IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **07.12.2023**

PRONOUNCED ON : **04.01.2024**

CORAM :

THE HONOURABLE MR. JUSTICE **A.D.JAGADISH CHANDIRA**

**Crl.R.C.Nos.1532 & 1541 of 2023**
**and**
**Crl.M.P.Nos.14005, 14007, 14052 & 14054 of 2023**

S.Arputhasamy ... Petitioner in Crl.R.C.No.1532 of 2023

M.Sathiyanarayanan ... Petitioner in Crl.R.C.No.1541 of 2023

Vs.

State represented by,
The Deputy Superintendent of Police,
Vigilance and Anti Corruption Department,
Krishnagiri. ... Respondents in both Crl.R.Cs'

**Prayer in Crl.R.C.No.1532 of 2023:** Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, pleased to set aside the order of the learned Judge made in Crl.M.P.No.5744 of 2021 in Spl.C.C.No.01/2021 dated 25.07.2023 on the file of the learned Chief Judicial Magistrate, Krishnagiri and allow the discharge petition.

**Prayer in Crl.R.C.No.1541 of 2023:** Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, pleased to set aside the order of the learned Judge made in Crl.M.P.No.5742 of 2021 in Spl.C.C.No.01/2021 dated 25.07.2023 on the file of the learned Chief Judicial Magistrate, Krishnagiri and allow the discharge petition.

In both Crl.R.Cs.,

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| For Petitioners | : | Mr.S.Vijayakumar, Senior Advocate for Mr.J.Melwin Jebaz |
| For Respondent | : | Mr.S.Udaya Kumar Government Advocate (Crl.Side) |

**COMMON ORDER**

The Criminal Revision Cases have been filed seeking to set aside the orders passed by the learned Chief Judicial Magistrate, Krishnagiri, in Crl.M.P.Nos.5742 & 5744 of 2021 in Spl.C.C.No.1 of 2021 vide orders dated 25.07.2023, dismissing the discharge petitions filed by the petitioners under Section 239 of Cr.P.C., who are A1 and A2.

2. The brief facts of the prosecution are as under :-

a) The first accused/M.Sathiyanarayanan was working as Special

Tahsildar, Adi Dravidar and Tribal Welfare Department, Krishnagiri from 23.06.2014 to 04.02.2015 and now, he retired from service on 31.08.2015 on attaining the age of superannuation and the second accused, S.Arputhasamy was working as District Adi Dravidar and Tribal Welfare Officer, Krishnagiri District from 24.02.2014 to 30.06.2015 and he retired from service on 30.06.2015 on attaining the age of superannuation. During the relevant period of commission of offences, A1 and A2 were public servants as defined under Section 2(c) of the Prevention of Corruption Act 1988. A1 and A2 are alleged to have committed misappropriation of Government money while implementing the scheme of providing milch animals to the Tribal people. A3 to A5 are private individuals, who acted as brokers in purchasing milch animals from open market.

b) Every year, the Government of India release the Special Central Assistance towards creation of Capital Assets and for undertaking activities under General category for economic development of Scheduled Tribes in conjunction with state's efforts in the Tribal sub plan. During the year 2013-14, totally Rs.488.25 lakhs was sanctioned, out of which, a sum of Rs.77.25 lakhs was towards creation of Capital Assets and Rs.411.00 lakhs was towards

General activities. The Government of Tamil Nadu in G.O.(Ms)No.4 Adi Dravidar and Tribal Welfare TD1(1) Department dated 28.01.2014 accorded sanction for Rs.488.25 lakhs under the Grant-in-Aid of Special Central Assistance to Tribal Sub-Plan for the year 2013-14 for the implementation of schemes. The Director of Tribal Welfare was authorized to draw and disburse the amount to the District Collectors/implementing agencies concerned for the implementation of the schemes and he was directed to release the amount to the implementing agencies for the activities already proposed by the State Government. In the said G.O, a total sum of Rs.51.60 lakhs was distributed to Krishnagiri District under the General Category for the supply of 150 free milch animals to 150 beneficiaries.

c) While implementing the scheme, the District Collector, Krishnagiri ordered A2 to constitute a Purchase Committee comprising of the officials viz., District Adi Dravidar and Tribal Welfare Officer (A2), Joint Director/Assistant Director, Animal Husbandry, Krishnagiri/Hosur, Veterinary Assistant Surgeon (respective Jurisdiction) and Special Tahsildar, Adi Dravidar Welfare, Krishnagiri (A1) and purchase milch animals from open market through A3 and A4 in the presence of Purchase Committee Members and supply them to 150 selected beneficiaries of Krishnagiri District.

d) Being a member of Purchase Committee, the duty of A1 was to assist A2 and other members of the Purchase Committee, in purchasing 150 milch animals through A3 and A4 from open market and supply them to the selected beneficiaries. It was the duty of A2 to constitute a Purchase Committee as ordered by the District Collector, Krishnagiri and purchase 150 milch animals through A3 and A4 from open market and supply to the selected beneficiaries and he is the authority competent to implement the scheme.

e) A3 and A4, being the brokers, were entrusted with the work of purchasing 150 milch animals from open market in the presence of Purchase Committee Members by spending their own money, supply the milch animals to 150 selected beneficiaries and can get reimbursement the money spent by them towards the purchase of milch animals from the Government. Though A5 was not entrusted with any work, he voluntarily and wilfully participated in the purchase process of 150 milch animals on his own interest, on behalf of A3 and A4.

f) During the period between 06.08.2014 and 13.01.2015, at the office of A2 viz., the office of the District Adi Dravidar and Tribal Welfare, Krishnagiri, A1 and A2 entered into an illegal agreement with A3 to A5 and with the active assistance of A5, with fraudulent and dishonest intention to defraud the funds of the Government in implementing the scheme by name Special Central Assistance to Tribal Sub Plan for the year 2013-14 to the tune of Rs.9,18,750/- towards the cost of 12 milch animals and other charges viz, transportation, conveyance, food and photograph and causing loss to the tune of Rs.8,100/- to the Government exchequer by way of creating false records viz., quotations and receipts, making use of such false documents as genuine, screening A4 and A5 from legal punishment, personation and by furnishing false information.

g) In pursuance of the above criminal conspiracy entered into by all the accused as stated supra, on or after 09.08.2014 at the office of A2, with the active connivance and assistance of A1 and A2, A5 had furnished two false quotations dated 09.08.2014 duly prepared by himself in the name of Tr.M.Azhagappan and Tr.A.Sakthivel quoting higher rates than the rates quoted by A3 and A4 in their quotations dated 06.08.2014 in order to get work order in the name of A3 and A4 without any competition. Accordingly, A2 went in conformity with A5 and awarded the work order to A3 and A4 on 10.09.2014 in Rc.No.8493/2014/L3 with fraudulent and dishonest intention to commit misappropriation in respect of the funds of the Government while implementing the scheme.

(h) In the course of the same transaction and in furtherance of the said criminal conspiracy, after completion of purchase and at the time of presenting bills for claim by A3 and A4, A3 himself prepared false receipts in the name of Haripriya transports dated 22.09.2014 for Rs.3,15,000/- towards transportation of milch animals from Anekal to the place of 150 beneficiaries, Manikandan Digital Studio and Video Coverage vide receipt No.1172 and 1729 dated 26.09.2014 for Rs. 10,500/- for having taken 150 photos, when in fact no such photos were actually taken, P.K.S. travels dated 23.09.2014 for Rs.27,000/- towards the cost of conveyance charges, Malliga Hotel dated 15.09.2014 for Rs.6,750/- towards food charges on the way to Anekal and Veerabadra Swamy Tiffin Centre dated 19.09.2014 for Rs.1,99,500/- towards food charges at the purchase place for 5 days. Further, A3 and A5 each prepared a letter dated 17.10.2014 addressing the District Collector, Krishnagiri requesting to sanction Rs.22,50,000/- towards the cost of 75 milch animals each at the rate of Rs.30,000/-, when in fact, 10 beneficiaries were not at all supplied with milch animals and similarly, the names of two beneficiaries were taken place twice in the list. Along with the said letters, A3 and A4 had separately enclosed the one set of above forged bills duly prepared by A4 and requested the District Collector, Krishnagiri to sanction the aforesaid charges by making use of such forged bills as genuine, when in fact, A1 to A5 made all the beneficiaries to meet out such expenses from their own money.

(i) In pursuance of the criminal conspiracy, on receipt of the bills furnished by A3 and A4, A2 got sanction order of the bills from the District Collector, Krishnagiri, on 12.01.2015 and issued cheque No.531504 dated 12.01.2015 for Rs.24,12,750/- to A3, which included the cost of 75 milch animals, transportation charges and photograph charges and cheque No.531513 dated 12.01.2015 for Rs.2,33,250/- to A3, which included the cost of conveyance charges and food charges and another cheque No.531506 dated 12.01.2015 for Rs.24,12,750/- to A4, which included the cost of 75 milch animals, transportation charges and photograph charges. Finally, the amounts were credited to the accounts of A3 and A4 maintained in Krishnagiri urban Co-operative Bank, Dowladabad Branch, Krishnagiri on 13.01.2015 in Savings Bank Account Nos.6480 and 6481 respectively. Similarly, a cheque bearing

No.531508 dated 12.01.2015 for Rs.1,01,250/- was issued to New India Assurance Company, Hosur towards the insurance charges of 150 milch animals each at the rate of Rs.650/- per animal on 06.02.2015. Thereby, A3 to A5 dishonestly misappropriated a total sum of Rs.9,18,750/-, which includes Rs.3,60,000/- towards the cost of 12 milch animals, Rs.3,15,000/- towards transportation charges, Rs.2,06,250/- towards food charges, Rs.27,000/- towards conveyance charges and Rs. 10,500/- towards photograph charges, whereas A1 and A2, being public servants, fraudulently and dishonestly allowed A3 to A5 to commit dishonest misappropriation by deriving pecuniary advantages, abusing their official position as public servants and by corrupt or illegal means. Further, A1 to A5 caused loss to the Government exchequer to the tune of Rs.8100/-towards the payment of insurance fee in respect of 12 milch animals, which were not supplied to the beneficiaries.

(j) In pursuance of the said criminal conspiracy entered into by all the accused as stated supra, with fraudulent and dishonest intention to misappropriate the Government funds under the control of A2 in the purchase of milch animals under the scheme, A2 willfully violated the order of the District Collector, Krishnagiri without constituting any Purchase Committee comprising of Veterinary Assistant Surgeon of the respective jurisdiction as its Member for the purchase of milch animals from open market through A3 and A4 to supply to beneficiaries and A1 to A5 willfully engaged themselves in the purchase process. Further, at the time of presenting the bills by A3 and A4 to the District Collector, Krishnagiri through A2 for claim, A1 and A2 had fabricated the beneficiaries list by forging the signature of Dr.S.Sivakrishnan, prepared a false receipt in the name of New India Assurance Company Ltd, Hosur by affixing false seal on the receipt in the name of said Company on 10.10.2014 for having received a sum of Rs.1,01,250/- from Dr.S.Sivakrishnan towards insurance premium for 150 cross breed milch cows for one year, when in fact, no such receipt was issued by the Insurance company and prepared a false list containing the tag numbers by forging the signature of Dr.S.Sivakrishnan and furnished the said documents along with the bills of A3 and A4 to the District Collector, Krishnagiri for claim knowing fully well that Dr.S.Sivakrishnan was not working within the relevant territorial jurisdiction during the relevant period of purchase (i.e.,from 13.09.2014 to 03.10.2014) and he was actually working at the office of the Regional Joint Director of Animal Husbandry, Udhagamandalam, which is beyond the territorial jurisdiction and used the above forged records as genuine with fraudulent and dishonest intention to misappropriate the funds allotted under the scheme. Thereby, A1 and A2 with the active connivance of the A3 to A5, fabricated records of the Purchase Committee as if Dr.S.Sivakrishnan involved himself as Member of Purchase Committee, in the process of purchase of milch animals from open market with fraudulent and dishonest intention to misappropriate the funds of the Government under the control of A2.

(k) After presenting the bills by A3 and A4 for claim, when the inspection team consisting of Dr.S.Kandasamy, Dr.L.Rajendran, Dr.K.Vediappan, Dr.A.Prakash and A1, conducted inspection by visiting the places of 150 beneficiaries on the allegation made by one Tr.M.Nanjappa, A1 willfully furnished a copy of the beneficiaries list containing 150 persons and physically produced some other 12 persons with milch animals by personation in lieu of the above 12 beneficiaries in order to cheat the inspection team and make them to believe that they are genuine beneficiaries and supplied with milch animals. Further, A1 is reported to have prepared false statements in the name of the said 12 beneficiaries, took their photographs, annexed with his Report and submitted to A2 in order to screen A3 and A4 from legal punishment. A2 had reason to believe that the said 12 beneficiaries were not at all supplied with milch animals earlier, however, he had wilfully accepted such false Report from A1 and submitted it to the District Collector, Krishnagiri in Rc.No. 8493/2014/L3 dated 22.12.2014 certifying that the milch animals were supplied to eligible beneficiaries and its value and quality are correct in accordance with the conditions and no irregularities had taken place, knowing to be false and he also concealed even the fact of replacing 13 milch animals, which were identified by the inspection team as unhealthy and replaced during the inspection in order to screen A4 and A5 from legal punishment.

(l) After completing the investigation, the respondent had filed the final report under Section 173(2) of Cr.P.C., before the learned Chief Judicial Magistrate in Krishnagiri, for the offences punishable under Sections 120B, 177, 201, 419, 465, 468, 471 of IPC and 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act 1988 r/w 109 of IPC in V & AC Crime No.1/AC/2016/AC. Thereafter, the case was taken up for trial in Spl.C.C.No.01 of 2021.

3. The petitioners herein had filed separate petitions before the trial Court

in Crl.M.P.Nos.5742 and 5744 of 2021 in Spl.C.C.No.01 of 2021 under Section 239 of Cr.P.C, seeking to discharge them from the case. The respondent had filed a detailed counter and the trial Court, after perusing the available materials and hearing the arguments on both sides, had dismissed the petitions for discharge vide orders dated 25.07.2023, against which, the present Criminal Revision Cases have been filed. Since both the cases arise out of the same case in Spl.C.C.No.1 of 2021 and represented by the same counsel, they have been taken up together and disposed of by the common order.

4. The submissions of Mr.S.Vijayakumar, learned Senior Counsel for Mr.J.Melwin Jebaz, learned counsel appearing for both the petitioners are as follows :-

4.1 The petitioner in Crl.R.C.No.1541 of 2023, who is arrayed as A1 in the case, had joined as Typist in the Revenue Department through Tamil Nadu Public Service Commission on 21.01.1982 at Yercaud Taluk Office, Salem District. He was later converted as Junior Assistant on 22.06.1984 and then promoted to the post of Assistant on 01.04.1997 at Namakkal District and subsequently, he was promoted as Deputy Tahsildar on 05.02.2007. After putting in three years of service, he was promoted to the post of Tahsildar on 19.03.2010 and later, promoted to the post of Deputy Collector on 05.02.2015. The first accused had put in 33 years of unblemished service and he was not subjected to any disciplinary proceedings whatsoever and he got superannuated on 31.08.2015.

4.2 The petitioner in Crl.R.C.No.1532 of 2023, who is arrayed as A2 in the case, had joined as Junior Assistant in the Revenue Department through Tamil Nadu Public Service Commission on 19.11.1984 at Thittagudi. Subsequently, he was promoted as Assistant on 31.01.1994 at the Senior Regional Manager's Office, Tasmac, Salem, and later as a Revenue Inspector, and after putting in 20 years of service, the petitioner was promoted as Deputy Tahsildar on 13.12.2004 and ultimately, he was promoted to the post of Deputy Collector on 24.02.2014. The second accused had put in 31 years of unblemished service and he was not subjected to any disciplinary proceedings whatsoever and he got superannuated on 30.06.2015.

4.3. Whileso, after retirement of A1 and A2, a case was registered by the respondent in FIR.No.1/AC/2016 dated 12.05.2016 alleging serious criminal acts said to have been committed in implementing the scheme for providing milch animals to Tribal community in and around several villages of Krishnagiri District. Though the First Information Report was lodged as early as 12.05.2016, the final report was filed on 12.03.2021 after a span of 5 years. The allegation against the accused are framed overlooking the various facts borne out of records.

4.4. The Government of Tamil Nadu sanctioned a scheme known as "Special Central Assistance to Tribal Sub Plan for the year 2013-2014" and for which, the Government of India releases Special Central Assistance annually towards creation of "Capital Asset' and for undertaking activities under "General" category for economic development of Schedule Tribes in conjunction with the efforts of the State in the Tribal Sub Plan. The *modus operandi* of the said scheme is to provide milch animals to the Tribal people, residing in different villages in the Districts of Tamil Nadu. Whileso, a sum of Rs.51.60 lakhs was allotted to Krishnagiri District for implementing the scheme in pursuance of the G.O.(Ms)No.4, Adi Dravidar and Tribal Welfare TD1(1) Department, dated 28.01.2014. It is the duty of the Director of Tribal Welfare to ensure the release of funds to the implementing authorities and that the grant in aid should reach the beneficiaries by following the due procedure in a transparent manner.



4.5. Whileso, the first accused was working as Special Tahsildar (ADW), Revenue Department in Krishnagiri District for the period from 23.06.2014 to 04.02.2015 and he had been entrusted many works besides that of the work of dealing with court cases in respect of land acquisition both before the lower Court and the High Court, maintenance and establishments of hostels and other works entrusted then and there by the superiors and the first accused was the only Special Tahsildar (ADW) for the entire Krishnagiri District.

4.6. The second accused was working as a Deputy Collector in the Revenue Department in Krishnagiri District, for the period from 24.02.2014 to 30.06.2015. He was posted as District Adi Dravidar and Tribal Welfare Officer, Krishnagiri and he was also deputed to look after the post of Sub Collector, P.A.(G) to Collector in Krishnagiri District, as full additional charges for several months.

4.7. Before the accused took up their respective positions, several applications have been received in the office of Adi Dravidar and Tribal Welfare, from the members of the tribal community seeking milch animals under the scheme formulated by the Government. The said applications received were forwarded to the office of the first accused for spot verification and the first accused had forwarded the same to the Special Revenue Inspector, ADW, Krishnagiri to verify the said applications. It is the duty of the Special Revenue Inspector, ADW to make spot enquiry with the help and assistance of the Village Administrative Officer of the village concerned and satisfy the genuineness of the claim and forward the same to the special Tahsildar and in turn, the Special Tahsildar (ADW) would also make a random check up to ascertain the details in the applications and later send the list to the District Adi Dravider and Tribal Welfare Officer.

4.8. The District Collector, Krishnagiri, had formed a Committee to implement the scheme in the light of G.O.Ms.No.4, dated 28.01.2014 for verification of animals and the Committee consists of the following Members.

1. District Adi Dravidar and Tribal Welfare Officer
2. Joint Director/Assistant Director, Animal Husbandry Department, Krishnagiri, Hosur.
3. Assistant Veterinary Doctor of the jurisdiction concerned.
4. Special Tahsildar (ADW), Krishnagiri.

It was the exclusive responsibility of the aforesaid Committee to procure the milch animals and approve the same for proceeding further. While allotting the milch animals to the beneficiaries, the Committee would unanimously approve the same and confirm the purchase of milch animals by seeing the conditions of the animals so far distributed to the beneficiaries. The same procedure was followed for all the Districts in Tamil Nadu. The Committee of Krishnagiri District acted meticulously following the said procedure and that in the proceedings No.Rc.8493/2014/L3 dated 22.12.2014, the officials of the said Committee were personally present and satisfied with the details of the list of milch animals and observed as "Verified the animals as per the list and found healthy, details have been noted in the list, the value is reasonable".

4.9. After receipt of the proceedings/note, the same was forwarded to the District Collector, through P.A. to Collector (Accounts) District Revenue Officer, for sanction and payment. The District Collector, being a competent authority, perused the file note and accorded sanction and issued instructions to draw the cheque for payment of purchase of milch animals, transportation of animals, travel expenses of the beneficiaries, food charges, photography charges, insurance an other incidental expenses. The payments were made to the suppliers only by means of cheque and no other mode of payment is involved in the transactions and no third parties are involved in the purchase of milch animals. The scheme formulated by the Government of Tamil Nadu was followed in good spirit without giving any room for any complaints whatsoever and the entire process was completed as early as during the year 2014. Except forwarding the application to the Special Revenue Inspector, the petitioners have no role in the alleged offence.

4.10. Whileso, to the shock and surprise of the accused, after a span of two years from the distribution of milch animals to the beneficiaries, the respondent has filed a First Information Report on 12.05.2016 under the provisions of Indian Penal Code and the Prevention of Corruption Act and after a period five years, the final report was filed on 12.03.2021 before the Special Judge and Chief Judicial Magistrate, Krishnagiri in Special C.C.No.1 of 2021.

4.11. Both the petitioners have put in more than three decades of unblemished service and they retired during the year 2015. Since there was no material against the petitioners and the charge against the petitioners were groundless, the petitioners have moved petitions before this Court in

W.P.Nos.20591 & 20593 of 2021 seeking to quash the final report in Spl.S.C.No.1 of 2021 on the file of Special Judge and Chief Judicial Magistrate, Krishnagiri, however, on legal advice, they have withdrawn the writ petitions and they were given liberty to move before the trial Court by filing the applications for discharge under Section 239 Cr.P.C.

4.12. Finding that the charge against the petitioners are groundless, they have moved petitions seeking to discharge them from the case, however, the trial Court without properly considering the materials had erroneously dismissed the petitions.

4.13. In order to invoke the provisions of the Prevention of Corruption Act, it is mandatory that the public servant ought to have abused his position and obtained any pecuniary advantage from the beneficiaries. There is absolutely no whisper either in the final report or in the annexure to the charge sheet to make out a case of dishonest intention on the part of the petitioners. Hence the essential conditions under Sections 13(1)(d)(ii) of the Act would not attract against the petitioners.

4.14. The petitioners, other than being members of the Committee, have not committed any offence and no dishonest motive is established. The trial Court is expected to apply its mind to the entire records and the documents before taking cognizance of the offence. Perusal of record shows that no case is made out against the petitioners.

4.15. The action of the public servant, contrary to the departmental norms without dishonest intention, would not amount to criminal misconduct.

4.16. There is absolutely no material against the petitioners that they have manipulated or forged the revenue records for any purpose and hence the offence punishable under Section 465 and 471 of IPC would not lie against him.

4.17. The trial Court overlooked the fact that though the investigation was conducted from the year 2014, the investigating agency could not unearth any valid material as against the petitioners and no cognizable offence is made out against the petitioners.

4.18. The petitioners are Government officials and the respondent has not obtained any sanction for prosecuting against the petitioners.

4.19. The allegations against the petitioners are vexatious and thereby, the criminal prosecution against the petitioners is unwarranted and the petitioners are unnecessarily being put through the rigors of trial and thereby, the learned Senior Counsel for the petitioners sought for setting aside the impugned orders dated 25.07.2023 and discharge the petitioners from the offences. In support of his contentions, the learned Senior Counsel for the petitioners relied on the judgment of the Hon'ble Apex Court in ***Vishnu Kumar Shukla & Another vs. The State of Uttar Pradesh & Another*** in ***Criminal Appeal No.3618 of 2023 dated 28.11.2023.***

5. The respondent has filed separate and detailed counters in both the revision cases, the crux of which is as under :-

5.1. The first accused, M.Sathiyanarayanan worked as Special Tahsildar, Adi Dravidar and Tribal Welfare Department, Krishnagiri from 23.06.2014 to 04.02.2015 and the second accused, S.Arputhasamy worked as District Adi Dravidar and Tribal Welfare Officer, Krishnagiri District from 24.02.2014 to 30.06.2015. Both A1 and A2 got superannuated during the year 2015.

5.2. During the relevant period of commission of offences, the first and second accused were public servants. Accused 3 and 4 are private individuals acted as brokers in purchasing milch animals from open market for supply to 150 beneficiaries. A5, who is also a private individual, is the father of A3 and father-in-law of A4.

5.3. Government of India releases Special Central Assistance annually towards creation of Capital Assets and for undertaking activities under General category for economic development of Scheduled Tribes in conjunction with state's efforts in the Tribal up liftment. Under the scheme, by G.O.(Ms)No.4 Adi Dravidar and Tribal Welfare TD1(1) Department dated 28.01.2014, the Government of Tamil Nadu accorded sanction for Rs.488.25 lakhs under the Grant-in-Aid of Special Central Assistance to Tribal Sub-Plan for the year 2013-14 for the implementation of schemes and as such, a sum of Rs.51.60 lakhs was allotted to Krishnagiri District for supply of free milch animals to 150 beneficiaries.

5.4. For implementing the said scheme, the District Collector, Krishnagiri had directed A2 to constitute a Purchase Committee comprising of the officials of the District Adi Dravidar and Tribal Welfare Officer (A2), Joint Director/Assistant Director, Animal Husbandry, Krishnagiri/Hosur, Veterinary Assistant Surgeon (respective Jurisdiction) and Special Tahsildar, Adi Dravidar

Welfare, Krishnagiri (A1) for purchasing milch animals from open market through A3 and A4 in the presence of Purchase Committee Members and supply to 150 selected beneficiaries of Krishnagiri District.

5.5. It was the duty of A1, being the Member of Purchase Committee, to assist A2 and the Purchase Committee members in the purchase of 150 milch animals through A3 and A4 from open market and supply them to the selected beneficiaries. It was the duty of A2 to constitute Purchase Committee and he is the authority competent to implement the scheme. Accused 3 and 4, being the brokers, were entrusted with the work of purchase of 150 milch animals from open market in the presence of Purchase Committee Members from their own money, supply the same to the selected beneficiaries and get reimbursement of the money spent by them towards the purchase of milch animals from the Government. Though, A5 was not entrusted with any work, he, being the relative of A3 and A4, had willfully participated in the purchase process.

5.6. Further, the accused had entered into a criminal conspiracy with fraudulent and dishonest intention to defraud the funds of Government in implementation of the Scheme, whereby, A5 had prepared false quotations in order to get work order in favour of A3 and A4 and after getting work order, all the accused had visited Anekal and other places to purchase milch animals along with beneficiaries. After completion of purchase, A1 and A2 had reasons to believe that the Purchase Committee was not constituted and Dr.S.Sivakrishnan (LW7) Assistant Director of Animal Husbandry, Formerly Veterinary Assistant Surgeon, Berigai, Krishnagiri District (One of the Members of the Purchase Committee) has not at all participated in the Purchase Committee, had forged the signatures of Dr.S.Sivakrishnan in the documents presented to the District Collector and similarly milch animals were not all supplied to 10 beneficiaries found in the list and other two beneficiaries whose names reflected twice in the beneficiaries list and had allowed A3 and A4 to claim the amount of Rs.3,60,000/- towards the cost of 12 milch animals and thereby, caused loss to the tune of Rs.8,100/- towards the payment of Insurance with respect to 12 milch animals.

5.7. In the course of the same transaction, A3 had deliberately prepared false receipts as if A3 and A4 spent Rs.3,15,000/- towards transportation charges, Rs.10,500/- towards photograph charges, Rs.27,000/-

towards conveyance charges and Rs.2,06,250/- towards food charges for the beneficiaries during the purchase of milch animals, where in fact they did not spend such money and presented such forged/false bills to A2 and A2 having reasons to believe that they had not at all spent the money to the beneficiaries, got sanction from the District Collector and issued cheque to them.

5.8. Similarly, in the course of the same transaction, A1 had cheated the inspection team officials by producing some other 12 persons with milch animals by impersonation and recorded false statements in order to believe that they are the persons mentioned in the list and to screen A3 and A4 from legal punishment, A2, in turn, furnished such information to the District Collector knowing to be false. Thereby, the accused had dishonestly misappropriated a total sum of Rs.9,18,750/- and caused loss to the Government Exchequer to the tune of Rs.8,100/- towards the payment of Insurance fee for 12 milch animals.

5.9. Thereby, A1 and A2 have committed the offence punishable under Sections 120B, 201, 419, 465, 468, 471 IPC r/w 109 of IPC and 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act 1988 and 120B of IPC. A3 to A5 have committed the offences under Sections 120B, 406, 465, 468, 471 r/w 109 of IPC and 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act 1988 r/w 109 IPC and 120B of IPC. After completion of investigation, charge sheet was filed on 12.03.2021 and it was taken up on the file of the learned Special Judge/Chief Judicial Magistrate, Krishnagiri on 19.03.2021 in Spl.C.C.No.1 of 2021. There are totally 112 witnesses in this case and the respondent had collected several documents to prove the acts of criminal breach of trust, forgery for the purpose of cheating and under the Prevention of Corruption Act.

5.10. The respondent has further contended that the trial Judge, after considering the relevant materials and statements of witnesses, had taken cognizance. The further contention in the counter is that the investigation reveals that while implementing the scheme during the year 2013-14, A1 was working as a Special Tahsildar, Krishnagiri and he knowing fully well that A2 did not constitute any Purchase Committee in obedience of the orders of the District Collector, Krishnagiri, prepared a false receipt along with A2, as if Dr.S.Sivakrishnan, Assistant Director of Animal Husbandry was also a part of the Committee and paid a sum of Rs.1,01,250/- to the New India Assurance Company Ltd, Hosur on 10.10.2014 towards insurance premium for 150 cross breed milch cows for one year and forged the signature of Dr.S.Sivakrishnan in the list containing with the tag numbers and in the beneficiaries list said to be prepared by the Purchase Committee in order to make others to believe that 150 milch animals were purchased through the Purchase Committee and in view of committing fraudulent and dishonest misappropriation of the Government funds with the active assistance of A3 to A5.

5.11. The first and second accused, during the purchase process, had intentionally omitted to get acknowledgments from 150 beneficiaries for having supplied milch animals to them in which, actually milch animals were not at all supplied to 10 beneficiaries namely LW-21 Tr.B. Krishnan, LW-22 Tmt.V.Jaya, LW-23 Tr.P.Marappa, LW-24 Tr.E.Doddiyappa, LW-25 Tr.V.Ellappa, LW-26 Tr.C.Pappanna, LW-27 Tmt.Sangeetha, LW-28 Tr.C.Govindasamy, LW-29 Tr.K. Murugesan and LW-30 Tr.K.Ramakrishnan. Similarly, the names of the beneficiaries LW-34 Tr.D. Ramachandran and LW-52 Tr.P.Sakthivel had reflected twice in the beneficiaries list. The first and second accused wilfully allowed A3 and A4 to claim the money with respect to two beneficiaries. Thereby, the petitioners herein (A1 & A2) have colluded with other accused and willfully allowed A3 to A5 to commit dishonest misappropriation of Rs.9,18,750/- including a sum of Rs.3,60,000/- with respect to the cost of 12 milch animals which were not supplied to beneficiaries and caused loss to Government exchequer to the tune of Rs.8,100/- with respect to payment of insurance fee towards 12 milch animals. Further, they allowed A3 and A4 to make deliberate false claims towards various charges.

5.12. Further, A2 had sent a false report vide letter dated 22.12.2014 to the District Collector, Krishnagiri to the effect that the milch animals were supplied to the eligible beneficiaries and its value and quality are correct in accordance with conditions and no irregularities had taken place, thereby, the accused willfully concealed all the scams.

5.13. LW-110 P.Vadivel, Scientific Officer/Document Expert, Forensic Science Department, Chennai had conducted examination on the specimen scripts and questioned documents relating to false bills furnished before the District Collector, Krishnagiri on 12.01.2015. He had also conducted test relating to the handwritings.

5.14. Further, there are enough materials to prove the fact that 10 beneficiaries were not supplied with milch animals and the name of two beneficiaries were reflected twice in the list and that forged bills were prepared as if milch cows were supplied to 12 beneficiaries, and the accused thereby, caused huge lose to the Government of Tamil Nadu.

6. The submissions of the learned Government Advocate (Crl.Side) appearing for the respondent are as under :-

6.1 The Central and the State Government had initiated a scheme for supplying the milch cattles for the benefit of the member of the scheduled tribe community. The amount of Rs.51.60 lakhs was allotted to the Krishnagiri District for the benefit of 150 beneficiaries and the District Collector, Krishnagiri District had formed a committee consists of A1, A2, Joint Director/Assistant Director, Animal Husbandry, Krishnagiri/Hosur and Veterinary Assistant Surgeon of the respective Jurisdiction) for the purchase milch animals from the open market through A3 and A4 in the presence of the members of the committee and to supply them to 150 beneficiaries.

6.2. During the relevant period of implementing the scheme, the first and second accused have fabricated the beneficiaries list by forging signatures of Dr.S.Sivakrishnan, who was actually transferred out of the District and was not at all working in the jurisdiction concerned, prepared false receipts in the name of New India Assurance Company, Hosur by affixing false seal on the receipt on the name of the said company on 10.10.2014 for having received a sum of Rs.1,01,250/- from Dr.S.Sivakrishnan towards insurance premium for 150 cross breed milch cows for one year, when in fact, no such receipts were issued by the Insurance company and they have also prepared a false list containing the tag numbers by forging the signature of LW7 and furnishing the said documents alongwith the bills of A3 and A4 to the District Collector, Krishnagiri for claim, knowing fully well that Dr.S.Sivakrishnan was not working within the relevant territorial jurisdiction during the relevant period of purchase i.e., from 13.09.2014 to 03.10.2014, while he was working at the office of the Regional Joint Director of Animal Husbandry, Uthagamandalam, which is beyond the territorial jurisdiction and the first and second accused have used the forged records as genuine with fraudulent and dishonest intention to misappropriate the funds allotted under the scheme.

6.3. There are other materials by way of statements and documents to prove the fact that A1 and A2, with a active connivance of A3 to A5 fabricated the records of Purchase Committee as if Dr.S.Sivakrishnan involved himself in the purchase process as a member of the Purchase Committee for the purchase of milch animals from open market with fraudulent and dishonest intention to misappropriate the funds of the Government under the control of A2.

6.4. The inspection team consisting of consisting of Dr.S.Kandasamy, Dr.L.Rajendran, Dr.K.Vediappan, Dr.A.Prakash and A1, conducted inspection by visiting the places of 150 beneficiaries arising out the allegation made by one Tr.M.Nanjappa. During which, A1 willfully furnished a copy of the beneficiaries list containing 150 persons and also physically produced some other 12 persons with milch animals by personation in lieu of the above 12 beneficiaries in order to cheat the inspection team and make them believe that they are genuine beneficiaries who have been supplied with milch animals. Further, A1 is reported to have prepared false statements in the name of 12 beneficiaries, took their photographs, annexed with his report and submitted to A2 in order to screen A3 and A4 from legal punishment. A1 and A2 had reasons to believe that the said 12 beneficiaries were not at all supplied with milch animals and they have submitted the report to the District Collector, Krishnagiri dated 22.12.2014 screening the same. The alleged 12 beneficiaries have stated that they have not received the milch animals.

6.5. The facts of the decision relied on by the learned Senior Counsel is different from the facts of the present case and therefore, it is not applicable to the case on hand. The petitioners in the present case have attained superannuation and there is no requirement of sanction to prosecute against them. Further, the ground with regard to sanction has not been raised before the trial Court and as such, the petitioners cannot raise it before this Court in the Criminal Revision Cases.

6.6. There are ample materials by way of documents and statements of witnesses more particularly, the statement of Dr.S.Sivakrishnan, who was not at all working in the respective jurisdiction during the relevant period and whose signature has been forged by the accused. The statements of alleged 12 beneficiaries, who have not received the milch cattles are also available.

6.7. He further submitted that at the stage of framing of charges, the Court is required to evaluate the materials 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. At that stage, the Court is not expected to evaluate the probative value of the material on record. The Court has to only consider whether there is a ground for presuming that the offence has been committed and not whether there is ground for convicting the accused has been made out. The Court cannot conduct a mini trial or a roving enquiry at the time of framing charges.

6.8. The petitioners, being the Government Officials, in collusion with other accused, had misused and abused their official position and the other accused have also abetted them in the commission of offence. Roving enquiry and weighing of pros and cons of the case should not be undertaken by the Court at the stage of framing charges. The investigation in this case reveals that the accused had entered into a criminal conspiracy on or before 06.08.2014 with a fraudulent and dishonest intention to defraud the funds of the Government in implementing the scheme and in pursuance of the said conspiracy, by way of fudging up the documents, the accused have fraudulently and dishonestly misappropriated the Government funds to the total sum of Rs.9,18,750/- and caused loss to the Government Exchequer to the tune of Rs.8,100/-. The trial Court, rightly finding that there are grounds for framing charges, had dismissed the application. Thereby, he vehemently opposed for allowing these petitions.

7. This Court anxiously and carefully considered the rival submissions made on both sides and perused the materials available on record.

8. Admittedly, in this case, the ground of non according of sanction had not been raised before the trial Court and thereby, the question of non according of sanction cannot be raised before this Court. The petitioners who are arrayed as A1 and A2 respectively have filed the petitions under Section 239 Cr.P.C., seeking to discharge them from the proceedings. Before, delving the facts of the case, it is useful to refer to the law regarding "discharge".

> *"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."*

9. It is trite law, 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.

10. 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: —*
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> > *"11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion*

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

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

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

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

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

*81. In the overall view of the matter, we are convinced that the impugned orders passed by the High Court are not sustainable in law and deserve to be set aside. The circumstances emerging from the record of the case, prima facie, indicate the involvement of the*

> *accused persons in the alleged offence. Having regard to the materials on record, it cannot be said that the charge against the accused persons is groundless. There are triable issues in the matter. If there are triable issues, the court is not expected to go into the veracity of the rival versions."*

11. 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 Virdi (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.) 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, adverting 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 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.""*

12. The allegation against the petitioners (A1 & A2) is that they had entered into a conspiracy with the other accused and with a fraudulent and dishonest intention to misappropriate the funds of the Government to derive pecuniary advantages, by abusing their official position as public servants, by corrupt or illegal means, by fabricating the documents and forging the signature of Dr.Sivakrishnan, who was formerly the Veterinary Assistant Surgeon, Berigai, Krishnagiri District and also by producing the fake beneficiaries by way of impersonation, the accused had committed misappropriation to the tune of Rs.9,18,750/- and also caused loss to the Government Exchequer for a sum of Rs.8,100/- towards the payment of Insurance fee for 12 milch animals. The respondent has relied on 112 witnesses and 57 documents. Perusal of record shows that there are statements of LW7, Dr.Sivakrishnan, formerly the Veterinary Assistant Surgeon, Berigai, Krishnagiri District, (who has spoken about not working within the jurisdiction during the relevant period and his signatures being forged and shown as Member of the Purchase Committee) and

10 beneficiaries (LW21 to LW30), who have spoken about the milch animals not been supplied to them and LW34 and LW52, whose names had been reflected twice in the beneficiary list, in respect of which A3 and A4 had claimed the money. Further, the statement of LW110, Scientific Officer/Document Expert, relating to the fabrication of documents supports the prosecution case.

13. Applying the law enunciated by the Hon'ble Apex Court in consonance with the facts of the case on hand, this Court is able to see that there are *prima facie* materials available to frame charges against the petitioners for having committed acts of fabrication of bills, forgery, misappropriation. Though a lengthy argument was advanced with regard to the previous conduct of the petitioners, they are not relevant for considering the discharge petition. Further, the ground of non according of sanction was not raised before the trial Court. The facts of the case in ***Vishnu Kumar Shukla*** referred *supra* by the counsel for the petitioners will not be applicable to the case on hand.

14. In the opinion of this Court, at the stage of discharge, the trial Court

cannot appreciate the probative value of the records and it is not required to conduct a roving enquiry by weighing the pros and cons of the case. The Court has to only consider whether the materials placed by the prosecution before the Court make out a *prima facie* case against the accused. In this case, the trial Court, finding that ample materials are available for framing of charges against the accused, had dismissed the application seeking to discharge. As stated above, perusing the final report along with the documents, this Court does not find any infirmity or illegality in the impugned orders passed by the trial Court and no valid grounds having been raised by the petitioners in these revision petitions, it warrants no interference.

15. In the result, these Criminal Revision Cases stand dismissed. However, it is made clear that what has been observed by this Court is only for the purpose of disposal of the discharge petition and any such observation made, shall not prejudice the rights of the petitioners during the course of trial and the trial Court may 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 petitions are closed.

**04.01.2024**

Index : Yes / No
Speaking / Non-speaking
Neutral Citation : Yes / No
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To

1. The Chief Judicial Magistrate, Krishnagiri.

2. The Deputy Superintendent of Police,
   Vigilance and Anti Corruption,
   Krishnagiri.

3. The Public Prosecutor,
   High Court of Madras.

***A.D.JAGADISH CHANDIRA, J.***

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***Pre-Delivery common order in***

***Crl.R.C.Nos.1532 & 1541 of 2023***
***and***
***Crl.M.P.Nos.14005, 14007, 14052 & 14054 of 2023***

***Delivered on***
***04.01.2024***