful loss to the Government during the check period between 2016-2017.

3. It is not in dispute that the District Collector Office building and the District Court building in Pudukkottai District are being maintained by PWD Construction and Maintenance Division. It is also not in dispute that the priority list for maintenance and special repairs of the buildings for the year 2016-2017 was approved by the District Collector, Pudukkottai vide order dated 02.01.2017.

4. The case of the prosecution in all the five cases in brief are stated below:

Spl.C.C.No.1 of 2021:

Allegation No.1

As per the measurement of M.Book No.2373, M.S.grill was fixed at yard wall in total 653.2 Kg and payment of Rs.41,151.60/- has been made for 653.2

Kg @ Rs.63 per Kg. But super check report revealed that no M.S grill was fixed at yard wall and made loss of Rs.41,151.60/- to the Government exchequer.

Allegation : 2

As per the measurement of M.Book No.2373, Aluminum door was fixed in the total area of 2.1 M² and payment of Rs.13,133.40/- had been made 2.1M² @ Rs. 6,254/- per 1 M² But super check report revealed that total area of Aluminum door is 2.04 M² only and shortage of quantity for the work is $(2.1-2.04)= 0.06 \text{ M}^2$ x 6254= Rs.394.00 and made loss of Rs.394.00/- to the Government exchequer.

Allegation : 3

As per the measurement of M.Book No.2373, Aluminum grill was fixed in the total area of 3.96 M² and payment Rs.8,525.88/- had been made for 3.96 M² @ Rs.2,153/- per 1 M². But super check report revealed that total area of Aluminum grill is 2.65 M² only and shortage of quantity for the work is $(3.96 - 2.65)= 1.31 \text{ M}^2$ x 2153 = Rs.2,816.12 and made loss of Rs.2,816.12/- to the Government exchequer.

Allegation : 4

As per the measurement of M.Book No.2373, 75 mm dia PVC pipe was laid in the total are of 14 Rm and payment Rs.3,048.00/- had been made for 14 Rm @ Rs.282/- per 1 Rm. But super check report revealed that 75 mm dia PVC pipe line was laid in the total are of 7.03 Rm only and shortage of quantity for

the work is $(14 - 7.03) = 6.97 \text{ Rm} \times 282 = \text{Rs.}1,965.54$ and made loss of Rs. 1,965.54/- to the Government exchequer.

Allegation : 5

As per the measurement of M.Book No.2373, 110 mm dia PVC pipe was laid in the total area of 10.5 Rm and payment of Rs.4042.50/- had been made for 10.5 Rm @ Rs.385/- per 1 Rm. But super check report revealed that 110 mm dia PVC pipe line was laid in the total are of 7.00 Rm only and shortage of quantity for the work is $(10.5 - 7.00) = 3.5 \text{ Rm} \times \text{Rs.}385 = \text{Rs.}1,347.00$ and made loss of Rs.1,347/- to the Government exchequer.

Allegation : 6

Further the super check report revealed that 2 Nos. of 110 mm dia bend, 1 No. of 75 mm dia bend, 3 Nos. of 110 mm dia Elbow, 2 Nos. of 70 mm Elbow, 5 Nos. of 110 mm dia Tee and 3 Nos. of 75 mm dia Tee were not used for the above said works and shortage of quantity for the work is Rs.4,587/- and made loss of Rs.4,587/- to the Government exchequer.

Totally swindled money - Rs.52,261.26/-

Spl.C.C.No.2 of 2021:

Allegation 1 :

As per the measurement of M.Book No.2382, weathering course was executed in the total area of 1.43M^3 and payment of Rs.3866.72/- had been

made for 1.43M^3 @ Rs.2,704/- per 1M^3 . But super check report revealed that the execution of total area is 1.12M^3 only and shortage of quantity for the above work is $(1.43-1.12) = 0.31\text{M}^3 \times \text{Rs.}2,704 = \text{Rs.}838.24/-$ and made loss of Rs. 838.24/- to Government exchequer.

Allegation 2 :

As per the measurement of M.Book No.2382, Aluminum partition work was executed in the total area of 12M^2 and payment of Rs.42.156/- had been made for 12M^2 @ Rs.3,513/-per 1M^2 . But super check report revealed that the execution of total area is 8.10M^2 only and shortage of quantity for the above work is $(12-8.10) = 3.9\text{M}^2 \times \text{Rs.}3,513 = \text{Rs.}13,700.70/-$ and made loss of Rs. 13,700.70/- to Government exchequer.

Allegation 3 :

As per the measurement of M.Book No.2382, 25mm dia PVC pipe was laid in the total area of 25.9 Rm and payment of Rs.3,211.60/- had been made for 25.9 Rm @ Rs.124/- per 1 Rm. But super check report revealed that 25mm dia PVC pipe line was laid in the total area of 18.80Rm only and shortage of quantity for above work is $(25.9 - 18.80)=7.1\text{Rm} \times \text{Rs.}124 = \text{Rs.}880.40/-$ and made loss of Rs.880.40/-to Government exchequer.

Allegation 4 :

As per the measurement of M.Book No.2382, Aluminum door was fixed in the total area of 2.1 M² and payment Rs.13,133.4/- had been made for 2.1 M² @ Rs.6254/- per 1 M². But super check report revealed that total area of aluminum door is 1.89M² only and shortage of quantity for the work is (2.1-1.89)=0.21 M² x Rs.6254 = Rs.1,313.34 and made loss of Rs.1,313.3/- to Government exchequer.

Allegation 5 :

Further the super check report revealed that 11 Nos. of 25mm dia bend, 3 Nos. of 25mm dia Elbow, 3 Nos. of 25 mm dia Tee, 2 Nos. of Gun metal Gate valve and 0.01 Cum Brick work and 0.10M² Precast slab and 0.26M² painting work were shortage and made loss of Rs.2,104.54/- totally to Government exchequer.

Totally swindled money – Rs.18,837.22/-

Spl.C.C.No.3 of 2021

Allegation No.1 :

As per the measurement of M.Book Nos.2375 and 1386, weathering course was executed in the total area of 5.24 M³ and payment of Rs.13,496.67/- had been made for 5.24 M³ @ Rs.2,575.7/- per 1M³. But super check report

revealed that no weathering course work was executed and made loss of Rs. 13,496.67/- to Government exchequer.

Allegation No.2 :

As per the measurement of M.Book Nos.2375 and 1386, Pressed Tiles (MP tiles) was laid in the total area of 115.18 M² and payment of Rs.86,603.84/- has been made for 115.18M² @ Rs.751.9/- per 1 M². But super check report revealed that no Pressed tiles was laid and made loss of Rs.86,603.84/- to Government exchequer.

Totally swindled money- Rs.1,00,100.51/-

Spl.C.C.No.4 of 2021

Allegation No. 1 :

As per the measurement of M.Book Nos.1415 and 2370, 25 mm dia PVC pipes were laid in total are of 154.2Rm and payment of Rs.14,494.80/- had been made for 154.2 Rm @ Rs.94/- per 1Rm. But super check report revealed that 25mm dia PVC pipe line was laid in the total are of 26.95 Rm only and shortage of quantity for the work is $(154.2 - 26.95) = 127.25$ Rm x Rs.94.00/- = Rs. 11,961.50/- and made loss of Rs.11,961.50/- to Government exchequer.

Allegation No. 2.

Further as per super check report 8 Nos. of 25mm dia Tee, 22 Nos. of 32mm dia Tee, 25 Nos. of 50mm dia Tee, 7 Nos. of 25mm dia bend, 22 Nos. of 32 dia bend, 32 Nos. of 50mm dia bend, 3 Nos. of 25mm dial elbow, 8 Nos. of 32mm dia elbow, 10 Nos. of 50mm dia elbow, 25 Nos. of 25 x 20mm reducer elbow, 2 Nos. of 25 x 15mm reducer elbow, 6 Nos. of 32 x 25mm reducer Tee, 14 Nos. of 20mm dia GI union, 22 Nos. of 32mm dia GI union, 28 Nos. of 50 mm dia GI union, 32 Nos. of 25mm dia GI Hex nipple, 72 Nos. of 20 mm dia GI union, 25 Nos. of 25mm dia GM Gate valve, 9 Nos. of 32 mm dia GM Gate valve, 2 Nos. of 50mm dia GM Gate valve and 15 Nos. of 15 mm dia SD tap were in shortage and made loss of Rs.70,425.00/- totally to Government exchequer.

Totally swindled money - Rs.82,386.50/-

Spl.C.C.No.5 of 2021

Allegation No. 1:

As per the measurement of M.Book Nos.1638 and 2353, Aluminum openable glass window was fixed in the total area of 8.55M² payment of Rs. 45,468.90/- had been made for 8.55M² @ Rs.5,318.00/- per 1 M². But super check report revealed that no Aluminum openable glass window was fixed and made loss of Rs.45,468.90/- to the Government exchequer.

Allegation No. 1:

As per the measurement of M.Book Nos.1638 and 2353, Brick work was executed in the total area of 0.98M³ and payment of Rs.3,959.59/- had been made for 0.98 M³ @ Rs.4040.4/- per 1 M³. But super check report revealed that Brick work was executed in the total area of 0.61M³ only and shortage of quantity for the work is (0.98-0.61) M³ x Rs.4040.4 = Rs.1490.65/- and made loss of Rs.1,490.65/- to the Government exchequer.

Allegation No.3.

As per the measurement of M.Book Nos.1638 and 2353, 50mm dia GI pipe was laid in the total area of 18.6Rm and payment Rs.5,161.50/- had been made for 18.6Rm @ Rs.277.5/- per 1Rm. But super check report revealed that 20mm dia GI pipe line was laid in the total area of 15.96Rm only and shortage of quantity work out is (18.6 - 15.96)=2.64Rm x Rs.277.5/- = Rs.732.60/- and made loss of Rs.732.60/- to the Government exchequer.

Total swindled money - Rs.47,692.15/-

5. The learned Senior Counsel appearing for the petitioner would submit that the petitioner/accused has only been cross-checking the measurement book and the discrepancy regarding repair works carried out in the Collector Office and the District Court buildings, Pudukkottai are errors and there is no loss to the

Government as alleged by the prosecution and that the non-examination of any officer from the Collector office and from the District Court office, Pudukkottai creates a reasonable doubts regarding the investigation.

6. The learned Senior Counsel would further submit that the learned Chief Judicial Magistrate ought not to have taken cognizance of the offences, when the prosecution agency failed to examine the competent Officer from the Collector Office and from the District Court office, where the works are being carried out by the contractors, that the learned Magistrate has also failed to appreciate the fact that even as per the super check report, the contractor spent more than the money paid to him and as such, there is no loss of money to the Government exchequer and that the learned Chief Judicial Magistrate failed to appreciate the fact that the respondent initiated suo motu proceeding and the Investigating Officer failed to conduct impartial investigation and the Investigating Officer had proceeded in the line of the First Information Report already registered in the said case.

7. The learned Senior Counsel would further submit that L.W.12 was present along with the officers who conducted the super check and did not allow them to discharge the duty independently and the officers who carried out the super check measurement, failed to visit the places and note for actual work

carried out by the contractors and that since the entire transaction is based upon the award of contract, there is no criminal intention to cheat anybody and there is no loss occasioned to the Government exchequer and as such, the entire criminal prosecution is liable to be quashed.

8. The learned Senior Counsel would further submit that the accused has not cheated any person to deliver any property to any person and none of the ingredients of the offence under Section 420 I.P.C., are made out, that since the entire prosecution theory is based upon some discrepancy in execution of the contractual work, there is no such question of forgery of valuable security under Section 467 I.P.C., that since the bills were prepared in accordance with law and the money was sanctioned, the question of framing charges under Section 468 I.P.C., for the alleged commission of forgery for the purpose of cheating and that since the petitioner never used any forged document as genuine for claiming the amount, the offence under Section 471 I.P.C., is also not made out.

9. The learned Senior Counsel would further contend that the accused has not dishonestly or fraudulently misappropriated or converted any property for his own use or under his control as a public servant and the ingredients for Section 13(1)(c) of the Prevention of Corruption Act are lacking in the case on hand.

10. Before entering into further discussion, let us consider the legal position regarding this Court's power and jurisdiction under Section 482 Cr.P.C. It is necessary to refer the judgment of the Hon'ble Supreme Court in [State of Haryana and Ors. v. Bhajan Lal and Others](#), reported in **1992 Supp (1) SCC 335**, wherein the Hon'ble Apex Court enumerates seven categories of cases where the power can be exercised under Section 482 Cr.P.C., and the same are extracted hereunder:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no

investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

11. The Hon'ble Supreme Court in ***Priya Vrat singh Vs. Shyam Ji Sahai*** reported in ***(2008) 8 SCC 232***, by relying on seven categories of cases listed out where the power under Section 482 Cr.P.C., can be exercised shown in ***Bhajan Lal's case***, has held as follows:

“11. '19. The Section does not confer any new power on the High Court. It only saves the inherent power which the Court possessed

before the enactment of the code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of

the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice.

20. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.”

12. Now coming to the present case, as already pointed out, there were 18 allegations through which money was allegedly swindled and out 18 allegations, 4 allegations are to the effect that no such work shown in the priority list was done at all. The very first allegation in the first case in Spl.C.C.No.1 of 2021 is

that M.S.Grill was not all fixed at yard wall, but by showing that the grill was fixed, they have caused loss to the tune of Rs.41,151.60/- to the Government exchequer. In Spl.C.C.No.3 of 2021, the main allegation is that weathering course work was not all executed and pressed tiles were not laid and that thereby they have caused loss to the tune of Rs.1,00,100.51/- to the Government exchequer. In Spl.C.C.No.5 of 2021, the allegation is that the aluminium opened glass window was not all fixed in the Sub Court building and thereby, they have caused loss to the tune of Rs.45, 468.90/- to the Government exchequer. All the remaining 15 allegations are with respect to shortage of quantity of the work calculated as per the measurement in M-Books.

13. As rightly contended by the learned Senior Counsel for the petitioner, neither the District Collector or any competent authority from the office of the District Collectorate, nor the learned Principal District Judge or the officials of the District Court, have raised any complaint about the non-execution of any work and shortage of the quantity of the work that were originally allotted as per the priority list.

14. It is pertinent to note that as rightly pointed out by the learned Senior Counsel, the Investigating Officer has not chosen to examine any responsible staff in the office of the District Collectorate and in the District Court office at

the time of investigation and no one from the occupying departments have been cited as witnesses.

15. The learned Senior Counsel appearing for the petitioner would submit that the District Collector, Pudukkottai and the learned Principal District Judge, Pudukkottai have sent letters to the Public Works Department that the works given in the priority list have been completed and that they have produced the copies of letter sent by the Principal District Judge, Pudukkottai to the Assistant Engineer (BC &M), Town Division, Pudukkottai and the copy of the proceedings issued by the District Collector, Pudukkottai and the said documents would go to prove the falsity of the allegations raised in the charge sheets.

16. Generally, the materials or the evidence put forth by the accused cannot be looked into, while this Court is exercising its power under Section 482 Cr.P.C., as the Court is required to consider the allegations made in the complaint/F.I.R., and charge sheet if any filed. No doubt, the Hon'ble Apex Court, in catena of decisions, has reiterated the legal position that the Court can look into the defence materials, if the same are of such sterling and impeccable quality and capable of completely negating the allegations of the complainant. At this juncture, it is necessary to refer the decision of this Court in G.Thomas and another Vs.The Superintendent of Police, Central Bureau of Investigation,

Anti-Corruption Branch, Madurai and another reported in (2021)1 LW (Crl.) 582 and the relevant passage is extracted hereunder:

*“10. It is time to remind myself that while exercising power under Section 482 Cr.P.C., it is the general rule that the materials put forth by the defence cannot be looked into, as the Court is only required to consider the allegations made in the complaint or FIR. But at the same time, as per the dictum of the Hon'ble Supreme Court, the above proposition is not absolute. The Court can very well look into the defence materials, if the same are of such sterling and impeccable quality and capable of completely negating the allegations of the complainant. The Hon'ble Supreme Court in **Prasanth Bharati Vs. State of NCT of Delhi**, reported in (2013) 9 SCC 293, (Crl.A.No.175 of 2013, dated 23.01.2013), after referring to its earlier judgment in **Rajiv Thapar and others Vs. Madan Lal Kapoor** reported in (2013) 3 SCC 330, has listed out the steps to determine the veracity of a prayer for quashing raised by the defence :*

“23. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashing, raised by an accused by invoking the power vested in the High Court under Section 482 of the Cr.P.C.:-

(i) Step one, whether the material relied upon by the accused is sound, reasonable, and indubitable, i.e., the material is of sterling and impeccable quality?

(ii) Step two, whether the material relied upon by the accused, would rule out the assertions contained in the charges levelled against the accused, i.e., the material is sufficient to reject and overrule the factual assertions contained in the complaint, i.e., the

material is such, as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false.

(iii) Step three, whether the material relied upon by the accused, has not been refuted by the prosecution/complainant; and/or the material is such, that it cannot be justifiably refuted by the prosecution/complainant?

(iv) Step four, whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings, in exercise of power vested in it under Section 482 of the Cr.P.C. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as, proceedings arising therefrom) specially when, it is clear that the same would not conclude in the conviction of the accused.”

17. The learned Senior Counsel for the petitioner has also relied on a decision of the Hon'ble Supreme Court in ***Rajiv Thappar and others Vs. Madam Lal Kapoor*** reported in ***(2013)3 SCC 330*** and the relevant passage is extracted hereunder:

“ 29. We shall now advert to the allegation made in the complaint by Madan Lal Kapoor, that there was non-cordiality of relations between the deceased Dr. Monica Thapar, and her in-laws. Telephone bills demonstrate, that phone calls were regularly

made from the residence of Rajiv Thapar (appellant no. 1), to the maternal family of Dr. Monica Thapar. The family of the husband of Dr. Monica Thapar was in consistent and regular contact with the other family members also. This relationship is shown to have been subsisting even at the time of the illness of Dr. Monica Thapar which proved to be fatal. Of utmost importance is a letter written by Rajiv Kapoor (the brother of the deceased, and the son of Madan Lal Kapoor, the respondent-complainant). In a letter dated 22.9.1992, just four days before the death of Dr. Monica Thapar (on 26.9.1992), Rajiv Kapoor showered praise on the immediate family of Rajiv Thapar residing at Delhi. His letter to his sister describes her in-laws in Delhi, as “very affectionate and very caring”. The telephone bills, as also the letter addressed by Rajiv Kapoor to his sister (Dr. Monica Thapar), are materials of sterling quality. Neither of the said materials has been controverted, either on veracity or on truthfulness. All this, in our opinion, would undoubtedly and inevitably result in concluding, that the relationship between the two families was cordial and affectionate. Clearly contrary to what has been alleged in the complaint.

18. Bearing the above legal position in mind, let us consider the documents produced by the petitioner – accused.

19. As already pointed out, the letter was sent by the Principal District Judge and the proceedings were issued by the District Collector, Pudukkottai. Admittedly, the respondent has disputed neither the genuineness nor the contents of the said two documents. In the letter sent by the learned Principal District Judge, Pudukkottai, dated 18.05.2018, it has been stated that open portion nearby the toilet meant for the Additional District Judge, Pudukkottai was closed with aluminium fixed window portion and that the place of work of closing the open space near the toilet of the chamber of Additional District Judge has been wrongly furnished as Sub Court, Pudukottai instead of Additional District Court, Pudukkottai in the estimate.

20. As already pointed out, it is the main complaint of the respondent that the aluminium openable glass window was not at all fixed in the campus, but the learned Principal District Judge, through the said letter, has clarified that the said work was done near the chamber of the Additional District Court and not near the Sub Court, as shown in the estimate. The District Collector, Pudukkottai has issued proceedings dated 11.02.2019 furnishing the particulars regarding the repair and maintenance works done by the Public Works Department in the campus of the District Collectorate and wherein it has been specifically stated that the machine pressed tiles and weather course concrete work were done in

the third floor of the old District Collectorate. PVC pipes were laid for the required extent and valves and SDTAP were also fitted and water flow was checked. Moreover in the said proceedings, it has been certified that the repairing works referred have been completed by the Public Works Department. Hence, the main allegation of the respondent that no aluminium glass window work was done in the Court campus, in view of the letter of the learned Principal District Judge is proved to be false. It is not the case of the prosecution that they have verified with the District Collector or any other responsible staff attached to the District Collectorate as to whether the works which were alleged to be not executed, were executed anywhere in the campus and as already pointed out, they have not taken any statement from the officials of the District collectorate.

21. As rightly contended by the learned Senior Counsel, a perusal of the above documents would go to show that the works had been completed as per the estimate and as per the requests of the District Collector and the Principal District Judge. As rightly contended by the learned Senior Counsel, the letter sent by the Principal District Judge and the proceedings of the District Collector can very well be construed as documents of sterling quality, more particularly when the Public Works Department and the respondent have not specifically disputed the same. As rightly pointed out by the learned Senior Counsel, the super check officer has not chosen to get the signature of the accused in their

report. Admittedly, the works referred have been completed by March-2017 and super check measurements were taken in the month of April-2018, after the lapse of more than one year. As already pointed out, the main allegation is that the accused by entering boosted measurements and by falsely preparing M-Books, had claimed the amount for the boosted measurements. To put it in other way, according to prosecution, there existed shortage of quantity of work.

22. The learned Additional Public Prosecutor would submit that based on the letter from the Investigating Officer and the DVAC, Chennai, the Public Works Department authorities have nominated Thiru.P.Anbarasan, Executive Engineer, PWD(C&M) Division, Thiru.Ramesh, Assistant Executive Engineer, PWD Building (C&M), Trichy and R.Rethinavel, Assistant Engineer, PWD (C&M) Sub-Division, Srirangam as super check officers as per letter dated 06.04.2018, that the super check officials have conducted super check in the presence of all the accused and that none of the accused had raised allegations against super check officials.

23. As rightly contended by the learned Senior Counsel for the petitioner, though the prosecution has been alleging that the super check was conducted in the presence of the accused, it is not their case that they have taken signatures from the accused. At this juncture, it is necessary to refer Rule 31 of the Manual

of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu, which is extracted hereunder:

"31.Examination of Accused Officers:

(1) In all Detailed Enquiries and Regular Cases, before concluding the enquiries/investigations, the Accused Officer should be examined in considerable detail in an objective and dispassionate manner to find out what he has to say about the materials appearing against him. It should be ensured that the versions given by the Accused Officer are listened to very carefully and subjected to thorough investigation and the results of such investigation should be discussed in the Final Report to be submitted by the Investigating Officer. It should be borne in mind that the examination of the Accused Officer is not a mere formality and that it is an integral part of the investigation and analysis to arrive at the truth or otherwise of the allegation under enquiry.

(2) While examining the Accused Officer, there should be nothing in the conduct of the Investigating Officer to create an impression in the mind of the Accused officer that the Investigating Officer has already reached a conclusion. On the other hand, the Investigating Officer should, by his conduct infuse confidence in the mind of the Accused Officer that the enquiry investigation is being conducted in a very fair manner and the Accused Officer can draw attention to whatever evidence is available in his support.

24. The above Rule contemplates that the accused officials should be examined before concluding the investigation and the purpose of such enquiry is to give a chance or opportunity to the accused officials to explain their stand and also gives an opportunity to the Investigating Officer to proceed investigation in that angle also. Moreover, the said Rule 31 makes it clear that the examination of the accused is not a mere formality and it is an integral part of the investigation and analysis to arrive at the truth or otherwise of the allegation under enquiry.

25. In the case on hand, as rightly contended by the learned Senior Counsel for the petitioner, if the super check officers pointed out the deficiencies and the alleged shortage of the quantity of the work and got the signatures of the petitioner, he could have very well explained the work done by them. Considering the above, as rightly contended by the petitioner's side, the respondent has failed to follow the requirements of Rule 31 of the Manual in its true spirit.

26. The learned Additional Public Prosecutor would further submit that the knowledge coupled with the criminal intention of the petitioner along with the other accused was expressly inferred from the acts committed from the inception, that the petitioner concealed the real fact before this Court and taking

effort by hook or crook to escape from the clutches of law, that the final report will enlighten the fact that the Government exchequer was put to wrongful loss to the tune of Rs.3,01,278/- and that the learned Chief Judicial Magistrate, after appreciating the entire materials and due application of judicial mind had taken cognizance of the offence.

27. The learned Senior Counsel for the petitioner would submit that the pipelines, T-bend and other electrical items were subject to damage and wear and tear.

28. As already pointed out, the super check measurements were taken after a lapse of one year, since the completion of the work. It is pertinent to note that all the works referred by the prosecution are repair works and not original work and as already pointed out, the deficiency pointed out are shortage of quantity in laying PVC pipes, brick work and shortage of quantity in aluminium partition and door and grills. Though the prosecution has alleged that the petitioner and other accused have committed the offences under Sections 420, 467, 468, 471 I.P.C., except showing the provisions of law, they have not averred the necessary particulars and averments sufficient enough to attract the ingredients of the said offences, The prosecution has alleged that the petitioner, being the Assistant Executive Officer, is duty bound to measure the works done by the Contractor

physically and if there is any discrepancy in the execution of work, it is the duty of the petitioner to divulge the discrepancy of the work to the higher officials. Though the prosecution has stated about the duty of the petitioner, they have not specifically alleged the way in which the petitioner had committed the offences alleged and was responsible for the loss caused to the Government exchequer. The prosecution has not furnished any particulars about the conspiracy theory, against the petitioner, canvassed by them. Moreover, as rightly contended by the learned Senior Counsel for the petitioner, the prosecution has not raised any allegations or averments through which the petitioner had conspired with co-accused, the way in which the misappropriation and swindling of money were done and as to how the measurements were boosted and the forged records were prepared.

29. Considering the above and also the nature of the allegations, as rightly contended by the learned Senior Counsel for the petitioner, the complaint has been lodged with some hidden agenda and for the reasons based known to them. Hence, this Court is of the view that the respondent has miserably failed to show the basis, upon which, the charge sheets were lodged for the alleged offences and that therefore, this Court has no hesitation to hold that there are absolutely no grounds for proceeding against the petitioner and that permitting the proceedings to proceed against the petitioner would amount to abuse of process of law and as

such, the proceedings in Spl.C.C.Nos.1, 2, 3, 4 and 5 of 2021, pending on the file of the learned Chief Judicial Magistrate, Pudukkottai, as against the petitioner are liable to be quashed.

30. In the result, all the Criminal Original Petitions are allowed and the the proceedings in Spl.C.C.Nos.1, 2, 3, 4 and 5 of 2021, pending on the file of the learned Chief Judicial Magistrate, Pudukkottai, as against the petitioner are quashed. Consequently, the connected Miscellaneous Petitions are closed.

12.10.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Chief Judicial Magistrate,
Pudukkottai.
- 2.The Inspector of Police,
Vigilance and Anti Corruption,
Pudukkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P.(MD)Nos.1326, 1327, 1329, 1331 and 1332 of 2022

K.MURALI SHANKAR, J.

SSL

PRE-DELIVERY ORDER MADE IN

Crl.O.P.(MD)Nos.1326, 1327, 1329, 1331 and 1332 of 2022

12.10.2022