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Crl.R.C.No.1753 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.R.C.No.1753 of 2023
and Crl.M.P.No.16674 of 2023

R.Krishnamurthy

... Petitioner

Vs.

State represented by
The Inspector of Police,
Special Investigation Cell,
Vigilance and Anti - Corruption,
Alandur, Chennai - 16.
(Crime No.13/2021/AC/HQ)

... Respondent

PRAYER : Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, pleaded to call for the records in Crl.M.P.No.1104 of 2023 on the file of the learned Special Judge and Chief Judicial Magistrate, Tiruvallur in Special Calender Case No.12 of 2022 and set aside the order dated 22.08.2023 made in Crl.M.P.No.1104 of 2023.

For Petitioner : Mr.G.Ravikumar

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



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ORDER

This Criminal Revision Case has been filed against the dismissal order passed by the learned Special Judge and Chief Judicial Magistrate, Tiruvallur in Crl.M.P.No.1104 of 2023 in Special Calender Case No.12 of 2022 dated 22.08.2023.

2. The brief facts of the prosecution case is that the first accused Krishnamurthy/petitioner herein served as Sub-Registrar at Sub-Registrar's Office (herein referred as SRO), Madhavaram on deputation from SRO, Ponneri 24.07.2019 to 27.07.2021 and Sudhakar (A2) served as Junior Assistant at SRO, Madhavaram on deputation from SRO, Redhills from 18.01.2019 to 27.07.2021. Both the first and second accused are Public Servants as defined under Section 2(c) of the Prevention of Corruption Act, 1988, who have entered into service on 26.07.2013 and 18.01.2019 respectively.

3. Further case of the prosecution is that the *de facto* complainant M.Samiulla Khan had approached the Sub-Registrar, Madhavaram, petitioner



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herein (A1) on 23.07.2021 to release the deed and the petitioner, after perusing the parent document produced before him, had taken a receipt No.5345 and wrote '10' on the backside of the receipt to indicate the demand of bribe amount of Rs.10,000/-. Thereafter, the petitioner had directed the *de facto* complainant to contact the second accused, who was sitting opposite to him. The second accused told the *de facto* complainant that the petitioner had written “10” on the receipt and demanded Rs.10,000/-.

4. As the complainant was not willing to pay the bribe, he preferred a complaint before the Inspector of Police, Special Investigation Cell, Vigilance and Anti-Corruption, Chennai about the illegal demand made by A1/petitioner herein through A2. On receipt of the complaint, a case was registered in Crime No.13/2021/AC/HQrs (SIC) under Section 7 of Prevention of Corruption (Amendment) Act, 2018 on 26.07.2021 at 17.30 hours. Pursuant to the above demand made by the accused, on 27.07.2021 at 11.55 hours, the complainant along with official witness K.Perumal went to Sub-Registrar Office, Madhavaram and met the second accused, Junior Assistant and he had reiterated the earlier demand as per the instruction of the first accused and



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handed over the money to A2. A2 accepted the bribe amount Rs.10,000/- from the *de facto* complainant with both hands and kept in his left side pant pocket. Thereby, the accused being a public servant demanded Rs.10,000/- and accepted the same as illegal gratification other than legal remuneration as a motive or reward to release a registered document. The accused were arrested by the trap laying officer and sent to judicial custody on 27.07.2021. The respondent after completing the investigation has filed the final report against the accused for the offence under Sections 7A & 7 of Prevention of Corruption (Amendment) Act, 2018.

5. The case was taken up on file in Spl.C.C.No.12 of 2022 on the file of the learned Special Judge and Chief Judicial Magistrate, Tiruvallur. The petitioner herein (A1) has filed a petition in C.M.P.No.1104 of 2023 under Section 239 of Cr.P.C. seeking to discharge him from the case. The learned trial Judge finding that there are materials to frame charges against the petitioner, had dismissed the petition vide order dated 22.08.2023. Against which, the present revision has been filed.



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6. Mr. G. Ravikumar, the learned counsel for the petitioner, submitted that the petitioner was working as a Sub-Registrar. He further argued that apart from the averment of making a note on the receipt as '10' in pencil by the petitioner, there is no other material to implicate the petitioner in this case. He contended that marking the number '10' on the receipt by itself would not amount to suspicion against the accused. Furthermore, no demand was made by the petitioner, and the recovery has been made from the second accused. In these circumstances, the allegations made against the petitioner are groundless, and there is absolutely no other material to frame charges against the petitioner/accused. Therefore, he should be discharged.

7. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the first accused Krishnamurthy/petitioner herein served as Sub-Registrar at SRO, Madhavaram on deputation from SRO, Ponneri 24.07.2019 to 27.07.2021 and Sudhakar (A2) served as Junior Assistant during the relevant period. He further submitted that the *de facto* complainant had appeared before the first accused on 23.07.2021 for releasing the deed dated 08.07.2021 and the first accused, after perusing the parent



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document, had taken a receipt No.5345 from the given papers and wrote '10' on the backside of the receipt to indicate the demand of bribe amount of Rs.10,000/- and directed the *de facto* complainant to contact the second accused, who was sitting opposite to him. Since the complainant was not willing to pay the bribe, he preferred to lodge a complaint before the respondent Police on 26.07.2021 and based on which, a trap was laid on the next day, during which, the second accused was caught red handed.

8. He further submitted that there are ample materials for framing charges against the accused and also to show that the accused have demanded and received the illegal gratification in order to release the deed. He also submitted that at that time of arrest, statements have also been recorded from the petitioner as well as the second accused and they have accepted that they have demanded the bribe amount and received the amount from the *de facto* complainant. The trial Court had found that the materials relied on by the prosecution disclosed the commission of the offence and had dismissed the discharge petition filed under Section 239 of Cr.P.C. on 22.08.2023 and subsequently, the charges have also framed on 26.09.2023 and the case now



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stands posted for examination of LW1 on 07.11.2023.

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9. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) and perused the materials available on record.

10. 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.

11. 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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12. 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



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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 allegation/charge is groundless.

75. Thus, the revisional power cannot be exercised



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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."

13. 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.

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.)



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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, advertng 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 out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of



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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.""

14. Applying the law enunciated by various Judgments referred above in consonance with the fact of the case on hand, in this case, the allegation against the petitioner is that, he along with A2 had demanded and received Rs. 10.000/- as illegal gratification for releasing the document. The petitioner claims that the demand was made by the second accused, and the recovery was also made only from the second accused. On the other hand, it is the case of the respondent that, the *de facto* complainant had appeared before the first accused on 23.07.2021 for releasing the deed dated 08.07.2021 and the first accused, after perusing the parent document, had taken a receipt No.5345 from the given papers and had written '10' on the backside of the receipt indicating the demand of bribe amount of Rs.10,000/- and directed the *de facto* complainant to contact the second accused, who was sitting opposite to him, clearly establishing an initial demand. The prosecution, argues that there are ample materials to frame charges against the petitioner, including the notation '10' made by the petitioner



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on the receipt and the direction he gave to meet A2, followed by the receipt of the bribe amount. Furthermore, it is the case of the respondent police that the petitioner and other accused have given statements admitting to the receipt of the bribe amount.

15. 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 see whether the materials placed by the prosecution before the Court made out *prima facie* case against the accused. In this case, the Trial Court found that there are materials available for framing charges against the accused and dismissed the petition and subsequently, the trial Court has also framed charges based on the available materials. This Court does not find any infirmity or illegality in the impugned order.

16. In the result, this Criminal Revision Case stands dismissed. Further, 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



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not 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.

17.10.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

1. The Inspector of Police,
Special Investigation Cell,
Vigilance and Anti - Corruption,
Alandur, Chennai - 16.

2. The Public Prosecutor,
High Court of Madras.



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A.D.JAGADISH CHANDIRA, J.

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