IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 20TH DAY OF FEBRUARY 2024 / 1ST PHALGUNA, 1945

CRL.REV.PET NO. 484 OF 2023

AGAINST THE ORDER/JUDGMENT IN CRL.M.P 1110/2021 IN CC 4/2018 OF ENQUIRY COMMISSIONER & SPECIAL JUDGE, THIRUVANANTHAPURAM

REVISION PETITIONER/PETITIONER/ACCUSED NO.7:

VAZHUTHACAUD R.NARENDRAN NAIR,
[redacted]

BY ADVS.
V.M.KRISHNAKUMAR
RENJITH THAMPAN (SR.)
MAYA M.

RESPONDENTS/STATE & COMPLAINANT/STATE & COMPLAINANT:

1 STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

2 THE SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION BUREAU,
SPECIAL INVESTIGATION UNIT-1,
THIRUVANANTHAPURAM., PIN - 695012

BY ADV
SRI.RAESH A,SPL GOVERNMENT PLEADER (VIGILANCE),
SMT.REKHA SR PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

'C.R'

K.BABU, J.

Criminal.R.P No.484 of 2023

Dated this the 20th day of January, 2024

O R D E R

This Criminal Revision is at the instance of accused No.7 in C.C No.4/2018 on the file of the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram.

Facts:

2. The petitioner is a Lawyer by profession. He was the Legal Advisor of the Kerala Transport Development Finance Corporation Limited (KTDFC), a Government owned company. Accused No.1 was the Managing Director of the KTDFC. Accused Nos.2 to 6 were the employees of the company. Accused No.8 is the husband of accused No.1.

2.1. Accused No.8 is the owner of 17.25 cents of land in survey No.394/B1-2 of Thycaud village. He mortgaged the said property and availed a cash credit loan of Rs.75 Lakhs from the Punjab National Bank, Kozhikode. The bank declared the loan as Non-Performing Asset (NPA) and proceeded against the property, which

was later sold to a third party on 17.11.2004.

2.2. The KTDFC introduced “Aiswarya Griha Housing Finance Scheme” in 2005. There was a provision for 'housing and taking over loan' under the scheme. Subsisting housing loans are taken under the scheme. Business loans are not taken under it. There was also a provision for relaxation in interest rate of such housing loans availed by the permanent employees of the KTDFC. Accused No.8, suppressing the fact that the landed property involved was subjected to mortgage with the Punjab National Bank and that the same was sold out, submitted an application for loan under 'Aiswarya Griha Housing Finance Scheme' before the KTDFC. As part of the conspiracy hatched by his wife and the other accused, the property, which was subjected to mortgage with the Punjab National Bank, was offered as security for the loan availed from the KTDFC. The application for loan was made on 04.03.2005. Accused Nos.2 to 6 did not conduct any verification of the application. They dishonestly entertained it knowing that accused Nos.1 and 8 were not actually eligible for the loan. Accused No.1 sanctioned Rs.46 Lakhs in favour of herself and accused No.8.

2.3. The petitioner gave a legal scrutiny certificate without

properly verifying the original title deeds and dues on the property. The legal scrutiny report was dated 25.02.2005, a date even prior to the application date.

2.4. The loan was sanctioned on 28.03.2005. Thereafter, without any application for loan and only based on the 'notes' submitted by accused No.1, an additional amount of Rs.30,33,983/- was also sanctioned as “top up” in violation of the scheme which limits 'top up' only up to Rs.1 Lakh. Relaxation of benefits was availed by accused No.1 in respect of both the loans. Accused Nos.1 and 8 obtained an undue pecuniary advantage worth Rs.76,92,171/-.

3. The prosecution alleges that the petitioner had the knowledge regarding the intention of accused Nos.1 and 8 and he participated in the conspiracy alleged.

4. The petitioner and the other accused are alleged to have committed the offences punishable under Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act and Sections 420, 465, 468, 471 and 120-B of the Indian Penal Code.

5. The Vigilance and Anti-Corruption Bureau, Thiruvananthapuram Unit conducted the investigation and

submitted the final report alleging the aforesaid offences.

6. The petitioner appeared in response to summons. He filed an application as Crl.M.P No.1110/2021 seeking discharge under Section 239 Cr.P.C. The learned Special Judge dismissed the application. The said order is under challenge in this Crl.R.P.

7. The relevant portion of the order under challenge is extracted below:

> "10. Involvement of the petitioner in the whole transaction was by giving ante-dated legal scrutiny report. As seen from the prosecution records the legal scrutiny report is dated 25.02.2005. But the said report also states that the petitioner had scrutinized photocopy of a building tax receipt dated 01.06.2005 and photocopy of ownership certificate dated 03.06.2005. The prosecution records further show that the building tax receipt and ownership certificate referred to above were issued on the respective dates. If so, they were not in existence when the legal scrutiny report dated 25.02.2005 was issued. Concerned loan file does not show, on which date the legal scrutiny report was received in the KTDFC office. There is no even any inward entry. The petitioner also did not put any date below his signature. Records also show that loan was sanctioned by A1 to herself on 28.03.2005. It prima facie indicates that loan was processed without the documents like building tax receipt dated 01.06.2005, ownership certificate dated 03.06.2005 and the legal scrutiny report. Legal scrutiny report is an inevitable document to be submitted along with the loan application. In fact, records show that loan file was opened on 28.02.2005 where as loan application is dated 04.03.2005. Check list in the Note Draft available in the loan file shows a tick mark in the column relating to legal opinion indicating that it was submitted with the loan application. Factually, there was no loan application at all as on that date, let alone the legal opinion. It may be true that the loan was sanctioned without the legal scrutiny report, as contended by the

petitioner. But his participation in the conspiracy by issuing ante-dated legal scrutiny report so as to make it appear that the loan was sanctioned after getting the legal scrutiny report can be presumed. His contention is that he issued the report without putting the date. Even that also indicates his participation in the conspiracy. Whether he mistakenly left the date column blank or purposefully left it blank or whether he has put the date as 25.02.2005 with guilty intention, are matters to be decided in the trial.

11. It is further seen that the legal scrutiny report was issued without verifying the original document. Being a legal professional it can be inferred that the petitioner had the knowledge that property can be mortgaged by deposit of title deed. Without verifying the original, he gave a certificate that A8 had good and valid marketable title. Of course, he has given a rider that his opinion is subject to the verification of documents in original. In the normal course without verifying the original document a legal opinion regarding marketable title cannot be issued. It also apposite to note that the letter addressed to him by the KTDFC for the legal opinion is not bearing any date. The letter does not show which are all the documents submitted to him. In his legal scrutiny report also he did not say which documents have been submitted to him by the KTDFC. In stead, it shows that he gave his opinion on the basis of the documents submitted by Mr. P S Ajithkumar, who is A8 herein. He was not supposed give opinion to KTDFC on the documents produced by the loan applicant.

12. Contention that loan was not sanctioned on the basis of his legal scrutiny report cannot be countenanced. He participated in the conspiracy by giving an ante-dated report. The report was a necessary document to make it appear that such report was obtained before sanctioning the loan. From the records it is seen that subsequently A1 has obtaining enhanced loan on the basis very same documents submitted in the initial stage. Issuing ante-dated report that too without properly verifying the title, in the absence proper explanation, will amount to participation in the conspiracy. Whether the explanation given by the petitioner in this petition is acceptable or not is to be decided during trial.

13. It is true that offence of forgery cannot be attributed to the petitioner as far as his legal scrutiny report is concerned. There is no forgery in creation of that report. Allegation of forgery is made against other accused

> and not against this petitioner. But, there are prima facie materials to show that petitioner is party to the conspiracy to defraud KTDFC by which A1 and A8 obtained undue advantage. Therefore I find prima facie materials against the petitioner for presuming that he has committed offences punishable under Sec.420 r/w 120B of IPC and also Sec. 13 (1) (d) of the P.C.Act r/w Sec.120B of IPC. Charges are to be framed against him for the aforesaid offences."

Submissions

8. Sri.Renjith Thampan, the learned Senior Counsel appearing for the petitioner made the following submissions:

(i) The allegations do not disclose any ground to establish the petitioner's link with the alleged conspiracy.

(ii) The petitioner cannot be roped in with the aid of the theory of conspiracy for an act allegedly committed after the commission of the offences.

(iii) The petitioner has not given any improper legal advice. The petitioner submitted an undated legal opinion at the request of the company months after the alleged commission of the offences.

9. The learned Senior Counsel for the petitioner relied on the following precedents in support of his contentions:

(I) Thomas A.V. v. State of Kerala and Others (2013 KHC 672)

(II) CBI v. K. Narayana Rao [(2012) 9 SCC 512]

(III) Esher Singh v. State of A.P. [(2004) 11 SCC 585]

(IV) Mohammed Sheriff v. State of Kerala (2000 KHC 675)

(V) Bhagwan Swarup Lal Bishan Lal v. State of Maharashtra (AIR 1965 SC 682)

(VI) Leo Roy Frey v. Supdt., Distt. Jail (AIR 1958 SC 119)

10. Sri.A.Rajesh, the learned Special Government Pleader (Vigilance) made the following submissions:

The submission of an antedated legal scrutiny report, based on an undated letter of the company, points to the link of the petitioner with the other accused. The petitioner has not verified the original documents before submitting the legal opinion. The petitioner had clear knowledge regarding the conspiracy hatched by the other accused and he aided them in committing the offences, and therefore, the knowledge alone is sufficient to implicate him with the aid of conspiracy.

11. The learned Special Government Pleader relied on the

following decisions:

(i) **Rajiv Kumar v. State of U.P. [(2017) 8 SCC 791]**

(ii) **State of Karnataka v. J. Jayalalitha [(2017) 6 SCC 263]**

(iii) **Sajjan Kumar v. CBI [(2010) 9 SCC 368]**

(iv) **Amit Kapoor v. Ramesh Chander [(2012) 9 SCC 460]**

(v) **State v. J. Doraiswamy [(2019) 4 SCC 149]**

(vi) **Manjit Singh Virdi v. Hussain Mohammed Shattaf [(2023) 7 SCC 633]**

(vii) **State of Gujarat v. Mansukhbhai Kanjibhai Shah [(2020) 20 SCC 360]**

(viii) **State of Rajasthan v. Fatehkaran Mehdu [(2017) 3 SCC 198]**

(ix) **State of Rajasthan v. Ashok Kumar Kashyap [(2021) 11 SCC 191].**

12. Sections 239 and 240 of the Code of Criminal Procedure deal with discharge and framing of charge.

13. The obligation to discharge the accused under Section 239 Cr.P.C. arises when "the Magistrate considers the charge against

the accused to be groundless."

14. The primary consideration at the stage of framing charge is the test of the existence of a prima facie case. The probative value of materials on record is not to be gone into at this stage.

15. The Apex Court in **Onkar Nath Mishra and others v. State (NCT of Delhi) and another [(2008) 2 SCC 561],** while considering the nature of evaluation to be made by the Court at the stage of framing of charge, held thus:-

> "11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the Accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the Accused in respect of the commission of that offence."

16. In **State of Maharashtra v. Som Nath Thapa [(1996) 4 SCC 659]**, while dealing with the question of framing charge or discharge, the Apex Court held thus:-

> "32...if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think

> that the Accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the Accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage."

17. In **State of M.P. v. Mohanlal Soni [(2000) 6 SCC 338]** the Apex Court held thus:-

> "7. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the Accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the Accused."

18. In **Sheoraj Singh Ahlawat and others v. State of Uttar Pradesh and another [(2013) 11 SCC 476]**, the Apex Court observed that while framing charges the Court is required to evaluate the materials and documents on record to decide whether the facts emerging therefrom taken at their face value would disclose existence of ingredients constituting the alleged offence. It was further held that the Court cannot speculate into the truthfulness or falsity of the allegations, contradictions and inconsistencies in the statement of witnesses at the stage of discharge.

19. Section 239 envisages a careful and objective consideration of the question whether the charge against the

accused is groundless or whether there is ground for presuming that he has committed an offence. What Section 239 prescribes is not, therefore, an empty or routine formality. It is a valuable provision to the advantage of the accused, and its breach is not permissible under the law. But, if the Judge, upon considering the records, including the examination, if any, and the hearing, is of the opinion that there is "ground for presuming" that the accused has committed the offence triable under the chapter, he is required by Section 240 to frame in writing a charge against the accused. The order for framing of charge is also not an empty or routine formality. It is of a far-reaching nature, and it amounts to a decision that the accused is not entitled to discharge under Section 239, that there is, on the other hand, ground for presuming that he has committed an offence triable under Chapter XIX and that he should be called upon to plead guilty to it and be convicted and sentenced on that plea, or face the trial. (See: **V.C. Shukla v. State through CBI (AIR 1980 SC 962)**."

20. In **Superintendent and Remembrancer of Legal Affairs, West Bengal v. Anil Kumar Bhunja [(AIR 1980 SC 52)],** the Apex Court stated thus:

> "At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence."

21. In **State by Karnataka Lokayukta, Police Station, Bengaluru v. M.R.Hiremath [(2019) 7 SCC 515]**, the Apex Court held thus:-

> "25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 239 Cr.P.C. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In State of T.N. v. N. Suresh Rajan (2014) 11 SCC 709), adverting to the earlier decisions on the subject, this Court held: (SCC pp. 721-22, para 29)
>
> > *29. ... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the Accused has been made out. To put it differently, if the court thinks that the Accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the Accused has committed the law does not permit a mini trial at this stage."*

22. In **State through Deputy Superintendent of Police v. R.**

Soundirarasu and Ors. (AIR 2022 SC 4218), the Apex Court, while dealing with the scope of Section 239 Cr.P.C., held thus:-

> "61. Section 239 of the Code of Criminal Procedure lays down that if the Magistrate considers the charge against the Accused to be groundless, he shall discharge the Accused. The word 'groundless', in our opinion, means that there must be no ground for presuming that the Accused has committed the offence. The word 'groundless' used in Section 239 of the Code of Criminal Procedure means that the materials placed before the Court do not make out or are not sufficient to make out a prima facie case against the Accused. .....
>
> 73. This would not be the stage for weighing the pros and cons of all the implications of the materials, nor for sifting the materials placed by the prosecution- the exercise at this stage is to be confined to considering the police report and the documents to decide whether the allegations against the Accused can be said to be "groundless".
>
> 74. The word "ground" according to the Black's Law Dictionary connotes foundation or basis, and in the context of prosecution in a criminal case, it would be held to mean the basis for charging the Accused or foundation for the admissibility of evidence. Seen in the context, the word "groundless" would connote no basis or foundation in evidence. The test which may, therefore, be applied for determining whether the charge should be considered groundless is that where the materials are such that even if unrebutted, would make out no case whatsoever."

23. Therefore, the obligation to discharge the accused under Section 239 Cr.P.C. arises when the Magistrate/Special Judge considers the charge against the accused to be groundless that is, there is no legal evidence or when the facts are such that no offence is made out at all and no detailed evaluation of the materials or meticulous consideration of the possible defences

need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken.

24. At the stage of framing charges, even a very strong suspicion founded upon materials before the Special Judge, which leads him to form presumptive opinion as to the existence of the factual ingredients constituting the offences alleged, may justify the framing of charges.

25. In **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya and Others [(1990) 4 SCC 76]**, the Apex Court held thus:- "

> "From the above discussion it seems well settled that at the Sections 227-228 stage the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may for this limited purpose sift the evidence as it cannot be expected even at the initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case."

26. In **V.C.Shukla v. State through C.B.I. (1980 SCC (Cri) 695)**, the Apex Court held hus:-

> "8. There can be no doubt that the stage of framing of the charges is an important stage and the court before framing the charge has to apply its mind judicially to the evidence or the material placed before it in order to make up its mind whether there are sufficient grounds for proceeding against the accused. But this case is not an authority for the proposition that once the court, after

> considering the materials, passes an order framing the charges, the order is a final order which could be revised and would not be barred under Section 397(2) of the Code which, however, did not exist at the time when the decision was given. It follows therefore that an order framing a charge was clearly revisable by the High Court under Sections 435 and 439 of the Code of 1898. We may, however, point out that we are in complete agreement with the principle, involved in the cases discussed above, that an order framing charges against an accused undoubtedly decides an important aspect of the trial and it is the duty of the court to apply its judicial mind to the materials and come to a clear conclusion that a prima facie case has been made out on the basis of which it would be justified in framing charges."
>
> (emphasis supplied)

27. The principles emerged from the precedents referred to above are; (1) That the Judge, while considering the question of framing charges under the Code, has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. (2) Where the materials placed before the Court disclose grave suspicion against the accused, which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. (4) That in exercising his jurisdiction under Sections 227 and 239 of the Code

the Judge cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This, however, does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. (5) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the Trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

28. I shall analyse the facts of the case on the touchstone of the principles discussed above.

29. The following facts are not in dispute:

(1) Accused No.8 submitted the loan application before the company on 04.03.2005.

(2) The loan was sanctioned on 28.03.2005.

30. The crux of the prosecution allegations is the following:

(a) Accused No.8, who is the husband of accused No.1, submitted an application before the

company for availing a loan under the "housing and taking over loan" scheme offering their immovable property comprised in survey No.394/B1-2 of Thycaud village suppressing the fact that the property had already been mortgaged with Punjab National Bank and later sold in public auction.

(b) Accused No.1, the wife of the applicant (accused No.8) sanctioned Rs.46 Lakhs in favour of herself and accused No.8 based on the false legal scrutiny certificate prepared by the petitioner, which was antedated.

(c) The petitioner had the knowledge regarding the commission of the offences by the other accused and he also participated in the conspiracy.

31. The case of the petitioner is as follows:

He prepared a legal scrutiny report after perusing all the documents submitted to him. By inadvertence, he omitted to incorporate the date in the report and that place had been left

blank. He believes that the date was subsequently inserted at the office of the KTDFC without his knowledge and consent. The petitioner had not prepared a legal scrutiny report dated 25.02.2005, which is evident from the report itself, which referred to the building tax receipt dated 01.06.2005 and the ownership certificate dated 03.06.2005. The loan was sanctioned by accused No.1 even before the legal scrutiny report was prepared and he had no involvement in the alleged conspiracy. The loan sanctioned on 28.03.2005 was not based on the legal scrutiny report submitted by the petitioner. The opinion in the legal scrutiny report is based on the documents placed before the petitioner. The legal scrutiny report is in no way improper.

32. The Court below recorded the following findings while considering the application seeking discharge:

(A) The petitioner prepared antedated legal scrutiny report without verifying the original documents.

(B) Being a legal professional it can be inferred that the petitioner had the knowledge that the property could be mortgaged by deposit of title

deed. So, the petitioner should have ascertained whether the applicant had a valid marketable title over the property.

(C) The fact that the letter addressed from the company seeking legal opinion to the petitioner was undated indicates the link of the petitioner with the other accused in the alleged commission of the offence.

(D) There is no forgery in the creation of the legal scrutiny report. But there are *prima facie* materials to show that the petitioner was a party to the conspiracy to defraud the company by which accused Nos.1 and 8 obtained undue advantage.

33. The allegation against the petitioner is essentially based on the legal scrutiny report submitted by him. It is useful to extract the relevant portion of the legal scrutiny report:

Date 25/02/2005

"To

The Managing Director
KTDFC

Sub: Legal scrutiny of the documents produced by Sri.P.S

Ajithkumar.

Sir,

I have verified the following documents.

1. Photocopy of Sale Deed No. 1355/1978 if Chalai Sub Registrar Office executed by SR. N. Anantha Sivan, Power Of Attorney Holder of Sr. N.L. Vaidyanathan in favour of Sri. P.S Sreenivasan.

2. Photocopy of Sale Deed No. 4748/1961 of Addl. Sub Registrar Office, Thiruvananthapuram executed in favour of Sri.N.L Vaidyanathan.

3. Photocopy of Tax Receipt No. 336208 dated 27.11.2004 issued from Thycaud Village Office.

4. Photocopy of Possession Certificate No. 4267/04 dated 23/11/2004 issued from Thycaud Village Office.
5. Photocopy of Location Certificate No. 4268/04 dated 23/11/2004 issued from Thycaud Village Office.
6. Photocopy of Location Sketch No.4269/04 issued from Thycaud Village Office.

7. Photocopy of Building Receipt No. 16366 dated 01/06/2005 from the Corporation of Thiruvananthapuram.

8. Phocopy of Ownership Certificate No.3501 dated 03/06/2005 from the Corporation of Thiruvananthapuram.

9. Encumbrance Certificate No. 1406/05 dated 16/02/2005 from the Chalai Sub Registrar Office for the period from 01/01/1990 to 15/02/2005.

REPORT

(1) The Possession Certificate No.4267/04 dated 23/11/2004 issued from the Thycaud Village Office reveals that the property of 17.250 cents in Sy. No. 394/B1 & B2 of Thycaud Village and all other things attached thereto is in the possession an enjoyment of Sri. P.S. Ajithkumar and the same is under this tax payment.

(2) Sri P.S. Ajithkumar acquired the said property as he is the son and legal heir of Late Sri. P.S Sreenivasan who had got the property by virtue of Sale Deed No.1355/1978 of Chalai

Sub Registrar Office.

(3) The Ownership Certificate No.3501 dated 03/06/2005 shows that the building bearing T.C 15/1218, 1219 situated in the above property stand in the name of Sri. P.S Ajithkumar. Building tax is also being paid in his name.

(4) The Encumbrance Certificate for the period from 01/01/1990 to 15/02/2005 forwarded shows that the property is free from any encumbrance during that period.

(5) From the scrutiny of the documents forwarded, I am of opinion that Sri.P.S Ajithkumar has got good, absolute, valid, clear and marketable title over the 17.250 cents property, building bearing T.C 15/1218, 1219 and all other things attached thereto in Sy,. No. 394/B1 & B2 of Thycaud Village, Thriruvananthapuram Taluk, Thiruvananthapuram District. This opinion is subject to the verification of documents in original.

(6) The property is unencumbered till 15/02/2005.

(7) No minor's right is involved in this transaction.

(8) There is no Scheduled Caste/Scheduled Tribe antecedents to the property.

(9) The provisions of Urban Ceiling Act is not made applicable to the State of Kerala. Hence permission from competent Authority is not required.

(10) Tenancy laws will not affect the Bank in eventually taking possession of or selling or exercising its right as mortgage.

(11) Acquisition is in accordance with the law.

(12) Sri. P.S Ajithkumar is legally capable of creating charge in favour of KTDFC.

(13) The KTDFC is advised to collect and accept original title deeds and other documents for creating equitable mortgage.

(14) If all other formalities of the KTDFC are complied with, loan can be sanctioned."

34. The legal scrutiny report extracted above contains the date 25.02.2005 on the top of it. But the report shows that the petitioner had referred to copies of the building tax receipt No.16366 dated 01.06.2005 and the ownership certificate dated 03.06.2005. The defence raised by the petitioner that he had actually submitted an undated report due to an inadvertent omission which might have been misused by the other accused is to be assessed based on this fact. It is also important to note that the petitioner has made it clear in clauses 5 and 13 of the report that the opinion is subject to the verification of documents in original. In the report, he advised the company to collect and accept the original title deeds and other documents.

Conspiracy theory

35. Sections 120-A and 120-B of IPC read thus:

> **"120-A - Definition of criminal conspiracy.-** When two or more persons agree to do, or cause to be done,--
>
> (1) an illegal act, or
> (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:
>
> Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

> **120-B. Punishment of criminal conspiracy.-** (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
>
> (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

36. The essentials of an offence under the above sections are as follows:

> (i) Existence of a design to commit an offence, punishable with imprisonment;
> (ii) Voluntary concealment of such design by the accused either by act or omission or even by false representation;
> (iii) The accused knew or intended to facilitate the commission of such offence."

37. In Halsburys' Laws of England [Fourth Edition, Volume 11, page 44 para 58] the learned author comments thus:

> "58. Meaning of conspiracy.— The conspiracy arises and the offence is committed as soon as the agreement is made; and the offence continues to be committed so long as the combination persists, that is, until the conspiratorial agreement is terminated by completion of its performance or by abandonment or frustration or however, it may be. The actus reus in a conspiracy is the agreement to execute the illegal conduct, not the execution of it. It is not enough that two or more persons pursued the same unlawful object at the same time or at the same place. It is necessary to show the meeting of minds, a consensus to effect an unlawful purpose. It is not, however, necessary that each conspirator should have been in communication with each other. "

38. In **Mohd. Husain Umar Kochra v. K.S. Dalipsinghji [(1969) 3 SCC 429]** the Supreme Court held that in conspiracy, agreement is the gist of the offence and a common design and common intention in furtherance of the common scheme is necessary. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. It was enounced that conspiracy may develop in successive stages and new techniques may be invented and new means may be devised, and a general conspiracy may be a sum up of separate conspiracies having a similar general purpose, the essential elements being collaboration, connivance, jointness in severalty and coordination.

39. In **Noor Mohammad Yusuf Momin v. State of Maharashtra [(1970) 1 SCC 696]** the Apex Court held that criminal conspiracy postulates an agreement between two or more persons to do or cause to be done an illegal act or an act which is not illegal by illegal means. It was elucidated that conspiracy is of wider amplitude than abetment though there is a close association between the two. It was ruled that conspiracy can be proved by circumstantial evidence and proof thereof is largely inferential, founded on facts and this is because of the difficulty in securing

direct evidence of criminal conspiracy. It was explicated that once a reasonable ground is shown to suggest that two or more persons have conspired, then anything done by one of them in reference to their common intention becomes relevant in proving the conspiracy and the offences committed pursuant thereto.

40. In **Yash Pal Mittal v. State of Punjab [(1977) 4 SCC 540]** the Supreme Court held that there may be so many devices and techniques adopted to achieve the common goal of the conspiracy, and there may be division of performances in the chain of actions with one object to achieve the real end of which every collaborator need not be aware but in which each one of them would be interested. There must be a unity of object or purpose but there may be plurality of means, sometimes even unknown to one another, amongst the conspirators. The only relevant factor is that all means adopted and illegal acts done must be to fulfil the object of the conspiracy. Even if some steps are resorted to by one or two of the conspirators without the knowledge of the others, it will not affect the culpability of those others when they are associated with the object of the conspiracy.

41. In **Saju v. State of Kerala [(2001) 1 SCC 378]**, it was

propounded that to attract Section 120-B IPC, it is to be proved that all the accused had the intention and they had agreed to commit the crime. It was assumed that conspiracy is hatched in private and in secrecy, for which direct evidence would not be readily available. It was ruled that it is not necessary that each member to a conspiracy must know all the details of the conspiracy.

42. In **Ram Narayan Popli v. CBI [(2003) 3 SCC 641]**, the Supreme Court reiterated that the essence of a criminal conspiracy, is the unlawful combination and ordinarily the offence is complete when the combination is framed and that the law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. It was held that the offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means. The agreement which is the quintessence of criminal conspiracy can be proved either by direct or by circumstantial evidence or by both and it is a matter of common experience that direct evidence to prove conspiracy is rarely available.

43. In **Firozuddin Basheeruddin v. State of Kerala [(2001) 7 SCC 596]**, it was ruled that loosened standards prevail in a conspiracy trial regarding admissibility of evidence. Contrary to the usual rule, in conspiracy prosecution, any declaration by one conspirator, made in furtherance of a conspiracy and during its pendency, is admissible against each co-conspirator. Despite the unreliability of hearsay evidence, it is admissible in conspiracy prosecutions. It was observed that thus the conspirators are liable on an agency theory for statements of co-conspirators, just as they are for the overt acts and crimes committed by their confreres.

44. In **Mir Nagvi Askari v. CBI (2009) 15 SCC 643**, it was enounced that courts in deciding on the existence or otherwise, of an offence of conspiracy must bear in mind that it is hatched in secrecy and that it is difficult, if not impossible, to obtain direct evidence to establish the same. The manner and circumstances in which the offences have been committed and the accused persons had taken part are relevant. To prove that the propounders had expressly agreed to commit the illegal act or had caused it to be done, may be proved by adducing circumstantial evidence and/or by necessary implication.

45. In **Kehar Singh v. State (Delhi Admn.) [(1988) 3 SCC 609]**, the Supreme Court held that to establish the offence of criminal conspiracy, it is not required that a single agreement should be entered into by all the conspirators at one time. Each conspirator plays his separate part in one integrated and united effort to achieve the common purpose. Each one is aware that he has a part to play in a general conspiracy though he may not know all its secrets or means by which the common purpose is to be accomplished.

46. The Supreme Court in **Rajiv Kumar v. State of U.P. [(2017) 8 SCC 791]** held thus:

> "44. The essential ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. It is extremely difficult to adduce direct evidence to prove conspiracy. Existence of conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. In some cases, indulgence in the illegal act or legal act by illegal means may be inferred from the knowledge itself."

47. On the theory of conspiracy in **Russel on Crimes**, [12th Edition, Volume 1] the learned author comments thus:

> "63.... 'The gist of the offence of conspiracy then lies, not in doing the act, or effecting the purpose for which the conspiracy is formed, nor in attempting to do them, nor in inciting others to do them, but in the forming of the scheme or agreement between the parties. Agreement is essential. Mere knowledge, or even discussion, of the plan is not, per se, enough. "

48. In **Leo Roy Frey** (supra), the Supreme Court held thus:

> **4**.....The offences with which the petitioners are now charged include an offence under Section 120-B of the Indian Penal Code. Criminal conspiracy is an offence created and made punishable by the Indian Penal Code. It is not an offence under the Sea Customs Act. The offence of a conspiracy to commit a crime is a different offence from the crime that is the object of the conspiracy because the conspiracy precedes the commission of the crime and is complete before the crime is attempted or completed, equally the crime attempted or completed does not require the element of conspiracy as one of its ingredients. They are, therefore, quite separate offences. This is also the view expressed by the United States Supreme Court in *United States* v. *Rabinowich* [(1915) 238 US 78] . The offence of criminal conspiracy was not the subject-matter of the proceedings before the Collector of Customs and therefore it cannot be said that the petitioners have already been prosecuted and punished for the "same offence". It is true that the Collector of Customs has used the words "punishment" and "conspiracy", but those words were used in order to bring out that each of the two petitioners was guilty of the offence under Section 167(8) of the Sea Customs Act. The petitioners were not and could never be charged with criminal conspiracy before the Collector of Customs and therefore Article 20(2) cannot be invoked. In this view of the matter it is not necessary for us, on the present occasion, to refer to the case of *Maqbool Hussain* v. *State of Bombay* [(1953) SCR 730] and to discuss whether the words used in Article 20 do or do not contemplate only proceedings of the nature of criminal proceedings before a court of law or a judicial tribunal as ordinarily understood. In our opinion. Article 20 has no application to the facts of the present case. No other points having been urged before us, these applications must be dismissed."

49. In **Esher Singh** (supra), the Supreme Court held that the circumstances relied on for the purposes of drawing an inference should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.

50. In **Bhagwan Swarup Lal Bishan Lal** (supra), on the exercise of a criminal conspiracy as defined in Section 120-A of IPC, the Apex Court observed thus:

> **"8**.....In short, the section can be analysed as follows : (1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour."

51. While considering the question of negligence on the part of a lawyer while giving legal opinion in a case where an offence under Section 109 read with Section 420 of IPC was charged against the lawyer in **CBI v. K. Narayana Rao** (supra) the Supreme Court following **P.D. Khandekar v. Bar Council of Maharashtra, [(1984) 2 SCC 556]** held that there is a world of difference between the giving

of improper legal advice and the giving of wrong legal advice. Mere negligence unaccompanied by any moral delinquency on the part of a legal practitioner in the exercise of his profession does not amount to professional misconduct. The Supreme Court added that at the most, the lawyer may be liable for negligence if it is established by acceptable evidence and cannot be charged for the offences under Sections 420 and 109 IPC. **CBI v. K. Narayana Rao** was followed by this Court in **Thomas A.V. v. State of Kerala and Others** (supra).

52. The learned Special Government Pleader submitted that the truthfulness, sufficiency and accessibility of the material produced can be assessed only at the stage of trial and at the stage of framing of charge, the Court has to only satisfy that a *prima facie* case is made out against the accused. Relying on **State of Gujarat v. Mansukhbhai Kanjibhai Shah**, **State of Rajasthan v. Fatehkaran Mehdu**, **State v. J. Doraiswamy**, **State of Rajasthan v. Ashok Kumar Kashyap** and **Manjit Singh Virdi v. Hussain Mohammed Shattaf**, the learned Special Government Pleader submitted that the power of discharge at the stage under Sections 239 and 240 of Cr.PC should be exercised very sparingly and with circumspection in rarest of

rare cases.

53. In the present case, the petitioner is implicated only based on the antedated legal scrutiny report, which he prepared allegedly based on an undated letter from the company. The learned Special Government Pleader submitted that the fact that an undated letter was submitted to the petitioner, who in turn submitted an antedated scrutiny report, points to the link between the other accused and the petitioner.

54. I have discussed above that the legal scrutiny report contains reference to documents prepared in June 2005, long after the date of sanction of the loan. This is sufficient to come to the conclusion that the legal scrutiny report, which is the document relied on by the prosecution to rope in the petitioner with the conspiracy, was prepared after the commission of the crime. The prosecution has no case that the petitioner prepared a wrong legal scrutiny report. He opined on the encumbrance or liability over the property based on the encumbrance certificate (Serial No.9 in the documents) placed before him. He made it clear that his opinion is subject to the verification of the documents in original. He advised the company to collect and accept the original deeds and other

documents for creating equitable mortgage.

55. The learned Special Government Pleader submitted that the petitioner had the knowledge regarding the design for the commission of the offence by the other accused. It is further submitted that the circumstances made available would point to the involvement of the petitioner in the crime.

56. The prosecution failed to establish the association of the petitioner with the other accused in any of the acts which led to the commission of the offences. The prosecution also failed to establish the knowledge of the petitioner regarding any of the design made by the other accused in the commission of the offences. There is no meeting of minds with the petitioner. There is no iota of evidence to infer that at a single point of time the petitioner entered into an agreement with the other accused in the commission of the offences. The prosecution has not produced any material to establish that the petitioner had the knowledge that the other accused had a design for the commission of the alleged offences. In all probability, this Court has to conclude that the legal scrutiny report was prepared after June 2005, that is two months after the completion of the offences. The circumstances relied on

by the prosecution to persuade this Court to infer that the petitioner had a link with the other accused, should be prior in point of time than the actual commission of the offence in furtherance of the alleged conspiracy.

57. It is essential that the prosecution has to establish the *mens rea* of the petitioner to implicate in the crime.

58. Dishonest intention is *sine qua non* to attract the offence punishable under Section 13(1)(d) of the Act. Mere conduct and action of the accused contrary to rules and departmental norms would not amount to criminal misconduct by a public servant.

59. A fundamental principle of criminal jurisprudence with regard to the liability of an accused is the element of *mens rea*. On the principles of *actus reus* and *mens rea,* the learned author Sri.Glanville Williams in the 'Textbook of Criminal Law' [Third Edition, Dennis.J.Baker, page 95] comments thus:

> "The mere commission of a criminal act (or bringing about the state of affairs that the law provides against) is not enough to constitute a crime, at any rate in the case of the more serious crimes. These generally require, in addition, some element of wrongful intent or other fault. Increasing insistence upon this fault element was the mark of advancing civilization."

60. On the principles of Criminal Liability, the learned author Sri.K.D. Gaur in his book Criminal Law [Lexis Nexis, Butterworths,

page 37] explains thus:

> "Criminal guilt would attach to a man for violations of criminal law. However, the rule is not absolute and is subject to limitations indicated in the Latin maxim, *actus non facit reum, nisi mens sit rea*. It signifies that there can be no crime without a guilty mind. To make a person criminally accountable, it must be proved that an act, which is forbidden by law, has been caused by his conduct, and that the conduct was accompanied by a legally blameworthy attitude of mind. Thus, there are two components of every crime, a physical element and a mental element, usually called actus reus and mens rea respectively."

61. Dishonest intention is the crux of the offence under Section 13(1)(d) of the Prevention of Corruption Act. The question of whether violation of the rules and departmental norms would amount to the offence under section 13(1)(d) of the Prevention of Corruption Act was considered by the Apex Court in **C.K.Jaffer Sharief v. State [2013 (1) SCC 205]**. The Apex Court held thus:

> "If in the process, the rules or norms applicable were violated or the decision taken shows an extravagant display of redundance it is the conduct and action of the appellant which may have been improper or contrary to departmental norms. But to say that the same was actuated by a dishonest intention to obtain an undue pecuniary advantage will not be correct. That dishonest intention is the gist of the offence under Section 13(1)(*d*) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant."

62. In **M. Narayanan Nambiar v. State of Kerala (AIR 1963 SC 1116)** while dealing with Section 5 of the 1947 Act the Apex Court held that dishonest intention is the gist of the offence.

63. In **Zakia Ahsan Jafri v. State of Gujarat (AIR 2022 SC 3050)**,

the Apex Court held that every act of commission and omission would not result in hatching criminal conspiracy unless the acts have been done deliberately and there is meeting of minds of all concerned.

64. Even if the materials in the final report before the Special Judge are taken at the face value and accepted in their entirety, they do not constitute anything to show the involvement of the petitioner in the conspiracy. There is no legal evidence against the revision petitioner or the facts are such that no offence is made out against him.

65. In **Sajjan Kumar** (supra) on the scope of Sections 227 and 228 Cr.P.C, the Apex Court held thus:

> ***"Exercise of jurisdiction under Sections 227 and 228 CrPC***
>
> **21.** On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
>
> (i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.
>
> (ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

66. In the present case, at the most, the materials produced before the Court may give rise to a mere suspicion against the petitioner as distinguished from grave suspicion enunciated by the

Supreme Court in **Sajjan Kumar.**

67. The learned Special Government Pleader submitted that at the time of considering a revision petition this Court is not expected to conduct a roving enquiry on the materials placed.

68. I make it clear that what I have undertaken is not a roving inquiry but a simple and necessary inquiry for a proper adjudication of an application for discharge. The Special Judge was bound to conduct a similar inquiry for coming to a conclusion that a *prima facie* case was made out for the revision petitioner to stand trial. The Special Judge has not exercised his jurisdiction to see as to whether there is any basis for framing charges against the revision petitioner. This Court is of the firm view that the charges against the revision petitioner are groundless. There is patent error in the exercise of the jurisdiction by the Special Judge.

69. It is made clear that the observations made in this order are restricted to the revision petitioner, namely, Sri.Vazhuthacaud R.Narendran Nair (accused No.7). The learned Trial Judge may not be influenced by the observations made above and may proceed with the case qua the other accused persons independently on its own merits, in accordance with law.

70. In the result, the impugned order is set aside. Crl.M.P.No.1110/2021 is allowed. The petitioner/accused No.7 in C.C.No.4 of 2018 is discharged of the offences alleged.

The Criminal Revision Petition is allowed as above.

Sd/-
K.BABU,
JUDGE

KAS