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Crl.R.C.No.1742 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1742 of 2023
and Crl.M.P.No.16580 of 2023

P. Moorthi

... Petitioner

Vs.

State represented by,
The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode.
Crime No.08/AC/2019/ER.

... Respondent

PRAYER : Criminal Revision Petition is filed under Section 397 and 401 of Criminal Procedure Code, pleaded to call for the records relating to the order dated 15.06.2023 made in C.M.P.No.2918 of 2022 in Spl.C.C.No.3 of 2021 on the file of the learned Chief Judicial Magistrate/Special Court at Erode and set aside the same.

For Petitioner : Mr.N.Manoharan

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl.Side)



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ORDER

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The Criminal Revision Case has been filed against the dismissal order passed by the learned Chief Judicial Magistrate/Special Judge, Erode in Crl.M.P.No.2918 of 2022 in Spl.C.C.No.3 of 2021, dated 15.06.2023.

2. The brief facts of the prosecution is that A1/K.Elango was working as Assistant Director/Member Secretary (in-charge), Erode Local Planning Authority Office, Erode from 13.08.2018 to 31.07.2019 and A2/A.Sathish was working as Draughtsman Grade-3 in Erode Local Planning Authority Office from 31.12.2013 to 18.10.2019 and A3/Thiru P.Moorthi, the petitioner herein was working as Surveyor/Assistant Draughtsman in the same office from 07.03.2016 to 31.07.2019. A1 to A3 are Public Servants within the definition of 2(c) of the PC Act 1988 as amended by the P.C. Act 2018.

3. The further case of prosecution is that the *de facto* complainant M.Yuvaraja (L.W.3) had formed an unapproved layout in the agriculture land bearing Re survey No.26/4 of Peelamedu Village, Erode Taluk. While so, the complainant's father V.Manoharan (L.W.4) had purchased the site No.7 in



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another R.S.No.25/2 under the sale deed document No.4000/2016 to use it as an access road to R.S.No.26/4. The complainant had formed the lay out for 27 house sites and sold house site no.9 alone to one Tamilselvi under Doc.No.5231/ 2016. The complainant obtained a power of attorney deed (Doc.No.4417/2017) from the original owners A.Maruthaiah Pillai and A.Palaniappan and based on the power of attorney, the *de facto* complainant had executed a sale agreement (Doc.No.4731/2017) to his father (LW4). The Government had decided to regularize the unapproved plots and the *de facto* complainant had submitted an application dated 01.10.2018 to LPA Office, Erode and paid requisite charges. As per the prosecution case, A1 and A2 had conducted spot visit on 10.10.2018 and they had returned the file stating that there is no direct road access to the layout. Later, the *de facto* complainant had submitted a fresh layout with separate path to approach the road and thereafter, the *de facto* complainant had approached A1 and A2 and discussed the matter on 12.07.2019. As per the complaint, A1, who is an authority to grant in-principle approval order, along with A2 abused their official position and demanded Rs.2,50,000/- to process the application submitted by the complainant.



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4. The further allegation is that A1 and A2 had demanded Rs. 2,50,000/- on 12.07.2019 at 6.00 p.m. and later reduced the demand amount to Rs.2,25,000/- on the same day. They again reiterated the demand on 15.07.2019 at 1:00 p.m., 24.07.2019 at 11:30 a.m., and 5:45 p.m. The *de facto* complainant/LW3, who did not want to give bribe, had given a complaint to the respondent Police on 31.07.2019 against A1 and A2 and based on which, the First Information Report in Crime No.08/AC/2109/ER was registered. Pursuant to the demand of bribe, A1 reiterated and reduced the amount to Rs.2,12,000/- on 31.07.2019 at 2.50 pm. and received it through the petitioner/A3. Thus, the petitioner/A3 is alleged to have abetted the offence.

5. On the date of the alleged trap proceedings, A2 was on leave, and A1 had instructed the petitioner, A3, to receive the amount from the complainant. Subsequently, the police arrived and arrested A1 and A3 on 31.07.2019 at the Local Planning Authority Office in Erode, in the presence of witnesses. The respondent searched A1's house. Immediately after the search, A1 to A3 were placed under suspension. The petitioner was granted bail on 29.08.2019. After completing the investigation, the respondent filed the final report dated



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11.11.2021 before the learned Chief Judicial Magistrate/Special Judge in Erode for the offenses punishable under Sections 7(a) and 7(a) r/w.12 of the Prevention of Corruption Act, 1988, as amended by the Prevention of Corruption (Amendment) Act 2018.

6. The petitioner, A3, filed a petition in Crl.M.P.No.2918 of 2022 under Section 239 of Cr.P.C, seeking his discharge from the case in Spl.C.C.No.3 of 2021 on the grounds that, he has been falsely implicated with an oblique motive and contended that other than having received the amount from the complainant on the instruction of his superior, he has not committed any offence. The said petition was opposed by the respondent and after enquiry, it was dismissed on 15.06.2023. Against the same, the present revision has been filed.

7. Mr. N. Manoharan, the learned counsel appearing for the petitioner, submitted that the petitioner, A3, was working as a Surveyor/Assistant Draughtsman at the Erode Local Planning Authority office, along with A1 and A2, who are his superior officers. The allegation against the petitioner is that he received the bribe money on the instructions of A1, his superior officer.



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Mr.Manoharan also submitted that, apart from the receipt of money, there is absolutely no evidence against the petitioner for having demanded the amount or abetted or assisted the main accused in the offence. Therefore, the petitioner can only be brought in as a witness, whereas the respondent has implicated him as the third accused, alleging that he abetted the crime. In order to charge the petitioner for having abetted the other accused, there should be specific material to show that the petitioner actively participated in the offence and abetted the other accused to commit the crime and when the charge against him is groundless, he has to be discharged.

8. In reply, the learned Government Advocate submitted that the petitioner worked as a surveyor/Assistant, Draughtsman in Erode Local Planning Authority, Erode from 07.03.2016 to 31.07.2019 and as such he is a public servant. He further submitted that, the petitioner, on the instructions of A1 & A2, knowing well that the money he took from the *de facto* complainant is a bribe money, had received the amount. There was no necessity for the petitioner to receive the money from the *de facto* complainant. He was arrested red handed while receiving the money on behalf of the other accused which is



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not a legal fee and the phenolphthalein test conducted at the spot also proved positive. He also submitted that, the petitioner, in the Statement recorded after arrest, has admitted that he had received the money on the instructions of the other accused.

9. He further submitted that the prosecution has collected documents, namely, D2, D8, D10, D12, D16, D18 and D25 and also the statements recorded from LW3, LW4 and LW6, which would *prima facie* prove the involvement of the accused in the crime. The documents collected by the prosecution are extracted hereunder:-

<i>S.No.</i>	<i>Doc.No.</i>	<i>Date</i>	<i>Particulars</i>
1	2	-	Proceedings in R.C.No.14744/2019/K1, Dt.16.02.2021 of the Director of Town and Country Planning, Chennai.
2	8	31.07.2019	Seizure Mahazar (Post trap proceedings) in Erode V&AC, Cr.No.8/AC/2019 prepared on 31.07.2019 between 16.30 hours and 19.30 hours.
3	10	31.07.2019	Rough Sketch of SOC in Erode V&AC Cr.No.8/AC/2019 dated 31.07.2019
4	12	07.01.2016	(vii). Copy of office orders issued in Na.Ka.No.20/2016 ELPA-1, Dt: 07.01.2016 of the Member Secretary (incharge), Erode Local Planning Authority, Erode containing the duties and responsibilities given to staff working in Erode Local Planning Authority Office, including accused A-2 A-3.



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S.No.	Doc.No.	Date	Particulars
5	16	-	Original Application file in C.No.731/2019 ELPA-2 of Erode Local Planning Authority, Erode in connection with in-principle lay out approval for the lay out located in S.F.No.26/2, 26/4 of Peelamedu village in the name of Complainant. (Pages 1 to 278)
6	18	-	Letter in Na.Ka.No.959/2019 of the Member Secretary, (in-charge), Erode Local Planning Authority, Erode addressed to the Inspector of Police, V & AC, Erode along with (i). Original file No.2657/2018 ELPA-2 given name of Mr. Yuvaraja (complainant) along with file. It was closed on 31.01.2019.
7	25	-	Attendance Register of Erode Local Planning Authority, Erode for the year 2019

10. He further submitted that although the witnesses have not spoken about the demand made by the accused, the *mens rea* and knowledge of the accused can only be proved during the examination of the witnesses. Moreover, the amount has been recovered from the accused, and both the phenolphthalein test and the swab test conducted on the blueprint printer have yielded positive results. The allegation against the petitioner is for an offense under Section 12 of the Prevention of Corruption Act, 1988, as amended by the Prevention of Corruption (Amended) Act 2018. Since there is ample evidence, the petitioner cannot be discharged. He also submitted that the trial Court, finding that the materials relied on by the prosecution disclosed the commission of offence, had



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dismissed the application. He further submitted that the discharge petition was dismissed as early as on 15.06.2023 and as on date, charges have been framed and the case now stands posted for examination of LW1 and LW2 on 27.11.2023 and thereby, he would vehemently oppose for allowing this revision.

11. Heard the learned counsel appearing on either side and perused the materials available on record.

12. In the case on hand, it is relevant to extract Section 239 CrPC, which is extracted hereunder:-

“239. When accused shall be discharged.—If, upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing.”

13. It is trite that at the time of framing charges, the Court must proceed with the presumption that the material brought on record by prosecution are true and must evaluate such material with a view to find out whether such facts disclose existence of ingredients of offense.



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14. In this regard, it would be also relevant to refer paragraph Nos. 57, 61, 72, 75, 76 and 81 of the judgment of the Hon'ble Apex Court in ***State, through Deputy Superintendent of Police v. R. Soundirarasu***, reported in **(2023) 6 SCC 768** which are extracted below :

" 57. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561, and referring to its earlier decisions in the State of Maharashtra v. Som Nath Thapa, (1996) 4 SCC 659, and the State of M.P. v. Mohanlal Soni, (2000) 6 SCC 338, it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record. The relevant observations made in the judgment are as follows: —

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even



strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

61. Section 239 CrPC lays down that if the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused. The word "groundless", in our opinion, means that there must be no ground for presuming that the accused has committed the offence. The word "groundless" used in Section 239 CrPC means that the materials placed before the court do not make out or are not sufficient to make out a prima facie case against the accused.

72. The ambit and scope of exercise of power under Sections 239 and 240 CrPC, are therefore fairly well-settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The section mandates that the Magistrate shall discharge the accused recording reasons, if after : (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless i.e. either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage - the only consideration at the stage of Sections 239/240 is as to whether the



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allegation/charge is groundless.

75. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure.

76. Thus, the revisional power cannot be exercised in a casual or mechanical manner. It can only be exercised to correct manifest error of law or procedure which would occasion injustice, if it is not corrected. The revisional power cannot be equated with the appellate power. A Revisional Court cannot undertake meticulous examination of the material on record as it is undertaken by the trial court or the appellate court. This power can only be exercised if there is any legal bar to the continuance of the proceedings or if the facts as stated in the charge-sheet are taken to be true on their face value and accepted in their entirety do not constitute the offence for which the accused has been charged. It is conferred to check grave error of law or procedure.

81. In the overall view of the matter, we are convinced that the impugned orders passed by the High Court are not sustainable in law and deserve to be set



aside. The circumstances emerging from the record of the case, prima facie, indicate the involvement of the accused persons in the alleged offence. Having regard to the materials on record, it cannot be said that the charge against the accused persons is groundless. There are triable issues in the matter. If there are triable issues, the court is not expected to go into the veracity of the rival versions."

15. Further, the Hon'ble Supreme Court in various decisions has also held that no mini trial is contemplated at the stage of framing of charges or at the stage of considering the validity of such charges framed. For this proposition, it is relevant to refer to the judgment in ***Captain Manjit Singh Viridi (Retd.) Vs. Hussain Mohammed Shattaf and others***, reported in **2023 SCC OnLine SC 379**, where it has been categorically stated as follows:

"11.The law on issue as to what is to be considered at the time of discharge of an accused is well settled. It is a case in which the Trial Court had not yet framed the charges. Immediately after filing of chargesheet, application for discharge was filed. The settled proposition of law is that at the stage of hearing on the charges entire evidence produced by the prosecution is to be believed. In case no offence is made out then only an accused can be discharged. Truthfulness, sufficiency and acceptability of the material produced can be done only at the stage of trial. At the stage of charge, the Court has to satisfy that a prima facie case is made out against the accused persons. Interference of the Court at that stage is required only if there is strong reason to hold that in case the trial is



allowed to proceed, the same would amount to abuse of process of the court.

12. The law on the point has been summarised in a recent judgment of this Court in **State of Rajasthan v. Ashok Kumar Kashyap**. Relevant paras are extracted below: -

"11.1. In P. Vijayan v. State of Kerala, MANU/SC/0058/2010 : (2010) 2 SCC 398, this Court had an occasion to consider Section 227 CrPC What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if the Judge comes to a conclusion that there is sufficient ground to proceed, he will frame a charge under Section 228 CrPC, if not, he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.



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11.2. *In the recent decision of this Court in State of Karnataka v. M.R. Hiremath, MANU/SC/0807/2019 : (2019) 7 SCC 515, one of us (D.Y. Chandrachud, J.) speaking for the Bench has observed and held in para 25 as under:*

"25. The High Court [M.R. Hiremath v. State, 2017 SCC OnLine Kar 4970] ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 CrPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan, MANU/SC/0011/2014 : (2014) 11 SCC 709, advertent to the earlier decisions on the subject, this Court held:

29. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made



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out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.""

16. Applying the law enunciated by various Judgments referred above in consonance with the fact of the case on hand, in this case, the petitioner had claimed that there is no material to show that he has demanded the amount and other than obeying the instructions of his superiors, the petitioner has not done any offence.

17. Taking into consideration the materials available, the allegation against the petitioner is that he abetted the offense along with A1 and A2, his superior officers. Perusal of the records shows that there are ample materials in the form of document nos. D2, D8, D10, D12, D16, D18, and D25. These documents would prima facie prove the involvement of the accused in the crime. Additionally, the statements of LW3, LW4, and LW6 also support the prosecution's case. The petitioner, who has been working there for an extended period, is alleged to have received the amount and abetted.



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18. In the opinion of this Court, at the stage of discharge, the trial Court cannot appreciate the records and it is not required to conduct a roving enquiry or mini trial. The Court can only look into to see whether the materials placed by the prosecution before the Court has made out *prima facie* case against the accused. In this case, the Trial Court found ample materials for framing charges against the accused and dismissed the petition. This Court does not find any infirmity or illegality in the impugned order.

19. In the result, this Criminal Revision Case stands dismissed. However, it is made clear that what has been observed by this Court is only for the purpose of disposal of the discharge petition and any observations made, shall not be prejudice the rights of the petitioner during the course of trial and the trial Court may also not be influenced/inhibited by the observations made by this Court and shall proceed with the trial independently in accordance with law. Consequently, the connected miscellaneous petition is closed.

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Speaking / Non-speaking
Neutral Citation : Yes / No
mrp/ham

To

1. The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Erode.
2. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

mrp/ham

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and Crl.M.P.No.16580 of 2023**

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