VERDICTUM.IN

CNR : KLHC011061852024

2026:KER:84142

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

TUESDAY, THE 3RD DAY OF NOVEMBER 2026 / 12TH KARTHIKA, 1948

CRL.REV.PET NO. 522 OF 2024

AGAINST THE ORDER DATED 22.11.2019 IN CRMP 770/2015 IN CC NO.5 OF 2014 OF SPECIAL COURT (SPE/CBI)-I, ERNAKULAM

REVISION PETITIONER/PETITIONER/2ND ACCUSED:

VINCENT JOSEPH CHOWALLOOR, AGED 59 YEARS
S/O. LATE C.C.JOSEPH, ASSISTANT COMMISSIONER, INCOME TAX, THRISSUR, PRESENTLY RESIDING AT 2002, TAKSHASHILA, NIRMAL NAGAR, MULUND WEST, MUMBAI, PIN - 400080

BY ADVS.
SRI.B.RAMAN PILLAI (SR.)
SHRI.BALAKRISHNAN M.
SHRI.A.L.GEORGE
SRI.T.K.VIPINDAS

RESPONDENT/RESPONDENT/COMPLAINANT:

THE STATE REPRESENTED BY INSPECTOR OF POLICE,
CBI/SPE, COCHIN, PIN - 682011

BY ADV SREELAL N WARRIER (SC)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28.10.2026, THE COURT ON 03.11.2026 DELIVERED THE FOLLOWING:

VERDICTUM.IN

A. BADHARUDEEN, J.

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Crl. Rev. Pet. No. 522 of 2024

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Dated this the 3rd day of November, 2026

ORDER

This revision petition has been filed by the second accused in C.C.No.5 of 2014 on the files of the Special Court for CBI, Ernakulam challenging the order in Crl.M.P. No.770/2015 dated 22.11.2019 in the said case.

2. Heard the learned counsel for the revision petitioner/second accused and the learned Special Public Prosecutor appearing for the CBI. Perused the order under challenge and the relevant records, including the written statements submitted on behalf of the revision petitioner.

3. In this case, as part of trap arranged pursuant to the demand of illegal gratification by the first accused, wherein the second accused also has involvement, as part of the conspiracy hatched between them, FIR was registered alleging commission of offences punishable under Section 120B of the Indian Penal Code (hereinafter referred to as 'IPC') and under Sections 7 and 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the PC Act') by the accused persons.

VERDICTUM.IN

4. After filing final report, the second accused filed discharge petition viz., Crl.M.P.No.770 of 2015 seeking discharge under Section 239 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.PC') contending that the prosecution materials are quite insufficient to proceed against him, as *prima facie* the allegation against him could not be seen from the prosecution records. However, the said plea was negatived by the learned Special Judge.

5. The contentions raised before the Special Court are extracted in paragraph 4 of the impugned order and the same have been reiterated while challenging the impugned order. Argument note has also been tendered by the learned counsel for the revision petitioner.

6. According to the learned counsel, the counter affidavit filed by the CBI on 12.02.2016, (Annexure 1), filed in response to the discharge application before the Trial Court, stated as follows:

Page no	Contents
Page no 10 , last para	It is submitted that the prosecution has no case alleging that the petitioner had jurisdiction to do any official Act in favour of the assessee

VERDICTUM.IN

Page No 11, last para	This Hon'ble court may appreciate the fact that it has not been alleged in the Final report that the petitioner has directly demanded bribe from CW-1, so naturally there cannot be any materials showing that the petitioner had demanded bribe from CW-1. On the contrary, prosecution has the specific allegation that A1 had demanded and accepted bribe from CW-1 in pursuance of the criminal conspiracy hatched among A1, A2, and CW-28 (approver).
Page No 12, last para	This Hon'ble court may appreciate the fact that the FIR in this case has been registered against Al and the approver and that it is Al who had demanded and accepted bribe from CW-1, even though A2 is a party to the criminal conspiracy hatched in this regard.

Thus, the allegation as admitted by the prosecution is only conspiracy and therefore, the substantive charges under Section 7 (Charge III) and Section 13(1)(d) r/w 13(2) of PC Act (Charge V) have no legs to stand.

7. The learned counsel has placed reliance on the Apex Court decisions in **Banarsi Dass v. State of Haryana ((2010)4 SCC 450:2010 INSC 193)** and **Ajit Kumar v. State of Jharkhand (2026 INSC 1084)** and it is pointed out in the argument note that the demand for illegal gratification is the *sine qua non* for

VERDICTUM.IN

establishing the offences under Sections 7 and 13 of the PC Act, which has been reiterated in the decision reported in ***Neeraj Dutta v. State (Government of NCT of Delhi) ((2023) 4 SCC 731***.

8. Secondly, it is contended that, even on evaluation of prosecution materials on its face value, nothing could be seen to show demand or acceptance of illegal gratification by the second accused merely on the fact that the trap was at his official residence. It has been contended that the prosecution cannot establish the missing ingredients of demand, knowing acceptance and criminal conspiracy merely by combining circumstances that show the alleged demand by the first accused with the presence of the petitioner at the place of the trap. The prosecution must disclose materials connecting the petitioner individually with the alleged offence. The legal principles reiterated by the Hon'ble Supreme Court in **P. Somaraju v. State of Andhara Pradesh, Ajit Kumar v. State of Jharkhand, State of Uttar Pradesh v. A.K. Gaba and M. Sambasiva Rao v. State of Andhra Pradesh,** read with the jurisdictional decision of this court in **Bharat Raj Meena v. Central Bureau of Investigation, Murukadas @ Murukan vs The state of kerala,** directly bear upon that issue.

VERDICTUM.IN

9. Further, it is contended that the original complaint, FIR or entrustment mahazar do not implicate the petitioner in the alleged demand and the alleged recovery of bribe money is inherently improbable and doubtful. Another point argued is that no independent witness in the form of approver's evidence is also available in this case. Thus, the learned counsel for the petitioner pressed for interference in the order impugned to grant discharge to the revision petitioner/second accused.

10. Zealously opposing the contentions raised by the learned counsel for the revision petitioner, the learned Special Public Prosecutor for CBI submitted, in terms of the objection filed before the trial court, as under:

> "It is submitted that it is CW1 Simon K Fransis who filed the written complaint. So naturally, his further statement would be recorded during the progress of the investigation. So also, CW-4 Shri Jose K. Fransis is the brother of CW-1, the complainant. Being the MD of the firms, he would be acquainted with the facts and circumstances of the case. So during the course of investigation, the investigating officer would question and record his statement, which would be certainly detrimental to the interest of the accused. It is submitted that there is no legal or valid ground to pick holes in the procedures adopted by the IO in securing the evidence of K.J. Tomy as approver or recording the further statement of CW-1 Simon K Fransis or citing Shri Jose K. Fransis as CW-4 on the basis of his statement U/s. 161 Cr.P.C. This Hon'ble

VERDICTUM.IN

Court may appreciate the clear admission of the petitioner even amidst the allegations and averments raised in para 6. It is evident from the contentions therein that he admits that the statements of CW-28, K.J. Tomy (under section 161, 164 and 306(4) Cr.P.C), further statement of Shri Simon K Fransis (CW-1) and the statement of CW-4 Jose K Fransis would prove the offences alleged against the petitioner. The only complaint of the petitioner is that those statements are fabricated evidence recorded with the ill motive of falsely implicating the petitioner in this case. It is submitted that the genuineness or the credibility of the versions of the approver or CW-1 or CW-4 or any other witnesses can be challenged by the petitioner only while they are being examined as witnesses during the trial of this case. At this stage of considering the discharge petition filed by the petitioner, he has no legal right to question the credibility of the statements given by the witnesses, particularly the statements recorded U/s. 164 Cr.P.C and 306 Cr.P.C.

It is submitted that the contention of the petitioner in para 7 of the petition that the charge filed against the petitioner is groundless and he is entitled to be discharged U/s. 239 Cr.P.C is not only untenable but also irrational. After the completion of the investigation and obtaining sanction from the authority concerned, charge sheet against A1 and the petitioner was filed on the basis of unrebuttable oral and documentary evidence. Prosecution is relying upon the oral evidence of CW-1 to CW-29 and the documentary evidence revealed from D-1 to D-40. MO-1 to 16 are also relied upon by the Prosecution. It is submitted that this Hon'ble Court can safely presume that the petitioner and Al had committed all the offences alleged against them, on the sheer merits of the materials placed before this Hon'ble Court.

It is submitted that the observation made by the Hon'ble Supreme Court in the case of Vinod Kumar Vs. State of Punjab, CA No. 554 of 2012 vide order dt. 21.01.2015 (AIR 215 SC 1206), citied by the petitioner in para 8 of the petition

VERDICTUM.IN

is not applicable to this case at this stage of considering the discharge petition filed U/s. 239 Cr.P.C. Time and again, the Hon'ble Supreme Court made it clear that the standard of test, proof and judgment which is to be finally applied before finding the accused guilty or otherwise is not to be applied at the stage of deciding the matter of framing charge. The Hon'ble Supreme Court also observed that the Judge should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he is conducting a trial.

The contentions advanced by the petitioner in para 10 of his petition are also devoid of any merits. It is submitted that the prosecution has no case alleging that the petitioner had the jurisdiction to do any official act in favour of the petitioner. So naturally, prosecution cannot place any materials before this Hon'ble Court to show that the petitioner had any jurisdiction in respect of the assessment file of M/s. Canon Granites Pvt. Ltd. However, the prosecution has placed material to show that M/s. Canon Granites Pvt. Ltd., being a corporate assessee of Thrissur District would come under the jurisdiction of Circle 1(1) and that the petitioner had been the Assistant Commissioner of Income Tax of Circle 1(1) Thrissur during the relevant period. It is true that the petitioner hadn't personally dealt with the above said file. In pursuance of orders U/s. 120 of the Income Tax Act, the assessment of the file in respect of M/s. Canon Granites Pvt. Ltd., had been entrusted to A1, the Asstt. Commissioner of Palakkad Range. In spite of the above fact, the petitioner, by virtue of holding the post of Asstt. Commissioner of Circle 1(1) Thrissur would have easy access to the file and thereby be acquainted with the relevant details in the file. Further, both CW-1 Simon K Fransis and CW-28, K.J. Tomy had approached the petitioner in the last week of February 2014 in connection with the scrutiny of the above file. On that occasion they were informed by the petitioner that the scrutiny of their accounts would be made by A1 by sitting at Circle 1(1) office.

VERDICTUM.IN

It is submitted that the above said facts revealed from the materials placed by the prosecution before this Hon'ble Court would also show the circumstance in which the Criminal conspiracy between A1 and the petitioner had been hatched with the object of deriving pecuniary advantage by demanding bribe from CW-1.

It is submitted that the contentions of the petitioner in para 11 of his petition are also devoid of any merits. The allegation that there is no material or evidence to prove that the petitioner has made any demand of bribe is quite unwarranted and such an allegation has been raised only to alleviate the gravity of the offences alleged against him. This Hon'ble Court may appreciate the fact that it has not been alleged in the Final Report that the petitioner had directly demanded bribe from CW-1. So naturally, there cannot be any materials showing that the petitioner had demanded bribe from CW-1. On the contrary, prosecution has the specific allegation that Al had demanded and accepted bribe from CW-1 in pursuance of the Criminal conspiracy hatched among A1, A2 and CW-28 (approver). It is submitted that prosecution has placed sufficient materials, both oral and documentary evidence, to prove the demand of bribe made by Al to CW-1. So, the contentions of the petitioner in para 11 deserve no merits for consideration.

It is submitted that the contention of the petitioner in para 12 of his petition alleging that there is no credible evidence of acceptance and recovery of the bribe amount is also not true to the facts. It is submitted that the oral evidence of CW-1, CW- 28 (approver), independent witnesses CW-2 & CW-3, CW-16 TLO, CW-17 to CW-19 the other members of the trap team, CW-15 photographer and the documentary evidence such as recovery mahasar (D-3), (D-29) photographs, (D-31) Chemical examination report of CFSL would conclusively prove the acceptance and recovery of the bribe amount beyond any shade of doubt.

VERDICTUM.IN

The contention of the petitioner that there is grave contradiction with regard to the mentioning of the person by whom the bag containing the bribe amount had been placed on the concrete shelf of the E-2 quarters after accepting the same from CW-1 is actually a mockery of truth. The petitioner has made a futile effort to mislead this Hon'ble Court by misinterpreting and distorting the actual facts. The petitioner, in his desperate effort to prove his contention, has quoted a portion of the D-3 trap proceedings in para 12 (ii)(b) of his petition. The above extract of the trap proceedings would show that A-1 while being confronted by the Trap Laying Officer after the acceptance of bribe, pointed out the exact place where bribe amount had been kept. By pointing out the above facts, the petitioner contends that it is A-1 who had placed the bribe amount in the concrete shelf. This Hon'ble Court may appreciate the fact that the FIR in this case had been registered against Al and the approver and that it is Al who had demanded and accepted bribe from CW-1, even though A2 is a party to the criminal conspiracy hatched in this regard. So, naturally, the Trap Laying Officer would ask Al as to where the bribe amount had been kept before throwing it out from the balcony. In response to the query put to A1 by the TLO, A1 pointed out the exact place, which under no circumstance, would show that the bribe amount had been placed there by Al and not A2, the petitioner. It is submitted that it is A2 who had actually placed the bag containing the bribe amount on the concrete shelf after verifying the amount in the bag. As it had been done by A2 in the presence of A1, both A1 & A2 are capable of answering the question of the TLO. It may also be noted that there is no mention anywhere in the trap proceedings to suggest that it is A1 who had placed the bribe amount on the concrete shelf.

The actual facts would be revealed only after questioning CW-1 and the approver in detail. Both of them have categorically stated that it is A2, the petitioner who had placed the bag containing the bribe amount on the concrete shelf.

VERDICTUM.IN

The petitioner in support of his contention has also quoted an extract of the 161 statement of CW-1 (Page No. 11) in para 12 (ii) (d) of his petition. This Hon'ble Court may appreciate the fact that the above portion of his statement specifically pertains only to the query made by the TLO to A1 and the response of Al to that query while being confronted immediately after accepting the bribe amount. It is further submitted that the petitioner has willfully suppressed the relevant portion of his statement which is reproduced hereunder (page No. 9) *"Shri Jose Kunjippalu accepted the same and looked inside the bag, verified the number of bundles with his hands and then handed over the same to Shri C.J. Vincent, he also opened the bag and looked inside, checked the bundles with his right hand inside the bag and kept the bag at the concrete shelf (showcase) top side, behind the sofa where he was sitting"*. The statements of CW-28 approver would also corroborate the above version of CW-1. So, it is submitted that there is no merit in the contentions advanced by the petitioner in para 12 of his petition.

The contention of the petitioner at para 13 of his petition that allegation do not attract Section 7 & 13 (2) of the PC Act, 1988 is also totally false and baseless. The observations of the Hon'ble Supreme Court cited by the petitioner in this regard are not applicable to the context of this case, particularly at the stage of considering the discharge petition filed by him.

The contention of the petitioner in para 14 of his petition alleging that there is no evidence of any "conspiracy theory is also devoid of any merits. As already submitted, the incriminating facts and circumstances brought out against the petitioner during the trap proceedings itself (page No.7 & 8 may be seen) is sufficient to presume the existence of a criminal conspiracy between A1 and A2 with the object of deriving undue pecuniary advantage by demanding and accepting bribe from CW-1. Had the petitioner not been a

VERDICTUM.IN

party to the criminal conspiracy, Al would not have been dare enough to accept such a huge amount of Rs.10,00,000/- from CW-1 as bribe in the presence of the petitioner and handed over the same to the petitioner for verification and the same would not have been placed by the petitioner on the concrete shelf in his quarters after verifying the number of bundles of currency notes in the bag. Al would have taken all precautions to ensure that the bribe amount had been received from CW-1 in the absence of the petitioner.

It is submitted that the admission of the petitioner in para 17(b) of his petition that A1 and himself are close friends may also be taken into consideration while appreciating the incriminating facts and circumstances brought out against the petitioner even during the Trap Proceedings itself.

It is submitted that the petitioner has cited the observation made by the Hon'ble Supreme Court in Sajjan Kumar Vs. CBI (2010) 9 SCC 368. The petitioner has also pointed out principles laid down by the Supreme Court while proceeding U/s. 227 & 228 Cr.P.C.

This Hon'ble Court may appreciate the observations made by the Hon'ble Supreme Court in the above said case which are narrated by the petitioner in page Nos. 39 to 41 of his petition. The Hon'ble Supreme Court was pleased to observe inter-alia as follows. *"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".*

The cogent and unrebuttable evidence both oral and documentary produced along with the Final Report would prove all the offences alleged against the petitioner and the other accused beyond all reasonable doubt. By considering the sheer merits of the materials on record, this Hon'ble Court may safely presume that there is sufficient ground to proceed

VERDICTUM.IN

> further against the petitioner and the other accused U/s. 240 Cr.P.C. On the contrary, apart from distorting and misrepresenting facts, A2 petitioner has failed to offer any explanation for the incriminating facts and circumstances brought out against him or to submit any valid and legal ground in the Crl. M.P in support of his prayer."

11. While addressing these contentions, it is necessary to look into the reasons stated by the learned Special Judge to dismiss the discharge petition, after referring the decision of the Apex Court in **Sajjan Kumar v. Central Bureau of Investigation ((2010) 9 SCC 368),** to be found in paragraphs Nos. 17 to 21, 24, 26 to 28, which are extracted hereunder:

> **"17.** In *Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] the scope of Section 227 CrPC was considered. After adverting to various decisions, this Court has enumerated the following principles: (SCC p. 9, para 10)
>
> "(*1*) That the Judge while considering the question of framing the charges under Section 227 of 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. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

VERDICTUM.IN

(*4*) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and experienced 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 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."

18. In *Dilawar Balu Kurane* [(2002) 2 SCC 135 : 2002 SCC (Cri) 310] , the principles enunciated in *Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609] have been reiterated and it was held: (*Dilawar Balu Kurane case* [(2002) 2 SCC 135 : 2002 SCC (Cri) 310] , SCC pp. 140-41, paras 12 & 14)

"*12*. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial

VERDICTUM.IN

(see *Union of India* v. *Prafulla Kumar Samal* [(1979) 3 SCC 4 : 1979 SCC (Cri) 609]).

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14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant."

19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction

VERDICTUM.IN

may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

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

VERDICTUM.IN

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.

24. At the stage of framing of charge under Section 228 CrPC or while considering the discharge petition filed under Section 227, it is not for the Magistrate or the Judge concerned to analyse all the materials including pros and cons, reliability or acceptability, etc. It is at the trial, the Judge concerned has to appreciate their evidentiary value, credibility or otherwise of the statement, veracity of various documents and is free to take a decision one way or the other.

26. The Letter further shows that based on the assurance on the floor of Parliament, the Government examined the Report of Justice Nanavati Commission, its recommendations regarding investigation/reinvestigation of the cases against (*a*) Shri Dharam Das Shastri, (*b*) Shri Jagdish Tytler, and (*c*) Shri Sajjan Kumar. The Letter further shows that the Government had decided that the work of conducting further investigation/reinvestigation against the abovementioned persons as per the recommendations of Justice Nanavati Commission should be entrusted to CBI. Pursuant to the said decision, the Home Department forwarded the relevant records connected with the cases against the abovementioned persons. It also shows that those additional records/information required in connection with investigation are to be obtained from Delhi Police.

VERDICTUM.IN

27. The materials placed by CBI show that Justice Nanavati Commission submitted its Report on 9-2-2005, its recommendations were discussed by the Lok Sabha on 10-8-2005 and the Rajya Sabha on 11-8-2005, Government of India asked CBI to inquire those recommendations on 24-10-2005 and FIR No. 416 of 1984 dated 4-11-1984 of Police Station Delhi Cantt. was re-registered by CBI as Case No. RC-24(S)/2005-SCU.I/CBI/SCR.I/New Delhi. Pursuant to the same, on 22-11-2005, investigation was taken up and it revealed that the accused persons committed offences punishable under Section 109 read with Sections 147, 148, 149, 153-A, 295, 302, 396, 427, 436, 449, 505 and 201 IPC and accordingly filed the charge-sheet. It is relevant to note that no one including the appellant has challenged the appointment of CBI to inquire into the recommendations made by Justice Nanavati Commission.

28. Mr Lalit heavily relied on the status report of Delhi Police and consequential order of the Magistrate. By pointing out the same, he contended that CBI is not justified in reopening the case merely on the basis of observations made by Justice Nanavati Commission. The following conclusion in the Status Report dated 31-7-2008 filed by Delhi Police was pressed into service:

"From the investigation and verification made so far it was revealed that:

(*a*) There is no eyewitness to support the version of the complaint of Smt Jagdish Kaur.

(*b*) The complaints and affidavits made by Smt Jagdish Kaur are having huge contradictions:

(*i*) In her first statement recorded by local police during the investigation, she did not name any person specifically and also stated that she could not identify anyone among the mob.

(*ii*) She even did not name Shri Sajjan Kumar in her statement recorded by the IO of the Special Riot Cell after a gap of seven years.

VERDICTUM.IN

> (*iii*) She suspected the involvement of one Congress leader Balwan Khokhar in these riots but she had not seen him personally. She was told by one Om Prakash who was the colleague of her husband, about the killing of her husband and son.
>
> (*iv*) In the statement recorded on 22-1-1993 under Section 161 CrPC during the course of further investigation, the witness Om Prakash stated that he had seen nothing about the riots. Jagdish Kaur stayed at his house from 1-11-1984 to 3-11-1984 but she did not mention the name of any person who was indulged in the killing of her husband and son."

12. The law is well settled on the point, as held in **Sajjan Kumar** (supra), when the prosecution materials in toto would show *prima facie* the ingredients for the offences alleged to be committed by the accused persons or the materials otherwise would show a strong suspicion regarding the involvement of the accused person, discharge plea cannot be considered restraining trial when the prosecution can prove the allegation based on the evidence to be adduced during trial.

13. Going through the statement given by Simon K. Francis on 22.03.2014, running into 13 pages, it could be gathered that when the complainant met the Auditor, K.J. Tomy, earlier arrayed as the second accused (now approver) informed him that Sri. P. Jose Kunjippalu, Assistant Commissioner, Income Tax, told him about the discrepancies in the account of M/s. Canon Granites Pvt. Ltd and for which, he had paid tax and fine to an

VERDICTUM.IN

amount of Rs.50 lakh and in order to pacify the situation and avoid the risk, he would reduce the amount to Rs.1 lakh if Rs.10 lakh would be given as bribe. It was thereafter, on 19.03.2014, he met CBI, ACB office, Cochin and met the SP and lodged a complaint in this regard. Accordingly, on 22.03.2014 at about 7 a.m., he reached PWD Rest House, Chembukavu, Thrissur and met the trap team. At the time of trap, the first accused and Sri. Vincent Joseph, revision petitioner herein (now the second accused), were present.

14. It is true that, as pointed out by the learned counsel for the petitioner and found by the learned Special Judge, Ext.D26, FIR and Ext.D1 entrustment mahazar, no reference about the demand made by the petitioner could be found. However, going by the mahazar, it could be gathered that the trap was at the official residence of the petitioner and as per Ext.D1, entrustment mahazar, the first accused had asked the approver to come to his Government accommodation with the defacto complainant to hand over the bribe amount, as the first accused was not residing in the Government accommodation allotted to him exclusively. Ext.D1 is the entrustment mahazar prepared on 22.03.2014 and Ext.D3 is the recovery mahazar

VERDICTUM.IN

prepared on 22.03.2014. As per which, it has been stated that, as part of the post-trap proceedings, the hands of the petitioner as well as the first accused were dipped in sodium carbonate solution. As part of the phenolphthalein test, the solution turned pink, showing primary evidence of acceptance of the bribe money by the first and second accused. In the statement dated 22.03.2014, CW1 given statement further that the petitioner also opened the bag in which the trap money was kept, looked inside, checked the bundles with his right hand inside the bag, and kept the bag on the concrete shelf. On 21.04.2014, another statement was also given by CW1, wherein he had stated that he would not be aware that the petitioner was also a conspirator in the demand of bribe till 22.03.2014. However, his brother, Jose K. Francis, cited as witness No.4 as well as the approver, Chartered Accountant, originally arrayed as the second accused, was aware of the same. He further stated that this was the reason for selecting the petitioner's official residence as the venue for the handing over and acceptance of the bribe.

15. CW4, Jose K. Fransis, brother of the defacto complainant, who had visited the income tax office and also the office of the approver in connection with the demand and

VERDICTUM.IN

acceptance of the bribe had given statement on 13.05.2014. On 22.03.2014, during the trap proceedings, when he had contacted CW1, CW1 told him that the first accused had demanded and accepted Rs.10 lakh from him at the official residence and the petitioner also was there. On this information, he replied that the first accused had informed him on 20.03.2014 about the role of the petitioner in demanding and sharing the bribe between them.

16. In this case, the statement of CW28, Chartered Accountant of M/s. Canon Granites Pvt. Ltd, formerly the original second accused turned approver, is very relevant. In the statement given by him, under Section 164 Cr.PC before the learned Magistrate, he had stated that the petitioner is also a party to the demand and acceptance of bribe, though the approver came to understood about the role of the petitioner at a later stage when the first accused disclosed that the amount had been shared between them. Here the prosecution alleges not only offences under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act and also offence under Section 120B of IPC. Thus, the prosecution case, as per the final report, is that the first and second accused hatched conspiracy to demand and accept bribe from CW1 and,

VERDICTUM.IN

pursuant to the said demand, it was given at the residence of the petitioner to the first accused and later, opening the bag, first and second accused counted and ensured the bribe money available as informed and at this juncture, they were nabbed. The positive result of the phenolphthalein test on the hands of the petitioner would *prima facie* substantiate this statement of CW1, which is supported by the statements of CW4 and CW28 (approver) as discussed above. The legal position clarified and settled in ***Neeraj Dutta*** *(supra)* that demand and acceptance of illegal gratification are *sine qua non* to find commission of offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the PC Act is the law of the land. However, in ***Neeraj Dutta*** *(supra),* the Apex Court held that proof of the ingredients to be inferred from the evidence in toto. Here, based on the statements of CW1, CW4 and CW28, the prosecution alleges conspiracy between the first and second accused to demand and accept illegal gratification, which could be decipherable from the discussions hereinabove. Be it so, proof of demand at the instance of the revision petitioner/second accused, including its acceptance is a matter of evidence. Thus, it appears that *prima facie,* the involvement of the revision petitioner necessitating trial of the revision petitioner could be found from the prosecution records or atleast a strong

VERDICTUM.IN

suspicion regarding the involvement of the petitioner could be found from the prosecution materials, discussed hereinabove and considered by the learned Special Judge. Therefore, the discharge plea raised by the petitioner is liable to be rejected and the learned Special Judge rightly did so. In view of the matter, the order impugned does not require any interference as a necessary consequence thereof; this revision must fail.

In the result, this revision petition fails and is dismissed. The interim stay stands vacated.

Since the matter is of the year 2014, there shall be a direction to the learned Special Court for CBI to expedite the trial and finish it at any rate within a period of four months from the date of receipt of the copy of this order.

Registry is directed to forward a copy of the order to the learned Special Court for CBI for compliance and information.

Sd/-

A. BADHARUDEEN
JUDGE

Sbna/