



Crl.R.C.Nos.316, 384 & 451 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.05.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 10.11.2022	Orders Pronounced On 24.05.2023
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Crl.R.C.Nos.316, 384 & 451 of 2022
and Crl.M.P.Nos.3926 & 4656 of 2022

M.Thangavel

... Petitioner
in Crl.R.C.No.316/2022

P.Vijayalakshmi

... Petitioner
in Crl.R.C.No.384/2022

M.Marichamy

... Petitioner
in Crl.R.C.No.451/2022

Vs.

The State Rep. by
Inspector of Police,
CBI/ACB,
Chennai.

... Respondent
in all Petitions

COMMON PRAYER: Criminal Revision Petitions filed under Sections 397 r/w. 401 of Criminal Procedure Code, to set aside the order passed in Crl.M.P.No/2564 of 2020, Cr.M.P.No.6927 of 2019 and Cr.M.P.No.7326 of



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2018 in C.C.No.10 of 2018 dated 07.02.2022 passed by learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai and discharge the petitioners.

For Petitioner
in Crl.R.C.No.316/2022 : Mr.K.Shankar

For Petitioner
in Crl.R.C.No.384/2022 : Mr.B.Kumar
Senior Counsel
for Mr.S.Ramachandran

For Petitioner
in Crl.R.C.No.451/2022 : Mr.R.Rajarathinam
for Mr.G.Muthukumar

For Respondent
in all Crl.RCs. : Mr.K.Srinivasan
Special Public Prosecutor
for CBI Cases

COMMON ORDER

The petitioners M.Thangavel/A1, P.Vijayalakshmi/A2 and M.Marichamy/A3 in C.C.No.10 of 2018 pending on the file of the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai challenging the dismissal of discharge petitions in Crl.M.P.No/2564 of 2020, Cr.M.P.No.6927 of 2019 and Cr.M.P.No.7326 of 2018 by a common order dated 07.02.2022, filed the above revision petitions.



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2. Since the defence and grounds raised by the petitioners are similar, a common order is being passed. For the sake of convenience and clarity, the petitioners are referred to as per their rankings in the Calendar Case.

3. A case in RC MA1 2016 A 0048 was registered by the CBI/ACB, Chennai on 27.12.2016 against A1 and A2 for the offence under Section 109 IPC and Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988 [hereinafter referred to as 'PC Act, 1988']. A1 was working as Section Supervisor, Employees Provident Fund Organization [EPFO], Regional Office, Chennai, A2 was working as Senior Accountant General, Grade II in the Office of the Accountant General [AGs Office], Teynampet, Chennai and A3, younger brother of A1 and brother-in-law of A2 started a firm in the name of M/s. Efficient Management Consultant [EMC] in the year 2004, the same was subsequently converted into a partnership firm including one T. Rahul, Son of A1 and A2, E. Kanniyammal, mother-in-law and mother of A1 and A2. Further, A3 along with one D. Ravichandran, friend of A1 started a partnership firm in the name of M/s. EMC HR



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Solutions and these firms were functioning in CIT Nagar premises of the accused and providing Pay roll, Consultant for remittance of EPI, ESIC, placement training and HR related statutory consultancy services, etc. Initially in the FIR, the check period was taken from 01.12.2011 to 09.12.2016, during investigation it was found that most of the properties were acquired during the year 2010 and hence, the check period was taken from 23.07.2010 to 09.12.2016. At the beginning of check period as on 23.07.2010, both A1 and A2 possess movable and immovable assets to the tune of Rs.31,94,408.24/- and at the end of the check period as on 09.12.2016, they were in possession of movable and immovable assets to the tune of Rs.2,55,73,648.73/-. During the check period the income of both A1 and A2 was to the tune of Rs.1,56,21,341.90/- and the expenditure during the check period was to the tune of Rs.1,14,68,288.22/-. Hence, at the end of the check period it was found that A1 and A2 amassed disproportionate asset in their name to the tune of Rs.1,82,26,186.81/- i.e., 116.67%. It was also found that various transactions were made by A1 and A2 in purchasing plot at Old No.71, New No.28, 1st Cross Street, CIT Nagar, Chennai – 35 measuring 1302 sq.ft. For Rs.93 lakhs and



construction was made by A1 and A2. Further A2 provided incorrect particulars to her Department regarding this transaction. The accused were given opportunity to give explanation or satisfactory account for the above mentioned disproportionate asset but they could not offer satisfactory explanation, hence they committed an offence of abetment and criminal misconduct under Section 109 IPC and Section 13(2) read with 13(1)(e) of PC Act, 1988. On conclusion of investigation, CBI recorded the statement of 92 witnesses and filed 333 documents to support the charges framed against A1 to A3.

4.The contention of learned counsel for A1 is that A1 is not having any movable or immovable property in his name. In the final report it is indicated that A1 paid Rs.50,000/- by way of cheque dated 31.08.2010 to L.W.9/Kalaiselvan. Apart from it, A1 also made payments towards School fees and College fees for his children from the joint account of A1 and A2. A2, his wife is also a Government Servant, both are having independent income and they have right to possess independent properties. He further submitted that possession of house in CIT Nagar is in the name of A2. The



final report is self contradictory on the allegations for the overt act against A1 to A3. A3 is having independent business and have been regularly filing his income tax returns and the Income Tax Department have not raised any objections. There is no evidence in the entire charge sheet, both oral and documentary to satisfy the legal requirement for abetment and also for possession of disproportionate asset. The CBI intentionally making wrong interpretation as though there were receipt of monies by A1 in his bank account from his brother/A3. The transfer of money is being projected against A1 not only in this case and in two other cases in which he is being prosecuted, namely, C.C.No.8 of 2019 and C.C.No.37 of 2017. For the same transaction, A1 is being prosecuted in three cases which is against the principle of Section 218 of Code of Criminal Procedure [Cr.P.C.]. It is further submitted that A1 is not in possession of immovable or movable assets in his name. The income of A3 has been projected and calculated as though it is an asset of A1 and A2. The final report is self contradictory in many places and unable to fix the principal offender and abettor. Further, all the three accused are projected as abettors.



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5.He further submitted that before the Trial Court, during the course of arguments in the discharge petition CBI filed an additional counter in which they admitted that the prosecution is not certain regarding the principal offender and the abettor. The Trial Court ought to have accepted the inability of CBI to fix the principal offender and abettors and invoking Section 239 Cr.P.C. ought to have discharged A1 from this case since no one can be a principal offender and abettor fro the same offences. The Lower Court committed an error to present a solution of alternate charge under Section 221 Cr.P.C. In this case, the Trial Court framed the charges on 04.03.2022 against all the accused on the presupposition of alternate charge, making A1 as a principal offender and A2 as an abettor in one charge and on the second charge made A2 as a principal offender and A1 as an abettor inspite of the fact that A1 has not possessed any property in his name, thereby the Trial Court committed an error and allowing the trial to proceed on the charges framed would cause grave prejudice to A1 since it will go against the fundamental principle laid down in Sections 218 and 221 of Cr.P.C. Further, it would be impossible and difficult for A1 to defend in

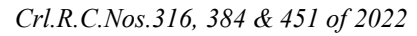


the trial if the charges are inalterate. He further submitted that holding of property is not an offence and only in case of unable to give proper explanation for the same would constitute the offence, in this case, A1 does not hold any property in his name which is disproportionate to his own source of income.

6.The learned senior counsel for A2 submitted that the order passed by the Trial Court is erroneous both in law and on facts and liable to be set aside. He would submit that A2 and A1 are husband and wife, both are Government servants, both are having independent income and consequently having right to possess independent properties. So the assets of two independent public servants cannot be combined in a single charge sheet. He further submitted that the disproportionate asset involved in this case for both A1 and A2 are one and the same and both cannot be tried by a single charge sheet in the same trial, more so, when each of the public servants gave explanation and reason for holding the assets in their name. The income of A2 as well as her husband A1 were underestimated as could be found from the undisputed documents which are available with CBI.



The CBI failed to consider these documents during preliminary enquiry and registered the above case. In the final report, paragraph 36 is quite contrary to paragraphs 37 and 39 which clearly prove that the intention of CBI is to somehow file a case against all the accused without having any iota of evidence. From the charge sheet it is clear that there is no material or documents to satisfy the legal requirement of Section 107 IPC and Section 13(1)(e) of PC Act, 1988. It is admitted by the CBI in the additional counter filed before the Trial Court that they are unable to fix the principal offender and the abettor. The Trial Court ought to have accepted the inability of CBI to fix the principal offender and abettor ought to have invoked Section 239 Cr.P.C. and discharge A2 from the case for the reason that one cannot be a principal offender as well as abettor for the same offence. The Lower Court committed an error by taking a recourse to Section 221 Cr.P.C. to frame alternate charges. The Lower Court failed to consider the importance of fixing principal offender in disproportionate of assets case wherein a public servant possessing disproportionate assets has to explain the resources which A2 have given and not considered by the Investigating Officer.



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considered. He further submitted that A2 had given intimation and got permission from the Department. Both the public servants cannot be prosecuted as primary offenders. He further submitted that no notice was given to A2 calling for any explanation.

8. In support of his contentions, the learned senior counsel for A2 relied upon the decision of the Apex Court in the case of **Anant Prakash Sinha Alias Anant Sinha vs. State of Haryana and another** reported in **[2016] 6 SCC 105**, and submitted that Cr.P.C. gives ample powers to the Courts to alter or amend a charge provided that the accused has not to face a charge for a new offence or is not prejudiced either by keeping him in the dark about the charge or in not giving him full opportunity of meeting it and putting forward any defence open to him on the charge finally preferred against him. He also relied upon the decision in the case of **Main Pal vs. State of Haryana** reported in **[2010] 10 SCC 130** for the principle to Sections 212, 215 and 464 of Cr.P.C. and the Apex Court held that the object of framing a charge is to enable an accused to have a clear idea of what he is being tried for and of the essential facts that he has to meet.



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Further, the accused is entitled to know with certainty and accuracy the exact nature of the charge against him and unless he has such knowledge, his defence will be prejudiced. Further, the Apex Court clearly held that in judging a question of prejudice, as of guilt, the Courts must act with a broad vision and look to the substance and not to the technicalities and their main concern is to see whether the accused had a fair trial. In this case, there is a material error in the charge as it violated the requirement of sub-section (1) of Section 212 Cr.P.C.

9.The learned counsel for A3 submitted that A3 except for being brother of A1 and brother-in-law of A2, he has nothing to do with their properties/assets. The primary contention of CBI is that for purchase of property at CIT Nagar and developing the same both A1 and A2 used the name of A3 and projected the loans/payments advanced by A3 is that of A1 and A2, forgetting for a moment that A3 was running two firms in the name of M/s.Efficient Management Consultants and M/s.EMC HR Solutions, both firms had good clientele and good business, their accounts have been properly submitted to the Income Tax Department which so far not raised



any objections on the same. He further submitted that in the final report at paragraph 38 it is projected that A3 was given an opportunity to offer his explanation but no such opportunity was given to him. A3 is running a PF Consultant Office in the name of M/s.Efficient Management Consultants from the year 2005 onwards and the CBI during search had seized the Income Tax returns of A3 for the assessment years 2009 to 2014 from EMC Office and the same is mentioned in the Seizure Mahazar dated 18.01.2016 as Document No.89. This income tax returns if properly studied and analyzed would show that A3 was into regular business and was filing contemporary statement of accounts to the authorities. The Statement of accounts of A3 was not considered by CBI and no reason was given for the same. On the contrary, the Income Tax Officer has been listed as L.W.56 gives a statement as though A3 has not filed any income tax returns from 2007, forgetting for a moment that CBI seized income tax returns from 2009 to 2014 during the search. A3 is roped in on the charge of abetment under Section 109 IPC, prior to it, it is the duty of Investigating Agency to show under which of the provisions of Section 107 IPC the act of A3 would come under. A3 could have been shown as a witness in this case and not as an



accused. In this case, no preliminary enquiry conducted before registration of FIR which is the dictum of the Apex Court in ***Lalita Kumari*** case [***Lalita Kumari vs. Government of Uttarpradesh reported in [2014] 2 SCC 1***]. He further submitted that the admitted position is that even prior to registration of FIR, A3 filed his income tax returns to the Department and the same is not disputed. In such circumstances, the income tax returns filed by A3 ought to have been taken in toto wherein the loans given to the other accused who are none other than his brother and sister-in-law ought to have been considered and no explanation in whatever manner was sought from A3.

10. In support of his contention, the learned counsel for A3 relied upon the decision of the Apex Court in the case of ***Nitya Dharmananda Alias K.Lenin and another vs. Gopal Sheelum Reddy also known as Nithya Bhaktananda and another*** reported in ***[2018] 2 SCC 93***, wherein the Apex Court observed that the Court is to be satisfied that the materials available with the Investigator, not made part of the charge sheet, has crucial bearing on the issue of framing of charge. But if the court is



satisfied that there is material of sterling quality which has been withheld by the Investigator/Prosecutor, the Court is not debarred from summoning or relying upon the same even if such document is not a part of the charge sheet. In this case, the income tax returns of A3 has already been seized and forms part of the charge sheet as Document No.89 which the Trial Court failed to consider. He also relied upon the decision of the Apex Court in the case of ***Manjeet Singh Khara vs. State of Maharashtra*** reported in **[2013] 9 SCC 276**, wherein the Apex Court following ***V.K.Sasikala Case [V.K.Sasikala vs. State reported in [2012] 9 SCC 771 : [2013] 1 SCC (Cri) 1010]***, observed that while submitting a report under Section 173 Cr.P.C., a fair amount of application of mind on the part of the Investigating Agency is inbuilt in the process by producing all the documents which have been seized during investigation both in favour of the prosecution as well as the accused. He also relied upon the decision of the Apex Court in the case of ***State of Andhra Pradesh vs. J.Satyanarayana reported in JT 2000 [10] SC 430***, wherein the Apex Court held that the income tax returns filed earlier to registration of the case have to be considered and cannot be labelled as an after thought when the same has been filed much earlier, prior to even



registration of case.

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11.Further, the learned counsel for A3 produced the income tax returns of A3 in support of his contention that A3 was having a running business having transactions and making profit and the income tax returns have been filed for the assessment years 2009-2010, 2011-2012 and 2013-2014. He further pointed out that advance for loan, a sum of Rs.36 lakhs have been paid and shown in the assets column as early as 21.12.2012. He further submit that the charges framed against the accused are not clear, improper, causing grave prejudice and nobody can be a principal offender and a abettor, thereby the impugned order dated 07.02.2022 is to be set aside and acquit the accused from all charges.

12.The learned Special Public Prosecutor opposed the contention of the petitioners and submitted that in this case the relationship and status of the accused are not in dispute. A1 and A2 are husband and wife, both are public servant employed in EPFO and AGs Office, A3 is the brother of A1 and brother-in-law of A2. The CBI registered a case in RC MA1 2016 A



0048 on 27.12.2016 against the accused for the offence under Section 109

IPC and Section 13(2) r/w. 13(1)(e) of PC Act, 1988. Initially the check period was fixed from 01.12.2011 to 09.12.2016, after investigation charge sheet was filed against A1 to A3 for the offence under Section 109 IPC and Section 13(2) r/w. 13(1)(e) of PC Act, 1988 before the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai and the same was taken on file as C.C.No.10 of 2018. During investigation, it was revealed that A1 and A2 being public servants, acquired disproportionate assets to the tune of Rs.1,82,26,186.81/- during the period from 23.07.2010 to 09.12.2016. In the charge sheet, the assets, income and expenditure in Statements A, B, C and D clearly reveal the possession of disproportionate assets in the name of A1 and A2. Major portion of assets acquired during the check period is during July 2010 A1 purchased a plot measuring an extent of 1302 sq.ft. along with a house measuring 300 sq.ft. at Old No.71, New No.28, 1st Cross Street, CIT Nagar, Chennai in the name of A2 for total consideration of Rs.93 lakhs, in this regard a sale agreement dated 23.07.2010 was executed which is shown as Document No.79. Out of Rs.93 lakhs a sum of Rs.57,25,000/- was paid to the vendors/sellers,



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namely, L.W.9/Kalaiselvan, L.W.10/Pachiammal, L.W.11/Poonurangam and L.W.12/Veeran by way of cheques [Document Nos.122, 172, 173, 176, 179, 180, 187, 188, 189, 190, 200, 201, 296, 297, 298, 299, 324] and the balance amount of Rs.37,75,000/- was paid in cash to L.W.9 to L.W.12. The statement of witnesses, L.W.9, L.W.12, L.W.36, L.W.37 and L.W.60 confirms the same. Further, L.W.10, L.W.11, L.W.12 and L.W.36 gave a statement under Section 164(5) Cr.P.C. which is Document Nos.328 to 330 would prove that A1 and A2 paid a total amount of Rs.93 lakhs for the above property and its mode of payments. In the charge sheet, the modes of payment are reproduced which show that as per sale agreement dated 23.07.2010 [D-79] cash was paid to the sellers as advance, A1 issued a cheque dated 31.08.2010 for a sum of Rs.50,000/- drawn on Canara Bank, Royapettah Branch in the name of L.W.9/Kalaiselvan and A2 issued a cheque dated 27.11.2010 for a sum of Rs.1,60,000/- drawn on South Indian Bank, T.Nagar Branch in the name of L.W.9. Further, on the instructions of A1, L.W.36/D.Ravichandran, friend of A1 issued cheques which are as follows:



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Sl. No.	Name of the Bank/branch	A/c.No.	Cheque No. and date	Amount in Rs.	In favour of Sellers S/Shri
1	Indian Overseas Bank, Triplicane Branch, Chennai	17910100000 0109	882883 & 22.10.2010	70000	Kalaiselvan
2			882881 & 27.11.2010	200000	Kalaiselvan
3			882885 & 13.09.2011	200000	Ponnurangam
4			882884 & 09.01.2011	30000	Kalaiselvan
5	Central Bank of India, Triplicane Branch, Chennai	1037331035	364551 & 22.12.2010	70000	Kalaiselvan
6			364553 & 09.01.2011	45000	Kalaiselvan
7	UCO Bank, Triplicane	07830110009 147	998161 & 07.09.2011	300000	Ponnurangam
Total				915000	

13.A3, younger brother of A1 made payment for total amount of Rs.36,00,000/- to the sellers L.W.9 to L.W.12 by way of cheques [D-203, D-232, D-296 to D-299, D-324] from the current account of M/s.Efficient Management Consultant, which is maintained with South Indian Bank, T.Nagar Branch, Chennai which are as follows:



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Sl. No.	Cheque	Date	Amount in Rs.	In favour of S/Shri
1	896945	28.04.2011	1000000	Smt.Pachaiammal
2	896946	06.05.2011	1000000	Kalaiselvan
3	81978	12.08.2011	500000	Veeran
4	385097	28.10.2011	300000	Veeran
5	385096	01.11.2011	300000	Ponnurangam
6	385086	19.11.2011	500000	Ponnurangam
Total			3600000	

14.L.W.60/V.Velmurugan, the then employee of A3 issued a cheque for Rs.5,00,000/- from his Savings Bank account maintained with South Indian Bank, T.Nagar, Chennai in favour of L.W.12. L.W.37/Sudhir Kumar, Proprietor of M/s.Swastik Shree, friend of A1 made payment of Rs.5,00,000/- to L.W.12/Veeran by issuance of two cheques for Rs.2,50,000/- each drawn on Bank of Baroda, Sowcarpet Branch, Chennai. The said amount was subsequently repaid to L.W.37 by A1 and his brother/A3. Hence, the total payment made to sellers by A1 to A3 are as follows:

Name of the Sellers	Amount in Rs.
Shri Kalaiselvan and Smt	2625000



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Name of the Sellers	Amount in Rs.
Pachaiammal (LW-9 & LW10)	
Shri B Veeran (LW-2)	1800000
Shri B Ponnurangam (LW-11)	1300000
Total	5725000

15.It further revealed during investigation that A1 and A2 paid the remaining amount of Rs.35,75,000/- to the vendors, namely, L.A.9 to L.W.12 in cash which was confirmed by them and the said property was registered in the name of A2 vide Document No.2685/2011 dated 08.12.2011 at Sub-Registrar Office, T.Nagar, Chennai. It was also confirmed that after purchasing the property A1 obtained plan approval for the construction of residential building [Ground floor + first floor + terrace] from Corporation of Chennai. Thereafter, A1 started to construct a commercial cum residential building in the said land in the year 2013 and completed the construction in the year 2015. Though A1 obtained permission for construction of house building to Ground floor, first floor and terrace, he constructed four floors in the property which stands in the name of his wife/A2. During construction, A1 paid Rs.34,60,000/- through A3 during the period May 2013 to May 2014 to the builder L.W.51/Venkat



which is confirmed by document No.282. A1 and A2 also made payment of Rs.35 lakhs to Rs.40 lakhs to L.W.51 towards labour charges and materials and for the interior work A1 paid Rs.44,16,000/- to L.W.52/Raffi who had confirmed the same. L.W.53/Nathique Haque supplied UPVC Windows at the cost of Rs.2,70,000/-. The evidence both oral and documentary confirm that A1 and A2 spent a total amount of Rs.1.26 Crores approximately for the construction of building at CIT Nagar. The CPWD authorities arrived at the construction value of the house at Rs.1,29,74,825/- vide report Document No.94. During investigation, it was also found that A2 submitted the intimation in the prescribed format dated 14.09.2011 for purpose of 1200 sq.ft. Of land at Plot No.123, Old No.71, New No.28, 1st Cross Street, CIT Nagar, Chennai for the sale consideration of Rs.30 lakhs including registration charges from L.W.10 to L.W.12, A2 also intimated in the prescribed format dated 07.05.2012 about the proposal of construction of house at a cost of Rs.50 lakhs by D-244. The intimation with regard to the purchase of land and construction of house submitted by A2 to AGs Office authorities are with false particulars and suppression of facts. The actual value was intimated to the Department. It is also seen that A1 and A2



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availed housing loan of Rs.17.70 lakhs from Karu Vysya Bank, Nungambakkam Branch, Chennai and the amount was transferred to HSBC Bank, Adyar Branch to close the existing housing loan which was availed for the house property at Nos.46 and 47, Dr.Giriappa Road, Flat 2A, Srinivaam Apartments, T.Nagar, Chennai. Further term loan of Rs.15 lakhs availed from Karur Vysya Bank, Nungambakkam Branch on 19.05.2015 to purchase an elevator. Out of Rs.15 lakhs, a sum of Rs.13,53,490.30 was paid to M/s.Kone Elevator on 03.07.2015. A1 and A2 being public servants not intimated about the said two loans, namely, housing loan of Rs.17.70 lakhs and term loan of Rs.15 lakhs availed from Karur Vysya Bank, Nungambakkam Branch, Chennai.

16.A3, younger brother of A1 is running a partnership firm in the name of M/s.Efficient Management Consultant and engaged in the business of preparation of payroll, consultant for remittance of EPF and ESIC contribution and other services whereas A1 was working a Senior Social Security Assistant and Section Supervisor in Employees Provident Fund Organization, Regional Office, Chennai and was also looking after the day-



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to-day affairs of M/s.Efficient Management Consultant including its bank transactions. A3 made payment of Rs.36,00,000/- to the sellers, namely, L.W.9 to L.,W.12 and also paid Rs.34,60,000/- to the builder L.W.51/P.K.Venkat by issuing the cheque of M/s.Efficient Management Consultant maintained with South Indian Bank, T.Nagar Branch, Chennai. A3 further made a payment of Rs.7.2 lakhs to Shriram Chits in favour of A2 and transferred a sum of Rs.2,35,000/- from his bank account to the SB account of A2 which is maintained at HSBC Bank, Adyar, Chennai. Apart from issuance of cheques by A3, an equivalent amount of cash was deposited in the bank of M/s.Efficient Management Consultant to clear the cheques which is nothing but the ill gotten money earned by A1 routed through the bank account of M/s.Efficient Management Consutant of A3. Investigation further reveal that A3 had no sufficient business income and there is no sufficient bank balance of M/s.Efficient Management Consultant to clear the cheques which were issued in the name of sellers, builder, Shriram Chits and to others. The employees of M/s.Efficient Management Consultant, namely, L.W.63/Saranya, L.W.64/Udhayakumar confirm that a total amount of Rs.77,53,200/- were deposited as cash in the amount of



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M/s.Efficient Management Consultant. The corresponding vouchers, cheques have been collected and the bank officials have also confirmed the same. He further submitted that the assets at the beginning of the check period, properties acquired during the check period, income, expenditure, likely savings and the disproportionate assets have been tabulated by way of Statements A, B, C and D which is available in the charge sheet with all particulars and details.

17.During investigation, A1 to A3 were given opportunity to give explanation for the disproportionate asset but no satisfactory explanation could be given by the accused. The accused have not denied the items mentioned in the statements. A1 to A3 independently filed three discharge petitions, during the pendency of the same A3 filed Crl.M.P.No.321 of 2021 under Section 91 Cr.P.C. to summon income tax returns while considering the discharge petition filed by him under Section 239 Cr.P.C. The same was dismissed by the trial Court on 19.09.2021, aggrieved against the same, A3 filed Crl.O.P.No.20111 of 2021 and this Court by order dated 04.02.2022 negated A3's contention confirming the dismissal of petition filed under



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Section 91 Cr.P.C. seeking income tax returns by observing that mere fact that the petitioner/A3 was assessed to income tax and he paid income tax for the income shown in the ITRs cannot be relied upon to discharge him from the charges and it cannot be held that the income shown in the ITRs were derived from the business and belonged to the petitioner to discharge him from the charges. This being so, the petitioner/A3 now making submissions that his income tax returns have not been produced and considered is not proper and sustainable.

18.Learned Prosecutor further submitted that A1 and A2 are jointly residing in single accommodation, income, asset and expenditure of A1 and A2 were taken for calculation. The role of A1 to A3 in respect of purchase of land for Rs.93 lakhs, construction of house building for Rs.1,29,74,825/- have been elaborately analysed and considered with relevant statements and documents. During the course of investigation all the legal/known source of income of A1 and A2 such as salary, GPF withdrawals, bank loans, loan availed from societies, etc. were considered and have been listed in the charge sheet as statements. After thorough investigation, it was ascertained



that A1 and A2 had amassed disproportionate assets in the names to an extent of Rs.1,82,26,186.81 which is around 116.67% disproportionate to their known source of income. On completion of investigation, charge sheet filed listing 92 witnesses with their statements and annexing 333 documents. The Lower Court considered the contentions putforth by the accused and by a detailed order dismissed the same. The points raised by the petitioners are factual in nature and disputed, which are to be decided during trial and not in a discharge petition. The prosecution has collected materials and produced all the materials to substantiate the disproportionate asset held by the accused and it is for the accused now to give plausible explanation to the concerned Court for acquiring these properties and both A1 and A2 have not denied any of the properties which is listed in the charge sheet. The accused/A1 to A3 in a well planned and camouflaged manner have diverted the ill gotten money through the business accounts of M/s.Efficient Management Consultant and projected the same as genuine transactions. The main plan of attack of the accused is that both A1 and A2 being public servants cannot be charged under Section 13(2) r/w. 13(1)(e) of PC Act, 1988 for the same disproportionate asset listed in the tabulations.



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He further submitted that in this case, all the accused in a well orchestrated manner committed the offence right from the initial time when they propose to purchase the property. The vendors/sellers have clearly stated the initial amount paid by A1, thereafter at the request of A1 the property was registered in the name of A2 and some money was paid through A2 and in the meanwhile, A3 paid a portion of the sale consideration to the vendors which is confirmed by L.W.9 to L.W.12. Apart from it, A1 made an application with the municipal authorities for construction of building further in violation of the approved plan constructed four floors for residential cum commercial purpose. A3 was running his business in the said building. In the meanwhile, A2 shown a lesser amount as sale consideration for purchase of plot as well as for construction of house building and sought approval with the authorities by suppression of facts and submission of false documents. When approval was obtained by fraud and suppression, the same is non-est in law.

19.He further submitted that the Trial Court considering all these aspects passed a detailed order. The petitioners by filing one petition after



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another from the year 2018 have successfully stalled the trial of the case.

Hence, he prayed for dismissal of the revision petitions and with a direction to complete the trial expeditiously. Learned Prosecutor filed a typed set with statement of relevant witnesses and documents. He further submitted that the citations referred to by the petitioners are not applicable to the facts and circumstances of the above case. He would further submit that the principle that has to be kept in mind is that charge so framed by the Magistrate is in accordance with the materials produced before him or if subsequent evidence comes on record. It is not to be understood that unless evidence has been let in charges already framed cannot be altered, for that is not the purport of Section 216 Cr.P.C. Further, it is obligatory on the part of the Courts to see that no prejudice is caused to the accused and he is allowed to have a fair trial.

20.This Court considered the rival submissions and perused the materials available on record.



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21. In this case, both A1 and A2 are public servants. A1 employed in EPFO, A2 employed in AGs Office and A3, brother of A1, was doing business in the name of M/s. Efficient Management Consultant and M/s. EMC HR Solutions.

22. The case in RC MA1 2016 A 0048 was registered against A1 and A2 for offence under Section 109 IPC and Sections 13(2) read with 13(1)(e) of PC Act, 1988 by the CBI on 27.12.2016 and the check period was taken from 01.12.2011 to 09.12.2016. During investigation finding that the acquisition of properties was during the month of July 2010, the check period expanded to 23.07.2010 to 09.12.2016. On completion of investigation, charge sheet filed listing out the properties at the beginning of the check period as on 23.07.2010 as Statement-A; Assets at the end of check period as on 09.12.2016 as Statement-B; Income during the check period as Statement-C; Expenditure during the check period as Statement-D. Finally, after calculating the income, expenditure and assets, the accused (A1 to A2) were found to hold disproportionate assets to the tune of



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Rs.1,82,26,186.81/-, which is around 116.67% disproportionate to their known source of income. The above said Statements are given in separate tabulation, listing out particulars of properties and its values etc. The accused not disputed the properties, but raised objections as regards the valuation of the properties by over estimation, likewise for denial of rightful income derived by them. In Statement-B, i.e., Assets at the end of the check period, three items are shown. Item No.1 is a flat at 2A, Second Floor, Srinivasa Apartment, Giryappa Road, T-Nagar, Chennai. This property is shown in the Statement-A. As regards Item No.2, a plot to the extent of 1302 sq.ft at Old No.71, New No.28, First Cross Street, CIT Nagar purchased on 08.12.2011 in the name of A2-Vijayalakshmi, is to the tune of Rs.93 lakhs and construction of commercial-cum-residential building in the said plot is to the value of Rs.1,29,74,825/-. These two Items are projected as disproportionate assets.

23.The primary contention of A1 and A2 is that both are public servants, hence, they have every right to purchase properties in their



individual name. Further contention is that no property stands in the name of A1, which fact is known to the respondent, but invoking Section 109 IPC, A1 is made as an accused. The contention of A2 is that the serial Nos.2 and 3 listed in Statement-B are the properties, for which, A2 already informed her superiors and got approval for the same. As per Section 13(1)(e) of the PC Act, *Explanation* “known source of income” means income received by any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant. In this case, as per the Central Government Conduct Rules, the purchase and development of the property intimated to the superiors. In view of the same, A2 cannot be proceeded with.

24.Further submission is that the charge Nos.1 and 2 are primary charges against A1 and A2 respectively for offence under Sections 13(2) r/w 13(1)(e) of PC Act. In both charges, the period of acquisition is from 23.07.2010 to 09.12.2016 and the value arrived is Rs.1,82,26,186.81/- for the same property. The charge No.3 is the charge for abetment against each



other. Charge Nos. 1 and 2 cannot be framed against both A1 and A2 as principal offenders. The Trial Court resorting to Section 221 Cr.P.C is not proper. Further, in the impugned order, it is recorded that the Investigating Officer admits his difficulty in fixing the principal offender, giving approval to the same, is not proper and appropriate on the facts and circumstances of the case. Section 13 of the PC Act is that *“A public servant is said to commit the offence of criminal misconduct,— if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation.—For the purposes of this section, “known sources of income” means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant”*. In this case, as stated above, for the property situated at Old No.71, New No.28, 1st Cross Street, CIT Nagar, Chennai, advance amount was paid by A1 to the vendors and thereafter further amount was paid by A1 to A3, which is not denied by the vendors. In this case, 164(5) Cr.P.C statement of



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the vendors recorded. The bank entries along with debit and credit vouchers, statement of accounts collected and filed along with the charge sheet. Though the advance was paid by A1, on his request, the property was registered in the name of A2 by sale deed vide document No.2685/2011, dated 08.12.2011 at Sub-Registrar Office, T.Nagar, Chennai. Though the property registered in A2's name, A1 makes application to the municipal authorities for plan approval and construction of residential building for ground floor, first floor and terrace. Simultaneously, A2 informs her superior about purchase of CIT Nagar property and the cost of building. It was later found that the building has been constructed in violation of the building permission and presently four floors of commercial-cum-residential building constructed. The valuation of the property by the Senior Executive Engineer, CPWD is fixed at Rs.1,29,74,825/-. On the contrary, the information/permission sought by A2 with AGs Office is of much lesser value. A3, brother of A1 paid around Rs.36 lakhs to the vendors through bank and cheques which is reflected in the Income Tax Returns. Prior to issuance of the cheques, corresponding cash deposits made, the statement of LW63 & LW64, Employees of A3, confirm in their



statements. The corresponding bank vouchers and other documents collected and seized.

25.The contention of A3 is that this Rs.36 lakhs shown as advance for land in the Income Tax Returns for the assessment year 2012-2013 and the same filed with the Income Tax Authorities on 21.12.2012 much before the registration of the above case, is with credence. This Income Tax Returns seized during the search of his office on 18.01.2016 in connection with RC2(A)/2018 by CBI/ACB, Chennai. Though the documents have been seized by CBI in a different crime number, the Investigating Agency is one and the same. The CBI is aware of the Income Tax declaration and the same ought to have been considered and accepted. The Hon'ble Apex Court in the case of “*State of Tamil Nadu by Inspector of Police, Vigilance and Anti-Corruption vs. N.Suresh Rajan report in (2014) 11 SCC 709*” have held that mere filing of Income Tax Returns cannot be considered as defence proved by the accused. This view is consistently followed, in the absence of corresponding evidence, the Income Tax Returns cannot be accepted on its face value.



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26.The contention of A1 and A2 as regards the house property at CIT Nagar, this Court finds that in view of the statements of the vendors, bank vouchers, cheques, statements, statement of builder, material suppliers and others, the contention and defence of the accused ought to be decided only during trial and the same cannot be considered now. The only contention is that there cannot be alternate offenders. As per Section 221 of Cr.P.C, there can only be alternate charge and hence, charging A1 and A2 for the same property and for the same period and same value, is not proper. The purpose of framing of charge is for the accused to know for what reason he is prosecuted and details to be given, namely, contents of the charge, particulars as to time, place and reason, manner of committing the offence, and under which offence is punishable. The primary contention that the charge Nos.1 and 2 cannot be framed against both A1 and A2 and both cannot be required to answer for the same disproportionate assets, will not hold good on the facts and circumstances of the case. The manner in which the CIT Nagar property has been acquired, developed and payments made to the vendors, builders and others, have been attributed to all the accused A1



to A3, who have made payments through banks by joint account, single account and by cash over a period of time and tentatively camouflaging the payments. A1 to A3 have been seen as one by the vendors, builders and material suppliers. The apprehension of the accused is misconceived on the charges framed. There is no ambiguity or any prejudice would be caused to the accused which is the prime concern which the Court is required to look into.

27.The Hon'ble Apex Court in the case of “***P.Nallammal and another Versus State represented by Inspector of Police reported in (1999) 6 Supreme Court Cases 559***” considered the trial of non public servant for abetment of offence under Section 13(1)(e) of PC Act along with public servant. In paragraph No.20, it had held as follows:-

“20. The above contention perhaps could have been advanced before the enactment of the PC Act, 1988 because Section 5(1)(e) of the old PC Act did not contain an “Explanation” as Section 13(1)(e) now contains. As per the Explanation the “known sources of income” of the public servant, for the purpose of satisfying the court, should be “any lawful source”. Besides being the lawful source the



Explanation further enjoins that receipt of such income should have been intimated by the public servant in accordance with the provisions of any law applicable to such public servant at the relevant time. So a public servant cannot now escape from the tentacles of Section 13(1)(e) of the PC Act by showing other legally forbidden sources, albeit such sources are outside the purview of clauses (a) to (d) of the sub-section.”

Finally, it had observed as follows:-

“25. Such illustrations are apt examples of how the offence under Section 13(1)(e) of the PC Act can be abetted by non-public servants. The only mode of prosecuting such offender is through the trial envisaged in the PC Act.”

28. Thus, with the aid of Section 109 IPC, even a non-public servant can be prosecuted along with the public servant for offence under Section 13(e) of the PC Act. In the case of “**DSP, Chennai Versus K. Inbasagaran reported in (2006) 1 Supreme Court Cases 420**”, the public servant and his wife therein was holding joint possession of certain properties, further the wife of the public servant was not prosecuted in that case and the Hon'ble Apex Court held that the wife has fully owned the entire money and the



other wealth. Further, it was very difficult to segregate how much of wealth belong to the husband and how much belong to the wife. In the absence of wife not being an accused and not prosecuted, the Apex Court held that it would not be proper to hold the husband's guilty. In ***P.Nallammal case***, a private individual can be prosecuted along with the public servant, such being the position, there is no impediment to proceed against both A1 and A2 who happened to be public servants.

29.The requirement is that the accused who are facing trial, the charges against them must be clear giving all particulars. Alternate charges can be framed against the accused person if the Court thinks fit on the facts and circumstances of the case. The only condition is that no prejudice is caused to the accused in view of any ambiguity. The test to be applied is that there should not be any actual or possible failure of justice. A1 and A2 being a husband and wife residing in same residence, purchased and developed the property and made payments, the payments camouflaged and rooted through various means by each of the accused. Whether it was by design or otherwise it is a matter for trial. The principle that has to be kept



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in mind is that the charges so framed is in accordance with the materials produced and the accused has understood the charges. In this case, the accused A1 and A2 are fully aware what is the case against them, hence, it is for them to meet out the charge in the trial. Further, it is obligatory on the part of the Trial Court to see that no prejudice is caused to the accused and they are allowed to have a fair trial. In this case, from the above facts, it is seen that A1 to A3 acted in unison.

30.The Apex Court in the case of judgment of “***State Through Deputy Superintendent of Police Versus R.Soundirarasu etc., reported in 2022 SCC OnLine SC 1150***” referring to various citations pertaining to discharge of the accused in disproportionate assets, held in paragraph No.83 as follows:-

“83. Section 13(1)(e) of the Act 1988 makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of properties



disproportionate to his known sources of income but the term “known sources of income” would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 of the CrPC. At the stage of Section 239 of the CrPC, the Court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless.”

31.The Constitutional Bench of the Hon'ble Apex Court in the case of **“K.Satwant Singh Versus State of Punjab reported in AIR 1960 SC 266”**, in paragraph Nos.19 to 23 had dealt in detail with regard to Charge, Form of Charges and Joinder of Charges. With regard to old Code, there is no much difference in the new Code, the pith and substance are same. The paragraph Nos.19 to 23 in **K.Satwant Singh** case is extracted as follows:-

“19. The other line of argument in support of the objection that the appellant and Henderson could not be tried together was based on the provisions of Sections 233 and 239 of the Code. It was pointed out that under the provisions of



Section 233 of the Code for every distinct offence of which any person is accused there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in Sections 234, 235, 236 and 239. Unless, therefore, the joinder of trial of the appellant and Henderson was permitted under Section 239 of the Code they could not be tried together. It was urged that in construing Section 239 of the Code it was not permissible to take into consideration the provisions of Section 234. The only provision by which a person accused of an offence and a person accused of abetment of that offence can be tried together in a single trial is under Section 239(b) which permits persons accused of an offence and persons accused of abetment to be charged and tried together. Under the terms of these provisions any number of persons accused of committing a single offence could be tried together with any number of persons who had abetted that offence. But clause (b) did not permit the trial of persons accused of several offences and persons accused of abetment of those offences in one trial and to try a person accused of three offences along with a person accused of abetment of those offences would be contrary to the provisions of clause (b). If the provisions of Section 239(b) and Section 234 were combined the result would be to create another exception to be added to the exceptions stated in Section 233 of the Code. No



Court had any authority to create a new exception to Section 233. Section 239 being an exception to Section 233 its provisions had to be construed strictly. The plain words of Section 239(b) make it quite clear that persons who had committed a single offence and those who abetted it only could be tried together. Since the appellant is said to have committed three offences of cheating and Henderson three offences of abetment thereof, the provisions of Section 239(b) did not apply and their trial together was vitiated. It was further pointed out that if there had been misjoinder of trial in the present case it could not reasonably be said that the appellant had not been prejudiced. If the appellant had been tried apart from Henderson. Henderson's confession and all the evidence against him would have been excluded at the trial of the appellant. As the result of Henderson and the appellant being tried together all the evidence against Henderson and his confession must have necessarily adversely affected the case of the appellant.

20. *On the other hand, the Solicitor-General submitted that the provisions of the Code of Criminal Procedure must be construed as they stand and reference to decided cases may be made to assist the court in the matter of construction if necessary. The Code itself nowhere stated that Sections 234*



and 239 of the Code were mutually exclusive. The entire scheme of joinder of charges and joinder of persons in a single trial has been set out in the Code. Although Section 233 of the Code is clear enough, it has expressly expected from the application of its provisions Sections 234, 235, 236 and 239. Sections 234, 235, 236 and 239 are permissive sections. They are not compelling sections. That is to say, although these sections permit joinder of charges and joinder of persons a Court may well consider it desirable in the interest of justice and having regard to the circumstances of a particular case that the charges framed should be split up and separate trials should take place in respect of them and the accused be tried separately. It was to avoid multiplicity of trials, harassment to the accused and waste of time that the permissive Sections 234, 235, 236 and 239 enable a court, within their terms, to join charges and persons in a single trial. Section 239 permitted joinder of charges and persons in a single trial in cases covered by clauses (a) to (g). These clauses permitted the joinder of persons as accused in one trial and they contemplated the various circumstances in which such persons could be tried together. Joinder of several persons in one trial necessarily involves the framing of more than one charge. If the joinder of charges was within the terms of the section, then the provisions of Section 233 had no application. Although in



clause (b) of the section the words used are “persons accused of an offence and persons accused of abetment, or of an attempt to commit such offence”, a reasonable construction of these words could not lead to the conclusion that the words “an offence” meant a single offence because under Section 13 of the General Clauses Act (Central Act 10 of 1897) words in the singular shall include the plural and vice versa. Under clause (b), therefore, persons accused of several offences and persons accused of abetment thereof could be tried together in a single trial. The concluding words of Section 239 “and the provisions contained in the former part of this Chapter shall, so far as it may be, apply to all such charges” permitted a court to apply that part of Chapter 19 which preceded Section 239. Section 234 was one such provision and a court could resort to its provisions so far as they were applicable.

21. It was further pointed out by the Solicitor-General that although the appellant was asked to specify the points of law upon which these appeals would be urged, he did not state that, in fact, he had been prejudiced by a joint trial of himself and Henderson. He also pointed out that as the result of the amendment of the Code of Criminal Procedure misjoinder of charges did not vitiate the trial unless the misjoinder had, in fact, occasioned failure of justice.



22. We now proceed to consider some of the provisions of Chapter 19 of the Code which deal with the form of charges and the joinder of charges as well as joinder of persons. So far as the form of the charge is concerned, the provisions of Sections 221 to 232 of the Code would apply in any event where a single accused was being tried on a single or several charges or where several accused were tried for various offences at one trial within the terms of Section 239 of the Code. So far as joinder of charges is concerned, Section 233 clearly required that for every distinct offence of which any person was accused there must be a separate charge and every such charge must be tried separately. The framers of the Code, however, realised that it would be impracticable to have for all circumstances such a rigid rule. The section, accordingly, excepted from its provisions cases which were covered by Sections 234, 235, 236 and 239. Section 234 accordingly permitted a single accused to be tried at one trial for more offences than one of the same kind committed within the space of 12 months provided they did not exceed three in number. Section 235 went a step further. It permitted an accused person to be tried for more offences than one committed by him and the framing of a charge with respect to every such offence, provided that the series of acts were so connected together as



to from the same transaction. It also permitted that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. It also provided that if several acts of which one or more than one would by or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more of such acts. Section 236 permitted the framing of alternative charges where a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences and any number of such charges may be tried at once.

23. By Section 239 joinder of persons in a single trial is permitted in the circumstances mentioned in clauses (a) to (g). At the trial of such persons charges would have to be framed. Indeed, the section commences with the following words:

“The following persons may be charged and tried together”



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Leaving clause (b) out for the moment the other clauses of the section clearly contemplate the framing of more than one charge against accused persons when tried together. Under clause (a) persons accused of the same offence committed in the course of the same transaction can be tried together. Under clause (c) persons accused of more than one offence of the same kind within the meaning of Section 234 committed by them jointly within the period of 12 months can also be tried together. Under clause (d) persons accused of different offences committed in the course of the same transaction can be tried together. Similar is the position in cases mentioned in clauses (e), (f) and (g). It is clear, therefore, that the general rule that for every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately has no application to these clauses. Indeed Section 233 contemplated that and expressly excluded the application of its provisions to Section 239. The entire tenor of the provisions of Section 239 indicates that several persons could be tried together for several offences committed in the circumstances mentioned therein. There is no apparent reason why clause (b) should be construed in the way suggested by Mr Harnam Singh, according to whom, in one trial any number of persons could be tried for a single offence along with any number of persons accused of abetment of that offence. The argument was based on the words “an offence” in that clause and the suggestion was that these words meant a single offence. Having regard to the providers of Section 13 of the General Clauses Act, the singular includes the plural and it would not be straining



the language of the clause if the same was construed also to mean that persons accused of several offences and persons accused of abetment thereof could be tried together at one trial. So construed framing of three charges under Section 420, Indian Penal Code, against Satwant Singh and three charges of abetment against Henderson in the same trial did not infringe the provisions of clause (b). Furthermore, the concluding words of the section make it clear that the provisions contained in the former part of Chapter 19 i.e. previous to Section 239 as far as may be shall apply to all charges framed at the trial. It was suggested that the words “the former part of this Chapter” referred to Sections 221 to 232 as Chapter 19 is in two parts, the first part being the form of charges and the second part joinder of charges. Although such headings do appear in the Chapter, it is to be noticed that Chapter 19 does not divide itself into several parts as is to be found in many of the Chapters of the Code, e.g., in Chapter XXIII the parts are headed A to L. It is further to be noticed that words similar to the concluding words of Section 239 do not appear in Section 235 of the Code. The reason for these words appearing in Section 239 of the Code appears to be that this section permits persons to be charged and tried together. The Code obviously contemplated that when charges were being framed against each of the several accused in the cases contemplated in Section 239, not only the provisions concerning the form of charges but also the provisions concerning the joinder of charges, as far as may be, should apply. In these appeals the appellant was charged in one trial for three offences of cheating and Henderson for abetment



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of the same. If the appellant had been tried alone he could have been tried for three charges of cheating committed within 12 months and Henderson, in a separate trial, could have been tried for three offences of abetment of the same offences committed within 12 months. There is no good reason for thinking that when clause (b) of Section 239 permitted the joinder of the appellant and Henderson in a single trial for the commission of the offence of cheating and abetment thereof, the same was confined to one offence of cheating and one offence of abetment. In our opinion, the trial of the appellant and Henderson together on the charges as framed did not vitiate the trial.”

32.The Hon'ble Apex Court in plethora of judgments has pointed that at the stage of framing of charge, the Court should not enter upon the process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed further. The framing of charge cannot be interfered merely on hypothesis imagination and far-fetched reasons. In this case, no fundamental defects is found on the charges framed by the Trial Court. The object of charge is to inform the accused person on the acquisition which he has to meet.



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33.In this case, the prosecution has produced materials to show disproportionate assets in the name of the accused. The possession of properties are not denied, the mode of acquisition is disputed. It is for the accused to now satisfy the trial Court by giving plausible explanation either by way of cross examination or by examining themselves or producing any defence witnesses and materials to show that there is no disproportionate assets. This can be decided only in trial.

34.In view of the categorical finding of the Hon'ble Apex Court in ***K.Satwant Singh*** case, this Court does not find any illegality or infirmity in the order passed by the Trial Court in Crl.M.P.No.2564 of 2020, Cr.M.P.No.6927 of 2019 and Cr.M.P.No.7326 of 2018, dated 07.02.2022 and the same are hereby confirmed. Accordingly, all these Criminal Revision Cases stand dismissed.

35.It is made clear that the entire scrutiny is only for the purpose of framing of charge and nothing else. It is for the trial Court to proceed with



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the trial as per the evidence brought on record and shall not influence by any observation made herein and the same have to be restricted for the purpose of disposing the above case. Consequently, the connected Miscellaneous Petitions are closed.

24.05.2023

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes

cse/vv2

To

- 1.The Inspector of Police,
CBI/ACB,
Coimbatore.
- 2.The Special Judge for CBI Cases,
VIII Additional City Civil Court,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

Pre-delivery orders made in

Crl.R.C.Nos.316, 384 & 451 of 2022

24.05.2023