



Crl.R.C.No.590 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.07.2024
Delivered on	29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.No.590 of 2024
and
Crl.M.P.Nos.5443 & 5444 of 2024

1.D.Dwarakanadha Reddy

2.D.Sujana

3.Hemendhra Reddy

... Petitioners

Vs.

The State,
rep. by the Additional Superintendent of Police,
CBI, ACB, Chennai.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, 1973, to set aside the order dated 12.03.2024, passed by the learned XIII Additional Special Judge for CBI Cases, Chennai in C.C.No.13 of 2015.

For Petitioners	: Mr.K.Suresh Babu
For Respondent	: Mr.K.Srinivasan
	Spl. Public Prosecutor for CBI



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ORDER

Challenging the order passed by the learned XIII Additional Special Judge for CBI Cases, Chennai in C.C.No.13 of 2015 dated 12.03.2024, the present revision has been preferred by the petitioners.

2. The brief facts of the case which leads to the filing of the present revision is as follows:

2.1. The first petitioner herein is an appraiser in the Customs Department. The petitioners 1 and 2 are husband and wife, whereas the third petitioner is the brother-in-law of the first petitioner. A case has been registered against the petitioners herein for having acquired the alleged disproportionate assets (DA) to a sum of Rs.26,20,666.51/- for the check period i.e., from 01.04.2001 to 31.03.2005. On investigation by the respondent, it came to light that there was NIL DA and hence, they filed the closure report and the same was accepted by the trial Court.



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2.2. After four years, on authentic information about the petitioners' assets, the case was reopened by the respondent and after investigation, it has been proved by the respondent that the petitioners have committed the offences under Sections 13 (1) (e) and 13 (2) of the PC Act, 1988 r/w. 109 of IPC for the check period from 01.04.2001 to 31.03.2005 for acquiring the alleged disproportionate assets (DA) to the tune of Rs.57,22,601/-. The respondent thereon filed the charge sheet before the trial Court and the same was taken on file by the learned Judge on 06.03.2015 in C.C.No.13 of 2015 and posted it for disposal before the learned XIII Additional Special Judge for CBI Cases, Additional City Civil Court. Challenging the charge sheet in C.C.No.13 of 2013, the petitioners herein filed petition for quashing the same in Crl.O.P.Nos.11101 of 2015, Crl.O.P.15873 of 2015 and Crl.O.P.411 of 2016 respectively and the petitions were allowed by this Court which were challenged by the respondent before the Hon'ble Apex Court in Criminal Appeal Nos. 1300 to 1302 of 2023 and the same were allowed by its order dated 28.04.2023. Aggrieved over the same, the petitioners herein



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filed a review petition before the Hon'ble Supreme Court in Review Petition (Criminal) No.400 of 2023 which was dismissed by an order dated 04.10.2023. Thereupon, the learned trial Judge after completion of proceedings framed charges against the petitioners for the alleged offences U/s. 13(1)(d), 13(2) of PC Act, 1988 r/w. 109 of the IPC.

3. Aggrieved over the same, the petitioners has filed the present revision.

4. Heard Mr.K.Suresh Babu, learned counsel for the petitioners and Mr.K.Srinivasan, learned Special Public Prosecutor appearing on behalf of the respondent.

5. The learned counsel for the petitioners submitted that the learned trial Judge without considering the submissions of the petitioners had dismissed the petition filed by them under Section 240(1) of Cr.P.C. on 12.03.2024 and framed charges against the petitioners under Section 240(2) of Cr.P.C. Hence, they have approached this Court by way of present revision on the ground of fresh jurisdiction / fresh cause of action. He drew the attention of



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this Court to the dictum laid down by the Hon'ble Supreme Court in the case of **Harish Dahiya @ Harish & another Vs State of Punjab** reported in **2019 (18) SCC 69**, wherein it had stated that after the dismissal of the quash petition also, the petitioner can approach the learned Court for discharge of the charges framed against him and also stated that under Sections 482 and 227 Cr.P.C., the relative scope for Quashment and Discharge is that grounds for quashing a criminal proceeding and the reasons for allowing or disallowing an application for discharge are completely different and merely because an earlier application to quash the entire prosecution under S. 482 may have been dismissed, the court could not decline to consider the application for discharge on that ground and remanded back the discharge application to the trial Judge for fresh consideration. The relevant portion of the order reads as under:

4. ... Merely because an earlier application to quash the entire prosecution under Section 482 CrPC may have been dismissed, the Additional Sessions Judge could not decline to consider the application for discharge on that ground. The grounds for quashing a criminal proceeding and the reasons for allowing or



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disallowing an application for discharge preferred by the accused are completely different. The grounds falling for consideration in the two jurisdictions are completely different.

5. Without expressing any opinion on the merits of the matter, we set aside the impugned orders and remand the discharge application to the Additional Sessions Judge, Hoshiarpur for fresh consideration and to pass a reasoned and speaking order to his satisfaction keeping all aspects of the matter in mind, including the submissions made before us on behalf of the respondent State. The appeal is allowed.”

6. Furthermore, the learned counsel also relied upon the case in ***Minakshi bala V. Sudhir kumar and others*** reported in **1994 (4) SCC 142**, wherein it has held that “if charges are framed in accordance with [Section 240](#) CrPC on a finding that a prima facie case has been made out as has been done in the instant case the person arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under [Section 173](#) CrPC and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional



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court if so satisfied can quash the charges framed against him.”

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7. Continuing his arguments, the learned counsel submitted that FIR has been registered against the petitioners 1 and 2 on 30.06.2006 for the alleged offences under Sections 13 (1) (e) and 13 (2) of the PC Act, 1988 r/w. 109 of IPC for the check period from 01.04.2001 to 31.03.2005 for acquiring the alleged disproportionate assets (DA) to the tune of Rs.26,20,666.51/-. The Deputy Superintendent of Police investigated the FIR for the check period 01.01.1998 to 11.07.2006 and found that the petitioners 1 and 2 did not acquire any disproportionate assets during the said period and on that ground, the respondent police had filed a closure report on 24.12.2008 before the learned Principal Special Judge for CBI Cases, Chennai which was accepted by the Court below through an order dated 29.01.2009 in Crl.M.P. No. 49 of 2009. Moreover, after four years, the respondent Police had moved a petition under Section 173(8) Cr.P.C. in Crl.M.P. No. 3833 of 2013 before the learned XIII Additional Special Judge for CBI Cases to reopen the case for further investigation and the said petition was allowed on 28.06.2013 for further investigation by the respondent. The



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respondent during further investigation summoned the first petitioner/A1 for enquiry on 01.03.2014 and A1 being aggrieved with the said summons, had challenged the same before this Court in Crl.O.P. No. 6371 of 2014 and the same was dismissed on 11.09.2014 with an observation, allowing the investigation to continue. On completion of investigation, the CBI had filed the charge sheet against the petitioners herein / A1, A2 and A3 for the alleged offences under Sections 109 IPC r/w. 13(2) r/w. 13(1)(e) of PC Act, 1988 for the check period from 01.01.1998 to 30.06.2005, on the ground that the petitioners have acquired the alleged disproportionate assets to the tune of Rs.57,22,601/-. The respondent thereon filed the charge sheet before the trial Court and the same was taken on file by the learned Judge on 06.03.2015 in C.C.No.13 of 2015 and posted it for disposal before the learned XIII Additional Special Judge for CBI Cases, Additional City Civil Court. Challenging the charge sheet in C.C.No.13 of 2013, the petitioners herein filed petitions for quashing the same in Crl.O.P.Nos.11101 of 2015, Crl.O.P.15873 of 2015 and Crl.O.P.411 of 2016 respectively and the petitions were allowed by this Court which were challenged by the respondent before the Hon'ble Apex Court in Criminal Appeal Nos. 1300 to 1302 of 2023 and the same were allowed by its order



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dated 28.04.2023. Aggrieved over the same, the petitioners herein filed a review petition before the Hon'ble Supreme Court in Review Petition (Criminal) No.400 of 2023 which was dismissed by an order dated 04.10.2023. The learned trial Judge after completion of proceedings framed charges against the petitioners for the alleged offences U/s. 13(1)(d), 13(2) of PC Act, 1988 r/w. 109 of the IPC.

8. The learned counsel for the petitioners urged before this Court that the prosecution has wiped out the initial investigation which is contrary to the dictum laid down by the Hon'ble Supreme Court in ***Vinay Tyagi Vs. Irshad Ali*** reported in **2013 (5) SCC 762**. The primary closure report dated 24.12.2008 had a check period as "01.01.1998 to 11.07.2006" with NIL DA. The supplementary report/charge sheet had a new check period of "01.01.1998 to 30.06.2005".

9. At this point of time, he highlighted that the primary closure report dated 24.12.2008 had a check period as "01.01.1998 to 11.07.2006" with NIL DA whereas the supplementary report/charge sheet had a new check period of "01.01.1998 to 30.06.2005" and contended that the Initial Investigation done for



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the period 01.07.2005 to 11.07.2006 has been wiped out as seen in the Supplementary report which is in contravention to the law laid down in *Vinay Tyagi's case* stated supra. In view of the same, the trial Court had erred in framing the charges against the petitioners herein without taking into account the period 01.07.2005 to 11.07.2006 which is very predominant since during the said period, the income of Rs.60,00,000/- has been generated to A3 on 13.07.2005, which is evident from the prosecution document/D22 but the same has been concealed by the prosecution. It is to be noted that the alleged DA figured in the charge sheet for the check period of "01.01.1998 to 30.06.2005" against the petitioners herein / A1, A2 & A3 is to the tune of Rs. 57,22,601/-.

10. He vehemently contended that the prosecution had reduced the check period i.e., the primary report from "01.01.1998 to 11.07.2006" to a new check period in the supplementary report to "01.01.1998 to 30.06.2005" only to ignore the income of Rs.60,00,000/-generated by the third petitioner/A3 on 13.07.2005.

11. He argued that the learned trial Court had erred in framing the charges against the petitioners herein when the



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respondent had deliberately reduced the check period to wipe out an income of Rs.60,00,000/- generated by the third petitioner/A3 on 13.07.2005 which is also accepted by the prosecution through Ex.D22. If the check period of 01.07.2005 to 11.07.2006 was not wiped out, an income of Rs.60,00,000/- generated by the third petitioner/A3 on 13.07.2005 as reflected in Ex.D22 would not permitted the respondent to made out a DA case as against the petitioners herein under Section 109 IPC and 13(2) r/w. 13(1)(e) PC Act, 1988, as this amount would be added in statement C.

12. Moreover, the alleged DA figured in the charge sheet is a sum of Rs. 57,22,601/- against the petitioners which would have been NIL DA if the check period of 01.07.2005 to 11.07.2006 was not wiped out, as an income of Rs.60,00,000/- would have been taken for consideration and would have got reflected in statement C.

13. The learned counsel added that with a mala-fide intention, the prosecution had incorporated a sum of Rs.14,29,680/- in S.No.4 and another sum of Rs.7,75,000/- in S.No.5 in "statement B" being the amounts spent / incurred by the third petitioner/A3 for the



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purchase of said immovable properties only to make out a disproportionate asset case of Rs. 57,22,601/- against the petitioners herein.

14. Thus, by summing up the substance of the case, the learned counsel put forth his arguments and pleaded before this Court to allow the revision by discharging the charges framed against the petitioners herein as they have not committed any offence as alleged by the prosecution.

15. Contrary to the submissions made by the learned counsel for the petitioners, the learned Special Public Prosecutor propounded that the first petitioner/A1/Dwarakanadha Reddy and the second petitioner/A2 D.Sujana Reddy were alleged to be in possession of assets worth Rs.26.21 Lakhs during the check period 01.04.2001 to 31.03.2005. After investigation, the CBI had filed a closure report under Section 173 Cr.P.C. on 24.12.2008, which was accepted by the learned Special Judge for CBI Cases, Chennai. He further submitted that in the year 2013, CBI received credible information against the petitioners herein and therefore, they filed a petition for re-opening the case and the same was allowed.



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However, the accused did not cooperate with the further investigation. During the investigation, it was revealed that the third petitioner/A3/D.Hemendra Reddy, brother-in-law of A1, purchased a property in his name at a cost of Rs.14,29,680/- and another plot at Rs.7,75,000/- in his name. A3 had not filed any IT Returns or legal income to justify the purchase where the property was worth Rs.22,04,680/-.

16. The case involves the purchase of two plots at Velachery, Chennai by A1/D.Dwarakanath Reddy, a public servant. The assets were not investigated during the initial investigation and hence, they sought for further investigation. The case revealed that A1 purchased plots at Velachery in the benami name of A3, which is also supported by the evidence from the Income Tax Department and A3/Hemendra Reddy's declaration as 'insolvent' in the Court of Tirupathi supports this. The case was reopened and Hemendra Reddy, brother-in-law of A1, was arrayed as A3. Further investigation revealed that A3 had not filed any IT Returns or legal income to justify the purchase of the plots. Hence the check period was modified in the further investigation as "01.01.1998 to 30.06.2005" instead of "01.01.1998 to 11.07.2006" in the charge



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sheet / final report under Section 173 Cr.P.C. filed by the prosecution of the case. For which, the learned Special Public Prosecutor drew the attention of this Court to the case in ***State of Maharashtra V. Pollonji Darabshaw Dharwala [AIR 1988 SC 88]***, wherein it has been held that full service period of the public servant need not be taken as check period and it could be shorter also. A charge sheet was filed against the petitioners / A1 to A3 for amassing wealth of Rs.57,22,601/- which is disproportionate to the known sources of income of the accused person under Section 109 IPC r/w Section 13(2) r/w 13(1)(e) of the PC Act, 1988.

17. The case was taken cognizance by the trial Court for framing charges. The accused persons filed petitions for quashing the said proceedings and this Court had quashed the final report. Aggrieved over the same, the prosecution has challenged the quashment of final report which was allowed, to which the petitioners filed a Criminal Review Petition but the same was dismissed. The accused/Petitioners did not file a petition for discharge under Section 239 Cr.PC. But however on a later time, they raised objections about changing the check period. The trial Court dismissed their contentions after hearing both sides and



reviewing the attached material papers.

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18. Sections 239 and 240 of Cr.P.C., reads as under:

"239.Discharge - 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 doing so."

240.Framing of Charge-

1) If, upon such consideration examination, if any, and hearing, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion could be adequately punished by him, he shall frame in writing a charge against the accused.

2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.



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20. He cited the aforesaid provisions of Sections 239 and 240 of Cr.P.C., and pleaded that the said provisions has to be read in continuity. The reading of the said provisions show that consideration of the police report, consideration of the documents sent along with the police report, examination of the said documents and affording opportunity to the accused as well as the prosecution. Section 239 Cr.P.C., discharges the accused if charges are groundless, while Section 240 Cr.P.C., speaks that if there is ground for presuming that the accused had committed the offence, then charges should be framed.

21. At this juncture, the learned Special Public Prosecutor drew the attention of this Court to the decision of this Court in the case of ***Kannan and Others V. CBI in CrI.O.P.Nos.3761 to 3764 & 3901 of 2019 dated 20.03.2019***. Since the accused did not file a petition under Section 239 Cr.P.C for discharge, the trial Court dismissed their contentions under Section 240 Cr.P.C., and framed charges against them on 12.03.2024. The petition filed by the



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petitioners before this Court in Crl.O.P.No.6371 of 2014 was dismissed but however, they again filed petitions in Crl.O.P.Nos.11101/2015, 15873/2015 & 411/2016 which were allowed vide orders dated 15.12.2015 and 08.01.2016 respectively. The prosecution filed appeals against these orders in Crl. Appeal Nos.1300 to 1302 of 2023 before the Hon'ble Supreme Court and the same were allowed. As against the same, the accused filed a Review Petition (Crl.) No.400/2023, which was dismissed. He stressed that the case in **Harish Dahiya @ Harish and Another Vs State of Punjab and others** is not applicable to the present case on hand. The accused has not filed a discharge petition and therefore, filing of the present revision in Crl.R.C.No.590 of 2024, is not maintainable and thus, prayed this Court to dismiss the revision filed by the petitioners.

22. Considered the rival submissions made by the respective counsels and also perused the materials available on record.

23. The learned counsel for the petitioners submitted that the respondent had deliberately reduced the check period from [01.01.1998 to 11.07.2006] to [01.01.1998 to 20.06.2005] by



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ignoring the period 01.07.2005 to 11.07.2006 in which a sum of Rs.60 lakhs have been reflected as income of the third petitioner. Since the respondent has wiped out the said period, the charge of disproportionate assets has been levelled against the petitioners. The trial Court has erred in perusing the primary and supplementary reports jointly so as to confirm whether the petitioners have committed the offences under Section 109 IPC and 13(2) r/w. 13(1)(e) of PC Act, 1988.

24. It is pertinent to note that in the initial investigation conducted, the period of 01.07.2005 to 11.07.2006 has been wiped out in the supplementary report of the respondent which is contradictory to the dictum laid down by the Hon'ble Supreme Court in *Vinay Tyagi's case* as stated supra. The relevant paragraphs of the said order of the Hon'ble Supreme Court reads as under:

"22. Further Investigation" is where the Investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and therefore, is understood and described as a "further Investigation."



Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. **It is commonly described as "supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement and the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency.** This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contra distinction to a "reinvestigation", "fresh" or "de novo" investigation..."

....

42.Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to



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which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the court shall discharge an accused in compliance with the provisions of Section 227 of the Code.

...

53.The court of competent jurisdiction is duty-bound to consider all reports, entire records and documents submitted therewith by the investigating agency as its report in terms of Section 173 (2) of the Code. This rule is subject to only the following exceptions:

(a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

(b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e., primary report, supplementary report or the report submitted on "fresh investigation" or "reinvestigation" or any part of it be excluded, struck off the court record and be treated as non est.



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....

60. Once the Court has taken this view, there is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion, in accordance with law ...

25. In the present case on hand, the period 01.07.2005 to 11.07.2006 plays a vital role as the sum of Rs.60 lakhs had been earned by the third petitioner herein in the said period and if the same is taken into consideration, there will be NIL DA and hence, no charges can be framed as against the petitioners for acquiring disproportionate assets from unknown source of income. The modified check period is a predominant one in this case which becomes fatal to the prosecution.

26. In yet another decision of the Hon'ble Supreme Court in the case of ***Luckose Zachariah and others V. Joseph Joseph and Others*** reported in ***2022 SCC Online SC 241***, wherein the



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Hon'ble Court has held as follows:

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"16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and Vinubhai Haribhai Malaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence ..."

27. On an overall analysis and elaborate discussions, it is clear to see that the trial Court had erred in considering the reports i.e., primary report, as well as supplementary report jointly, had come to the conclusion that the petitioners have committed the aforesaid offences and framed the charges against them which is *per-se* illegal in the eye of law and also as per the decisions of the Hon'ble Supreme Court as stated supra.



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28. In view of the above discussions and in the light of the decisions of the Hon'ble Apex Court as stated supra, this Court set asides the impugned order dated 12.03.2024 passed by the learned XIII Additional Special Judge for CBI Cases, Chennai as against the petitioners herein. Consequently, the petitioners are discharged from all the offences framed against them by the learned XIII Additional Special Judge for CBI Cases, Chennai in C.C.No.13 of 2015 dated 12.03.2015.

29. In the result, the Criminal Revision Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

29.07.2024

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

DP



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To

- 1.The XIII Additional Special Judge,
Special Court for PC Cases,
Chennai.
- 2.The Additional Superintendent of Police,
CBI, ACB, Chennai.
- 3.The Public Prosecutor,
Madras High Court, Chennai.



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VIVEK KUMAR SINGH, J.

DP

ORDER MADE IN
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