

**S. Karunakaran Vs The State****Criminal R.C. No. 1099 of 2006**

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**Court:** Madras High Court**Date of Decision:** July 29, 2009**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 239, 397, 401#Prevention of Corruption Act, 1988 â€” Section 13(1), 13(2), 17, 2, 7

**Hon'ble Judges:** M. Jeyapaul, J**Bench:** Single Bench**Advocate:** R. Saseetharan, for the Appellant; N. Kumanan, Government Advocate, for the Respondent**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

M. Jeyapaul, J.

The petitioner who was serving as the Secretary of the Avinashi Co-operative Housing Society Limited, Avinashi was

charged with offences punishable u/s 7 and 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988.

2. Specifically referring to the embargo found u/s 17(c) of the Prevention of Corruption Act, 1988, the petitioner who stood charged as stated

above moved a petition invoking the provision u/s 239 of Code of Criminal Procedure praying for discharge from the criminal prosecution

launched by the respondent in Special CC No. 4 of 2005. The trial court having referred to the sanction accorded for prosecution as against the

petitioner herein without actually advertng to the ambit of Section 17(c) of the Prevention of Corruption Act, 1988 which was the main crux of the

issue dismissed the petition filed by the petitioner seeking discharge.

3. As already pointed out by this Court, the petitioner was serving as the Secretary of the Avinashi Co-operative Housing Society Limited,

Avinashi. No doubt he comes under the definition of public servant as per Section 2(c)(ix) of the Prevention of Corruption Act, 1988 in as much

as he was serving as a Secretary of the Avinashi Co-operative Housing Society Limited, Avinashi.

4. The learned Counsel appearing for the petitioner would vehemently submit that the petitioner does not fall under the category of the officer

belonging to Group A or Group B of the service of the Government of Tamilnadu. Therefore the G.O.'s referred to by the respondent police, as

though the Inspector of Police has been conferred with the power to investigate and arrest without warrant for the offence punishable under the

Prevention of Corruption Act, 1988 would not apply to the petitioner. He would also submit that the Inspector of police who has investigated the

case in this matter has not been empowered either to investigate or to arrest without warrant. The petitioner has been serving as the Secretary of

the Co-operative Society and was not in the services of the Government. Therefore, he would submit that the whole investigation embarked upon

by the respondent police is tainted with illegality and as a result of which discharge as prayed for is warranted.

5. The learned Government Advocate (Criminal side) would submit referring to three Government Orders passed by the Government of Tamil

Nadu that the Inspector of Police has been conferred with the power to investigate and arrest without warrant any of the public servants as

contemplated under the definition part of the Prevention of Corruption Act, 1988. It is his submission that the petitioner has set up a very technical

stand on the premises, that no power was conferred on the Inspector of Police either to investigate the case or to arrest an accused public servant

under the Prevention of Corruption Act, 1988. Therefore, he would submit that the plea for discharge is not at all tenable.

6. There is no dispute to the fact that the petitioner is a public servant as defined u/s 2(c)(ix) of the Prevention of Corruption Act, 1988 as he was

serving as the Secretary of the Avinashi Co-operative Housing Society Limited, Avinashi. As rightly pointed out by the learned Counsel appearing

for the petitioner, the trial court has gone out of track and has passed an order that the petitioner is not entitled to discharge as prayed for without

determining the point in issue raised by the petitioner herein. The petitioner had not challenged the sanction accorded in this case for prosecution

against the petitioner. The only challenge made by the petitioner is that as per Section 17(c) of the Prevention of Corruption Act, 1988 only the

District Superintendent of Police or a police officer of equivalent rank alone is empowered to investigate the case.

7. The first proviso found u/s 17(c) of the Prevention of Corruption Act, 1988 would read that, if a police officer not below the rank of Inspector

of Police is authorised by the State Government to investigate the case arisen under the Prevention of Corruption Act, 1988, he may also

investigate any such offence and can also effect arrest without any warrant from the competent Judicial Magistrate concerned.

8. The question is whether the Government of Tamil Nadu has conferred any power on the Inspector of Police to investigate the cases arisen under

the Prevention of Corruption Act, 1988. Let me straight away refer to G.O.Ms. No. 269/Personal and Administrative Reforms (Personal N

Department)/dated 04.06.1990 which empowers the Inspector of Police of the Directorate of Vigilance and Anti-Corruption, Madras under the

aforesaid proviso to Section 17 of the said Act to exercise the powers of investigation and arrest without warrant. But as far as the officers

belonging to Groups A and B involved in any of the offence under the Prevention of Corruption Act, 1988 are concerned, the Inspectors of Police

of the Directorate of Vigilance and Anti-Corruption, Madras so empowered have been deprived of the power of arrest without a warrant.

9. Subsequently, the Government of Tamil Nadu passed G.O.Ms. No. 15, Personal and Administrative Reforms (N) Department, dated

19.02.2003 whereunder taking into consideration the jump in the pay scale of officers belonging to Groups A and B, the ceiling of the Pay

structure found in the earlier G.O.Ms. No. 269 dated 04.06.1990 was enhanced to Rs. 11,100/-.

10. The cumulative reading of these two Government Orders in G.O.Ms. No. 269 dated 04.06.1990 and G.O.Ms. No. 15 dated 19.02.2003

would read that the inspectors of police of the Directorate of Vigilance and Anti-Corruption, Madras has been authorised by the Government of

Tamil Nadu invoking the powers contemplated under the proviso to Section 17 of the Prevention of Corruption Act, 1988 to exercise the powers

of investigation and arrest in connection with any case for that matter arisen under the Prevention of Corruption Act, 1988 but only in a case where

the arrest of officers belonging to Groups A and B, formerly in the pay scale of Rs. 3,500/- and now in the pay scale of Rs. 11,100/-, shall not be

arrested without warrant of arrest issued by the competent Judicial Magistrate. In other words, it is only the District Superintendent of Police who

has been empowered u/s 17(c) of the said Act can effect arrest without warrant those officers belonging to Group A and B.

11. As general power of investigation under arrest with the specific exclusion of the power of arrest of certain category of employee of

Government without warrant has been contemplated in those two G.O"s., the petitioner being a public servant cannot contend that the aforesaid

G.O"s would not apply to the public servants who are not Government servants. It is held emphatically that those two G.O"s. do apply to the

public servants who are not Government servants also but the Government servants working in Group A and B in the maximum pay scale of above

Rs. 11,100/- shall claim exemption from the purview of the power of arrest by the inspector of police attached to the Directorate of Vigilance and

Anti-Corruption as referred in those two G.O"s.

12. The court finds that the respondent police in this case has got ample power as per the authorisation made by the Government of Tamil Nadu in

G.O.Ms. No. 269 dated 04.06.1990 and G.O.Ms. No. 15 dated 19.02.2003 not only to investigate the case under the Prevention of Corruption

Act, 1988 as against the accused petitioner but also to arrest him without warrant.

13. In view of the above facts and circumstances, the plea for discharge on the aforesaid premises is found not sustainable and therefore the said

plea stands dismissed. Though the trial court has not adverted to the actual point in issue arisen in this matter, the ultimate decision to reject the plea

for discharge stands confirmed and the revision is dismissed. The observations made herein for the purpose of disposal of the plea for discharge

shall not have bearing on the merit of the case.