



Crl.R.C.Nos.2194 and 2195 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	26.04.2024
Delivered on	07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.R.C.Nos.2194 & 2195 of 2023
and
Crl.M.P.Nos.19769 & 19772 of 2023

Pramod Kumar

... Petitioner in both Revisions

Vs.

State, CBI,
The Additional Superintendent of Police,
CBI, E.O.W., Shastri Bhavan,
Chennai.

... Respondent in both Revisions

PRAYER IN CRL.R.C.No.2194 of 2023: Criminal Revision
Petition filed under Section 397 r/w.401 of Criminal Procedure Code,
1973, to set aside the order dated 23.11.2023 passed by the
learned II Additional District Judge for CBI Cases, Coimbatore in
Crl.M.P.No.1527 of 2023 in C.C. No.2 of 2013.

PRAYER IN CRL.R.C.No.2195 of 2023: Criminal Revision
Petition filed under Section 397 r/w.401 of Criminal Procedure Code,



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1973, to set aside the order dated 28.11.2023 passed by the learned II Additional District Judge for CBI Cases, Coimbatore in C.C. No.2 of 2023 wherein charges were framed against the petitioner and consequently discharge the petitioner/first accused from all offences charged in the Charge Sheet dated 28.11.2013 in C.C.No.2 of 2013 pending on the file of the learned II Additional District Judge for CBI Cases, Coimbatore.

For Petitioner : Mr.C.Mani Shankar
Senior Counsel
for Mr.Arun C Mohan
in Crl.R.C.No.2194 of 2023
Mr.A.Ramesh
Senior Counsel
for Mr.Arun C Mohan
in Crl.R.C.No.2195 of 2023

For Respondent : Mr.R.Sankara Narayanan
Senior Counsel
Special Counsel for CBI
&
Mr. K.Srinivasan
Senior Counsel
Special Public Prosecutor for CBI
Assisted by Ms.Vrinda Ramesh
(in both petitions)

COMMON ORDER

Challenging the order passed by the learned II Additional District Judge for CBI Cases, Coimbatore in Crl.M.P.No.1527 of 2023



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in C.C. No.2 of 2013 dated 23.11.2023 and as against the charges framed against the petitioner herein through his order dated 28.11.2013, the present Criminal Revision Petitions have been filed by the petitioner herein/first accused.

2.The gist and kernel of the case which leads to the filing of these revision petitions are as follows:

i)The petitioner in both the Criminal Revision Cases is the first accused in RC ME1 2001 E 0013 registered by the respondent police against him along with the other named accused persons for the alleged offences under Sections 120-B r/w 347, 384, 506 (i) of IPC and Sections 8, 10 and 13 (2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988. After completion of investigation, the same was taken cognizance by the learned II Additional District Judge for CBI Cases, Coimbatore in C.C.No.2 of 2013.

ii)The petitioner is a member of the Indian Police Service, allotted to the State of Tamil Nadu. While he was functioning as Inspector General of Police, West Zone, based at Coimbatore, a complaint was registered in Crime No.26 of 2009 by the Central Crime Branch (CCB) Tiruppur, against the Directors of Paazee Forex



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Trading India Ltd., under the provisions of Prize Chits and Monies Circulation Scheme (Banning) Act, 1978 and Section 420 of IPC. Subsequently, Tiruppur North Police registered a case in Cr.No.3068 of 2009 for "Woman Missing" pursuant to a complaint that Mrs.Komalavalli Arumugham, one of the Directors of Paazee Forex Trading India Ltd., was found missing.

iii) Since police failed to take any action against the Directors of Paazee Forex Trading India Ltd., inspite of cancellation of the anticipatory bail to them, one of the depositors and the association of depositors of Paazee Forex Trading India Ltd., moved this Court in Crl.O.P.Nos.2691 and 5358 of 2011 with a prayer for transfer of investigation from the State Police to Central Bureau of Investigation (CBI). The petitioner was not an accused at that point of time. This Court has passed an order dated 19.04.2011 transferring the investigation of both the crimes from the State Police to CBI.

iv) In the meanwhile, the petitioner herein was interrogated in connection with Crime No.3068 of 2009 on 06.04.2011 and on investigation, it was found that he abused his official position as



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Inspector General of Police and inter-alia was involved in extorting money from the Directors of M/s Paazee Forex. This Court by an order dated 19.04.2011, transferred the investigation in Crime No.3 of 2010 (originally Crime No.26 of 2009) to CBI. Thereafter, the petitioner had filed an application for bail, which was rejected by this Court on 20.04.2012 and was arrested. The Principal Secretary to Government of Tamil Nadu by an order dated 10.05.2012 placed the petitioner under suspension with effect from 02.04.2012 in terms of Sub Rule 2 of Rule 3 of the All India Service (Discipline and Appeal) Rules, 1969, until further orders.

v)Thereafter, the petitioner had filed a Writ Petition in W.P.No.21801 of 2012 before this Court forbearing the respondents from proceeding further with conducting enquiry or investigation in FIR in RC No.13(E)/2011/CBI/EOW/Chennai and the same was dismissed by this Court. In the meanwhile, the decision to initiate a disciplinary proceeding against the petitioner was approved by the Disciplinary Authority on 05.04.2013. Pursuant to which, a charge memo was issued to him on 29.10.2013. This Court by an order dated 19.04.2011 in Crl.O.P.Nos.2691 of 2011 and 5356 of 2011 had transferred the investigation in Crime No.26 of 2009 and Crime



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No.3068 of 2009 to CBI, which was challenged before the Hon'ble Supreme Court by way of SLP and the same was disposed of and this Court also clarified in the order dated 19.04.2011 that it will not stand in the way of the petitioner herein while disposing of the matter afresh.

vi) The petitioner filed O.A.No.165 of 2016 before the Central Administrative Tribunal, Madras Bench, for quashing the order of suspension dated 10.05.2013 and the charge memo dated 29.10.2013 and also sought for reinstatement with all consequential benefits. The Central Administrative Tribunal, Madras Bench, refused to interfere with the charge memo, however, directed revocation of suspension by holding that there was no material to indicate that the petitioner had tampered with the evidence and influenced the witnesses. Aggrieved by the direction issued by the Central Administrative Tribunal to reinstate the petitioner, the State of Tamil Nadu filed a Writ Petition before this Court. This Court by a judgment dated 12.01.2017, upheld the judgment of the Tribunal pertaining to revocation of suspension. Further, this Court quashed the disciplinary proceedings on the ground that the charge memo was not approved by the disciplinary authority. Against the same,



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the State of Tamil Nadu had filed a Civil Appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court by relying on the decision of ***Ajay Kumar Choudhary Vs. Union of India*** reported in ***(2015) 7 SCC 291*** and on the basis of the material available on record, convinced that no useful purpose would be served by continuing the petitioner under suspension any longer and that his reinstatement would not be a threat to a fair trial and also reiterated the observation of this Court that the State has the liberty to appoint the petitioner in a non sensitive post. By an order dated 02.11.2021, in a batch of Writ Petitions and Criminal Original Petitions, this Court had finally dismissed all the petitions preferred by the petitioner herein, as well as by the other accused. As against the dismissal order, the petitioner had preferred SLP before the Hon'ble Supreme Court in SLP.No.8901-8904/2021 and the Hon'ble Supreme Court had dismissed the SLP with liberty to the petitioner to raise all the grounds raised therein before the appropriate Court, if and when the charges are framed against the petitioner.

vii)Thereafter, the petitioner had preferred Crl.M.P.No.1527 of 2023 seeking discharge from the proceedings in C.C.No.2 of 2013 and the trial Court has dismissed the discharge petition on



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23.11.2023. Pursuant to which, charges were framed against the petitioner on 28.11.2023. Aggrieved over the said orders, the petitioner has filed the present revisions before this Court. This Court by an order dated 20.12.2023 granted interim stay of all further proceedings in C.C.No.2 of 2013 till 11.03.2024 and also personal appearance of the petitioner has been dispensed with.

3.Heard Mr.A.Ramesh and Mr.C.Manishankar, learned Senior Counsels appearing on behalf of the petitioner in Crl.R.C.No.2194 of 2023 and Crl.R.C.No.2195 of 2023 respectively as well as Mr.R.Sankaranarayanan, learned Senior counsel and Mr.K.Srinivasan, learned Special Public Prosecuor appearing for the respondent/CBI.

4.Since the issue involved in these revisions are one and the same, a common order is being passed in these Criminal Revision Petitions.

5.Arguments made on behalf of the petitioner:

5.1. Mr.A.Ramesh, learned Senior counsel in **Crl.R.C.No.2195 of 2023** submitted that the Directors of Paazee



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Forex Trading Pvt. Ltd., [for the sake of brevity, hereinafter referred to as "Paazee Trading"] collected deposits in the form of ponzi scheme from the public and failed to repay the amount to the depositors and thereby committed a huge scam. A complaint was filed in this regard and on a direction of this Court, a Committee was established to oversee that the amount has been refunded to the depositors by the Directors of Pazee Trading. However, certain depositors, who were dissatisfied with the progress of investigation, approached this Court by way of filing petitions seeking transfer of investigation from the State Police to CBI in Crl.O.P.Nos.2691 and 5336 of 2011.

5.2. At this juncture, it was stated by the State that along with Crime No.26 of 2009 (Paazee case), another FIR was filed relating to this case which was originally registered as a "woman missing case", who was one of the directors of Paazee Trading and on investigation, it came to light that it was "kidnapping and extortion case" involving police officers investigating the Paazee scam. In view of the same, this Court by its order dated 19.04.2011 in Crl.O.P.Nos.2691 and 5336 of 2011 directed transfer of investigation of both Crime No.26 of 2009 (Paazee Case) and Crime



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No.3068 of 2009 (Woman Missing Case) to the CBI. CBI had taken over the woman missing case from CBCID, Vellore which was the then investigating agency and thereafter registered an FIR wherein the petitioner herein was arrayed as A6. It is pertinent to note that until CBI's FIR dated 15.06.2011, the petitioner herein was no way connected or investigated in the woman missing case until the matter was transferred and taken up by CBI.

5.3. The respondent had filed the charge sheet on 13.05.2013 before the learned II Additional District Judge for CBI Cases, Coimbatore and in the meantime, the petitioner herein had initiated proceedings to challenge investigation against him without according sanction for investigation as contemplated under Section 6A of the Delhi Special Police Establishment (DSPE) Act. When the matter was taken up to the Hon'ble Supreme Court in Civil Appeal No.3062 of 2015, the Court by order dated 17.03.2015 had set aside and remanded back the matter to this Court and had also directed to remand of Crl.O.P.Nos.2691 and 5336 of 2011 since the petitioner was not made a party or heard therein.



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5.4. This Court heard the matters afresh and vide its order dated 02.11.2021 was pleased to uphold the transfer of investigation and directed the trial Court to proceed in the manner known to law. The petitioner preferred a quash petition in Crl.O.P.No.19442 of 2022 which was subsequently dismissed on 28.11.2023 and in the interim, when the petitioner was directed to appear before the learned trial Court as Non Bailable Warrant issued, he preferred a discharge petition which was dismissed on 23.11.2023. Aggrieved over the same, Crl.R.C.No.2194 of 2023 has been filed and also that the petitioner has preferred Crl.R.C.No.2195 of 2023 as against the framing of charges dated 28.11.2023.

5.5. It is strenuously contended by the learned Senior counsel for the petitioner that the bare perusal of the charges framed against the petitioner vide order dated 28.11.2023 would show that the same are defective, vague and ought to be set aside as the same are not comprehensible and would result in great prejudice to the petitioner. On a perusal of the first charge framed against the petitioner for the offence of criminal conspiracy under Section



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120-B IPC would reveal that the same runs to about 14 pages by enunciating various facts, dates and time and particularly, in various places when the said charge is read out, the same is incomprehensible. It is vital to point out that the first charge running to 14 pages has various material facts not concerning to the petitioner but concerning other accused in the case, however all being put together as one, has rendered the charges meaningless and groundless. In respect of the charges 4, 7 and 8, the trial Court has conveniently charged the petitioner for the said offence therein for his actions committed in the date, time and place as mentioned in the first charge. The fourth charge is without any basic details pointing to the first charge with regard to time, place etc. The first charge has more than 25 dates and 3 different places viz., Coimbatore, Tiruppur and Chennai. The charge for 506(i) IPC should mention threat to cause death or grievous hurt or with an intent to cause alarm, which is absent in the present charge. Seventh charge for Section 10 of the Prevention of Corruption Act (PC Act) does not specify the offence for framing charges against the petitioner. Since Section 10 of the PC Act requires Section 8 or 9 to be committed as a pre-requisite, which is absent in the present case as against the petitioner.



5.6. The learned Senior counsel referred to Section 464 of

Cr.P.C., and the same reads as follows:

464. *Effect of omission to frame, or absence of, or error in, charge-*

1)No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

2)If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a)in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge;

(b)in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the



conviction.

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5.7. In the present case on hand, Section 464 of Cr.P.C., has not been followed and submitted that it is the duty of the Court to step in when there is an error in framing a charge and set aside the same for want of fresh charges to be framed as not being so would gravely prejudice the petitioner at the time of trial.

5.8. He placed reliance on Chapter 17 of the Code of Criminal Procedure, more specifically on Sections 211 to 215, wherein contents of a charge and the manner in which the same ought to have been framed and the effect of an error in a charge are illustrated. For useful reference, Sections 211 to 215 of Cr.P.C., have been extracted and the same reads as follows:

211.Contents of charge.—

(1) Every charge under this Code shall state the offence with which the accused is charged.

(2) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

(3) If the law which creates the offence does not give it any specific name, so much of



the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(4) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

(5) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

(6) The charge shall be written in the language of the Court. (7) If the accused, having been previously convicted of any offence, is liable, by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge; and if such statement has been omitted, the Court may add it at any time before sentence is passed.

212.Particular as to time, place and person.—

(1) The charge shall contain such



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particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219:

Provided that the time included between the first and last of such dates shall not exceed one year.

213. When manner of committing offence must be stated.—When the nature of the case is such that the particulars mentioned in sections 211 and 212 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was



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committed as will be sufficient for that purpose.

214. Words in charge taken in sense of law under which offence is punishable.—In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

215. Effect of errors.— No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

5.9. A cursory reading of the charges framed as against the petitioner would show that none of the provisions as enumerated above foreshadow the charges so framed thereby making the charges wholly erroneous and thus, the learned Senior counsel prayed to set aside the charges framed as against the petitioner.

5.10. In support of his contentions, the learned Senior counsel drew the attention of this Court by placing reliance on the following judgments:



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a) ***Krishnan Balakrishnan and Others Vs. State of Kerala,***

1957 SCC Online Ker 215:-

7.Now, as we have already said, the charge against each of the accused is a long rambling document cluttered with irrelevant detail telling him not merely what he himself but also what the other accused persons did in the course of the transaction, but at the same time failing to tell him and it is here that the objection lies of the matters making out the offences with which he was eventually convicted. Taking first the charge against the first accused, it is no doubt true that Section 302 IPC is mentioned in charge in addition to Section 302-149 IPC, but nowhere in the charge is it said that the first accused was being held liable for having himself caused that death of the deceased.

b) ***Pitambar Dehury and Others Vs. State of Orissa, 1984***

SCC Online Ori 226

"12.We would now examine the correctness of the second submission of the learned Counsel for the appellants. The Supreme Court and various High Courts have considered as to the effect of absence of a charge or defect in charge how far vitiates the conviction. In one



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of the earliest cases (Willie (William) Slaney v. State of Madhya Pradesh), it was held :

Sections 34, 114 and 149 of the Penal Code provide for criminal liability viewed from different angles as regards actual participants, accessories and men actuated by a common object or a common intention ; 'and the charge is a rolled-up one involving the direct liability' without specifying who are directly liable and who are sought to be made constructively liable.

In such a situation, the absence of a charge under one or other of the various heads of criminal liability for the offence cannot be said to be fatal by itself, and before a conviction for the substantive offence, without a charge, can be set aside, prejudice will have to be made out. In most of the cases of this kind, evidence is normally given from the outset as to who was primarily responsible for the act which brought about the offence and such evidence is of course relevant.

13.In this case in the majority judgment, their Lordships explained and distinguished the two earlier decisions of the Court (Nanakchand v. State of Punjab) and ([Surajpal v. State of U.P.](#)).

14.In the case of [K.C. Mathew v. State of Travancore-Cochin](#) , repelling a contention raised on behalf of the accused that they have been



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prejudiced for non-framing of a charge, the Supreme Court held :

We are satisfied that the charge neither caused, nor could have caused, prejudice. The body of the charge set out the fact that the accused 1-29 formed an unlawful assembly and stated the common object ; and then the charge specified in detail the part that each accused had played. In the circumstances, each accused was in a position to know just that was charged against him because once the facts are enumerated the law that applies to them can easily be ascertained ; and in this particular case it was just a matter of picking out the relevant sections from among the ten mentioned.

There is nothing in this objection :....

In the very same judgment, the Court also further observed :

"... but the fact that the objection was not taken at an earlier stage, if it could and should have been taken, is a material circumstance that will necessarily weigh heavily against the accused particularly when he has been represented by counsel throughout..."

16.In the case of [Khemasil Rout v. State of Orissa](#) (1974) 40 Cut LT 428, a learned Judge of this Court examined the provisions of [Sections 143](#) and [149](#) of the Penal Code and held :



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"The law is well settled that the only test to decide whether a conviction can be sustained or not is to find out whether the absence of such a charge has resulted in prejudice to the accused persons. Here, in this case, there was a specific charge Under [Section 148](#), Indian Penal Code. The common object also has been specified. The petitioners therefore cannot complain that they had no notice of the ingredients of the offence Under [Section 149](#), Indian Penal Code. No prejudice has therefore resulted to the accused-petitioners. ..."

c) *Selvam and Others Vs. State, Crl.A.(MD) No.234 of 2011 dated 18.08.2015:-*

"16. With pains, thus for, we have discussed about the irregularities in the charges framed and the consequential trial conducted by the trial Court. Time and again, the Hon'ble Supreme Court as well as this Court have been impressing upon the need for the trial Court to have thorough study of the entire Police report and all the documents filed therewith and to frame appropriate charges so as to avoid any failure of justice. The law makers have made it mandatory that under Section 218 Cr.P.C. for every distinct offence of which a person is accused, there shall be a separate charge. The



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law makers have also made a provision under Section 226 Cr.P.C. that in a trial before a Court of Sessions, the Public Prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused. In practice, often we have come to know that this provision is followed only in breach. This case is a classic illustration of failure of justice as the accused have walked away with punishment for simple murder, though there were three brutal murders.

17. We regret to say that in our experience, in many cases, which have come up before this Court in the recent past, we have noticed that because the cases were not properly opened by the prosecutors, because the prosecutors had not described the charges brought against the accused; and because the trial Courts also had not bestowed their required attention, there were defective charges framed which, ultimately, in some cases, resulted in failure of justice as well. In some cases, because of the defects in the charges, the accused have cakewalk on account of the said loopholes in the charges. In some cases, this Court had to often remand the case after many years, for altering the charges properly and to pass fresh judgment. This sordid



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stated of affairs has not vanished.

18. Judicial training has almost become a part of the service of the Judges, in this State. On the important subjects, often training is imparted to the Judges by the Tamil Nadu State Judicial Academy run by this Court and by the National Judicial Academy, through eminent jurists drawn from across the country. We are told that even the Public Prosecutors are also trained at the cost of the Government. Despite these efforts, it is really distressing that we have noticed a lot of defects in the matter of framing of charges as we have seen in the instant case which have, at times, paved the way for the real culprits to escape from the clutches of law. We would like to remind the Judicial Officers that gross failure to bestow attention and to frame appropriate charges resulting in failure of justice and paving the way for the accused to escape from the clutches of law may amount to a dereliction of official duty by the officers. In this scenario, we, once again, wish to reiterate that Judges and Magistrates, presiding over the Criminal Courts, shall bestow their best attention in the matter of framing of charges as framing of charges is not a ministerial job but a very serious judicial function.

19. As there were defects in the charges,



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equally in this case, there were defects in the trial also, as the trial was not conducted with best attention by the learned Public Prosecutor, who was in charge of the case. In many cases, this Court has pointed out that the trial had not been conducted with proper care and attention, resulting in acquittal of the accused, though during the investigation sufficient materials had been collected by the investigating officers. Very recently, one of us (Justice S.NAGAMUTHU) sitting single in Crl.A.No.67 of 2015 (Navaneethakrishnan and another Vs. Inspector of Police, Q Branch Police Station, Madurai), relating to a very sensational case involving the security of the nation, found such serious irregularities in the charges and the serious errors committed at the time of trial by failing to bring on record the evidences collected during the investigation. In that case, the conviction was set aside and the matter was remanded to the trial Court for fresh disposal (vide judgment dated 24.07.2015). This is only an illustration. The case on hand is the next illustration. We do not want to cite many more cases as, in our considered view, it would only add to the length of this judgment. We only wish to impress upon the Government to ensure the competence of the Public Prosecutors in conducting criminal trials,



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while making appointments and also impart them legal training on periodical basis. This will surely improve the quality of the Prosecutors in this State and consequently, improve the quality of the criminal judicial administration in the State.

d)Parthiban and Others Vs. State, Crl.A.No.349, 353, 392, 419, 439, 449 and 495 of 2016 dated 23.08.2016:-

16. Before analyzing the arguments advanced by the learned counsel for both sides and the evidences available on record, let us, at the outset, record our displeasure about the manner in which the charges have been framed, in this case, and the manner in which the trial court has convicted these 14 accused for various offences.

17. Time and again, this Court and the Hon'ble Supreme Court have been impressing upon the trial courts, the importance of charges framed, because the accused are liable to answer the charges framed against them and framing of appropriate charges alone would put the accused on notice, the allegations against him, so that, he could face the same effectively. In other



words, framing of appropriate charges would be part of fair trial afforded to the accused.

18. Section 211 of the Criminal Procedure Code contemplates the contents of the charges. The provisions that followed in Chapter XVII elaborately deal with the form of charges and more specifically, Section 215 of the Code, deals with effects of errors in charges. But it is not infrequent that this Court comes across cases, which reflect the indifference on the part of the trial courts, in the matter of bestowing attention to frame appropriate charges. The present case is a classic example of such indifference. As we have pointed out in paragraph No.1 of this judgment, though it is alleged that 14 accused had assembled, all armed with wooden logs, with a common object of killing the deceased, the trial court has not framed appropriate charges.

19. As we have pointed out, as against all the 14 accused, the trial court has framed charges under Section 147 IPC as well as 148 IPC. Since all the 14 accused were armed with dangerous weapons, the trial court ought to have framed charges against all the accused under Section 148 IPC, but, quite, strangely, the trial court has convicted and imposed sentence for offence under Section 148 as well as 147 IPC. This will amount to clear double jeopardy. It is



common knowledge that once an accused is convicted for the offence under Section 148 IPC, he cannot be again punished for the offence under Section 147 IPC.

5.11. Furthermore, it is pertinent to go through the charge sheet as the prosecution even while filing the same after allegedly investigating the issue, has left open the question of money trial to further investigation under Section 173(8) of Cr.P.C. This would only show that the prosecution has hastily filed the charge sheet without completing the investigation and reiterate the prosecution's *mala-fide* intention to somehow roped the petitioner. The trial Court failed to apply its mind at the time of taking cognizance of the matter. As per the prosecution's status report before the trial court dated 17.10.2023 further investigation is still ongoing and money trial is yet to be established.

5.12. The learned Senior counsel argued that the charges framed are made as even assuming without admitting that there are grounds to proceed for framing charges, the exercise undertaken by the trial Court in framing charges in a case where there are no grounds to proceed, is unsustainable and the same is



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liable to be set aside.

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5.13. He also submitted that the defects as raised and argued above are incurable, since on a joint consideration of the errors made in the impugned discharge order and the impugned charges framed, the same would vitiate the entire proceedings as against the petitioner.

5.14. Mr.C.Manishankar, learned Senior counsel in **Crl.R.C.No.2194 of 2023** submitted that the petitioner was under custody between 02.05.2012 and 28.06.2012 and subsequently was granted bail by order dated 28.06.2012. The learned Senior counsel drew the notice of this Court that bail was granted by this Court in Crl.O.P.No.12056 of 2012 by order dated 28.06.2012, on the ground that Ms.Kamalavalli (L.W.2) had constantly changed her statement before the investigating agency which raised a question to her credibility.

5.15. At this juncture, the learned Senior counsel also pointed out that the character of L.W.2/Ms.Kamalavalli is to mislead Courts and investigation agencies. In the present case, a woman missing



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case turned into an extortion and kidnapping case, since L.W.2 had made such a statement when she was initially investigated on 14.02.2010. Moreover, she was not kidnapped and the story was concocted in her statements under Section 161(3) Cr.P.C., dated 13.03.2010 and 23.08.2011, are merely an evasion from her duty to refund the depositors in the Paazee Trading scam and to take revenge on the police officers, who investigated her for the same.

5.16. On 11.08.2022, a petition to quash the proceedings in C.C.No.2 of 2013 was filed before this Court and an order of dispensing with the personal appearance of the petitioner was granted. On 04.09.2022, this Court vide an order in Crl.M.P.No.13402 of 2023 in Crl.O.P.No.24216 of 2018, directed the trial Court to fix a schedule and proceed with the matter if there is no other legal impediment. It is relevant to point out that the petitioner herein was not a party therein. On 25.10.2023, the trial Court issued a non bailable warrant against the petitioner for his non appearance and further dismissed the petition under Section 309 Cr.P.C., filed by the petitioner.

5.17. Subsequent to the issuance of a non bailable warrant



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against the petitioner, he appeared before the trial Court and the same was recalled on 27.10.2023. At this point of time, the petitioner had also filed the petition to discharge in Crl.M.P.No.1527 of 2023. However, the petitioner was directed to appear before the trial Court on 04.11.2023 for framing of charges even before hearing the discharge petition filed by the petitioner. It is submitted that the petitioner moved Crl.O.P.No.25507 of 2023 against the dismissal of 309 petition and interim protection from appearance before the trial Court was granted by this Court vide its order dated 03.11.2023. However, on 06.11.2023, Crl.O.P.No.25507 of 2023 was disposed of with the direction to the petitioner to appear for framing charges and 313 questioning. On 23.11.2023, the Discharge Petition in Crl.M.P.No.1527 of 2023 was dismissed by the trial Court. Aggrieved over the same, the instant revision in Crl.R.C.2194 of 2023 has been preferred by the petitioner.

5.18. The trial Court in its order dated 23.11.2023 placed reliance on the order of this Court in Crl.O.P.Nos.2691 & 5356 of 2011, wherein this Court has transferred the case from CBCID to CBI. It is further submitted that the said order of this Court dated



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19.04.2011 was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court by its order dated 17.03.2015 was pleased to set aside the same and remanded the matter back to this Court, with a direction to hear the petitioner before passing orders.

5.19. The learned Senior counsel highlighted the order of the trial Court, wherein the trial Court being influenced by the order of this Court dated 19.04.2011 had extracted the same in para 7.7 of its order, even though it was set aside by the Hon'ble Supreme Court. He therefore submitted that the trial Court ought not to have placed reliance on the order of this Court in Crl.O.P.Nos.2691 & 5356 of 2011 and for this reason alone, the order of dismissing the discharge petition by the trial Court is liable to be set aside.

5.20. In para 7.10 of the impugned order of the trial Court dated 23.11.2023, it specifically referred and extracted the common order of this Court dated 02.11.2021 which reveals the fact that the trial Court has been influenced by the same. In spite of the observation made by the Hon'ble Supreme Court in its order dated 19.07.2022 in SLP (Crl.) Nos.8901 to 8904 of 2021, wherein it has held that the common order of this Court dated 02.11.2021 being a



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prima facie observation is not to weigh in the minds of the trial Court when proceedings are brought before it, the learned Judge of the trial Court merely followed the order dated 02.11.2021 which is contrary. Hence he submitted that the trial Court had passed the order without application of mind and disregard to the grounds raised seeking dismissal of discharge.

5.21. Continuing his argument, the learned Senior counsel raised the following points for consideration of the revision petitions:

5.21.1) Sanction for prosecution granted under Section 19(2) of the PC Act and Section 197(1)(b) of Cr.P.C., suffers from severe non application of mind as even a *prima facie* reading of the charge sheet would show that no case under the offences are made out as against the petitioner.

5.21.2) Section 8 and 10 of PC Act reads as follows:

8. Offence relating to bribing of a public servant.

(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention-



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i)to induce a public servant to perform improperly a public duty; or

ii)to reward such public servant for the improper performance of public duty; shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:

Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:

Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:

Provided also that when the offence under this section has been committed by commercial organisation, such commercial organisation shall be punishable with fine.

Illustration. - A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation. - It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or



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has performed, the public duty concerned and it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

2)Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.

10.Person in charge of commercial organisation to be guilty of offence.

Where an offence under section 9 is committed by a commercial organisation, and such offence is proved in the court to have been committed with the consent or connivance of any director, manager, secretary or other officer shall be of the commercial organisation, such director, manager, secretary or other officer shall be guilty of the offence and shall be liable to be proceeded against and shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.



Explanation. - For the purposes of this section, "director", in relation to a firm means a partner in the firm.

5.21.3) A mere reading of Section 8 of PC Act, 1988 would show that it can only be attracted to private persons and not public servants. In the instant case, there is nothing in the charge sheet or witnesses statements to show that A4 and A5 were ever in contact with the petitioner. It is relevant to note that A4 and A5 have an effect on the petitioner to abuse his power is nowhere to be found in the charge sheet or accompanying documents.

5.21.4) Section 10 of PC Act shall not be charged against the petitioner as Section 10 is punishment for abetting an offence under Section 8. The prosecution has failed to establish a *prima facie* nexus between A1 and the private persons A4 and A5 and therefore, Section 8 and 10 of PC Act, would not attract. When the materials were placed before the Sanctioning Authority, the authority ought to have considered the same and applied their mind prior to issuing sanction for prosecution. The same would apply even to the sanction granted under Section 197 Cr.P.C., since no ingredients of Sections 347, 384 or the other offences charged



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under, have been made out. It is also admitted by the prosecution that there is no money trail. It is therefore submitted that there is a severe lack of application of mind by the Sanctioning Authority.

5.21.5) The learned Senior counsel contended that sanction granted for the offences under IPC, even though the prosecution has admitted the fact that no money trail could be established, the sanctioning authority has not applied his mind prior to granting sanction to prosecute the petitioner. Sanction ought not to have been granted by the authority as the requisite of an illegal gain as mandated under the statute for Sections 347 and 384 has not been made out as against the petitioner. This also applies to the sanctioning authority, who has granted sanction under the PC Act wherein sanction granted for Section 13(1)(d) has no requisite material for a *prima facie* case of demand and acceptance.

5.22. In support of his submissions, the learned Senior counsel placed reliance on the following decisions:

a) ***Nanjappa Vs. State of Karnataka [2015 (14) SCC 186]***

22.The legal position regarding the



importance of sanction under [Section 19](#) of the Prevention of Corruption is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of an authority competent to grant such sanction in terms of clauses (a), (b) and (c) to [Section 19\(1\)](#). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. If the trial Court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non-est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution.

b) *Dinesh Kumar Vs. Chairman, Airport Authority of India [2012 (1) SCC 532]*

10.In our view, invalidity of sanction where sanction order exists, can be raised on



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diverse grounds like non-availability of material before the sanctioning authority or bias of the sanctioning authority or the order of sanction having been passed by an authority not authorised or competent to grant such sanction. The above grounds are only illustrative and not exhaustive. All such grounds of invalidity or illegality of sanction would fall in the same category like the ground of invalidity of sanction on account of non-application of mind - a category carved out by this Court in Parkash Singh Badal, the challenge to which can always be raised in the course of trial.

c) Suresh Budharmal Kalani Vs. State of Maharashtra

[1998 (7) SCC 337]

7. So far as the confession of Jayawant Suryarao is concerned, the same (if voluntary and true) can undoubtedly be brought on record under [Section 30](#) of the Evidence Act to use it also against Kalani but then the question is what would be its evidentiary value against the latter. The question was succinctly answered by this Court in [Kashmira Singh V. State of Madhya Pradesh](#) (1952 SCR 526) with the following words:

"The proper way to approach a case of this



kind is first, to marshal the evidence against the accused excluding the confession altogether from consideration and see whether, if it is believed, a conviction could safely be based on it. If it is capable of belief independently of the confession, then of course it is not necessary to call the confession in aid. But cases may arise where the judge is not prepared to act on the other evidence as it stands even though if believed, it would be sufficient to sustain a conviction. In aid the confession and use it to lend assurance to the other evidence and thus fortify himself in believing what without the aid of the confession he would not be prepared to accept."

The view so expressed has been consistently followed by this Court. Judged in the light of the above principle the confession of Suryarao cannot called in aid to frame charges against Kalani in absence of any other evidence to do so.

.....

10. *A bare perusal of the above statement makes it abundantly clear that it is self exculpatory and hence inadmissible in evidence as ' confession'. Once it is left out of consideration - as it should be - the confessional*



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statements of the other three accused, for what they are worth, cannot be made - in absence of any other material to connect Dr. Desai with the accusation levelled against him a basis for impugned charges in view of the law [laid down in Kashmira singh](#) (supra).

d) *P.Satyanarayana Murthy Vs. District Inspector of Police [2015 (10) SCC 152]*

20.This Court in [A. Subair vs. State of Kerala](#) (2009)6 SCC 587, while dwelling on the purport of the statutory prescription of [Sections 7 and 13\(1\)\(d\)](#) of the Act ruled that the prosecution has to prove the charge thereunder beyond reasonable doubt like any other criminal offence and that the accused should be considered to be innocent till it is established otherwise by proper proof of demand and acceptance of illegal gratification, which are vital ingredients necessary to be proved to record a conviction.

21. In [State of Kerala and another vs. C.P. Rao](#) (2011) 6 SCC 450, this Court, reiterating its earlier dictum, vis-à-vis the same offences, held that mere recovery by itself, would not prove the charge against the accused and in absence of any evidence to prove payment of bribe or to



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show that the accused had voluntarily accepted the money knowing it to be bribe, conviction cannot be sustained.

22. In a recent enunciation by this Court to discern the imperative pre-requisites of [Sections 7 and 13](#) of the Act, it has been underlined in [B. Jayaraj](#) (supra) in unequivocal terms, that mere possession and recovery of currency notes from an accused without proof of demand would not establish an offence under [Sections 7](#) as well as [13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act. It has been propounded that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under [Sections 7 and 13](#) of the Act. Qua [Section 20](#) of the Act, which permits a presumption as envisaged therein, it has been held that while it is extendable only to an offence under [Section 7](#) and not to those under [Section 13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act, it is contingent as well on the proof of acceptance of illegal gratification for doing or forbearing to do any official act. Such proof of acceptance of illegal gratification, it was



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emphasized, could follow only if there was proof of demand. Axiomatically, it was held that in absence of proof of demand, such legal presumption under [Section 20](#) of the Act would also not arise.

23. The proof of demand of illegal gratification, thus, is the gravamen of the offence under [Sections 7](#) and [13\(1\)\(d\)\(i\)&\(ii\)](#) of the Act and in absence thereof, unmistakably the charge therefor, would fail. Mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof, dehors the proof of demand, ipso facto, would thus not be sufficient to bring home the charge under these two sections of the Act. As a corollary, failure of the prosecution to prove the demand for illegal gratification would be fatal and mere recovery of the amount from the person accused of the offence under [Sections 7](#) or [13](#) of the Act would not entail his conviction thereunder.

5.23. As per the ratio laid down by the Hon'ble Apex Court in the cases of *Nanjappa and Dinesh Kumar* as stated supra which squarely applies to the present case shows that the order of the Sanctioning Authority suffers from non application of mind and therefore, the learned trial Judge ought to have considered the



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same and discharged the petitioner from the charges framed.

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5.24. In regard to approver's evidence, the learned Senior counsel contended that it is vital to point out the fact that the entire case of the prosecution rests on the statement of L.W.27, one Mr.E.Shanmugaiah, who was first an accused in the FIR but later turned as an approver by grant of pardon. There is no direct evidence apart from the evidence of approver as against the petitioner which is fatal to the case of the prosecution.

5.25. At this point of time, it is relevant to cite the approver's character before appreciating his evidence, Document No.D 293, a list of communications where a report on the misdeeds of the approver is articulated therein. Moreover, he also drew the attention of this Court that, E.Shanmugaiah was in the habit of misusing the name of superior officers to extort money/bribe from individuals and the same can be seen from the report of the Additional Superintendent of Police, his immediate superior. The allegation/charge against the petitioner is also similar in nature. It is submitted that neither any witness other than approver nor document reveals any contact between the petitioner and the



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alleged extortion. Further, the statement of E.Shanmugaiah being an approver, who was granted a pardon, cannot be taken into account at the stage of framing of charges.

5.26. Reliance cannot be placed on the statement of E.Shanmugaiah, who is not only proven to be an unreliable witness but also due to the fact that such a statement cannot be used at the time of framing of charges bereft of any other supporting or corroborating evidence as per the law laid down by the Hon'ble Supreme Court in *Suresh Budharmal Kalani's case* as stated supra. Hence, pleaded that the trial Court ought to have considered the same and discharged the petitioner herein.

5.27. The learned Senior counsel drew the attention of this Court to Sections 340 and 347 IPC and the same has been extracted for ready reference as under:

340.Wrongful confinement:-

Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits, is said "wrongfully to confine" that person.



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347. Wrongful confinement to extort property, or constrain to illegal act.—

Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security or of constraining the person confined or any person interested in such person to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

5.28. Section 347 of IPC for wrongful confinement to extort property has been charged against the petitioner. There is no *prima facie* case or factual foundation to invoke Section 347 IPC. It is pivotal to note that the petitioner herein was not in charge of the investigation and it was only the second accused/A2, who was part of the Paazee Trading investigation and reimbursement committee and A3/Inspector, who was in-charge. The police obtained information that one Jayaraman/L.W.8 and Meena Shantakumari/L.W.16, who were the agents of Paazee Trading were still functioning when the operations were shut down by the police,



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the petitioner merely directed the concerned officials to conduct a raid in their respective premises. The statement given by Jayaraman specifically refers that only A3 took him to the station for questioning and sent in the same evening as he was not arrested. Hence, there is no stretch of imagination be the reason to invoke Section 340 (wrongful confinement) and Section 347 of IPC as against the petitioner and the charge under Section 347 is erroneous.

5.29. So far as Section 384 IPC is concerned, the petitioner has been charged under the same for extortion. In order to invoke Section 384 IPC, two things are mandated namely, intentionally putting a person in fear of injury to himself or another and dishonestly inducing the person so put in fear to deliver to any person any property or valuable security. Section 384 of the IPC (Indian Penal Code) deals with punishment for extortion. According to Section 384 IPC, whoever commits or does extortion shall be punished or will be held with imprisonment of either description for a term which may extend to three years, or with a fine, or with both, and also as per the facts of the cases as per section 384 IPC. Insofar as the present case on hand is concerned, the perusal of the



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statement relied upon by one Kamalavalli/L.W.2 would show that she never made any allegation as against the petitioner to bring home the ingredients of Section 384 IPC. Since Kamalavalli completely goes back on her previous statement and in her second statement, she states that she went on a pilgrimage voluntarily, without considering the reliability of the statements of Kamalavalli, the charge is framed in a mechanical manner and the charge framed under 384 IPC is also baseless. The learned trial Judge has gone forward to frame charges without the necessary ingredients to establish an offence under Sections 347 and 384 of IPC, which resulted in total non application of mind.

5.30. The petitioner was charged under Section 506(i) of IPC for criminal intimidation. In order to bring this charge, it is necessary to prove that the ingredients of Section 503 IPC were made out. It is essential to show that threatening a person with any injury to his person or property or reputation or to anyone on which the person is interested and the threat must be with intent to cause alarm; to cause such person to do any act which he is not legally bound to do or cause such person to omit to do anything which he is legally entitled to do. The statement of Kamalavalli



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appears to be the basis even though the same is not referred in the order of discharge. As far as the statement of Kamalavalli is concerned, it was already dealt with. The statement of E.Shanmugaiah/approver is concerned, he merely stated that Inspector General instructed him to make an anonymous call to bring home the ingredients of Section 503. Hence, there is no question as the petitioner directly being involved in order to show that Section 506(i) would be attracted against him in this case. A perusal of charge No.4 itself shows that it has jumbled too many facts and no offence has been made out against the petitioner to prove the ingredients under Section 503 to frame a charge under Section 506(i).

5.31. In regard to Section 8 of PC Act which shows that it can only be attracted to private persons and not public servants. Furthermore, there is nothing in the charge sheet or witness statements to show that A4 and A5 were ever in contact with the petitioner herein. There is no evidence to prove that A4 and A5 influenced the petitioner to misuse his power either in the charge sheet or in the accompanying documents. Section 10 of PC Act also ought to vanish since Section 10 is punishment for abetting an



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offence under Section 8. The prosecution has failed to establish a prima facie connection between A1 and the private persons A4 and A5 and therefore, Sections 8 and 10 of PC Act would not attract.

5.32. It is pointed out by the learned Senior Counsel that the prosecution while filing the charge sheet has left open the question of money trail to further investigation under Section 173(8) Cr.P.C. Even as per the prosecution's status report before the trial Court dated 17.10.2023, further investigation is still ongoing and money trail is to be established. It is further submitted that neither proof of demand nor any money trail to show acceptance is established by the prosecution and it is the settled proposition of law that in the absence of demand, a charge under Section 13(1)(d) of PC Act completely fails.

5.33. Thus, while concluding their arguments, both the learned Senior counsel pleaded this Court that the orders impugned by the trial Court has to be set aside.

6. Contentions of the learned Senior counsel and counsel appearing on behalf of the respondent/CBI is as



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follows:

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6.1. The petitioner during his tenure as Inspector General of Police, Coimbatore Division, directed the registration of complaint against one Paazee Trading for defrauding the public by collecting hundreds of crores as deposits in the name of doing Forex trade without license from Reserve Bank of India (RBI). Pursuant to the said direction of the petitioner, on 24.09.2009 CCB, Tirupur suo moto registered Cr.No.26 of 2009 against the directors of the said Company namely, Mohanraj, Kathiravan and Kamalavalli under Sections 3 and 4 of Prize Chits and Money Circulation Scheme (Banning) Act, 1978 & under Section 420 of IPC. Subsequently, Section 5 of Tamil Nadu Protection of Investments of Depositors Act was also included.

6.2. On 08.10.2009, this Court while granting anticipatory bail to all the three accused in Crl.O.P.No.20887 of 2009, directed the Superintendent of Police, Tirupur to take effective measures for ensuring repayments to the depositors by the accused persons.

6.3. On 08.12.2009, A.Kamalavalli, the third accused in



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Cr.No.26 of 2009 went missing and "a woman missing case" was registered by Tirupur North Police Station on 09.12.2009 under Cr.No.3068 of 2009 at the instance of her driver.

6.4. The said Kamalavalli came on 11.12.2009 and on 14.02.2010, she gave a representation to the then Deputy Superintendent of Police, Tirupur alleging that she was kidnapped on 08.12.2009 and an amount of Rs.3 Crores was extorted from her Company by three police officers viz., Rajendran-Deputy Superintendent of Police, Tirupur; Mohanraj-Inspector of Police, CCB Tirupur; & E.Shanmugaiah, formerly Inspector, CCB Tirupur and a private individual namely, Annachi @ John Prabakar. On 15.02.2010, the Sections of woman missing case in Cr.No.3068 of 2009 was altered to Sections 323, 353, 365, 384 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002.

6.5. On 23.02.2010, Cr.No.26 of 2009 was transferred from CCB, Tirupur to Economic Offences Wing (EOW), Coimbatore by the Director General of Police (DGP), Tamil Nadu considering the nature of gravity of the case and the same was re-registered as Cr.No.3 of



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2010 by EOW.

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6.6. On 18.03.2010 by the order of the DGP, Tamil Nadu, the case in Cr.No.3068 of 2010 on the file of Tirupur North PS was transferred to CB CID, Vellore. After investigation, on 15.09.2010 CBCID, Vellore altered the charges in Cr.No.3068 of 2009 to Sections 384, 506(i) & 507 of IPC, Section 4 of TNHW(A) Act, 2002 and Sections 7 and 13(2) r/w.13(1)(d) of PC Act against the aforesaid three police officers and the private individual Annachi. The petitioner was directed to attend an enquiry in connection with the case in Cr.No.3068 of 2009 and the petitioner was interrogated.

6.7. In the meanwhile, the depositors had formed an association and filed petitions under Section 482 Cr.P.C., in Crl.O.P.Nos.2691 and 5356 of 2011, seeking for transfer of the investigation from State Police to CBI, scaring that the State Police is protecting the directors of the Company and delaying the payments to the depositors. This Court by its order dated 19.04.2011 in Crl.O.P.Nos.2691 and 5356 of 2011, observed the nexus between Cr.No.26 of 2009 & Cr.No.3068 of 2009 and directed transfer of both the cases to CBI for investigation. The



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cases were transferred to CBI, EOW, Chennai and they were renumbered as R.C.12/E/2011 and R.C.13/E/2011.

6.8. During investigation, it was found that the petitioner while working as Inspector General of Police, West Zone, Coimbatore during the year 2008-2009 and under whose jurisdiction CCB Tirupur comes, abused his official position, conspired with his subordinate police officers and extorted money to the extent of Rs.2.85 Crores from the directors of Paazee Trading Group of Companies i.e., the accused in Cr.No.26 of 2009. The petitioner was arrayed as A6 through a memo filed before the learned Special Judge for CBI Cases, Coimbatore on 28.02.2012. His bail application in CrI.O.P.No.7071 of 2012 was dismissed by this Court on 20.04.2012. The petitioner was arrested on 02.05.2012 in Crime No.3068 of 2009 and subsequently, released on bail on 28.06.2012.

6.9. He has filed W.P.No.21801 of 2012 to forbear the respondents therein from proceeding further with regard to investigation in R.C.No.13(E)/2011-CBI/EOW/Chennai on the ground that the petitioner is a member of IPS Cadre. He is in the



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category of officer of the level of Joint Secretary and hence, as per Section 6A of the Delhi Special Police Establishment Act, 1946 (DSPE Act), it is mandatory to get prior permission to initiate any investigation against the petitioner and that the investigation launched against the petitioner is in violation of the statutory mandate of Section 6A of the DSPE Act and therefore, is invalid and non-est in the eye of law and prayed that the entire investigation made by the CBI against the petitioner should be set aside insofar as the petitioner is concerned. On 05.12.2012, the learned Single Judge dismissed the Writ Petition holding that, this Court in exercise of its powers under Section 482 Cr.P.C., passed an order transferring investigation from State Police to CBI and when the transfer of investigation was ordered by this Court, CBI can investigate the case even without getting prior permission from the Central Government.

6.10. Being aggrieved by the dismissal of his Writ Petition, the petitioner preferred a Writ Appeal in W.A.No.12 of 2013 against W.P.No.21801 of 2012. The said Writ Appeal was dismissed on 29.04.2013 on the ground that, prior approval contemplated under Section 6A DSPE Act is only directory and not mandatory and



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6.13. CBI had also completed the investigation with respect to the offence in Cr.No.26 of 2009 and had filed a final report before the Special Court for TNPID Cases in Coimbatore, which had taken cognizance of the final report as C.C.No.9 of 2011 against the accused, Mohan Raj, Kathiravan, Kamalavalli, M/s.Paazee Marketing Co., for offences punishable under Sections 120-B r/w. Section 4 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978, Section 420 IPC and Section 5 of TNPID Act, 1997.

6.14. On 05.07.2013, the petitioner/Pramod Kumar filed a special leave to Appeal (C) No.17999 of 2013 against the judgment of the Hon'ble Division Bench of this Court. By order dated 17.03.2015, the Hon'ble Supreme Court remanded the matter, namely, W.P.No.21801 of 2012 back to this Court and directed afresh adjudication by impleading the appellant therein, namely, Pramod Kumar in Crl.O.P.Nos.2691 and 5356 of 2011 and afford him an opportunity of being heard. The order dated 05.12.2012 in W.P.21801 of 2012 was set aside.

6.15. In the interregnum, on 06.05.2014, the Hon'ble Supreme Court struck down Section 6A of the DSPE Act as invalid in



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W.P.(Civil) No.38 of 1997.***

6.16. On 19.10.2015, C.C.No.2 of 2013 was closed by the trial Court vide docket order based on a memo filed by the petitioner and in view of the order passed by the Hon'ble Supreme Court in C.A.No.3062 of 2015 and subject to the order passed by this Court in W.P.No.21801 of 2012, Crl.O.P.Nos.2691 & 5356 of 2011. The said docket order closing the case pending under C.C.No.2 of 2013 was challenged by the CBI on 20.01.2016 in Crl.O.P.No.1661 of 2016.

6.17. On remand, heard the batch of cases and this Court on 02.11.2021 passed a common order in W.P.No.21801 of 2012, Crl.O.P.Nos.2691 & 5356 of 2011, Crl.O.P.No.1661 of 2016 etc., whereby this Court i) confirmed the transfer of investigation to CBI and subsequent investigation; ii) set aside closing of C.C.No.2 of 2013 by trial Court and iii) directed the trial Court to proceed with the case. Against the common order of this Court dated 02.11.2021, the petitioner filed Special Leave Petition, which was dismissed as withdrawn on 19.07.2022.



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6.18. On 11.08.2022, the petitioner filed Crl.O.P.No.19442 of 2022 for quashing the charge sheet filed by CBI pending in C.C.No.2 of 2013, contending that striking down Section 6A of the DSPE Act, is prospective. On 11.09.2023 in another unrelated case, CBI Vs. R.R. Kishore (Crl.A.No.377 of 2007), the Hon'ble Constitution Bench of the Hon'ble Supreme Court held that Section 6A of the DSPE Act, is *void ab initio*. The same was held to be in effect retrospectively i.e., Section 6A not in force from date of insertion viz., 11.09.2003. In the meanwhile, the said Original Petition was dismissed.

6.19. On 23.11.2023, the trial Court dismissed the discharge petition filed by the petitioner vide order passed in Crl.M.P.No.1527 of 2023. Subsequently on 28.11.2023, Crl.O.P.No.19442 of 2022 filed by the petitioner was dismissed by this Court and on the same day, charges were framed against the petitioner and others by the trial Court. Assailing the same, the present Criminal Revision Petitions were filed along with Criminal Miscellaneous Petition seeking interim stay of further proceedings in C.C.No.2 of 2013 on the file of the learned II Additional District Judge for CBI Cases,



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Coimbatore in order to protract the proceedings in C.C.No.2 of 2013.

6.20. Pursuant to the order dated 19.04.2011 of this Court in Crl.O.P.Nos.2691 and 5356 of 2011, investigation of two cases, were transferred to CBI out of which in one case, the trial was completed and the judgment was delivered by the trial Court on 26.08.2022, convicting the accused to undergo rigorous imprisonment for 27 years and also imposing a fine of Rs.171 Crores, while in the present case, charges were framed only on 28.11.2023.

6.21. The petitioner has challenged the final report before the trial Court on the following grounds viz., it does not satisfy the ingredients under IPC and PC Act and also bereft of any ingredients; it does not reveal about money trail of the petitioner; sanction under Section 19(2) of the PC Act suffers from non application of mind as Section 8 of the PC Act, is not applicable to the public servant and also since the investigation has not disclosed any money trail. Since Section 8 and 10 applies only to private persons and therefore, the charges against the petitioner under those



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Section cannot exist. It is also contended that Section 197(1)(b) of Cr.P.C., also suffers from non application of mind for similar reasons. It is also contended that ingredients of the offences under Sections 120-B r/w.347, 384, 506(1), 507 IPC and Sections 8, 10, 13(2) r/w.13(1)(d) of PC Act, 1988 are not made out. Moreover, it has been stated by the petitioner that the statement of approver/L.W.27 is not admissible in view Section 30 of the Indian Evidence Act and the proposition laid down in **1998 (7) SCC 337 [Suresh Budharmal Kalani Vs. State of Maharashtra]**. It is their case that a statement of an accused, who is later discharged and not tried together, cannot be used against the co-accused facing the trial, if they do not face trial together. Therefore, the statement of the approver, who is granted pardon under Section 306 of Cr.P.C., cannot be used against the petitioner as he does not face trial along with the petitioner. Section 13 of the PC Act is not attracted, since there is no demand and lack of money trial and recovery in view of proposition laid down in **2015 (10) SCC 152 [P.Satyannarayana Murthy Vs. District Inspector of Police, State of A.P. and another]**.

6.22. However the trial Court on hearing the arguments on



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both sides, dismissed the discharge petition filed by the petitioner on the following grounds:

i) Discharge is not a proper stage to decide about inconsistencies. It is only after the trial, the inconsistencies and contradictions can be considered and the probative value of the materials can be gone into. The trial Court relied on the decisions of the Hon'ble Supreme Court reported in **2008 (2) SCC 561 [Onkar Nath Mishra & Others V. State (NCT of Delhi) & another]** and **2004 (8) SCC 568**.

ii) During discharge, what is required is to find out whether there is ground for presuming whether prima facie case giving rise to suspicion is made out. The trial Court relied on **State of Rajasthan Vs. Ashok Kumar Kashyab** which lays down that there cannot be a mini-trial during the stage of discharge.

iii) There is a recovery of 25 lakhs from A4 which is lying in the FDR. Hence, the objection that there is no recovery is not at all tenable. Even though the recovery is from A4, it is the case of prosecution that A1 along with other accused are co-conspirators and committed the alleged offences together.

iv) The trial court relied on **AIR 2022 SC 5454 [Ghulam Hasan Beigh V. Mohammed Maqbool Magrey & Others]** which



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states that the Court must be satisfied that the evidence is sufficient to presume that the accused has committed the offence, even a strong suspicion would suffice. For the same, the trial Court also relied on ***State of Bihar V. Ramesh Singh*** and ***CBI Vs. Aryan Singh***.

v)The trial Court distinguished ***1998 (8) SCC 337 [Suresh Budharmal Kalani V. State of Maharashtra]*** relied on by the petitioner on facts. It held in the present case that the co-accused was not treated as an approver nor was given a tender of pardon but was discharged. The accused was granted a pardon under Section 306 Cr.P.C., and not a discharge. Section 164 Cr.P.C., statement of the approver forms part of the charge sheet.

vi)It also distinguished ***2015 (10) SCC 152 [P.Satyanarayana Murthy V. District Inspector of Police, State of A.P. & another]*** lays down that demand and proof of demand is an essential ingredient to attract Section 13 of PC Act. The trial Court held that the Hon'ble Supreme Court rendered such a view after full trial is completed and the petitioner cannot use the said proposition at the stage of discharge.

6.23. The trial Court held that invalidity of sanction for non



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application of mind cannot be questioned at the time of discharge.

The trial Court relied on ***Prakash Singh Badal and Another Vs. State of Punjab, 2012 (1) SCC 532, 2014 (14) SCC 295 and 2020 (17) SCC 664.***

6.24. It held that there were call detail records, travel particulars and statements of 103 witnesses to show the conduct between the accused and there were enough grounds to proceed with framing of charges and dismissed the discharge application filed by the petitioner.

6.25. The trial Court proceeded with framing the charges and has framed 8 charges under Section 120-B r/w.347, 384, 506(i), 507 of IPC and Section 8, 10, 13(2) r/w.13(1)(d) of PC Act, 1988.

6.26. The petitioner/A1 has preferred the present two revision petitions against the order dismissing the discharge application and as against framing of charges.

6.27. The grounds raised were the same as one raised in the discharge petition along with few other grounds in addition to the



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above mentioned here. They are a) sanction bad in law; b) prima facie discrepancies in the charge sheet grounds; c) evidentiary value of approver's statement; d) offences under IPC and PC Act are not made out; e) documents and witness statements bereft of any merits and do not disclose any triable offence against the petitioner; f) judgment relied on by the trial Court are not applicable to the facts of the present case on hand and hence, the order is bad in law; g) charges framed against the petitioner is bad in law since the charge is long and complicated; h) charge sheet does not make out any charge against this petitioner; i) charge sheet suffers from vagueness; j) the defects mentioned in the charges does not fall under Section 464 Cr.P.C., and hence the order framing the charges have to be quashed; k) The very framing of charges is defective since the investigation has not been completed. It is the petitioner's case that the last paragraph discloses that the investigation pertaining to the money trail is ongoing and hence, investigation is not completed even as per the case of the prosecution. Since the investigation is not complete, the prosecution cannot file a final report under Section 173(2) of Cr.P.C.; and l) The petitioner questions the credentials and conduct of the approver and alleges that his statement under Section 164



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Cr.P.C., are not believable and hence, prayed for allowing the revisions.

6.28. The respondent has filed their counter disputing the legal grounds raised by the petitioner and pleaded for dismissing the revisions at the outset.

6.29. The learned counsel for the respondent/CBI submitted that the grounds agitated by the petitioner is beyond the scope of revision. He contended that at the stage of discharge, the Court has to be satisfied that a *prima facie* case is made out against the accused and cannot conduct a roving enquiry or a mini trial at this stage. All the documents and statements of the witnesses filed by the prosecution are genuine. In a discharge petition, the Court has to merely sift through the evidence filed by the prosecution and satisfy itself to proceed with the trial. He further contended that in a revision, the Court cannot re-appreciate the evidence and can only look into fundamental defects like lack of jurisdiction and illegality leading to failure of justice.

6.30. Furthermore, he relied upon the decision of the Hon'ble



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Supreme Court in the case of **Willie (William) Slaney Vs. The State of Madhya Pradesh** reported in **AIR 1956 SC 116** The relevant portion of the judgment reads as under:

"5.Before we proceed to set out our answer and examine the provisions of the Code, we will pause to observe that the Code is a code of procedure and, like all procedural laws, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. The object of the Code is to ensure that an accused person gets a full and fair trial along certain well-established and well-understood lines that accord with our notions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him and he is afforded a full and fair opportunity of defending himself, then, provided there is substantial compliance with the outward forms of the law, mere mistakes in procedure, mere in consequential errors and omissions in the trial are regarded as venal by the Code and the trial is not vitiated unless the accused can show substantial prejudice. That, broadly speaking, is the basic principle on which the Code is based.



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6.31. It has clearly noted that there are three ingredients to attract failure viz., a) trial by a competent Court b) the accused understands the nature of offence, c) if the case is fully and fairly explained to him and he is afforded with a full and fair opportunity of defending himself. In the present case, none of the three ingredients are satisfied. The accused has clearly read and understood the charge against him and has pleaded not guilty. Since the petitioner has signed and very clearly pleaded not guilty, he is estopped from taking a different stand in the revision.

6.32. In yet another decision of the Hon'ble Supreme Court in ***Lachman Dass V. Santokh Singh reported in 1995 (4) SCC 201*** para 7, clarified that the discretionary remedy of revision is not akin to an appeal and distinguished their scope and ambit as below:

7. The legislature has however, made a provision for discretionary remedy of revision which is indicative of the fact that the Legislature has created two jurisdictions different from each other in scope and content in the form of an appeal and revision. That being so the two jurisdictions - one under an appeal and the other under revision cannot be said to be one and the



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same but distinct and different in the ambit and scope. Precisely stated, an appeal is a continuation of a suit or proceedings wherein the entire proceedings are again left open for consideration by the appellate authorities which has the power to review the entire evidence subject, of course, to the prescribed statutory limitations. But in the case of revision whatever powers the revisional authority may have, it has no power to reassess and re-appreciate the evidence unless the statute expressly confers on it that power. That limitation is implicit in the concept of revision.

6.33. In furtherance of his contentions, he relied upon the decision of the Hon'ble Supreme Court in the case of ***State of Tamil Nadu Vs. R.Soundirarasu reported in 2023 (6) SCC 768*** has held that the revisional power can be exercised to correct manifest error of law or procedure which would occasion injustice if not corrected. A revisional Court cannot undertake meticulous examination of materials on record as it is undertaken by the trial can be called for only in the rarest of rare cases to correct patent error of jurisdiction. The relevant portions of the judgment reads as under:



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79. 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 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.

80. This Court in [Asian Resurfacing of Road Agency Pvt. Ltd. v. Central Bureau of Investigation](#), (2018) 16 SCC 299, has held that interference in the order framing charges or refusing to discharge is called for in the rarest of rare case only to correct the patent error of jurisdiction.

6.34. On the very same aspect, the learned counsel for the respondent relies on the following judgments viz., a) ***S.Kannan & Others Vs. The State [Crl.O.P.Nos.3761 to 3764, 3901 of***



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2019] and b) ***Dalbir Singh Vs. State of U.P. [2004 (5) SCC 334]***.

6.35. Continuing his arguments, he contended that the petitioner has filed several rounds of writs in the Hon'ble Supreme Court, as well as this Court and it is not now permissible to allege that charge is too complicated to understand by taking into account his professional capacity and antecedents. Further, it is pertinent to state that the petitioner did not object to the charges being complicated even during questioning and also at the time of framing of charges. It is also evident that the stand taken by the petitioner is purely an afterthought and the contention of the petitioner, is unsustainable.

6.36. Insofar the scope of trial Court in discharge and framing of charges is concerned, the trial Court had come to a presumptive opinion that it is a fit case for trial. In order to appreciate the order of the trial Court, it is necessary to peruse through a few witness statements. The first statement of L.W.1 clearly shows the relationship between A4 and A1 and the illegal demand made by A1 and his co-conspirators against L.W.1 for Rs.10 Crores. The acts of



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extortion by all the co-conspirators against L.W.1 is also clearly seen from the typed set of the petitioner itself produced before this Court and L.W.1 has stated that he has paid an amount of Rs.50 lakhs in cash to A4 as instructed by A1 and has promised to pay the remaining amount and establishes the nexus between all the accused. 161 Cr.P.C., statement of L.W.20/Balaganga Devi, IPS is crystal clear on the fact that A1 wanted the approver posted to Tirupur CCB inspite of her vehement opposition. It also obvious to note from the typed set of the petitioner that the committee members in-charge of transferring officers were not consulted and A1 without assigning any reasons transferred approver to CCB Tirupur for carrying out his illegal activities and act of extortion. The statement of the approver Shanmugaiah throws more light on the conspiracy that had taken place among all the accused. His statement is clear about the involvement of A1 and his special interest in making L.W.1 and L.W.2 to settle certain depositors. The approver has clearly stated that A3 mentioned that A1 and A4 had arranged for 60:40 sharing with one of the depositors namely, Sadhasivam from the recovered amount. This statement also discloses that A1 scolded the approver for not obtaining cash from L.W.1 in the Sadhasivam's matter in spite of his instructions. It is



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also obvious that there was a demand for Rs.50 Crores from L.W.1.

The approver discloses that he was handed over Rs.10 lakhs as a partial payment of the bribe demanded by A1 and his co-conspirators. These three statements alone very clearly disclose the existence of a criminal conspiracy, demand for bribe, receiving the bribe, extortion and criminal intimidation. The statements taken at their face value clearly discloses the offences charged and a very strong suspicion making it a fit case for trial. Apart from this, there are about 103 statements and 354 documents filed by the prosecution.

6.37. The Hon'ble Supreme Court in the case of Captain Manjit Singh Viridi (Retired) V. Hussain Mohammed Shattaf reported in 2023 (7) SCC 633 held that the Court cannot weigh and balance evidence and probabilities during the stage of framing of charges and it is the function of the Court after the trial starts. Similarly, the respondent relies on the decisions of the Hon'ble Supreme Court in Ghulam Hassan Beigh V. Mohammed Maqbool Magrey [2022 (12) SCC 657]; State of Rajasthan Vs. Ashok Kumar Kashyap [2021 (11) SCC 191] and CBI Vs. Aryan Singh etc [2023 SCC Online Sc 379]. Further cited the decision of the Hon'ble Supreme Court in Amit



Kapoor Vs. Ramesh Chander and another [2012 (9) SCC 460]. The relevant paragraphs of the judgment reads as under:

"17.Framing of a charge is an exercise of jurisdiction by the trial court in terms of [Section 228](#) of the Code, unless the accused is discharged under [Section 227](#) of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.

....

19.At the initial stage of framing of a charge, the court is concerned not with proof but



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with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is that the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage.

6.38. Section 216 of Cr.P.C., empowers the Court to alter or add any charge at any time before the judgment is pronounced. On this aspect, the respondent relies on ***P.Karthikalakshmi Vs. Sri Ganesh and another [2017 (3) SCC 347]***.

6.39. He also dealt with the scope of revisional Court in dealing with sanction and the right forum to question irregularities pertaining to sanctioning stating that the ground pertaining to sanction being defective is to be dismissed in limine on two grounds viz., a) it has to be raised at the stage of trial; and b) Section 8 of PC Act is applicable to public servants also. The learned counsel for the respondent also relied on the decision of ***Parkash Singh Badal Vs. State of Punjab*** reported in ***2007 (1) SCC 1*** which states that the opening word of the Section is “whoever” is wide enough to include public servants also. The relevant paragraphs of the order is



extracted for ready reference:

52. So far as the appellant Sukhbir Singh Badal is concerned, the stand is that he being a member of the Parliament is a public servant and cannot be charged with offences under [Sections 8](#) and [9](#) of the Act. His contention is that [Sections 8, 9, 12, 14](#) and [24](#) of the Act are applicable to private persons and not to public servants. The opening word of [Sections 8](#) and [9](#) is "whoever". The expression is very wide and would also cover public servants accepting gratification as a motive or reward for inducing any other public servant by corrupt or illegal means. Restricting the operation of the expression by curtailing the ambit of [Sections 8](#) and [9](#) and confining to private persons would not reflect the actual legislative intention.

53. If [Section 8](#) is analytically dissected then it would read as below: (i) Whoever (ii) Accepts or obtains gratification from any person (iii) For inducing any public servant (by corrupt or illegal means) (iv) To render or attempt to render any services or disservice (etc.) (v) With any public servant (etc.)

...



56. In view of the above, it would not be permissible to contend that a public servant would be covered by [Section 13\(1\)\(d\)](#) (similar to [section 5\(1\)\(d\)](#) of Old Act) and therefore the public servant would not be covered by [Sections 8 and 9](#) of the Act. The offences under [Section 13\(1\)\(d\)](#) and the offences under [Sections 8 and 9](#) of Act are different and separate. Assuming, [Section 13\(1\)\(d\)\(i\)](#) covers public servants who obtain for 'himself or for any other person' any valuable thing or pecuniary advantage by corrupt or illegal means, that would not mean that he would not fall within the scope of [Sections 8 and 9](#). The ingredients are different. If a public servant accepts gratification for inducing any public servant to do or to forbear to do any official act, etc. then he would fall in the net of [Sections 8 and 9](#). In [Section 13\(1\)\(d\)](#) it is not necessary to prove that any valuable thing or pecuniary advantage has been obtained for inducing any public servant.

Hence on this reason alone, the ground cannot be entertained as it goes against the very spirit of the section. Secondly, the right forum to agitate the validity of sanction is during the course of trial and the same has been affirmed in **2012 (1) SCC 532 [Dinesh Kumar Vs. Airport Authority of India]**. The ground is premature and



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cannot be entertained at this stage. The same view has been affirmed in ***CBI Vs. Ashok Kumar Aggarwal [2014 (14) SCC 295]***.

6.40. The next aspect to be considered is scope of Section 306 Cr.P.C., and the admissibility of statements of the approver, who has been granted pardon. The very purpose of Section 306 Cr.P.C., is to prevent injustice from happening due to lack of evidence and a pardon under Section 306 Cr.P.C., is granted only for the purpose of recording evidence and bringing out the truth. Section 30 of the Indian Evidence Act has no application as alleged by the petitioner, also the allegation that the statement of an accused, who is discharged from the case cannot be applied to the present case. The pardon granted under Section 306 Cr.P.C., cannot be equated to that of a discharge. Therefore, the application of Section 30 of the Indian Evidence Act will not arise in this instant case. Hence, the grounds raised by the petitioner that the statement of the approver is inadmissible is totally mindless and illegal. In order to support this contention of the respondent, the Hon'ble Supreme Court in ***2012 (1) SCC 500 [Bangaru Laxman V. State (Through CBI) and another]*** clearly states that the



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statement of a approver granted pardon should be used and the main purpose of granting pardon is to prevent failure of justice by allowing the offender to escape from lack of evidence. The respondent also relies on 2004 (5) SCC 334 as stated supra on the similar aspect.

6.41. It is pertinent to note that as per Section 464 Cr.P.C., only defects that lead to failure of justice can be used to invalidate a judgment. All other defects cannot be questioned in appeal or revision. In the instant case, all the alleged defect that the petitioner points out are the ones that fall within the purview of Section 464 Cr.P.C., whether such defect has lead to failure of justice can be answered only after completion of trial. There are three ingredients to attract failure of justice viz., i)trial by a competent court ii)the accused understands the nature of offence iii)if the case is fully and fairly explained to him and he is afforded with a full and fair opportunity of defending himself. In the present case, none of three ingredients are satisfied. It is important to note that any omission to frame a charge or a defective charge can be cured by virtue of Section 216 of Cr.P.C. This section enables the Court to add or alter charge at any time before the judgment is



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pronounced. The entire argument of the petitioner is that the first charge runs to 14 pages without satisfying ingredients of certain offences. Therefore as mentioned earlier in the light of Section 216 of Cr.P.C., the charges can be altered depending on the evidence in the trial if necessary and raising the same at this stage, is premature.

6.42. It was also argued by the petitioner that the order framing the charges are defective since the investigation is not complete as the evidence for money trail leading to A1 is yet to be filed. This argument is wholly incorrect since it is the prerogative of the Investigating Officer to fit. In fact, in the case of ***State of Haryana Vs. Mehal Singh and another [ILR 1978 (2) P & H 44]***, wherein it was held that even if the Investigating Officer has not received the evidence of expert, statement of witnesses and other documents, the job of an Investigating Officer is over as far as investigation is concerned. If the Investigating Officer comes across any other evidence and he seeks to adduce the same. There has to be a petition under Section 173(8) Cr.P.C., filed and it is within the discretion of the Court to allow such evidence to be produced or not. When such evidence is allowed to be adduced a



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copy of the same would be provided to the accused and a fair chance to defend the case would also be given.

6.43. Summing their contentions, it was submitted by the learned counsel for the respondent/CBI that the argument of the petitioner revolves around the petitioner having a good case in the trial. All the material relied upon by the petitioner can be gone into only during trial. In that case, the petitioner has to face the trial and make out his defence. As pointed out above, a revision cannot be entertained on the aspects highlighted by the petitioner since none of the grounds lead to failure of justice and the petitioner has miserably failed to make out a fit case for the purposes of revision. The background of the petitioner, his educational qualification, his professional capacity and his antecedents have to be taken note of when assessing the capacity of the petitioner to understand the charge. The petitioner is an IPS officer in the zone for consideration for the post of DGP, being the highest post in the department for the State. The petitioner has also pleaded not guilty and has not objected to the charges framed during the proceedings before the trial Court. Moreover, the conduct of the petitioner is to be noted and it is clear that the petitioner is abusing the process of law and



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trying to delay the trial as much as possible which cannot be permitted. On perusing and examining the witnesses statements, the trial Court came to the right conclusion that there is a fit case to proceed against the accused as the statement taken at their face value are very clear about the fact that there was conspiracy. There is also evidence that A4 has received bribe on behalf of the first accused/A1 and there was recovery to the tune of Rs.25 lakhs. Hence, the learned Senior counsels for the respondent prayed this Court to dismiss the present revisions filed by the petitioner.

7. In response to the counter filed, the learned Senior Counsels contended that it is the duty cast upon the respondent to prove the averments made in the counter. At the same time, the learned Senior counsel admitted the contents of the counter in regard to paragraphs 2 to 4 as much as they are the matters of record but however, denied the remaining averments. Further, the learned Senior counsel highlighted that Kamalavalli had altered/changed her statement on three occasions, wherein it was brought out that she had not been kidnapped but had gone on her own accord in order to avoid repercussions with respect to the then ongoing investigation in Crime No.26 of 2009 and also stated that



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she had continuously changed her statements which raised the question as to her credibility.

8. Furthermore, he submitted that the Hon'ble Supreme Court while disposing of SLP (C) No.17999 of 2013 was pleased to set aside the order passed by this Court in W.P.No.21801 of 2012 and remanded the matter back to this Court to be heard afresh. It is stated that the order passed by this Court in Crl.O.P.Nos.2691 and 5356 of 2009 dated 19.04.2011 would not come in the way while deciding these petitions since the petitioner herein was not made a party and heard while deciding the said Criminal Original Petitions. Subsequently, this Court combining all the pending matters before it, passed its order on 02.11.2021, the petitioner had challenged the same before the Hon'ble Supreme Court in SLP Cri. Nos.8901 to 8904 of 2021. It is submitted that the Hon'ble Supreme Court vide its order dated 19.07.2022 was pleased to permit the petitioner herein to approach the appropriate Courts with remedies available under law and was also pleased to record that the observations made in the common order dated 02.11.2021 ought not to come in the way when Courts are deciding proceedings as against the petitioner.



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9. The learned Senior counsel denied the fact that the present revisions are filed merely to delay further proceedings before the trial Court. It is submitted that the Hon'ble Supreme Court has time and again made certain observations to the effect that Section 19(3)(b) and (c) of PC Act do not act as an impediment to the High Court exercising its power under Section 482 Cr.P.C. The petitioner is merely exercising his right under law and the same cannot be construed as a dilatory tactic. Moreover, the completion of trial in the Paazee Trading case has nothing to do with the petitioner herein and it is worthwhile to note that not a single mention concerning the petitioner was brought about in the order of conviction. A comparison between the Paazee Trading case and the instant case is misplaced.

10. It was submitted that the instant criminal revision challenging the dismissal order of petitioner's discharge petition is maintainable and is to be considered in the interest of justice. The impugned order dismissing the discharge petition was passed on 23.11.2023 and the charges immediately framed on 28.11.2023 without affording appropriate time to the petitioner for challenging



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the impugned order before this Court. Since the impugned order is riddled with inaccuracies and errors, this Court may be pleased to consider the same and pass appropriate orders.

11. While continuing his submissions, the learned Senior counsel brought to the notice of this Court that the respondent has filed a status report before the trial Court to the effect that investigation is still ongoing in the matter. It is also submitted that various documents including search mahazar which were prepared/recovered at the time of arresting and conducting searches on the petitioner in 2012 have not been filed before the trial Court along with the charge sheet and hence, the respondent is today estopped from placing reliance on the same in any further investigation conducted since those documents have been available prior to filing of the charge sheet in 2013.

12. The contention of the learned Senior counsel is that framing of charges has been done in a mechanical way without independent application of mind and consideration of the investigation made in the charge sheet. The Hon'ble Supreme Court goes one step further in stating that on account of invalidity



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of sanction, the Courts ought to discharge the accused and not be made to go through the rigour of trial. The learned trial Court failed to appreciate the law laid down in *Nanjappa's case* as stated supra and has erroneously held that the factual matrix differs from the present case on hand.

13. Further, it is submitted that the petitioner is not seeking to evaluate the evidence available in the present case but merely trying to show that even on *prima facie* consideration of the said evidence, there is nothing which even rises a suspicion that the petitioner has committed the alleged crimes that he has been charged with and the same is permissible under law.

14. He drew the attention of this Court to the intention, scope and purpose of Sections 227 and 239 of Cr.P.C., apart from the inherent powers conferred under Section 482 of Cr.P.C., are to ensure that no person is made to undergo the ordeal of trial just for the sake of it when nothing in investigation or evidence point to the commission of said offence. By merely stating that everything is a matter for trial is a method of avoiding glaring holes in the prosecution, investigation and the nature of evidence that



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corroborates the investigation. These glaring holes, *prima facie* does not disclose the involvement of the petitioner in the alleged offences.

15. The decision of the Hon'ble Supreme Court in the case of *Suresh Budharmal Kalani* stated supra is factually different and inapplicable to the present case. The correlation between a discharged accused and an accused, who has been granted a pardon, has been entirely avoided from any redressal by the respondent and the same ought to be considered by this Court in discharging the petitioner.

16. It is denied that there exists *prima facie* material to proceed with the matter or that there is enough evidence to convict the petitioner herein. A *prima facie* case has not been made out against the petitioner and the present proceedings are only an attempt to drag the petitioner through gravel and mud. The respondent has not appreciated the ratio as laid down in *P.Satyanarayan Murthy's case*. Even though it was a trap case, for an offence under Section 13(1)(d) of PC Act especially, where there are allegations of illegal gains, there ought to be a demand and



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acceptance that will have to be proved beyond reasonable doubt by the respondent. Having no such material, it is only just that the petitioner is discharged from the instant case and the order framing charges against the petitioner be set aside. It is submitted that even as per the respondent's own statement, the evidence of L.Ws.1, 2, 16, 27, 30, 34 and 35, along with documents D-177 to 183, 198 to 202, 206 to 208, 222 to 235, 238 to 242, 244 to 284 and 302 to 304 are merely circumstantial and do not point out the petitioner even being remotely involved in the offences, he has been charged with. It is denied that a strong case has been made out against the petitioner.

17. Reliance on the judgment of the Hon'ble Supreme Court in *State of Rajasthan Vs. Ashok Kumar Kashyap* is entirely misplaced. The Hon'ble Supreme Court therein held that a trial Court ought to proceed further in trial only on satisfaction of suspicious circumstances against the accused for charges to be framed. The petitioner seeks to take this Court through the investigation and evidence only to show that even prima facie, no case is made out as against the petitioner herein since there is no involvement shown. The respondent's reliance on *State of Bihar Vs. Ramesh Singh* does



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not factually or legally apply to the present case at hand since i)it talks about the general law on discharge which is well established and not disputed by the petitioner and ii)it concerns the offence of Section 302 and applicability of circumstance evidence to prove cases under Section 302 and allied offences. Reliance of the respondent on *Ghulam Hassan Beigh Vs. Mohammad Maqbool Magrey* is misplaced since the same concerned, appreciation of medico legal evidence which is entirely different from the case. The Court ought not to consider these precedents as the same differ on facts and the manner of appreciation of the law. Having referred to paras 7.5 and 7.10 of the impugned order dated 23.11.2023, the respondent has failed to take note of the specific reference by the learned trial Judge in para 7.10 of the impugned order to the finding of suspicion as against the accused by this Court in its common order dated 02.11.2021. The learned trial Judge makes note of this finding and decides to proceed with a bias mind owing to the extracted finding from this Court's common order dated 02.11.2021, when the Hon'ble Supreme Court in SLP.(Cri) Nos.8901 to 8904 of 2021 has very specifically observed that the common order dated 02.11.2021 passed by this Court ought to not weigh on the minds of any Court that are ceased of proceedings concerning



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the petitioner. Therefore, on this ground alone, the impugned order ought to be set aside.

18. Even though this Court vide its order dated 04.09.2023 in Crl.M.P.No.13402 of 2023 in Crl.O.P.No.24216 of 2018, directed the trial Court to proceed with trial, this Court was not informed that the petitioner was enjoying an order of this Court dispensing with his personal appearance before the trial Court vide this Court's interim order in Crl.O.P.No.19442 of 2022. Moreover, the petitioner herein was not made a party to the said proceedings.

19. Insofar as issuance of NBW against the petitioner is concerned, the same was misplaced since the petitioner at the contemporaneous point in time was enjoying an order dispensing with his personal appearance before the trial Court. When the petitioner warrant was recalled by the trial Court, a discharge petition was also preferred. Further, the learned trial Judge was monotonous in framing charges and has merely reiterated the investigation as laid out in the charge sheet. Hence, the same ought not to be considered by this Court.



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20. The petitioner's quash petition in Crl.O.P.No.19442 of 2022 was dismissed since the scope of a discharge under Section 239 of Cr.P.C., is entirely different. It is also submitted that the power of this Court as held by the Hon'ble Supreme Court in ***Asian Resurfacing [2018 (16) SCC 299]*** and Section 19(3)(b) of PC Act is not a bar on issuing orders of stay. The trial Court failed to consider the fact that not even a prima facie case is made out as against the petitioner herein and has mechanically interpreted the issues involved as matters for trial.

21. The decision of the Hon'ble Supreme Court as relied upon by the respondent in the case of ***Amit Kapoor Vs. Ramesh Chander*** can also be canvassed in favour of the petitioner since it is over perverse findings that the petitioner has preferred the instant revision petitions. The decisions relied upon by the respondent are on the general principles on the law of discharge. It is submitted that the present case will have to be adjudicated on the basis of its own merit and it would not fall under the ambit of any of the judgments relied upon. It is further submitted that the instant case is not the one where this Court is required to deep into evidence but merely on a cursory view, it would be clear that there



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is nothing that connects the petitioner to the alleged charged arrayed against him. It is also reiterated as above that this Court under Section 482 of Cr.P.C., has extensive powers to look into the orders in discharge even though charges are framed.

22. Considered the rival submissions made on either side and perused the materials available on record.

23. Discussions:

23.1. The charges framed against the petitioner herein are criminal conspiracy, criminal intimidation, criminal misconduct, wrongful confinement, abuse of power, illegal gratification for the commission of the offences punishable under Sections 120-B r/w.347, 384, 506(i), 507 of IPC r/w. Sections 8, 10 and 13(2) r/w.13(1)(d) of the PC Act.

23.2. The learned Senior counsels submitted that the entire case of the respondent rests only on hearsay and indirect evidence and no proof has been produced to substantiate the allegations levelled against the petitioner. It is contended that the charge



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sheet, witnesses statements and documents filed along with the charge sheet failed to make out a prima facie case as against the petitioner. Furthermore, the learned counsel contended that the charges framed are defective in nature; no material produced to prove the charge and also no sanction from proper authority. He also submitted that the material defect in the charge and omission to frame a proper charge regarding demand, alleged grave prejudice has been caused to the petitioner.

23.3. Per contra, the respondent/CBI has stated that the petitioner, being an IPS officer has abused his capacity and indulged in criminal conspiracy, instructed his sub-ordinates to extort money from the directors/accused of Paazee Trading by criminally intimidating them and involved in illegal gratification and pressed their arguments to the effect that he is the key person for the entire act of criminality. In this regard, they have placed several documents and highlighted the evidences of the witnesses and quoted various citations as stated above. It was further submitted by the learned counsel for the respondent/CBI that the trial Court after proper appreciation of the oral and documentary evidences of the case, have framed the charges as against the petitioner in



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accordance with law, which warrants no interference by this Court and hence, prayed to dismiss the revisions filed by the petitioner.

23.4. Since the charge sheet has been filed pending investigation and the alleged money trial is yet to be established even after 10 years of filing of charge sheet, the sanction accorded by the Central Government under Section 19(2) of the PC is arbitrary. The illegal gain by the petitioner has not been proved by the investigating agency which is indispensable part of the offence under the PC Act. It is also to be noted that for the offence under Section 13(1)(d) of PC Act, the prosecution has failed to substantiate their stand to prove that the petitioner had misused his power as a public servant and received illegal gratification. In view of these facts, it is obvious to state that the sanctions accorded by both the Central, as well as the State Authority, is without application of mind, which is illegal and invalid in the eye of law.

23.5. In the present case on hand, even as per the charge sheet, as well as the status report dated 17.10.2023, the sanctioning authority failed to note the fact that the investigating authority has not proved the act of illegal gain by the petitioner.



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Section 8 of PC Act has been invoked against the petitioner which is unsustainable as he is a public servant which has not been taken into account by the sanctioning authority prior to grant sanction for prosecuting him. Without any material on record to show the fact that the petitioner has abetted an offence under Section 8 of PC Act, Section 10 has been invoked by the respondent as against the petitioner, which is per se illegal. Since the investigating authority has failed to any receipt of illegal gratification, as well as money trail pertaining to the petitioner, the sanction granted by the State Government to prosecute the petitioner under Section 197(1)(b) of Cr.P.C. is arbitrary and illegal. Moreover, as threat and extortion with illegal gain has not been established as per Section 383 IPC, Section 384 IPC does not attracts. Summing the above, proves the sanction granted against the petitioner is bad in law.

23.6. At this juncture, it is relevant to refer to the decision of the Hon'ble Supreme Court in the case of **Mansukhlal Vithaldas Chauhan Vs. State of Gujarat** reported in **1997 (7) SCC 622** for grant of sanction without application of mind, wherein it has held that independent application of mind to the facts of the case as also material and evidence collected during investigation by the



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authority competent to grant sanction is mandatory. In yet another case in ***Anthony Xavier Vs. State in Crl.A.No.479, 487 & 511 of 2013***, this Court has held that in the absence of material evidence, it has to be presumed that the order of sanction lacks application of mind.

23.7. It was brought to the notice of this Court that there are several prima facie discrepancies in the charge sheet filed by the respondent. There is no whisper about the direct involvement of the petitioner in the aforesaid offences except the statements of the list witness viz., 1,2,3,8,16,27,34 & 35 and also to be noted that the evidences produced before the trial Court are only hearsay evidences. It is baseless and illegal to prosecute the petitioner for extortion as the approver and the co-accused have demanded money using his name. No role has been played by the petitioner in the appointment of approver as Inspector, CCB, Tiruppur as his appointment was done by the DIG of the Committee. As per Rule 3 of the All India Service Rules, all oral orders are to be reduced into writing and approved by the concerned superior officer, hence L.W.20's statement in regard to approver's appointment was instructed by the petitioner is groundless and without any basis.



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L.W.83's complaint has been properly marked to the concerned jurisdictional officer/A2 by the petitioner which does not reflect any ulterior motive of extortion by the petitioner as alleged in the charge sheet and not a single statement or document filed to corroborate the same by the respondent. It is also crystal clear that there is no nexus between the money and the petitioner as stated by L.W.14 in his 161 statement which reveals that the co-accused misused his name to extort money from various persons. Furthermore, the statement of L.W.3 is wholly unreliable and cannot be taken into consideration as she improvises her statement frequently. As there are no oral or documentary evidence to prove the demand of Rs.10 Crores by the petitioner, he cannot be liable for any conspiracy, extortion or offences under PC Act. D-293 letter of the approver dated 13.08.2009, as well as the report dated 17.08.2009 by the ASP, Nilgiris put on light the constant practice of approver indulging in corrupt activities using the superior officers' names and the petitioner had no role in his transfer which was done by the transfer committee. It is also came to light that the duties and responsibilities of A3 are decided by the committee and not by the petitioner. In the charge sheet itself, it was stated that even after the registration of criminal cases against the Paaze company



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and directors, the agents of Paazee involved in illegal criminal activities. For curtailing the same, raids were conducted which is the duty cast upon the petitioner. It is stated in the charge sheet that L.W.34 and L.W.35 have taken the amount from Coimbatore and handed over the same to A4 in Chennai, which did not disclose the involvement of the petitioner in the above transactions and the respondent is still investigating to establish the money trail, that too even after lapse of 10 years.

23.8. It is to be noted that there is no statement from any of the witnesses that they have received the orders from the petitioner directly to perform the alleged offences charged by the prosecution. Moreover, the respondent relies only on the evidence of the approver viz., document D-167 which is the confession statement recorded under Section 164 Cr.P.C. It is the well settled proposition of the Hon'ble Supreme Court in *Suresh Budharmal Kalani's case* as stated supra that approver's evidence cannot be used against the accused for framing of charges. The trial Court has misinterpreted the ratio laid in the aforesaid case and erred in making distinction between the statement of a person discharged and a statement of an approver. It is to be seen that the evidence of an approver, who



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has been granted a pardon under Section 306 Cr.P.C. As per Section 308 Cr.P.C., an approver to be degraded and be tried as an accused in the same case.

23.9. Insofar as Section 347 IPC is concerned, no wrongful confinement was ordered by the petitioner in respect of L.W.8, as it was only for the purpose of investigation and hence, Section 347 does not attract. In respect of Section 384 IPC, there was neither any threat nor extortion of property by the petitioner and the same was not established through money trial by the prosecution as per the status report dated 17.10.2023 which implies that investigation with respect to money trial is still ongoing as there is no conclusive evidence and therefore, the allegation under Sections 383 and 384 of IPC is groundless.

23.10. No record has been produced to prove the involvement of the petitioner neither directly nor indirectly criminally or anonymously intimidating any of the persons mentioned in the charge sheet, which reveals that the offence levelled against the petitioner under Sections 506(i) and 507 IPC does not attract.



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23.11. In regard to the offence under Section 120-B, there is no evidence to show connecting money trail or benefit to the petitioner by the other accused including the approver which shows that no case has been made out against the petitioner for the said offence.

23.12. A bare reading of the Section 8 of PC Act reveals that the said section can be attracted for private persons and not against a public servant and the trial Court has also not dealt with this section in the impugned judgment. In the case on hand, A4 and A5 private persons have not made any statement against the petitioner about abetment and hence, the same cannot be charged against the petitioner and no finding of the trial Court in the impugned order in this regard.

23.13. There is neither demand nor acceptance of bribe by the petitioner from the complainant and also, there is no recovery and money trail linking the petitioner to any illegal gratification, which is fatal to the case of the respondent and as regards misuse of power for illegal gratification, except hearsay witness there is no proof for abuse of power in his official capacity and and hence, the



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offences under Section 13(2) r/w.13(1)(d) of the PC Act cannot be maintainable.

23.14. Furthermore, there are also other discrepancies in the order of the trial Court in its findings, wherein it has relied on the document Nos.177 to 183, 198 to 202, 206 to 208, 222 to 235, 244 to 284 and 302 to 304 which are frivolous as it does not prove the involvement of the petitioner in the alleged offences. In spite of the setting aside the order of this Court in Crl.O.P.Nos.2691 & 5356 of 2011 by the Hon'ble Supreme Court vide its order dated 17.03.2014 in C.A.No.3062 of 2015, the trial Court has relied upon the same in the impugned order. Moreover, the trial Court without proof of commission of offence, has framed the charges against the petitioner and has also misunderstood that the petitioner was a part of the committee that was overseeing the disbursement of funds to the defrauded depositors but he was not at all a member of such committee which was evidenced from its impugned order dated 28.11.2023.

24. Concentrating on the submissions of the learned Senior counsels on the following decisions defending their stand in respect



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of the charges framed by the respondent:

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24.1. Defective charge:

In the decision of the Hon'ble Supreme Court in ***Soundarajan V. State rep. by the Inspector of Police Vigilance Anti-Corruption, Dindigul*** reported in **2023 SCC Online SC 424**, wherein it has held that under Section 464 of Cr.P.C., omission to frame a charge or any error in charge is never fatal unless, in the opinion of the Court, a failure of justice has in fact been occasioned thereby. The relevant portion of the order reads as follows:

"16.We find that, in this case, the charge has been framed very casually. The trial Courts ought to be very meticulous when it comes to the framing of charges. In a given case, any such error or omission may lead to acquittal and/or a long delay in trial due to an order of remand which can be passed under sub-section 2 of Section 464 of Cr.P.C. Apart from the duty of the trial Court, even the public prosecutor has a duty to be vigilant and if a proper charge is not framed, it is his duty to apply to the Court to frame an appropriate charge."



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In regard to similar issue, the decisions of *Latu Mahto* and another V. State; *Willie (William) Slaney* V. The State; and *Gaya Prasad v. State of U.P.* has been highlighted by the petitioner's counsel.

24.2. No material to charge:

In relation to this, it has already been dealt above in this order in the case *Suresh Budharmal Kalani's case* as stated supra, wherein it has held that the confession statements cannot called in aid to frame charges against the accused in absence of any other evidence to do so.

24.3. No sanction from proper authority:

Likewise, in ***Nanjappa Vs. State of Karnataka [2015 (14) SCC 186]*** has already dealt above, wherein it has held that the competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for prosecution in accordance with law. In yet another judgment in ***P.Satyanarayana Murthy's case as stated supra***, it has held



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that in the absence of any proof of demand for illegal gratification, the use of corrupt or illegal means or abuse of position as a public servant to obtain any valuable thing or pecuniary advantage cannot be held to be proved. The proof of demand, thus, has been held to be an indispensable essentiality and of permeating mandate for an offence under [Sections 7](#) and [13](#) of the Act and it was held that in absence of proof of demand, such legal presumption under [Section 20](#) of the Act would also not arise.

24.4. Charges:

a) Charge No.1 framed against the petitioner which runs to 14 pages for the offences under Sections 120-B r/w.347, 384, 506(i), 507 of IPC r/w. Sections 8, 10 and 13(20 r/w.13(1)(d) of PC Act is vague and invalid as no tenable evidence has been produced by the prosecution to prove the same and make out a prima facie case as against the petitioner.

b) Charge No.4 for the alleged offence under Section 506(i) IPC also not attracted since the anonymous commission threatening the approver by the petitioner has not been corroborated through



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any material evidence.

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c) Insofar as Charge No.7 for the offence under Section 10 of PC Act is concerned, due to the credibility of the approver's statement who used to misuse his superior officials' names in order to indulge in corrupt activities and also that, no proof has been placed for the same by the respondent, the same cannot be attracted as against the petitioner.

d) In regard to Charge No.8 framed under Section 13(2) r/w.13(1)(d) of PC Act, since there is no demand or acceptance of bribe and abuse of official capacity has been established against the petitioner, the same cannot stand against him.

25. In the recent decision of the High Court of Rajasthan, in the case of ***Jitendra Singh vs. State Of Rajasthan S.B. [Criminal Revision Petition No. 265/2023]*** reported in **2023 LiveLaw (Raj) 37**, it has held that "Forcing a person to go through the rigor of trial without there being apt *prima facie* material or evidence would surely be direct infringement of his fundamental rights. Of course, if a person has to do nothing in connection with



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the alleged offence but is still forced to remain on bail and to attend the court proceedings, then restraining his liberties would tantamount to breach of his fundamental rights...Framing of charge is a determinative action," the bench observed."

26. In another decision, in the **State of Kerala Vs. P. Sugathan and Ors.** reported in (2000) 8 SCC 203, it was held by Hon'ble the Supreme Court that there is not enough evidence to link the accused to the offence of **criminal conspiracy**. The relevant paragraphs of the afore-mentioned judgment are as follows:

*"12. We are aware of the fact that direct independent evidence of criminal conspiracy is generally not available and its existence is a matter of inference. The inferences are normally deduced from acts of parties in pursuance of purpose in common between the conspirators. This Court in **V.C. Shukla v. State(Delhi Administration)** 1980 SCC (2) 665 held that to prove criminal conspiracy, there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds resulting in ultimate decision*



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taken by the conspirators regarding the commission of an offence and where the factum of conspiracy is sought to be inferred from circumstances, the prosecution has to show that the circumstances giving rise to a conclusive or irresistible inference of an agreement between the two or more persons to commit an offence. As in all other criminal offences, the prosecution has to discharge its onus of proving the case against the accused beyond reasonable doubt. The circumstances in a case, when taken together on their face value, should indicate the meeting of the minds between the conspirators for the intended object of committing an illegal act or an act which is not illegal, by illegal means. A few bits here and a few bits there on which the prosecution relies cannot be held to be adequate for connecting the accused with the commission of the crime of criminal conspiracy. It has to be shown that all means adopted and illegal acts done were in furtherance of the object of conspiracy hatched. The circumstances relied for the purposes of drawing an inference should be prior in time than the actual commission of the offence in furtherance of the alleged conspiracy.”



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27. Also in the case of ***State of M.P. Vs. Mohan Lal Soni:***

2000 Cri. LJ 3504, this Court while referring to several previous decisions, held that the crystallised judicial view is that at the stage of framing charge, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused.

28. In the case of ***Neeraj Dutta V. State (Govt. of N.C.T. of Delhi)*** reported in ***2023 Live Law (SC) 211***, the Hon'ble Apex Court has held that in the present case, there are no circumstances brought on record which will prove the demand for gratification. Therefore, the ingredients of the offence under Section 7 of the PC Act were not established and consequently, the offence under Section 13(1)(d) will not be attracted. Similarly, in the present case on hand, there is neither direct evidence nor proof for demand and acceptance has been proved by the respondent through any evidence and also, allegation of demand of gratification and acceptance made by a public servant/petitioner herein has not been established beyond a reasonable doubt.



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29. The High Court of Karnataka in the case of **Somanath @**

Somashekhar S/O. Mahadevappa ... V. The State Of

Karnataka has held that "... It is settled principle of law in criminal cases, the prosecution has to prove its case beyond all reasonable doubt as alleged. In cases under Prevention of Corruption Act, the essential ingredients of demand and acceptance is to be proved. Then only presumption can arise. Here neither there is evidence to show that either accused No.1 demanded money nor he accepted that money. Drawing inference that accused No.2 received money on behalf of accused No.1 has not an iota of evidence. Such presumption is not based on any legally admissible evidence. There is lot of difference between may be true and must be true. On appreciation of the entire evidence of prosecution it clearly indicates that, the prosecution has failed to prove the guilt of accused No.1 beyond all reasonable doubt. As the evidence of prosecution witnesses creates doubt about the prosecution case, the benefit of doubt should go to accused No.1. If there are two views possible from evidence of prosecution witnesses, then the Court has to accept the view favourable to the accused."

The aforesaid decision of the High Court of Karnataka is self explanatory.



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30. In the case on hand, the respondent has not proved the essential ingredients of demand and acceptance as against the petitioner and merely saying that the other accused has received money on behalf of the petitioner, cannot substantiate their case which is only presumptive. Such presumption is legally unsustainable in the eye of law and there is lot of difference between may be true and must be true. On appreciation of the entire evidence of prosecution it clearly indicates that, the prosecution has failed to prove the offences of the petitioner herein beyond all reasonable doubt.

31. After an elaborate and analytical discussions of the case on hand and also on an overall analysis of the submissions made on either side and scrutinizing the charges framed against the petitioner, looking from any angle, this Court is of the considered opinion that the same is without application of mind and in violation to principles of natural justice as the offences levelled against the petitioner in framing the charges have not been proved by the respondent through any prima facie evidence and hence, the impugned orders of the trial Court dated 23.11.2023 and



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28.11.2023 (framing of charges) suffers from material infirmity and unsustainable in the eye of law.

32. For the foregoing reasons and in the light of the decisions of the Hon'ble Supreme Court and various decisions of the High Courts as stated supra, the impugned orders dated 23.11.2023 and 28.11.2023 passed by the learned II Additional District Judge for CBI Cases, Coimbatore as against the petitioner herein, are set aside. Consequently, the petitioner/first accused is discharged from all offences charged in the Charge Sheet dated 28.11.2013 in C.C.No.2 of 2013 pending on the file of the learned II Additional District Judge for CBI Cases, Coimbatore.

33. In the result, the Criminal Revision Petitions stand allowed. Consequently, connected Miscellaneous petition(s) is/are closed.

07.06.2024

NCC : Yes
Index : Yes
Order : Speaking

DP

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To

- 1.The II Additional District Judge for CBI 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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VIVEK KUMAR SINGH, J.

DP

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and
Crl.M.P.Nos.19769 & 19772 of 2023

07.06.2024

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