Supreme Court of India
State Of T.Nadu Tr.Insp.Of Police vs N Suresh Rajan & Ors on 6 January, 1947
Author: C K Prasad
Bench: Chandramauli Kr. Prasad, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.22-23 OF 2014
(@SPECIAL LEAVE PETITION(CRL.)NOs.3810-3811 of 2012)

STATE OF TAMILNADU BY INS.OF POLICE
VIGILANCE AND ANTI CORRUPTION … APPELLANT

VERSUS

N.SURESH RAJAN & ORS. …RESPONDENTS

With

CRIMINAL APPEAL NO.26-38 OF 2014
(@SPECIAL LEAVE PETITION(CRL.)NOs. 134-146 of 2013)

STATE REP. BY DEPUTY SUPDT. OF POLICE
VIGILANCE AND ANTI CORRUPTION … APPELLANT

VERSUS

K.PONMUDI & ORS. …RESPONDENTS

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

CRIMINAL APPEAL NO.22-23 OF 2014 (@SPECIAL LEAVE PETITION(CRL.)Nos.3810- 3811 of 2012) The State of Tamil Nadu aggrieved by the order dated 10th of December, 2010 passed by the Madras High Court in Criminal R.C.No.528 of 2009 and Criminal M.P.(MD) No.1 of 2009, setting aside the order dated 25th of September, 2009 passed by the learned Chief Judicial Magistrate-cum-Special Judge, Nagercoil (hereinafter referred to as 'the Special Judge'), whereby he refused to discharge the respondents, has preferred these special leave petitions.

Leave granted.

Short facts giving rise to the present appeals are that Respondent No. 1, N. Suresh Rajan, during the period from 13.05.1996 to 14.05.2001, was a Member of the Tamil Nadu Legislative Assembly as

also a State Minister of Tourism. Respondent No. 2, K. Neelkanda Pillai is his father and Respondent No. 3, R.Rajam, his mother. On the basis of an information that N. Suresh Rajan, during his tenure as the Minister of Tourism, had acquired and was in possession of pecuniary resources and properties in his name and in the names of his father and mother, disproportionate to his known sources of income, Crime No. 7 of 2002 was registered at Kanyakumari Vigilance and Anti Corruption Department on 14th of March, 2002 against the Minister N. Suresh Rajan, his father, mother, elder sister and his bother- in-law. During the course of the investigation, the investigating officer collected and gathered informations with regard to the property and pecuniary resources in possession of N. Suresh Rajan during his tenure as the Minister, in his name and in the name of others. On computation of the income of the Minister from his known sources and also expenditure incurred by him, it was found that the properties owned and possessed by him are disproportionate to his known sources of income to the tune of Rs. 23,77,950.94. The investigating officer not only examined the accused Minister but also his father and mother as also his sister and the brother- in-law. Ultimately, the investigating agency came to the conclusion that during the check period, Respondent No.1, N. Suresh Rajan has acquired and was in possession of pecuniary resources and properties in his name and in the names of his father, K. Neelakanda Pillai (Respondent No. 2) and mother R. Rajam (Respondent No. 3) and his wife D.S. Bharathi for total value of Rs. 17,58,412.47. The investigating officer also came to the conclusion that Minister's father and mother never had any independent source of income commensurate with the property and pecuniary resources found acquired in their names. Accordingly, the investigating officer submitted the charge-sheet dated 4th of July, 2003 against Respondent No.1, the Minister and his father (Respondent No.2) and mother (Respondent No.3) respectively, alleging commission of an offence under Section 109 of the Indian Penal Code and Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act. Respondents filed application dated 5th of December, 2003 under Section 239 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code'), seeking their discharge. The Special Judge, by its order dated 25th of September, 2009 rejected their prayer. While doing so, the Special Judge observed as follows:

> "At this stage it will be premature to say that there are no sufficient materials on the side of the state to frame any charge against them and the same would not be according to law in the opinion of this court and at the same time this court has come to know that there are basic materials for the purpose of framing charges against the 3 petitioners, the petition filed by the petitioners is dismissed and orders passed to that effect." Aggrieved by the same, respondents filed criminal revision before the High Court. The High Court by the impugned judgment had set aside the order of the Special Judge and discharged the respondents on its finding that in the absence of any material to show that money passed from respondent No. 1 to his mother and father, latter cannot be said to be holding the property and resources in their names on behalf of their son.

The High Court while passing the impugned order heavily relied on its earlier judgment in the case of State by Deputy Superintendent of Police, Vigilance and Anti Corruption Cuddalore Detachment v. K. Ponumudi & Ors. (2007-1MLJ-CRL.-100), the validity whereof is also under consideration in the connected appeals. The High Court while allowing the criminal revision observed as follows:

> "12.In the instant case, the properties standing in the name of the petitioners 2 and 3 namely, A2 and A3 could not be held to be the properties or resources belonging to the 1st accused in the absence of any investigation into the individual income resources of A2 and A3. Moreover, it is not disputed that A2 was a retired Head Master receiving pension and A3 is running a Financial Institution and an Income Tax assessee. In the absence of any material to show that A1's money flow into the hands of A2 and A3, they cannot be said to be holding the properties and resources in their name on behalf of the first accused. There is also no material to show that A2 and A3 instigated A1 to acquire properties and resources disproportionate to his known source of income." It is in these circumstances that the appellant is before us.

CRIMINAL APPEAL NO.26-38 OF 2014 (@SPECIAL LEAVE PETITION(CRL.)Nos. 134-146 of 2013) These special leave petitions are barred by limitation. There is delay of 1954 days in filing the petitions and 217 days in refiling the same. Applications have been filed for condoning the delay in filing and refiling the special leave petitions.

Mr. Ranjit Kumar, learned Senior Counsel for the petitioner submits that the delay in filing the special leave petitions has occurred as the Public Prosecutor earlier gave an opinion that it is not a fit case in which special leave petitions deserve to be filed. The Government accepted the opinion and decided not to file the special leave petitions. It is pointed out that the very Government in which one of the accused was a Minister had taken the aforesaid decision not to file special leave petitions. However, after the change of the Government, opinion was sought from the Advocate General, who opined that it is fit case in which the order impugned deserves to be challenged. Accordingly, it is submitted that the cause shown is sufficient to condone the delay.

Mr. Soli J. Sorabjee, learned Senior Counsel appearing for the respondents, however, submits that mere change of Government would not be sufficient to condone the inordinate delay. He submits that with the change of the Government, many issues which have attained finality would be reopened after long delay, which should not be allowed. According to him, condonation of huge delay on the ground that the successor Government, which belongs to a different political party, had taken the decision to file the special leave petitions would be setting a very dangerous precedent and it would lead to miscarriage of justice. He emphasizes that there is a life span for every legal remedy and condonation of delay is an exception. Reliance has been placed on a decision of this Court in the case of Postmaster General v. Living Media India Ltd., (2012) 3 SCC 563, and our attention has been drawn to Paragraph 29 of the judgment, which reads as follows:

> "29. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bona fide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters

everyone under the same light and should not be swirled for the benefit of a few." Mr. Sorabjee further submits that the Limitation Act does not provide for different period of limitation for the Government in resorting to the remedy provided under the law and the case in hand being not a case of fraud or collusion by its officers or agents, the huge delay is not fit to be condoned. Reliance has also been placed on a decision of this Court in the case of Pundlik Jalam Patil v. Executive Engineer, Jalgaon Medium Project, (2008) 17 SCC 448 and reference has been made to Paragraph 31 of the judgment, which reads as follows:

"31. It is true that when the State and its instrumentalities are the applicants seeking condonation of delay they may be entitled to certain amount of latitude but the law of limitation is same for citizen and for governmental authorities. The Limitation Act does not provide for a different period to the Government in filing appeals or applications as such. It would be a different matter where the Government makes out a case where public interest was shown to have suffered owing to acts of fraud or collusion on the part of its officers or agents and where the officers were clearly at cross purposes with it. In a given case if any such facts are pleaded or proved they cannot be excluded from consideration and those factors may go into the judicial verdict. In the present case, no such facts are pleaded and proved though a feeble attempt by the learned counsel for the respondent was made to suggest collusion and fraud but without any basis. We cannot entertain the submission made across the Bar without there being any proper foundation in the pleadings." The contentions put forth by Mr. Sorabjee are weighty, deserving thoughtful consideration and at one point of time we were inclined to reject the applications filed for condonation of delay and dismiss the special leave petitions. However, on a second thought we find that the validity of the order impugned in these special leave petitions has to be gone into in criminal appeals arising out of Special Leave Petitions (Criminal) Nos. 3810-3811 of 2012 and in the face of it, it shall be unwise to dismiss these special leave petitions on the ground of limitation. It is worth mentioning here that the order impugned in the criminal appeals arising out of Special Leave Petition (Criminal) Nos. 3810-3811 of 2012, State of Tamil Nadu by Ins. of Police, Vigilance and Anti Corruption v. N.

Suresh Rajan & Ors., has been mainly rendered, relying on the decision in State by Deputy Superintendent of Police, Vigilance and Anti Corruption Cuddalore Detachment vs. K. Ponmudi and Ors.(2007-1MLJ-CRL.-100), which is impugned in the present special leave petitions. In fact, by order dated 3rd of January, 2013, these petitions were directed to be heard along with the aforesaid special leave petitions. In such circumstances, we condone the delay in filing and refiling the special leave petitions.

In these petitions the State of Tamil Nadu impugns the order dated 11th of August, 2006 passed by the Madras High Court whereby the revision petitions filed against the order of discharge dated 21st of July, 2004 passed by the Special Judge/Chief Judicial Magistrate, Villupuram (hereinafter referred to as 'the Special Judge'), in the Special Case No. 7 of 2003, have been dismissed.

Leave granted.

Shorn of unnecessary details, facts giving rise to the present appeals are that K. Ponumudi, respondent No. 1 herein, happened to be a Member of the State Legislative Assembly and a State Minister in the Tamil Nadu Government during the check period. P. Visalakshi Ponmudi (Respondent No.2) is his wife, whereas P.Saraswathi (Respondent No.3) (since deceased) was his mother-in-law. A.Manivannan (Respondent No.4) and A.Nandagopal (Respondent No.5) (since deceased) are the friends of the Minister (Respondent No.1). Respondent Nos. 3 to 5 during their lifetime were trustees of one Siga Educational Trust, Villupuram.

In the present appeals, we have to examine the validity of the order of discharge passed by the Special Judge as affirmed by the High Court. Hence, we consider it unnecessary to go into the details of the case of the prosecution or the defence of the respondent at this stage. Suffice it to say that, according to the prosecution, K. Ponmudi (Respondent No.1), as a Minister of Transport and a Member of the Tamil Nadu Legislative Assembly during the period from 13.05.1996 to 30.09.2001, had acquired and was in possession of pecuniary resources and properties in his name and in the names of his wife and sons, which were disproportionate to his known sources of income. Accordingly, Crime No. 4 of 2002 was registered at Cuddalore Village, Anti-Corruption Department on 14th of March, 2002 under Section 109 of the Indian Penal Code read with Section 13(2) and Section 13(1)(e) of the Prevention of Corruption Act, hereinafter referred to as 'the Act'. During the course of investigation it transpired that between the period from 13.05.1996 to 31.03.2002, the Minister had acquired and possessed properties at Mathirimangalam, Kaspakaranai, Kappiampuliyur villages and other places in Villupuram Taluk, at Vittalapuram village and other places in Thindivanam Taluk, at Cuddalore and Pondicherry Towns, at Chennai and Trichy cities and at other places. It is alleged that respondent No.1-Minister being a public servant committed the offence of criminal misconduct by acquiring and being in possession of pecuniary resources and properties in his name and in the names of his wife, mother- in-law and also in the name of Siga Educational Trust, held by the other respondents on behalf of Respondent No. 1, the Minister, which were disproportionate to his known sources of income to the extent of Rs.3,08,35,066.97. According to the prosecution, he could not satisfactorily account for the assets and in this way, the Minister had committed the offence punishable under Section 13(2) read with Section 13(1)(e) of the Act.

In the course of investigation, it further transpired that during the check period and in the places stated above, other accused abetted the Minister in the commission of the offence by him. Respondent No. 2, the wife of the Minister, aided in commission of the offence by holding on his behalf a substantial portion of properties and pecuniary resources in her name as well as in the name of M/s. Visal Expo, of which she was the sole Proprietor. Similarly, Respondent No. 3, the mother-in-law, aided the Minister by holding on his behalf a substantial portion of properties and pecuniary resources in her name as well as in the name of Siga Educational Trust by purporting to be one of its Trustees. Similarly, Respondent No. 4 and Respondent No. 5 aided the Minister and held on his behalf a substantial portion of the properties and pecuniary resources in the name of Siga Educational Trust by purporting to be its Trustees. It is relevant here to mention that during the course of investigation, the statement of all other accused were taken and in the opinion of the investigating agency, after due scrutiny of their statements and further verification, the Minister was

not able to satisfactorily account for the quantum of disproportionate assets. Accordingly, the Vigilance and Anti Corruption Department of the State Government submitted charge-sheet against the respondents under Section 109 of the Indian Penal Code and Section 13(2) read with Section 13(1)(e) of the Act.

It is relevant here to state that the offences punishable under the scheme of the Act have to be tried by a Special Judge and he may take cognizance of the offence without commitment of the accused and the Judge trying the accused is required to follow the procedure prescribed by the Code for the trial of warrant cases by the Magistrate. The Special Judge holding the trial is deemed to be a Court of Sessions. The respondents filed petition for discharge under Section 239 of the Code inter alia contending that the system which the prosecution had followed to ascertain the income of the accused is wrong. Initially, the check period was from 10.05.1996 to 13.09.2001 which, during the investigation, was enlarged from 13.05.1996 to 31.03.2002. Not only this, according to the accused, the income was undervalued and the expenditures exaggerated. According to Respondent No. 1, the Minister, income of the individual property of his wife and that of his mother-in-law and their expenditure ought not to have been shown as his property. According to him, the allegation that the properties in their names are his benami properties is wrong. It was also contended that the valuation of the properties has been arrived at without taking into consideration the entire income and expenditure of Respondent No. 1. Respondents have also alleged that the investigating officer, who is the informant of the case, had acted autocratically and his action is vitiated by bias. The Special Judge examined all these contentions and by order dated 21st of July, 2004 discharged Respondents on its finding that the investigation was not conducted properly. The Special Judge further held that the value of the property of Respondent Nos. 2 to 5 ought not to have been clubbed with that of the individual properties and income of Respondent No. 1 and by doing so, the assets of Respondent No. 1 cannot be said to be disproportionate to his known sources of income. On the aforesaid finding the Special Judge discharged all the accused. Aggrieved by the same, the State of Tamil Nadu filed separate revision petitions and the High Court, by the impugned order, has dismissed all the revision petitions. The High Court, while affirming the order of discharge, held that the prosecution committed an error by adding the income of other respondents, who were assessed under the Income Tax Act, in the income of Respondent No.1. In the opinion of the High Court, an independent and unbiased scrutiny of the entire documents furnished along with the final report would not make out any ground of framing of charges against any of the accused persons. While doing so, the High Court has observed as follows:

> "18. The assets which admittedly, do not belong to Accused 1 and owned by individuals having independent source of income which are assessed under the Income Tax Act, were added as the assets of Accused -1. Such a procedure adopted by the prosecution is not only unsustainable but also illegal. An independent and unbiased scrutiny of the entire documents furnished along with the final report would not make out any ground for framing of charge as against any of the accused persons. The methodology adopted by the prosecution to establish the disproportionate assets with reference to the known source of income is absolutely erroneous.

xxx xxx xxx The theory of Benami is totally alien to the concept of trust and it is not legally sustainable to array the accused 3 to 5 as holders of the properties or that they are the benamies of the accused. The benami transaction has to be proved by the prosecution by producing legally permissible materials of a bona fide character which would directly prove the fact of benami and there is a total lack of materials on this account and hence the theory of benami has not been established even remotely by any evidence. On a prima-facie evidence it is evident that the other accused are possessed of sufficient funds for acquiring their properties and that A1 has nothing to do with those properties and that he cannot be called upon to explain the source of income of the acquisition made by other persons.

19..... Admittedly the accused are not possessed of the properties standing in the name of Trust and controlled by the Accused A3 to A5. The trust is an independent legal entity assessed to income tax and owning the properties. Only to boost the value of the assets the prosecution belatedly arrayed the Trustees of the Trust as accused 3 to 5 in order to foist a false case as against A1.

xxx xxx xxx 21.....All the properties acquired by A2 and A3 in their individual capacity acquired out of their own income have been shown in the Income Tax Returns, which fact the prosecution also knows and also available in the records of the prosecution. The prosecution has no justification or reason to disregard those income tax returns to disallow such income while filing the final report. The documents now available on record also would clearly disprove the claim of benami transaction." The High court ultimately concluded as follows:

"24.....Therefore, the trial court analyzing the materials and documents that were made available at the stage of framing charges and on their face value arrived at the right conclusion that charges could not be framed against the respondents/accused." Now we proceed to consider the legal position concerning the issue of discharge and validity of the orders impugned in these appeals in the background thereof. Mr. Ranjit Kumar submits that the order impugned suffers from patent illegality. He points out that at the time of framing of the charge the scope is limited and what is to be seen at this stage is as to whether on examination of the materials and the documents collected, the charge can be said to be groundless or not. He submits that at this stage, the court cannot appraise the evidence as is done at the time of trial. He points out that while passing the impugned orders, the evidence has been appraised and the case of the prosecution has been rejected, as is done after the trial while acquitting the accused.

Mr. Sorabjee as also Mr. N.V. Ganesh appearing on behalf of the respondents-accused, however, submit that when the court considers the applications for discharge, it has to examine the materials for the purpose of finding out as to whether the allegation made is groundless or not.

They submit that at the time of consideration of an application for discharge, nothing prevents the court to sift and weigh the evidence for the purpose of ascertaining as to whether the allegations made on the basis of the materials and the documents collected are groundless or not. They also contend that the court while considering such an application cannot act merely as a post-office or a mouthpiece of the prosecution. In support of the submission, reliance has been placed on a decision of this Court in the case of Sajjan Kumar v. CBI, (2010) 9 SCC 368 and our attention has been drawn to Paragraph 17(4) of the judgment, which reads as follows:

> "17. In Union of India v. Prafulla Kumar Samal & Anr., 1979 (3) SCC 4, the scope of Section 227 CrPC was considered. After adverting to various decisions, this Court has enumerated the following principles:
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> xxx xxx xxx (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." Yet another decision on which reliance has been placed is the decision of this Court in the case of Dilawar Balu Kurane v. State of Maharashtra, (2002) 2 SCC 135, reference has been made to the following paragraph of the said judgment:
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> "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." We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post-office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is

trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. 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 offence. The law does not permit a mini trial at this stage.

Reference in this connection can be made to a recent decision of this Court in the case of Sheoraj Singh Ahlawat & Ors. vs. State of Uttar Pradesh & Anr., AIR 2013 SC 52, in which, after analyzing various decisions on the point, this Court endorsed the following view taken in Onkar Nath Mishra v. State (NCT of Delhi), (2008) 2 SCC 561:

“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 there from, 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."

Now reverting to the decisions of this Court in the case Sajjan Kumar (supra) and Dilawar Balu Kurane (supra), relied on by the respondents, we are of the opinion that they do not advance their case. The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused. Under Section 227 of the

> Code, the trial court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused".

However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction". Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken. Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of R.S. Nayak v. A.R. Antulay, (1986) 2 SCC 716. The same reads as follows:

> "43.....Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial court is satisfied that a prima facie case is made out, charge has to be framed." Bearing in mind the principles aforesaid, we proceed to consider the facts of the present case. Here the allegation against the accused Minister (Respondent No.1), K. Ponmudi is that while he was a Member of the Tamil Nadu Legislative Assembly and a State Minister, he had acquired and was in possession of the properties in the name of his wife as also his mother-in-law, who along with his other friends, were of Siga Educational Trust, Villupuram. According to the prosecution, the properties of Siga Educational Trust, Villupuram were held by other accused on behalf of the accused Minister. These properties, according to the prosecution, in fact, were the properties of K.Ponumudi. Similarly, accused N. Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother. While passing the order of discharge, the fact that the accused other than the two Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law. While passing the impugned orders, the court has not sifted the materials for the purpose of finding out whether or not there is sufficient ground for proceeding against the accused but whether that would warrant a conviction. We are of the opinion that this was not the stage where the court should have appraised the

> evidence and discharged the accused as if it was passing an order of acquittal. Further, defect in investigation itself cannot be a ground for discharge. In our opinion, the order impugned suffers from grave error and calls for rectification.

Any observation made by us in this judgment is for the purpose of disposal of these appeals and shall have no bearing on the trial. The surviving respondents are directed to appear before the respective courts on 3rd of February, 2014. The Court shall proceed with the trial from the stage of charge in accordance with law and make endeavour to dispose of the same expeditiously.

In the result, we allow these appeals and set aside the order of discharge with the aforesaid observation.

.....J.

(CHANDRAMAULI KR. PRASAD) ..... J.

(M.Y. EQBAL) NEW DELHI, JANUARY 06, 2014.
