

STATE REPRESENTED BY THE DEPUTY SUPERINTENDENT A
OF POLICE VIGILANCE AND ANTI CORRUPTION,
TAMIL NADU

v.

J. DORAISWAMY ETC.

(Criminal Appeal Nos. 445-446 of 2019) B

MARCH 07, 2019.

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Code of Criminal Procedure, 1973: C

s.227 – Respondents-Police officials prosecuted under Prevention of Corruption Act – Charge sheet filed by the State Prosecuting Agency against the respondents – Application under s.227 filed by respondents praying for their discharge from the case which was allowed by trial court – High Court dismissed the revision petitions filed by State challenging the order of trial court – Validity – Held: While considering the case of discharge, sought immediately after the charge-sheet is filed, the Court cannot become an Appellate Court and start appreciating the evidence by finding out inconsistency in the statements of the witnesses as was done by the High Court in the impugned order – There is no prima facie case made out for discharge of the respondents at this stage of the trial – CJM should have, therefore, allowed the State to adduce the evidence on merits in support of the charge-sheet to prove the charges – Matter remitted to CJM to proceed with the trial – Prevention of Corruption Act, 1988.

Allowing the appeals and remitting the matter to CJM Court, the Court. F

HELD: The High Court acted like an Appellate Court than as a Revisionary Court as if it was hearing the appeal against the final verdict of the Special Court. There was no prima facie case made out for discharge of the respondents at this stage of the trial. They, therefore, have to stand for trial on merits in the light of the documents and contents of charge-sheet filed pursuant to the order of the Court. [Paras 12, 18][923-G; 925-D]

- A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 445-446 OF 2019.

From the Judgment and Order dated 14.07.2016 of the High Court Judicature at Madras in Crl. R.C. Nos. 825 and 826 of 2015.

- S. Partha Sarathi, S. Raja Rajeshwaran, M. Yogesh Kanna, Advs.
B for the Appellant.

Neeraj Jain, Sr. Adv., S. Thananjayan, Krishan Kumar, Rahul Raj Mishra, Advs. for the Respondents.

The Judgment of the Court was delivered by

- C **ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. These appeals are directed against the final judgment and order dated 14.07.2016 passed by the High Court of Judicature at Madras in Crl. R.C. Nos. 825 and 826 of 2015 whereby the High Court dismissed the revisions filed by the appellant-State and affirmed the order of the

- D Special Judge/Chief Judicial Magistrate, Tiruvannamalai by which the respondents herein were discharged under Section 227 of the Criminal Procedure Code, 1973 (hereinafter referred to as “the Cr.P.C.”) from the Criminal Proceedings filed against them in Special Case No.4 of 2014 under the Prevention of Corruption Act, 1988 (hereinafter referred to as “the PC Act”).

- E 3. These appeals involve a short point as would be clear from the facts mentioned *infra*.

4. Respondents (A-1 and A-2) were working as Inspector of Police and Sub-inspector of Police respectively in the State Tamil Nadu Police Services. Both the respondents were prosecuted for commission of the

- F offences punishable under Section 7 read with Section 13(1) (d) of the PC Act in Crime Case No.3 of 2008/Special Case No. 4 of 2014 in the Court of Special Judge and Chief Judicial Magistrate, Tiruvannamalai.

- G 5. On charge-sheet being filed by the State Prosecuting Agency against the respondents after obtaining necessary sanction as required in law, both of them filed applications under Section 227 of the Cr.P.C. (Crl.M.P.Nos.648/2014 & 113/2015) before the CJM praying therein for their discharge from the case. In substance, the respondents contended that no *prime facie* case is made out against them under the PC Act and in the charge- sheet hence both the respondents are liable to be
H discharged.

6. The Chief Judicial Magistrate, by order dated 29.06.2015, allowed the applications and discharged them from the case. The State felt aggrieved by the order dated 29.06.2015 passed by the Chief Judicial Magistrate and filed two revisions in the High Court. By impugned order, the High Court dismissed the revisions and affirmed the order of the Chief Judicial Magistrate, giving rise to filing of these appeals by the State by way of special leave in this Court.

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7. So, the short question, which arises for consideration in these appeals, is whether the Courts below were justified in allowing the discharge applications filed by the respondents under Section 227 of the Cr. P.C.

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8. Heard Mr. S. Partha Sarathi, learned counsel for the appellant and Mr. Neeraj Jain, learned Senior counsel and Mr. S. Thananjayan, learned counsel for the respondents.

C

9. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions filed by the respondents, we are inclined to allow the appeals and while setting aside the impugned order, dismiss the applications filed by the respondents under Section 227 of the Cr.P.C. and remand the case to the Special Judge/CJM for its trial on merits in accordance with law.

D

10. We have gone through the record including the impugned order with a view to find out as to whether any *prima facie* case is made out against the respondents on the basis of documents filed by the State along with the charge-sheet.

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11. Having gone through the documents, the contents of the charge-sheet and the impugned order, we are of the view that though the High Court referred to the law laid down by this Court on the subject in the case of **Yogesh alias Sachin Jagdish Joshi vs. State of Maharashtra** [(2008) (10) SCC 394], but erred in not properly applying the principles laid down therein thereby committed an error in allowing the applications filed by the respondents under Section 227 of the Cr.P.C. for their discharge.

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12. We find that the High Court acted like an Appellate Court than as a Revisionary Court as if it was hearing the appeal against the final verdict of the Special Court.

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A 13. It is clear from the perusal of the entire order including its concluding Para 14, which reads as under:

B “14. That being so, when the charges which are identical, could not be established in the departmental proceedings, for the same set of facts, for framing a charge in the criminal proceedings, chance of conviction would be very remote. At the same time, this Court is also well aware of the legal position that mere exoneration from the departmental p[proceedings, cannot be taken as a sole ground to allow the discharge petition. Therefore, it is necessary to see as to whether any prime facie case has been made out by the prosecution to frame charge against an accused. In this case, the case of the prosecution is mainly relied upon the statement of witness/complaint sundarajan and his cousin brother Sekar. As observed by the trial court, there are inconsistencies in the statements of prosecution witnesses. Moreover as observed by the trial court, the prosecution has not produced any evidence much less documentary evidence to show that A1 and A2 were present in room No.4 of the said Arunachala Lodge/Guest House. Though it is the case of the prosecution that the said sum of Rs.5 lakhs was paid in the said Room No.4 in the said Lodge, in the statement of Sekar recorded under section 161 Cr.P.C. on 14.09.2010 before Subbiah-Additional Superintendent of Police, DV & AC, Special Investigation Team, Chennai, he has referred to the date of payment of money as 15.01.2004, but in the statement before ADSP-Crime (Vellore) – Juilan on 09.07.2004, he has stated that the said amount was paid one or two days before 15.02.2004. Therefore, there is material contradiction, more particularly with regard to the date of the above said payment of Rs.5 Lakhs to A1 and A2. Except the ipse-dixit statement of the said Sekar, absolutely there is no other material before this Court to prove the demand of money by A1 and A2.”

G 14. In our view, such approach of the High Court while deciding the discharge applications of the respondents (accused) is not legally correct and, therefore, it cannot be upheld.

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15. In our view, consideration of the record for discharge purpose is one thing and the consideration of the record while deciding the appeal by the Appellate Court is another thing. A

16. While considering the case of discharge sought immediately after the charge-sheet is filed, the Court cannot become an Appellate Court and start appreciating the evidence by finding out inconsistency in the statements of the witnesses as was done by the High Court in the impugned order running in 19 pages. It is not legally permissible. B

17. We have neither set out the facts and nor the evidence (which is yet to be led and tested in the trial) in detail and have also refrained ourselves from recording any finding on the merits of the case, else it will cause prejudice to the rights of the parties while prosecuting their case in the trial. C

18. All that we say while allowing these appeals is that there is no *prime facie* case made out for discharge of the respondents at this stage of the trial. They, therefore, have to stand for trial on merits in the light of the documents and contents of charge-sheet filed pursuant to the order of the Court. The Special Court (CJM) should have, therefore, allowed the State to adduce the evidence on merits in support of the charge-sheet to prove the charges. D

19. In view of the foregoing discussion, the appeals succeed and are accordingly allowed. The impugned order is set aside. As a consequence, the applications filed by the respondents under Section 227 of the Cr.P.C. are dismissed. E

20. The Special Court(CJM) is directed to proceed with the trial and conclude it within six months in accordance with law. F

21. The Special Court will decide the case strictly on the basis of evidence adduced by the parties in the trial in accordance with law uninfluenced by any observations made by the High Court and this Court in these proceedings.