



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 21.11.2022	Orders Pronounced On 28.04.2023
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**Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022
and Crl.M.P.Nos.1219, 1216,
3472, 3474 & 3625 of 2022**

S.Gnanamani

... Petitioner
in Crl.R.C.No.272/2022

K.Viswanathan

... Petitioner
in Crl.R.C.No.126/2022

P.Poonghuzali

... Petitioner
in Crl.R.C.No.127/2022

G.Nagarajan

... Petitioner
in Crl.R.C.No.328/2022

Mookiah

... Petitioner
in Crl.R.C.No.343/2022

Vs.



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

The State
Represented by its
Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.
Crime No.5 of 2014

... Respondent
in all Petitions

COMMON PRAYER: Criminal Revision Petitions filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in C.M.P.No.453 of 2021, C.M.P.No.343 of 2021, C.M.P.No.344 of 2021, C.M.P.No.342 of 2021 and C.M.P.No.392 of 2021 dated 31.01.2022 in Spl.C.C.No.2 of 2021 on the file of Special Judge for the cases under Vigilance and Anti-Corruption Act, Coimbatore and discharge the petitioners.

For Petitioner in Crl.R.C.No.272/2022 :	M/s.R.B.Kavya for Mr.A.Parthasarathy
For Petitioner in Crl.R.C.Nos.126 & 127/2022 :	Mr.N.R.Elango Senior Counsel for Mr.A.S.Aswin Prasanna
For Petitioner in Crl.R.C.No.328/2022 :	Mr.M.Palanivel
For Petitioner in Crl.R.C.No.343/2022 :	Mr.J.Franklin
For Respondent in all Crl.RCs. :	Mr.S.Udayakumar Government Advocate [Crl. Side]



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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3.Since all the petitioners are accused in Spl.C.C.No.2 of 2021 and the points raised by them are similar in nature, all the revision petitions are heard together and disposed of by a common order. The petitioners and the respondent are referred to as accused and complainant as per the charge sheet.

4.The case against the petitioners is that A1 was the Assistant Director/Incharge Member Secretary to the Local Planning Authority [LPA] Coimbatore for the period from 29.10.2010 to 02.11.2010 and 15.01.2011 to 21.01.2011, A2 was the Assistant Director/Member Secretary of LPA from 03.11.2010 to 14.01.2011 and 22.01.2011 to 31.07.2011, A3 was the Assistant Director/Member Secretary of LPA from 12.04.2010 to 26.10.2010. A1 to A3 are public servants. A4 was the Supervisor at LPA for the period from 02.06.2010 to 22.05.2015 who now voluntarily retired from service. A5 and A6 are private individuals. The Local Planning Authority consists of Chairman, Member Secretary, five elected members and two nominated persons. The District Collector is the Chairman of the Committee, the Joint Director is the Member Secretary of LPA and in the



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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vacancy of Joint Director, Assistant Director of LPA can hold incharge of the post of Member Secretary. The power of planning approval of 4000 sq.ft. upto first floor was conferred to Member Secretary and he is competent to forward the application along with his report pertaining to commercial building upto 2500 sq.ft. to the Chairman [District Collector] for approval. In case of Multi-storied Building [MSB] to the extent of four floors whose height is 15 meters or more Member Secretary should forward the application to the Director of Town and Country Planning, Chennai [DTCP]. The LPA has no power to approve MSB planning permission in the notified area in Coimbatore as per Section 49 of Tamil Nadu Town and Country Planning Act, 1971. In case of violation in MSB, the LPA to take appropriate legal action against the building owners. As regards this case, prior to 27.05.2010 A5 and A6 who are adjacent land owners in S.F.No.495/3A had amalgamated their properties, constructed a building to the extent of three floors and two basements without obtaining any building approval from the competent authority. They had also suppressed the construction, submitted an application with false information to the LPA as though they proposed to construct a commercial building to the extent of



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

1204.31 sq.m. for running an automobile retail business in the name of M/s.Vasanthi Motors and the property is situated at Vilankurichi Village, Hope College, Avinashi Road, Coimbatore. In the case of amalgamation at approved sites, it is the Director of Town and Country Planning, Chennai who is the competent authority to issue orders.

5.On receipt of application of A5 and A6, the then Member Secretary [Incharge] A3 visited the spot on 16.06.2010 and rejected the application for want of documents. On rejection of the application, A5 and A6 submitted an application on 27.07.2010 along with revised plan, annexed with documents such as, No Objection Certificates from Fire service Department, Highways Department, land documents, chitta, adangal, patta, encumbrance certificate for 13 years and with legal opinion. In the said application, A5 and A6 suppressed, already construction of three floors and two basements and they submitted the application as though they intend to construct a building to an extent of 1950.35 sq.m. for their automobile business. On receipt of this application dated 27.07.2010, A4/Supervisor of LPA prepared a note as if spot inspection was conducted on 16.06.2010, but had not



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

disclosed the construction in the property. After preparation of the note by A4, A3 approved the note on 17.09.2010 without conducting spot inspection. A3 and A4 thereby abused their position and sent the proposal to the Director of Town and Country Planning for plan approval. The Director of Town and Country Planning directed A5 and A6 to send a revised plan with rectification of building space, site open space, rear side open space, ramp, etc. A3 obtained a revised plan from A5 and A6 and forwarded the same to DTCP suppressing the material fact of existing construction. A3 received the technical permission from DTCP. Pursuant to the technical permission, A4 fixed the Special Building charge of Rs.190/- per sq.m. instead of MSB rate of Rs.375/- per sq.m. The actual measurement of the construction area was 2839.87 sq.m. Thus wrongful loss caused to the Government to the tune of Rs.5,32,900/-, correspondingly wrongful gain made by A5 and A6. In the course of the above transaction A1, A3 and A4 without adhering to the rules collected the fee for a commercial building instead of MSB.



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

6. In pursuance of the approval, A5 and A6 continued further construction, more than plan approval dated 29.10.2010. To suppress the same they submitted two revised plans with false information on 14.12.2010 and 20.12.2010, for construction of retail business store of 1536.34 sq.m. On receipt of the revised plan, A2/then Member Secretary inspected the building on 03.01.2011, pointed out minor discrepancy in parking, but suppressed the measurement of building and its height. A4 again prepared a note file with revised plan and submitted the same to A1 since A2 was on a training programme at Hyderabad. In the meanwhile, a revised plan was submitted to the extent of 1830.86 sq.m. on 10.01.2011 by A5 and A6, due to which another note file prepared. A1 thereafter sent the recommendation to the District Collector/Chairman of LPA without spot inspection, verifying the physical features of the building. The Chairman approved the building plan vide 7666/2010/3 dated 22.01.2011 for the extent of 1830.86 sq.m. A2 returned from training on 22.01.2011 forwarded the approval to the Commissioner, Coimbatore Corporation for issuance of building license for running a Professional Consultancy office. Thus A1, A2 and A4 abused their position, fabricated the reports relating to construction of building of



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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A5 and A6, prepared incorrect statement in the reports and used the reports as genuine, submitted the same to the Chairman of LPA and obtained building plan approval in favour of A5 and A6. Further, the note files for the revised plans dated 10.01.2011 and 18.01.2011 were fabricated and thereby caused wrongful loss of Revenue to the tune of Rs.6,86,230.70/-. Thus, A1, A3 and A4 committed the offence punishable under Sections 167, 468, 471, 477A, 420 IPC r/w. 511 IPC and Section 13(1) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. A5 and A6 committed the offence punishable under Sections 177, 468, 471, 420 and 109 IPC r/w. Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. A1, A2 and A4 committed the offence punishable under Sections 167, 468, 471, 477A, 420 r/w. 109 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. Along with the charge sheet, the statements of L.W.1 to L.W.35 and documents L.D.1 to L.D.49 annexed and submitted. The Trial Court on perusal of the charge sheet, documents and materials took cognizance and issued summons to the accused. On receipt of the summons, the accused appeared before the Trial Court, filed discharge petitions which came to be dismissed as stated above.



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

7.In this case, it is now reported that A1/petitioner in Crl.R.C.No.272 of 2022 passed away on 30.08.2021 which is not disputed by the respondent. Hence, the case against A1 stands abated.

8.The contention of the learned counsels is that the Inspector of Police, Vigilance and Anti-Corruption registered FIR on 10.04.2014 on his own. There is no complaint by any of the Department concerned or from any individual. Further, there is no allegation of any irregularity committed. There is a delay of more than three years in registration of FIR and the same has been filed with ulterior motive. The charge sheet is silent with regard to the allegations. Further there is a delay of seven years in filing the charge sheet before the concerned Court. The process of building approval started during the year 2010 to 21.01.2011, the file was submitted to DTCP and Chairman, LPA [District Collector]. Both processed and approved. The primary allegation is that instead of collecting fees for Multi-storied Building, the fee was fixed for Special building. The distinction between the multi-storied building and special building as contemplated under Tamil Nadu Town and Country Planning Levy of Infrastructure and Amenities



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

Charges Rules, 2008 issued under G.O.Ms.No.22 Housing and Urban

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Development Department [UD4-1] dated 25.01.2008, reads as follows:

'(f) "Multi-storeyed building" means as building having more than 4 floors including the ground floor or if the ground floor is used for parking under stilts, then excluding the ground floor, whose height is 15 metres or more;

(g) "Special Building" means a building having more than two floors but not exceeding 4 floors inclusive of ground floor or a building with basement or stilt floor and 4 floor or a residential building having more than 4 dwelling units or a building accommodating commercial or industrial or institutional or combination of such activities with a floor areas exceeding 300 square meters.'

9.Hence, based on the documents submitted the fees levied by the authorities is in accordance with Act and Rules and as per G.O.Ms.No.22 Housing and Urban Development Department [UD4-1] dated 25.01.2008. Further the allegation is that the building plan approval to A5 and A6 was issued on 29.10.2010 and at that time, the officials failed to show absolute integrity and devotion in discharge of official duty is denied as false. Even if the allegation is taken on its face value, the same would not attract any



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

criminal prosecution, more so under Prevention of Corruption Act, utmost it can be a dereliction of duty attracting disciplinary action, as per the Service and Conduct Rules. None of the document annexed in the charge sheet would reveal that there is any fabrication by the officials by abusing their position. In this case, the alleged occurrence is said to have taken place from 27.05.2010 to 07.02.2022, FIR came to be registered on 10.04.2014, sanction for prosecution was obtained on 29.04.2019. Though charge sheet shown to be made ready on 15.07.2019, the same was filed before the Trial Court on 03.05.2021. The statement of witnesses would reveal that there is no offence committed by any of the petitioners. There is no reason given as to why there have been delay of seven years in filing the final report in this case. From the statement and documents annexed, it is seen that there is no specific allegation in the charge sheet, who are the accused who created or signed any forged document in this case. The Tamil Nadu Town and Country Planning Act is a self-contained Act and in the event of any violation of the Act, there is specific provision under Section 89 to take cognizance of offences.



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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10.The contention of learned counsel for A2 is that if there is deviation or violation of Tamil Nadu Town and Country Planning Act, provisions are there to file revised plan and to rectify the defects. In the event of no post approval or condonation, violation of building would attract, building to be demolished and removed. In view of the same there is no necessity for the respondent to travel beyond the Act and implicate the petitioner/A2 in a criminal case, more so under Prevention of Corruption Act when there is no statement or any material to show that there was any misconduct, enrichment by the petitioner in any manner. The petitioner/A2 advised the building owners, namely, A5 and A6 to rectify the defects and to file a revised plan, in the meanwhile he attended the Seminar at Hyderabad and in his absence, file processed, sent to DTCP and Chairman, LPA, A2 is not aware of the same. Further, the Director of Town and Country Planning issued Circular No.2694/2010/LA2 dated 20.12.2010 which was received by the Local Planning Authority after 03.01.2011 wherein power delegated to approve commercial building to maximum height of 15 meters with a floor area of 2500 sq.m. On the proposal sent by the Local Planning Authority on 21.01.2011 the Chairman/District Collector gave his approval on



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

22.01.2011, during this period the petitioner/A2 was attending the Seminar and only after getting approval from the Chairman/District Collector, the file was placed before A2. The petitioner again thereafter scrutinized the proposal, re-examined the plans and released the approval after collecting necessary fees. On the approval dated 03.01.2011 the construction of the building was not completed, pillars were raised upto 4 floors, no external or internal walls constructed and hence, the height of the building which was under construction could not be measured.

11.The plan approval was issued to building on the Development Control Regulations for Coimbatore [DCR] issued vide G.O.Ms.No.130 Housing and Urban Development [UD 4-1] dated 14.06.2010. Regulation No.5 of the said DCR relates to Multi-storeyed Building which defines “Multi-storeyed Building is a building having more than four floors with a height of 15 meters or more, then only it can be stated as Multi-storeyed building. In the case on hand, building was constructed only with four floors and hence, it cannot be termed as Multi-storeyed Building. Regulation 5(6) of the Development Control Rules for Coimbatore stipulates



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

MSB should conform to the National Building of India. The petitioner did not frame any incorrect documents. The application submitted by A5 and A6 was processed as per the Rules and Regulations. It is well settled in law that charge of forgery cannot be based on mere suspicion or doubt. The petitioner had not approved the building plan and there is no role on the part of the petitioner/A2 in sanctioning of building approval. The petitioner/A2 served only for limited period as Assistant Director/Member Secretary of LPA. The No Objection Certificate dated 20.07.2010 of the Fire Service Department and the No Objection Certificate dated 30.08.2010 of the Divisional Engineer, Highways, would clearly prove that there is no case made against the petitioner/A2 and the allegations are false and untrue.

12.The contention of the learned counsel for petitioner/A3 is that A3 was the Assistant Director/Member Secretary of LPA during the period 12.04.2010 to 26.10.2010. A6 in this case given a representation to the Director of Town and Country Planning through Member Secretary on 27.05.2010. The Member Secretary inspected the land on 16.06.2010 and on 20.07.2010, No Objection Certificate was given by the Fire Service



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

Department and the Divisional Engineer, Highways, on 20.07.2010 and 30.08.2010. Additional details sought from A5 and A6 vide letter dated 09.08.2010, revised plan dated 30.09.2010 was received as per the directions from DTCP. The Director of Town and Country Planning approved the building construction on 21.10.2010, Chairman, LPA approved, thereafter on 26.10.2010 A5 and A6 permitted to pay the building fees. The above dates would clearly show that the petitioner/A3 is no way connected with any of the allegations raised by the prosecution. The petitioner/A3 permitted collection of fees for commercial building as per the Departmental norms.

13.The petitioner/A3 on receipt of the proposal from A5 and A6 forwarded the same to the Director of Town and Country Planning, on direction, sought revised plan with rectification of building space, site open space, rear side open space, ramp, etc. The revised plan from the applicant was forwarded to the Director of Town and Country Planning, the Director given technical permission. Following the technical permission and approval from Chairman, LPA the charges were fixed as applicable to the special



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

building. It is not mandated in the rules and regulations that each time when the revised plan is submitted, fresh inspection to be conducted. It is not a fresh application.

14.The contention of learned senior counsel for petitioners/A5 and A6, namely, the building owners is that in pursuance of the technical permission from the Director of Town and Country Planning, the petitioner/A4 fixed the charges applicable to special building and the same was paid. Now it is projected that building comes under MSB and lesser fee has been remitted instead of fee for MSB thereby causing loss to the Government. Further allegation is that the construction continued with deviations more than the approved plan dated 29.10.2010, forgetting for a moment revised plans dated 14.12.2010 and 20.12.2010 letter submitted, thereafter another revised plans dated 10.01.2011 and 18.01.2011 were submitted, on the instructions of the Director of Town and Country Planning, forwarded by the Local Planning Authority. On receipt of the revised plans, inspection was carried out and it is recorded that the building was in Skeleton shape. When the first application was submitted, the same



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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was returned for want of documents and prior to it, site inspection conducted. Thereafter, second application with requisite documents along with No Objection Certificate was submitted on 27.07.2010. Since earlier the property was inspected which is primarily to confirm the area and dimension of the site, inspection report was used for further processing of the plan which is now blown out of proportion and projected as though without inspection, plan approval has been forwarded. Likewise, when the revised application was submitted, the officials from LPA had inspected and given instructions to rectify certain of the defects, thereafter only revised application was submitted. At each stage the application was submitted to LPA forwarded to DTCP, who gave technical approval, thereafter construction progressed. During the on going construction, revised plan was submitted, the approved plan was forwarded for building license approval, the Corporation officials proceeded on a wrong premise that already the construction of building completed.

15.As regards the Corporation inspection is concerned, their role is limited to give approval for building as per the plan which has been



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

approved by the DTCP and LPA. In this case, the planning permission and revised plan approval was obtained in the year 2010 and in the first month of 2011 and the preparatory construction was in progress. At the first instance planning permission was accorded, later it was rejected. Thereafter, appeal filed with the Secretary which is pending. Further, the petitioner/A6 filed W.P.No.3892 of 2012 and the First Bench of this Court by order dated 21.02.2012 directed the authorities to pass final orders on the pending appeal, further gave prohibitory order to the Commissioner, Coimbatore City Municipal Corporation not to demolish the superstructure of the petitioners/A5 and A6, with caveat not to put up further construction. Thereafter, Municipal authorities not assessed the property for tax purpose. Hence, W.P.No.7892 of 2012 was filed seeking direction to assess the property for tax purpose and to provide water and drainage connection and the property assessed. Further, W.P.No.25796 of 2012 filed seeking direction against the Corporation not to interfere with the business of the petitioners/A5 and A6 in the said premises and later the said writ petition was withdrawn on 18.12.2012. The Coimbatore Corporation issued notice to keep the building under lock and seal. The First Bench of this Court in



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

W.P.No.15734 of 2013 by order dated 28.06.2013 referring to the earlier order of the First Bench in W.P.No.3892 of 2012 directed the authorities to remove the lock and seal put up by the Corporation officials giving liberty to the officials to take action in accordance with law subject to the result of the appeal pending before the Government. In this case, admittedly the appeal filed by the petitioners/A5 and A6 is still pending. This being so, in the year 2014 FIR registered on source information by the respondent police, seven years thereafter charge sheet filed in the year 2021 which is in gross violation to the orders passed by the First Bench of this Court in W.P.No.3892 of 2012 dated 21.12.2012 and W.P.No.15734 of 2013 dated 28.06.2013. He further submitted that registration of criminal case for civil wrong is nothing but a abuse of process, indirectly blotting the petitioner's legal right of appeal pending before the concerned authorities. Apart from that, the learned senior counsel further submitted that in this case utmost, it is deviation in the planning permission, there are several earlier instances wherein the concerned authorities/Government have given appropriate directions to rectify the defects and granted approval or in some cases exemption given as per the rules and regulations. In some cases demolition



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

to the extent of deviation ordered. In such circumstances, slapping a criminal case against the petitioners is nothing but a persecution.

16.It is further submitted, as regards the sanction for prosecution issued under Section 19 of Prevention of Corruption Act in G.O(3D)No.30 Housing and Urban Development [UD2(1)] Department dated 29.04.2019 against A1 to A3, it is an erroneous order, invalid in eye of law and issued without application of mind. It is further submitted that in the sanction order though sanction accorded to A1 to A3. It is submitted that in this case A5/Viswanathan has been referred to as A4 and A6/Poonghuzali has been referred to A5 in the sanction order. This mistake is not in one place but in the entire sanction order. Likewise, A4/Viswam is referred to as A7, in the charge sheet there are only six accused in this case. Added to it, the sanction for prosecution for A1 to A3 accorded finding that they have committed offences punishable under Sections 109, 120B of IPC r/w. 177, 202, 420 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act. The charge sheet is filed for the offence under Sections- 109, 166, 167, 177, 420 IPC r/w. Section 13(2) r/w. 13(1)(d) of Prevention of Corruption



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

Act alternatively charged under Sections 167, 177, 468, 471, 477A, 420, 109 r/w. 511 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 which proves that either the Investigating Officer not produced all statements and documents to the Sanctioning Authority or the Sanctioning Authority not gone into all statements and documents, independently applied his mind. Thus arrival of subjective satisfaction in according sanction, confirms non-application of mind. It was further submitted that taking into consideration the statements, documents and materials produced nowhere it is seen that there is any misconduct committed in any manner by any of the Public Servant, utmost it is only a mistake of fact and not mistake of law, falls under misfeasance, for which the answer is not a criminal prosecution under various Provisions of IPC, more so, under Prevention of Corruption Act. The sanction is invalid, improper sanction and causing prejudice to the accused. Hence, prayed for setting aside the dismissal of the discharge petitions and consequently, quash the charge sheet.

17.The petitioners in support of their contentions relied on the



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

following judgments:

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**1.State Through Central Bureau of Investigation
vs. Dr.Anup Kumar Srivastava [Crl.A.No.1336 of 2017]**

**2.Ramakrishna vs. State of Bihar and another
reported in 1964 SCR (1) 897.**

**3.Sri Hari vs. State rep. by the Additional
Superintendent of Police, CBI(ACB), Chennai reported in
(2021) 2 MLJ(Crl.) 530**

**4.Sharat Babu Digumarti vs. Government [NCT of
Delhi) reported in (2017) 2 SCC 18**

**5.Suresh Nanda vs. Central Bureau of Investigation
reported in (2008) 3 SCC 674**

**6.M/s.ACC Ltd. and another vs. State of Jharkhand
[Crl.M.P.No.152 of 2016 dated 27.07.2021]**

**7.J.Jayalalitha and four others vs. State rep. by
Director of Vigilance and Anti-Corruption, Chennai
reported in 2001 (Suppl.) 112.**

18.Learned Government Advocate [Crl. Side] appearing for the respondent filed his counter and submitted that A1 to A4 all are public servants. He submitted that recognized principle of criminal jurisprudence is that anyone can set or put the criminal law into motion except where the



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

statute enacting or creating an offence indicates to the contrary. A1 to A3 worked as Assistant Director Incharge of Member Secretary, Local Planning Authority, they being the public servants are legally bound to furnish true and correct information of measurements of the building, its height, set back measurements and other particulars. FIR in this case was registered after conducting preliminary and detailed enquiry, hence some time had taken in registering the FIR. Delay in all cases is not fatal and in this case, delay occurred due to preliminary and detailed enquiries. FIR is not an encyclopedia, the veracity of the witnesses statement and the documents have to be tested, gone through only during trial and cannot be decided at this stage. The offences charged against the petitioners are punishable upto seven years and hence there is no time limit and the limitation as per Section 468 Cr.P.C. does not arise. The Chairman, Local Planning Authority/District Collector on 21.01.2011 recommended for the planning permission, based on the Member Secretary recommendatory note, Member Secretary without inspecting the site purposefully suppressed the measurement of the buildings, which shows that the accused colluded with each other.



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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19.The collusion of the petitioners with each other are clearly spoken to by Ravichandran/L.W.12, Town Planning Officer, Isac Arthur/L.W.13, Junior Engineer, M.Soundararajan/L.W.21, Town Planning Officer and S.Chandrasekaran/L.W.31. The public servants being duty bound officers failed to mention the measurements of the construction made and purposefully failed to inspect the spot. The report filed by the Coimbatore Corporation officials disclose the building was constructed to the extent of 4 floors and measurements of the building not provided. Further, the building was more than 15 meters height and hence it comes under MSB, on the other hand it had been shown as special building, lesser amount collected as charges, thereby causing loss to the Government. The act of the accused is nothing but abuse of official position, which would fall under criminal misconduct within the ambit of Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988. The public servants were charged for abetting the building owners to fabricate the document with suppression of facts. The statement of witnesses and documents speaks about the fraudulent act committed by the petitioners. As per Section 28 of the Prevention of



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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Corruption Act, the provision of this Act shall be in addition to and not in derogation of any other law for the time being in force. He further submitted that the probative value of the documents and statements cannot be assessed and looked into at this stage. A1 to A4 concealed the measurements along with the height of the building to do illegal favour to A5 and A6. A3 in this case conducted a site inspection on 16.06.2010, thereafter fresh application was submitted by the applicants on 27.07.2010 and 02.09.2010 but no spot inspection thereafter conducted. A report has been sent to the Director of Town and Country Planning with suppression of fact about construction of three floors with two basements already available as 19.07.2010.

20.L.W.9/Nandakumar from the Fire Service Department gave a report on 20.07.2010 stating the building was with three floors and with this remark he has given No Objection Certificate. Likewise, L.W.12, Assistant Engineer, P.W.D. in his report has stated that on 25.08.2010 when he inspected he found construction to the extent of 3 to 4 floors. The learned Government Government [Crl. Side] submitted that A1 to A4 who are public



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

servants failed to inspect the construction of building stage by stage, they connived with A5 and A6, made incorrect statement in the official records to favour them. A1 to A4 failed to initiate appropriate legal action against the builders, A5 and A6, which they ought to have taken as per Tamil Nadu Town and Country Planning Act. A3 and A4 purposely collected lesser amount from A5 and A6 in order to cheat the Government. Thus, A1 to A4 abused their official position and committed criminal misconduct. Further, submitted that Section 84 of Tamil Nadu Town and Country Planning Act is for willful disobedience committed for not responding to notice or summons sent to Builder or occupier. In this case, no notice or summons sent by A1 to A4 and there is no private complaint. As regards A5 and A6, the building owners, the respondent submitted that they put up construction even before submitting the application for planning permission. When the planning permission application was pending with the Local Planning Authority, construction was in progress. After getting permission from the DTCP and from LPA without getting building permission from the Coimbatore Corporation, building construction continued. This is in clear violation of the plan approval, A5 and A6 thereafter attempted to cover up the same,



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

filed revised plans on two occasions which were rejected.

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21.Despite the fact that the building consists of four floors, which is more than 15 meters of height, squarely comes under MSB and the charges to be paid at Rs.375/- per sq.m., by suppressing the materials facts they paid the charges as Special building and paid Rs.190/- per sq.m. thereby caused loss to the Government and made unlawful gain. The officials in collusion helped the builders A5 and A6 in this regard. The Corporation officials who inspected the building, given a report about existence of four floors. He further submitted that the writ petitions filed earlier has nothing to do with the criminal proceedings. It was filed for the purpose of assessing the property, providing water and sewage connection and to remove the lock and seal. The rejection order of planning permission was served to A5 and A6, they have filed an appeal and the same is still pending. Further, filing of appeal would not absolve them of their criminal act. As regards final opportunity notice not given, in case of disproportionate assets, final opportunity notice is issued to seek explanation and not in the case under Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act.



Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022

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22.Further, in the case of ***Duraimurugan vs. State rep. by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore*** reported in ***2013 (1) CWC 136*** and ***G.Mohanasundaram vs. State rep. by Inspector of Police, Directorate of Vigilance and Anti-corruption [Crl.O.P.No.20882 of 2014]***, this Court held that non following of the procedures laid down in DVAC manual is not fatal. In the case of ***State of Orissa vs. Dependranathpathi*** reported in ***AIR 2005 SC 359***, it is observed that at the time of framing charge or discharge, Court cannot conduct a mini trial. In the case of ***Sivalingamoorthy vs. CBI, Bengaluru*** reported in ***AIR 2020 SC 331***, it is stated that the defence of the accused, not to be looked into at the stage when the accused seeks discharge. In the case of ***Union of India vs. Prafulla Kumar Samal*** reported in ***AIR 1979 SC 366***, it is observed that charges can be framed if there is a prima facie case made out to proceed against the accused. Further, learned Government Advocate [Crl. Side] relied upon the following decisions:

1.***R.S.Naik vs. A.R.Antulay*** reported in ***AIR 1986 SC 2045***



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*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

**2.State of Himachal Pradesh vs. Krishan Lal
Pradhan** reported in **AIR 1987 SC 773**

3.State of Delhi vs. Gyan Devi reported in **AIR
2001 SC 40**

4.Mauvin Godinho vs. State of Goa reported in **AIR
2018 SC 748.**

Thus it is submitted that the points raised by the petitioner are in their defence which ought to be look into during trial. There are enough and sufficient materials against the accused by way of statements and documents. He further submitted that mere error, omission or irregularity in the sanction order is not fatal. The petitioners have not shown that the error has resulted in failure of justice. Thus the points raised by the petitioners are to be decided during trial. Hence prayed for dismissal of these revision petitions.



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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23.Considering the submissions made and on perusal of the materials, it is not in dispute that the first application for plan approval filed by A5 and A6 prior to 16.06.2010 for 1204.31 sq.m., A3 conducted site inspection on 16.06.2010 and rejected the application for want of documents. Thereafter, A5 and A6 resubmitted the application on 27.07.2010 and this time for construction of 1950.35 sq.m. A4 prepared the note file based on the available inspection report and A3 approved the note on 17.09.2010. Another application dated 02.09.2010 was submitted giving clarifications. Thereafter, this proposal was forwarded to the Director of Town and Country Planning who sought for further clarifications and gave direction to file a revised plan. The clarifications are with regard to building space, open space, ramp, etc. With this rectification, A3 received the revised plan and forwarded to the DTCP, who in turn given approval for Special Building. Thereafter, Special building charges collected and the District Collector/Chairman of LPA gave his approval. A6 paid the Government, an amount of Rs.5,32,900/-. Since the actual construction was 2839.87 sq.m, A1, A3 and A4 issued building plan approval on 29.10.2010. A5 and A6



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

again filed revised plans on 14.12.2010 and 20.12.2010. After receipt of the revised plans, A2 inspected the building on 03.01.2011 and pointed out certain discrepancy in parking area. This inspection report was without actual measurement of the building and its height. A2 had gone for a training to Hyderabad from 15.01.2011 to 21.01.2011. During this period, A1 and A4 prepared a note for revised plan for automobile retail business for 1830.86 sq.m. and another revised plan was submitted on 10.01.2011 and 18.01.2011. A1 sent the recommendation to the District Collector/Chairman of LPA without spot inspection report and measurement. The District Collector gave his approval on 22.01.2011, by then A2 returned from training forwarded the approval to Coimbatore Corporation for building license for Professional Consultancy Office, the Corporation Officials inspected the building and rejected the permission with a report.

24.In this case, L.W.2, L.W.3, L.W.13, L.W.16, L.W.16, L.W.19, L.W.22, L.W.28, L.W.32, L.W.33 and L.W.34 are the officials from the Local Planning Authority, of which L.W.2, L.W.3 and L.W.32 are the



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

Assistant Director/Member Secretary [Incharge] who state about the office procedures. L.W.4, L.W.5, L.W.6, L.W.7, L.W.14, L.W.15, L.W.17, L.W.18, L.W.20, L.W.31, L.W.24 and L.W.30 are from the Coimbatore Corporation who state about subsequent happening after the approval by the DTCP and LPA, visiting the site finding the on going construction and with regard to assessment of tax and other particulars. L.W.9 and L.W.31 are from the Fire Service Department, L.W.10 from Highways Department, L.W.11, L.W.12 and L.W.35 are from the Public Works Department. Except L.W.35, these witnesses state about the No Objection Certificate issued for construction of building and on the day of inspection, they found the building with 3 to 4 floors. L.W.35 speaks about various stages of construction and the time taken for the same. L.W.1 is the sanctioning authority, L.W.36 to L.W.38 are the Investigating Officer and other witnesses are private persons. On the statements from LPA, it is seen that all the witnesses have stated about the application made by A5 and A6 seeking plan approval and building permission, forwarding the plan proposed to DTCP, again submitting revised plan, getting approval from the Chairman of LPA, subsequent to it another revised plan submitted both to



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

the LPA as well as Coimbatore Corporation, again inspection conducted, finding some shortcomings and discrepancy, the builders were advised to submit a revised plan which was again forwarded to the DTCP, by then a Government Order authorizing Local Planning Authority following the circular of DTCP in No.2694/2010/LA2 dated 20.12.2010 and G.O.Ms.No.130 Housing and Urban Development [UD 4-1] dated 14.06.2010 issued, No Objection Certificates from the Fire Service Department and Highways Department submitted the file got processed and forwarded to the Chairman of LPA who gave his approval. These incidents happened during the year 2010 to January 2011. In this case, the Collector/Chairman of LPA not conducted any site inspection, no reason or statement recorded why and for what reason, such exercise not followed. Instead the entire blame are focused against the Member Secretary, namely, A1 to A3 and A4.

25.The officials of Coimbatore Corporation conducted inspection and rejected the application for building license, against which appeal has been filed by the builders on 27.07.2011, Auto-DCR submitted. In this case,



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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initially inspection was conducted on 16.06.2010, thereafter on re-submission of application on 27.07.2010 the same was processed and subsequently, the Corporation officials conducted inspection on 18.11.2010 found violation, again revised application submitted and inspection conducted on 03.01.2011, proposal forwarded to DTCP and approval was given by the District Collector/Chairman of LPA on 22.01.2011. It is seen that digital survey made by the then Member Secretary of LPA S.Chandrasekaran who submitted the same to the Director of Town and Country Planning. The revision of building plan, change of business and violations are now projected as though the LPA officials joined with the builder, abetted and committed misconduct and other offences. The violations found is that two basements available affecting the drive way. Likewise, ground floor, first floor, second floor and third floor are for commercial purpose and construction is in violation of the approved plan. The fourth floor is an additional construction and the head room is more than the prescribed height. L.W.13 state about the violations in basement and construction of fourth floor unapproved, also found excess construction of few meters in each floors than the approved plan. But all the witnesses



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

have stated that for the violations and deviations found, they advised the builders to submit revised plan, based on which the builder filed revised plan in the year 2010 and 2011 [two occasions each] on 14.12.2010, 20.12.2010, 10.01.2011 and 18.01.2011 which were all processed, considered by both LPA and DTCP and thereafter, approval has been given by DTCP and the Chairman of LPA, who is the appropriate authority. It is not in dispute, revised plans submission and thereafter processed and approved, thereby confirming that at the first instance plan submitted and scrutinized. Hence, the question of construction without planning permission does not arise. It can be constructively held to be an act of misfeasance.

26.It is not in dispute that notice was issued with regard to refusal of planning permission and against which, A5 and A6 filed an appeal before the concerned authorities on 27.07.2011 which is still pending. In the meanwhile, the said notice was challenged and the First Bench of this Court in W.P.No.3892 of 2012 by order dated 21.02.2012 directed the concerned authorities to dispose of the appeal as expeditiously as possible within a period of four weeks from the date of receipt of a copy of the order.



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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Thereafter, till date the appeal is kept pending and no decision taken. The officials of Coimbatore Corporation not assessed the property for the reason no planning approval obtained. Further water connection and sewage connection denied. Thereafter, the building owners approached this Court in W.P.No.7812 of 2012 to assess the property. Later the property was assessed and all facilities provided by the Municipal authorities. In the meanwhile, another notice dated 10.08.2012 seeking explanation for continuing unapproved construction despite the order dated 21.02.2012 in W.P.No.3892 of 2012 issued suitably replied informing construction of compound wall alone and nothing more. Hence, the notice dated 10.08.2012 quashed. Further, the Municipal authorities on 18.09.2012 visited the building and forced closure of business, directed the occupants to vacate the building. For this action, again W.P.No.25796 of 2012 filed. In the meanwhile, the objection and obstruction eased out and hence the writ petition withdrawn. Not stopping with that, again a notice dated 06.06.2013 was issued to lock and seal the building. Again the builder approached this Court in W.P.No.15734 of 2013, the First Bench of this Court by order dated 28.06.2013 passed an elaborate and detailed order narrating the



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

sequence of events wherein it had captured the directions issued by this Court as early as on 21.02.2012 in W.P.No.3892 of 2012 and disposed of the writ petition with a direction to the Secretary to Government, Municipal Administration and Water Supply Department to dispose of the appeal filed by A5 and A6 as expeditiously as possible, with a caveat that the respondents, namely, Municipal Administration are at liberty to initiate further action in accordance with law **subject to the result of the appeal pending before the Government.**

27. Admittedly, FIR in this case was registered on 10.04.2014. The Investigating Officer glossed over the earlier writ petition and its orders giving reason that Vigilance and Anti Corruption is not a party to the writ petition and gives justification for proceeding with the criminal case, but the witnesses clearly state about the writ petitions and the directions issued. The admitted fact is that the statutory appeal filed by A5 and A6 seeking regularization of planning permission is pending with the authorities. The First Bench of this Court in W.P.No.3892 of 2012 and W.P.No.15734 of 2013 given specific direction. In all fairness it would be appropriate to await



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

the outcome of the appeal. It is seen that no steps taken by the authorities including the Police officials in getting the appeal decided. The respondent is well aware of the pending appeal and the outcome of the appeal would have a direct barring. Added to it, it is common knowledge that revised plans are either approved with direction to rectify the deviations or revised plan rejected ordering demolition. Admittedly, none of the witnesses L.W.1 to L.W.35 state anything with regard to receiving of any illegal gratification by the officials or private individuals passing any consideration. There is nothing to infer, about any of the officers acting with malice or with corrupt motive. The refusal of planning permission is under challenge and it can be approved, modified or even rejected. Therefore, even if an incorrect appraisal or recommendation which is not sustainable is made it cannot be said that the recommendation was made with dishonest intention in the absence of any evidence to this effect.

28.The Apex Court in the case of ***M.Narayanan Nambiar vs. State of Kerala*** reported in ***AIR 1963 SC 1116***, held that Section 5(i)(d) of the Old Act which is analogous to Section 13(1)(d) being a penal provision,



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

shall be strictly construed and if so construed it only take in cases of direct benefit obtained by a public servant for himself or any other person from a third party in the manner described therein and does not cover a case of a wrongful loss caused to the Government by abuse of his power.

29.The *Narayanan Nambiar's* case has been quoted with approval by the Apex Court in *Major S.K.Kale vs. State of Maharashtra* reported in *1977 (2) SCC 394* wherein it is held that abuse of position must necessarily be dishonest on the part of the accused. Thus the judgments referred would show that what is sought to be punishable under Section 13(1)(d) of Prevention of Corruption Act is not mere misconduct but criminal misconduct and for criminal misconduct, the element of mensrea is essential and if there is no mensrea, the act does not by itself become punishable. Further, this Court in the case of *J.Jayalalitha and 4 others vs. State rep. by Director of Vigilance and Anti-Corruption*, observed in paragraph Nos.60 and 61 reads as follows:

“60.The Supreme Court had an occasion in



WEB COPY



Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022

M.Narayanan Nambiar v. State of Kerala, AIR 1963 SC

1116, to consider Section 5(i)(d) of the old Act. It was contended before the Supreme Court that Clause (d) being a penal provision, shall be strictly construed; and that if so construed, it would only take in cases of direct benefit obtained by a public servant for himself or for any other person from a third party in the manner described therein and does not cover a case of a wrongful loss caused to the Government by abuse of his power. The Supreme Court held as follows:

“First taking the phraseology used in the Clause, the case of a public servant causing wrongful loss to the Government by benefiting a third party squarely falls within it. Let us look at the Clause “by otherwise abusing the position of a public servant,” for the argument mainly turns upon the said Clause. The phraseology is very comprehensive. It covers acts done “otherwise” than by corrupt or illegal means by an officer abusing his position. The gist of the offence under this Clause is, that a public officer abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. “Abuse” means mis-use, i.e. using his position for something for which it is not intended. That abuse may be by corrupt or illegal means



WEB COPY



Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022

or otherwise than those means. The word 'otherwise' has wide connotation and if no limitation is placed on it, the words, 'corrupt', 'illegal', and 'otherwise' mentioned in the clause become surplusage, for on that construction every a buse of position is gathered by the clause. So, some limitation will have to be put on that word and that limitation is that it takes colour from the preceding words along with which it appears in the clause, that is to say, something savouring of dishonest act on his part. The contention of the learned counsel that if the clause is widely construed even a recommendation made by a public servant for securing a job for another may come within the clause and that could not have been the intention of the Legislature. But, in our view such innocuous acts will not be covered by the said clause. The juxtaposition of the word 'otherwise' with the words 'corrupt or illegal means', and the dishonesty implicit in the word 'abuse' indicate the necessity for a dishonest intention on his part to bring him within the meaning of the clause. Whether he abused his position or not depends upon the facts of each case; nor can the word 'obtains' be sought in aid to limit the express words of the section."

The above judgment of the Apex Court was quoted with approval by the same court in Major S.K. Kale v. State of



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*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

Maharashtra, 1977 (2) SCC 394.

61.The findings of the Division Bench of this Court in the writ petitions that there was non-application of mind on the part of A1 and A2, were given after perusing the original file and such findings were approved by the Supreme Court and the said findings do not establish dishonesty. Mere passing of an order, which may be even against public interest, cannot be held culpable, as unless dishonesty is seen in the action of a public servant in getting a valuable thing to another person without any public interest, every order of a public servant, which is found to be made without application of mind and therefore, not correct, will lead to a prosecution, This could have never been the intention of the Legislature or otherwise, every public servant, who passes an incorrect order without any public interest, can be hauled before a criminal court and it will lead to disastrous consequences.”

30.At the cost of repetition, it is seen that none of the witnesses have stated that there is passing of any illegal gratification between the accused. Admittedly the case proceeds for violation and deviation of approved planning permission by A5 and A6, the statutory appeal already filed



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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pending is not in dispute. The answer and remedy for violation of planning permission awaits decision which is pending before the statutory authorities.

In the absence of any culpability, malice and passing of any gratification, criminal case cannot be strapped on the petitioners, more so, in this case the alleged violation of planning permission is between the year 2010 and 2011. Thereafter, planning permission rejected and now appeal is pending from 27.07.2011. In this case, suo motu FIR registered in the year 2014, thereafter investigation completed charge sheet filed in the year 2019 and the case taken on file in the year 2021. Added to it, sanction granted against the public servants by L.W.1, from the statement and sanction order/L.D.1 it is clear that a report received from DVAC on 24.12.2018 along with the investigation report and case related documents, on perusal of the same, he accorded sanction for prosecution for offence under Sections 109, 120-B, 177, 202 and 420 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act. In the sanction order, A5 and A6 are referred as A4 and A5 and as regards S.P.Viswam [A4], he is referred as A7. Admittedly, in this case, there are only six accused. Neither in the statement nor in the sanction order, there is any reference to any of the writ petitions, more particularly,



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

WEB COPY

W.P.No.3892 of 2012 and W.P.No.15734 of 2013, wherein specific directions were issued by the First Bench of this Court. Further, in the charge sheet, the petitioners are charged for the offences under Sections 166, 177, 468, 471, 477A, 420 r/w. 109 IPC and Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, strangely Sections 120-B and 202 IPC left out and there are inclusion of Sections 167, 468, 471 and 477A IPC. Added to it, though sanction has been accorded to A1/Gnanamani, A2/Mookiah and A3/Nagarajan, from the reading of the sanction order, it is seen there is no reference of any overt act of A3/Nagarajan. Thus, it is clear that the sanction order reflects clear non-application of mind. The sanctioning authority's independent application of mind is *sine qua non*. The sanction order does not reflect the demonstration of fact to explicitly show application of mind on the part of the sanctioning authority. In view of the above narrative, this Court is inclined to allow the Criminal Revision cases.

31.Further, in this case A4 who is a Supervisor prepared the office note, charging fee for Special Building instead of charging fee for Multi-storied Building and collected lesser amount. A4 role is limited to prepare



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

office note based on the file put up to him, not vested with any field work.

Though A4 had not filed any petition finding that he is also similarly placed as that of the petitioners herein, A4 is also entitled to the same relief.

32.In the result, the order passed by the learned Special Judge for the cases under Vigilance and Anti-Corruption Act, Coimbatore in C.M.P.No.453 of 2021, C.M.P.No.343 of 2021, C.M.P.No.344 of 2021, C.M.P.No.342 of 2021 and C.M.P.No.392 of 2021 dated 31.01.2022 is hereby set aside, consequently the case in Spl.C.C.No.2 of 2021 against all the accused is quashed. The petitioners and A4 are acquitted from all the charges levelled against them. Accordingly, Criminal Revision Petitions are allowed. Consequently, connected M.Ps are closed.

28.04.2023

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes

cse



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

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To

- 1.The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.
- 2.The Special Judge for the cases under
Vigilance and Anti-Corruption Act,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.



WEB COPY



*Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022*

M.NIRMAL KUMAR, J.

cse

Pre-delivery order made in

**Crl.R.C.Nos.272, 126, 127,
328 & 343 of 2022**

28.04.2023