

Crl.O.P.(MD) No.2907 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURTS

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Reserved on	12/9/2023
Pronounced on	16 /2/2024

C O R A M

THE HONOURABLE Dr.JUSTICE D.NAGARJUN

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N. Thirumagal

...

Petitioner/A.2

Vs

1. The State of Tamil Nadu
rep. By the Additional Superintendent of Police
Chief Investigation Officer
Idol Wing – CID
Ashok Nagar
Chennai 600 083.

2. Rangarajan Narasimhan

...

Respondents

Prayer: Petitions filed under Section 482 of the Code of Criminal Procedure to call for the entire records in C.C.No.1 of 2023 pending on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam and quash the same.



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For Petitioner

...

Mr.A.Ramesh
for Mr.R.Ashwin

For respondents

...

Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

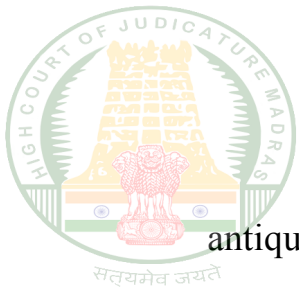
Mr.Rangarajan Narasimhan
(Party-in-person)
for R.2.

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ORDER

This Criminal Original Petition is filed by A2/Tmt.Thirumagal, under Section 482 of the Code of Criminal Procedure seeking quashment of C.C.No.1 of 2023, pending on the file of the learned Additional Chief Judicial Magistrate and Special Court for Idol Theft Cases, Kumbakonam.

2. Thiru.Rangarajan Narasimman of Sri Rangan, Trichy, filed a complaint on 23.07.2018, before Idol Wing of CID alleging that after interacting with Archakas, devotees and after taking to HR & CE Department employees, he came to that Thiru.Venu Srinivasan, Tmt.Thirumagal, Thiru.M.Muthiah Sthapathy, Archakas and temple officials have one day prior to Kumbabhishegam in 2004, have stolen



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antique stone peacock idol with flower in its beak at Punnaivananathar Sannadhi of Kabaleeshwarar Temple, Mylapore, Chennai and replaced with duplicate one and misappropriated the old peacock idol. Basing on the said complaint, a case in Crime No.5 of 2018 was registered on 23.07.2018 under Sections 403, 406, 409, 202 r/w. 120-B of the Indian Penal Code by Idol Wing of CID which was established as per G.O.Ms.No.2098 dated 07.10.1983 to deal with idol theft cases.

3. During the course of investigation, respondent No.1 Police have examined 71 witnesses and recorded their statements under Section 161 (3) of the Code of Criminal Procedure, filed 57 documents, a CD and got recorded the statements of 7 witnesses under Section 164(5) of Code of Criminal Procedure. After completion of investigation, charge sheet is filed against six persons namely A.2/Tmt.Thirumagal, A.3 / M.Muthiah Sthapathy, A.4 / Thiru. Dhanapal, A.5/Thiru.T.A.Ranganathan, A.6/Thiru.Balu @ Balasubbarayalu and A.7/Thiru.Magesh.

The content of charge sheet in brief :-

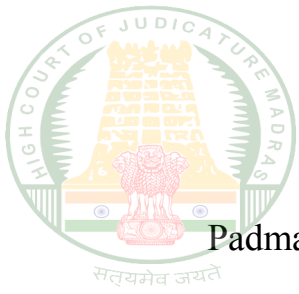
4. A.2/Tmt.Thirumagal, was working as Deputy Commissioner/ Executive Officer of the Kapaleeshwarar temple, Mylapore during the



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year 2002 to 2007 and in the capacity as Executive Officer of the temple being a public servant, she used to hold domain over the movable and immovable properties of the temple. A.3/Thiru.M. Muthiah Sthapathy, was Chief Sthapathy of the HR & CE Department during the year 2003-2004 he was also holding the domain over the movable and immovable properties of the temple. A.4/Thiru.Dhanapal was Joint Commissioner of the HR & CE Department during the year 2002 to 2004. He was appointed as Special Officer for the kumbhabhishegam ceremony at Kapaleeshwarar temple, Mylapore. In the capacity of Joint Commissioner/Special Officer of the temple, he was also jointly holding domain over the movable and immovable properties of the temple along with A.2 / Tmt. Thirumagal.

5. The Department of HR & CE has decided to renovate Kapaleeshwarar temple, Mylapore, Chennai. The petitioner/A.2 being Executive Officer of the temple has engaged the services of Thiru Padmanabha Sharma of Irinjalakuda of Kerala, who performed the Ashtamangala prashannam at Kapaleeshwarar temple from 7/10/2002 to 9/10/2002 in the presence of Sree Jayendra Saraswathi Swamigal, some of the accused and the temple priests. After completing the prashannam,



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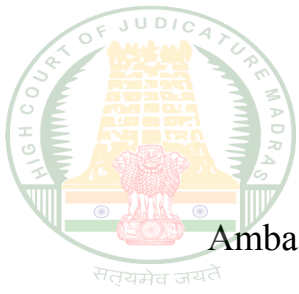
Padmanabha Sharma has prepared a report listing out the faults (தேராமம்)

and suggested the remedies (பரிசீலா) indicating that “the dhoshams of the idol of Punnai Mara Nathar (holy peacock) should be remedied”.

Whereas Thiru. Jayendra Saraswathi Swamigal suggested to conduct “Asthapandhana Maha Kumbhabhishegam”.

6. In respect of renovation of the Kapaleeshwarar Temple Government of Tamil Nadu has constituted Thirupani Kuzhu Committee as per G.O.Ms.No.2D, No.7 dated 26/2/2003, with Thiru.S.Venu Srinivasan as Chairman, Thiru.P.Sivandhi Adhithan, Thiru.B.A.Kothandaraman, Thiru.S.V.R.M.Ramanathan, Thiru.S.Ekambara Mudhaliar, Dr.A.Thillai Vallal, Dr.P.S.Ayyappan, Thiru.S.Krishnasamy, Tmt.Parameshwari Rathinavelu, Thiru.S.Kalyanasundaram and Thiru.P.Viswanathan Kakkan, as members.

7. A3, the Chief Stapathy of the State has inspected the temple on 27.05.2003 and on 20.04.2004 and suggested modifications and improvements including replacement of Raaghu and Kedhu idols at Navagraha Sannadhi, pair of Dwarabalagas at the entrance of the shrine of the main deity and the pair of Dwarabalagis at the entrance of the



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Ambal shrine and the damaged Chandran idol with newly made stone
idols.

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8. Thiruppani Kuzhu Committee accepted the recommendations of Irinjalakuda Padmanabha Sharma and Thiru Muthiah Stabathi and decided to entrust the renovation and restoration work to Sri Venugopal Swamy Kaingariyam Trust of Thiru.Venu Sreenivasan who under took to complete the renovation and restoration works free of cost and the same was approved by the HR & CE. Thiru.Venu Sreenivasan has deputed Thiru.T.A.Ranganadhan/A.5 to oversee the Thirupani works on behalf of Sri Venugopal Swamy Kaingariyam Trust and he was assisted by A.6/ and A.7.

9. A.2, being Executive Officer of the temple has prepared work estimate for purchase of new stone idols of Peacock, Raaghu, Kedhu, pair of Dwarabalagars, pair of Dwarabalagis and Chandran idols and that the estimate was approved by A.3 and was sent to A.4 who carried out the entire civil contract works for Kumbhabhishegam on behalf of “Sri Venugopal Swamy Kaingariyam Trust”. The cost of sculpting pair of Dwarabalagar and Dwarabalagi was given by Sankara Madam,

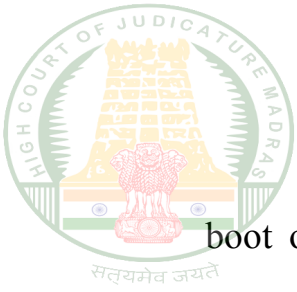


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Kancheepuram. A.2 and A.4 have entrusted the work of making new stone idols of Peacock, Raaghu, Kedhu and Chandran to A.3 who in turn got them sculpted at M/s.Sornam Sirpa Kalaikoodam at Kancheepuram, belonging to him.

10. As per the instructions of A.2 to A.5 newly made stone idols of one pair of Dwarabalagar, one pair of Dwarabalagi, Peacock, Raaghu, Kedhu and Chandran were brought to Kabaleeshwarar Temple, Mylapore on 28.08.2004. However, the priests of Kapaleeshwarar Temple, refused to perform the purification rites to the newly made idols, thereby, the purification ceremonies of these newly made stone idols were conducted by Rathina Sabhabathi Gurukkal, Amirdha Kadesa Gurukkal and Jaya Gurukkal on 29/8/2004 morning. Thereafter newly made stone idols of one pair of Dwarabalagar and one pair of Dwarabalagi were installed at the entrance of the main deity and Ambal Sannadhi.

11. On 29.08.2004, after priests have left the temple, at the behest and in the presence of A.2, A.3, idols of peacock, Raaghu and Kedhu were removed by A.4 and A.5 whereas A.6 and A.7 have carried peacock idol with flower in its beak, Raaghu, Kedhu and loaded them into the



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boot of private car of A.2 during night time. Then A.2 and A.4 have transported the old idols in the said private car and concealed them in a secret location, which is in the exclusive knowledge of A.2 and A.4. On 30th August, 2004 in the morning hours, newly made stone idol of peacock with snake in its beak was installed at Punnaivananathar by A.5, A.6, on the specific instructions and in the presence of A.2, A.3 Sthapathy and A.4. On account of change of the idol the silver armour (velli kavasam) of the antique stone idol of peacock donated by Thiru.Lakshmanan of TVS Group and the silver kavasams of Raaghu and Kedhu which were earlier donated by some unknown person were found to be totally unfit and unsuitable to the newly made idols of Peacock, Raaghu and Kedhu.

12. Finally on conclusion of investigation, the respondent No.1 police have filed Charge Sheet alleging that A.2/ Tmt.Thirumagal, A.3/ Thiru.M. Muthiah Sthapathy and A.4/ Thiru.Dhanapal, A.5/ Thiru.T.A.Ranganathan, A.6/Thiru.Balu @ Balasubbarayalu and A.7/Thiru.Magesh (originally shown as A1 to A6) have committed offences punishable under Section 403,406,409, 202 read with Section 120B of IPC, 409, 109 read with Section 109 of IPC, 201 and 204 of IPC.



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However, respondent No.1 police have excluded Thiru. Venu Srinivasan from the Charge Sheet as accused.

13. As per the directions of this Court in Crl.O.P.No.8690 and 12060 of 2017 all the cases pending on various Courts of the Tamil Nadu investigated by Idol Wing are transferred to the Additional Chief Judicial Magistrate, Kumbakonam for effective and speedy disposal of all the cases. Accordingly Charge Sheet is filed on the file of the Additional Chief Judicial Magistrate, Kumbakonam.

14. Aggrieved by not taking the case on file against the petitioner/ Thiru.Venu Srinivasan, the second respondent/defacto complainant Thiru.Rangarajan Narasimhan, filed Protest Petition in Crl.M.P.No.224 of 2022 with a prayer to take cognizance offences against Thiru.Venu Srinivasan, and the same was allowed with the following order on 27/1/2023.

“In the result, this Court held that there is sufficient material available to take cognizance as against Venu Srinivasan along with other accused under Sections 403, 406, 409 r/w. 109 of the Indian Penal Code and directed



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to issue summons to the said Venu Srinivasan along with other and mentioned in the final report filed by the Investigation Officer as per Section 204 IPC, if the documents and other material in the final report is in order.”

15. Subsequently, on 30/1/2023, cognizance order was passed by learned Magistrate and on the final report, runs as under:-

“The Final Report is taken on file as against one Venu Srinivasan and other accused cited in the final report since sufficient recital is available to take cognizance under Sections 403, 406, 409, 202, 120 (B) read with Section 120(b), 409 read with Section 109, 409, 201, 204 of IPC and issue summons to the accused by 28.02.2023 as per Section 204 of IPC.”

16. The status of the accused after taking the case on file against Thiru.Venu Srinivasan is as under:

A.1/ Thiru. Venu Srinivasan, A.2/ Tmt. Thirumagal, A.3/
Thiru. M.Muthiah Sthapathy, A.4/ Thiru.Dhanapal, A.5/



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Thiru.T.A.Ranganathan, A.6/ Thiru.Balu @ Bala Subbrayalu
and A.7/ Thiru.Magesh.

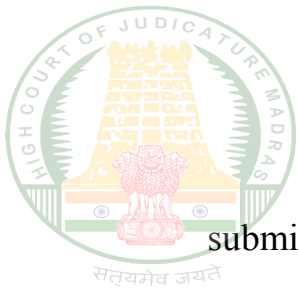
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17. The petitioner/A.2 has filed this petition under Section 482 of Cr.P.C., seeking to quash the Charge Sheet against her. Respondent No. 1/police have filed common counter affidavit. Similarly. respondent No. 2/defacto complainant, also filed a separate common counter affidavit.

18. Heard the submissions Mr.A.Ramesh, learned Senior counsel appearing for the petitioner/A.2 and Mr.Antony Sahaya Prabahar, the learned Additional Public Prosecutor appearing for the state respondent No.1 and Thiru.Rangarajan Narashimhan respondent No.2 party in person and perused the material placed on record in detail including the copy of the Charge Sheet.

19. The point for determination is whether C.C.No.1 of 2020 pending on the file of the learned Additional Chief Judicial Magistrate, Kumbakonam insofar as petitioner/A.2 can be quashed.

20. Learned Senior Counsel appearing for the petitioner, has



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submitted that the Charge Sheet filed by the respondent No.1 police is full of assumptions without any incriminating material, that the statements of the witnesses recorded by the respondent No.1 police cannot be basis for Charge Sheetting the petitioner/ A.2 as the statements of witnesses were recorded under Section 161 (3) of Cr.P.C about more than 14 years of alleged incident and that most of the witnesses were not present at the time of alleged incident and that their statements are only hearsay.

21. Learned counsel for the petitioner has further submitted that the defacto complainant has lodged complaint directly in Idol Wing of CID without holding any authentic certificate that the Idol was of more than 100 years old, there is no record as to the age of the idol as per the reply under RTI shows that peacock idol is of 100 years old, complaint has alleged that peacock idol is more than 400 years old and that as per the Charge Sheet temple was built in the 7th century, thereby there is no clarity as to the age of the peacock idol. It is further submitted that without mentioning the date of offence, details of witnesses, etc. that it was vague complaint and unless preliminary enquiry was conducted FIR should not have been registered, consequently investigation also should



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not have been taken up.

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22. Learned counsel have further submitted that the statement of one Sekar, who was the driver of A.2, recorded under Section 161 Cr.P.C., cannot be considered as he developed grudge against petitioner/A.2, the then Executive Officer, as during the course of administration she has suspended him on the ground of in-subordination. It is also submitted that if at all the petitioner has committed the offence, there is no reason why none of the witnesses, have reported the same to the higher officials or to the police. It is further submitted that there is no limitation under 468 of Cr.P.C., for taking cognizance of some of the offences alleged against the petitioner, the investigation was hurriedly completed without collecting incriminating material against the petitioner, the peacock idol which was lost has not been traced and placed before the Court, the peacock idol which was allegedly misappropriated was changed prior to the year 2004 and that Idol Wing, CID has no right to investigate the offences and that even if the contents the Charge Sheet are accepted to be true there are no ingredients to conclude that the petitioner has committed offence alleged against her.



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23. It also submitted further that the cognizance order dated 30.01.2023 does not reflect application of mind as it was done mechanically without recording reasons for taking cognizance and that directing the accused to face the trial in a case like this amounts to violation of Article 21 of the Constitution of India and thereby submitted that continuing the proceedings is abusive of process of law. Learned counsel has further submitted that the respondent No.1 police have filed the final report with the very same material placed in Crl.O.P.No.24544 of 2019 without any further investigation and finally learned Senior Counsel have submitted that case against the petitioner has to be quashed.

24. Mr.Antony Sahaya Prabahar, the learned Additional Public Prosecutor appearing for the state has submitted that the investigation of respondent No.1 police establishes that A.2 to A.7 have committed offences alleged against them, there is no delay in the investigation, thereby Section 468 Cr.P.C does not apply, non production of peacock idol cannot be a ground for quashing the final report, the peacock idol which was lost is an antique one, and that Idol Wing of CID .Respondent No.1 are having jurisdiction to investigate the case etc.



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25. Learned Additional Public Prosecutor has further submitted that the witnesses have categorically stated that petitioner and other accused have removed the peacock idol with flower in its beak and replaced with peacock idol with snake in its beak and also changed the Raahgu and Kedhu idols and that A.2 and A.4 have secreted the idols and thereby submitted that case against the petitioner cannot be quashed.

26. The defacto complainant/ Thiru. Rangarajan Narashimhan has submitted that as per the material placed before the Court antique peacock idol with flower in its beak was at Punnaivananathar Sannadhi was in existence for the last many centuries and it was stealthily removed and replaced with duplicate idol by all the accused with a conspiracy and concealed old antique Peacock idol for selling it in order to enrich illegally. It is further submitted that the silver kavasam of the peacock idol is not properly fit on account of change of the idol of peacock and the respondent No.1 Police did not bother to record the statements of the any of members of the Thirupani Committee. The defacto complainant has further submitted that as per the statements of the witnesses recorded by Police and the documentary evidence placed before the Court A.2, A.3



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and A.4 and other accused it is proved that all the accused have conspired to stealthily remove antique stone idols of Peacock, Raahgu, Kedhu and replace them with newly made idols and to conceal old idols at a secret place, with an intention to misappropriate and to sell them for exorbitant amount for their personal illegal gain.

27. Considering the rival submissions it is to be examined whether there is no prima facie material placed by respondent no.1 police in the form of Charge Sheet connecting the petitioner/A.2 to the offences alleged against her.

28. On going through the statements of 71 witnesses, it is clear that defacto complainant is not an eye witness to the alleged offences admitted by Thiru Subramaniya Sivachariyar who was working as full time Priest in Kapaleeswarar Temple at the relevant time, Kabali Vaidyanathan who was working as a priest in the said temple, Duraisamy who was worked as Chief Priest in the said temple, Ganapathy who was working as Chief Priest in the said temple and Ganesan Ramasamy, D.S.Velayudham have stated to the police in their statements that in their presence peacock idol with flower in its beak was removed and replaced

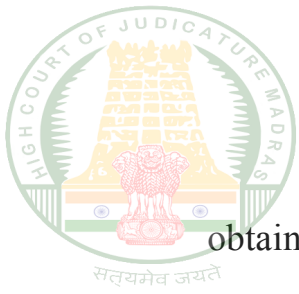


with peacock idol with snake in its beak by A.2, A.4 to A.7.

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29. Similarly, Prabhakaran, Swaminathan, Kaveri, Balasubbirayulu, Magesh, Kalyana Sundaram and A.Arjunan stated to the police that they came to know that peacock idol with flower with in its beak was replaced with peacock idol with snake in its beak. Thiru. Suresh Gurukkal, Thiru. Somasekara Gurukkal, Thiru.Sambamurthi Sivachariyar and Thiru. Sekar (car driver of A.2) and others have stated to the police that Astabandhanam was performed to the newly made idols of Peacock, Raaghu and Kedhu in the presence of A.2, A.3, A.5, A.6 and A.7. Evidence of Balaji Gurukkal, Kabali Gurukkal, Venkata Subramaniya Sivachariyar and others were recorded under Section 164(5) of Cr.P.C., and they spoke about the conspiracy of A.2 to A.7 in replacing the peacock, Raaghu and Kedhu idols with new idols.

30. Further, Thiru.Muthiah Sthapathy/A.3 admitted that old stone idols of Peacock, Raaghu and Kedhu were replaced with newly made idol vide his letter dated 09.10.2018. Similarly the letter of the Executive Officer Srimathi Kaveri, and her statement recorded under Section 161(3) of Cr.P.C are also to the effect that the A.2 Tmt.Thirumagal, without



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obtaining permission from the Commissioner HR & CE Department has replaced the idols. It is also stated by her that A.2 has destroyed the documents relating to purchase of newly made idols and documents relating to renovation works and Kumbabhishegam.

31. Therefore, there is strong incriminating material placed by the prosecution in the Charge Sheet against the petitioner/A.2 and other accused. In the back drop of material placed by the prosecution as discussed above, the grounds raised by the petitioner seeking quashment have to be examined.

32. Learned Senior Counsel appearing for the petitioner/A.2 has submitted that there is enormous delay of more than 14 years in recording the statements of witnesses from the date of offence thereby there is no possibility to the witnesses to remember the events that happened about more than 14 years ago and all the statement of witnesses are created and prompted. It is true that for a man of ordinary prudent, it is very difficult rather impossible to keep in memory the events that happened about 14 years ago. On going through the statements under Section 161(3) of Cr.P.P., the witnesses have narrated the sequence of events that were



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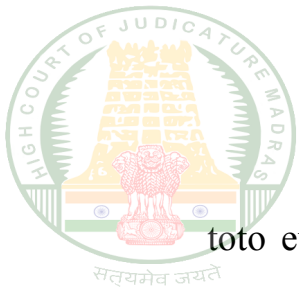
allegedly unfolded on 29.08.2004 as if those incidents have occurred very recently. The witnesses have stated to the police in clear tone that the A.2 being the Executive Officer has supervised and was physically present along with A.4 when the peacock idol with flower in its beak was removed from the place where it was and replaced with another peacock idol with snake in its beak by A.5 to A.7 and that the said old peacock idol was kept in the boot of private car of the A.2 and was taken to a secret place by A2 and A4. Whether really witnesses have stated to the police as mentioned in their respective 161(3) Cr.P.C. statement or their statements are created by the police can be decided only after subjecting the witnesses to cross examination. Until then it is not safe to quash the proceedings on the ground of enormous delay of 14 years in recording the statements from the date of alleged offence.

33. It is submitted by the learned Senior Counsel appearing for the petitioners that if really there is an element of truth in the statement the priests and other staff of the temple in respect of incident they should have made a complaint to the higher officials but until they were examined by the police, they have not stated anything about the alleged incident to anyone, thereby it is submitted that their statements are



created. There is no answer from the respondents on this aspect. However this Court is of the opinion that even if any such incident has happened, may be because the witnesses were working as Priests under HR & CE Department they could not have dared to complain against the Executive Officers and Senior Officer of the HR & CE Department. As observed above, the veracity of the statements have to be tested only during the course of trial, until then it cannot be ground to discard the case of the prosecution on this ground.

34. It is submitted by the learned Senior Counsel appearing for the petitioner that the statements of Thiru.Sekar, the Driver of A.2, cannot be considered as he has enmically disposed of against A.2 as during the course of administration as she has suspended him for in-subordinating. The statement of Thiru.Sekar recorded by the police is to the effect that A.2 in her presence and supervision got the peacock idol with flower in its beak replaced with new peacock idol with snake in its beak. Since the said Sekar is having certain issues with the A.2, as rightly submitted by the learned counsel for the petitioners, his evidence cannot be summarily accepted. However at the same time merely because he was inimically opposed to A.2, it does not mean that his evidence has to be rejected in



toto evidence has to be scrutinized with cautions. Again only after the said Sekar was subjected to cross examination before the Trial Court, the question whether he was really an eye witness to the alleged incident and whether his statement can be taken into consideration against the petitioner/A.2 and other accused can be decided.

35. One of the contentions raised by the learned Counsel for the petitioner is that value cannot be attached to the FIR and also to the Charge Sheet as they are full of assumptions and directing the petitioner/A.2 to face the trial amounts to abusing the process of law. Insofar as FIR is concerned as rightly submitted by the learned counsel for the petitioner that the FIR is not clear as to the date of offence, details of witnesses and other connected details. Normally basing on such complaint the police should not have immediately registered a criminal case, as the complaint is made in respect of offence allegedly took about 14 years prior to the date of complaint. A preliminary enquiry should have been done by the police to verify as to whether any serious offence was committed. However, since Charge Sheet has already been filed on completion of investigation and that Charge Sheet is under challenge at this stage, this Court cannot go back and examine whether registration of



FIR is proper or not.

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36. Learned counsel for the petitioner/A.2 has submitted that the respondent police filed final report with the same material placed in Crl.O.P.No.24544 of 2019 without, collecting any further material, it is submitted further that while disposing of Crl.O.P.No.24544 of 2019 this Court has held that there was no material against the accused and that the FIR was almost quashed except giving four months time and that since no further investigation was done and since Charge Sheet is filed basing on the same material the Charge Sheet required to be quashed. As seen from the record subsequent to filing of the Crl.O.P.No.24544 of 2019 since, the investigation was not stayed during the pendency of Crl.O.P. the respondent No.1 police have done substantial part of investigation. Further, the Crl.O.P.No.24544 of 2019 was filed by two accused persons challenging the FIR. This petition is filed challenging the Final Report by all the accused except A.4, questioning the Charge Sheet comprehensively on various grounds. Further this petition has to be independently examined basing on the material in the final report. Though part of the investigation was considered by this Court in Crl.O.P.No.24544 of 2019, since entire material of final report was not



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considered, the submissions of the petitioner that with the same material which was subject matter of CrI.O.P.No.24544 of 2019 cannot be accepted.

37. On considering the submissions of the learned Senior Counsel appearing for the petitioner/A.2 and on analysing the statements of witnesses recorded under Section 161(3) of Cr.P.C., it is clear that there is strong prima facie case to the effect that A.2 to A.4 with the active assistance of the A.5, A.6 and A.7 brought the newly made stone idols of one pair of Dwarabalagars and one pair of Dwarabalagis, peacock, Raahgu, Kedhu and Chandran on 29.08.2004 and that during the night time of 29.08.2004 A.2, A.3, A.4 after all the priests have left the temple with the active assistance of A.5, A.6 and A.7 and removed the old stone idol of peacock from Punnaivananathar Sannadhi and loaded the old idols in a private car boot of A.2/Tmt.Thirumagal and taken them to several place by A.2 and A.4 and concealed them.

Delay in Investigation:

38. It is submitted by the learned counsel for the petitioner that respondent no.1 police have filed the Charge Sheet in the year 2022 after



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four years of time in completing the investigation in respect of the offenses which allegedly occurred in the year 2004, which violates the fundamental rights of the accused under Article 21 of constitution of India thereby on the ground of delay Final Report required to be quashed.

39. Mr.Antony Prabhakaran, learned Additional Public Prosecutor representing the state has submitted that delay in completion of investigation is not always a ground for quashement. If the prosecution has simply registered a case and kept quite for a period of four years and does nothing and hurriedly filed a Charge Sheet, is different story. But on going through the dates of the recording of the statements of witnesses, dates of collecting the documents and material objects it is clear that the investigation was steadily progressing.

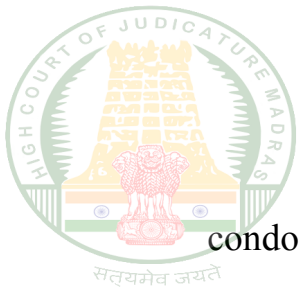
40. The very purpose of the investigation is to collect evidence in respect of offences alleged by the defacto complainant against the accused. Though investigation for a period of four years appears to be too long, taking into consideration of this special case where antique peacock idol was allegedly misappropriated and that police have made all the efforts to trace the old idols and that the offence took place about 14 year



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prior to the registration of the FIR and majority of the documents pertaining to Kumbabhishegam were destroyed, the delay of 4 years in completing the investigation cannot be fatal to the prosecution. In the process of investigation, if the prosecution take little more time than normally required, such delay can be acceptable. Therefore, the delay in investigation cannot be a ground for quashment of Charge Sheet filed against the petitioner/A.2.

41. Further, Crl.O.P.No.24544 of 2019 filed by A.3 seeking quashment of FIR, under Section 482, of Cr.P.C. was disposed of on 22.07.2022 directing the police to complete the investigation and file a final report within a period of four months from the date of disposal of the said criminal petition. Accordingly, within four months, respondent police have filed their Charge Sheet. That means while disposing of Crl.O.P.No.24544 of 2019 on 22.07.2022, this Court having considered all the grounds raised by the petitioner, including the delay in the investigation, has disposed of the said petition by giving four months time to file Charge Sheet. Thereby, from the date of registration of FIR on 23/7/2018 until disposal of the Crl.O.P.No.24544 of 2019 on 22.07.2022 whatever the delay caused in the investigation was deemed to have been



condoned by this Court. Thereby, the contention of the petitioner/A.2 to quash the final report on the ground of delay cannot be accepted.

Peacock Idol not traced:

42. The other important ground raised by the learned counsel for the petitioner is that the peacock idol with flower in its beak which was allegedly misappropriated has not been traced so far. Learned Senior Counsel appearing for the petitioner/A.2, has submitted that in order to prove the offences alleged against accused persons that the peacock idol with flower in its beak, should have been recovered by the police and produced before the Court. On the other hand, Mr.Antony Prabkaran, the learned Additional Public Prosecution appearing for the state has submitted that even though the peacock idol which was lost could not be placed before the Court still it will not affect the case of the prosecution as there is a material to show that the peacock idol with flower in its beak was removed and concealed by the petitioner/A.2 Tmt.Thirumagal and other accused.

43. As rightly submitted by the learned Senior Counsel appearing for the petitioner, in spite of lengthy investigation, the respondent police could not trace stone peacock idol with flower in its beak and other idols.



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As per the charge sheet, the petitioner and other accused have misappropriated the peacock idol with an intension to sell the same for higher price to make money. The Charge Sheet filed by the respondent police did not reveal about the efforts made by the police in unearthing the peacock idol which was lost, so far as this aspect is concerned it is failure of the police investigation but question is on the ground of non tracing of Peacock idol can be a ground to quash the final report?

44. As per prosecution version, in the year 2004 during the time of consecration, peacock idol with flower in its beak was replaced with the peacock idol with snake in its beak. Some of the witnesses whose statements were recorded under Section 161 (3) of Cr.P.C including Thiru.Venkata Subramania Sivachariyar and Kabali Vaidyanathan have specifically stated that on 30.08.2004, the peacock idol along with the idols of Raghu and Kethu were taken away and replaced with identical idols. Even as on today, the idol which was allegedly committed theft has not seen the light.

45. There is no dispute that peacock idol with flower in its beak was in existence and that it was replaced with peacock idol with snake in



its beak. If there is any dispute about existence of Peacock idol with flower in its beak and it is missing, then as rightly submitted tracing the idol is vital for prosecution to prove the case against the accused. However, when there is no dispute at all about missing of peacock idol when there is prima facie material to that effect non tracing of idols is not fatal to the prosecution and thereby non recovery of the peacock idol with flower in its beak will not help the petitioner/A.2. The issue which will have to be decided by the Trial Court is whether accused are involved in removing the old peacock idol and replacing with new one.

Peacock Idol were changed prior to 2004:

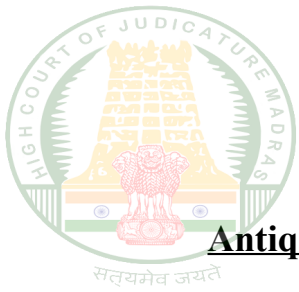
46. Learned Senior Counsel for the petitioner/A.2 has submitted that two years prior to the alleged date of incident peacock idol with flower in its beak was replaced with peacock idol with snake in its beak, thereby, the allegation that in the year 2004 the petitioner and others have changed the peacock idol with flower in its beak with peacock idol with snake in its beak, cannot be accepted. It is submitted by the Defacto complainant/ respondent No.2 that the proceedings to show that peacock was changed two years prior to 2004 are created in order to help the accused to escape from the charges levelled against her.



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47. If really peacock idol with flower in its beak was changed and replaced with peacock idol with snake in its beak prior to 2004 then the Endowment Department must have preserved the old peacock idol with flower in its beak and should have produced before the investigating authorities during the course of investigation. But no such thing has happened. Added to that many witnesses whose statements were recorded under Section 161(3) of Cr.P.C., have stated that on 30.08.2004 peacock idol with flower in its beak was replaced with peacock idol with snake in its beak. Therefore, if at all really the peacock idol with flower in its beak was changed two years prior to 2004, how can many witnesses in one voice state to the police that in their presence, in spite of protest, the peacock idol with flower in its beak was changed in the year 2004.

48. Therefore, when there is a direct evidence in the form of statement of witnesses that peacock idol was replaced, value cannot be attached to the proceedings to show that the peacock idol with flower in its beak was replaced two years prior to the alleged incident and basing on the said doubtful proceedings, the final report cannot be quashed.



Antiquity

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49. The learned Senior counsel for the petitioner has submitted that the peacock idol with flower in its beak cannot be said to be antiquity as per the Antiquities And Art Treasures Act, 1972, thereby the Idol Wing Police of CID cannot investigate this case consequently Additional Chief Judicial Magistrate, Kumbakonam cannot try this case. Learned Senior Counsel has further submitted that if the peacock idol with flower in its beak is an antiquity, it must have huge antique value in terms of money, however, as per the Charge Sheet the value of the peacock idol with flower in its beak is shown as zero.

50. Mr.Antony Prabhakar, the learned Additional Public Prosecutor appearing for the state has while conceding that no certificate is produced to show that it is an Antiquity as per the Antiquities and Art Treasures Act, 1972, submitted that the stone peacock idol with flower in its beak is an antiquity, even though in the Charge Sheet its value is shown as zero. The defacto complainant has submitted that though there is no certificate as required under Antiquities And Art Treasures Act, 1972 it cannot be said that peacock idol with flower in its beak is an antiquity.



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51. Prosecution has failed to produce any material to show in which year the peacock idol with flower in its beak was installed in the temple. There is no record, to the effect that peacock idol with flower in its beak is an antiquity as the required under the Antiquities And Art Treasures Act, 1972 and in the final report its value shown as zero. However as rightly submitted by the Defacto complainant that the records in the form of book, old pictures, sculptures and historical evidence to the effect that the peacock idol with flower in its beak was in existence since long time and that it was not installed in the recent past.

52. In respect of value of the idol is concerned, whatever police have mentioned in the Charge Sheet that there is no value for the idol cannot be taken seriously. In fact it is very difficult to value an idol more so if it is stated to be an antique idol. The value will come to know when it is offered to sell. Even otherwise, if the charge sheet has mentioned that the value of idol is zero, it is only because Investigation Officer was unable to assess the value but it does not mean the idol has no value. The petitioner/A.2 can raise these issues before the Trial Court. Even though the idol is an not antiquity and that idol wing police have investigated the



offence instead of regular police, the investigation done by idol wing cannot be said to be irregular and at this stage on this ground final report cannot be quashed. The petitioner is at liberty to raise the said issue before the Trial Court.

Ingredients of the offences not found

53. As per the Charge Sheet, it is mentioned that the offenders have committed the offences under Section 403, 406, 409, 202, 120-B of IPC @ 120-B of IPC, 409, 109 of IPC, 409 of IPC, 201 and 204 of IPC. Insofar as petitioner/A.2-Tmt.Thirumagal, is concerned it is specifically mentioned that she has committed the offences punishable under Section 120B, 409, 201 and 204 of IPC. Mr.Ramesh, the learned Senior Counsel appearing for the petitioner has submitted that even if all the contents of the Charge Sheet are accepted to be true, no offence alleged against the petitioners/A.2 is made out. Mr.Antony Sahayana Prabhakar, the learned Additional Public Prosecutor appearing for the state has submitted that on close scrutiny of the material placed before the Court by the police in the form of Charge Sheet there are ingredients which constitutes the offences alleged against the accused.



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54. Section 120B of IPC reads as under:

“120B. Punishment of criminal conspiracy.—(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, 1 [imprisonment for life] or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.”

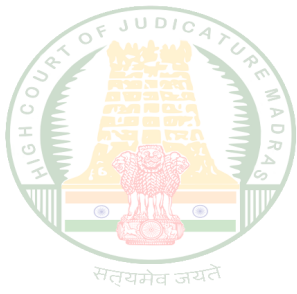
55. In order to prove the offence under Section 120B IPC, it is required to prove that there is an agreement among the accused to commit an illegal act or a legal act but by illegal means, the essence of these offence lies in the agreement and the intension to commit and it also requires a place or scheme to execute the act. All the conspirators are equally liable, regardless of their role played individually in exercise of act and thereby all the accused are liable for the act of other co-conspirators. However, it is difficult to prove by direct evidence, thereby



from established facts an inference has to be drawn. The learned counsel for the petitioner has relied on the judgment of the Hon'ble Apex Court in

CENTRAL BUREAU OF INVESTIGATION, HYDERABAD vs. K. NARAYANA RAO reported in (2012) 9 Supreme Court Cases 512 and the relevant portion reads as under:

“24. The ingredients of the offense of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by legal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable



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explanation. In other words, an offense of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence.”

56. It is the submission of the learned Senior Counsel for the petitioner that there is no material before the Court to conclude prima facie that the petitioner conspired with other accused to commit the offences alleged and the allegations leveled by the prosecution are purely basing on suspicion.

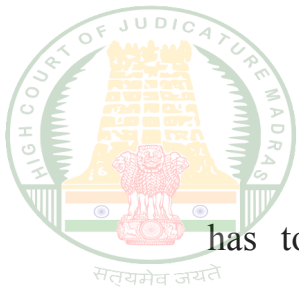
57. As per the prosecution version in furtherance of Criminal conspiracy A.2 to A.4 have engaged the services of the Mrs.Sornam Sirpa Kalaikoodam of Kanchipuram of A.3 to secretly to make and deliver new stone idols of peacock, Raahgu and Kedhu. A.2 has used A.5, A.6 and A.7 to stealthily removed old stone idols of peacock, Raahgu and Kedhu and replaced them with newly made stone idols and to concealed the old idols, thereby A.2 to A.7 have conjointly committed offence punishable under Section 120B of IPC.

58. The agreement between the conspirators need not be express



specific, it can also be implied as observed in E.Sher Singh Vs. State of Andhara Pradesh reported in AIR 204 SC 3030. As secrecy is maintained in respect of conspiracy it has to be proved by way of surrounding circumstances by means of circumstantial evidence. Courts will have to take cumulative effect of circumstances instead of considering the circumstance in isolation. Thereby while considering the petition under Section 482 of Cr.P.C., it is difficult to rule that there is no material to prove the offence. Unless trial is conducted it is not possible to come to conclusion in respect of offence under Section 120 of IPC.

59. Basing on the allegations levelled against the petitioner in the Charge Sheet though as rightly submitted by the learned Senior Counsel, there is no direct evidence to show that the petitioner/A.2 conspired with the other accused to commit the alleged offences, the statement of witnesses specifically go to show that the petitioner/A.2 being Executive Officer has controlled every aspect of alleged offence right from taking decision of renovation of the temple until alleged concealment of peacock idol with flower in its beak. As already observed, the criminal conspiracy in most of the times cannot be proved with the direct evidence only basing on the circumstances that existed, the offence of conspiracy



has to be inferred. This can be done only after full-fledged trial.

Therefore, at this stage, basing on the material it cannot be said that there are no ingredients to hold prima facie the offence of criminal conspiracy against the petitioner/A.2.

60. Section 409 of IPC runs as under:

“ 409. Criminal breach of trust by public servant, or by banker, merchant or agent.—Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with 1 [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

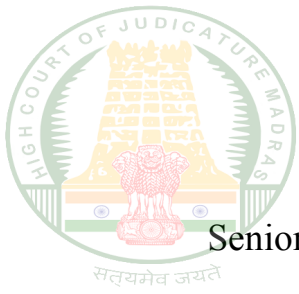
61. In order to prove of the offence under Section 409 of IPC, the prosecution is expected to prove that the petitioner/A.2 is public servant as defined under Section 21 of IPC and was entrusted with peacock idol with flower in its beak in her capacity as public servant and that she has committed criminal breach of trust as defined under Section 405 of IPC in respect of peacock idol with flower in its beak.



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62. It is the case of the prosecution that in furtherance of criminal conspiracy, on the instructions of A.2 and A.4, A.5, the newly made stone idols of Raahgu and Kedhu were installed at Navagraha Sannadhi by A.6 and A.7. On 29.08.2004 during night time A.2 and A.5 transported the misappropriated idols in that private car and concealed them in a secret location which is exclusively with the knowledge of the A.2 and A.5. Thereby according to the prosecution there is prima facie material against the petitioner/A.2 and others for the offence under Section 120B of IPC and Section 409 of IPC. Thereby according to the prosecution petitioner/A.2 being Executive Officer/ Public Servant entrusted with peacock idol and that she has dishonestly misappropriated the same.

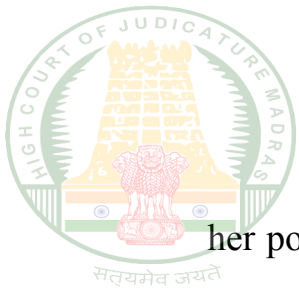
63. Basic ingredient for the offences under Sections 409 is that the accused shall be public servant and that the property was entrusted. The learned Senior Counsel for the petitioner has submitted that there is no record that petitioners were entrusted with the peacock idol with flower in its beak, thereby the offences alleged under Sections 409 cannot be attributed and cannot be proved against the petitioner/A.2. Learned



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Senior Counsel for the petitioner, while referring relevant provisions of Hindu Religious & Charitable Endowment Act submitted that as per Endowment Act, all movable properties in the temple were entrusted to the trustees and therefore the petitioner/A.2 is no way concerned with the property of temple, including the idols.

64. The prosecution has not produced any record to show that the peacock idol with flower in its beak was entrusted to the petitioner/A.2. There is no entrustment of peacock idol to the petitioner/A.2 in writing. There is no provision or rule or orders of the Government entrusting Idols of the temple to the Executive Officer. However by virtue of her nature of work as Executive Officer of the temple, she has domain control on each and every aspect of the temple. Even if trustees are having control over the property of the temple, as per Endowment Act, petitioner/A.2 being Executive Officer cannot say that she is no way concerned with idols. The Executive Officer will have the overall control of all the activities of all the wings of the temple administration including protection and preservation of the temple properties along with idols. Even though there is no specific entrustment on paper of any of the properties of the temple more particularly the peacock idol, by virtue of



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her position as Executive Officer of Temple, she has got control over the property of the temple including the peacock idol. Thereby, petitioner/A.2 Tmt.Thirumagal cannot contend that she was not entrusted with the idol.

65. Further, as already observed, as per the Charge Sheet that the petitioner was physically present and organised and gave instructions to other accused for replacing the peacock idol with flower in its beak with the peacock idol with snake in its beak and old idol was kept in her car. The fact that other accused, employees of the temple and Archakas have been following petitioner/A.2's all the instructions including that of idols, go to show that she has got control and domain over all the properties of the temple including idols. Therefore, the petitioner cannot escape by saying that there is no formal entrustment of the peacock idol.

66. It is further case of the prosecution, A.2 to A.7 have caused disappearance of evidence by replacing and secretly concealing misappropriate the stone idols of peacock with flower in its beak, Raaghu and Kedhu idols, thereby A.2 to A.7 have committed the offence punishable under Section 201 of IPC.



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67. Section 201 of IPC reads as under

“Causing disappearance of evidence of offence, or giving false information to screen offender.—Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, if a capital offence.—shall, if the offence which he knows or believes to have been committed is punishable with death be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; if punishable with imprisonment for life.—and if the offence is punishable with 1 [imprisonment for life], or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; if punishable with less than ten years’ imprisonment.—and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.”



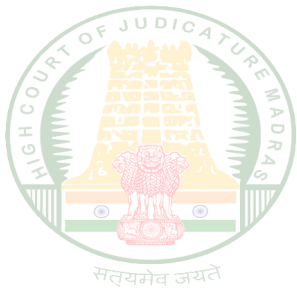
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68. In order to prove the offence under Section 201 of IPC, it is required to prove that the accused knowing that an offence was committed has destroyed the evidence of that offence to screen the accused from legal punishment. This offence is not attracted to the petitioner/A.2. According to the prosecution, petitioner/A.2 and other accused have caused disappearance of stone idols of peacock with flower in its beak, in order to escape herself from criminal liability, and to have illegal gain. When allegation of concealing peacock idol is not to screen the other accused and that it was only to sell it for illegal gain, the offence under Section 201 of IPC is not attracted to the petitioner/Accused No.2.

69. Section 204 of IPC reads as under

204. Destruction of document to prevent its production as evidence.—“Whoever secretes or destroys any 3 [document and electronic record] which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant, as such, or obliterates or renders illegible the whole or any part of such 3 [document or



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electronic record] with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

70. In order to prove the offence under Section 204 of IPC prosecution has to prove that the petitioner/A.2 destroyed the documents or electronic evidence which may be compelled to produce before the Court, as evidence.

71. The contentions of the respondents is that A.2/Tmt.Thirumagal, being Additional Commissioner/ Executive Officer having domain over the documents available in the office of the Commissioner of HR & CE Department, deliberately with criminal intension to prevent the documents being produced as evidence before the Court, destroyed the certain valuable documents pertaining to change of idols and



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consecration on 14.07.2008, thereby A.2/Thirumagal has committed the offence punishable under Section 204 of IPC. The statements of Executive Officer is very clear to the effect that when she has visited the office of A.2, she was destroying the documents. The photographer has stated to the Police that he has handed over the photos and CD to petitioner/A.2 but during the course of investigation they were not found. The Executive Officer who was working at the time of investigation has stated to the Police that documents pertaining to Kumbahishekam were destroyed by the petitioner/A.2. Hence, there is prima facie material against the petitioner for the offence under Section 204 of IPC.

Bar under Section 468 of Cr.P.C.

72. Learned Senior Counsel appearing for the petitioner and other accused have submitted that, the investigation of the offences under Sections 120B, 409, 201 and 109 of IPC, should have been completed within a specific period as required under Section 468 of Cr.P.C. It is submitted further that from the date of alleged offence, in the year 2004 or from the date of registration of FIR on 23.07.2018, the investigation



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was continued beyond the period as prescribed under Section 468 of Cr.P.C, insofar as the offences punishable under Sections 120B, 201 and 109 of IPC, the Charge Sheet against the petitioner.

73. On the other hand, Mr.Antony Prabhakaran, the learned Additional Public Prosecutor appearing for the state has submitted that the limitation in this case does not apply as there is a material to hold that the accused have committed offence punishable under Section 409 IPC and that insofar as offence under Section 409 of IPC concerned, the bar under Section 468 of Cr.P.C does not apply. He has further submitted that while disposing of Crl.O.P.No.24544 of 2019 on 22.07.2022, this Court has permitted the respondent police to file the Charge Sheet within a period of four months and accordingly the Charge Sheet was filed within four months, thereby Section 468 of Cr.P.C does not apply even for the offences punishable under Section 120B, 201 and 109 of IPC.

74. Section 468 of Cr.P.C., imposes bar from taking cognizance of certain offences after the lapse of certain periods of limitation. Section 468 of Cr.P.C runs as under:

“468. Bar to taking cognizance after lapse of the period of limitation.—



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(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation. (2) The period of limitation shall be— (a) six months, if the offence is punishable with fine only; (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

[(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.]"

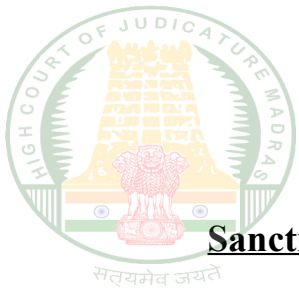
75. As per the Charge Sheet offences under Section 120B, 201 of IPC are attributed against A.2 to A.7, for the offences under Section 409 of IPC against A.2 to A.4 offence under Section 204 of IPC was attributed against A.2 and for the offences under Sections 109 read with Section 409 of IPC against A.5 to A.7.

76. Considering the bar in taking cognizance in respect of



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offences punishable under Sections 120B, 204 and 109 of IPC, the charge sheet should have been filed within three years from the date of offence under Section 468 (2) (C) of Cr.P.C. However in respect of offence under Section 409 of IPC is concerned, it is submitted by the learned counsel for the petitioners that the offence under Section 409 is deliberately included by the prosecution in order to save the limitation even though there are no ingredients to that effect. Insofar as offence under Section 201 of IPC is concerned the punishment can be 7 years or fine or even less than that, as punishment goes with the main offence the accused has allegedly committed. Hence, insofar as offence under Section 201 of IPC is concerned the bar under Section 468 of Cr.P.C does not apply. When a Charge Sheet is filed alleging that accused has committed more than one offences and of which for some of the offences limitation has been prescribed for completing the investigation and was expired under Section 468 of Cr.P.C and in respect of other offences, if no limitation is prescribed for filing the Charge Sheet, it is to be considered that in respect of all the offences, Charge Sheet is filed well within limitation. Considering the above, it cannot be said that there is delay in filing the charge sheet and on that ground, charge sheet cannot be quashed.



Sanction not obtained- Public Servant.

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77. Mr.Ramesh, the learned Senior Counsel has submitted that A. 2/Tmt.Thirumagal who was working as Executive officer is a public servant as defined under Section 21 of IPC, and that as per Section 197(1) of Cr.P.C., the learned Magistrate cannot take cognizance of offence against the petitioner/A.2 without sanction of the State Government, however cognizance was taken contrary to Section 197(1) of Cr.P.C., which is bad in law and is liable to be quashed. It is submitted that whenever sanction is required non compliance of the same is a ground for quashment as per Bhajanlal case.

78. The learned counsel for the petitioner has cited an authority in **A. Srinivasulu Vs. State Rep, by the Inspector of Police** reported in 2023 SCC OnLine SC 900 and the relevant portion reads as under:

“41. In Devinder Singh v. State of Punjab through CBI, this Court took note of almost all the decisions on the point and summarized the principles emerging therefrom, in paragraph 39 as follows:

"39. The principles emerging from the aforesaid decisions are summarised hereunder:

39.1. Protection of sanction is an assurance to an



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honest and sincere officer to perform his duty honestly and to the best of his ability to further public duty. However, authority cannot be camouflaged to commit crime.

39.2. Once act or omission has been found to have been committed by public servant in discharging his duty it must be given liberal and wide construction so far its official nature is concerned. Public servant is not entitled to indulge in criminal activities. To that extent Section 197 CrPC has to be construed narrowly and in a restricted manner.

39.3. Even in facts of a case when public servant has exceeded in his duty. if there is reasonable connection it will not deprive him of protection under Section 197 CrPC. There cannot be a universal rule to determine whether there is reasonable nexus between the act done and official duty nor is it possible to lay down such rule.

39.4. In case the assault made is intrinsically connected with or related to performance of official duties, sanction would be necessary under Section 197 CPC, but such relation to duty should not be pretended or fanciful claim. The offense must be directly and reasonably connected with official duty to require sanction. It is no part of official duty to commit offence. In case offense was incomplete without proving, the official act, ordinarily the provisions of Section 197 CPC would apply.



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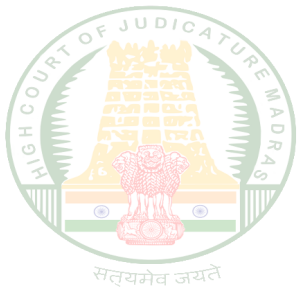


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51. No public servant is appointed with a mandate or authority to commit an offence. Therefore, if the observations contained in paragraph 50 of the decision in Parkash Singh Badal are applied, any act which constitutes an offence under any statute will go out of the purview of an act in the discharge of official duty. The requirement of a previous sanction will thus be rendered redundant by such an interpretation.

52. It must be remembered that in this particular case, the FIR actually implicated only four persons, namely PW-16, A-3, A-4 and A-5. A-1 was not implicated in the FIR. It was only after a confession statement was made by PW-16 in the year 1998 that A-1 was roped in. The allegations against A-1 were that he got into a criminal conspiracy with the others to commit these offenses. But the Management of BHEL refused to grant sanction for prosecuting A-3 and A-4, twice, on the ground that the decisions taken were in the realm of commercial wisdom of the Company. If according to the Management of the Company, the very same act of the co-conspirators fell in the realm of commercial wisdom, it is inconceivable that the act of A-1, as part of the criminal conspiracy, fell outside the discharge of his public duty, so as to disentitle him for protection under Section 197(1) of the Code.

53. In view of the above, we uphold the contention advanced on behalf of A-1 that the prosecution ought to



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have taken previous sanction in terms of Section 197(1) of the Code, for prosecuting A-1, for the offenses under the IPC.”

79. The learned counsel for the petitioner has relied on the judgment of ***A.Sreenivasa Reddy vs. Rakesh Sharma & Anr.***, reported in 2023 LiveLaw (SC) 614 and the relevant portion reads as under:

“59) From the aforesaid, it can be said that there can be no thumb rule that in a prosecution before the court of Special Judge, the previous sanction under Section 19 of the PC Act, 1988 would invariably be the only pre-requisite. If the offences on the charge of which, the public servant is expected to be put on trial include the offences other than those punishable under the PC Act, 1988 that is to say under the general law (i.e. IPC), the court is bound to examine, at the time of cognizance and also, if necessary, at subsequent stages (as the case progresses) as to whether there is a necessity of sanction under Section 197 of the CrPC. There is a material difference between the statutory requirements of Section 19 of the PC Act, 1988 on one hand, and Section 197 of the CrPC, on the other. In the prosecution for the offences exclusively under the PC Act, 1988, sanction is mandatory qua the public servant. In cases under the general penal law against the public servant, the



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necessity (or otherwise) of sanction under Section 197 of the CrPC depends on the factual aspects. The test in the latter case is of the “nexus” between the act of commission or omission and the official duty of the public servant. To commit an offence punishable under law can never be a part of the official duty of a public servant. It is too simplistic an approach to adopt and to reject the necessity of sanction under Section 197 of the CrPC on such reasoning. The “safe and sure test”, is to ascertain if the omission or neglect to commit the act complained of would have made the public servant answerable for the charge of dereliction of his official duty. He may have acted “in excess of his duty”, but if there is a “reasonable connection” between the impugned act and the performance of the official duty, the protective umbrella of Section 197 of the CrPC cannot be denied, so long as the discharge of official duty is not used as a cloak for illicit acts.”

80. Mr.Antony Prabhakaran, the learned Additional Public Prosecutor appearing for the state in the contrary has submitted that though the petitioner/A.2 and Thiru.Dhanapal/A.4 are public servants as on the date of alleged commission of the offence, sanction under Section 197 of Cr.P.C is not necessary as the acts done by them, are not the acts done by them while discharging their official functions as such public



servants.

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81. The relevant portion of the judgment of Hon'ble Apex Court in State of **Kerala vs. V.Padmanabhan Nair**, reported in (1999) 5 SCC 690, reads as under:

"4. As the matter was taken up before the High Court the decision of this Court in Harihar Prasad v. State of Bihar- was cited before the learned Single Judge, who heard the matter. It was held in the said decision that: (SCC Headnote) "As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409 of the Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act are concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. It is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar to a prosecution under Section 120-B, read with Section 409 of the Penal Code."

Learned Single Judge tried to distinguish the said decision by observing thus:"But here he is charged under Sections 406 and 409 also which relate to criminal



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breach of trust by a public servant. Therefore, sanction is necessary to prosecute the petitioner (respondent)."

7. That apart, the contention of the respondent that for offences under Sections 406 and 409 read with Section 120-B of IPC sanction under Section 197 of the Code is a condition precedent for launching the prosecution is equally fallacious. This Court has stated the correct legal position in Shreekantiah Ramaya Munnipalli v. State of Bombay and also Amrik Singh v. State of Pepsu that it is not every offence committed by a public servant which requires sanction for prosecution under Section 197 of the Code, nor even every act done by him while he is actually engaged in the performance of his official duties. Following the above legal position it was held in Harihar Prasad- as follows: (SCC p. 115, para 66)

"As far as the offence of criminal conspiracy punishable under Section 120-B, read with Section 409, Penal Code, 1860 is concerned and also Section 5(2) of the Prevention of Corruption Act is concerned, they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under 197 of the Code of Criminal Procedure is, therefore, no bar."

8. Learned Single Judge of the High Court declined to



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follow the aforesaid legal position in the present case on the sole premise that the offence under Section 406 of IPC has also been fastened against the accused besides Section 409 of PC. We are unable to discern the rationale in the distinguishment. Sections 406 and 409 of IPC are cognate offences in which the common component is criminal breach of trust. When the offender in the offence under Section 406 is a public servant (or holding any one of the positions listed in the section) the offence would escalate to Section 409 of the Penal Code. When this Court held that in regard to the offence under Section 409 of IPC read with Section 120-B it is no part of the duty of the public servant to enter into a criminal conspiracy for committing breach of trust, we find no sense in stating that if the offence is under Section 406 read with Section 120-B IPC it would make all the difference vis-à-vis Section 197 of the Code.

9. For the aforesaid reasons, we have no doubt that the High Court has committed a grave error in quashing the prosecution proceedings. The case against the respondent has to go to trial in accordance with law. Accordingly, we allow this appeal and set aside the judgment of the High Court and direct the Special Judge concerned to proceed with the trial.”

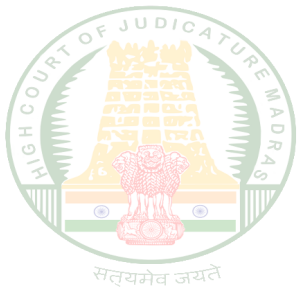
82. The judgment of Devinder Singh & Ors. vs. State of Punjab



through CBI , reported in CRIMINAL APPEAL NO.190 OF 2003 and

the relevant portion reads as under:

“21. In P.K. Pradhan v. State of Sikkim represented by the Central Bureau of Investigation 2001 (6) SCC 704 this Court considered the provisions contained in section 197(1) of the Code of Criminal Procedure whether an offence committed “while acting or purporting to act in the discharge of his official duty” and laid down that the test to determine the aforesaid is that the act complained of must be an offence and must be done in discharge of official duty. In any view of the matter there must be a reasonable connection between the act and the official duty. It does not matter that the act exceeds what is strictly necessary for the discharge of the official duty, since that question would arise only later when the trial proceeds. However no sanction is required where there is no such connection and the official status furnishes only the occasion or opportunity for the acts. The claim of the accused that the act was done reasonably and not in pretended course of his official duty can be examined during the trial by giving an opportunity to the defence to prove it. In such cases the question of sanction should be left open to be decided after conclusion of the trial. The decision in Abdul Wahab Ansari (supra) has also been taken into consideration



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by this Court. In *P.K. Pradhan (supra)* this Court has laid down thus

“5. The legislative mandate engrafted in sub-section (1) of Section 197 debarring a court from taking cognizance of an offence except with the previous sanction of the Government concerned in a case where the acts complained of are alleged to have been committed by a public servant in discharge of his official duty or purporting to be in the discharge of his official duty and such public servant is not removable from office save by or with the sanction of the Government, touches the jurisdiction of the court itself. It is a prohibition imposed by the statute from taking cognizance. Different tests have been laid down in decided cases to ascertain the scope and meaning of the relevant words occurring in Section 197 of the Code: “any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty”. The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point for determination is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds



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what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What a court has to find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of official duty, though, possibly in excess of the needs and requirements of the situation.”

83. Admittedly sanction is not obtained by the respondent No.1 police prior to taking cognizance of offences against A.2 and other public servant A.4. Considering the material placed before the Court on applying the test required under Section 197 of Cr.P.C., it is clear that the petitioner/A.2 even being public servant as defined under Section 21 of IPC has acted completely away from her duty as a public servant and committed the offence. There is no connection between the official duties of petitioner/A.2 and offence committed. It is not even a case of exceeding duty. Petitioner/A.2 has allegedly acted contrary to her duties. The petitioner/A.2 being the Executive Officer is expected to protect the properties of the temple. Even if peacock idol with snake in its beak was required to be removed as advised by Thiru.Padmanabha Sharma of Kerala and others advised by A.2 could have removed the old peacock



idol and preserved it.

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84. It is also the statement of the present Executive Officer of the temple that A.2 has not taken permission from the Superiors of HR & CE Department before taking the decision of change of peacock idol. It is alleged by the prosecution that A.2 and A.4 that after removing peacock idol with flower in its beak and idols of Raahgu and Kedhu, they were concealed by them secretly without accounting them and without preserving them in the department. Even if removal of the idols is considered as part of her duty as Executive Officer concealing them secretly and appropriating them without accounting them in the department is totally away from her duties as the Executive Officer of the temple. Therefore, petitioner/A.2 will not get protection under Section 197 of Cr.P.C.

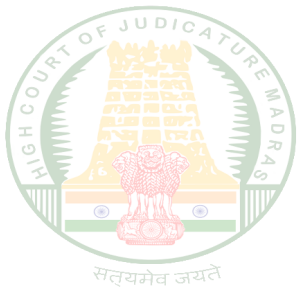
85. Scope of 482 of the Code of Criminal Procedure:

“482. Saving of inherent powers of High Court.— Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”



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86. The learned counsel for the petitioner/A.2 has submitted that there is no prima facie case against the petitioner/A.2 hence urged the Court to quash the case against the petitioner/A.2. Inherent powers under Section 482 of Cr.P.C., have to be exercised very sparingly, only to prevent abuse of process of law and the secure the ends of justice. The cardinal principles of law to be considered while exercising powers under Section 482 Cr.P.C., is that the prosecution is not required to prove the charges before the High Court and that the charges have to be proved only in the Trial Court during the course of trial on the basis of evidence, thereby, the High Court is not required to conduct a mini trial, while considering petition under Section 482 of Cr.P.C. This Court while dealing with a petition under Section 482 of Cr.P.C., cannot embark upon the enquiry as to whether witnesses have stated truth or otherwise and it is sufficient if a prima facie case is made out. It is for the the Trial Court to examine the witnesses, and give a finding after conclusion of full fledged trial about truth or otherwise of the evidence of witnesses. If there is prima facie case against the accused in respect of offences alleged against the accused, then only course left for this Court is to divert the accused to face the trial.

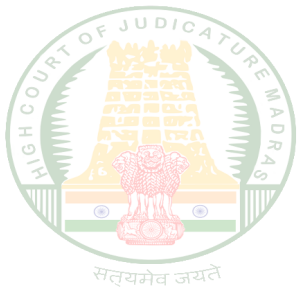


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87. Learned counsel for the petitioner has cited the judgment of Hon'ble Supreme Court in ***Mahmood Ali & Ors. vs. State of U.P & Ors.*** In Criminal Appeal No.2341 of 2023 (arising out of S.L.P. (Criminal) No. 12459 of 2022) and the relevant portions reads as follows:

“10. We are of the view that even if the entire case of the prosecution is believed or accepted to be true, none of the ingredients to constitute the offence as alleged are disclosed. It is pertinent to note that the FIR in question came to be lodged after a period of 14 years from the alleged illegal acts of the appellants. It is also pertinent to note that in the FIR no specific date or time of the alleged offences has been disclosed.

12. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the

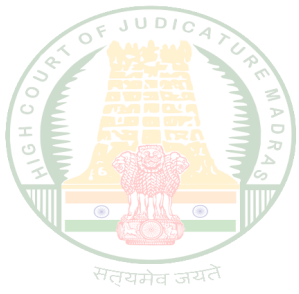


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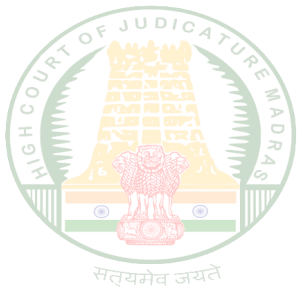
accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into 13 many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”



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88. In ***Rajiv Thapar and Others vs. Madan Lal Kapoor***, reported in (2013) 3 Supreme Court Cases 330 and the relevant portion reads as under:

“29. The issue being examined in the instant case is the jurisdiction of the High Court under Section 482 CrPC, if it chooses to quash the initiation of the prosecution against an accused at the stage of issuing process, or at the stage of committal, or even at the stage of framing of charges. These are all stages before the commencement of the actual trial. The same parameters would naturally be available for later stages as well. The power vested in the High Court under Section 482 CrPC, at the stages referred to hereinabove, would have far-reaching consequences inasmuch as it would negate the prosecution's/complainant's case without allowing the prosecution/complainant to lead evidence. Such a determination must always be rendered with caution, care and circumspection. To invoke its inherent jurisdiction under Section 482 CrPC the High Court has to be fully satisfied that the material produced by the accused is such that would lead to the conclusion that his/their defence is based on sound, reasonable, and indubitable facts; the material produced is such as would rule out and displace the assertions



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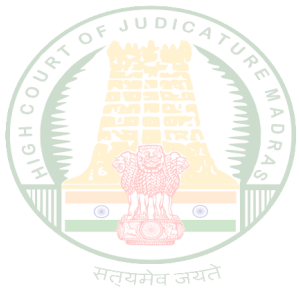


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contained in the charges levelled against the accused; and the material produced is such as would clearly reject and overrule the veracity of the allegations contained in the accusations levelled by the prosecution/complainant. It should be sufficient to rule out, reject and discard the accusations levelled by the prosecution/complainant, without the necessity of recording any evidence. For this the material relied upon by the defence should not have been refuted, or alternatively, cannot be justifiably refuted, being material of sterling and impeccable quality. The material relied upon by the accused should be such as would persuade a reasonable person to dismiss and condemn the actual basis of the accusations as false. In such a situation, the judicial conscience of the High Court would persuade it to exercise its power under Section 482 CrPC to quash such criminal proceedings, for that would prevent abuse of process of the court, and secure the ends of justice.

30. Based on the factors canvassed in the foregoing paragraphs, we would delineate the following steps to determine the veracity of a prayer for quashment raised by an accused by invoking the power vested in the High Court under Section 482 CrPC:

30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e.



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the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges levelled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations as false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, the judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial(as well as proceedings therefrom) specially when it is clear that the same



would not conclude in the conviction of the accused.”

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89. The judgment of Hon'ble Apex Court in ***Saranya Versus Bharathi and another***, reported in 2021 (3) ALT (Crl.) (SC) 225 (D.B.) and the relevant portion reads as under:

“7.1 In the case of Deepak (supra), to which one of us (Dr. Justice D.Y. Chandrachud) is the author, after considering the other binding decisions of this Court on the point, namely, Amit Kapoor v. Ramesh Chander (2012) 9 SCC 460; State of Rajasthan v. Fatehkaran Mehdu (2017) 3 SCC 198; and Chitresh Kumar Chopra v. State (Government of NCT of Delhi) (2009) 16 SCC 605, it is observed and held that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for “presuming” that the accused had committed the offence. It is observed and held that at that stage, the High Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, take at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences. It is further observed and held that at this stage the High Court is not required to appreciate the evidence on record and consider the allegations on merits and to



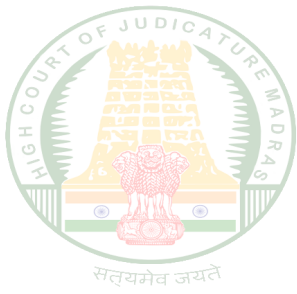
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find out on the basis of the evidence recorded the accused chargesheeted or against whom the charge is framed is likely to be convicted or not.

9. It also appears that during the course of the investigation, the investigating officer has collected very important evidence in the form of call details between A1 & A2 which are in the proximity of the time of commission of offence and even thereafter. Therefore, in the facts and circumstances of the case, when respondent no.1 herein has been chargesheeted for the offences under Sections 420, 302 r/w 109 IPC and as observed hereinabove when there is ample material to show at least a prima facie case against respondent no.1 herein – A2, the High Court has committed a grave error in quashing the chargesheet/entire criminal proceedings qua her in exercise of powers under Section 482 Cr.P.C. Quashing the chargesheet against the accused is not justified. The High Court has evidently ignored what has emerged during the course of investigation. The High Court has entered into the appreciation of the evidence and considered whether on the basis of the evidence, the accused is likely to be convicted or not, which as such is not permissible at all at this stage while considering the application under Section 482 Cr.P.C. The High Court was not as such conducting the trial and/or was not exercising the jurisdiction as an



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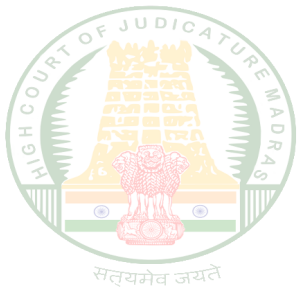
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appellate court against the order of conviction or acquittal. Therefore, in the facts and circumstances of the case, the High Court ought not to have quashed the chargesheet qua respondent no.1 herein – original accused no.2.”

90. The judgment of Hon'ble Apex Court in ***Indian Oil Corporation vs. NEPC India Limited and others***, reported in (2006) 6 SCC 736 and the relevant portion reads as under:

“(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prime facie constitute any offence or make out the case alleged against the accused. For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause



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harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence



or not.”

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91. In **Central Bureau of Investigation vs. Arvan Singh** reported in 2023 SCC OnLine SC 379 and decided on 10-04-2023, the Honourable Supreme Court observed at Para.No.4.1 as under:

“4.1 From the impugned common judgment and order passed by the High Court, it appears that the High Court has dealt with the proceedings before it, as if, the High Court was conducting a mini trial and/or the High Court was considering the applications against the judgment and order passed by the learned Trial Court on conclusion of trial. As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr.P.C., the Court is not required to conduct the mini trial. The High Court in the common impugned judgment and order has observed that the charges against the accused are not proved. This is not the stage where the prosecution / investigating agency is/are required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution / investigating agency. Therefore, the High Court has materially erred in going in detail in the allegations and the material collected during the course of the investigation against the accused, at this stage. At the stage of discharge and/or while exercising the powers



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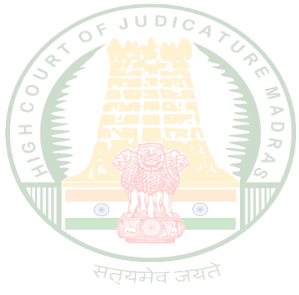
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under Section 482 Cr.P.C., the Court has a very limited jurisdiction and is required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not”.

Conclusion:

92. On overall consideration of entire material placed on record and the contentions alleged before this Court by the learned Senior Counsel and other counsel for the petitioner/A.2 and also on hearing the learned Additional Public Prosecutor and the Defacto complainant and also on considering the law laid down by the Hon'ble Apex Court in the judgments referred supra, it cannot be said that the continuation of proceedings against the petitioner/A.2 amounts to abuse process of Court.

93. As discussed above though the petitioner was charge sheeted for the offence under Sections 120B, 409, 201 and 204 of IPC, insofar as offence alleged against the petitioner/A.2 under Section 201 cannot be fastened against the petitioner/A.2, the Charge Sheet against the petitioner/A.2 for the offences 120B and 204 of IPC cannot be quashed.



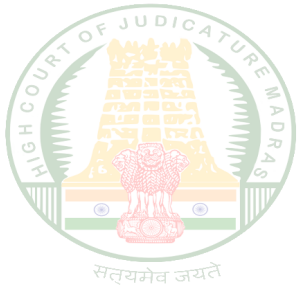
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94. In the result Criminal Original Petitions is partly allowed only

insofar as offence under Section 201 of IPC is concerned, thereby Charge Sheet against the petitioner/A.2 for the offence under Section 201 of IPC is hereby quashed. In respect of other offences, i.e., Section 120B, 409 and 204 of IPC are concerned, the Criminal Original Petition is dismissed.

pkn/mvs/jai
Index: yes/No
Neutral Citation: Yes/No

16/2/2024
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Dr.D.NAGARJUN, J.

pkn/mvs/jai

To

1. The Additional Superintendent of Police
State of Tamil Nadu
Chief Investigation Officer
Idol Wing – CID
Ashok Nagar
Chennai 600 083.

Pre-delivery order made in

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16/2/2024

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