IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

SUO MOTU Crl.R.C.No.1559 of 2023

1.The State
Directorate of Vigilance and Anti-Corruption
Rep.by the Deputy Superintendent of Police
Vigilance and Anti-Corruption
Chennai City-I Department
Chennai 600 028.

2.Thiru.I.Periyasamy
S/o.Irulappa Servai
Durairaj Nagar, West Govindapuram
Dindigul.
Formerly Minister for Tamil Nadu Housing Board
Government of Tamil Nadu.

... Respondents

Criminal Revision case filed under Section 397 of Cr.P.C. to call for the records on the file of the Additional Special Court for Trial of Criminal cases related to Elected MP's and MLA's of Tamil Nadu, Chennai passed in Crl.MP.No.4204 of 2023 in C.C.No.13 of 2019, dated 17.3.2023 and set aside the same.

SUO MOTU Crl.R.C.No.1559 of 2023

N.ANAND VENKATESH., J.

In the course of the past few weeks this Court has initiated Suo Motu Revisions 1480, 1481 and 1524 of 2023 against the orders of discharge of certain MLA's of the Tamil Nadu State Legislative Assembly from criminal cases pending against them before the Special Court for MP/MLA Cases. This Court after examining the records noticed, *prima facie*, several serious procedural irregularities/illegalities that had eventually led to the discharge of the accused from the prosecutions against them. This is yet another textbook case of how the criminal justice system has been successfully subverted from within. It is a model for all the wrong reasons, for it offers a panoramic view of all known legal techniques available in the armoury to derail trial and to ensure that the wheels of the criminal justice system come to a creaking halt. This Court prefaces this order with the following observations from the decision of the Supreme Court in ***Tarak Singh v. Jyoti Basu, (2005) 1 SCC 201:***

> *"Again, like any other organ of the State, the judiciary is also manned by human beings — but the function of the judiciary is distinctly different from other organs of the State — in the sense its function is divine. Today, the judiciary is the repository of public faith. It is the trustee of the people. It is the last hope of the people. After every knock at all the doors fail people approach the judiciary as the last resort. It is the only temple worshipped by every citizen of this nation, regardless of religion, caste, sex or place of birth. Because of the power he wields, a judge is being judged with more strictness than*

others. Integrity is the hallmark of judicial discipline, apart from others. It is high time the judiciary must take utmost care to see that the temple of justice does not crack from inside, which will lead to a catastrophe in the justice-delivery system resulting in the failure of public confidence in the system. We must remember that woodpeckers inside pose a larger threat than the storm outside."

2.Mr.I.Periyasamy was elected as a Member of the Tamil Nadu Legislative Assembly on a DMK ticket in May 2006. Between 2007 and May 2011 was a member of the State Cabinet as the Minister for Housing. The case of the prosecution is that between 2008 and 2009, one C. Ganesan (A1), an Inspector of Police in the SBCID (Core Cell), Chennai had entered into a criminal conspiracy with one Kavitha (A2) and the Minister I.Periyasamy (A3) to illegally obtain a HIG (High Income Group) Plot in the Mogappair Eri Scheme of the Tamil Nadu Housing Board. It is alleged that Ganesan (A1) had given an undated application to the then Chief Minister of Tamil Nadu Dr.M. Karunanidhi stating that his family was residing in a private house paying exorbitant rent suppressing the fact that he was actually residing in the TNHB Housing Quarters paying a paltry sum of around Rs 1180. In his undated representation made to the Chief Minister, Ganesan requested for allotment of a plot in the public quota.

3.It is alleged that this application was not accompanied by any supporting documentary evidence. Nor did this petition bear the seal or sign of any officer to acknowledge receipt. The application was however numbered as 5732/HB-5(I)/08 on

06.03.2008 in the Housing Development Department and an office note was initiated on the same day with a suggestion that Plot No.1023 in the HIG category in Mogappair Eri Scheme of the Tamil Nadu should be allotted to A1 under the "*impeccable honest Government servant*" discretionary quota. This application was signed by one R.Sellamuthu, Secretary, Housing and Urban Development Department on 07.03.2008. This application was then processed at breakneck speed and was approved by I. Periasamy (A3) in his capacity as Minister for Housing on 10.03.2008. On the same day the Government issued GO.2D No.170, Housing Urban Development (HG 5(1) allotting the aforesaid plot to A1. Thus, the process of numbering an undated application on 06.03.2008 culminating with the passing of a Government order on 10.03.2008 allotting a HIG plot was accomplished in just 96 hours. Considering the fact that 08.03.2008 and 09.03.2008 were a Saturday and Sunday, the time taken to perform this administrative feat was only 48 hours. In other words, it appears that the application given by A1 was numbered on a Thursday (06.03.2008), processed by the Secretary on a Friday (07.03.2008) and approved by the Minister on Monday (10.03.2008) followed by the release of Government Order at lightning speed on the very same day. How one wishes that the bureaucracy worked the same way for lesser mortals in this State.

4. On 18.03.2008 the Tamil Nadu Housing Board (TNHB) issued a memo to the Executive Engineer, TNHB enclosing a copy of the GO issued on 10.03.2008. On the

same day, the Manager (Marketing and Service), Mogappair Division, TNHB issued a provisional allotment order and intimated A1 that he was required to pay a sum of Rs. 74,13,100/- on or before 31.03.2008. Even before the provisional allotment order was issued A1 Ganesan entered into a JDA with A2 Kavitha on 16.03.2008 whereby it was agreed that A1 Ganesan would be entitled to 15% share and the remaining 85% UDS would go to A2 Kavitha. It was further agreed that A2 Kavitha would pay A1 Ganesan a sum of Rs. 74,13,100/- as a non-refundable deposit towards the full cost of the allotment of the plot. Pursuant to the aforesaid JDA, A2 issued a cheque dated 24.03.2008 in favor of the Executive Engineer, TNHB, Mogappair Division. This cheque was sent by A1 to the Executive Engineer on 27.03.2008, and a regular allotment order was issued in favor of A1 on the very next day ie., 28.03.2008. Thus, the entire process commencing with the numbering of an undated representation on 06.07.2008 culminating with the payment of consideration and the issuance of a regular allotment order took just 22 days.

5.Pursuant to the regular allotment order dated 28.04.2008, a sale deed dated 07.08.2008 was executed by the Executive Engineer, TNHB in favour of A1. On 19.01.2009, A1 Ganesan executed a power of attorney in favor of A2 Kavitha which was registered on 23.01.2009 before the Sub-Registrar, Konnur. Using this power, A2 Kavitha, as the agent of A1, sold the plot to one Kalaiammal for a total sale consideration of Rs.1,01,38,400/-. In truly business style, A2 Kavitha issued a cheque

for a sum of Rs. 19,66,000/- in favour of A1 Ganesan being the 15% share payable to him under the JDA dated 16.03.2008. This cheque was encashed by A1 Ganesan on 20.07.2009.

6. The prosecution case is that the entire conspiracy was orchestrated by A3 Perisamy by allotting the HIG plot under the Impeccable Honest Government Servant quota even though A1 Ganesan had not asked for allotment under the said quota. It is alleged that A1 Ganesan was set up to ask for a plot to reside with his family and in furtherance of the conspiracy with A2 and A3 the allotment was stage-managed for the purposes of obtaining an unfair pecuniary advantage.

7.In May 2011, the DMK, of which A3 was a Minister, was voted out of power. In keeping with the usual practice of the DVAC, with the change in power, the alleged wrongdoings of the past regime became the focal point for investigation. A discreet enquiry was conducted by the DVAC on the HIG Allotment made in favour of A1 and a report was submitted to the Directorate on 23.01.2012. Finding that there was something amiss, the Tamil Nadu Vigilance Commission, *vide* order dated 07.02.2012, accorded permission to register a regular case. Consequently, an FIR in Crime No.4 of 2012 was registered by the DVAC for the offences under Sections 120-B, 420 and 109 of the IPC and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 against C.Ganesan (A1), Padma (A2) and I. Perisamy (A3). In the course of

investigation, the IO R. Murali examined 22 witnesses and collected 45 documents. A charge sheet under Section 173(2) Cr.P.C was laid before the Special Court for Cases Under the Prevention of Corruption Act on 25.03.2013. It is seen from the records that the Speaker of the Tamil Nadu Assembly had accorded sanction *vide* proceedings dated 17.12.2012.The Special Court took cognizance of the case in C.C.No.19 of 2013 on 24.06.2013 and directed summons to be issued for the hearing on 19.08.2013.

8.It is seen from the records that on 19.08.2013, A1-A3 appeared before the Special Court through counsel and copies of the material case papers were furnished to them on the same day. On the next date ie., 04.09.2013, A1 Ganesan filed a petition for discharge under Section 239 Cr.P.C. In the meantime, the prosecution filed Crl.MP.No. 42 of 2014 for permission to conduct further investigation alleging that further material had come to light regarding the role of A1 Ganesan. This petition was allowed by the Special Court by an order dated 30.01.2014. A supplementary charge sheet was filed by S.M. Mohamed Iqbal, Additional Superintendent of Police, Vigilance and Anti Corruption on 13.06.2014 alleging that A1 was actually residing in a TNHB flat at KK.Nagar paying rent of Rs.1180/- and that he had suppressed this fact by claiming that he required accommodation as he was paying high rent for Government accommodation.

9.It is seen from the records that the petition for discharge filed by A1 was finally

dismissed by the Special Court on 06.08.2015 on which date the matter was directed to be posted for framing charges on 31.08.2015. It was now the turn of A2 to play "*the discharge game*". On 31.08.2015, A2 filed Crl.M.P.No. 1184 of 2015 seeking discharge. This petition was adjourned from time to time for 10 hearings until it was finally dismissed on 12.01.2016. The matter was again directed to be posted for framing charges on 02.02.2016.

10. Records reveal that by this time the Special Court was clearly alive to the fact that the accused were merely filing petitions one after another in a bid to gain time. On 19.02.2016, the Court appears to have recorded that no further petition would be entertained. In the meantime, Ganesan (A1) filed Crl.R.C.No.1112 of 2015 before this Court challenging the order of the Special Court dismissing his discharge petition. By an order dated 09.02.2016, this Court dispensed with the personal appearance of A1 Ganesan before the Special Court.

11.A1 Ganesan and A2 Kavitha having failed it was now the turn of A3Periasamyto play "*the discharge game*". On 25.02.2016, A3 I.Periasamy filed Crl.M.P.No. 366 of 2016 seeking discharge. In his petition for discharge, he contended that the entire prosecution was borne out of malice as he was a political opponent of the ruling AIADMK. He contended that there were no materials to link him with the crime. It is seen from the order of the Special Court that during the course of

arguments it was contended on behalf of I.Periasamy that (i) the prosecution had not obtained separate sanction under Section 197 Cr.P.C to prosecute A3 for the offences under Section 409 and 420 IPC (ii) that the Governor and not the Speaker was the competent authority to grant sanction for prosecution under Section 19 of the Prevention of Corruption Act. The Special Court rejected these contentions and dismissed the discharge petition *vide* order dated 06.07.2016. Thus, ended the three-year saga before the Special Court where A1-A3 were playing musical chairs by filing discharge petitions one after another. The scene now shifted to the High Court.

12. It is seen from the records that A2 Kavitha filed Crl.R.C.No. 983 of 2016 and A3 I.Periasamy filed Crl.R.C.No. 957 of 2016 before this Court challenging the orders of the Special Court dismissing their respective discharge petitions. Though no stay was granted, A3 I.Periasamy appears to have successfully persuaded this Court to call for the records from the Special Court, *vide* a requisition dated 22.07.2016. The result was that the entire proceedings before the Special Court stood neutralized.

13.As the records were transmitted to this Court, the Special Court was obviously constrained to adjourn the matter for no fewer than 34 hearings till 28.06.2019. On 05.07.2019, the matter was transferred to the Special Court for MP/MLA cases and renumbered as C.C.No.13 of 2019. It is seen from the records that on 03.09.2019, the Special Court addressed a letter to the High Court requesting for transmission of

records, and that the case bundle was returned to the Special Court only on 19.10.2019. By this time 6 years had passed.

14. On 31.10.2019, the Special Court took note of the continued absence of the accused and directed the accused to remain present on 06.11.2019 for framing of charges. On 06.11.2019, the Special Public Prosecutor appears to have submitted that this Court had orally instructed the Special Court to post the matter on 22.11.2019, and sought deferment. The Special Court appears to have perfectly seen through the game plan of the accused. The following order was passed on 28.11.2019.

> *"A1 and A2 present. A3 absent. Counsel for A2 filed memo stating that the Cr.R.C 983 of 2016 came up before the Hon'ble High Court on 27.11.2019 and the same was adj after two weeks. Memo recorded. This case is pending from 2013. Still the charges could not be framed. A1 to A3 have filed their discharge petns one after another to gain time. All the three discharge petns were disposed. A1 to A3 have filed Crl Revisions before the Hon'ble High Court, thereby the records were called for and submitted to the Hon'ble High Court. Recently, the Hon'ble High Court was pleased to retransmit the original records to this Court. Even the counsels for the accused sought time till 27.11.2019 as the Criminal Revisions are posted for final hearing. It is learnt that the Cril Revisions were adj and*

posted after two weeks. A3 did not appear before this Cout for the past four hearings. Even today A3 did not appear and filed ptn under 317 Cr.P.C. Counsel for A3 sough time till 04.12.2019 as last chanve. Hence adj call on 04.12.2019. A1 to A3 are directed to appear on 04.12.2019 from framing charges otherwise suitable orders will be passed."

15. It is seen from the records that on 04.12.2019, A1 to A3 were present before the Special Court. The Special Court framed charges against A1 to A3. When questioned, the accused denied the charges and claimed trial. The case was, thereafter, posted to 18.12.2019. On 18.12.2019, records show that the counsel for the accused had submitted that they intended to challenge the framing of charges before this Court. Hence, the matter was adjourned to 10.01.2020. On the said date the Special Public Prosecutor appears to have voluntarily requested deferment of examination of witnesses. The matter was again adjourned to 10.01.2020, 27.01.2020, 05.02.2020, 06.02.2020, 12.02.2020. On 12.02.2020, the Special Court was informed by way of a memo that one Mohamed Muzammil, Government Advocate had stated that the High Court had directed him to inform the trial court to adjourn the cases. On this basis the matters were adjourned to 03.03.2020. It is also seen that A3 I.Periasamy had also filed Cr.O.P 34130 of 2019 before this Court, under Section 482 Cr.P.C, to quash the proceedings before the Special Court. From the note of proceedings dated 09.03.2023

of the Special Court it appears that an order of ad-interim stay was granted in this petition

16.In the meantime, A1 filed Crl.R.C.No. 187 of 2020 challenging the order of the Special Court framing charges. It is seen from the records, that this Court by an order dated 06.03.2020 stayed the proceedings and directed the matter to be listed on 20.03.2020 for arguments. Much to the relief of the accused, COVID-19 intervened. The proceedings were thereafter deferred. On 30.04.2021, this Court took up Crl.O.P.No. 34130 of 2019 and extended the interim order till 21.06.2021. On 21.06.2021, the interim order was extended till 16.07.2021, and was not extended thereafter. By this time, May 2021 had arrived and the DMK was voted back to power and A3 was back on the political saddle.

17. In the meantime, records show that the Special Court had issued summons to LW-1 the former Speaker of the Tamil Nadu Legislative Assembly to depose before it. It was now the turn of the police to play truant. It is shocking that in its proceedings dated 21.10.2021 the Special Court has lamented that the police have not received the summons from the Court bundle since 2019 for effecting service on the witnesses. On 17.11.2021, the Special Court condemned the police observing that the police "*have not bothered to take the summons from Court*". Even this admonition did little to ruffle the thick hide of the state police. By 31.12.2021 the Special Court ran out of patience

and probably out of sense of helplessness went on to observe as under:

> *"The inaction of the police since 18.12.2019 shows wilful disobedience of the order of the Court and there has been no progress in this case for the period of two years, defeating the very object behind constitution of this Court. Spl.PP is required to call upon the ADSP concerned with this case to be present today, and this case is passed over."*

It is seen that the ADSP was sent for, and an assurance was given that summons would be served on the next date of hearing to ensure that LW-1 was present to get on with the matter.

18.The aforesaid developments naturally alarmed the accused who rushed to this Court and sought a status quo. By this time, this Court had heard and reserved orders on 29.10.2021 in Crl.O.P.No.34130 of 2019 filed by A3 and Crl.R.C.No.1112 of 2015, Crl.R.C.Nos. 957 and 983 of 2016 filed by A1 to A3 respectively challenging the dismissal of their discharge petitions. Upon being mentioned, the matters were listed on 05.01.2022, and while sympathizing with the "*plight of the trial court*", this Court directed status quo to be maintained observing that orders would be "delivered shortly". The aforesaid developments once again put the case before the Special Court in the back burner.

19. After 11 months, this Court pronounced orders in Crl.O.P.No. 34130 of 2019

filed by A3 and Crl.R.C.No.1112 of 2015, Crl.R.C.Nos. 957 and 983 of 2016, dismissing the quash petitions and the criminal revisions challenging the orders of the Special Court declining discharge. A3 I.Periasamy filed SLP (Criminal) 11381-11382 of 2022 before the Hon'ble Supreme Court challenging the order of this Court dated 11.11.2022. This SLP was also dismissed on 12.12.2022. Thus ended the saga of the discharge petitions. However, in law as in life one always learns to expect the unexpected.

20. It is seen from the records of the Special Court that there was a change in guard in May 2022 when the earlier judge who had unsuccessfully persevered to conduct trial was moved out and another successor was directed to assume charge. After the dismissal of the SLP, the Special Court took up the matter and issued summons to LW-1 P.Dhanabal, the former Speaker of the Tamil Nadu Legislative Assembly who had accorded sanction for prosecution. On 15.02.2023, LW-1 appeared before the Court and was examined as PW-1. The sanction order was marked through him as Ex.P1, and the matter was posted on 21.02.2023.

21. On 21.02.2023, very curiously, a petition in Crl.M.P.No.4204 of 2023, purportedly under "Section 19 of the P.C Act", was filed at the behest of A3Periasamy with a prayer to discharge him from the case. At first blush, this Court thought that this was a typographical error since Section 19 of the Prevention of Corruption Act deals with the sanction for prosecution and does not deal with discharge at all. However, on

closer scrutiny, it is self-evident that this was part of a well-orchestrated plot to somehow short-circuit the proceedings before the Special Court. It is at this juncture that the portals of the Special Court suddenly turn into a circus for A3Periasamy to demonstrate his skill in litigative gymnastics.

22.In the so-called petition for "discharge" it was contended, once again, that the Speaker was not the competent authority to grant sanction and that the appropriate authority was the Governor. It will be recalled that this identical argument was already raised by A3 in the earlier discharge petition before the Special Court. The Special Court had categorically rejected this contention in paragraph 8 of its order in Crl.M.P.No.366 of 2016 dated 06.07.2016. This order was affirmed by this Court in Crl.R.C.No.657 of 2016 by order dated 11.11.2022. The order of this Court was later affirmed by the Hon'ble Supreme Court on 12.12.2022. It is, therefore, clear as the day that in filing Crl.M.P.No. 4204 of 2023 A3 was committing the grossest abuse of the judicial process by repeatedly filing discharge petitions on grounds that had already been considered and negatived right up to the Hon'ble Supreme Court.

23.However, unlike the earlier round of discharge, this time around luck, by chance or by deliberate design, smiled on A3 in the form of the Special Court. It is shocking that the Special Court, which is expected to possess at least a working knowledge of criminal law and procedure, has entertained a petition under Section 19 of the Prevention of Corruption Act to discharge the accused knowing fully well that the

provision did not deal with discharge at all. It is even more shocking that this petition was entertained by the Special Court midway through trial in March 2023 after it had framed charges way back on 04.12.2019. Unsurprisingly, in their counter affidavit, the prosecution has not whispered a single word about the earlier discharge petition and the fact that the identical grounds raised in Crl.M.P.No. 4204 of 2023 had been affirmed right up to the Hon'ble Supreme Court. This is because by March 2023 A3 had become a member of the State Cabinet, and the State prosecution and the accused had, by a natural progression of time, become members of the same team working towards a common goal.

24.Given this all too self-evident plot, it was hoped that the Special Court would have at least risen to the occasion. Alas, it was not to be. Crl.M.P.No. 4204 of 2023 was filed on 21.02.2023. The very next hearing ie., 04.03.2023 the Special Public Prosecutor filed his counter and on the third hearing ie., 08.03.2023 Crl.M.P.No. 4204 of 2023 was reserved for orders. On 17.03.2023, the Special Court allowed Crl.M.P.No.4204 of 2023, and discharged A3 from the case on the sole ground that the sanction given by the Speaker was invalid as the competent authority was the Governor and not the Speaker. A case which had hitherto progressed at a rate worse than a snail, suddenly progressed and finished at lightning speed. While the criminal conspiracy between A1 to A3 to obtain the allotment of the TNHB flat in favor of A1 took 22 days, the collaborative effort between the prosecution, the defense counsel and the Court to discharge A3 was

achieved in an equally incredible span of just 24 days.

25. Having examined the records, this Court is of the considered view that the Special Court has thrown all known norms of judicial propriety to the winds by allowing the discharge petition of A3 on the very same ground that had been negatived earlier by its predecessor and which order was later affirmed by this Court as well as the Supreme Court. By discharging the accused on the very same ground the Special Court has not only reviewed its earlier order, which is ex-facie illegal in view of the bar under Section 362 Cr.P.C but has virtually sat and set aside the orders of this Court as well as the Hon'ble Supreme Court negativing the discharge of A3. In its anxiety to discharge the accused, the Special Court, it appears, has discharged its judicial conscience as well.

26. From the proceedings dated 16.11.2022 in the note file of the Special Court, it is evident that it was aware of the order of this Court dated 11.11.2022. The Special Court cannot feign ignorance of the order of the Hon'ble Supreme Court as the records clearly reveal that the Assistant Registrar of the Hon'ble Supreme Court had addressed a letter to the Registrar of this Court on 14.12.2022 informing that the SLP against the order dated 11.11.2022 had been dismissed on 12.12.2022. This order was communicated to the Special Court by the Assistant Registrar of this Court on 04.01.2023 and was received by the Special Court on 20.01.2023 as is evident from the endorsement made by the Special Court itself. In fact, the Special Court has directed

the said order to be put up in the file of C.C.No.13 of 2019. Thus, after being appraised of the order of this Court as well as the Hon'ble Supreme Court, the Special Court thought it fit to recklessly discharge the accused and that too under a provision that did not deal with discharge at all. I have no hesitation in observing that the conduct of the Special Court in this matter is thoroughly condemnable and is seriously suspect on several counts. Judicial equipoise requires that I refrain from saying anything more.

27.This Court is also of the view that the order of discharge passed by the Special Court in Crl.M.P.No.4204 of 2023 suffers from several incurable legal blunders and illegalities which has resulted in gross miscarriage of justice. As stated supra, the earlier discharge petition raising an identical ground had been dismissed. The Special Court could not sit in appeal over its own order and undo the same that too after the earlier order had been affirmed by this Court and the Hon'ble Supreme Court.

28.The second manifest illegality is the Special Court has thought it fit to discharge the accused in March 2023 after framing charges in December 2019. Section 5(1) of the Prevention of Corruption Act, 1988 requires the Special Court to follow the procedure for trial of warrant cases by Magistrates while trying P.C Act offences. The trial of warrant cases under the Cr.P.C is governed by Chapter XIX and the only provision under that Chapter to discharge the accused is Section 239 Cr.P.C. Since the earlier petition under Section 239 Cr.P.C had been dismissed, A3 I.Periasamy decided to

use a new label for his latest venture by terming his second discharge petition under Section 19 of the P.C Act.

29. It is settled law that once charges are framed a petition under Section 239 Cr.P.C is not maintainable. In ***Ratilal Bhanji Mithani v. State of Maharashtra*, (1979) 2 SCC 179,** the Hon'ble Supreme Court considered the scope of Section 253 of the Cr.P.C 1898, which is in parimateria with Section 239 of the Cr.P.C 1973. The Hon'ble Supreme Court went on to observe as under:

> "***28.****Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).*"

30.To the same effect are the decisions in ***State of Orissa v. Debendra Nath***

Padhi*, (2005) 1 SCC 568** and ***Rukmini Narvekar v. Vijaya Satardekar*, (2008) 14 SCC 1**. That apart, as discussed earlier this is a case where the issue regarding the defect in sanction had alreadybeen raised and negatived in the earlier discharge petition on the same grounds. The Special Court could not, therefore, recall or review its earlier order dismissing the discharge petitions or the order framing charges.The approach of the Special Court is illegal in the teeth of the law laid down by the Hon'ble Supreme Court in its recent decision in ***State of Karnataka v S. Subbegowda, 2023 SCC Online SC 911 wherein it has been observed as under:

> "***15.<u>As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable</u>***. *Once the cognizance was taken by the Special Judge and the charge was framed against the accused, the trial could neither have been stayed nor scuttled in the midst of it in view of Section 19(3) of the said Act."*

31. In the impugned order of discharge dated 17.03.2023, the Special Court has framed two points: a) whether A3 was a public servant and (ii) whether the sanction is proper and in accordance with law. The Special Court claims to have read the judgment of the Constitution Bench of the Hon'ble Supreme Court in P.V Narasimha Rao .v. State, AIR 1998 SC 2120. This judgment, according to the Special Court, has laid down the following propositions:

> "*31. In the case P.V Narasimharao /vs/State, which is identical on facts to the present case. The ratio arising from this case is summarized as under:*

(i) M.P/MLA's are public servant as per section 2(c) of the Prevention of corruption Act 1988.

(ii) The speaker of the Parliament or legislature have no power to remove them from there office as MP's or MLAs.

(iii) The speaker cannot be reckoned as the competent authority as per Section 19(1)(c) of PC Act in respect of MPs or MLA's.

(iv) In the absence of the power in the speaker to remove them, the concept of sanctioned as per section 19 of PC Act will not apply to such members".

This Court has carefully read the decision of the Hon'ble Supreme Court in ***P.V. Narasimha Rao v. State (CBI/SPE)*, (1998) 4 SCC 626.** Under Article 141 of the Constitution what the Hon'ble Supreme Court declares as law is binding on all Courts in India. This Court is shocked to find that the Special Court, in its supposed understanding of ***P.V Narasimha Rao v State,*** AIR 1998 SC 2120, has attributed exactly the opposite of what was actually declared by the majority in that case. The two questions before the Constitution Bench were ;

- Whether by virtue of Article 105 of the Constitution a Member of Parliament can claim immunity from prosecution on a charge of bribery in a criminal Court? and
- Whether a Member of Parliament is a "public servant" falling within the purview of the Prevention of Corruption Act, 1988?

The majority view of the Constitution Bench was delivered by Justice S.C. Agrawal for himself and Dr. A.S Anand, J (as he then was) Justice G.N. Ray agreed with Justice Agrawal on all but one point which is not very relevant to the present discussion. Dealing with the requirement of sanction for MP/MLA's Justice Agrawal has observed:

> "*It is no doubt true that the House in exercise of its power of contempt can pass a resolution for expulsion of a Member who is found guilty of breach of privilege and acceptance of bribe by a Member in connection with the business of the House is regarded as breach of privilege. On that basis it may be possible to say that the House has the power to remove a Member who is found to have indulged in bribery and corruption. But in view of the decision in Veeraswami [(1991) 3 SCC 655 : 1991 SCC (Cri) 734 : (1991) 3 SCR 189] wherein Shetty, J. has said that the legislature while enacting clause (c) of Section 6 of the 1947 Act could not have intended Parliament to be the sanctioning authority, the House cannot be regarded as the authority competent to grant sanction under Section 19(1)(c) of the 1988 Act. On that view of the matter it must be held that there is no authority who can remove a Member of Parliament and who would be competent under clauses (a), (b) or (c) of Section 19(1) of the 1988 Act to grant sanction for his prosecution. This does not, however, lead to the conclusion that he cannot be treated as a "public servant" under Section 2(c)(viii) of the 1988 Act if, on a proper interpretation of the said provision he is found to be a public servant. Since on an interpretation of the provisions of Section 2(c)(viii) of the 1988 Act we have held that a Member of Parliament is a public servant, a Member of Parliament has to be treated as a public*

servant for the purpose of the 1988 Act even though there is no authority who can grant sanction for his prosecution under Section 19(1) of the 1988 Act.

It was sought to be contended before the Hon'ble Supreme Court if it is found that there is no authority who is competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the 1988 Act then a Member of Parliament would fall outside the purview of the Act because in view of the provisions of Section 19 sanction is imperative for prosecution in respect of an offence under the 1988 Act. This contention was rejected and the following procedure was devised by the Court:

> "*The Chairman of the Rajya Sabha/Speaker of the Lok Sabha by virtue of the position held by them are entrusted with the task of preserving the independence of the Members of the House. In order that Members of Parliament may not be subjected to criminal prosecution on the basis of frivolous or malicious allegations at the hands of interested persons, the prosecuting agency, before filing a charge-sheet in respect of an offence punishable under Sections 7, 10, 11, 13 and 15 of the 1988 Act against a Member of Parliament in a criminal court, shall obtain the permission of the Chairman of the Rajya Sabha/Speaker of the Lok Sabha, as the case may be.*"

Justice G.N Ray agreed with the aforesaid view (See para 99 of the SCC Report). Thus, the majority of the judges did not share the view of the Special Judge that the concept of sanction would not apply to MP/MLA's. On the contrary, the minority view of Justice

Barucha and Justice Rajendra Babu was as follows:

> "***182.****We have, as aforestated, reached the conclusion that Members of Parliament and the State Legislatures are public servants liable to be prosecuted for offences under the said Act but that they cannot be prosecuted for offences under Sections 7, 10, 11 and 13 thereof because of want of an authority competent to grant sanction thereto. We entertain the hope that Parliament will address itself to the task of removing this lacuna with due expedition."*

Thus, in concluding that the concept of sanction for offences under Section 13 of the P.C Act will not apply to MP/MLA's the Special Court, in its own infinite wisdom, has converted the minority view into the majority one. This was not a tactless mistake for the Special Court has subsequently set out the correct ratio of the majority view in ***P.V Narasimha Rao v State,*** AIR 1998 SC 2120, in paragraph 34 of the impugned order.

32.That apart, it is seen from the records that A3 was a Minister in the State Cabinet upto May 2021. Thereafter, he continued as an MLA in the State Assembly as a member of the opposition. In Paragraph 4 II of the so-called discharge petition A3 has stated as follows:

> "*On the date of cognizance of the offences under Section 13*

of the PC Act against this petitioner, the petitioner was a Member of the Legislative Assembly [MLA] of Tamil Nadu"

Thus, on the date of taking cognizance, which is the date with reference to which sanction must be obtained, A3 was only an MLA in the State Assembly and not a Minister in the State Cabinet. This is precisely the reason why the prosecution chose to obtain the sanction of the Speaker which is in line with the majority view in ***P.V Narasimha Rao v State,*** AIR 1998 SC 2120. It is also amusing to notice that even A3 did not canvass a case that the competent authority to grant sanction against him is the Governor. On the contrary, he pleads in paragraph 4 III of his discharge petition as follows:

> *"The position regarding prosecution of Member of Parliament for offences under the PC Act was also settled by another subsequent Constitution Bench of the Supreme Court. The Hon'ble Supreme Court held that a MP [same as regards MLA of a State] is a public servant as per PC Act but the Speaker cannot be regarded as the competent authority to remove him.* ***The Governor, as the Executive head of the State Government or the President as the Executive Head of the Union of India also does not have power to "REMOVE" MP/MLA****"*

33. Turning to the scope of the suo motu power of revision under Section

397/401 Cr.P.C, in *Krishnan* v. *Krishnaveni*, (1997) 4 SCC 241, a three-judge bench of the Hon'ble Supreme Court has observed that it is the salutary duty of the High Court to interfere in a criminal proceeding where a failure of justice has been occasioned. It was observed as follows:

> *"The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order."*

In ***Jagannath Choudhary*** **v.** ***Ramayan Singh***, (2002) 5 SCC 659, the Hon'ble Supreme Court went on to observe as under:

> *"11. The High Court possesses a general power of superintendence overthe actions of courts subordinate to it. On its administrative side, the power is known as the power of superintendence. On the judicial side, it is known as the duty of revision. The High Court can at any stage even on its own motion, if it so desires, and certainly when illegalities or irregularities resulting in injustice are brought to its notice, call for the records and examine them. This right of the High Court is as much a part of the administration of justice as its duty to hear appeals and revisions and interlocutory applications - so also its right to exercise its powers of administrative superintendence."*

34. Having noticed the aforesaid factors, *prima facie*, this Court is of the considered view that it would be failing in its constitutional duty if it does not invoke its suo motu powers under Sections 397 and 401 Cr.P.C and Article 227 of the Constitution of India against the order of the Special Court dated 17.03.2023 discharging A3 from C.C.No.13 of 2019. It is beyond the endurance of judicially trained minds to turn a blind eye to such lapsesparticularly when it is so palpable.

35. In view of the above discussion, the following directions are issued:

a. The learned Public Prosecutor takes notice on behalf of the State

b. Issue notice to the 3rd accused in C.C.No. 13 of 2019 before the Additional Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai/ the 2nd respondent herein returnable on 12.10.2023.

c. The Registry is directed to place a copy of this order before the Hon'ble Chief Justice for information.

08.09.2023

KP
Internet: Yes
Index: Yes/No
Speaking Order/Non-Speaking Order
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To

1.Additional Special Court for Trial of Criminal cases
related to Elected MP's and MLA's of Tamil Nadu,
Chennai

2.The Deputy Superintendent of Police
Directorate of Vigilance and Anti-Corruption
Vigilance and Anti-Corruption
Chennai City-I Department
Chennai 600 028.

3.Public Prosecutor
High Court, Madras.

N.ANAND VENKATESH., J.

KP

SUO MOTU Crl.R.C.No.1559 of 2023

08.09.2023

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