-BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.02.2025

Pronounced on : 30.04.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)Nos.246, 249, 250 and 251 of 2025
and
Crl.M.P.(MD)Nos.2579, 2606, 2610 and 2615 of 2025

N.Ganeshkumar ... Petitioner in Crl.R.C.(MD)No. 246 of 2025

V.M.Elangovan ... Petitioner in Crl.R.C.(MD)No. 249 of 2025

1.A.Subramanian

2.S.Aathi Senthil ... Petitioners in Crl.R.C.(MD)No. 250 of 2025

S.Vinothkannan @ Kannan ... Petitioner in Crl.R.C.(MD)No. 251 of 2025

Vs.

K.Balakumar ... Respondent in all the petitions

Common Prayer : These Criminal Revision Cases filed under Sections 438 r/w 442 B.N.S.S., to call for the records relating impugned order dated 03.01.2025 passed in Cr.M.P.Nos.3123, 3126, 3125 and 3124 of 2024 in Spl.S.C.No.1 of 2021 on the file of the Principal District and Sessions Judge, Madurai and set aside the same.

For Petitioners : Mr.B.Santhanam Rajesh Kumar
in Crl.R.C.(MD)No.246 of 2025

Mr.P.T.Kannan
in Crl.R.C.(MD)No.249 of 2025

Mr.S.Loganathan
in Crl.R.C.(MD)Nos.250 and 251 of 2025

For Respondent : Mr.S.G.L.Rishwanth
in all the petitions

COMMON ORDER

These Criminal Revisions are directed against the orders dated 03.01.2025 passed in Crl.M.P.Nos.3123, 3126, 3125 and 3124 of 2024 in Spl.S.C.No.1 of 2021 on the file of the Principal District and Sessions Court, Madurai, in dismissing the petitions for discharge filed under Section 227 of the Code of Criminal Procedure.

2. The petitioners are the accused 5, 1, 7, 8 and 6 in Spl.S.C.No.1 of 2021 on the file of the Principal District and Sessions Court, Madurai.

3. The case of the respondent/complainant is that the respondent was running four business entities in the name of M/s.Shri Naga Agencies, M/s.Shri Naga Trading Company, M/s.K.N.Carriers and M/s.Varshini Associates, that the respondent along with his wife Geeta and mother Nagarathinam were the partners in the said business, that the fifth accused was working as a manager from 1997 onwards, the sixth accused is an associate and relative of the fifth accused and the accused 7 and 8 are the relatives of the fifth accused, that the accused 1 to 4 are the police officials, that since Income Tax Return for the year 2007-2008 was not submitted, the same was questioned by the respondent, for which, the fifth accused gave an evasive reply, that though the fifth accused had promised to submit the accounts and records by 14.01.2010, had left work by midday and thereafter he did not report to the office, that the respondent came to know from the verification of records and accounts, that RC books, cheque leaves signed by the respondent and other documents were found missing and came to understand that the fifth accused had played fraud upon them, that the respondent immediately lodged a police complaint before the Tallakulam Police Station on 21.01.2010 and on 31.01.2010, the first accused called the respondent and asked him to come

to Thideer Nagar Police Station and the respondent appeared at about 09.30 p.m. on the same day, that the respondent had seen his absconding manager fifth accused along with the accused 6 to 8 and others at the police station, that the first accused, without taking any action against the accused 5 to 8, informed that the sixth accused claimed to have paid Rs.48 lakhs for purchasing the assets and business of K.N.Carriers and as he was not willing, the respondent was directed to pay the sixth accused an amount of Rs.30 lakhs, that on 11.02.2010, the first accused along with the accused 5 to 8 colluded together and threatened the respondent and his mother and extorted three blank signed cheques from them in the police station and the respondent was forced to agree for all the terms dictated by them under coercion, threat, torture and humiliation and he was forced to sign an agreement on 11.02.2010 as per the dictation of the first accused with false statements as if the respondent and his family members had liability towards the sixth accused and his family members, that though the first accused had promised that the said three cheques will be kept in his custody till enquiry, had breached his promise and fraudulently handed over the cheques and agreement to the sixth accused, that the sixth accused colluding with the first accused and others had presented the cheque belonging to the respondent's mother for Rs.10 lakhs and encashed it on 04.03.2010 in the bogus account of M/s.K.N.Carriers at Veerapandi Branch of Union Bank of India, Theni, which came to be opened fraudulently by the accused 6 to 8 with the help of the fifth accused under false documents, that the respondent gave a cheque stop payment instructions to the Manager of Canara Bank for the remaining two cheques and also sent a letter to the sixth accused citing his fraudulent and illegal acts at the police station, that the sixth accused presented the other cheques for collection and on being dishonored, sent a legal notice to the respondent on 23.04.2010, for which, the respondent sent a reply on 06.05.2010, that the respondent has then lodged a complaint before the Central Crime Branch, Madurai and since there was no action, filed a petition under Section 156(3) Cr.P.C. before the Court of the Judicial Magistrate No.1, Madurai on 13.08.2010 in Crl.M.P.No.6208 of 2010 and the said petition was ordered on 02.09.2010 and that despite the direction of the Court, the accused 1 and 2 did not register any case on the basis of the complaint given by the respondent, but on the other hand, on the basis of the complaint given by the sixth accused, FIR came to be registered in Crime No.87 of 2010 on the file of the Central Crime Branch, Madurai.

4. It is the further case of the respondent that on 13.11.2010 in furtherance of their conspiracy the accused 3 and 4 along with another police man in mufti by colluding with the accused 1, 2 and 5 to 8 had forcibly taken the respondent and his wife from his house and illegally confined them in the police station from early morning to midnight, that both of them were threatened, tortured and abused and extorted Rs.20 lakhs in cash for the alleged two dishonored cheques, that they were also forced to write a letter as dictated by them in the police station and also forced to sign the same and other documents, that thereafter the respondent and his wife were released from the police station at midnight, that though the respondent gave a complaint to the Commissioner of Police on 01.12.2010 against the police officials and others, there was no action and that the accused had committed the offences punishable under Sections 120B, 384, 341, 294(b), 506(2), 452, 500, 467, 471, 477A, 406, 420 r/w Section 34 IPC and Section 30 of Human Rights Act.

5. It is evident from the records that the respondent preferred a private complaint before the Court of the Chief Judicial Magistrate, Madurai in Crl.M.P.No.1248 of 2011 and the same was subsequently

transferred to the Court of the Judicial Magistrate No.2, Madurai and that the learned Magistrate, after conducting necessary enquiry and by concluding that there existed *prima facie* case as against the accused 1 to 11, had taken cognizance for the offences under Sections 384, 341, 294(b), 506(2), 452, 500, 467, 471, 477A, 406, 420 r/w Section 34 IPC and Section 30 of Human Rights Act in P.R.C.No.85 of 2014 and ordered for issuance of summons to the accused vide order dated 15.07.2014. It is not in dispute that the case was subsequently committed to the Principal Sessions Court and the case was taken on file in Spl.S.C.No.1 of 2021 and is pending on the file of the Principal Sessions Court, Madurai. Pending Sessions Case, the accused 5, 1, 7, 8 and 6 have filed separate petitions invoking Section 227 Cr.P.C. seeking discharge from the above case.

6. It is evident from the records that on the basis of the complaint given by the respondent, FIR came to be registered in Crime No.98 of 2012 and subsequently as per the directions of this Court, investigation was transferred to the CBI and after completing the investigation, they have laid the final report against the accused including the present accused 5 to 8 and the case was taken on file in C.C.No.11 of 2017 and is pending

on the file of the Additional District and Sessions Court (CBI Court), Madurai.

7. Before entering into further discussion, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***State by the Inspector of Police, Chennai Vs. S.Selvi and another*** reported in ***(2018) 13 SCC 455,***

> *"7. It is well settled by this Court in catena of judgments including the cases of Union of India v. Prafulla Kumar Samal (1979) 3 SCC 4, Dilawar Balu Kurane v. State of Maharashtra (2002) 2 SCC 135, Sajjan Kumar v. CBI (2010) 9 SCC 368, State v. A.Arun Kumar (2015) 2 SCC 417, Sonu Gupta v. Deepak Gupta (2015) 3 SCC 424, State of Orissa v. Debendra Nath Padhi (2003) 2 SCC 711, Niranjan Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijjayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bangal v. Anil Kumar Bhunja (1979) 4 SCC 274 that the Judge while considering the question of framing charge under Section 227 of the Code in sessions cases (which is akin to Section 239 CrPC pertaining to warrant cases) has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the material placed before the court discloses grave suspicion against*

the accused which has not been properly explained, the court will be fully justified in framing the charge; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his rights to discharge the accused. The Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the statements and the documents produced before the court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the mater and weigh the materials as if he was conducting a trial"

8. It is settled law that at the stage of framing charges, the Court has to *prima facie* consider whether there is sufficient ground for proceeding against the accused and the Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

9. It is also settled law that while considering an application seeking discharge from a case, the Court is not expected to go deep of the

probative value of the material on record, but on the other hand, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, and for that purpose, the Court cannot conduct a roving enquiry into the pros and cons of the matter and weigh the evidence as if it is a main trial.

10. It is pertinent to note that the Courts while dealing with the application for discharge, are required only to see whether a prima facie is made out against the accused and detailed enquiry is not required at this stage. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***State through Deputy Superintendent of Police Vs. R.Soundirarasu and others*** reported in ***2022 LiveLaw (SC) 741,*** wherein, the case of ***State of Karnataka Lokayukta, Police Station Bengaluru Vs. M.R.Hiremath*** reported in ***(2019) 7 SCC 515*** and the decision in ***State of Tamil Nadu Vs.N.Suresh Rajan*** reported in ***(2014) 11 SCC 709***, were referred, wherein, it has been specifically held that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts

emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence and that what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out.

11. The main contention of the accused 5 to 8 is that the respondent had repeated the very same allegations and offences in both the complaints, that on the basis of the complaint given by the respondent, CBI has laid the charge sheet and the case is pending in C.C.No.11 of 2017 before the CBI Court, that the respondent now adding the police officials as accused 1 to 4 has filed the present private complaint, on the basis of which, the present sessions case in Spl.S.C.No.1 of 2021 is pending, that the present case is clearly hit by the doctrine of double jeopardy, that the case as against some of the accused have already been quashed by this Court, that the present complaint and the consequent proceedings are an abuse of process of law, that the respondent has filed two criminal cases as against the same set of persons including the accused 5 to 8 for the very same cause of action, that the respondent has

come to the Court with unclean hands and does not deserve any sympathy or relief from the Court, that the offence under the Human Rights Act will not apply to the accused 5 to 8 as there has been no allegations made against the accused 5 to 8 in respect of any human rights violation either in the complaint or in the sworn statement of the respondent or in any other supporting documents and that therefore the accused 5 to 8 are liable to be discharged from the above case.

12. The main contention of the first accused is that the present complaint and the consequent proceedings are an abuse of process of law as a false case was filed only to harass the first accused, that the allegation of the respondent that the first accused had forced the respondent to hand over the three cheques for Rs.30 lakhs and also coerced and threatened the respondent that if he did not comply, the first accused would detain the respondent and his wife and mother till compliance, is false and baseless, that the respondent had not made any allegations under the human rights violation for more than a year since the alleged incident, that the respondent has deliberately filed the human rights violation case due to his issues with the accused 2 to 4 and deliberately embroiled the first accused

in his complaint unnecessarily and that therefore the first accused is entitled to be discharged from the above case.

13. The respondent has filed a counter statement raising objections and further stated that the accused 5 to 8 had also committed various unlawful and fraudulent acts and violated the Human Rights Act by colluding with other accused, that all the accused flouted the legal process by their personal gains, that the respondent had not concealed the earlier proceedings now pending before the CBI Court and he had disclosed about his complaints, that the facts and nature of crime in the above two cases are entirely different, that the CBI case in C.C.No.11 of 2017 is related to bank fraud and the crime occurred is from 2007 to January-2010, but the present case relates to money and document extortion and related offences committed in the police station and the said crime period is from February-2010 to December-2010, that the crime occurrence place and period are different in both the cases, that the amounts involved in the CBI case was Rs.3.10 crores and the accused 5 to 8 had caused huge wrongful loss to the respondent and his companies as per the charge sheet filed by the CBI in C.C.No.11 of 2017, that the accused, after a gap of

long 10 years, had intentionally and malafidely filed the discharge petitions to drag on the case proceedings and that therefore the discharge petitions are liable to be dismissed.

14. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***State of Jharkhand through S.P., CBI Vs. Lalu Prasad and others*** reported in ***AIR 2017 SC 3389*** and the relevant passages are extracted hereunder:-

> *"Offences were not the same offence in the present case. There can be different trials for the same offence if tried under two different enactments altogether and comprised of two different offences under different Acts/statutes without violation of the provisions of Article 20(2) or Section 100 Code of Criminal Procedure, 1973. Though there was one general charge of conspiracy, which was allied in nature, the charge was qualified with the substantive charge of defalcation of a particular sum from a particular treasury in particular time period. The charge has to be taken in substance for the purpose of defalcation from a particular treasury in a particular financial year exceeding the allocation made for the purpose of animal husbandry on the basis of fake vouchers, fake supply orders etc. The sanctions made in Budget were separate for each*

and every year. The separate trials which were being made were in accordance with provisions of law otherwise it would have prejudiced the Accused persons considering the different defalcations from different treasuries at different times with different documents. Whatever could be combined had already been done. Each defalcation would constitute an independent offence. Thus, it could be held to be in violation of Article 20(2) of the Constitution or Section 300 of Code of Criminal Procedure, 1973. Separate trials in such cases is the very intendment of law. There is no room to raise such a grievance. Though evidence of general conspiracy has been adduced in cases which have been concluded, it may be common to all the cases but at the same time offences are different at different places, by different Accused persons. As and when a separate offence is committed, it becomes punishable and the substantive charge which has to be taken is that of the offence under the P.C. Act etc. There was conspiracy hatched which was continuing one and has resulted into various offences. It was joined from time to time by different Accused persons, so whenever an offence is committed in continuation of the conspiracy, it would be punishable separately for different periods as envisaged in Section 212(2), obviously, there have to be separate trials. Thus it cannot be said to be a case of double jeopardy at all. It cannot be said that for the same offence the Accused persons are being tried again."

15. In the case on hand, it is the specific case of the respondent that both the cases are entirely different. In the first case, since the police has not taken any action on the basis of the complaint lodged by the respondent, he moved a petition before the Court seeking transfer of the case to CBI in Crl.O.P.(MD)No.6702 of 2011 and this Court directed the Central Crime Branch, Madurai to register a case and despite the specific direction, since no action was taken by the Central Crime Branch, Madurai, the respondent was constrained to file a contempt petition and thereafter only, FIR came to be registered in Crime No.98 of 2012 and subsequently as per the order of this Court, investigation was transferred to the CBI and the case was registered as RC.MA1/2015/A/0007 dated 17.02.2015 against the accused 5 to 8 and other bank officials and others for causing loss to the respondent and his companies for around Rs.3.10 crores and loss to the bank and that the case was taken on file in C.C.No. 11 of 2017 and is pending on the file of the CBI Court.

16. In the second case, at the instigation of the accused 5 to 8, the first accused had called the respondent for enquiry and extorted three signed blank cheques and he was subjected to coercion, torture and

humiliation and was also forced to sign an agreement at the police station and that subsequently on 13.11.2010, the accused 1 to 4 along with the accused 5 to 8 in furtherance of their conspiracy had taken the respondent and his wife to the police station and threatened, tortured and extorted Rs. 20 lakhs cash from them and that since there was no action on the basis of the complaint lodged by the respondent, he was constrained to file a private complaint before the jurisdictional Court and on that basis, the case was taken cognizance and subsequently was committed to the Sessions Court and is pending in Spl.S.C.1 of 2021 on the file of the Principal Sessions Court, Madurai.

17. It is pertinent to note that under the doctrine of double jeopardy once a person tried and either convicted or acquitted of an offence, they cannot be tried again for the same offence, regardless of whether the earlier case entered in conviction or acquittal. The principle of double jeopardy is protection against being tried twice for the same offence and the said protection is enshrined in Article 20(2) of the Constitution of India, which contemplates that no person shall be prosecuted or punished for the same offence more than once. In the present case, it is not the case

of the accused 5 to 8 that they were convicted in the earlier case and as rightly contended by the learned counsel appearing for the respondent, both the cases are entirely different.

18. The next contention of the accused 5 to 8 is that Human Rights Act will not be made applicable as against them and that the respondent himself has not raised any human rights violation as against the accused 5 to 8.

19. The learned counsel appearing for the respondent would submit that the accused 5 to 8 in collusion with the accused 1 to 4 violated the human rights of the respondent and only at the instigation of the accused 5 to 8, the respondent's family members were taken to the police station.

20. As rightly pointed out by the learned counsel appearing for the respondent, Section 2(d) of the Protection of Human Rights Act defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual, as guaranteed by the Constitution or embodied in International Covenants and enforceable by the Courts in India. The

Hon'ble Supreme Court in ***Kaushal Kishor Vs. State of Uttar Pradesh and others*** reported in ***2023 4 SCC 1,*** relied on by the learned counsel appearing for the respondent, has held that a fundamental right under Article 19/21 of the Constitution can be enforced even against persons other than the State or its instrumentalities.

21. The learned counsel appearing for the first accused would submit that a false case was foisted against the accused, that the allegations of the extortion are false and baseless and that the respondent has not made any allegations under the human rights violation for more than a year since the alleged incident, but he has not elaborated anything further.

22. As already pointed out, the respondent has lodged the private complaint before the Chief Judicial Magistrate, Madurai in the year 2011 itself and the same was taken on file in Crl.M.P.No.1248 of 2011 and after conducting enquiry, the case was taken on file in P.R.C.No.85 of 2014. Moreover, this Court in Crl.O.P.(MD)No.12470 of 2023 directed the learned trial Judge to frame charges and dispose of the case in Spl.S.C.No.

1 of 2021 as expeditiously as possible not later than eight months from the date of receipt of a copy of that order. It is pertinent to note that PRC was taken on file in 2014 and the case was committed in 2021 but the present petitions came to be filed in 2024.

23. It is pertinent to note that the Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Madurai City has conducted an enquiry with regard to the complaint given by the respondent against the police officials and missing of case file from the police authorities and he gave a report dated 25.03.2014, wherein, he has come to a decision that there are police excesses and the relevant passages in the said report are extracted hereunder:-

> *"From the evaluation of statements and perusal of Documents it is crystal clear that Inspector Elangovan has misused his power and extorted 3 cheques from Thiru.K.Balakumar, the petitioner (whose parents are Doctors) and has acted as an agent of one VinothKannan. This act of Thiru.Elangovan has no legal sanction. He is now working at Thiruppur District.*
>
> *Inspector Thiru.Pethuraj after knowing fully well that the recovery of the amount of cheques (That too*

illegally obtained) which were bounced will not come under the purview of Police, hushing up the facts revealed by the petitioner a signatory of cheque, got opinion to register a case and got a case registered by WSI, and illegally detained both husband and wife at Police station from dawn to dusk and extorted an amount of Rs.20 Lakhs from Balakumar and made him to write as if, the matter was settled out of CCB and instructed WSI to drop the action of case. This is against the procedure established by law.

WSI.Tmt.Sharmila, now working in Civil Supply CID, Madurai, has contributed her mite, she along with Muneeswaran has gone to the house of Balakumar at AnnaNagar on 13.11.2010 at 06.00 hrs and has taken Balakumar and his wife Tmt.Geetha to CCB and had kept them up to midnight till Balakumar gave Rs.20 Lakhs. Further in order to hide the illegal detention of them, she has altered the dates 13.11.2010 in the statements of Balakumar and Vinothkannan, as 23.12.2010, to show that as if they came on 23.12.2010 and gave the statements to the effect that they were compromised. WSI has dropped action in this case in Cr.No87/2010 without making any investigation.

SSI Muneeswaran has also accompanied with WSI

> *to take the petitioner. Balakumar and his wife Geetha to Police station. Thus his part comes in the illegal detention. So, appropriate disciplinary action may be taken against all the above 4 officers."*

24. The Additional Deputy Commissioner of Police has also observed that the police officials have acted as agent of the sixth accused.

25. Considering the above, this Court has no hesitation to hold that there existed *prima facie* materials to proceed against the petitioners and as such, the impugned orders dismissing the discharge petitions cannot be found fault with. Consequently, this Court concludes that the revisions are devoid of merits and the same are liable to be set aside.

26. In the result, these Criminal Revision Cases stand dismissed. Consequently, connected Miscellaneous Petitions are closed. No costs.

30.04.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

K.MURALI SHANKAR,J.

csm

To

1. The Principal District and Sessions Judge,
   Madurai.

Pre-Delivery Common Order made in
Crl.R.C.(MD)Nos.246, 249, 250 and 251 of 2025
and
Crl.M.P.(MD)Nos.2579, 2606, 2610 and 2615 of 2025

Dated : 30.04.2025