IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC. No. 178 of 2024

G. Mani (A1) ..Petitioner

Vs

The State represented by
The Inspector of Police,
Vigilance and Anti-Corruption,
Vellore.
(Crime No.7/2012) ..Respondent

Prayer: Criminal Revision Petition is filed to set aside the judgment dated 21.11.2023 made CMP.No. 8431 of 2021 (CNR No. TNVIL03-011408-2021) in Spl.C.C.No. 5/2021 on the file of the Chief Judicial Magistrate, Vellore, Vellore District.

For petitioner : Mr. V.Vijayashankar
Mr.K.S.Saravanan

For Respondent : Mr.S.Santhosh,
Government Advocate (Crl.Side).

O R D E R

Aggrieved by the order passed by the Chief Judicial Magistrate, Vellore in CMP.No. 8431 of 2021, dated 21.11.2023, the present revision petition has been filed by the petitioner who was arrayed as A1 in Crime No.7/20212.

2. Facts in brief:

The petitioner was working as Executive Engineer in Tamil Nadu Agricultural Engineering Department, Vellore Division and he was having supervisory power over the Assistant Executive Engineers and Junior Engineers working in the department in Walajah Sub Division. The Government, in the year 2008, have implemented 'Agricultural Mechanisation Scheme' for electricity consumption to replace the old electric motor installed by the farmers in their pump sets with the new ones on subsidised rates under the scheme. Based on the allegation that the petitioner along with 8 others who are Assistant Executive Engineers and Junior Engineers with the connivance of some private electric motor dealers, created false and forged records and misappropriated the Government funds. The petitioner was charged under Sections 120(B), 409, 467, 468, 471, 477-A, 167 of IPC and under Sections 13(2) R/W 13(1)(c) & (d) of the Prevention of Corruption Act. The charge sheet was taken on file by the learned Special Judge/Chief Judicial Magistrate in Spl Case No. 5 of 2021 and the same is pending trial. At this stage, the petitioner has filed a petition in CMP.No. 8431 of

2021 under Section 239 Cr.PC seeking to discharge from the charges levelled against him in Crime No. 7 of 2012. The said application was dismissed by the trial Court by order dated 21.11.2023. Hence the present revision to set aside the order of the trial Court.

3. Mr.V.Vijayshankar, learned counsel for the petitioner would submit that petitioner during the relevant period i.e. 2008-2009 was working as Executive Engineer in Agricultural Engineering Department, Vellore and the role assigned to him was only to supervise the other accused who were working under him as Assistant Executive Engineers and Junior Engineers. Though the prosecution has cited 59 witnesses, viz L.W.1 to L.W.59 other than L.W.55, who is the Superintending Engineer in Agricultural Engineering Department, Vellore and Thiruvannamalai District, no other witness has made any mention about the role of the petitioner. There is no material to frame charge against the petitioner for the offences alleged. Even accepting the statement of L.W.55 in entirety, it only attributes dereliction of duty in informing about the action taken by him against the other Government servants who were subordinates to him and that the petitioner has not personally visited the farmers and inspected them. Even in the

statement of LW55, there is no allegation that the petitioner had conspired with the subordinates and indulged in the offences under Section 120-B, 409, 467, 468, 471, 477-A and 167 of IPC. Due to the delayed intimation about the action taken by him to L.W.55, the petitioner, as a public servant, did not commit any act of criminal misconduct.

4. In order to charge the petitioner for criminal misconduct as required under Section 13(1)(c)(d), there should be a evidence for the petitioner acted with dishonest intention and committed criminal misconduct by entering into criminal conspiracy with the other accused, whereas there is absolutely no material for the same. Further there is also no material to show that the petitioner had obtained any pecuniary advantage consequent to the abuse of his position as public servant. The charge against the accused is groundless and he is entitled to be discharged, therefore, the trial Court erred in dismissing the application.

5. The respondent-police has filed elaborate counter affidavit. The learned Government Advocate would submit that the petitioner worked as an Executive Engineer in Vellore Division during the period between 2008 to 2009 and he was

having supervisory power over Walajah Sub Division. During investigation it came to light that totally 335 application were received in the scheme, out of the said 335 application, 60 applications were randomly selected and it was found that only 29 applicants were aware of the scheme.

6. The learned Government Advocate would further submit that the allegations against the petitioner is that he along with A2 to A10 being public servants, by abusing their official positions and in connivance with the private motor pump dealers generated false documents and by using those false documents as genuine, claimed subsidy portion for motor pump and misappropriated the Government funds to the tune of Rs.1,83,178/-. To substantiate the case, the prosecution has examined 59 witnesses including farmers who are the beneficiaries under the scheme and collected 90 documents. The Assistant Executive Engineers and Junior Engineers who were responsible for implementation of the scheme have by fabrication of documents and creation of fake bills have misappropriated the Government funds of Rs.1,83,178/-.

7. The learned Government Advocate would further submit that the

petitioner being an Executive Engineer was having supervisory role over the other official accused namely A2 to A10. The Assistant Executive Engineers have informed the petitioner that the motor pumps were duly supplied, however later on the complaints made by certain farmers, the petitioner had issued memo to the Assistant Executive Engineers and thereafter since the explanations given by them were not satisfactory, the petitioner had taken action against the Assistant Executive Engineers for recovery of pay. However the petitioner had informed to his superior officer namely LW55 with delay. Further he had also failed to personally enquire the farmers and he had also failed to do field verification. He would further submit that though there is no direct evidence for conspiracy, the act of conspiracy is hatched in secrecy and that the petitioner by abdicating the responsibilities to enquire into the matters, had conspired with the other accused in the offence. He would further submit that trial Court rightly held that there are materials against the petitioner and made a finding that there are grounds for framing charges. Consequently, dismissed the discharge petition filed by the petitioner.

8. Heard Mr. V.Vijayshankar, learned counsel appearing for the petitioner

and Mr.S.Santhosh, learned Government Advocate (Crl.Side) appearing for the respondent-Police and perused the materials available on record.

9. Admittedly, a case was registered against the petitioner in Crime No. 7 of 2012 for the charges under Sections 13(1)(d) of the Prevention of Corruption Act, 1988 and Sections 120(B), 467, 468, 471 and 420 of IPC. The prosecution has examined witnesses LW1 to LW35 and cited documents Ex.1 to Ex.90.

10. The court has gone through the statements of 59 witnesses, including the sanctioning authority (LW1) who accorded sanction to prosecute the petitioner. LW1 stated that the petitioner in connivance with other accused (Assistant Engineers and Junior Engineers) in Agricultural Engineering Department, Walajapet Sub Division along with other private individuals have created false and forged documents during the year 2008 & 2009 to misappropriate subsidies for farmers. LW2 to LW4 were sanctioning authorities for other accused. LW5 to LW35 were farmers whose names were used for false bills. LW36, the Superintendent, described the role of public officers in motor pump replacements. LW40 to LW42 were Village Administrative Officers whose signatures were forged. LW43 & LW44 were Tahsildars whose computer-

generated Chitta were fabricated. One Ranjith Kumar, Superintending Engineer (LW55), testified that the petitioner issued memos to subordinates but failed to visit or inquire about beneficiaries, as required, and did not record his visits in the monthly diary.

11. A perusal of entire records reveals that the only witness who has spoken about the role of the petitioner is LW 55/ Superintending Engineer. No other witnesses have spoken about the petitioner. Even accepting the entire statement of LW55, the only allegation made against the petitioner is for having delayed in intimating LW 55 about the action taken against the other accused. Further LW 55 has stated about the petitioner having taken action against the other accused and not enquiring the beneficiaries. There is absolutely no material to implicate the petitioner for other offenses registered under the Indian Penal Code. What needs to be determined is whether the act of the accused, as stated by L.W.55, would constitute an offense of criminal misconduct by a public servant.

12. Considering the charge against the petitioner under Section 13(1)(c)(d) of the Prevention of Corruption Act, the relevant section is extracted below:

"***13. Criminal misconduct by a public servant*** - *(1) A public servant is said to* *commit the offence of criminal misconduct,-*

xxxxx
xxxxx

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) If he,-

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; ...”

13. In order to attract the offence under Section 13 (1) (d) there should be material to show that the petitioner had dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do. To attract the offence under Section 13(1)(d) of the Act, the petitioner ought to have acted with corrupt or illegal means, obtains for himself or for any other person any valuable or pecuniary advantage.

14. The prosecution has established that the official concerned used his

positions for some thing which is not intended. The sum and substance is that the petitioner ought to have dishonest intention and the dishonest intention is the crux of the offence under Section 13(1)(c)(d) of Prevention of Corruption Act. As stated above, except the statement of LW 55, there is no other material to implicate the petitioner in the alleged offence. Even as per statement of LW55, the only allegation made against the petitioner is for having delayed in intimating LW 55 about the action taken against the other accused. The learned Government Advocate has contended that there is no direct evidence, therefore, it cannot be presumed that the petitioner had conspired with other accused.

15. In this regard , it is useful to refer upon the latest decision of the ***High Court of Kerala in Crl.MC.No. 1071 of 2022 dated 17.01.2024 in the case of C.Surendranath & another Vs. State of Kerala, Represented by the Public Prosecutor, High Court of Kerala, Ernakulam & another.***

> *"15. It is trite that conspiracy need not be yet necessarily proved by direct evidence. It is also capable of being proved by circumstances pointing out the existence of a conspiracy to commit an unlawful act.*
>
> *16. **In Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra (AIR 1965 SC 682)** a three-Judge Bench of the Apex Court held that the offence of conspiracy can be established either by direct evidence or by circumstantial evidence and the section will come into play only when the*

Court is satisfied that there is reasonable ground to believe that two or more persons have conspired to commit an offence or an actionable wrong, that is to say, there should be prima facie evidence that a person was a party to that conspiracy.

17. ***In State of M.P. v. Sheetla Sahai [(2009) 8 SCC 617], the Apex Court has held as follows:-***

> *"Criminal conspiracy is an independent offence. It is punishable separately. Prosecution, therefore, for the purpose of bringing the charge of criminal conspiracy read with the aforementioned provisions of the Prevention of Corruption Act was required to establish the offence by applying the same legal principles which are otherwise applicable for the purpose of bringing a criminal misconduct on the part of an accused."*

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

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

20. A fundamental principle of criminal jurisprudence with regard to the liability of an accused is the element of mens rea. On the principles of actus reus and mens rea, the learned author Sri.Glanville Williams in the 'Textbook of Criminal Law' [Third Edition, Dennis.J.Baker, page 95] comments thus:

> *"The mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of the more serious*

crimes. These generally require, in addition, some element of wrongful intent or other fault. Increasing insistence upon this fault element was the mark of advancing civilization."

21. On the principles of Criminal Liability, the learned author Sri.K.D. Gaur in his book Criminal Law [Lexis Nexis, Butterworths, page 37] explains thus:

"Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, actus non facit reum, nisi mens sit rea. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively."

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

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

23. In M. Narayanan Nambiar v. State of Kerala (AIR 1963 SC 1116), while dealing with Section 5 of the 1947 Act, the Apex Court held *that dishonest intention is the gist of the offence."*

16. It is also also useful to rely upon the decision of the ***Hon'ble Supreme Court in the case of A.Sivaprakash Vs.State of Kerala (Crl.Appeal No. 131 of 2007, dated 10.05.2016) reported in (2016) 12 SCC 273*****,** wherein the Hon'ble Supreme Court reversed the conviction on the ground that no evidence to prove the allegation of committing criminal misconduct made against a public servant under Section 13(1)(d) of the Prevention of Corruption Act. The relevant portion is extracted below;

"19. It was not even the case set up by the prosecution that appellant had taken that money from some person and had obtained any pecuniary advantage thereby. It was the obligation of the prosecution to satisfy the aforesaid mandatory ingredients which could implicate the appellant under the provisions of Section 13(1)(d)(ii). The attempt of the prosecution was to bring the case within the fold of clause (ii) alleging that he misused his official position in issuing the certificate utterly fails as it is not even alleged in the charge sheet and not even iota of evidence is led as to what kind of pecuniary advantage was obtained by the appellant in issuing the said letter.

20. ***In C. Chenga Reddy & Ors. v. State of A.P., (1996) 10 SCC 193,*** *this Court held that even when codal violations were established and it was also proved that there were irregularities committed by* *allotting/ awarding the work in violation of circulars, that by itself was not sufficient to prove that a criminal case was made out. The Court went on to hold:*

> *"22. On a careful consideration of the material on the record, we are of the opinion that though the prosecution has established that the appellants have committed not only codal violations but also irregularities by ignoring various circulars and departmental orders issued from time to time in the matter of allotment of work of jungle clearance on nomination basis and have committed departmental lapse yet, none of the circumstances relied upon by the prosecution are of any conclusive nature and all the circumstances put together do not lead to the irresistible conclusion that the said circumstances are compatible only with the hypothesis of the guilt of the appellants and wholly incompatible with their innocence. In Abdulla Mohd. Pagarkar v. State (Union Territory of Goa, Daman and Diu), (1980) 3 SCC 110, under somewhat similar circumstances this Court opined that mere disregard of relevant provisions of the Financial Code as well as ordinary norms of procedural behaviour of government officials and contractors, without conclusively establishing, beyond a reasonable doubt, the guilt of the officials and contractors concerned, may give rise to a strong suspicion but that cannot be held to establish the guilt of the accused. The established circumstances in this case also do not establish criminality of the appellants beyond the realm of suspicion and, in our opinion, the approach of the trial court and the High Court to the requirements of proof in relation to a criminal charge was not proper"*

17. The ambit and scope of exercise of power under Section 239 of CrPC are well settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless".

The Section mandates that the Magistrate shall discharge the accused recording reasons, if after (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless, i.e., either there is no legal evidence or that the facts are such that no offence is made out at all. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution. The exercise at this stage is to evaluate whether to examine and consider the police report and the document sent with it under Section 173 CrPC and to provide an opportunity for both the prosecution and the accused to be heard. Subsequently, determine whether there are sufficient grounds to frame charges. If not, and upon finding the accusations groundless, discharge the accused while recording reasons for such a decision.

18. Admittedly, as discussed in detail above, none of the witnesses examined by the Investigation Officer in this case have spoken about the involvement of the petitioner/A1 in commission of the offence of conspiracy. The only grievance expressed by LW55/Superintending Engineer is that petitioner had informed him about the action taken against the other official accused belatedly

and without any enquiry with the farmers and the delinquent officers, the petitioner had passed an order for recovery of pay from them. In this regard, it is seen from the records that the report was called for by the petitioner from the Assistant Executive Engineers A4 to A6 as early as 17.07.2009 and since the explanations were not satisfactory, the petitioner had initiated disciplinary action against them on 16.08.2010 and ordered recovery of pay. There is no proof that the petitioner had conspired with other accused and indulged in the acts of criminal breach of Trust, forging of documents, fabrication of accounts or framing an incorrect documents with an intent to cause injury. The learned Government Pleader during the course of the arguments, has admitted the fact that there are no direct evidence against the petitioner. Considering the above circumstances, this Court has come to the conclusion that the allegation against the petitioner are groundless. Consequently, there are no ingredients which could implicate the petitioner under the provisions of Section 13(1)(c)(d) of Prevention of Corruption Act.

19. In the overall view of the matter, this Court convinced that the impugned dismissal order passed by the trial Court is not sustainable in law and deserve to be set aside. The circumstances emerging from the records, *prima*

facie, indicate no involvement of the petitioner/A1 in the alleged offence. Having regard to the statement of witnesses and materials on record, it can be said that the charge against the petitioner/accused is groundless.

20. In the result, the Criminal Revision Petition is allowed. The impugned dismissal order passed by the trial Court on the discharge petition filed by the petitioner is set aside. The petitioner/A1 alone discharged.

15.02.2024

Internet: Yes/No
Index : Yes/No
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To

1. The Inspector of Police,
   Vigilance and Anti-Corruption,
   Vellore.

2. The Public Prosecutor,
   High Court,
   Madras.

A.D.JAGADISH CHANDIRA, J.

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