

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

WEDNESDAY, THE 3RD DAY OF NOVEMBER 2021 / 12TH KARTHIKA,
1943

CRL.MC NO. 4620 OF 2019

SEEKING TO QUASH THE COURT CHARGE DT.01.04.2019 IN
CC NO.40/2011 OF SPL.JUDGE CBI/SPE, THIRUVANANTHAPURAM

PETITIONERS/ACCUSED NOS.6 AND 7:

- 1 THOMAS CHERIAN,
AGED 69 YEARS
S/O. CHERIAN, CHARTERED ACCOUNTANT, RESIDING AT
ANGADISSERIL HOUSE, P. O. KOLLADU, KOTTAYAM - 686
029
- 2 P. D. RAJENDRAN
AGED 56 YEARS
S/O. P. K. DIVAKARAN, TYPIST, RESIDING AT
PERUNDANATHU HOUSE, P. O. AYMANAM,
KOTTAYAM - 686 015
BY ADVS.
C.S.MANU
SRI.S.K.PREMRAJ
SMT.V.SARITHA
MRS.S.SREELAKSHMY

RESPONDENT/COMPLAINANT:

CBI THIRUVANANTHAPURAM UNIT, REPRESENTED BY
SPL.PP. P.VIJAYAKUMAR (ASGI)
MALABAR HOUSE, KESTOM ROAD, T. C. 11/304,
VELLAYAMBALAM, TIRUVANANTHAPURAM - 695 003.
REPRESENTED BY ITS INSPECTOR

ASG-SRI.P.VIJAYAKUMAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION
ON 03.11.2021, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

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R.NARAYANA PISHARADI, J

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Dated this the 3rd day of November, 2021

ORDER

The petitioners are the sixth and the seventh accused in the case C.C.No.40/2011 pending in the Court of the Special Judge (CBI/SPE), Thiruvananthapuram.

2. As per the charge-sheet filed by the CBI in the case, the allegation against the accused is that they have committed the offences punishable under Sections 13(1)(d) read with 13(2) of the Prevention of Corruption Act, 1988 and also under Sections 420, 465, 471 and 120B of the Indian Penal Code.

3. The case relates to loan transactions conducted in the State Bank of Travancore, Main Branch, Kottayam. The substance of the allegations against the accused is that loan was sanctioned on the basis of fictitious and forged documents, pursuant to a conspiracy hatched by the bank officials, who are

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public servants, with the persons who availed of the loans.

4. Accused 1 and 8 in the case were the AGM (Officiating) and the Manager (SIB) of the Bank. The second accused was the Managing Partner of the firm M/s.J.J.Exports. The fourth accused in the case was the Managing Director of the company by name 'Coromondal Foot Wears India Private Limited'. The fifth accused was a Chartered Engineer. Accused 6 and 7, the petitioners, were Chartered Accountant and Accountant respectively of the firm M/s.Ayyar and Cherian.

5. An idea regarding the allegations against the petitioners, who are accused 6 and 7 in the case, can be obtained from the charge described under the head "Charge - VII" in the charge-sheet filed by the CBI, which reads as follows:

"Sri.Thomas Cherian being a Chartered Accountant, A-6 during 2002-2003 dishonestly prepared the loan application for Rs.200 lakhs as LC and CC facilities in the name of M/s.Corromondal Foot Wears India (P) Ltd, a non-existing company and got forged the signatures of Directors through his employee on conspiracy with A-2, A-7 and other accused

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persons and dishonestly offered 54.67 acres of land situated at Ambasamundiram, properties of his in-laws Shri George Dominic, Smt.Elima George, Dominic George and Thomas Martin George as collateral security for availing the said facility with knowledge that the said property would worth below 2 lakhs and got prepared an exorbitant valuation report through Sri.K.S.Ramakrishna Iyyer in conspiracy with other accused and induced the bank to sanction and disburse the loan amount to A-2 and A-4 in the name of M/s.Corromondal Foot Wears Pvt.Ltd., thereby caused a wrongful loss of Rs.3,68,73,385/- to SBI and thus accused committed offence punishable u/s 420 IPC.”

6. The trial court has framed charge against the accused in the case. The charge framed against the petitioners by the trial court is in the same lines as contained in the charge-sheet filed by the CBI. Further, the trial court has also framed charge against the petitioners to the effect that “That you, the 6th and 7th accused joined in the conspiracy and jointly prepared loan application for M/s.Coromandal Foot Wears without the knowledge of Sri.Raju Varghese whose name was incorporated as

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Director of the company.”

7. This application is filed by the petitioners under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') for setting aside the charge framed against them by the trial court.

8. Heard learned counsel for the petitioners and the learned Central Government Standing Counsel who appeared for the CBI.

9. Learned counsel for the petitioners submitted that criminal liability cannot be attributed to the petitioners in respect of the acts done by them in their professional capacity. Learned counsel would further contend that the documents and other materials produced by the prosecution are not sufficient even to create a suspicion against the petitioners of committing the offences alleged against them.

10. *Per contra*, learned Central Government Standing Counsel who appeared for the CBI invited the attention of this Court to the statements of certain witnesses and contended that there are sufficient materials produced by the prosecution to

proceed against the petitioners.

11. The prosecution has produced along with the final report a list of 47 witnesses to be examined during the trial of the case. The prosecution has also produced 180 documents to prove the charges levelled against the accused in the case.

12. In answer to a query made by this Court, the learned counsel for the petitioners conceded that the petitioners had not made any application for discharge in the trial court at the appropriate stage. Without even filing any application for discharge at the appropriate stage, the petitioners now challenge the charge framed against them by the trial court, by filing an application under Section 482 of the Code, that too, purely on factual grounds.

13. Under Section 227 of the Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 of the Code can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power of discharge under Section 245(1) of the

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Code has to be exercised by the Magistrate when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction". There is difference in the language employed in the above provisions. But, notwithstanding these differences, whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused (See **State v. Suresh Rajan : (2014) 11 SCC 709** and **Tarun Jit Tejpal v. State of Goa : 2019 SCC OnLine SC 1053**).

14. It is well-settled that at the stage of framing the charge, the trial court is required to evaluate the materials and documents on record with a view to find out whether the facts emerging therefrom, taken at their face value, disclose the existence of the ingredients constituting the offences alleged against the accused (See **State v. M.R. Hiremath: (2019) 7 SCC 515 : AIR 2019 SC 2377**).

15. It is also well settled that the trial court, while considering the discharge application, has to sift through the

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evidence in order to find out whether there are sufficient grounds to try the accused. The trial court has to consider the broad probabilities, total effect of evidence and documents produced and the basic infirmities appearing in the case and so on (See **Sanjay Kumar Rai v. State of U.P : AIR 2021 SC 2351**).

16. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before it. The satisfaction of the trial court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of the jurisdiction in framing the charge against the accused (See **State v. Anup Kumar Srivastava : (2017) 15 SCC 560 : AIR 2017 SC 3698**).

17. In the instant case, since the petitioners had not filed any application for discharge, the trial court had no occasion to state the reasons for framing the charge against them. Of course, the trial court has no obligation to write an order showing the reasons for framing charge. Reasons have to be given only when the trial court dismisses an application for discharge. But, when

the charge framed against the accused by the trial court is directly challenged before the High Court in a petition under Section 482 of the Code, it would be necessary for this Court to peruse all documents and materials produced by the prosecution in the trial court along with the final report to ascertain whether the facts emerging from them constitute the offences alleged against the accused. In the instant case, the petitioners have not produced before this Court the documents and other materials produced by the prosecution along with the final report to enable this Court to undertake such an exercise.

18. In the above circumstances, I am inclined to accept the prayer made by the learned counsel for the petitioners to grant the petitioners an opportunity to file application for discharge before the trial court. Granting such an opportunity can be done only after setting aside the charge already framed against them by the trial court.

19. Consequently, the charge framed against the accused by the trial court, as far as it relates to the petitioners alone, is set aside. The petitioners are granted liberty to file application

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for discharge before the trial court within a period of one month from today. If such application is filed by them, the trial court shall dispose of it within a period of one month from the date of filing it. If the petitioners fail to file any application for discharge before the trial court within the aforesaid period, the charge framed against them by the trial court shall stand restored and it would be then at liberty to proceed with the trial of the case. The CrI.M.C is disposed of as above.

(sd/-) **R.NARAYANA PISHARADI, JUDGE**

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APPENDIX OF CRL.MC 4620/2019

PETITIONER'S ANNEXURES

ANNEXURE A-1	TRUE COPY OF THE FIR IN C.C.NO.40 OF 2011 ON FILES OF THE HON'BLE COURT OF THE SPL.JUDGE CBI/SPE, TIRUVANANTHAPURAM
ANNEXURE A-2	TRUE COPY OF THE FINAL REPORT IN C.C.NO.40 OF 2011 ON FILES OF THE HON'BLE COURT OF THE SPL.JUDGE CBI/SPE, TIRUVANANTHAPURAM
ANNEXURE A-3	CERTIFIED COPY OF THE COURT CHARGE DATED 01.04.2019 IN C.C.NO.40 OF 2011 ON FILES OF THE HON'BLE COURT OF THE SPL.JUDGE CBI/SPE, TIRUVANANTHAPURAM
ANNEXURE A-4	TRUE COPY OF THE JUDGMENT IN CRL. R.P.NO.926 OF 2018 ON FILES OF THIS HON'BLE COURT

**RESPONDENTS '
EXHIBITS :**

NIL

TRUE COPY

PS TO JUDGE