IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	Delivered on
13.02.2024	26.02.2024

CORAM

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.

For Respondents : Mr.P.S.Raman
Advocate General
Asst.by Mr..M.D.Muhilan
Government Advocate (Crl.Side)
for R1

Mr.Ranjit Kumar
Senior Counsel
and
Mr.A.Ramesh, Senior Counsel
for Mr.C.Arun Kumar
for R2

ORDER

INDEX

I. FACTS LEADING TO THE SUO MOTO PROCEEDINGS

1. This suo motu revision, under Section 397 & 401 of the Code of Criminal Procedure, 1973, is directed against an order dated 17.03.2023 passed by the Additional Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu at Chennai (hereinafter the "Special Court") in Cr.M.P 4204 of 2023 in C.C. 13 of 2019 discharging the 2nd respondent herein (the 3rd accused before the Special Court) from the case.

2.A summary of the background facts has been set out in the earlier order dated 08.09.2023 initiating the present proceeding. All the same, a brief summation is as follows:

i.Mr.I.Periyasamy, the 2nd respondent (A3), 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.

ii. It is the case of the prosecution that the application made by Ganesan 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.

iii. This application was signed by one R.Sellamuthu, Secretary, Housing and Urban Development Department on 07.03.2008. This application was then processed at break neck 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.

iv.On 18.03.2008 the Tamil Nadu Housing Board (TNHB) issued a memo to the ExecutiveEngineer,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 wasissued in favor of A1 on the very next dayie., 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.

v. 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, A1Ganesan executed a power of attorney in favour 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.

vi. 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.

vii. In May 2011, the DMK, ofwhich A3 was a Minister, was voted outof 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 seriously amiss about the manner in which the allotment was made in hot haste, 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).

viii. In the course of investigation, the IO R. Murali examined 22 witnesses and collected 45 documents. A final report 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 ofthe Tamil Nadu Assembly hadaccorded 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.

II. FIRST SET OF DISCHARGE PETITIONS

3. 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. 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.

4. On 04.09.2013, A1 Ganesan filed a petition for discharge under Section 239 Cr.P.C. This petition was dismissed by the Special Court on 06.08.2015 on which date the matter was adjourned for framing charges on 31.08.2015. 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.

5. 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.

6. A1 and A2 having failed, 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 centre stage now moved to the High Court.

7. 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.

8. 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.

9.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 04.12.2019aslastchanve.Hence adj call on 04.12.2019. A1to A3 are directed to appear on 04.12.2019 from framing charges otherwise suitable orders will be passed."

10. It is seen from the records that on 04.12.2019, A1 toA3 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.

11. 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 thatA3I. Periasamy had also filed Crl.O.P No.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 09.03.2020 of the Special Court it appears that an order of ad-interim stay was granted in this petition.

12. 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-19intervened. 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.

13. In the meantime, records show that the Special Court had issued summons to LW-1 Mr.P.Dhanabal, 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 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 veryobjectbehindconstitutionofthisCourt.Spl.PPisrequired to call upon the ADSP concerned with this case to be present today, and this case is passed over.*"

14. 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. 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 once again 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.

15. 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 as withdrawn on 12.12.2022. Thus ended the saga of the discharge petitions.

16. 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.

17. 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.

III. INITIATION OF SUO MOTU PROCEEDINGS

18. This Court, *vide* order dated 08.09.2023 initiated this suo motu proceeding after finding that the order of the Special Court dated 17.03.2023 discharging the 2nd respondent (A3) from the case, *prima facie*, suffered from several manifest illegalities and legal errors resulting in miscarriage of justice. This Court directed notices to be issued to the State and the 2nd respondent herein returnable on 12.10.2023.

19. On 12.10.2023, notice was ordered through a Special Messenger of this Court to the 2nd respondent as the Special Court found itself unable to serve notice on the 2nd respondent. The 2nd respondent has since been served and has entered appearance through counsel. The entire material forming the subject matter of the order dated 08.09.2023 was compiled by the Registry of this Court in the form of a paper book. Copies of the same

were handed over to the State Prosecutor as well as the counsel on record for the 2nd respondent. On 08.01.2024, this Court passed an order fixing 12.02.2024 and 13.02.2024 as the dates for final hearing of these matters. These matters were heard out finally on the aforesaid dates and the matter stood reserved for orders on 13.02.2024.

IV.SUBMISSIONS

20. Heard Mr.P.S.Raman, learned Advocate General assisted by Mr.K.M.D Muhilan, learned Government Advocate for the 1st respondent (DVAC) and Mr. Ranjit Kumar and Mr. A. Ramesh, learned Senior Advocates, assisted by C. Arun Kumar and R. Ashwin, learned counsel for the 2nd respondent.

21. Mr.P.S.Raman, the learned Advocate General, made the following submissions:

a) The 1st respondent, D.V.A.C had consistently raised objections before the Special Court that the 2nd petition for discharge was not maintainable. In fact, the stand in the counter affidavit filed by the DVAC before the Special Court on 04.03.2023 is specifically to the effect that the discharge application was not maintainable once the trial had commenced. The learned Advocate General invited the attention of this Court to paragraphs 12-14 of the counter affidavit in support of the aforesaid contention.

b) Mr.P.S.Raman, learned Advocate General invited my attention to the decision of a three-judge bench in ***Ratilal Bhanji Mithani v. State of Maharashtra*, (1979) 2 SCC 179**, and submitted that once charges had been framed there was no question of the Court discharging the accused. In particular, he drew the attention of the Court to paragraph 28 which reads 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).*"

c) Mr.P.S. Raman, learned Advocate General pointed out that the second petition was filed under "Section 19 of the Prevention of Corruption Act, 1988" after the trial had commenced. Such a petition was not maintainable in the light of the law laid down by a learned single judge of this Court (S. Nagamuthu, J) in *K. Selvam v State*, 2010 2 MWN (Cri) 463, wherein it was

held as under:

> "*In so far as the power to discharge an Accused after the framing of charges is concerned, I find no provision in Section 19 of the Act or in any other provisions of the said Act to empower the Magistrate to do so. Similar provision is not found in the Code of Criminal Procedure also. Therefore, Section 19 of the Act cannot be interpreted in such a manner to empower the Magistrate to discharge an Accused after the trial has commenced.*"

22. Mr.Ranjit Kumar and Mr.A.Ramesh, learned Senior Counsel, made the following submissions on behalf of the 2nd respondent:

a. The DVAC had registered an FIR against 2 persons for offences under Section 120(B) 420, 109 IPC and 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988. The Special Court has correctly concluded that sanction was necessary to prosecute the 2nd respondent for the commission of IPC offences. Admittedly, in the instant case, no sanction was obtained under Section 197 Cr.P.C.

b. In so far as sanction under Section 19 of the Prevention of Corruption Act, 1988 is concerned, the amendments made by the Prevention of Corruption (Amendment) Act, 1988 to Section 19 constituted a change of circumstance which necessitated the filing of the second discharge petition.

c. It was pointed out that Section 19(1)(b) (post amendment) uses the expression "*at the time of commission of the offence*" thereby implying that the reference point for sanction was the date of commission of the offence and not the date of taking cognizance by the Court.

d. Mr. Ranjit Kumar, learned Senior Counsel, drew the attention of this Court to Section 19 of the P.C Act, 1988 and submitted that what is contemplated under the said provision is "sanction" as distinguished from "permission" which the Speaker had granted in this case. He emphasized the distinction between "sanction" and "permission" and submitted that the two were not synonymous.

e. There is no bar in filing a second petition particularly since the Special Court had granted liberty when it dismissed the first discharge application. In any event, the law laid down by the Supreme Court in *Nanjappa v State of Karnataka* (2015) 14 SCC 186 is clear that a Court can discharge the accused at any stage if it finds that there is no valid sanction to prosecute the accused. Mr.Ranjit Kumar lay great emphasis on the fact that the lack of sanction strikes at the very jurisdiction of the Court to try the accused. It was submitted that the Special Court was correct in discharging the accused after finding that the sanction granted by LW-1 (P. Dhanabal, the then Speaker of the Tamil Nadu Legislative Assembly) is not valid.

f. In the light of the law laid down in ***Narasimha Rao's case*** (1998) 4 SCC 626, the appropriate authority for the grant of sanction under Section 19 of the PC Act, 1988

was the Governor and not the Speaker as the 2nd respondent was admittedly a Minister at the time of the alleged commission of the offence.

g. The decision of the Supreme Court in *State of Karnataka v Subbe Gowda*, 2023 SCC Online SC 911 was distinguishable. In that case, the accused had filed a discharge petition in the course of trial after having filed a memo withdrawing his earlier discharge petition. It was in these circumstances that the Supreme Court had held that a discharge petition was not maintainable mid-way through trial.

h. The Supreme Court had not dismissed the petition against the earlier order of this Court affirming the decline of discharge. SLP (Criminal) 11381-11382 of 2022 was filed challenging the common order of this Court in Crl.O.P34130 of 2019 filed by A3 and Crl.R.C 1112 of 2015, Crl.R.C 957 and 983 of 2016, dismissing the quash petitions and the criminal revisions challenging the orders of the Special Court declining discharge. This SLP was withdrawn on 12.12.2022. Withdrawal of the SLP would not tantamount to affirming the order of this Court.

i. A feeble attempt was made in the written submission to assail the jurisdiction of this Court under Section 397/401 Cr.P.C. In particular, it was pointed out that the order dated 08.09.2023 had made certain observations/findings which "smacks of bias". However, this plea was not canvassed by the learned senior counsel in the course of their oral submissions.

V. SUO MOTU REVISIONAL JURISDICTION

23. Before examining the rival contentions, it is first necessary to clear the air on the powers of this Court to initiate a suo motu revision under Sections 397 & 401 of the Cr.P.C. Section 397 (1) Cr.P.C reads as follows:

> *"397. Calling for records to exercise powers of revision.—(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself; to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on bail or on his own bond pending the examination of the record.*
>
> *Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398"*

This provision must be read in conjunction with Section 401(1) Cr.P.C which reads as follows:

> *"401. High Court's powers of revision.—(1) In the case of any proceeding the record of which has been called for by itself or which*

otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307, and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392."

24. The power of the High Court to invoke the powers under Section 397/401 Cr.P.C has been recognised in several judgments of the Supreme Court. In *Eknath ShankarraoMukkawar v. State of Maharashtra*, (1977) 3 SCC 25**,** which was one of the early cases under the 1973 Code, the Supreme Court had noticed the suo motu revisional powers of the High Court under the Code. The Supreme Court observed:

> "***6.*** *.....High Court's power of enhancement of sentence, in an appropriate case, by exercising suo motu power of revision is still extant under Section 397 read with Section 401 of the Criminal Procedure Code, 1973, inasmuch as the High Court can "by itself" call for the record of proceedings of any inferior criminal court under its jurisdiction. The provision of Section 401(4) is a bar to a party, who does not appeal, when appeal lies, but applies in revision. Such a legal bar under Section 401(4) does not stand in the way of the High Court's exercise of power of revision, suo motu, which continues as before in the new Code."*

25. In *Krishnan v. Krishnaveni*, (1997) 4 SCC 241, the Supreme Court once again reiterated the suo motu revisional powers of the High Court under Sections 397/401

Cr.P.C. It observed:

> "*Section 401 of the Code gives to every High Court the power of revision. Sub-section (1) of the said section provides that in the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by Sections 386, 389 and 391 and on a Court of Sessions by Section 307. Apart from the express power under Section 397(1), the High Court has been invested with suo motu power under Section 401 to exercise revisional power.*"

In an important passage, the principles governing the exercise of this power was explained in the following way:

> "*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.*

26. More recently, in *Honniah v State of Karnataka*, (2022 SCC Online SC 1001), the Supreme Court speaking through Dr. D.Y Chandrachud, J (as the learned Chief Justice then was) and J.B Pardiwala, J, have observed as under:

> "*The revisional jurisdiction of a High Court under Section 397 read with Section 401 of the CrPC, is a discretionary jurisdiction that can be exercised by the revisional court suo motu so as to examine the correctness, legality or propriety of an order recorded or passed by the trial court or the inferior court. As the power of revision can be exercised by the High Court even suo moto, there can be no bar on a third party invoking the revisional jurisdiction and inviting the attention of the High Court that an occasion to exercise the power has arisen.*"

In the light of the aforesaid legal position, the power of this Court to initiate a *suo moto* revision under Sections 397/401 Cr.P.C against an order of an inferior criminal court is no longer res integra and has travelled far beyond the orbit of Courtroom debates.

27. It must also be noted that at the time of initiating *suo moto* proceedings *vide* order dated 08.09.2023 as well during the final hearing of this matter, this Court was holding the portfolio for MP/MLA cases across the State of Tamil Nadu. That apart, pursuant to the administrative order dated 7.2.2024, of the Hon'ble Chief Justice the instant case ie., Suo Motu Crl.R.C.No.1559 of 2023 as well as other connected cases have been specifically ordered to be listed before this Court for hearing and disposal.

VI. GROUNDS IN THE II DISCHARGE PETITION

28. To recapitulate the facts, it will be recalled that the 2nd respondent (A3) had filed Crl.M.P 366 of 2016 before the Special Court seeking discharge on various grounds including lack of sanction under Section 197 Cr.P.C and the invalidity of the sanction order under Section 19 of the P.C Act, 1988. This discharge application was dismissed by the Special Court on 06.07.2016. The 2nd respondent (A3) challenged the aforesaid order of the Special Court before this Court in Crl.R.C 957 of 2016. A3 also filed Crl.O.P 34130 of 2019 under Section 482 of the Cr.P.C seeking to quash the charges framed against him and all further proceedings before the Special Court. This Court, by a common order dated 11.11.2022, dismissed Crl.R.C 957 of 2016 and Crl.O.P 34130 of 2019 filed by the 2nd respondent (A3) and Crl.R.C.No. 1112 of 2015 and Crl.R.C.No. 983 of 2016 filed by A1 and A2 challenging the orders of the Special Court declining discharge. While dismissing the petitions this Court had observed as under:

> "*It is made clear that the observations made herein are only for the limited purpose in deciding the above petitions.* ***The trial Court uninfluenced with the observations made herein to proceed with the trial against A1 to A3 on its own merits during trial****. Consequently, the connected Miscellaneous Petitions are closed."*

The common order of this Court dated 11.11.2022 was assailed before the Supreme Court

in S.L.P 11391 (Crl) of 2022. On 12.12.2022, the following order was passed by the Supreme Court

> "*After making some submissions, learned Senior Advocates appearing for the respective parties seek permission to withdraw the present Special Leave Petitions. The Special Leave Petitions are dismissed as withdrawn.*"

29. On 21.02.2023, the 2nd respondent (A3) once again filed a petition seeking discharge. Ingeniously, the petition was styled and filed under Section 19 of the Prevention of Corruption Act, 1988 although the said provision had nothing to do with discharge at all. The petition proceeds to state that (a) trial has commenced and that (b) the then Speaker of the T.N. Legislative Assembly had been examined and cross-examined as LW-1. It then proceeds to set out the following legal grounds seeking discharge:

a. The Speaker had accorded sanction under Section 19(1)(c) of the P.C Act, 1988. This sanction was invalid as it was granted by an incompetent authority. The competent authority, according to A3, was the Governor as he is the executive head of the State Government.

b. The Speaker is not the competent authority to grant sanction since he is not empowered to remove an MLA from office. What is contemplated under Section 19 is sanction but the Speaker in the instant case had granted only permission.

c. The prosecution was bad for want of sanction under Section 197 Cr.P.C since the IPC offences alleged against the 2nd respondent (A3) were admittedly done while discharging his duty as a Minister.

d. The prosecution and the Speaker (LW-1) failed to take note of Section 19(4) of the P.C Act, 1988.

30. At this juncture, it must be noticed that the ground of lack of sanction under Section 197 Cr.P.C and the incompetency of the Speaker to grant sanction under Section 19 of the P.C Act, 1988 were expressly raised by A3 and rejected by the Special Court in paragraph 8 of its order dated 06.07.2016 while dismissing the first discharge application of the 2nd respondent (A3) which order was also affirmed by this Court on 11.11.2022.

31. Reverting to the narration, the Special Court, which was directed by this Court, *vide* order dated 11.11.2022, to proceed with trial, very generously decided to entertain the second discharge petition of A3 under Section 19 of the P.C Act, 1988 by taking the same on file as Crl.M.P 4204 of 2023 on 21.02.2023. As noticed in the earlier order dated 08.09.2023, the Special Court appears to have proceeded thereafter in lightning speed and finally allowed Crl.M.P 4204 of 2023 within 21 days ie., on 17.03.2023, discharging the accused despite a clear and categorical direction by this Court to proceed with trial. This Court has no hesitation in observing that the conduct of the Special Court in entertaining

the second discharge application contrary to the directions of this Court is thoroughly condemnable and is seriously suspect on several counts.

VII. ORDER PASSED IN THE II DISCHARGE PETITION

32.The following conclusions are discernable from the impugned order dated 17.03.2023 in Crl.M.P 4204 of 2023 discharging the 2nd respondent (A3) :

a. An MP is a public servant. By analogy, the same logic applies to an MLA.

b. In paragraph 30, the Special Court has arrived at a rather incredible conclusion that the Supreme Court in *P.V. Narasimha Rao v. State* (CBI/SPE), (1998) 4 SCC 626had held that an MP is a public servant within the meaning of Section 21 of the IPC.

c. In paragraph 31, the Special Court proceeds to set out its understanding of the ratio of *P.V. Narasimha Rao v. State* (CBI/SPE), (1998) 4 SCC 626. Of particular interest is the conclusion in paragraph 31(iii) and (iv) that the Speaker cannot be reckoned as a competent authority for the purposes of Section 19(1)(c) of the P.C Act, 1988 in respect of MP/MLA's. According to the Special Court, in the absence of any power in the Speaker to remove MP/MLA's Section 19 of the P.C Act, 1988 does not apply to such members.

d.Having held as above, the Special Court concludes in paragraph 38 that "*as per*

the plain language of Section 19(1)(a) sanctioned to prosecute against a public servant should be obtained from the Central Government or the State Government as the case may be and in the case of any other person of a authority competent to remove him from his office shall be competent to accord sanction to prosecute." Unfortunately, the Special Court, either by chance or deliberate design, did not notice that it was nobody's case that Section 19(1)(a) of the P.C Act, 1988 was applicable to the 2nd respondent (A3). Even the 2nd respondent (A3) had no case that sanction had to be obtained under Section 19(1)(a). On the contrary, his case in paragraphs 3 & 4 of the discharge petition is that sanction under Section 19(1)(c) was faulty.

e.That apart, Section 19(1)(a) cannot possibly apply since that provision is confined to a person employed or was, at the time of the commission of the offence, employed in connection with the affairs of the Union and is not removable from office save with the sanction of the Central Government. By applying Section 19(1)(a) to an MLA, the Special Court has equated the 2nd respondent (A3) I. Periasamy, a Minister of the T.N Government, to a person employed with the Union Government who is removable from office with the sanction of the Central Government. This conclusion is completely perverse and bizarre apart from being legally and politically incorrect.

f. The Special Court then proceeds to commit another legal blunder by applying

Section 19(2) of the P.C Act overlooking the fact that the provision would apply only in cases where there is a doubt as to the sanctioning authority. This is clear from the decision of the Supreme Court in *Abhay Singh Chautala v. CBI*, (2011) 7 SCC 141. In the case on hand, the Special Court has categorically (but incorrectly) held that the sanctioning authority is the Governor. Thus, even if one goes by the Special Court's flawed reasoning there was never any doubt as to the sanctioning authority so as to apply Section 19(2). Consequently, the conclusion of the Special Court to apply Section 19(2) is completely specious and perverse.

g.Applying (or mis-applying) Section 19(2) the Special Court has concluded that the time for reckoning the requirement of sanction is the date of commission of the offence overlooking the settled position that under the P.C Act 1988, the relevant date for sanction is the date on which the Court takes cognizance of the offences. By applying 19(2) the Special Court concludes that as A3 was a Minister at the time of commission of the offence, the authority competent to remove him (A3) was the Governor and not the Speaker.

h.Ironically, having erroneously applied Section 19(1)(a) and 19(2) in paragraphs 38 the Special Court then abruptly concludes at paragraph 57 that the competent authority for sanction under Section 19(1)(c) is the Governor and not the Speaker.

VIII. QUESTIONS FOR CONSIDERATION

33. From a reading of the impugned order of the Special Court dated 17.03.2023 and the submissions of the learned senior counsel, the following are the questions that arise for consideration:

i. Whether a second discharge petition is maintainable, if so, at what stage?

ii. Whether the prosecution of the 2nd respondent (A3) in C.C. 13 of 2019 is bad for want of sanction under Section 197 Cr.P.C?

iii. Who is the competent authority to grant sanction under Section 19 of the P.C Act, 1988 in respect of the offences alleged to have been committed by the 2nd respondent (A3)?

i. MAINTAINABILITY OF THE SECOND DISCHARGE PETITION

34. Mr. Ranjit Kumar, learned senior counsel submitted that there was no bar for the Special Court to entertain a second petition for discharge particularly since the Special Court in its order dated 06.07.2016 passed in the first discharge petition of A3, had granted liberty to do so. The learned senior counsel invited the attention of this Court to the decisions in *Nanjappa v State of Karnataka*, (2015) 14 SCC 186 and State of Karnataka v C. Nagarajaswamy (2005) 8 SCC 370 to contend that the question as regards lack of sanction goes to the root of the matter and affects the very jurisdiction of the Court

to try the case. In such circumstances, it would be an exercise in futility to proceed with trial once the Court finds that the sanction is invalid or defective.

35. The question as to when and at what stage a discharge petition could be entertained in a prosecution under the P.C Act fell for consideration before the Supreme Court in *State of Karnataka v S. Subbegowda* (2023) 4 MLJ (Cri) 393 (SC). The Supreme Court, after considering its earlier decision in *Nanjappa v State of Karnataka*, (2015) 14 SCC 186, has observed as under:

> "*Having regard to the afore-stated provisions contained in Section 19 of the said Act, there remains no shadow of doubt that the statute forbids taking of cognizance by the Court against a public servant except with the previous sanction of the Government/authority competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1).* ***It is also well settled proposition of law that the question with regard to the validity of such sanction should be raised at the earliest stage of the proceedings, however could be raised at the subsequent stage of the trial also. In our opinion, the stages of proceedings at which an accused could raise the issue with regard to the validity of the sanction would be the stage when the Court takes cognizance of the offence, the stage when the charge is to be framed by the Court or at the stage when the trial is complete i.e., at the stage of final arguments in the trial****. Such issue of course, could be raised before the Court in appeal, revision or confirmation, however the powers of such court would be subject to sub-section (3) and sub-section (4) of Section 19 of the said Act. It is also significant to note that the competence of the court trying the accused also would be*

dependent upon the existence of the validity of sanction, and therefore it is always desirable to raise the issue of validity of sanction at the earliest point of time. It cannot be gainsaid that in case the sanction is found to be invalid, the trial court can discharge the accused and relegate the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with the law."

From the aforesaid, it is clear as the day that a plea of discharge can be sought (a) at the time of taking cognizance (b) at the stage of framing charges and (c) at the stage of final arguments. In the case on hand, the second discharge petition was filed after stages (a) and (b) and before stage (c). Consequently, a plea of discharge, after framing charges and in the midst of trial was not maintainable. This conclusion is fortified by the following observations in paragraph 15 in *Subbegowda's case*:

> "***As a matter of fact, such an interlocutory application seeking discharge in the midst of trial would also not be maintainable***. *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. In the instant case, though the issue of validity of sanction was raised at the earlier point of time, the same was not pressed for.* ***The only stage open to the respondent-accused in that situation was to raise the said issue at the final arguments in the trial in accordance with law.***"

Thus, once the first discharge petition had been rejected and the trial had commenced, it

was not open to the accused to commence another round of discharge proceedings in the midst of trial.

36. In ***K. Selvam v State*** (2010) Cr.LJ 3240, a learned single judge of this Court (S. Nagamuthu, J) had taken a similar view when he observed:

> *"Now reverting back to the question of power of the learned Trial Judge to discharge the Accused, I have to state the following. As held by the Honourable Supreme Court in RatilalBhanjiMithani v. State of Maharashtra and Others, 1979 SCC (Crl.) 405 that after framing of charges, the question of discharge of an Accused does not arise, is the view consistently taken by the Honourable Supreme Court in several judgments. Before the said judgment as well as after, the law stands well settled that when once charges have been framed, the question of discharging an Accused does not arise at all."*

As a matter of fact, S. Nagamuthu, J has very rightly predicted the fate of cases such as the one on hand and the disastrous consequences that would ensue if discharge petitions were filed piecemeal during trial. The learned judge has observed:

> *"At this juncture, we may visualise a situation. Suppose, if there are 10 Accused in a case under the Prevention of Corruption Act and for each Accused there are separate Sanctioning Authority and at every stage, as soon as one Sanctioning Authority isexamined, if a Petition is filed seeking to discharge, then the proceedings will be endlessly going on. No statute can be interpreted in such a way as it is sought to be made in this case by the Petitioner. For all these reasons, I firmly hold that the Petition for discharge after the trial has commenced, even in respect of the Accused falling under the*

provisions of the Prevention of Corruption Act, is not at all maintainable and therefore, the lower Court was right in dismissing the Petition."

37. In fact, a similar attempt was made in ***K. Selvam v State*** (2010) Cr.LJ 3240, to file a discharge petition under Section 19 of the P.C Act, 1988. This was repelled by this Court with the following observations:

> "*In so far as the power to discharge an Accused after the framing of charges is concerned, I find no provision in Section 19 of the Act or in any other provisions of the said Act to empower the Magistrate to do so. Similar provision is not found in the Code of Criminal Procedure also. Therefore, Section 19 of the Act cannot be interpreted in such a manner to empower the Magistrate to discharge an Accused after the trial has commenced."*

The decisions in *State of Karnataka v S. Subbegowda* (2023) 4 MLJ (Cri) 393 (SC) and*K. Selvam v State* (2010) Cr.LJ 3240 apply on all fours to the case on hand. This Court has no hesitation in concluding that the 2nd respondent was committing the grossest abuse of process by filing Cr.M.P 4203 of 2023 seeking discharge for the second time with the obvious intent of scuttling the trial.

38. However, Mr. Ranjit Kumar, learned senior counsel would contend that the decision in *Nanjappa v State of Karnataka*, (2015) 14 SCC 186 was clear to the effect that a plea of discharge could be raised "at any stage" which implied that it could be raised even in the midst of trial. Before analyzing this decision, it is necessary to bear in mind the following caution administered by the Constitution Bench in ***Padma Sundara Rao v.***

***State of T.N.*, (2002) 3 SCC 533.**

> *"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."*

In view of the above, it is necessary to notice the facts of *Nanjappa v State of Karnataka*, (2015) 14 SCC 186. Nanjappa was working as a Bill Collector in a taluk in Karnataka. He was prosecuted for demanding a bribe of Rs 500 to procure a copy of a certain resolution from the Panchayat. The trial court acquitted the accused after finding the evidence to be slender in addition to finding that the Chief Officer of the Zilla Panchayat had not accorded sanction under Section 19 of the P.C Act. On appeal, the High Court of Karnataka held that the issue of sanction was not raised at any stage before the trial court. Hence, the appellant was not entitled to raise the same at the conclusion of trial. Re-appreciating the evidence, the High Court convicted the appellant for the offences charged. On appeal at the instance of Nanjappa, the Supreme Court held as under:

> *"The legal position regarding the importance of sanction under Section 19 of the Prevention of Corruption Act is thus much too clear to admit equivocation. The statute forbids taking of cognizance by the court against a public servant except with the previous sanction of an authority*

competent to grant such sanction in terms of clauses (a), (b) and (c) to Section 19(1). The question regarding validity of such sanction can be raised at any stage of the proceedings. The competence of the court trying the accused so much depends upon the existence of a valid sanction. In case the sanction is found to be invalid the court can discharge the accused relegating the parties to a stage where the competent authority may grant a fresh sanction for the prosecution in accordance with law. If the trial court proceeds, despite the invalidity attached to the sanction order, the same shall be deemed to be non est in the eyes of law and shall not forbid a second trial for the same offences, upon grant of a valid sanction for such prosecution."

From the aforesaid facts and observations, the following conclusions emerge:

a. *Nanjappa's case* did not involve the filing of a discharge petition amid trial. The case did not involve a discharge petition at all.

b. The issue of sanction was raised only during the stage of arguments. The High Court incorrectly held that the issue of sanction could not be raised at the stage of arguments.

c. The Supreme Court held that once the Court concluded that the prosecution lacked sanction it could not go ahead and convict/acquit the accused since it lacked jurisdiction to proceed with the case. The only option is to discharge the accused and relegate the parties to obtain proper sanction.

d.The error committed by the trial court in Nanjappa's case was that it had acquitted the accused after noticing that sanction was required. On facts, since the prosecution failed for sanction, the trial could have only discharged the accused and not

acquitted him. This conclusion is because discharge does not bar a subsequent trial after obtaining sanction whereas an acquittal bars a fresh trial under the principle of *auterofiois aquit* under Section 300 Cr.P.C.

39. From the aforesaid discussion, it would be clear that on facts*Nanjappa v State of Karnataka*, (2015) 14 SCC 186 was a case where the issue of sanction was agitated before the trial court at the stage of final arguments. This is in complete consonance with the later view of the Supreme Court in *State of Karnataka v S. Subbegowda* (2023) 4 MLJ (Cri) 393 (SC), wherein *Nanjappa v State of Karnataka*, (2015) 14 SCC 186, has been referred to and followed. The use of the expression "any stage" by the Supreme Court in *Nanjappa v State of Karnataka*, (2015) 14 SCC 186 cannot be divorced from the facts of the case before it.

40. Mr. Ranjit Kumar, learned senior counsel also referred to *State of Karnataka v C. Nagarajaswamy* (2005) 8 SCC 370, to contend that the power of discharge is available even after the framing of charges. This decision has been elaborately considered by S. Nagamuthu, J in *K. Selvam v State* (2010) Cr.LJ 3240. This Court is in complete agreement with the following conclusions of the learned judge:

> "*In that case, factually, cognizance was taken on the basis of a sanction order, charges were framed, the Accused was tried and finally, he was acquitted by the Trial Court on the ground that the sanction order was withoutjurisdiction and therefore, the very taking of*

cognizance as against the said Accused was bad in law. Subsequently, after getting fresh valid sanction, proceedings were again initiated on which cognizance was once again taken by the Trial Court. The Accused sought for quashing the latter proceedings. The matter ultimately came before the Honourable Supreme Court. In those circumstances, the question before the Honourable Supreme Court was, whether the order of acquittal recorded in the earlier proceedings for want of valid sanction would be a bar for the fresh proceedings in terms of Section 300 of Cr.P.C

A close reading of the above would go to clearly substantiate my understanding of the judgment of the Honourable Supreme Court that it was not at all the question before the Honourable Supreme Court as to whether an Accused can be discharged after the framing of charges."

41. For all the aforesaid reasons, the inescapable conclusion is that once the trial had commenced Crl.M.P.No. 4204 of 2023 filed by the 2nd respondent (A3) seeking discharge was not maintainable. Consequently, the Special Court committed a gross illegality in entertaining and allowing a second discharge petition in the midst of trial. This Court has no hesitation in holding that the order dated 17.03.2023 passed in Crl.MP.No.4204 of 2023 discharging A3 smacks of manifest illegality and grave procedural impropriety warranting interference under Sections 397/401 Cr.P.C.

ii. SANCTION UNDER SECTION 197 Cr.P.C

42. Mr. Ranjit Kumar and Mr. A. Ramesh, learned Senior Advocates submitted in unison that the prosecution against the 2nd respondent for offences under the Indian Penal Code was invalid for want of sanction under Section 197 Cr.P.C. The Special Court has, in paragraph 30 of the impugned order, also opined that the 2nd respondent was a public servant within the meaning of Section 21 of the IPC.

43. To test this argument, it is first necessary to set out Section 197 (1) Cr.P.C, in so far as it is material, which reads as follows:

> "***197. Prosecution of Judges and public servants:****(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]— (a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government; (b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government"*

From a plain reading of Clause (1) of Section 197 Cr.P.C it is clear that it would apply only to persons who commit offences "*while acting or purporting to act in the discharge of his official duty"* and are removable from office with the sanction of the Government. Admittedly, on the date of the commission of the offence, the petitioner was an MLA and a Minister in the State Cabinet. It is too fundamental that an MLA, who is an elected representative of the people, cannot be removed from office at the behest of the Government. The point is no longer res integra. In ***State of Kerala v. K. Ajith*****, (2021) 17 SCC 318,** the Supreme Court has observed thus:

> *"A plain reading of Section 197Cr.P.C clarifies that it applies only if the public servant can be removed from office by or with the sanction of the Government. However, MLAs cannot be removed by the sanction of the Government, as they are elected representatives of the people of India. They can be removed from office, for instance when disqualified under the Xth Schedule of the Constitution for which the sanction of the Government is not required."*

44. The argument that an MLA is a public servant within the meaning of Section 21 of the Indian Penal Code was raised and rejected long ago by a Constitution Bench in ***R.S. Nayak v. A.R. Antulay*****, (1984) 2 SCC 183,** wherein it was held as follows:

> *"To say that MLA by virtue of his office is performing policing or prison officers' duties would be apart from doing violence to language lowering him in status. Additionally, clause (7) does not speak of any*

adjudicatory function. It appears to comprehend situations where as preliminary to or an end product of an adjudicatory function in a criminal case, which may lead to imposition of a prison sentence, and a person in exercise of the duty to be discharged by him by virtue of his office places or keeps any person in confinement. The decisions in Homi D. Mistry v. Shree Nafisul Hassan [ILR 1957 Bom 218 : 60 Bom LR 279] , Harendra Nath Barua v. Dev Kanta Barua [AIR 1958 Ass 160] and Edward Kielley v. William Carson, John Kent [(1841-42) 4 Moo PCC 63] hardly shed any light on this aspect. Therefore, the submission that MLA would be comprehended in clause (7) of Section 21 so as to be a public servant must be rejected."

Consequently, the contention that the prosecution against the 2nd respondent (A3), was bad for want of sanction under Section 197 Cr.P.C must be rejected as completely misconceived.

iii. SANCTION UNDER SECTION 19 OF THE P.C ACT

45. The next ground of attack by Mr. Ranjit Kumar, and Mr. A. Ramesh learned senior counsel for the 2nd respondent was on the sanction/permission accorded under Section 19 of the P.C Act, 1988. According to them, sanction ought to have been given by the Governor and not by the Speaker. It was submitted by them in unison that Section 19(1)(b) would apply to the 2nd respondent (A3), and consequently by virtue of the Prevention of Corruption (Amendment), Act, 2018 the amended Section 19(1)(b)

constituted a change of circumstance for agitating the issue of sanction in the second discharge petition. In fairness to the learned senior counsel, neither of them attempted to support the palpably perverse logic of the Special Court, which has been adverted to earlier.

46. Mr. Ranjit Kumar would also contend that in its order dated 06.07.2016 the Special Court had granted liberty to agitate the issue of sanction under Section 19 after the evidence of the Speaker. In these circumstances, the sanction granted by LW-1, the former Speaker could be gone into by the Special Court.

47. Section 19(1) of the P.C Act, 1988 reads as follows:

> *"19. Previous sanction necessary for prosecution.—(1) No court shall take cognizance of an offence punishable under 1 [sections 7, 11, 13 and 15] alleged to have been committed by a public servant, except with the previous sanction [save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—*
>
> *(a) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in connection with the affairs of the Union and is not removable from his office save by or with the sanction of the Central Government, of that Government;*
>
> *(b) in the case of a person [who is employed, or as the case may be, was at the time of commission of the alleged offence employed] in*

connection with the affairs of a State and is not removable from his office save by or with the sanction of the State Government, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office: [Provided that no request can be made, by a person other than a police officer or an officer of an investigation agency or other law enforcement authority, to the appropriate Government or competent authority, as the case may be, for the previous sanction of such Government or authority for taking cognizance by the court of any of the offences specified in this sub-section, unless— (i) such person has filed a complaint in a competent court about the alleged offences for which the public servant is sought to be prosecuted; and (ii) the court has not dismissed the complaint under section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) and directed the complainant to obtain the sanction for prosecution against the public servant for further proceeding: Provided further that in the case of request from the person other than a police officer or an officer of an investigation agency or other law enforcement authority, the appropriate Government or competent authority shall not accord sanction to prosecute a public servant without providing an opportunity of being heard to the concerned public servant: Provided also that the appropriate Government or any competent authority shall, after the receipt of the proposal requiring sanction for prosecution of a public servant under this sub-section, endeavour to convey the decision on such proposal within a period of three months from the date of its receipt: Provided also that in case where, for the purpose of grant of sanction for prosecution, legal consultation is required, such period may, for the reasons to be recorded in writing, be extended by a further period of one

month: Provided also that the Central Government may, for the purpose of sanction for prosecution of a public servant, prescribe such guidelines as it considers necessary.

Explanation.—For the purposes of sub-section (1), the expression "public servant" includes such person— (a) who has ceased to hold the office during which the offence is alleged to have been committed; or (b) who has ceased to hold the office during which the offence is alleged to have been committed and is holding an office other than the office during which the offence is alleged to have been committed."

48. As already noticed above, the 2nd respondent had initially pitched his case under Section 19(1)(c). The Special Court in paragraph 38 of the impugned order founded its reasoning on Section 19(1)(a). Not to be outdone, the contention raised on behalf of the 2nd respondent in the course of arguments was based neither on Section 19(1)(a) nor on Section 19(1)(c) but on Section 19(1)(b). Thus, a game of musical chairs was being played by the 2nd respondent on the issue of sanction within the three limbs of Section 19(1).

49. Having closely examined the provisions, the contention that Section 19(1)(b) applies to the case of the 2nd respondent is completely misconceived. In the first place,

Section 19 (1)(b) applies only to a person who is employed or was, at the time of the commission of the offence employed in connection with the affairs of the State and could be removed from office by the State Government. As we have already seen, the decision in ***State of Kerala v. K. Ajith*, (2021) 17 SCC 318** settled the position that an MLA is not a person who can be removed with the sanction of the Government.

50. Interestingly, prior to 2018, Sections 19(1)(a) and 19(1)(b) covered only cases where sanction is sought and the accused continued to remain in the employment of the respective Governments. The 2018 Amendment amended Clauses (1)(a) and (1)(b) of Section 19, and did not touch Section 19(1)(c). The object of the 2018 Amendment in amending only Clauses (1)(a) and (1)(b) of Section 19 can be gleaned from the 69th Report of the Department Related Standing Committee of the Rajya Sabha (February, 2014), and reads thus:

> "*Previous sanction of appropriate Government or competent authority is to be sought under Section 19 of the Prevention of Corruption Act, 1988 for corruption related cases whereas previous sanction of appropriate authority is to be sought for any sort of offences committed by public servants while discharging their official duty under Section 197 of the Code of Criminal Procedure, 1973. Amendment proposed to Section 19 of The Prevention of Corruption Act, 1988 through Clause -10 of the Bill is to extend the protection of previous sanction already available to serving public servant to honest public*

servants after their retirement or demitting public office in order to protect them from frivolous, vexatious even malicious prosecution."

From the above, it is clear that the object of the 2018 Amendment was to extend the protection already available under Section 197 Cr.P.C to those officers who had retired or had demitted public office. It was for this reason that only Clauses (1)(a) and (1)(b) of Section 19 were amended to extend the protection to public servants under the Union under Section 19(1)(a), and public servants under the State under Section 19(1)(b). Consequently, Clauses (1)(a) and (1)(b) of Section 19 can apply only if the public servant can be removed from office with the sanction of the respective Government. In view of the decision in ***State of Kerala v. K. Ajith*****, (2021) 17 SCC 318,** the case of the petitioner cannot fall in either clauses ie., Clauses (1)(a) and (1)(b) of Section 19.

51. The 2nd respondent was fully aware and appraised of this position since his second petition for discharge is founded entirely on Section 19(1)(c) and not on Clauses (1)(a) and (1)(b) of Section 19. Thus, the contention raised on the basis of Section 19(1)(b) is rejected as an afterthought and is completely devoid of merits.

52. Turning to Section 19(1)(c) the argument which found favour with the Special Court is that the sanction/permission ought to have been accorded only by the Governor

and not the Speaker. In ***Parkash Singh Badal v. State of Punjab*, (2007) 1 SCC 1**, it was held that the *terminus a quo* for a valid sanction under Section 19 is the time when the court is called upon to take cognizance of the offence. In the case on hand, cognizance was taken by the Special Court on 24.06.2013, on which date the 2nd respondent (A3) was admittedly not a Minister but only an MLA as could be seen from paragraph 4-II of his second petition seeking discharge.

53. The legal position as regards sanction/permission under Section 19 of the P.C Act,1988 for the prosecution of an MLA is governed by the decision of the Supreme Court in *P.V. Narasimha Rao v. State* (CBI/SPE), (1998) 4 SCC 626. The majority opinion delivered by Justice S.C Agrawal held, in the context of an MP, the Constitution does not confer on any particular authority the power to remove him from office. While holding that an MP/MLA was nonetheless a public servant for the purposes of Section 2(c) of the P.C Act, 1988, the following procedure was devised in relation to the prosecution of MP/MLA under the P.C Act, 1988:

> "*Since there is no authority competent to remove a Member of Parliament and to grant sanction for his prosecution under Section 19(1) of the Prevention of Corruption Act, 1988, the court can take cognizance of the offences mentioned in Section 19(1) in the absence of sanction but till provision is made by Parliament in that regard by suitable amendment in the law, 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."

In the instant case, as on the date of taking cognizance of the offences, the 2nd respondent was an MLA with the result that it was the Speaker and not the Governor who was the competent authority to grant permission to prosecute the 2nd respondent in terms of the judgment of the Supreme Court in *P.V. Narasimha Rao v. State* (CBI/SPE), (1998) 4 SCC 626. On this analysis, the permission/sanction granted by the Speaker in the instant case does not suffer from any infirmity or want of authority.

54. Coming to the other submission of Mr. Ranjit Kumar, learned senior counsel that the second discharge application was filed pursuant to the liberty granted by the Special Court, it is first necessary to set out the relevant passage from the order of the Special Court dated 06.07.2016 passed in the first discharge petition:

> "*On perusal of records admittedly at the time of registration of the case the petitioner was not a Minister and only an MLA. And hence, the contention raised by the learned senior counsel cannot be accepted without giving an opportunity to the prosecution to examine the sanctioning authority to establish that the speaker has got the authority to accord sanction.*"

A reading of the aforesaid passage does not suggest the grant of any liberty as contended

by the learned senior counsel. Even if the Court is to read this passage the way suggested by him, in the light of the law laid down in *State of Karnataka v S. Subbegowda* (2023) 4 MLJ (Cri) 393 (SC), it is not possible to conclude that the discharge petition could be maintained mid-way through trial.

55. The other contention of the learned senior counsel is that in the course of his cross-examination, LW-1 has admitted that the competent authority to grant permission was the Governor. It is not in dispute that charges were framed against the accused on 04.12.2019. LW-1, the former Speaker was examinedon 15.02.2023. The attention of this Court was drawn to the following passage in the cross-examination of LW-1:

> *"If told that generally only the Governor is empowered to issue consent order for filing criminal case against a minister, it is correct."*

> *"If told that with the prior permission of the Speaker of the Legislative Assembly only corruption case could be filed against a member but not by consent order, I do not know about it."*

The first sentence is a response to a tactless suggestion put to the witness that the Governor is the competent authority for filing a criminal case against a Minister. But, the 2nd respondent was not a Minister on the date of taking cognizance of the offence but was

only an MLA as has been admitted by him in paragraph 4-II of his second discharge petition. Consequently, the 2nd respondent (A3) cannot score any brownie points on the basis of this answer given by LW-1.

56. In conclusion and for the reasons stated above, the impugned order dated 27.03.2023, of the Special Court discharging the 2nd respondent (A3) from the case on the ostensible ground of a supposed defect/invalidity in sanction under Section 19 of the P.C Act, 1988 suffers from manifest perversity and gross illegality. It is also tainted by procedural impropriety as the Special Court had acted in open defiance of the order dated 11.11.2022 passed by this Court in Crl.R.C 1112 of 2015, Crl.R.C 957 and 983 of 2016 dismissing the first round of discharge petitions and directing the Special Court to proceed with trial. To compound the illegality, the Special Court has discharged the 2nd respondent (A3) from the case for all eternity as if the order of discharge on the ground of want of sanction operated as an acquittal. This Court has no hesitation in concluding that this case warrants the exercise of powers under Section 397/401 Cr.P.C to prevent the subversion of the criminal justice system through a palpably illegal order of discharge.

57. The legitimacy of the administration of criminal justice will be eroded and

public confidence shaken if MLA's and Ministers facing corruption casescan short-circuit criminal trials by adopting the modus operandi that has been carried out in this case. The public should not be led to believe that a trial against a politician in this State isnothing but a mockery of dispensing criminal justice. AConstitutional Court is duty-bound, under the Constitution, to ensure that such things do not come to pass.

IX. CONCLUSIONS AND DIRECTIONS

58. In the result, the following order is passed:

i. The impugned order dated 27.03.2023 passed by the Additional Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu (hereinafter the "Special Court") in Cr.M.P 4204 of 2023 in C.C. 13 of 2019 is set aside.

ii. As the case in C.C. 13 of 2019 has been transferred to the Special Court for trial of P.C Act Cases, Chennai pursuant to the discharge of A3 from the case, the Special Court for P.C Act Cases, Chennai shall forthwith re-transmit the case records to the Additional Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.

iii. Upon such transmission, the case shall stand restored to the file of the Additional Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai in its original

case number. The aforesaid said exercise shall be completed within one month from today ie., on or before 26.03.2024.

iv. All the accused shall appear before the Special Court on 28.03.2024. Upon such appearance, all the accused shall furnish a bond of Rs.1,00,000/- each with two sureties under Section 88 Cr.P.C. to the satisfaction of the Special Court.

v. The Trial Court shall re-commence trial and ensure that the accused cross-examine the prosecution witnesses on the day they are examined-in-chief, as directedby the Supreme Court in Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288]. If the accused adopt any dilatory tactics, it is open to the Trial Court to insist upon their presence and remand them to custody, as laid down by the Supreme Court inState of Uttar Pradesh vs. Shambhu Nath Singh [JT 2001 (4) SC 319].

vi. The trial court shall, as far as practicable, conduct trial from day to day, and shall complete the same on or before 31.07.2024. A compliance report be sent thereafter to the Registrar General of the High Court.

vii. Though obvious, it is made clear that this Court has not examined or commented upon the merits of the case which shall be decided by the Special Court on merits, without being influenced by any of the observations made here in above.

Suo Motu Cr.R.C 1559 of 2023 is allowed on the aforesaid terms.

26.02.2024

KP
Internet: Yes
Index: Yes
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.