IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 03.04.2025

Orders Pronounced on : 22.04.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.Nos.1498, 1718 and 1413 of 2024
and
Crl.M.P.Nos.12541, 12540 and 11937 of 2024

Mr.B.Gnanaprakasam, S/o R.Bangaru,
M/s.ICON OFFICE Equipments,
residing at Dharshin Apartments,
2nd Floor, No.8/4, Maduvinkarai,
5th Street, Alandur, Chennai-16,
Office at No.71/22, Cheran Street,
Pary Nagar, Jafarkhanpet,
Chennai-600 083. .. Petitioner in Crl.R.C.No.1498 of 2024

R.Shaktheeswaran,
Managing Director of
M/s.Sri Krishna Works,
Irunkattukottai, Chennai. .. Petitioner in Crl.R.C.No.1718 of 2024

N.Asokan,
S/o Namasivayam,
Managing Director,
Vadivam Media Pvt. Ltd.,
Residing at No.25, Swamy Nagar 2nd Street,
Madhavaram,
Chennai-600 060. .. Petitioner in Crl.R.C.No.1413 of 2024

Vs.

1. State, represented by
   Sub-Inspector of Police,
   EDF-III, Team XXIA,
   Central Crime Branch,
   Vepery, Chennai-07.

2. M/s.ICMC Corporation Limited,
   Rep. by its Managing Director,
   Mr.M.Kannan Road, Office No.36,
   Ambattur Industrial Estate,
   Ambattur, Chennai-600 058.

(second respondent impleaded as per
order dated 24.01.2025 in
Crl.M.P.No.17579 of 2024
in Crl.R.C.No.1413 of 2024)

.. Respondents in Crl.R.C.No.1498 of 2024

1. State represented by
   Inspector General of Police,
   Central Crime Branch, (EDF-III, Team XXIA),
   Vepery, Chennai-600 007
   (Cr.No.90 of 2021).

2. K.V.N.Rajan, S/o Kuselar.G.,
   DGM of ITI Ltd.,
   Office at: 3rd Floor, Panagal Building No.1,
   Sai Kripa Flat, 'A' Block, Ground Floor,
   Oragadam Road, Venkatapuram,
   Ambattur, Chennai-53.

3. B.Pasupathy, S/o Balakrishnan,
   M/s.DCDR Infra Pvt. Ltd.,
   Office at: No.23/1, West Road, West CIT Nagar,
   Chennai-35,
   Residing at No.360, 2nd Street, 6th Sector,

K.K.Nagar, Chennai-78.

4. N.Asokan, S/o R.Namasivayam,
M/s.Vadivam Media Pvt. Ltd.,
Office at : Plot No.13/14,
Dhanalakshmi Nagar,
Vadaperumbakkam, Madhavaram,
Chennai-60,
residing at No.13, S.S.Baba Nagar,
Vadakarai, Chennai-52.

5. B.Gnanaprakasam, S/o R.Bangaru,
M/s. ICON Office Equipments,
Office at No.71/22, Cheran Street,
Pary Nagar, Jafarkhanpet, Chennai-600 083
Residing at: Dharshin Apartments, 2nd Floor,
No.8/4, Maduvinkarai, 5th Street,
Alandur, Chennai-16.

6. M.Sivakumar, S/o Muthu Velayutham,
M/s.Pregio Pharma Pvt. Ltd.,
New No.11, No.1035-A, 24th Street, "H" Block,
Anna Nagar West, Chennai-40.

7. M/s.ICMC Corporation Limited,
Rep. by its Managing Director Mr.M.Kannan,
Regd. Office at No.36, Ambattur Industrial Estate,
Ambattur, Chennai-600 058,
(Amended as per order dated 24.01.2025
in Crl.M.P.No.17589 of 2024 in Crl.R.C.No.1718 of 2024.

.. Respondents in Crl.R.C.No.1718 of 2024

1. State represented by
the Sub Inspector of Police,
EDF-III, Team XXI A,
Central Crime Branch,

Vepery, Chennai-600 007.

2. M/s.ICMC Corporation Limited,
Rep. by its Managing Director,
Mr.K.Kannan, Regd. Office at No.36,
Ambattur Industrial Estate,
Ambattur, Chennai-600 058.

(Amended as per order dated 24.01.2025
in Crl.M.P.No.1758 of 2024 in
Crl.R.C.No.1498 of 2024)

.. Respondents in Crl.R.C.No.1413 of 2024

Crl.R.C.No.1498 of 2024 is filed to call for the records, to allow the present criminal revision petition and set aside the impugned order dated 21.11.2023 in Crl.M.P.No.29269 of 2022 in C.C.No.6662 of 2022 on the file of the Metropolitan Magistrate Court for CCB and CB.CID cases, Egmore, Chennai.

Crl.R.C.No.1718 of 2024 is filed to call for the records, to set aside the impugned order dated 21.11.2023 in Crl.M.P.No.8495 of 2023 in C.C.No.6662 of 2022 on the file of the Metropolitan Magistrate Court for CCB and CB.CID cases, Egmore, Chennai.

Crl.R.C.No.1413 of 2024 is filed to call for the records and set aside the impugned order dated 21.11.2023 in Crl.M.P.No.29266 of 2023 in C.C.No.6662 of 2022 on the file of the Metropolitan Magistrate Court for CCB and CB.CID cases, Egmore, Chennai and to allow the Criminal Revision Petition.

For petitioner : Mr.M.Palanivel in Crl.R.C.No.1498 of 2024

For petitioner : Mr.V.Balasubramani in Crl.R.C.No.1718 of 2024

For petitioner : Mr.R.Sagadevan in Crl.R.C.No.1413 of 2024

For first respondent: Mr.S.Sugendran, Addl.P.P.
in all criminal revision petitions

For second respondent : in Crl.R.C.Nos.1413 and 1498 of 2024 and
for seventh respondent in Crl.R.C.No.1718 of 2024: Mr.Vimal B.Crimson

COMMON ORDER

Crl.R.C.No.1498 of 2024 is filed to call for the records and set aside the impugned order dated 21.11.2023 in Crl.M.P.No.29269 of 2022 in C.C.No.6662 of 2022 on the file of the Metropolitan Magistrate Court for CCB and CB.CID cases, Egmore, Chennai.

2. Crl.R.C.No.1718 of 2024 is filed to call for the records and set aside the impugned order dated 21.11.2023 in Crl.M.P.No.8495 of 2023 in C.C.No.6662 of 2022 on the file of the Metropolitan Magistrate Court for CCB and CB.CID cases, Egmore, Chennai.

3. Crl.R.C.No.1413 of 2024 is filed to call for the records and set

aside the impugned order dated 21.11.2023 in Crl.M.P.No.29266 of 2023 in C.C.No.6662 of 2022 on the file of the Metropolitan Magistrate Court for CCB and CB.CID cases, Egmore, Chennai and to allow the Criminal Revision Petition.

4. The first respondent-Police registered a case against the revision petitioners and other and after investigation, the respondent filed charge-sheet in Central Crime Branch Cr.No.90 of 2021 for the offences under Sections 409, 406, 420, 465, 468 read with Section 34 IPC, before the trial Court and it was taken on file in C.C.No.6662 of 2022, in which, the revision petitioner in Crl.R.C.No.1718 of 2024 is A4, the revision petitioner in Crl.R.C.No.1498 of 2024 in A5 and the revision petitioner in Crl.R.C.No.1413 of 2024 is A3.

5. Pending the above said C.C.No.6662 of 2022, the revision petitioners have filed petitions in Crl.M.P.Nos.29266 of 2023, 29269 of 2022 and 8495 of 2023 to discharge them from the said case in C.C.No.6662 of 2002. The trial Court, after hearing the matter, dismissed the discharge-petitions, against which, the revision petitioners have filed the respective Criminal Revision Petitions.

6. Learned counsel for the revision petitioner (A3) in Crl.R.C.No.1413 of 2024 submitted that due to the pressure of the de-facto complainant, A3 sent a mail to A1, asking to clarify the situation, since the de-facto complainant is pressurising to return the amount and A1, on receipt of the mail on the same day, at about 4.40 p.m., reverted that the payment of A3 is under progress and it will be paid soon and further directed A3 to give a delivery challan in favour of the de-facto complainant/Corporation. Since there was a continuous threat and pressure from the de-facto complainant, who literally said that he will give a complaint against A3 and in case A3 failed to give the delivery challan as requested by him, A3 again asked A1 as to whether the law permits to give another delivery challan for the books for which the delivery challan has been given.

7. Learned counsel for the revision petitioners further submitted that A1 called A3 to the Office on 04.03.2021 at about 8 p.m., that too, in the odd hours and A1 and his wife and one Mr.Ramu, Accounts Officer, were present and A1 gave two cheques, dated 05.03.2021 for a sum of Rs.1,10,00,429/- and Rs.1,09,99,981 drawn on State Bank of India, Greams Road Branch. A3 asked A1 and other persons there as to how the

Government of India undertaking would issue the cheque, when they are supposed to give the Pay Order. A1 informed that they are empowered to issue the cheques and the Finance Manager can do the same in favour of her husband A1, in particular, advised A3 to present the cheque on 09.03.2021 through the cheques.

8. Learned counsel for the revision petitioners further submitted that on 06.03.2021, A3 received a mail directing A3 to return the cheques immediately and A3 immediately called A1 and verified the authenticity of the mail sent from the e.mail ID and A1 asked A3 to ignore the mail and present the cheque on 09.03.2021. Since some of the dues were ignored in the minds of A3 on 08.03.2021, A3 sent a letter to Finance Manager of the ITI Limited, to the e.mail address and A3 was advised to return the cheques that were issued, but there was no reply from the Finance Manager. The cheques were presented as directed by A1 with the sole intention that when once the cheques were cleared, A3 can pay the de-facto complainant, and the amount was credited to the Account of A3 on behalf of A1. However, to the shock of A3, both the cheques got dishonoured for the reason of payment stopped by the drawer and immediately A3 tried to call A1 and he never responded to the call of A3.

Immediately, A3 sent a detailed letter, dated 19.03.2021 to the Chairman and Managing Director of the Company. The communication between the parties was acknowledged by the concerned official by Post as well as mail, there was no reply and A3 was constrained to send a detailed letter to the Vigilance Office.

9. Learned counsel for the revision petitioners further contended that A3 came to know that there was a deep conspiracy and there was hatched conspiracy committed by A1, A2 and wife of A1 to create documents without supply of goods and also make the vendor registration. A3 was cheated by A1, who directed A3 to deposit Rs.2,20,00,000/- to the credit of the A3, represented by A2, without supplying any goods. The delivery challan was also created and the revision petitioners were made to believe that the goods have been delivered to the revision petitioners and to wait for the payment.

10. Learned counsel for the revision petitioners further submitted that A1 directing the de-facto complainant to deposit Rs.2 crores and also directed the de-facto complainant to deposit Rs.50 lakhs to the credit of A2, from whom, substantial amount has been credited to the Account of similar

persons also. Since A3 refused to return the amount to the de-facto complainant on the ground that the de-facto complainant / ITI Limitaed transferred the money only on behalf of A1 and he preferred a Police complaint before the first respondent-Police, who registered a case in Crime No.90 of 2021.

11. Learned counsel for the revision petitioners further contended that A3 has not committed any offence and it is only A1 and A2 who entered into conspiracy and they have only made the revision petitioner to do it and they have not committed any alleged offence made out against A3 and the revision petitioners have filed discharge petition before the trial Court. The trial Court failed to consider the role played by A3, but there is no specific overt act against A3, and therefore, even if the trial is conducted, there is no material to convict A3 and therefore, A3 may be discharged from the case.

12. Learned counsel for the petitioner (A4) in Crl.R.C.No,.1718 of 2024 submitted that on negotiation, A5 was dealing with the business on behalf of A1 and both of them discussed and on the instructions of A1, A5 had received proforma Invoice on 21.11.2020 for Rs.3,36,00,287/- with a

condition that A4 has to pay Rs.50 lakhs as advance immediately and on the same day to allot tender in favour of A4.

13. Learned counsel for the revision petitioner further submitted that believing their representation, A1 also represented that he is the authority to allot the tender in favour of A4. On believing their representation, A1 also represented that he is the authority to allot the tender in favour of A4. The amount was paid by A4 for Rs.50 lakhs through ICICI Bank to and in favour of the Company dealing with office equipments, as instructed by A1 and A5.

14. Learned counsel for the revision petitioners further submitted that after receipt of the amount, either A1 or A5 did not respond properly and did not disclose any details about the proceedings and hence, A4 has immediately approached A1 and requested to provide the materials and their status, but he did not provide the same and one or the other way, he postponed and later, he did not even allowed to meet him in his office. Hence, A4 has tried to contact A5 and he also did not provide the details and at some point of time, he refused to meet him.

15. Learned counsel for the revision petitioners further submitted that A4 went to A1's office in January 2021 and requested him to provide concrete status of tender. However, he did not give any proper reasons and hence, A4 has requested him to pay the amount, otherwise to return back the amount, failing which, A4 has informed him that he would take appropriate legal action against A1 and A5 for their act of cheating, fraud and mis-representation of the funds.

16. Learned counsel for the revision petitioners further contended that A1 made a request to wait for 15/20 days and promised to arrange for refund of the amount of Rs.50 lakhs, from the de-facto complainant who has to pay Rs.3 crores to A1. Further, on 06.02.2021, A1 informed A4 that he has instructed the de-facto complainant to pay the amount of Rs.50 lakhs to adjust the amount, which A4 paid to A5 on the instructions of A1. Further, as informed by A1, A4 received Rs.50 lakhs from the de-facto complainant and after five days of payment, but to the shock and surprise, the de-facto complainant requested A4 to refund Rs.50 lakhs, as he was cheated by A1 and others to the tune of Rs.3 crores. Further, though A4 has informed to the de-facto complainant that A4 has received amount only at the instructions of A1, as A4 has already paid to them. He continuously

insisted and threatened to pay the amount immediately, otherwise, he stated that he would file a criminal complaint against A4. On the request of A5, the A4 refunded the amount of Rs.10 lakhs on the same day, and A4 paid Rs.10 lakhs to the de-facto complainant to avoid litigation from the de-facto complainant and A4 has requested him to wait for some more time to pay the balance amount of Rs.40 lakhs and as A4 is in need to get back from A1 and A5. Further, A4 received further amount of Rs.3 lakhs on 08.03.2021.

17. Learned counsel for the revision petitioners further contended that during the said period, A5 and A1 have again requested to pay further sum of Rs.12 lakhs, as A5 has applied for getting loan and sort out all the issues and as such, he needed Rs.12 lakhs as processing charge for the proposed loan. Therefore, the revision petitioners may receive money and he paid Rs.12 lakhs to A5 on 12.03.2021. Further, on 15.03.2021, Rs.5 lakhs and also Rs.7 lakhs were paid and totally, A4 has paid Rs.62 lakhs to A5. Despite the de-facto complainant filed case before the first respondent-Police against A1 and others and included A4 also. Moreover, A4 has not committed any offence and only with the connivance of A1 and A3, though he paid the money and got back the amount and did not receive the

money. There is no specific overt-act against A4 and A4 has not committed any offence, and therefore, the revision petition may be allowed as against A4 and A4 may be discharged from the case. Even if trial is conducted, there are no sufficient incriminating materials against A4 to convict him for the alleged offences.

18. Learned counsel appearing for the revision petitioner (A5) in Crl.R.C.No.1498 of 2024, submitted that the allegations against A5 is false and there is no prima-facie case to proceed against A5 and A5 is innocent and he has been falsely implicated in the case. The case of the prosecution is completely false and there is no oral or documentary evidence to support the prosecution to establish the case as against A5. The entire statement of the witnesses from L.W.1 to L.W.15 recorded under Section 161 Cr.P.C., filed by the prosecution along with the final report under Section 173 Cr.P.C., does not disclose any of the alleged offences that are levelled against A5. Further, there is no iota of materials against A5 in order to attract any of the ingredients that would constitute the offence of cheating. The charge against A5 is without any basis and grounds. The statement of witnesses who are cited in the charge-sheet, did not disclose anything against A5. As per the case of the prosecution, there

are materials to show that A5 committed cheating and allegation against A5 has no grounds at all. There are no prima-facie materials and evidence, either direct or circumstantial evidence as against A5. Further, A5 is no way connected with the alleged evidence. A5 never committed any offence as alleged by the respondent-Police and he did not commit or omit anything as alleged by the prosecution and there is no offence made out as against A5.

19. Since there are no materials as against A5, the A5 filed the petition to discharge him from the case before the Court and the trial Court failed to consider the facts and dismissed the discharge petition. Hence, A5 is present before this Court by filing the present revision petition.

20. Even the original complaint filed by the de-facto complainant, nor the FIR contains any allegations that would make out cognizable offence as against A5 and A5 does not have any transaction of even a single pie, with the de-facto complainant. Further, during the period in which the offence was alleged to have been committed between 30.01.2021 and 29.03.2021, A5 had no transaction except with A4. A5 had various business transactions with A4 even before December 2020. Rs.50 lakhs

stated to have been given to A5 by A1 in his confession statement was a genuine business transaction with A4 only and it has nothing to do with A1 or as alleged mis-deeds and the same was received even before 02.06.2021 and the date on which the de-facto complainant is stated to have transferred Rs.50 lakhs to A4. Further, Rs.10 lakhs stated to have returned by A5 on the instructions at the instance of the de-facto complainant, was part of earlier business transactions between A5 and A4 and not out of any threat or criminal complaint, as stated in the original complaint of the de-facto complainant. The confession statement given by A1 against A5 is only mala-fide in nature and for other reasons not known to A5. Therefore, there are no materials as against A5 also to frame the charges and therefore, the case against him may be set aside.

21. For all the above reasons, it is contended by the learned counsel for the revision petitioners that A3, A4 and A5 may be discharged from the case.

22. Learned Additional Public Prosecutor appearing for the first respondent/Police submitted that prima-facie, there are materials to proceed against the revision petitioners/A3, A4 and A5 and to frame the

charges. The grounds taken by the revision petitioners are nothing but the defence, which can be decided only after trial and not at this stage. Even the revision petitioners themselves have admitted that they had business transactions and they have also admitted that at the instance of A1 and A2, they have made payment and also issued documents, and therefore, it is not the case of the petitioners (A3, A4 and A5) that they are no way connected with A1 and A2. Further, it is settled proposition of law that at the time of framing charges, the Court need not conduct any roving enquiry and the veracity and the validity of the documents cannot be gone into at this stage and it can be decided only after trial. There are enough materials as against the revision petitioners and they are not entitled for discharge from the case.

23. Heard both sides and perused the materials available on record.

24. The specific case of the prosecution as per the charge-sheet is as follows:

The complainant Mr.Kannan, Managing Director of ICMC Corporation Ltd., Chennai stated in his complaint is that Mr.K.V.N.Rajan, DGM of ITI Ltd., approached the complainant that M/s.ITI Ltd. is authorised suppliers of COVID 19 materials like face shield, face mask, Nitrile Gloves to Government hospitals. As ITI is a Government of India undertaking and they do not have provision to make advance payment without any bank guarantee and the Government of India has permitted them to get funding from their approved vendors and to provide them a decent margin of 10% and also said that the money is sanctioned directly by the Prime Minister's office (PMO) through Ministry of Finance, Government of India. Based on this, the complainant and Mr.K.V.N.Rajan of ITI Limited, executed a sales and purchase agreement on 01.02.2021 for Rs.11,24,20,000/- in K.V.N.Rajan's office. In the meantime, the complainant's Company approached Punjab National Bank authorities and the said bankers agreed to initially process a loan of Rs.25 crores to the complainant's firm from its Nungambakkam Branch from 30.01.2021 onwards. In the initial stage, K.V.N.Rajan asked the complainant to Rs.5 crores to M/s.Connoiseur Electronics Pvt. Ltd., and hence, the complainant transferred money on 02.02.2021 from his Bank, namely, Punjab National Bank through RTGS to M/s.Connoiseur Electronics Pvt. Ltd. But Harish Kumar of M/s.Connoiseur Electronics Pvt. Ltd., conveyed to complainant that there are no materials and Rs.5 crores will be returned to the complainant's account. After K.V.N.Rajan asked the complainant to transfer Rs.50 lakhs to M/s.DCDR

Infra Pvt. Ltd. on 05.02.2021, Rs.2.20 crores to M/s.Vadivam Media Pvt. Ltd., on 05.02.2021 and Rs.50 lakhs to M/s.Sri Krishna Works on 06.02.2021. Based on the instructions of K.V.N.Rajan through Email, complainant transferred the aforesaid amounts to the aforesaid companies. But he did not get any details about the supply of the materials. All the aforesaid companies along K.V.N.Rajan neither supplied any Nitrile Gloves and masks to the complainant, nor returned the money. Hence, the complainant lodged the complaint against (i) K.V.N.Rajan, DGM of M/s.ITI Ltd., (ii) B.Pasupathy of M/s.DCDR Infra Pvt. Ltd., and (iii) Asokan of M/s.Vadivam Media Pvt. Ltd., and (iv) Shaktheeswararan of M/s.Krishna Works and hence, the complainant requested necessary action in the matter.

25. From the charge-sheet and the statement of the witnesses, it is found that A1, A2 and A5 are the prime accused and master-mind for swindling of money in the crime of the de-facto complainant. The de-facto complainant was induced to deliver money in favour of the Company pointed out by him by using his own letter-pad providing commercial intention and some other invoices with ITC based on the wrong representation made by A1. A1 being DGM of ITI Ltd., which is a Central

Government undertaking company, with the collusion of common intention to cheat the de-facto complainant, colluded with the other accused who are private company owners, committed breach of trust, cheating and forgery, for the purpose of cheating, thereby, made loss of Rs.3,20,00,000/- during the period 01.02.2021 to 22.02.2021 to the de-facto complainant, thereby A1 to A6 have committed the offences punishable under Sections 409, 406, 420, 465, 468 read with Section 34 IPC.

26. Therefore, in order to substantiate the above allegations, the first respondent-Police recorded the statements from 17 witnesses cited in the charge-sheet. They have also collected certain documents and laid charge-sheet.

27. Though the revision petitioners have filed petition for discharge before the trial Court, the trial Court, on considering the entire materials, found that there are sufficient materials to frame charge against them and therefore, the petitions for discharge were dismissed by the trial Court and hence, the revision petitioners are before this Court.

28. On a reading of the entire materials and allegations levelled by

the de-facto complainant against the revision petitioners and other accused and also the materials collected by the investigating agency and the statements recorded from the list of witnesses, this Court finds that there are prima-facie materials to proceed with the case against the revision petitioners also.

29. It is settled proposition of law that while framing charges, the Court has to see the materials produced by the investigating officer and if the materials disclose prima-facie case to frame the charge, the Court has to frame the charge and proceed with the case further.

30. It is also settled proposition of law that at the time of deciding the discharge petition, the Court has to see the materials produced by the investigating officer and not the defence taken by the accused.

31. Further, probative value of the materials collected by the prosecution, cannot be gone into at this stage and the veracity and validity of the documents cannot be also gone into at this stage. Therefore, the validity and veracity of the documents can be gone into only after trial and not at the stage of framing charges.

32. It is held by the Honourable Apex Court in the decision reported in 2020 (2) SCC 290 (State (NCT of Delhi) Vs. Shiv Charan Bansal) that the probative value of the evidence, cannot be gone into at the stage of framing charges.

33. Following the above decision of the Honourable Supreme Court, this Court finds that there are enough materials against the revision petitioners to frame charges and proceed with the case. The petitioners are at liberty to take their defence during trial.

34. The petitioners have admitted the transaction and whether it leads to commission of offence or not, can be decided only after trial and not at this stage.

35. There are no merits in these revision petitions and the same are accordingly dismissed. The miscellaneous petitions are closed.

36. The trial Court is directed to frame charges against all the accused and proceed with the case further and decide the case on merits. However, the petitioners are at liberty to take all their defences during trial.

22.04.2025

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To

1. Metropolitan Magistrate for CCB and CB.CID cases, Egmore, Chennai

2. The Inspector General of Police,
   Central Crime Branch, (EDF-III, Team XXIA),
   Vepery, Chennai-600 007

3. The Public Prosecutor, High Court, Madras.

4. The Section Officer, Criminal Section (Records), High Court, Madras.

P.VELMURUGAN, J

cs

Pre-delivery common Order in

Crl.R.C.Nos.1498, 1718
and 1413 of 2024

Order pronounced on
22.04.2025