IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.11.2022
PRONOUNCED ON : 24.05.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.992, 1032 & 1040 of 2021 and 196 & 396 of 2022
and
Crl.M.P.No.4005 of 2022 in Crl.R.C.No.396 of 2022

1.V.Mohan Dass ... Petitioner in Crl.R.C.No.992 of 2021

2.M.Marichamy ... Petitioner in Crl.R.C.No.1032 of 2021

3.S.Kulasekaran, aged 53 years,
S/o.A.Sambandam,
Section Supervisor,
Employment Provident Fund- Regional Office,
Royapettah,
Chennai- 600 037. ... Petitioner in Crl.R.C.No.1040 of 2021

4.M.Thangavel, aged 57,
S/o.Mahalingam,
Section Supervisor, EPFO,
Regional Office, Chennai-14. ... Petitioner in Crl.R.C.No.196 of 2022

5.M.S.Srinivasan, M/45 years,
Director,
M/s.SY Consultants Statutory Services Pvt. Ltd.,
No.6/7, Eden Dale Bishop Wallace Avenue East,
Mylapore,
Chennai-600004. ... Petitioner in Crl.R.C.No.396 of 2022

Vs.

The Inspector of Police,
Special CBI: ACB: Chennai.
(Crime No.RC MA1 2016 A0036). ... Respondent in Crl.R.C.No.992 of 2021

State by:
Superintendent of Police,
SPE:CBI:ACB, Chennai. ... Respondent in Crl.R.C.No.1032 of 2021

State by its Superintendent of Police,
SPE : CBI : ACB : Chennai.
(Crime No.RC MA1 2016 A0036) ... Respondent in Crl.R.C.No.1040 of 2021

State represented by
Superintendent of Police,
SPE, CBI, ACB, Chennai.
Crime No.RC MA1 2016 A0036. ... Respondent in Crl.R.C.No.196 of 2022

The State Rep. by
The Superintendent of Police,
Anti Corruption Branch,
Central Bureau of Investigation,
Chennai. ... Respondent in Crl.R.C.No.396 of 2022

PRAYER in Crl.R.C.No.992 of 2021: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the lower Court in Crl.M.P.No.10520 of 2019 in C.C.No.8 of 2019 order dated on 06.10.2021 on the file of Principal Special Judge for CBI Cases (VIII Additional City Civil Court).

PRAYER in Crl.R.C.No.1032 of 2021: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in C.C.No.8 of 2019 pending on the file of the Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai and set aside the order dated 06/10/2021 passed in Crl.M.P.No.3284/2021 and discharge accused from C.C.No.08/2019.

PRAYER in Crl.R.C.No.1040 of 2021: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order passed in Crl.M.P.No.129 of 2020 in C.C.No.8 of 2019 by the Principal Special Judge for CBI Case, (VII Addl. City Civil Court) Chennai dt.06-10-2021 and to allow the Revision petition.

PRAYER in Crl.R.C.No.196 of 2022: Criminal Revision is filed under Section 309 r/w 401 of the Code of Criminal Procedure, (a)to call for the records from the lower Court (b)to discharge the petitioner/accused-1 by setting aside the order passed by learned Principal Special Judge for CBI cases, VIII Additional Special Judge for CBI Cases, Chennai in Crl.M.P.No.2565 of 2020 in C.C.No.8 of 2019, dated 6.10.2021 (c)pass any orders as this Court deemed fit and proper in the circumstances listed in this petition and thus render justice.

PRAYER in Crl.R.C.No.396 of 2022: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records in C.C.No.8/2019 pending on the file of the Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai and set aside the order dated 06/10/2021 passed in Crl.M.P.No.3000 of 2020 and discharge accused from C.C.No.08/2019.

For Petitioners : Mr.L.Infant Dinesh in Crl.R.C.No.992 of 2021
Mr.B.Kumar, Senior Counsel for
Mr.S.Ramachandran in Crl.R.C.No.1032 of 2021
Mr.R.Karunakaran in Crl.R.C.No.1040 of 2021
Mr.K.Shankar in Crl.R.C.No.196 of 2022
Mr.R.Rajarathinam for
Mr.G.Muthukumar in Crl.R.C.No.396 of 2022

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

*****

COMMON ORDER

The petitioners herein are A3, A5, A4, A1 & A2 in C.C.No.8 of 2019.

During trial in C.C.No.8 of 2019, the petitioners along with A6 have filed discharge petitions under Sections 329 and 222 of Cr.P.C., in Crl.M.P.Nos.10520 of 2019, 3284 of 2021, 129 of 2020, 2565 of 2020, 3000 of 2020 and 1540 of 2020 in C.C.No.8 of 2019. The learned Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai/Trial Court, vide order, dated 06.10.2021 dismissed the discharge petitions filed by A1 to A5 and allowed the discharge petition filed by A6.

2.Aggrieved against the order of the Trial Court, dated 06.10.2021, the petitioners A3, A5, A4, A1 & A2 have filed the present Criminal Revision Cases.

3.For the sake of convenience and clarity, the petitioners are referred to as accused, as per their rank, in the charge sheet. Since all the revisions arise out of C.C.No.8 of 2019, this Court decides to dispose of all the petitions by way of Common Order.

4.The allegations against the accused in the charge sheet is as follows:-

(i)A1 was working as Senior Social Security Assistant, Employees Provident Fund Organization (EPFO), Regional Office, Chennai from April

2004 to 14.09.2015 and as Section Supervisor from 15.09.2015 to May 2017 and was working in Group 25. A2 is one of the Directors of M/s.SY Consultants Statutory Services Private Limited having office at "Eden Dale", New No.7, Old No.6, Ground Floor, Bishop Waller's Avenue (E), Mylapore, Chennai. M/s.SY Consultants and Statutory Services is engaged in offering statutory services such as EPF; ESIC, etc. A3 was promoted and posted as Senior Social Security Assistant in April 2004 and as Section Supervisor in September 2015 at Regional Office, Chennai. He was working in Despatch Section at EPFO, Regional Office Chennai. A4 was promoted as UDC in September 2003 and Section Supervisor in December 2007 at EPFO, Regional Office, Chennai from April 2015, he is working as Section Supervisor in Accounts Group 30, Regional Office, Chennai. A5, brother of A1 and is Proprietor of M/s.Efficient Management Consultants (EMC) and is the account holder of the current account opened in the name of M/s.EMC with South Indian Bank, T.Nagar, Chennai. He is also a partner of M/s. EMC HR Solutions maintaining current account at Karur Vysya Bank, Nungambakkam Branch and he is operating the said account. He was managing the bank transactions of both the accounts. A1 associated with the activities of M/s.Efficient Management Consultants and M/s.EMC HR Solutions. A6 wife of A1. A1, A3 & A4 are the Public Servants within the meaning of Section 2(c) of the Prevention of Corruption Act, 1988.

(ii)M/s.CPF (India) Private Limited (formerly, Charoen Pokphand (India) Private Limited) having registered office at D.No.40, F2, 2nd Street, Sparton Nagar, Mugappair East Chennal, is a Thailand based 100% foreign direct investment company dealing with manufacturing of poultry feed and production of poultry products. In Tamil Nadu, the establishment has its PF registration no. TN/MAS/40120 and during 2014-15 was under the allocation of Group-21 Task- 5 EPFO, RO, Chennal. M/s. Chareon Pokphand (India) Private Limited entered into consulting agreement on 1st April 2014 for a period of 2 years with M/s.SY Consultant Statutory Services Private Limtied (Termed as "Consultant") to take care of all services under EPF/ESI/PF/LWF/Shops and the Establishment/Contract Labour Regulation Act etc. During the compilation of the accounts of the establishment in the year 2013-2014 in the accounts group 21 of EPFO, RO, Chennai, It was noticed that there was a huge excess remittance in A/c No.1 and huge short fall in A/c No.10 till 2013-14 as below.

A/c No.1	(+) 15151755
A/c No.2	(-) 42727

A/c No.10	(-) 15966359
A/c No.21	(-) 19444
A/c No.22	(+) 228

(iii)Hence, a letter was sent on 21.07.2014 (signed on 22.07.2014) by Assistant PF Commissioner to the establishment advising them to remit the shortfall immediately and to explain the reason for making excess payments in Account No.1 and confirm whether annual returns were submitted to all the members for whom contributions have been deducted. During the process taken up to redress the grievance by one Tousif Khan, one of the employees of M/s.CPF India Limited, on 05.01.2015, it was observed by the then RPFC (F&A) that there were discrepancies in the remittance made by the establishment in A/c.No.1 & 10 which lead to the huge excess and shortage. He observed that without verification of Form 3A and 6A and remittance challans, annual accounts for the year 2011-12 should not have been finalized. The accounts have been complied for the year 2010-2011 on 07.07.2014 and that for 2011-12 on 11.07.2014 and 2012-13 on 13.08.2014. The employer had paid arrears for 21 International workers due for the period 2010-2011 on 21.12.2011 and 14 International Workers on 06.02.2012, similarly for the period 4/11 to 11/11, the establishment paid for 21 International Workers on

21.12.2011 and for 45 International Workers for the period 2011-12 on 06.02.2012 and 19.03.2012. The Form 3A and 6A for the International Workers and other employees were received In the year 2014.

(iv)In the same observations, dated 05.01.2015, it was also noted that as per Form 3A and 6A(R) for the year 2010-11, the establishment has restricted pension contribution to Rs. 541/- upto the month 9/10 paid in 10/10 and from 10/10, the pension contributions are made on 8.33% of PF wages, and that the employer has to be directed to file Form 12A revised for the period 3/1 to 2/12 in respect of International Workers in respect of whom the payments were made on 21.12.2011, 6.2.2012 and 19.3.2012. On the same day, i.e., on 05.01.2015, a letter was sent to the establishment requiring them to furnish Form 12A(R) in respect of International workers for the period 3/10 to 2/12, list of employees along with their monthly wages and contribution for each month urgently in order to reconcile the dues and payments In respect the establishment and reminders were sent on 04.03.2015 and on 02.09.2015. The establishment CPF India Private Limited entrusted the matter of filing the returns sought for and sorting out the issue with A2, their consultant, and Sankaranarayanan, Manager (Payroll) of the company was following up the matter with the consultant A2. On the advice of A2, 12(A) revised forms, Form 6, Form 5, Form 10, Remitted Challans, contribution for each month from March 2010 to February 2010 for 24 months were prepared and submitted by the establishment vide letter, dated 14.09.2015, and again the establishment resubmitted vide letter, dated 25.09.2015 to RPFC, Form 12A and challans along with monthly contribution details for the period 2009-10, Form 12A for arrears remitted, challans and Form 6A for the period 2010-11, Form 12A for arrears remitted, challans and Form 6A for the period 2011, which were prepared as per the advice of M.S.Srinivasan.

(v)On 07.10.2015, Shri Pankajaraman, RPFC (F&A) wrote a letter to the establishment stating the Form 3A filed earlier by the establishment in respect of International Workers, from which it is evident that the contribution towards Pension Fund Contribution is not to be restricted to Rs.541/- and 8.33% of the entire PF wages has to be diverted to Pension Fund. Therefore, the establishment is required to re-work the reconciliation and Form 12A in respect of International Workers in accordance with Form 3A(R) filed earlier and submit the same to the office without further loss of time. Sankaranarayanan, as advised by A2, made corrections and submitted the monthly contribution summary/Form12A for the period 2009-10, 2010-11 and 2011-12 vide his letter, dated 09.10.2015 the data was pending with the accounts group for verification and reconciliation. Since the 3(A) forms which were earlier said to be available in the office were not readily available for cross verification of revised 12(A) forms submitted by the establishment Seethalakshmi, the dealing hand had Informed the establishment to provide the same in CD and in hard copy for reconciliation. The same was entrusted to the consultant A2 for advice and it could not be immediately prepared as the old records of the establishment were not readily available for reconciliation. The establishment made an addendum to the initial agreement on 21.11.2015 of Expat PF report for the period from April 2009 to February 2012 for total of 35 months with professional charges of Rs.31,750/- per month plus service tax. In the meeting with the top management of the company it was promised by A2 that he would sort out the excess/shortage Issue and get a letter showing 'NII' balance from EPFO. A2 approached A1 to help him out of the Issue.

(vi)The accused persons A1 to A6 entered into criminal conspiracy to and obtain pecuniary advantage in the matter of expedition of the excess/short remittance adjustment with respect to M/s. CPF (India) Pvt. Ltd. In pursuance of the conspiracy, in order to facilitate and favour A2 to prepare 3(A) revised returns, on 23.11.2015 A1 by abusing his official position without any authority, got a printout of the account ledger of the establishment which is privy to the office and can only be furnished to establishment by order, handed over the same to A2 to prepare the required data. A1 was in no way concerned with the accounts adjustments and the processing of the files of Group-21 as it was not part of his duties. Based on the computer print out given by A1, revised 3(A) forms have been prepared and a letter, dated 27.11.2015 was submitted to RPFC-I stating that the short of Rs.1,59,66,359/- in Account No.10 is due to excess remittance of Rs.1,51,51,755/- in Account No.1 and hence, there is a net short of Rs.8,14,604/- and that they are ready to pay the amount, and the short amount arrived in respect of Account Nos. 2 and 21 will be remitted as directed (i.e. Rs.42,727/- in Account No.2 and Rs.19,444/- in Account No.21). In the said letter, dated 27.11.2015 the establishment has requested to adjust the amount in excess from Account No.1 towards the amount the short fall In Account No.10. The establishment furnished the actual work showing the details of contribution of PF account and the Pension account for the year 2010-11, 2011-12 in respect of all employees in the Form

3A. The establishment also regretted for the mistake in the credit and requested to correct the data and settle the amount to be paid to the Individual members.

(vii)In pursuance of criminal conspiracy, to expedite the matter of excess/short remittance adjustment, on the instance of A1, A3, Section Supervisor of Tapal & Despatch Section and A4, Section Supervisor, Group 30 by abusing their official position pressurized the then dealing hand of Group 21/Task 5 and A4 also pressurized then Section Supervisor of Group 21 to expedite the matter. A3 or A4 were in no way concerned with the accounts adjustments and the processing of the files of Group -21 as it was not part of their duties. On 10.12.2015, by referring the letter, dated 27.11.2017, a note vide No.TN/MAS/40120/Gr21/2015 was put up by the dealing hand for orders for making relevant adjustments in Account No.1 and Account No.10 and the same was approved by the then RPFC (F&A), Shri Bhuvanendran.

(viii)As per the orders of RPFC (F&A), the FY adjustments were carried out and verified in the system by the then dealing hand and Section Supervisor respectively on 10.12.2015, and a note to that effect was initiated on the same day. The FY adjustment was approved by Shri Venkateswaralu Kaluvai, APFC in the system on 11.12.2015. On the instance of A1, A4 was following the file movement by accompanying the dealing hand or MTA when the notings or correspondences were taken for signatures to get the approvals to expedite the matter and ensure that the file should not be kept pending. On 15.12.2015, when the approval of the FY adjustment in the note file was pending for approval by APFC, to expedite the matter A4 took the note file as well as the letter, dated 15.12.2015 prepared by the Section Officer addressed to the establishment giving the break up of amounts to be remitted in various accounts and to remit the difference amount, and got the same signed by Shri R.S.Naik, APFC who was available at that point of time.

(ix)In pursuance of the criminal conspiracy, at the instance of A1, A4 took access of the note file, ledger account, letter to the employer, dated 15.12.2015 signed by Shri Naik, APFC and took them out of the office and handed over the same to A1 which was in turn, handed over by A1 to A2 and A2 to Sankaranarayanan to make the management of the company to believe that they had access to the EPF office and that they were pushing things. As a reward for the facilitation, A4 got his son employed by A2 in his company

M/s.SY Consultants and Statutory Services and his son joined in the company on 16.12.2015. On reference of the letter dated 15.12.2015, the company remitted the difference amount of Rs. 8,76,775/- on 17.12.2015 and vide letter dated 23.12.2015, forwarded the challan to EPFO office as their proof of remittance. In pursuance of the criminal conspiracy, and at the Instance of A1, A3 and A4 by abusing their official position went and pressurized the dealing hand of Group 21/Task 5 to send a letter to the establishment acknowledging the receipt of the challans remitted by them. Since the office copy of the letter, dated 15.12.2015 was not immediately available to initiate a note, the then dealing hand pressurized by A3 and by A4 and prepared another letter on 30.12.2015 with the same contents as that of the letter, dated 15.12.2015 and got it signed by the same APFC R.S.Naik and initiated a note below the letter stating that the establishment has remitted the shortfall on 17.12.2015 and the short remittance will be adjusted with the remittance of Rs.8,76,775/- made by the establishment subject to reconciliation. The note supported by the printout of DCBR taken on 30.12.2015 was signed by the then Section Supervisor on 30.12.2015. In pursuance of the criminal conspiracy, A3 and A4 got access to the note file and took a copy of it and handed over to A1 as proof of acknowledgment, which in turn was given to Sankaranayanan by A2.

(x)As a reward for facilitating Shri M.S. Srinivasan (A-2), in expediting the matter of short/excess remittance and for providing the records of the office as proof of acknowledgment, A3 demanded a TVS Scooty for his daughter and accordingly A2 purchased a TVS "Jupiter Scooty" with registration No.TN-05-BC-8032 on 30.12.2015 in the name of Ms.Kanimozhi, daughter of A3 from M/s. SBM Motor, Peravallur, Chennal for a total amount of Rs.64,179/- out of which Rs.20,000/- was swiped through the debit card of A2 issued by ICICI Bank, Nungambakkam Branch, Chennai. A1 is associated with the firms M/s.Efficient Management Consultants and M/s.EMC HR Solutions managed by his brother A5. The account of M/s.Efficient Management Consultants at South Indian Bank, T.Nagar Branch (Account No.0357073000001314) and the account of M/s.EMC HR Solutions at Karur Vysya Bank, T.Nagar (Account No.1752138000000312) are operated and managed by A5. A5 was an employee of M/s.SY Consultant Statutory Services, which had account transactions with M/s.Efficient Management Consultants. During November 2015 to the 1st week of January 2016, there is transfer of Rs.28,000/- on 04.11.2015, Rs. 31,500/- on 01.12.2015 and Rs. 31,500/- on 02.01.2016 from the account of M/s.SY Consultants Statutory

Services (A/c No.01/140001) maintained at Corporation Bank, Nungambakkam Branch to the account of Efficient Management Consultants at South Indian Bank, T.Nagar which was operated by A5). During the same period the same period there is a transfer of Rs.74,000/- on 27.11.2015, Rs.20,000/- on 21.12.2015 and Rs.60,000/- on 28.12.2015 from the account of M/s.EMC HR Solutions (Account No.1752138000000312) maintained and operated by A5 at Karur Vysya Bank, Nungambakkam Branch to the joint account of A6 and A1 (A/c. No.1752155000012341) maintained in the same branch. In pursuance of the criminal conspiracy the pecuniary advantage and valuable things were obtained by A1 by abusing his official position in facilitating and favouring A2 in expediting the Issue related to excess/short remittance adjustment of M/s.CPF India Limited, and was included in the transfer of money by A2 from M/s.SY Consultants Statutory Services to the account of M/s.Efficient Management Consultants operated by A5 and in turn A6 transferred the money from M/s.EMC HR Solutions to the joint account of A6 and A1. A1 and A6 are the ultimate beneficiaries of the pecuniary advantage. During 2015, A1 while working as Section Supervisor of Group-25 at EPFO, RO, Chennai entered into criminal conspiracy with other accused to commit criminal misconduct in the matter of expedition of excess/short remittance adjustment with respect to M/s CPF India Pvt Ltd, and in pursuance of that conspiracy A1, A3, A4 committed misconduct by abusing their official position and obtained pecuniary advantage and valuable things without consideration from A2 and thereby facilitated, favoured A2 in expediting the Issue related to excess/short remittance adjustment of M/s.CPF India Private Limited and got benefit to accused persons. Thus the accused A1 to A6 committed the offence punishable under Section 120-B IPC r/w. Sections 11 and 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 [hereinafter referred to as 'PC Act, 1988]. In the Charge sheet, the respondents have recorded the statement of witnesses and collected documents, listing L.W.1 to L.W.54 and L.D.1 to L.D.107.

5.The contention of learned counsel for A1 is that Section 11 of PC Act, 1988 will not be attracted. The accused A1 was then Section Supervisor of Group 25 and the file pertaining to M/s.CPF India Private Limited was dealt by Group 21, there is nothing even remotely to suggest that A1 committed any misconduct in straightening the wrong accounting M/s.CPF India Private Limited by transferring from one account to another account. He would submit that the CBI had wrongly interpreted the transfer of money from the bank account of his brother A5, for similar allegation already two cases registered in C.C.No.37 of 2017 and C.C.No.10 of 2019. He further submitted that for the same allegation departmental disciplinary proceeding initiated by EPFO against A1 and by order dated 08.07.2021, the Regional Provident Fund Commissioner-I exonerated A1 by giving a finding, not proved and closed the departmental proceedings after full-fleged enquiry. The disciplinary authority accepted the finding of the Enquiry Officer. A1 is falsely projected as though he had tactful understanding with A2 along with A3 and A4, the other Section Officers of Group 30 and Tapal Section, influenced the officials in Group 21 dealing with the file pertaining to M/s.CPF India Private Limited and thereby, they committed criminal misconduct is far fetched without any material. A2 is a Consultant engaged by M/s.CPF India Private Limited for sorting out their wrong credits with EPFO which is not disputed. A2 took the service of A5, processed the rectification and reconciliation in the normal course. The dealing hand, Section Supervisor, Accounts Officer, Assistant Provident Fund Commissioner and the Regional Provident Fund Commissioner not stated anything in dealing with the file of M/s.CPF India Private Limited other than in the normal course. The admitted case of CBI is that there was no loss of revenue to EPFO. A5 being brother of A1 would not automatically implicate

A1 in this case. He further submitted that the principal of A2, namely, Director, Vice President and others of M/s.CPF India Private Limited their categorical statement is that their organization not paid any amount as bribe to A2 or anyone else for processing their files. In support of his contention, the learned counsel relied upon the decision of the Apex Court in the case of ***Deputy Superintendent of Police vs. Ashoo Surendranath Tewari*** reported in ***[2020] 9 SCC 636*** wherein the Apex Court laid down the yardstick with regard to binding nature of allegations in adjudication proceedings in the event of exoneration if the allegations are identical. He further submitted that allegation against A1 and his wife A6 are almost similar when the Trial Court discharged A6 from the case. A1 ought to have been discharged. Hence, he prayed for allowing the revision petition.

6.The contention of learned counsel for A2 is that the allegation levelled against A2 is not supported by any witness or materials, none of the witnesses state against him and there is no monetary loss to EPFO. The Officers and staff of Accounts Section of Provident Fund rectified the mistakes and straightened the account by giving appropriate debit and credit to Account No.1 and Account No.10. The staff and officials who dealt with this rectification are shown as witnesses and none of them stated that A2 attempted to influence them by any means. In such circumstances, proceeding against A2, who is a Director of M/s.SY Consultants and Statutory Services Pvt. Ltd., consultant not only to M/s.CPF India Private Limited, but to various other establishments in the matters pertaining to EPF, ESIC and for other statutory compliances. The primary allegation is that A2 along with other accused straightened the accounts of M/s.CPF India Private Limited. In this case though M/s.CPF India Private Limited was shown as A3 in the FIR, the same has been dropped in the charge sheet. In view of the same, proceeding against A2 is not proper. He would submit that for the allegations against A2, the CBI is relying upon the statement of L.W.18. A bare perusal of his statement would show that nowhere there is any reference to receipt of money for the purpose of bribing the officials of EPFO. On the other hand, the statement confirms that M/s.CPF India Private Limited, as a policy was not in the habit of paying any bribe. He also confirms that only consultancy charges was paid to A2 and the same was through banking transactions, which have been accounted by way of proper vouchers. L.W.19 to L.W.24 confirm the same. In view of such positive statements in favour of A2, implicating A2 as an accused and proceeding against him is not proper. He further submitted that L.W.4 is the dealing hand who processed the file states about the procedure in detail and confirms that in Group 21 L.W.5 was the Section Supervisor, L.W.6 was the Accounts Officer, L.W.10 was the Assistant Provident Fund Commissioner and Mr.Pankajraman and Mr.Durga Prasad were the Regional Provident Fund Commissioner who dealt with the files of M/s.CPF India Private Limited. The data pertaining to particular establishment will be mapped in a ID of the respective SSA/Sr.SSA, Section Supervisor, Accounts Officer and APFC. Any adjustment in the system or approval of notings in the system can be done only through login ID and finally the Provident Fund Commissioner approve the reconciliation of accounts and necessary debit and credit made. L.W.1, another dealing hand confirms the same.

7.Learned counsel for A2 further submitted that already amounts remitted to EPFO but on the wrong head which was later reconciled and there is no loss to EPFO which is admitted. He further submitted that friendly relationship of A2 with A1, A3 and A4 now wrongly projected as though they were used for reconciliation proceedings. He further submitted that A1 was posted in Group 25, A3 in Tapal Section and A4 in Group 30 of EPFO, the file of M/s.CPF India Private Limited was with in Group 21, none of the staff and officials of Group 25 made any complaint in any form whatsoever, even after registration of the above case, any allegation against A2. A2 is a Consultant for various establishments including M/s.CPF India Private Limited for compliance of EPF, ESIC and other statutory compliances, who in the course of his consultancy service used to visit these offices regularly, and thereby, developed acquaintance with them. Further, A2 using his credit card by swiping Rs.20,000/- helped A3 when he was short of the amount in purchasing a TVS Scooty for his daughter costing around Rs.64,179/-. This was a facilitation and the amount of Rs.20,000/- was repaid by A3 within a short period. Further, as regards the allegation of employing A4's son Dhandapani in M/s.SY Consultants Statutory Services Pvt. Ltd. is far fetched as he was a trainee between December 2015 to February 2016. These two stray incidents projected as A2 along with A3 and A4 had conspired together. Further, A5 brother of A1 was employed in M/s.SY Consultants Statutory Services Pvt. Ltd., and later acted as Consultant, for which charges paid. This is projected as a payment intended to A1, the consultancy charges paid through bank which is properly accounted. The Trial Court on the similar charge as against A6, wife of A1 finding charges baseless discharged A6.

Hence, in one stretch the Trial Court finds the payment of charges to A5 being proper and on the same breadth, finds it to be improper. Thus, there are overwhelming positive statements and evidence in favour of A2 who discharged his function as Consultant to M/s.CPF India Private Limited.

8.The contention of learned counsel for A3 is that A3 who is a Senior Social Security Assistant in EPFO posted in Despatch Section is alleged to have acted in collusion with A1 and A4 [his co-employees], influenced the staff of Group 21 to process the file of M/s.CPF India Private Limited to reconcile and regularize the accounts and further he was following up the files and influencing the staff therein, for the same, A3 took Rs.20,000/- from A2. He would submit that A3 was in the Despatch Section, he has got nothing to do with Group 21 and none of the staff and officials of Group 21 stated any thing against A3. The statement of staff and officials of Group 21 is that file of M/s.CPF India Private Limited was processed in its usual course, only after obtaining appropriate orders from the Regional Provident Fund Commissioner, the accounts were reconciled and regularized. He further submitted that purchase of two wheeler to his daughter was for easy commutation a necessity to her further career. On the date of purchase, he expected loan his wife who is working in TANGEDCO have got delayed the purchase date was already fixed, not to disappoint his daughter, A2 helped A3 the loan was repaid within a short period. A2 admits the repayment of loan. This stray incident is projected against him, entire bank accounts of A3 as well as his wife who is working in TANGEDCO was verified and nothing adverse adverse found. For this stray incident, if the petitioner/A3 has to face prosecution, his entire career in the Department would get affected, he is already been stigmatized and great prejudice would be caused and his future would be in cross roads.

9.The contention of learned counsel for A4 is that A4 is a Section Supervisor in Group 30, he has been victimized. He would submit that the allegation against A4 is that his son Dhandapani, a Diploma student had some arrears during the loan period attended a training in M/s.SY Consultants Statutory Services Pvt. Ltd. during December 2015 for one month and this is now projected as though A4 influenced A2 to get his son employed, further A4 influenced the staff and officials of Group 21 to speed up the reconciliation of accounts of M/s.CPF India Private Limited. The further allegation is that A4 took the note file and a letter dated 15.12.2015 prepared by the Section Officer addressed to M/s.CPF India Private Limited giving up the breakup of amounts and handed over to A1 who in turn handed over to A2. These allegations are far fetched. On the other hand, the statement of staff and officials of Group 21, namely, L.W.4, L.W.5, L.W.6, L.W.9, L.W.10 and others not stated anything against A4 or made any complaint during the relevant period. He further submitted that the witnesses have stated that the file was dealt in its usual course and there was no loss of revenue to EPFO.

10.The contention of learned senior counsel for A5 is that A5 was projected as though he is part of conspiracy hatched by A1, A3 and A4 to process the adjustment of account of M/s.CPF India Private Limited and as a reward for the same, various transactions between A2 and A5 are projected. A5 is the younger brother of A1 who was earlier employed under A2. A5, a qualified person later started his own business in the name of M/s.Efficient Management Consultants [EMC] doing consultancy service for EPF/ESIC and other professional services, at times A5 was engaged by A2 to do consultancy service for which he used to receive consultancy charges and these charges transferred from the account of M/s.SY Consultants Statutory Services Private Limited to the account of M/s.EMC. He would submit that A1 and his wife/A6 were having joint account, in which some transactions made by A5 which is nothing but payment of rental charges at times based on requirements some transfers made which is now projected as though transactions made for regularization of accounts of M/s.CPF India Private Limited. He further submitted that A6, sister-in-law of A5, discharged from the above case, on the other hand, for similar transaction with A1, A5 is prosecuted. Hence, he prayed for allowing the revision petition.

11.The learned counsels further submit that in this case the admitted position is that there have been no wrongful loss to EPFO correspondingly there cannot be any wrongful gain to anyone. The incidents which are projected against the accused is that A1 in Group 25, A3 posted in Despatch Section, A4 in Group 30 all employees of EPFO, as Section Supervisor were known to A2 who is doing Consultancy Services in ESIC and EPF, had conspired along with A5/brother of A1 and A6[discharged accused], wife of A1 in making payments from the account of A2's M/s.SY Consultants Statutory Services Pvt. Ltd. to M/s.EMC of A5 and thereafter, further transferring to A1 and A6 [discharged accused]. As regards A3 and A4, they were monitoring, the movement of file pertaining to M/s.CPF India Private

Limited in regularization of its accounts at the behest of A1, further, taking the note file and letter dated 15.12.2015 finally regularized the Account No.1 & 10 of M/s.CPF India Private Limited, for which A3 took Rs.20,000/- from A2 and A4 got employment for his son in M/s.SY Consultants Statutory Services Pvt. Ltd. From the statement of staff and officials of EPFO, namely, L.W.1, L.W.4, L.W.5, L.W.6, L.W.8, L.W.9, L.W.10, L.W.11, L.W.12, L.W.13, L.W.16 and L.W.17, it is apparent that the payments earlier made by M/s.CPF India Private Limited was only a wrong credit, instead of crediting to Account No.1, major portion of the credits have been made in Account No.10. Hence, there was shortage in Account No.1 and excess in Account No.10, this confusion was due to change in accounting pattern, new online procedure coming into force. Thereafter, M/s.CPF India Private Limited, a foreign establishment not acquainted with the change of procedures in filing of returns, took service of A2, a Consultant for ESIC, EPF and filing of other statutory returns, no bribe amount in any form paid by M/s.CPF India Private Limited which is confirmed by L.W.18 to L.W.24. Though an attempt has been made to project as though A2 had informed L.W.18 that extra money has to be paid to the officials of EPFO, the Management of M/s.CPF India Private Limited as policy not agreeable for any extra money, given a positive evidence, whatever money has been paid is only through banking channel supported with vouchers and the amount has been paid, as consultancy charges A2 booked the service, paid the service tax and for this reason M/s.CPF India Private Limited shown as A3 in the FIR dropped in the charge sheet. Further, on a demurer submitted that when there is no case against principal, A2 only an agent cannot be prosecuted. The other incidents of A3 and A4 getting benefit is a stray incidents the categorical admission of A2 that Rs.20,000/- paid by A3 and it was only a training for A4's son, that too, for a month. The other allegation of taking of note file and letter, there is no evidence to show when and who took the file and handed over to A2. On the contrary, the evidence of L.W.4 and other staff of EPFO is that all the files and documents in the office will be placed in the rack, they were not aware of what happens after office hours, there is no evidence to show that in any manner A1, A3 and A4 dealt with these files. Further, the note file and the letter are not secret documents, ultimately these documents has to be sent to M/s.CPF India Private Limited for regularizing their accounts and in this case, accounts of M/s.CPF India Private Limited got regularized. Further, A6 in this case already discharged by the Trial Court and the CBI had left it at that stage. In view of the same, the conspiracy projected snapped. Hence, considering the entire report and documents sent under Section 173 Cr.P.C./Charge sheet and examination of the same, the charge against the accused are groundless and they are entitled for discharge.

12.In support of the contentions, the learned counsel filed a typed of documents along with the citations, which are as follows:

1. ***Public Prosecutor vs. T.K.Viswanathan and another*** reported in ***1969 SCC Online Mad 275***, wherein this Court held that unless it is established that the public servant obtained loan by corrupt or illegal means, or by dishonestly misusing his position as public servant, the offence under Section 5(1)(d) of PC Act will not be made out.
2. ***Major S.K.Kale vs. State of Maharashtra*** reported in ***[1977] 2 SCC 394***, wherein the Apex Court held that burden of proof is on the prosecution to prove that abuse of position under Clause (d) of 5(1) of PC Act must necessarily be shown to be dishonest, so that it may be proved that the public servant has caused deliberate wrongful loss to the State.
3. ***State by Special Police Establishment vs. D.Krishnamurthy*** reported in ***1995 Supp (3) SCC 702***, wherein the Apex Court held that abuse of position as a public servant is lacking in the prosecution case, and there is evidence barely to the effect hat he has by some means, be they illegal or corrupt, obtained for

himself or any other person any valuable thing or pecuniary advantage, that by itself would not be enough.

4. ***G.Mohan vs. State by CBI, Bangalore*** reported in ***[2004] 7 SCC 700***, wherein the Apex Court held that even in cases under the PC Act, it is not necessary that the prosecution is required to prove its case only by direct evidence and the same can be based on circumstantial evidence also.

13.The learned Special Public Prosecutor filed separate objections to each of the accused. As regards A1, learned Special Public Prosecutor submitted that A1 being a public servant in pursuance of the criminal conspiracy received undue amounts of Rs.74,000/- on 27.11.2015, Rs.20,000/- on 21.12.2015 and Rs.60,000/- on 28.12.2015 through A5 from A2 to handle the pending matters in respect of M/s.CPF India Pvt. Ltd, for which, A1 facilitated printouts of account ledger of the establishment which is privy to EPFO handed over to A2. No doubt there were wrong entries of remitted fund by M/s.CPF India Pvt. Ltd. in EPFO. A1 along with other accused A3 and A4 followed the staff and officials of EPFO in group 21, pressurized to and sought to reconcile the accounts of M/s.CPF India Pvt. Ltd. Thus, A1 benefited from A2. The points raised by the accused are matters of defence which could not be raised at the time of framing of charges. The points herein have already been raised before the Trial Court. The Trial Court on considering the elaborate arguments and on perusal of the materials found prima facie case made out against the accused. He would further submit that at this stage, it is not necessary to conduct a rowing enquiry. He further submitted that A1 exonerated in the departmental proceedings could not entitle him to straight away get discharged from the criminal case. He relied on the decision of the Apex Court in the case of ***State [NCT of Delhi] vs. Ajay Kumar Tyagi*** reported in **[2019] 9 SCC 685,** wherein the Apex Court held that exoneration in the departmental proceeding would not ipso facto terminate the criminal proceeding. Further, the decision relied on by the petitioner on this point will not be applicable to the facts of A1's case. It is also submitted that it is well settled that a decision is an authority for what it actually decides and not what flows from it.

14.As regards A2, learned Special Public Prosecutor submitted that in pursuance of criminal conspiracy with other accused to obtain pecuniary advantage in the matter of expedition of excess/short remittance, adjustment with respect to M/s.CPF India Pvt. Ltd., got printouts of account ledger of establishment which is privy to EPFO from A1, for which he transferred fund through A5 which is a joint account of A1 and A6 [discharged accused]. Further, A2 given his debit card for purchase of motorcycle to A3's daughter and also employed A4's son in M/s.SY Consultants Statutory Services Pvt. Ltd. Admittedly there is no revenue loss to EPFO. He would submit that investigation reveals that there is a criminal conspiracy by the accused, namely, A2 to cheat M/s.CPF India Pvt. Ltd. and A1, A3 and A4 who are no way concerned with the accounts adjustment by abusing their official position conspired and pressurizing the then dealing hands of Group 21 to rectify the error. Further, during investigation it was found that there is no criminal conspiracy on the part of M/s.CPF India Pvt. Ltd. and hence, they were exonerated from the charges.

15.As regards A3, learned Special Public Prosecutor submitted that in furtherance to criminal conspiracy, A3 purchased a motorcycle using the debit card of A2 by swiping Rs.20,000/-. This has been done in favour of expediting the processing of regularization of accounts of M/s.CPF India Pvt. Ltd. A3, who is a Section Officer in Tapal Section of EPFO had liasoned with dealing hands and other officials of Group 21. He further submitted that A3 was also the Union Secretary, in excess of power and authority had pressurized the staff and officials of Group 21 to process the file in a speedy manner and thereby regularized the accounts of M/s.CPF India Pvt. Ltd. Hence, A3 committed the offence of criminal misconduct.

16.As regards A4, learned Special Public Prosecutor submitted that in pursuance of criminal misconduct along with A3 got access to the note file and letter dated 15.12.2015, handed over the same to A1 as a proof of acknowledgment to show M/s.CPF India Pvt. Ltd. that A2 got influence with EPFO officials and thereby, he could set right the accounts of M/s.CPF India Pvt. Ltd. and in the process, A2 demanded huge bribe amount which was paid by M/s.CPF India Pvt. Ltd. as a consultancy charges. Except for change of nomenclature, the purpose of receipt of money was for bribing the officials of EPFO whether it has been paid or utilized by A2 and others is a matter to be decided during trial. He further submitted that A4 got employment for his son in M/s.SY Consultants Statutory Services Pvt. Ltd. and hence, liable to be prosecuted.

17.As regards A5, learned Special Public Prosecutor submitted that it is found from the statement of account of M/s.EMC, of which A5 is a partner, A5 transferred funds from Karur Vysya Bank to the joint account of A1 and A6 [discharged accused]. A5 being a Consultant himself though has no prohibition to offer consultancy service to other Consultancy firms, namely, M/s.SY Consultants Statutory Services Pvt. Ltd. of A2. This transfer of money from A2 to A5 and thereafter to A1 is only a camouflaged act. He further submitted that the statement of witnesses and documents collected established illegal gratification received by A5 and passed on to A1. The Trial Court discharged A6 finding no sanction obtained and merely because A6 is the joint account holder along with A1, she cannot be strapped with conspiracy. Further, A5 running his business in the building owned by discharged accused A6 and he paid tenancy charges, hence, those transactions found proper, hence A6 was discharged. As regards the relationship of A5 and A1 it is not in dispute that A5 is the brother of A1, who acted as Consultant to A2 and A2 as Consultant brought in huge benefit to M/s.CPF India Pvt. Ltd. by regularizing the account for which he received huge portion of money in the name of Consultancy charges, some portion of money had been transferred to A5 and thereafter to A1, hence, in a well orchestrated manner, conspiracy has been hatched by all the accused and thereby, committed the offence. Further, the Company policy of M/s.CPF India Pvt.

Ltd. not to pay any extra money, A5 received the money as Consultancy charges and the accused benefited among themselves. The staff and officials of Group 21 state that A3 and A4 were following the files of M/s.CPF India Pvt. Ltd. and pressurizing them to process the same which will prove that undue influence shown by A1, A3 and A4 who were from Group 25, Despatch Section and Group 30 not connected with Group 21, A2 is the Consultant who got benefitted would clearly prove that there is clear misconduct of public servants. The Sanctioning authority on perusal of the statements and materials granted sanction which has to be decided during trial. Further, the points raised by the accused are disputed and refuted which necessarily have to be decided during trial.

18.Learned Special Public Prosecutor relied on the decision of the Apex Court in the case of ***Central Bureau of Investigation vs. Dr.Anup Kumar Srivastava*** reported in ***AIR 2017 SC 3698***, wherein it is held as follows:

> "23.......The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine

the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against him the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. The court is required to consider the "record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case."

19.Learned Special Public Prosecutor further submitted that getting exonerated from disciplinary proceedings shall not ipso facto entail the public servant from the criminal case, the same has to be considered during trial. He further submitted that it is well settled that at the stage of framing of charges, it is sufficient to find out whether there are prima facie materials to proceed against the accused and whether there are materials leading to conviction in the case. On the materials produced by the CBI, the Trial Court found prima facie materials and hence, prayed for dismissal of the revision petitions.

20.Considering the submissions made and the records produced, it is not in dispute that M/s.CPF India Pvt. Ltd. had remitted the Provident Fund amount. The short fall arose in Account No.10 since excess credit was given in Account No.1 and this ought to be reconciled. It is also to be seen that during the period i.e., from 01.04.2012 the system of physical remittance was changed to remittance by online. There was roughly around Rs.1.5 Crores short fall in Account No.10 and excess in Account No.1. This has been subsequently reconciled, rectified and accounted appropriately. The undisputed fact is that it was only a wrong credit and due to which, there was no loss to the Exchequer. Further switching to online payment also added to the confusion. The complaint/allegation against the accused is that the accused, namely, A1, A3 and A4, Section Supervisors in Group 25, Tapal Section and Group 30 respectively in EPFO for valuable consideration from A2 accelerated the process of this reconciliation by constantly following up with the dealing hands, Section Supervisor, Accounts Officer, Assistant Provident Fund Commissioner [APFC] and the Regional Provident Fund Commissioner [RPFC]. In this case, after investigation charge sheet was filed against six persons, namely, A1, A3 and A4 who are public servants, A5 brother of A1, A6 [discharged accused] wife of A1 and A2, a Consultant who is doing business in the name of M/s.SY Consultants Statutory Services Pvt. Ltd., a Consultant to M/s.CPF India Pvt. Ltd. A6, wife of A1 was discharged by the Trial Court by order dated 06.10.2021 in Crl.M.P.No.1540 of 2020. The rest of the accused are before this Court. The prosecution on completion of investigation listed L.W.1 to L.W.54 and documents L.D.1 to L.D.107.

21.The witnesses can broadly classified as, L.W.1 to L.W.17 are the witnesses from EPFO and L.W.18 to L.W.24 are the witnesses from M/s.CPF India Pvt. Ltd. The other witnesses are for proving the fact of remittance of Rs.11.45 lakhs by M/s.CPF India Pvt. Ltd. to M/s.SY Consultants Statutory Services Pvt. Ltd., namely, L.W.27/Citi Bank Manager and

L.W.38/Corporation Bank Manager to confirm the credit of amount to the account of M/s.SY Consultants Statutory Services Pvt. Ltd. L.W.29 and L.W.30 state that it is A2 who was looking after the entire business of M/s.SY Consultants Statutory Services Pvt. Ltd. As regards payment of Rs.20,000/- a part amount for purchase of TVS Scooty in the name of one Kanimozhi, daughter of A3, L.W.25, L.W.26, L.W.31 and L.W.32 are examined to show that payment of Rs.20,000/- was made through the credit card of A2. As regards employment of A4's son Dhandapani, L.W.40 was examined. The said Dhandapani worked only for a month in A2's Organization which is confirmed by L.W.18. As regards the intricacies between A1 and A5, L.W.28/General Manager of M/s.EMC, L.W.33, L.W.35, L.W.36 and L.W.37 were examined to show that A5 brother of A1 had close working relationship with A2, who made several transfers to the account of A5, who in turn transferred the same to A1.

22.The dealing hands, namely, L.W.1 and L.W.4 state about the wrong credits made by M/s.CPF India Pvt. Ltd., thereafter letter issued by EPFO to the establishment, M/s.CPF India Pvt. Ltd. seeking time for submission of documents and the processing of the file in Group 21. L.W.2 states about adopting of online remittance from 01.04.2012. L.W.2/Assistant Provident Fund Commissioner as well as L.W.6/Accounts Officer categorically state that the dealing hand is the custodian of note files and correspondences. In this case, one of the allegation against A3 and A4 is that they got access to the note files and letter dated 15.12.2015 and handed over the same to A1 who in turn handed over to A2. The dealing hands, namely, L.W.1, L.W.4 and other witnesses of EPFO stated that files in the office would be kept in the rack and after office hours, they would not have any control over the same. The Accounts Officer/L.W.3 states that the ledger account of particular establishment can be viewed by any person in the office who has an User ID. Though these are privy to EPFO, in case of need for the establishment on their request the member ledger can be furnished by getting orders from the competent official. Hence, the availability of the letter and the ledger account is not of serious consequence. L.W.13/K.Sekar, Data Processing Assistant in EDP Section of EPFO confirms that printout taken from the printer assigned to him and also gives a justification that in case if any printer does not function properly, the concerned come to the EDP Section to take printout. The Accounts Officer/L.W.3, L.W.5/Section Supervisor, another Accounts Officer/L.W.6, the Assistant Provident Fund Commissioners/L.W.2, L.W.8, L.W.9, L.W.10, L.W.11 and L.W.12 have stated to the effect that files passed through various levels, properly scrutinized with notings, reached APFC and finally RPFC passed the reconciliation order, thereafter payments were remitted and accounts have now been straightened. In this case, strangely Shri Pankajraman and Shri.Durga Prasad, Regional Provident Fund Commissioners who dealt with the file, approved the reconciliation order not been cited as witness but the Assistant Provident Fund Commissioners and other witnesses of EPFO confirmed that the short fall of Rs.1,59,66,359 in Account No.10 is due to excess remittance of Rs.1,51,51,755/- in Account No.1 have now been reconciled and set right. The difference amount now paid which is not disputed.

23.Further, there is a mention in the statement of L.W.4 that during December 2015, A3 and A4 not connected to Group 21 were giving pressure to expedite the matter informing that the Commissioner had agreed to expedite the matter on the grievance expressed by the establishment and further, they also enquired about certain of the letters whether it had reached the Group. L.W.4 further qualifies by stating that the establishment regretted for the mistake in the credit and requested to correct the data and settle the amount to be paid to the individual members. A letter received by then RPFC-1 was sent to the Group to expedite the matter. Apart from this, from the statement of L.W.5 it is seen that A4 volunteered to carry the file and get the signature from the available APFV. The order of reconciling the account of M/s.CPF India Pvt. Ltd. is not disputed. In view of the same, taking the file to any of the available APFC is of no consequence. Further, the data pertaining to establishment can be viewed/mapped by logging into the file in the system and each Officer are given a specific ID, there cannot be any intrusion by others and only authenticated persons can view this file which is confirmed by L.W.16/Assistant Director of EDP system. Further, it is seen that L.W.8 and L.W.12 confirms that the Regional Provident Fund Commissioner after perusing the file, approved the same by noting 'Yes'. From the statement of witnesses of M/s.CPF India Pvt. Ltd., it is seen that as a policy they do not pay any extra money to anyone and only consultancy charges paid to A2 who in turn might have passed on to others. Whether it is a consultancy charge or otherwise is to be decided on facts. A2 seems to be more friendly with A1, who visits and meets A2 at various places. Added to it, A5, brother of A1 previously employed with A2 and now doing consultancy service on his own in the name of M/s.EMC have several transactions with A2. Whether these transactions are for consultancy charges or for some other reason, given different connotation is a matter to be decided on facts. Since these aspects are factual in nature, the case as against A1, A2 and A5 can be decided only during trial.

24.As regards A3 and A4, except for the isolated incident of A3 receiving a help by way of Rs.20,000/- accommodation while purchasing a two wheeler to his daughter and A3's contention, that he had repaid the same within a short period and it was only an accommodation is not disputed. A2 admits the receipt of Rs.20,000/-. Likewise, A4's son who had some arrears during his study was on a lien period, during that period for one month was employed in A2's Consultancy. These two isolated incidents cannot be looked against A3 and A4. The order of the Lower Court in dismissing the petitions filed by A3 and A4 is without any reasoning. On the contrary, there are positive evidence from the staff and officials of EPFO stating that the file as regards M/s.CPF India Pvt. Ltd. was processed in the normal course, further the ledger account and letter is not a secret document, it can be furnished to the establishment if they ask for the same. Hence, looking at the case against A3 and A4 on the undisputed fact and taking the statement and materials as a whole, this Court finds that the charge raised against A3 and A4 are groundless. Accordingly, the finding given by the Trial Court is hereby set aside in respect of A3 and A4 and they are discharged from the case in C.C.No.8 of 2019. As regards other accused, namely, A1, A2 and A5 the finding of the Trial Court is hereby confirmed.

25.Accordingly, the criminal revision petitions filed by A3 and A4 in Crl.R.C.Nos.992/2021 and 1040/2021 are allowed and the criminal revision petitions filed by A1, A2 and A5 in Crl.R.C.Nos.196/2022, 396/2022 and 1032/2021 are dismissed.

26.It is made clear that the observations made herein is only for the purpose of deciding the above revision petitions. The Trial Court uninfluenced with the order of this Court shall decide the case on its own merits and in accordance with law with regard to the accused who are facing trial. The connected miscellaneous petitions are closed.

24.05.2023

Speaking order/Non-speaking order
Index: Yes/No
Neutral Citation: Yes/No
vv2/cse

To

1.The Principal Special Judge for CBI Cases
(VIII Additional City Civil Court), Chennai.

2.The Superintendent of Police,
SPE:CBI:ACB, Chennai.

3.The Public Prosecutor,
High Court, Madras.

M.NIRMAL KUMAR, J.

vv2/cse

PRE-DELIVERY ORDERS IN
Crl.R.C.Nos.992, 1032 & 1040 of 2021
and 196 & 396 of 2022

24.05.2023