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Crl.O.P.No.8714 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.06.2024
Delivered on	28.06.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.O.P.No.8714 of 2024
and
Crl.M.P.No.6271 of 2024

A.Lakshmanan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.
Crime No.4/2016/AC/CB

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, 1973, to call for the records pertaining to the proceedings in Spl.C.C.No.5 of 2023 on the file of the learned Special Judge, Special Court for Cases under Prevention of Corruption Act, Coimbatore and to quash the same.

For Petitioner	: Mr.N.Hariharan Nair for Mr.Durai Gunasekaran
For Respondent	: Mr.S.Santhosh Govt. Advocate (Crl. Side)



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ORDER

Challenging the order passed by the learned Special Judge, Special Court for Cases of Prevention of Corruption Act, Coimbatore in Spl.C.C.No.5 of 2023, the present Criminal Original Petition has been preferred by the petitioner.

2. The brief facts of the prosecution case is as follows:-

There are six accused involved in this case namely, A.Lakshmanan, B.Prabhakaran, D.Srinivasan, S.Lakshmi Devi, D.Dhandapani and D.Saroja. The petitioner herein/Lakshmanan, who is arrayed as the first accused, was a former Executive/Assistant Commissioner I/C, Central Zone, Coimbatore Corporation, Coimbatore. It is stated that the petitioner along with the second accused colluded with the building owners/A3 to A6 had entered into a criminal conspiracy in the construction of three commercial buildings without proper building approval plan as originally building plan approval had been granted for construction of residential buildings. Initially, a case was registered against the petitioner herein/A1 and A6 on 24.05.2016. On completion of investigation, it came to light that the petitioner/A1 and A2 entered



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into a criminal conspiracy with the building owners/A3 to A6 and favoured them to construct the commercial buildings instead of residential buildings in violating the building approval plan. A1 and A2 have not inspected the construction site but only after receipt of RTI petition from Samugha Vizhipunarvu Iyakkam, A1 directed A2 to visit the subject premises. Being aware of the violation made by A3 to A6 in construction of the buildings without proper building plan approval, A1 and A2 have not issued deviation notice but acted favourably to them for pecuniary advantage without taking into consideration of public safety. Lock and seal notices were also issued belatedly and no action has been initiated to stop the construction of the buildings by the accused 3 to 6 which paved the way for acquiring tax fixation and by way of this act, the petitioner has favoured the accused 3 to 6, who in turn gained pecuniary benefits. Hence, the case has been registered against the accused in Cr.No.4/2016/AC/CB and a final report has been filed by the respondent police for the offences punishable under Sections 120B, 109 of IPC and Section 13(2) r/w.13(1) (d) of PC Act.

3. Aggrieved over the same, the present petition has been filed by the petitioner herein/first accused.



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4. The learned counsel for the petitioner submitted that the petitioner served as Executive Engineer/Assistant Commissioner I/C (Central Zone), Coimbatore from 01.01.2012 to 25.06.2013. The accused/building owners made application to the corporation for building approval and the building plan approval in T.S.No.1212 of Gopalapuram III Street, Coimbatore to the extent of 3993 sq.ft was granted on 12.12.2011, T.S.No.1216/1 part at Gopalapuram I Street, Coimbatore to the extent of 3996 sq.ft. on 14.03.2012 and T.S.No.1216/1, Ward 1A, Block-20 at Gopalapuram I Street, Coimbatore to the extent of 3966 sq.ft. on 19.07.2012. He submitted that there are no ingredients for the criminal conspiracy as against the petitioner as he had not indulged in any agreement or any illegal act and therefore, the offence under Section 120 B of IPC does not attract. He further contended that as contemplated under Section 89 of the Tamil Nadu Town and Country Planning Act, the Commissioner of Coimbatore Municipal Corporation is the competent authority/ planning authority to lodge a complaint in writing to prosecute the owners of the buildings for not complying with the notice under Section 56 of Tamil Nadu Town and Country Planning Act. Furthermore, there is no proof of evidence to show



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that the petitioner had intentionally aided in commission of the crime or instigated any person to do any such act and hence, Section 109 of IPC, cannot be charged against the petitioner. There are no charges levelled against the petitioner at all in the final report stating that the petitioner had obtained any valuable things or pecuniary advantage either for himself or for any other person, by misusing his position as a public servant and in the absence of the essential ingredients of the offence of criminal misconduct as contemplated under Section 13 of PC Act, no *prima facie* case is made out as against the petitioner. He also contended that for mere dereliction of duty, the offence under Section 13(2) r/w. 13(1)(d) of PC Act, cannot be invoked against the petitioner.

5. The learned counsel for the petitioner drew the attention of his Court to the following decisions:

i) *C.Surendranath and another V. State of Kerala rep. By the Public Prosecutor, (representing the Deputy Superintendent of Police and Another)* reported in **2024 SCC Online Ker 210; and**

ii) *The State by S.P. Through the Special CBI V. Uttamchand Bohra*; and



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iii)State of Madhya Pradesh Vs. Sheetla Sahai and Others reported in 2009 (8) SCC 617.

6. The learned counsel pleaded that there is no iota of evidence for the charges levelled against the petitioner in the final report for the offences under Sections 120B & 109 IPC and Section 13(2) r/w. 13(1)(d) of PC Act and therefore, prosecuting the petitioner on the said offences, is unsustainable and illegal in the eye of law. Hence, he prayed for quashing the final report filed by the respondent against the petitioner and allow the petition.

7. Per contra, the learned Government Advocate submitted that the petitioner being a public servant failed to take necessary steps to stop the construction of the buildings which clearly shows collusion of the petitioner with other accused and hence, the act of the accused is not only abusing the official position but also criminal misconduct within the ambit of Section 13(2) r/w.13(1)(d) of the PC Act. He further submitted that the petitioner failed to spot inspect the building which act comes under misconduct of the public servant and also failed to inspect or instruct the subordinates to make necessary inspection periodically so as to prevent the commercial



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construction instead of its original approval of residential buildings and stop the violation of the construction made by the building owners which paved them to obtain tax assessment. Even though deviation notice dated 26.10.2012, as well as lock and seal notices dated 18.02.2013 and 14.05.2012 were issued, the petitioner had not taken any steps against the building owners in order to get pecuniary benefits and also that there was no reason given by the petitioner for such an inordinate delay for issuance of lock and seal notice.

8. While continuing his argument, he stated that it is also crystal clear that tax assessment of the buildings would clearly show the violation of construction against original approval and inspite of the same, property tax has been assessed which reveals the criminal conspiracy and criminal intention of the petitioner along with the other accused and therefore, the petitioner is liable to be punished for the commission of offence punishable under Section 120B of IPC. The petitioner, who was in charge of Coimbatore Corporation as Assistant Commissioner instructed A2 to visit the building construction approved by the Corporation and on inspection, he prepared a report as if that there was only minor



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violations dated 10.10.2012 instead of severe deviations and issued notices under Section 282(1)(2) and 296(1) & (2) and the same was approved by the petitioner on 26.10.2012 which evidences the misconduct committed by him by abusing his official position since the said constructions of the building contains serious violation made by A3 to A6 against the building plan approval and the act of approval was done for pecuniary benefits and he has committed the offence under Section 13(2) r/w. 13(1)(d) of PC Act. A2 finally prepared a deviation notice under Section 296(2) to stop the work and prepared an interim report with fragile deviations. The petitioner along with A2 permitted the building owners to complete the construction which consists of 103 rooms without proper explanation and removal of deviation which clearly shows the misconduct done by them and has abetted A3 to A6 to complete the construction and hence, the act of the petitioner comes under the purview of Section 109 IPC and had gained monetary benefits which attracts Section 13(2) r/w. 13(1)(d) of PC Act. A1 and A2 deliberately avoided to initiate proceedings against them as mandated under Section 56 & 57 of the Tamil Nadu Town and Country Planning Act, 1971 and permitted the building owners to complete the construction and facilitated them to get the property



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tax assessment. A2 verified the title ad site measurements and vacancy and sent the same to the Town Planning Officer, who in turn recommended the application of building license No.68/2012 MH5(c) of A3 to A6 which was approved by the Commissioner, Coimbatore Corporation. Only on receipt of a petition from one Samuga Vizhipunarvu Iyakkam, the petitioner instructed A2 to visit the place and take necessary action. Even after receipt of deviation notice, A3 to A6 have not offered any explanation and continued the construction. The petitioner permitted A3 to A6 to continue the constructions till their tenure. A1 and A2 abused their official position and they violated the Coimbatore City Municipal Corporation Act and avoided to take remedial actions and also they violated the Tamil Nadu Town and Country Planning Act, 1971 and thus avoided the demolition and prosecution in order to show undue favour to A3 to A6 and paved way for fixation of property tax and made the building owners/A3 to A6 to sell/rented rooms constructed in the aforesaid three commercial buildings which benefited the building owners immensely. A1 and A2 have not ensured the safety and protection of public gathering and thereby committed the offence of criminal misconduct under Section 109 IPC r/w.13(2) r/w.13(1)(d) of PC Act. On completion of investigation, the charge



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sheet against A1 along with other accused under Sections 120B & 109 IPC r/w. 13(2) r/w. 13(1)(d) of PC Act was filed before the learned Special Judge, Special Court for Cases under PC Act, Coimbatore in Spl.C.C.No.5 of 2023 dated 27.03.2023, which was served to the petitioner on 26.06.2023 and stands posted to 30.04.2024 for framing of the charges.

9. In support of his contentions, the learned Government Advocate relied upon the decision of the Hon'ble Supreme Court in the case of ***Supriya Jain Vs. State of Haryana and another in Criminal Appeal No.1780 of 2023 @ SLP (Crl.) No.3662 of 2023***, wherein the Hon'ble Court has observed that quashing of a charge is an exception to the rule of continuous prosecution where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*. In yet another decision in the case of ***Union of India V. Prafulla Kumar Samal*** reported in ***AIR 1979 SC 366***, where it has held that charge can be framed if there is *prima facie* case made out to



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proceed against the accused. Further, he relied on the decisions of the Hon'ble Apex Court in the case of ***Ramakrishna Vs State of Bihar [AIR 2000 SC 3330]***, wherein it is stated that analysis of all the materials by deciding the pros and cons, reliability or acceptability of those materials not to be undertaken by the Court at this stage and in ***Soma Chakravarthy Vs. State through CBI*** reported in ***AIR 2007 SC 2149***, the Hon'ble Apex Court had observed that at the time of framing charge the materials produced by the prosecution have to be accepted as true, the probative value of those documents cannot be gone into.

10. The learned Government Advocate while concluding his submissions, contended that the statement of witnesses and the documents shows that the petitioner/accused has committed the offences under IPC and PC Act and the same can be proved only after full trial. Moreover, the petitioner has come forward with the present petition after 10 months that too, at the stage of his superannuation and hence, opposed to allow the petition.

11. Heard the rival submissions made by the respective counsels and also perused the materials available on record.



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Analysis of the Court:-

12. The learned counsel for the petitioner submitted that the petitioner herein had not committed any offence as alleged by the prosecution and in the absence of any evidence or any proof to substantiate the commission of offences namely, criminal conspiracy, criminal misconduct, corruption etc., the charges levelled against the petitioner in the final report/Spl.C.C.No.5 of 2023, is unsustainable and non est in the eye of law.

13. On perusal of the case, it is seen that the petitioner had not done periodical inspection of the buildings constructed by the accused 3 to 6 and had only initiated action on receipt of a petition and also that, he had sent the deviation as well as lock and seal notices belatedly and made the building owners to acquire tax fixation benefitting them immensely without taking into consideration of public safety and protection as there was more deviations in the construction of buildings without proper building approval plan and the construction has been granted for residential buildings and hence, the same seems to be dereliction of duty of the

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petitioner and cannot be said to attract the offences under Section 120B & 109 IPC r/w. Section 13(2) r/w.13(1)(d) of PC Act. In order to prove the alleged offences, the prosecution has failed to establish the fact that the petitioner or any other person related to him has gained pecuniary benefits through illegal acts. Considering the allegations levelled against the petitioner, this Court held that dishonest intention as a sine qua non to attract offence under Section 13(1)(d) of PC Act and that mere conduct or action contrary to rules and departmental norms would not amount to criminal misconduct by public servant. This Court hints towards the prosecution's failure to show dishonest intention of the petitioner to commit any acts, while there was no allegation of obtaining any pecuniary advantage.

14. A bare perusal of the provisions of Section 120B and 109 of IPC reads as under:

120B. Punishment of criminal conspiracy.--(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be



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punished in the same manner as if he had abetted such offence.

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(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

109.Punishment of abetment if the act abetted is committed in consequence and when no express provision is made for its punishment.- Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

15. It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120B, it is necessary to establish that there was an agreement between the parties for doing an unlawful



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act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy.

16. In the case on hand, on close scrutiny of evidence on record, we are of the considered view that prosecution has failed to prove its case, that the petitioner herein, has conspired with other accused for the offences for which he was charged.

17. Apparently, in the present case, it is predominant to note that the prosecution reveals only violation of the rules and departmental norms or procedural norms for construction of the buildings without proper approval plan. It is also to be seen that the prosecution has failed to produce any material to show that the petitioner herein with dishonest interest committed any acts. Furthermore, it is vital to note that there is absolutely no allegation



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in regard to pecuniary benefits gained by the petitioner by illegal means from the accused 3 to 6. When there is no pecuniary advantage, then there itself the allegations of criminal conspiracy and criminal misconduct does not arise.

18. The Court further analysed the specific provisions of the PC Act and expressed that "A reading of Section 13(1)(d) of the PC Act would reveal that a public servant can be prosecuted only if he has abused his position as a public servant and obtained for himself or any other person any valuable thing or pecuniary advantage. The intention of the legislation is not to punish a public servant for erroneous decision, but to punish for corruption." It further added that for attracting the term 'abuse', the prosecution must establish that the position was used for something the official was not intended to, making dishonest intention as the gist of the offence. The Court commented that "It is trite that conspiracy need not be yet necessarily proved by direct evidence. It is also capable of being proved by circumstances pointing out the existence of a conspiracy to commit an unlawful act." The Court followed Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra, (1964) 2 SCR 378, State of M.P. v. Sheetla Sahai, (2009) 8 SCC 617 and Zakia Ahsan Jafri v. State



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of Gujarat, 2022 SCC OnLine SC 773 to support the stance. The Court held 'dishonest intention' as a sine qua non to attract offence under Section 13(1)(d) of PC Act and that mere conduct/action contrary to rules and departmental norms would not amount to criminal misconduct by public servant.

19. At this juncture, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of ***State of MP. V. Sheetla Sahai and others*** reported in ***2009 (8) SCC 617***, wherein it has been stated that decision could be an error of judgment but there was nothing to suggest that authorities abused their position or took decision to cause any wrongful gain to themselves or to a third party or for causing wrongful loss to State or to provide pecuniary advantage to contractors without any public interest. No Criminal misconduct, held, was therefore committed and hence, no offence.

20. Section 13 of the Act provides for criminal misconduct by a public servant. Such an offence of criminal misconduct by a public servant can be said to have been committed if in terms of Sections 13(1)(d)(ii)-(iii), a public servant abuses its position and obtains for himself or for any other person any valuable thing or pecuniary



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advantage; or while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest. Sub-section (2) of Section 13 provides that any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.

21. In *Uttamchand Bohra's case* as stated supra, the Hon'ble Apex Court has held that under Section 226 of the Code while opening the case for the prosecution, the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. If 'the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing', as enjoined by Section 227. If on the other hand, 'the Judge is of opinion that there is ground for presuming that the accused has committed an offence which— ... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused', as provided in Section 228. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:



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(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

....

....

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

...

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the



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prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

22. Furthermore, even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.” The material to implicate someone as a conspirator acting in concert with a public servant, alleged to have committed misconduct, under the PC Act.

23. It would be helpful, in the context of the present case, to recollect the decision of the Hon'ble Supreme Court, in **P. Nallammal v. State** which observed, as follows:

“Thus, the two postulates must combine together for crystallization into the offence, namely, possession of property or resources



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disproportionate to the known sources of income of public servant and the inability of the public servant to account for it. Burden of proof regarding the first limb is on the prosecution whereas the onus is on the public servant to prove the second limb. ..."

24. In the case of *Surendranath* as stated supra, the Hon'ble Supreme Court has held that mere conduct and action of the accused contrary to rules and departmental norms would not amount to criminal misconduct by a public servant. The relevant paragraphs of the said decision is as follows:

"20. A reading of Section 13(1)(d) of the PC Act would reveal that a public servant can be prosecuted only if he has abused his position as a public servant and obtained for himself or any other person any valuable thing or pecuniary advantage. The intention of the legislation is not to punish a public servant for erroneous decision, but to punish for corruption. To fall within the four corners of sub-clause (ii) of Clause (d) of sub-section (1) of Section 13 of the PC Act, the decision/conduct of the public servant must be dishonest, amounting to corruption.

21.To attract the term 'abuse' as contained in Section 13(1)(d) of the PC Act, the



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prosecution has to establish that the official concerned used his position for something it is not intended. The sum and substance of the discussion is that dishonest intention is the gist of the offence under Section 13(1)(d) of the PC Act.

...

26. In Zakia Ahsan Jafri v. State of Gujarat (AIR 2022 SC 3050), the Apex Court held that every act of commission and omission would not result in hatching criminal conspiracy unless the acts have been done deliberately and there is meeting of minds of all concerned.

27. Dishonest intention is sine qua non to attract the offence punishable under Section 13(1)(d) of the Act. Mere conduct and action of the accused contrary to rules and departmental norms would not amount to criminal misconduct by a public servant.

...

30. Dishonest intention is the crux of the offence under Section 13(1)(d) of the PC Act. The question of whether violation of the rules and departmental norms would amount to the offence under Section 13(1)(d) of the PC Act was considered by the Apex Court in C.K.Jaffer Sharief v. State [(2013) 1 SCC 205]. The Apex



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Court held thus:

"If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundancy it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant."

25. It is pertinent to note that the petitioner is at the fag end of his service and at this stage, the respondent has charged him with the aforesaid allegations without any iota of proof which is *per se* illegal.

26. Considering the facts and circumstances of the case and also in the light of the decisions of the Hon'ble Supreme Court as stated supra and taking note of the fact that the final report did not disclose the offences alleged by the prosecution, this Court is of the considered opinion that continuation of the proceedings in



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Spl.C.C.No.5 of 2023 would be an abuse of process of law and therefore, the same deserves to be quashed. Accordingly, the proceedings in Spl.C.C.No.5 of 2023 on the file of the learned Special Judge, Special Court for Cases under PC Act, Coimbatore as against the petitioner herein, is hereby quashed. Thus, the Criminal Original Petition filed by the petitioner stands allowed. Consequently, the connected Miscellaneous Petition is closed.

28.06.2024

NCC : Yes/No
Index : Yes/No
Order : Speaking/Non Speaking

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To

- 1.The Special Court for Cases under PC Cases,
Coimbatore.
- 2.State, CBI,
The Additional Superintendent of Police,
CBI, E.O.W., Shastri Bhavan,
Chennai.
- 3.The Public Prosecutor,
Madras High Court, Chennai.



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