



CRL RC(MD)No.675 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 28.08.2025

PRONOUNCED ON : 27.11.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

CRL RC(MD)No.675 of 2024

and

CRL MP(MD)No.6985 of 2024

B.Meenakshi Sundaram

... Petitioner /4th Accused

Vs.

The Deputy Superintendent of Police,
CCIW, CID, Salem.

... Respondent /Complainant

PRAYER: Criminal Revision Petition is filed under Section 397 and 401 Cr.P.C., 1973, to call for the records pertaining to the order passed in CrI.M.P.No.1580 of 2017 in C.C.No.358 of 2016 dated 14.03.2024 by the learned Judicial Magistrate No.1, Karur, and set aside the same.

For Petitioner : Mr.K.P.S.Palanivel Rajan,
Senior Counsel,
For M/s.K.P.S.Law Associate

For Respondent : Mr.S.Ravi,
Additional Public Prosecutor

ORDER

Preface:

This Criminal Revision case challenges the order dated after-remand in C.M.P. No. 1518 of 2017 (originally C.M.P. No. 1580 of 2017) in C.C. No. 358 of



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2016 on the file of the learned Judicial Magistrate No.I, Karur, whereby the petitioner (Accused No.4) was refused discharge under Section 239 Cr.P.C., 1973. The axis of the challenge is twofold: (i) want of previous sanction under Section 197 Cr.P.C., 1973, on the premise that Accused No.4 is a public servant and the acts alleged bear a reasonable nexus with official duty; and (ii) misapplication of the threshold test at Sections 239/240 Cr.P.C., 1973.

2. This Court, by an order dated 05.02.2024 in Crl.R.C.(MD)No. 86 of 2024, had earlier remitted the discharge application for fresh consideration on merits, untrammelled by prior observations. Upon reconsideration, the learned Trial Court again dismissed the plea. Aggrieved by the same, the petitioner / Accused No.4 is before this Court.

Case of the Prosecution :

3. On a complaint dated 16.05.2011 by the Deputy Registrar, a case in Crime No.1 of 2011 was registered by CCIW, Karur, for offences under Sections 406, 408, 467, 468, 471, 477-A r/w 120 (b) IPC against eight named accused. The investigation has examined about 153 witnesses. Core allegation against the 1st and the 2nd accused, who are the Society functionaries, is that, during 2008 to 2010, Accused No.1 (Special Officer) and Accused No.2 (Superintendent) of Thanthoni Agro Engineering Service Co-operative Centre Ltd., Karur, allegedly procured 675 MT of Urea and 235 MT of DAP worth



about Rs.54,06,906.30/- from Accused No.3 / TANFED, Trichy, fertilizers subsidised and earmarked for agricultural use, and diverted/sold them to TNPL and Balmer at industrial-fertilizer rates, realizing Rs.1,33,63,261.20/- and thereby committing large-scale misappropriation. The counter also adverts to a figure of Rs.1,31,62,262.00/- as the swindled amount. The allegation against the 4th accused/petitioner is that, the 1st accused addressed a letter dated 01.08.2008 seeking supply of 40 MT Urea and 20 MT DAP.

4. The petitioner / 4th accused, then Assistant/Deputy Director (Quality Control), Tiruchirappalli, is alleged to have, without territorial jurisdiction over Karur, issued a recommendation/permit communication dated 21.08.2008 to the 3rd accused to release fertilizers to the Karur society and report compliance. The prosecution asserts that the lack of jurisdiction and the tenor of the recommendation show concert with the 1st, 2nd and 3rd accused. Though the petitioner/4th accused stresses that the 3rd accused dispatched stocks on 23.08.2008 and his letter reached the 3rd accused only on 26.08.2008, the prosecution says the recommendation was part of a wider conspiracy, as the diversion continued on 61 occasions. The Section 81 T.N. Co-operative Societies Act inquiry reports and statements of the inquiry officers, including the statements of Krishnaprasad and Paulrajan Williams, are relied upon to demonstrate the role of the petitioner/4th accused. Invoking the jurisdictional matrix the prosecution case was built upon the premise that, Karur District licensing/quality-control functions lie with the Karur Assistant Director, not



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with Trichy. Therefore, the petitioner/4th accused's issuance of "O-Form/permit/recommendation" was ultra vires, an act outside his lawful remit, said to be facilitated as part of the conspiracy to move subsidised fertilizer out of the agricultural channel into industrial consumption.

Procedural History in Brief:

5. C.C. No. 358 of 2016 was taken cognizance after an investigation in which the petitioner figured as the 4th accused. Further the petitioner/4th accused's earlier quash attempt in CrI.O.P.No. 6038 of 2013 was dismissed on 20.11.2013. A later quash in CrI.O.P. No. 1589 of 2014 (urging want of sanction under Section 197 Cr.P.C.) was allowed on 25.07.2014; however, in CrI.A. No. 1216 of 2016, by order dated 09.12.2016, the Supreme Court set aside the quash, holding the High Court erred in re-entering the "letter dated 21.08.2008" merits after already having dismissed the earlier quash. Thereby, the trial against the petitioner/4th accused was directed to proceed in accordance with law. An SLP by the petitioner against the dismissal (SLP(CrI) with CrI.M.P. No. 3818 of 2017) was dismissed on 06.03.2017. The discharge petition under Section 239 was dismissed on 10.11.2021; on remand in CrI.R.C. No. 86 of 2024, the learned Trial Court again dismissed the discharge, giving rise to the present revision. The trial has commenced, and PW1 and PW2 have been examined.



Gist of the learned Trial Court's Order (post-remand):

6. The learned Trial Court extracted the test under Sections 239/240 Cr.P.C., 1973, at the charge stage, and examined whether there is ground for presuming the accused might have committed the offence keeping in mind that, detailed weighing of evidence is impermissible. Relying on the complaint, Section 81 reports, and witness statements, the learned Trial Court found strong suspicion of the petitioner/4th accused's role in issuing a recommendation/permit outside jurisdiction in aid of the alleged diversion. In Section 197 Cr.P.C., 1973, the Court held that acts done without territorial jurisdiction and in furtherance of an alleged conspiracy are not shielded as "official duty" or even "purported" official duty attracting sanction. The learned Trial Court also noted earlier High Court observations to similar effect and the Supreme Court's setting-aside of the quash with a direction to proceed to trial. Since the trial had begun (PW1, PW2 examined) and materials disclosed a *prima facie* nexus, the petition under Section 239 Cr.P.C., 1973, was dismissed.

Grounds in Revision:

7. The order is unsustainable on facts and law. The petitioner is a Government servant appointed by the Governor, and protection of Section 197 Cr.P.C., 1973, squarely applies. No previous sanction was obtained; hence discharge ought to follow. Cognizance without sanction is barred where the



alleged act is in discharge/purported discharge of official duty. Even assuming “beyond jurisdiction,” **A.Srinivasulu vs. State Rep. by the Inspector of**

Police¹. reiterates that reasonable nexus/excess of duty still requires sanction.

The learned Trial Court misconstrued the nature of the petitioner/4th accused’s communication as more than a mere recommendation. Earlier quash proceedings have merged in the Apex Court order; the learned Trial Court ought not to rely on the quash history adverse to the petitioner. Without sanction, the ordeal of trial cannot continue. Acts done with or without jurisdiction but in the colour of office attract Section 197. The Court was swayed by prosecution submissions; strong suspicion is not enough where an express statutory bar (sanction) exists.

8. The submissions of the learned Senior Counsel Mr.Palanivel Rajan for the Petitioner are crystallised as follows:

The petitioner/4th accused, as Assistant/Deputy Director (Quality Control), Trichy, acted in the colour of his office and hence, even if jurisdiction was imperfect, the act had a reasonable nexus to the office. Under Section 197 Cr.P.C., 1973, sanction is a condition precedent and absence of sanction vitiates cognizance. The learned Senior Counsel relied upon (i) **A.Srinivasulu vs. State Rep. by the Inspector of Police**²; (ii) **Suneeti Toteja vs. State of**

¹ 2023 SCC OnLine SC 900

² Supra 1



U.P. and another³; (iii) G.C.Manjunath and others vs. Seetaram⁴; (iv) K.Kalimuthu vs. State by DSP⁵; (v) Sanjay Kumar Rai vs. State of Uttar Pradesh and another⁶, (vi) Amal Kumar Jha vs. State of Chhattisgarh and another⁷ (vii) Satish Mehra vs. State (NCT of Delhi) and another⁸ (viii) Harish Dahiya Alias Harish and another vs. State of Punjab and others⁹ (ix) S.Shanmugavel Nadar vs. State of T.N. and another¹⁰ (x) Paul Varghese vs. State of Kerala and another¹¹ (xi) Indra Devi vs. State of Rajasthan¹² (xii) Municipal Corporation of Delhi vs. Gurnam Kaur¹³ (xiii) Ratilal Bhanji Mithani vs. State of Maharashtra and others¹⁴ to contend that even excess/colour of duty requires sanction. He further propounded that the dispatch on 23.08.2008 preceded the petitioner/4th accused's letter received on 26.08.2008 and insisted that his communication had no causal role. Finally he insisted that, negligence cannot be counted for conspiracy.

9. The submissions of the learned Assistant Public Prosecutor Mr.S.Ravi for the respondent are crystallised as follows:

At Section 239/240 stage, the Court only tests for strong suspicion and

3 2025 SCC OnLine SC 433

4 2025 SCC OnLine SC 718

5 (2025) 4 SCC 512

6 (2022) 15 SCC 720

7 (2016) 6 SCC 734

8 (2012) 13 SCC 614

9 (2019) 18 SCC 69

10(2022) 8 SCC 361

11 (2007) 14 SCC 783

12 (2021) 8 SCC 768

13(1989) SCC 101

14 (1979) 2 SCC 179



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detailed appreciation is taboo. The petitioner/4th accused had no jurisdiction over Karur. As such, the very issuance of a permit/recommendation for a Karur society by a Trichy officer is ultra vires and cannot be taken as an “official duty.” The Section 81 inquiry and statements attribute an active role to the petitioner /4th accused. The diversion channel continued for 61 occasions, indicating a concerted course, not a one-off clerical lapse. The High Court’s second quash was set aside by the Hon’ ble Supreme Court and hence, ultimately trial must proceed. With PW1 and PW2 examined, discharge is untenable. He further cited decisions including **State of Bihar v. Ramesh Singh**¹⁵, and recent pronouncements of the Hon’ble Apex Court, which were relied upon by the prosecution to underscore the low threshold for framing charges and the limited compass of Section 197 Cr.P.C., 1973, where the act is totally unconnected with official functions.

10. Heard the learned Senior Counsel Mr.Palanivel Rajan for the petitioner for M/s.K.P.S.Law Associate, the learned Additional Public Prosecutor, Mr.S.Ravi for the respondent State and carefully perused the materials available on record.

11. **Point for Determination:**

Whether, on the materials placed and at the stage of Sections 239/240

¹⁵ AIR 1977 SC 2018



Cr.P.C., 1973, the petitioner (Accused No.4) is entitled to discharge either (i) for want of previous sanction under Section 197 Cr.P.C., 1973; or (ii) for absence of sufficient grounds to presume commission of the alleged offences?

Analysis:

12. The settled position of law, at the pre-charge stage, is that the Court should see whether there exists ground for presuming that the accused might have committed the offence; if yes, charges are to be framed. A mini-trial is certainly proscribed. If at all the learned Trial Court finds it necessary to discharge, in that case reasons are mandated for discharge, not for framing charges. Strong suspicion emerging from police papers, statements, and attendant circumstances suffices to cross the threshold and commence trial.

13. In the given circumstances, the facts and materials on record disclose: (i) jurisdictional mismatch - Accused No.4 (Trichy) issuing a recommendation touching a Karur society; (ii) Section 81 materials and statements speaking to Accused No.4's facilitative role; (iii) continuing diversion over 61 occasions; and (iv) the larger conspiracy canvas. These are adequate to raise a strong suspicion warranting trial. The competing narrative, that the dispatch of 23.08.2008 preceded the receipt of Accused No.4's letter on 26.08.2008, goes to weight/causality, which is a matter for trial, not discharge.



14. It is the considered view of this Court that, the protective umbrella of Section 197 Cr.P.C., 1973, is triggered where the act complained of is done “while acting or purporting to act in the discharge of official duty.” The twin tests consistently applied are:

- (i) Reasonable connection between the act and official duty; and
- (ii) The act is not a mere cloak for objectionable conduct.

15. Therefore, it is the bounden duty of this Court to distinguish “excess of duty within field” from “acts totally outside the field.” It is needless to state, that acts that are manifestly without authority or jurisdiction, or which constitute the very commission of the crime (e.g., fabrication, misappropriation), do not attract the protection merely because the offender holds public office.

16. In the present case, the prosecution case is that the petitioner/4th accused, without territorial jurisdiction, issued a recommendation/permit enabling movement of subsidised fertilizers to a Karur society, an area outside his statutory remit, and did so as part of an agreement with co-accused to divert supplies for industrial sale. If these allegations are assumed at their face, the act is alleged to be ultra vires and in furtherance of a conspiracy. On such allegations, the act cannot, at the threshold, be pronounced as falling



within “official duty” or even “purported official duty” so as to bar cognizance absent sanction.

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17. The petitioner relies on A. Srinivasulu and cognate decisions to argue that even excess of duty requires sanction. Those authorities reiterate the reasonable-nexus test and protect acts done under colour of office. But each case turns on what is alleged. Where, as here, the gravamen is that the act was beyond all authority and constitutive of the offence itself in a conspiracy frame, and that is why the learned Trial Court exercising judicial caution has withheld the Section 197 Cr.P.C., 1973, bar at the pre-trial stage. However, I make it clear that the question as to whether, at the end of evidence, the act is shown to be administrative, colourable yet connected is an issue open for the learned Trial Court to re-evaluate at the appropriate stage, including at Section 319/232/248/313 stages or on final judgment.

18. The Hon'ble Supreme Court, in Crl.A. No. 1216 of 2016 (09.12.2016), had set aside the High Court's quash and directed the trial to proceed, noting that the High Court, having concluded sanction was not required, ought not to have revisited the merits related to the letter dated 21.08.2008. Hence, I am of the considered opinion that the pronouncement of the Hon'ble Apex Court is a clear signal against stifling the trial at the threshold on these very premises.



19. Additionally, the trial has commenced, and PW1, PW2 have been examined. Though the sanction plea can be raised at any stage, where materials disclose a *prima facie* conspiracy with acts alleged as ultra vires, Section 197 Cr.P.C., 1973, is not a bar to proceeding. The petitioner will be at liberty to re-urge the legal contention after evidence crystallises, more particularly as to whether the factual matrix establishes a reasonable nexus with official duty in the legally cognisable sense.

20. The petitioner's plea of "merger" does not assist him. The Hon' ble Supreme Court had set aside the quash and required the trial to continue. The learned Trial Court has rightly treated earlier observations as non-determinative for discharge and has confined itself to the Section 239/240 inquiry.

21. Accordingly, the Criminal Revision case fails and the same is dismissed. Consequently, connected miscellaneous petition is closed.

22. The order of the Judicial Magistrate No.I, Karur, dismissing the application for discharge under Section 239 Cr.P.C., 1973, in C.M.P. No. 1518 of 2017 (old C.M.P. No. 1580 of 2017) in C.C. No. 358 of 2016 is affirmed.



23. All observations herein are confined to the pre-charge threshold. The petitioner is at liberty to canvass the sanction issue at an appropriate stage if the evidence at trial establishes that the act complained of bears the requisite reasonable nexus with official duty in law.

24. The learned Trial Court shall expedite the trial and endeavour to conclude it within nine months from the date of receipt of a copy of this order, unmindful of any *prima facie* observations herein.

Epilogue:

25. The Trial Courts operate as gatekeepers, not by conducting a mini-trial at the Section 239/240 stage, but by ensuring that allegations disclosing a strong suspicion are not prematurely aborted. Equally, they safeguard public administration by declining to extend Section 197 Cr.P.C., 1973, as an overbroad shield for acts alleged to be ultra vires or constitutive of crime. The balance struck by framing charges where warranted, reserving fuller adjudication for trial, and leaving jurisdictional/Section 197 Cr.P.C., 1973, nuances to be revisited on a matured evidentiary record best preserves both administrative accountability and the rights of public servants.



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26. In fine, this Criminal Revision case is dismissed.

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Index : Yes / No
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To

- 1.The Judicial Magistrate No.1,
Karur.
- 2.The Deputy Superintendent of Police,
CCIW, CID, Salem.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.,

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