



Crl.R.C.(MD)No.492 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 03.03.2025

Delivered on : 09.04.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.492 of 2024

and

Crl.M.P(MD)No.5306 of 2024

1.Maruthamuthu

2.Rajaraman

: Petitioners

Vs.

State rep.by the Sub-Inspector of Police,
District Crime Branch, Thanjavur.

: Respondent

PRAYER : Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C., to call for the records relating to the order, dated 26.03.2024 in Crl.M.P.No.2886 of 2023 in C.C.No.132 of 2023 on the file of the learned Judicial Magistrate No.II, Thanjavur and set aside the same.

For Petitioners : Mr.V.R.Shanmuganathan

For Respondent : Mrs.M.Aasha,
Government Advocate (Criminal Side)



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ORDER

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This Criminal Revision Petition is directed against the order passed in Crl.M.P.No.2886 of 2023 in C.C.No.132 of 2023, dated 26.03.2024 on the file of the Court of the Judicial Magistrate No.II, Thanjavur, dismissing the petition filed for discharge under Section 239 of the Code of Criminal Procedure.

2. The petitioners are the accused 2 and 3 in C.C.No.132 of 2023. On the basis of the complaint given by one Bhuvaneswari, Superintendent of Primary Health Centre, Vallam, FIR came to be registered in Crime No.24 of 2012 on the file of the respondent police against the first accused and after completing the investigation, the respondent police has laid the final report against three persons including the petitioners herein for the alleged offences under Sections 409, 420, 467, 468, 471, 109, 120 B IPC and under Sections 65 and 66 of Information Technology Act 2000 and the case was taken on file in C.C.No.132 of 2023 on the file of the Court of the Judicial Magistrate, Thanjavur. When the calender case was pending for framing of charges, the accused 2 and 3, invoking Section 239 of Cr.P.C., have filed the petition seeking discharge from the above case.



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3.The case of the prosecution is that when the defacto complainant was on leave, the first accused, who was working as Junior Assistant in Vallam Primary Health Centre had operated the office computer and prepared the salary bill and other types of bill; that the first accused has prepared bills under various heads by inserting names of some persons, who are not in service and the persons, who were in some other service, submitted the bills in consultation with the accused 2 and 3, who were working as accountants in Thanjavur Sub-Treasury and that the first accused had misappropriated Rs.29,27,165/- and thereby caused loss to the Government.

4.The case of the petitioner in their discharge petition is that they are the Government employees working in Sub-Treasury at the relevant point of time; that they are working under the supervision and periodical checking made by the higher officials; that their respective higher officials have approved the alleged transaction and as such, they cannot be fastened with the liability; that the petitioners have no control over the functions and other activities of Primary Health Centre, Vallam; that the computer system through which the alleged documents were created belongs to the said primary health centre, wherein the petitioners have no



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access; that as per the final report, the first accused got benefit by transferring funds to his account and the petitioners are in noway benefited; that only allegations against the petitioners is that they had acquaintance with the first accused; that the petitioners have not committed any offence secretly or without the knowledge of higher officials and even if the petitioners are alleged to have been failed to perform their duty, they can be enquired for departmental action for lapses and that since the allegations are groundless, they are entitled to be discharged from the case.

5. The respondent police has filed counter statement raising objections and further stated that the prosecution has collected sufficient materials to establish a *prima facie* case to frame charges against the petitioners and that there are no merits in the petition and the same is liable to be dismissed.

6.The learned Judicial Magistrate, after enquiry has passed the impugned order, dated 26.03.2024, by holding that there are sufficient grounds available to proceed against the petitioners, dismissed the petition.



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7.No doubt, as rightly pointed out by the learned counsel for the petitioners, the petitioners' name does not find place in the FIR. But as rightly pointed out by the learned Government Advocate (Criminal Side), the respondent police during investigation has come to know about the involvement of the petitioners in the alleged occurrence and hence, charge sheet was laid against all the three accused including the petitioners.

8. The learned counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in ***Karan Talwar Vs. The State of Tamil Nadu in SLP (Crl) No.10736 of 2022, dated 19.12.2024***, wherein the Hon'ble Apex Court has referred its earlier decision reported in 2019 16 SCC 547 and the relevant passages are extracted hereunder:

“11.When this be the position, the question is whether the two Courts were justified in holding that there is prima facie case against the appellant to proceed against him. In this contextual situation, it is relevant to refer to the decision of this Court in Dipakbhai Jagadishchandra Patel v. State of Gujarat and Anr.5 Paragraphs 23 and 24 of the said decision are relevant for the purpose of this case and they read thus:-



"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a fullfledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused.

All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.



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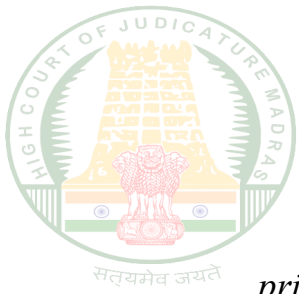


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24. *Undoubtedly, this Court has in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], taken the view that confession by a co-accused containing incriminating matter against a person would not by itself suffice to frame charge against it. We may incidentally note that the Court has relied upon the judgment of this Court in Kashmira Singh v. State of M.P. [Kashmira Singh v. State of M.P., (1952) 1 SCC 275].*

We notice that the observations, which have been relied upon, were made in the context of an appeal which arose from the conviction of the appellant therein after a trial. The same view has been followed undoubtedly in other cases where the question arose in the context of a conviction and an appeal therefrom. However, in Suresh Budharmal Kalani [Suresh Budharmal Kalani v. State of Maharashtra, (1998) 7 SCC 337], the Court has proceeded to take the view that only on the basis of the statement of the coaccused, no case is made out, even for framing a charge."

12.As noted hereinbefore, the sole material available against the appellant is the confession statement of the co-accused viz., accused No.1, which undoubtedly cannot translate into admissible evidence at the stage of trial and against the appellant. When that be the position, how can it be said that a



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prima facie case is made out to make the appellant to stand the trial. There can be no doubt with respect to the position that standing the trial is an ordeal and, therefore, in a case where there is no material at all which could be translated into evidence at the trial stage it would be a miscarriage of justice to make the person concerned to stand the trial.

13.In the said circumstances and in view of the settled position of law stated and reiterated by this Court, the impugned judgment is liable to be interfered with and the appeal is liable to be allowed.

14.Accordingly, the appeal is allowed and the impugned order dated 14.09.2022 passed by the High Court of Madras in CRLRC No.1258 of 2022 filed against the order dated 26.07.2022 passed by the ADJ in CMP No.586 of 2020 are quashed and set aside. As a necessary sequel, the appellant who is accused No.13 in CC No.43 of 2020 pending on the files of learned Additional District Judge-Special Court under Essential Commodities Act Cases, Coimbatore is discharged from the said case, by allowing the prayer of appellant for discharge.”

9.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



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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, Niranjana Singh Karan Singh Punjabi vs. Jitendra Bhimraj Bijayya (1990) 4 SCC 76 and Superintendent & Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunia (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,



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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”

10. It is settled law that at the stage of framing charge, 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.

11. 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.



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12. 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.



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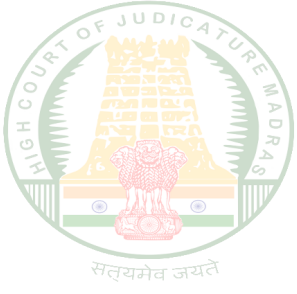
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13.The learned Government Advocate (Criminal Side) would submit that admittedly the petitioners are close friends of the first accused and they had good relationship between them and that only as per the advise of the petitioners the first accused has created pay bills and other bills by inserting wrong entries; that the petitioners 2 and 3 without verifying those bills properly, issued orders and that therefore, the petitioners have rightly been charged.

14. It is pertinent to note that the present case is a case of misappropriation and swindling of Government money. The learned Government Advocate (Criminal Side) would submit that witnesses Tmt.Malarkodi, Thiru.Rajamanikkam, and Thiru.Periasamy, who were working in the treasury, where the petitioners had worked, in their statements under Section 161 of Cr.P.C., had specifically stated that the petitioners failed to scrutinize the bills in appropriate manner and issued pay orders and that is why the bills came to be passed.

15.As rightly pointed out by the learned Government Advocate (Criminal Side), witness V.Rajamanikkam, the then Superintendent of District Treasury, Thanjavur in his statement would say

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“... S.விஜயபாஸ்கர், எங்கள் அலுவலக கணக்கர்களான K.J.Rajaraman, K.Maruthamuthu ஆகியோர் நெருங்கிய நண்பர்கள் ஆவார்கள். அவர்கள் அலுவலக நேரங்கள் தவிர மற்ற நேரங்களில் மூவரும் ஒன்றாக சேர்ந்துதான் சென்று வருவார்கள். ...

.... காசாளர்களான K.Maruthamuthu, K.J.Rajaraman, SB- ன் அலுவல் முறைப்படி மேற்படி பில்களை தணிக்கை செய்யாமல் S.விஜயபாஸ்கருக்கு உடந்தையாக இருந்து மேற்படி பில்களை முறையாக தணிக்கை செய்ததாக Pay Order எழுதி எனது பார்வைக்கு அனுப்பியுள்ளார்கள்.”

16. Moreover, as rightly pointed out by the learned Government Advocate (Criminal Side), the other witness Malarkodi and Periasamy would also reiterate the version of the witness Raja Manikkam.

17.During the consideration of a discharge petition, the Court examines whether the allegations, if taken at their face value, disclose the existence of the ingredients of the alleged offence, not on determining their truthfulness which is reserved for trial.



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18. Admittedly, there was misappropriation to the tune of Rs.29,27,165/- and thereby huge loss was caused to the Government exchequer.

19. As already pointed out, whether the charges or allegations levelled against the petitioners are true or not cannot be gone into in the present proceedings and is a matter for trial. But at the same time, as rightly observed by the learned Magistrate, there are materials available sufficient enough to frame charges and proceed against the petitioners and as such, the impugned order, dismissing the discharge petition cannot be found fault with. Consequently, this Court concludes that the Criminal Revision is devoid of merits and the same is liable to be dismissed.

20. In the result, the Criminal Revision is dismissed. Consequently, connected Miscellaneous Petition is closed.

09.04.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Judicial Magistrate No.II, Thanjavur.
- 2.The Sub-Inspector of Police,
District Crime Branch, Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
Crl.R.C.(MD)No.492 of 2024
and
Crl.M.P(MD)No.5306 of 2024

Dated: 09.04.2025