

State Vs K.P. Jai Xavier and Others

Court: Madras High Court (Madurai Bench)

Date of Decision: Nov. 4, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 161(3), 162, 173(2), 197(1)

Penal Code, 1860 (IPC) â€” Section 120B, 420, 463, 464, 468

Prevention of Corruption Act, 1988 â€” Section 13(1), 13(2)

Hon'ble Judges: S. Palanivelu, J

Bench: Single Bench

Advocate: P. Kandasamy, Government Advocate [Crl.side] [in both Crl.R.Cs.], for the Appellant; S. Shanmugavelayudham, for M/s. T. Kokilavane [for R1 to R3] and Mr. R. Anand [for R4 to R7] in Crl.R.C. No. 224 of 2011 and Mr. P.T.S. Narendravasan in Crl. R.C. No. 226 for 2011, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Honourable Mr. Justice S. Palanivelu, J.

The petition filed by the respondents/accused 1 to 3 for discharging them from the case in brief is

as follows:

1.(a) The petitioners 1 to 3 are the accused 1 to 3, were working as Executive Engineer, Assistant Executive Engineer and Junior Engineer

respectively in the Tirunelveli City Municipal Corporation during the relevant period to this case and one Tr.R. Raghunathan, who was working as

City Engineer in the said Corporation who is in superior rank to the Executive Engineer and his subordinates in the Said Corporation, He is the

head of the Engineering Section in the said Corporation.

1.(b) In the police report filed u/s 173(2) Cr.P.C., the Inspector of Police, Vigilance and Anti-Corruption, Tirunelveli had levelled charges for the

offences u/s 120-B, 420, 468 and 471 I.P.C. against all the eight accused and a charge for the offence punishable u/s 13(2) r/w Section 13(1)(d)

of Prevention of Corruption Act, 1988 against A1 to A3, that All the charges levelled are found to have been based merely on surmises and

conjectures and are found to be absolutely groundless, that even if the allegations in the police report are taken at their face value, they do not

make out the ingredients of the offences for which charges have been levelled therein, that the charges u/s 468 and 471 I.P.C., are found to be the

outcome of gross misconception of law and facts and that neither the allegations contained in the police report nor in the statement of witnesses nor

in the other documents relied on by the prosecution make out the ingredients of the offence of forgery as defined u/s 463 and 464 I.P.C., which is

a sine qua non for attracting Section 468 I.P.C.

1.(c) There is absolutely no scope for a charge for the offence of "forgery for purpose of cheating" punishable u/s 468 I.P.C which is just an

aggravated form of forgery, that even if all the mens rea and overt acts for the offence punishable u/s 468 I.P.C are presumed to be true, they do

not make out the ingredients of the said offence and that the charge u/s 468 and 478 I.P.C are found to have been levelled not only without any

basis but also quite contrary to the facts ex-facie available in the documents relied upon the prosecution.

1.(d) The fundamental allegation upon which the prosecution has found its entire case is that A6 and A7 recorded false measurements in the

Measurement Books as if earth and gravel had been filled in layers of 15 cm thick (each layer 15 cm thick) watered and consolidated layer by

layer but without actually doing this work as found in the Measurement Books, that this fundamental allegation itself stands disproved by Section

161(3) Cr.P.C statement of Mr. R. Regunathan, formerly City Engineer, Tirunelveli City Municipal Corporation, who found to have stated that he

supervised the Tirunelveli New Bus-Stand works from 15.10.2001 onwards, that in the same statement he further stated as follows: "nkW;go

xg;ge;jf;fhUU; xt;btH 15 br.kPl;lUf;Fk; gtu; nuhyiu gad;gLj;jp/ jz;zPu; moj;J/,Wf;fk; bra;Jjhd; nkW;go gs;sk; epug;g[k; ntiyia bra;jhu;." This

situation of facts unmistakably reveals that the measurements/entries recorded by A6 and A7 are not false one.

1.(e) The technical report dated 2.8.2004 of witness No. 22 Mr. A. Rampal Singh does not improve in any manner the above said position of the

prosecution case, that this report is nothing but a self-serving evidence generated for the purpose, that the Technical Report, being hit by Section

162 Cr.P.C., would be totally inadmissible in evidence during trial. The said Rampal Singh, being not an expert, his statement or report would not

fall under the category of "expert's evidence or expert's opinion.", that it is realised from his report that he has not carried out any test for

ascertaining the percentage of compaction attained by the filled up earth, that Mr. A. Rampal Singh has not stated anywhere either in his report or

in his statement as to on what scientific basis he excepted, that he has stated in his report that the measurements taken during his site inspection and

verification during July 2004 tally with the measurements recorded in the Measurement Books during 2001 and relied on for payments, that the

fact that there was no variation in the depth of earth filling even after 3 ½ years of its formation indicates that the filled up the earth has not sunk

even a centimetre in the course of this 3 ½ years and that despite this, the investigating agency for reasons best known to it has failed to take any

effort to ascertain the percentage of compaction attained by the filled up earth by any scientific methods and to bring before the Court the outcome

of such efforts to support its case.

1.(f) It is significant to note that Mr. Rampaul Singh has not stated in his report that the compaction made is far below the required compaction,

that he has also not stated that the filled up earth has sunk at any place in the entire extent of 19 acres of filled up area in the Bus Stand, that the

entire Bus Stand having 19 acres of area till 2004, that is even after the elapse of 3 ½ years from its formation, is a sufficient proof that the filled

up earth has attained full and complete compaction, that the New Bus Stand was put into operation from March 2003, then onwards more than

750 buses get in and out of the bus stand every day; the bus stand receives a large flow of water; heavy rains have sunk into the filled up earth after

its formation, that inspite of all these factors the filled up earth has not sunk at any place till today and that if it has sunk at any place, the

investigating agency which after a long and inordinate delay has filed its final report only in February 2010, would not have failed to bring such

events into evidence to support.

1.(g) In the police report, "forgery" is alleged to have been committed for the purpose of cheating and ultimately "cheating" and "criminal

misconduct by public servants" are alleged to have been accomplished by "using as genuine the forged documents", "cheating" and "criminal

misconduct by public servants" being consequential offences and therefore, as things stand, if forgery goes, the consequential offences of "using as

genuine the forged documents", "cheating", and "criminal misconduct by public servants" cannot stand as they are intimately connected with each

other, that if all the mens rea and overt act alleged in the police report against A1 to A3 in support of the charge for the offence punishable u/s

13(2) r/w Section 13(1)(d) of the P.C. Act, 1988 are presumed to be true, they do not make out the ingredients of the said offences and that A1

to A3 are public servants, previous sanction of the Government of Tamilnadu u/s. 197(1) of Cr.P.C. is mandatory for a prosecution against them

for the alleged offences u/s 120-B, 420, 468 and 471 I.P.C.

1.(h) It is settled law that charge for an offence can be framed against an accused only when the available materials arouse a strong and not a mere

suspicion as to the commission of that offence as well as the involvement of the accused therein, that even in cases, where two views are possible,

it is settled law that the view favourable to the accused has to be followed, that the criminal prosecution instituted against A1 to A3 in this case is

wanting in bona-fide and is frivolous, vexatious and rather oppressive.

2. In the counter filed on behalf of the respondent, it is stated as follows:

2.(a) The materials in the form of oral as well as documentary evidences are sufficient to establish the charges levelled against the accused, that it is

not correct to say that the allegations in the police report do not make out the ingredients of the offences, that there is sufficient materials to make

out the charges against the accused even as per the averments stated in the police report, that the available materials submitted along with the 173

Cr.P.C. report are sufficient to frame charges u/s. 468 and 471 I.P.C., that the allegations contained in the police report and in the statement of

witnesses and the documents i.e., the measurements books and other documents relating to the contract work done in the new bus stand would

show that the entries made in relation with the measurements of works done stage by stage in the measurement books are false, due to this act the

accused are liable for making false documents, so the ingredients of the offence forgery as defined in Section 363 is made out.

2.(b) It is not correct to say that the allegations in the entire prosecution records would not bring the case of making false documents which

amounts to forgery, that after the criminal conspiracy entered into between the accused A1 to A8, false entries were made in the measurement

books based upon the bills were prepared, passed and the amount as per the calculations made as if the works were done was disbursed to A8

the contractor, that the averments whether the ingredients of the offences u/s 468 and 471 are made out or not can be decided only after recording

of the evidence and after the analysis of the contents of the documents alleged to have been forged after let them in evidence by marking as exhibits

on the side of the prosecution.

2.(c) Witness No. 21 Mr. A. Raghunathan"s statement would show that he never check measured the work done and there is no records to show

that watering and consolidation work in the filled up layer of each 15 cm thickness were done by the contractor, in this circumstances the

presumption is he never supervised the work by his personal inspections on the spot during the execution of the work and so his version spoken in

his statement that ""nkw;go xg;ge;jf;fhuu; xt;bthU 15 br.kPl;lUf;Fk; gtu; nuhyiu gad;gLj;jp/ jz;zPu; moj;J/,Wf;fk; bra;Jjhd; nkw;go gs;sk; epug;g[k;

ntiyia bra;jhu;."" cannot be taken into account and it is to be ignored.

2.(d) Witness No. 22 Tr. A. Rampaul Singh is an Executive Engineer belongs to P.W.D., at the relevant point of time worked as Executive

Engineer in the Directorate of Vigilance and Anti-Corruption, Chennai on deputation, that when there is a technical expert available in the

Headquarters of DVAC itself, it is not necessary to address the Chief Engineer, P.W.D., Chennai, to nominate some other officer for his assistance

in technical matters during the investigation of a case, that whether the technical report of Witness No. 22 Tr. A. Rampaul Singh has stated while

testing upon the earth by making pits he found the earth is very loose can be removable even by fingers itself without applying much force and that

in these circumstances to ascertain the compaction, it is not necessary to test the earth with scientific methods. The non mentioning of the fact by

Mr. Rampaul sing that there are 2 or 3 different coloured layers of earth visible on the vertical surface of the trial pits and what scientific basis he

expected are not at all a ground to suspect his report.

2.(e) The case of the prosecution is that the work was not done as per the conditions of the contract so the earth has not sunk in the course of this

3 ½ years would not establish the fact watering and compaction were done during the execution of the work, that the report would show that

there is no sunk of earth in the filling area where he made tests in the trial pits in 2 or 3 places, that there is sufficient materials to prove that the

measurements / entries recorded in the measurement books are false and relied on that payments were made to the contractor by the Tirunelveli,

City Municipal Corporation, that according to the police report it reveals that for getting pecuniary advantages the accused A1 to A7 committed

violations in relation to the entry of the actual measurements of the works done in the Measurement Book the false measurements entered in the

Measurement Book and relied upon the bills were prepared and money for the work is disbursed to the contractor and for that the said act, the

accused are liable for falsification of accounts for the purpose of cheating.

2.(f) There is sufficient evidence to show that the accused A1 to A3 has committed an offence punishable u/s 13(2) r/2 13(1)(d) of the Prevention

of Corruption Act 1988, that due to the several act done by the accused A1 to A3 for wrongful gain it can be presumed that the acts were done in

order to get pecuniary advantages for themselves, that a charge of criminal conspiracy u/section 120(B) strong suspicion regarding the commission

of the offence is sufficient, meeting of minds in relation to the act to be done can be presumed from the circumstances in which the offence is

committed, that the Non-mentioning of the provisions Section 197(1) which envisaged power to accord sanction in the sanction order is only an

omission, that it is mentioned in the Sanction Order in G.O.Ms. No. 253 dated 21.12.2009 that the Governor of Tamilnadu hereby accord

sanction for the prosecution of Tr. K.P. Jai Xavier, formerly Executive Engineer now City Engineer and Tr.G. Karuppasamy, Assistant Executive

Engineer, Tirunelveli Municipal Corporation of the said offences by a court to competent jurisdiction which would show that sanction was granted

for the prosecution of the accused.

2.(g) Available materials are more than sufficient to frame charges against the accused as per the provisions of law mentioned in the police report,

that it is not correct to state that the prosecution is initiated against the accused is not in a bona fide manner, that the power to discharge an

accused in a criminal case taken on file by the court on a police report should be exercised very sparingly and that to in the rarest of rare cases and

that the petition filed on behalf of the accused to discharge is devoid of merits and therefore it is liable to be dismissed.

3. In the rejoinder filed on behalf of the petitioners, it is stated as follows:

3. (a) In support of point of law urged in Para 7 touching Section 464 I.P.C. the petitioners rely on

1. State Vs. Parasram,

2. Md. Ibrahim & Ors v. State of Bihar & Anr. [2009 SAR (CrL.) 961 (S C)]

3. Guru Bipin Singh Vs. Chongtham Manihar Singh and Another,

3.(b) In support of the contention urged in Paras 25 & 26, the petitioner rely on

1. Gauri Shankar Prasad Vs. State of Bihar and Another,

2. Abdul Wahab Ansari Vs. State of Bihar Another,

3. Suresh Kumar Bhikamchand Jain Vs. Pandey Ajay Bhushan and Others,

3.(c) The tenor of the counter filed by the prosecution triggers an apprehension in the minds of the petitioners that the police report in this case has

been filed neither with a mere intention of carrying the law into effect nor in furtherance of justice but with an ill-will of harassing the petitioners.

3.(d) As regards the principles of to be kept in view while considering whether there is sufficient ground for proceeding against the accused the

petitioners invite the attention of this Court to the following decisions of the Supreme Court.

i. Union of India (UOI) Vs. Prafulla Kumar Samal and Another,

ii. Dilawar Balu Kurane Vs. State of Maharashtra,

iii. A. Mohamed v. State [2006 (2) L.W.CrL. 752 (M H C)]

iv. Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another,

4. After hearing both sides, the learned Chief Judicial Magistrate, Tirunelveli has allowed both the applications, discharging the petitioners and also

the accused who had not filed discharge petition, from the case. Hence, the State has preferred these revisions.

5. Point for Consideration:

The following are the gist of the charge against the accused:

Some irregularities and malpractice done in execution of the construction work of the new bus stand at Veinthankulam in Palayamkottai, Tirunelveli

District during 2000 to 2004. On a verification by way of the detailed enquiry, it came to light that A1 to A3 in collusion with A4 to A7, private

individuals and representatives of M/s. Consulting Engineering Services Ltd., Chennai and A8 contractor [Sreepathy Associates, Erode] who

executed the work, caused wrongful loss to the Government to the tune of Rs. 19,83,374.73.

6. Point:

7. Accused 1 to 3 were working as Executive Engineer, Assistant Executive Engineer and Junior Engineer respectively in Tirunelveli Municipal

Corporation. 8th accused is Managing Partner of the Contractor firm viz., Sreepathy Associates, Erode, who had taken the contract for formation

of the bus stand. A4 to A7 are the employees of private Engineering Consultancy. It is the allegation that A1 to A3 were entrusted with the duty of

supervising the works, that A3 has recorded the measurements in the Measurement Book and A1 and A2 have signed in the Measurement Books

for having checked the measurements recorded by A3. It is stated that they entered into a criminal conspiracy with A4 to A7 who are the

employees of A8 consultancy, to do an illegal act to commit the offence of cheating of public fund by illegal means, by preparing false documents

using them as genuine, in order to get pecuniary advantage for themselves and thus conspired together for such purpose and hence liable to be

punished u/s 120(B) I.P.C.

8. They are further alleged to have entered into a criminal conspiracy, fraudulently and dishonestly to cause wrongful loss to Tirunelveli Municipal

Corporation, A6 and A7 recorded false measurement/entries in the Measurement Book as if the earth and gravel had been filled in layer of 15 cm

thick (each layer) watered and consolidated layer by layer but without actually doing the work as found in the Measurement Book. By making

false entries in the Measurement Books, they have caused a pecuniary loss of Rs. 7,24,574/- to the said Corporation and thereby they are liable to

be punished for the offences of cheating and forgery punishable u/s 420 and 468 I.P.C. respectively.

9. In the course of the same transaction, A1 to A8 with the dishonest intention, used forged Measurement Books and the bills and caused the bills

for Rs. 7,24,574/- sanctioned and hence they are punishable u/s 471 I.P.C.

10. In the course of the same transaction A1 to A3 being public servants by corrupt and illegal means and by abusing their official position,

dishonestly and fraudulently did several acts at every stage in committing the offence of forgery and cheating in order to get pecuniary advantage

for themselves and thereby they have committed the offence of criminal misconduct punishable u/s 13(2) r/w 13(1)(d) of Prevention of Corruption

Act, 1988.

11. It is the first and foremost contention of the revision petitioner that the work was not done as per the specification contained in the contract that

when the earth was filled in the site for every 15 cm, the layer should be as per the percentage of compaction, that without carrying out the contract

by actually performing the work, all the accused conspired together, made false entries into the measurement books and got the bills sanctioned for

Rs. 7,24,574/-and hence they have caused monetary loss to the Tirunelveli Municipal Corporation.

12. In order to prove the charges, the prosecution placed much reliance upon the Super Check Report of one A.Rampal Singh, who was

examined u/s 161(3) Cr.P.C. as 22nd witness in this case. The total extent of site for the formation of bus stand is 19 acres in Veithankulam village

in Tirunelveli near Palayamkottai. The said witness has taken up certain tests to ascertain the quality of the work performed by the 8th accused. He

made two pits in different places in the site and observed in his report as follows:

5.1 Pit No. 1: The size of the first pit is 2.45 m x 1.50 m x 3.40 m (Depth). The initial level of the ground at this location before filling is 98.305 m

as per page 13 of level filed book No. 1/2000. The final level of the ground at this location after filling is 101.590 m as per page 25 of level filed

book No. 5/2002. So the depth of earth filling at this location is 3.285 m (i.e. 101.590 m - 98.305 m). It is observed that there is no variation in

the depth of earth filling at this location. But it is noticed that the earth filling to the depth of 3.285 m has not been laid in 15 centimetre layers. As

per the specifications the earth filling to this depth of 3.285 metre has to be done in not less than 22 layers of 15 centimetre thick earth. But at site

the entire filling has been done in three layer only. So it may be concluded that the work has not been carried out as per agreement to the required

specifications.

5.2 Pit No. 2: The size of the second pit is 1.65 m x 1.50 m x 1.55 (depth). The initial level of the ground at this location before filling is 99.505 m

as per page 45 of level filed book No. 1/2000. The final level of the ground at this location after filling is 100.970 m as per page 57 of level filed

book No. 5/2002. So the depth of earth filling at his location is 1.465 m (i.e. 100.970 m - 99.505m). it observed that there is no variation in the

depth of earth filling. But it is noticed that the earth filling to the depth of 1.465 m has not been laid in 15 centimetre layers. As per the

specifications the earth filling to this depth has to be done in not less than ten layers of 15 centimetre thick earth. But at site the entire filling has

been done in two layers only. Also in two places in this pit the filled up earth is very loose and the earth is removable even by fingers itself with out

applying much force. So it may be concluded that the work has not been carried out as per agreement to the required specifications.

5.3. As per trial pits analysis it is deserved that the compaction made with two or three layers will be for below the required compaction of 95%

Due to the low compaction the filled up earth will sink in due course of time causing damages to the works such as roads. Pavements, bus bays,

platforms, passenger shed and other structures etc., provided over this filled up earth and thus incurring frequent expenditure on repair and

maintenance works. So it is opined that the entire amounts paid for refilling under agreement item No. 33 may be considered as a loss to the

Government.

13. The witness is of the opinion that the earth filling to the depth is not as per specification in both the test pits and as per the measurement and

that the filling of the depth in Pit No. 1 should consist not less than 22 layers of 15 centimetre thick earth. But he could see only two layers. As per

his opinion even the above said layers were below the required compaction of 95%. He has also expressed his view that if such compaction was

done it would lead to sink in due course in various parts of the bus stand which are to be used for various purposes viz., pavements, bus bays,

platforms, passenger shed and other structures etc.,

14. The witness inspected the site on 14.7.2004. The actual work was done in the site in the year 2004. Even after three years, nobody is able to

find out damage nor sinking in the site. In this case, charge sheet was laid in 2010 and at that time also there was no damage etc., in the site.

Hence, it could not be stated that the work was not upto the specifications.

15. The witness has also observed that in two places in Pit No. 2, the earth was very loose and the same is removable even by fingers itself without

applying much force. It is not so in Pit No. 1. Witness No. 22 was an Executive Engineer at the relevant period who was deputed to the

Directorate of Vigilance and Anti Corruption, Chennai, and was working as full time officer at the head quarters of the investigating agency at

Chennai. It is contended by the respondents" side that usual practice of the investigating officers addressing the Chief Engineer of the Public Works

Department, Chennai for nominating a suitable officer of his choice for inspecting the site is deviated. It is also argued that he is not an expert and

he is not competent to offer any opinion, besides contending that for ascertaining the compaction, no scientific examination was adopted by him.

Apart from physical verification of number of layers available in the site the witnesses also tested the quality of the compaction by utilising the

fingers. Certainly, there could be a scientific test for ascertaining the quality of the components or materials used for filling up the earth. Such

scientific method of approach was not adopted by the witness. Ascertaining the quality of compaction by fingers is not at all a scientific method and

it is doubtful whether the same would help the prosecution in sustaining the charge.

16. As far as the number of layers expected to be contained in the earth filling is concerned, the Court below has expressed the opinion that the

compaction was not made in 2001 and January 2002 and hence it is remote to expect the every layer of 15 cm could be distinguished. The said

opinion appears to be reasonable. It is also observed in the order challenged that the sand would have been obtained from various quarries and the

colour of the layers may look different. It is also proper observation.

17. Whether the report of opinion of the witnesses could be supported by other materials at the time of trial is another point to be borne in mind.

18. Witness No. 21 is one R. Regunathan who was working as Superintending Engineer in the office of the Commissioner of Municipal

Administration, Chennai. During the relevant period he was serving as City Engineer in the Tirunelveli Municipal Corporation from 26.9.2001 to

4.6.2003. He had to inspect the works which would cost more than Rs. 10 lakhs. In his statement recorded u/s 161(3) Cr.P.C., he has stated that

from 15.10.2001 onwards he was supervising the new bus stand formation work, that the contractor made the earth filling by spreading water and

used power roller and made compaction for every layer of 15 cms, of course there is no record to show the same. Witness No. 21 was the City

Engineer of Tirunelveli Municipal Corporation. He is of the opinion that A8 has carried out the work as per specification. His statement turns

contra to that of witness No. 22. But the prosecution relies upon the statement of report of witness No. 22. There could be no justification to

ignore the statement of Witness No. 21 as to the compaction for the layer of every 15 cms. At the time of trial there would be every possibility for

the Court to place reliance upon the words spoken to by witness No. 21. Hence, there could be no forgery nor cheating on the part of the

accused. The other consequential offences of using forged documents as a genuine one and criminal misconduct by the accused would not arise.

The version of witness No. 21 indicates that the work was done as per the specifications contained in the contract. The Court may also record a

finding to that effect. There would be no ground for ignoring nor discarding his evidence. Hence there is no scope for making false entries nor

forging the documents.

19. In the light of the above said observation, this Court is of the considered view that there is no sufficient materials to frame charges against the

accused.

20. It is further contended by the accused side that necessary sanction u/s 197(1) Cr.P.C. is wanting, since A1 to A3 are public servants. But the

Secretary to Government, Municipal Administration of Water Supply (ME-4) Department, Government of Tamil Nadu, Chennai-9 has given a

statement that after applying his mind and satisfying himself he accorded sanction for prosecution of A1 and A2. Hence the contention that proper

sanction has not obtained has no legs to stand.

21. The learned Government Advocate (Crl. Side) would rely upon a Full Bench decision of the Supreme Court in 2005 (Crl.) SCC 415 [State of

Orissa v. Debendra Nath Panthi] in which it is held that the law is that at the time of framing charge or taking cognizance the accused has no right

to produce any material, that no provision in the Code of Criminal Procedure, 1973 grants the accused any right to file any material or document at

the stage of framing of charge and that the said right is granted only at the stage of trial. The observations are as under :

18. ...The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we

accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now.

It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means

hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more.

The expression "hearing the submissions of the accused" cannot mean opportunity to file material to be granted to the accused and thereby

changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by

the police.

By this decision, earlier decision of the Supreme Court in Satish Mehra Vs. Delhi Administration and Another, was overruled.

22. The learned Senior Counsel Mr. S. Shanmugavelayutham appearing for A1 to A3 would place reliance upon certain decisions of the Supreme

Court and this Court for supporting his contention.

(i) As to Discharge of Accused:

23. As far as the discharge of the accused from the case is concerned, the Supreme Court has expressed its view in Union of India (UOI) Vs.

Prafulla Kumar Samal and Another, that 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. In the case on

hand, in the presence of the statement of witness No. 21, the Court has got reasonable suspicion over the statement of witness No. 22. Hence,

discharge of the accused is proper.

24. The view expressed in Prafulla Kumar Samal's case (supra) has been re-stated by the Supreme Court in Dilawar Balu Kurane Vs. State of

Maharashtra, . It is also observed that the Judge cannot act merely as a post office or a mouth piece 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.

25. The decision in Prafulla Kumar Samal's case (supra) has also been followed by this Court in 2006 (2) L.W.Crl.752 [A. Mohammed v. State

rep. By The Deputy Superintendent of Police, CBI, SCB Madras.]

(ii) as regards Forgery and using of Forged Documents as genuine:

26. In State Vs. Parasram, it is held that where the prosecution case is not one of subsequent alteration of the document but is essentially one of

making initial incorrect and unauthorised entries in the revenue record the marking of such entries cannot be said to constitute the making of false

document u/s 464 I.P.C.

27. In Guru Bipin Singh Vs. Chongtham Manihar Singh and Another, the Apex Court has observed that if forgery goes, cheating cannot stand. So,

the complaint does not make out a case under any of the three Sections, namely 420, 465 and 468. It may be pointed out that 468 is intimately

connected with 420 and 465 I.P.C.

28. The same view has been taken by the Supreme Court in 2009 SAR Crl. 961 [Md. Ibrahim & Ors v. State of Bihar & Anr.]

(iii) As to the appreciation of expert evidence:

29. This Court in 2010 (3) M.L.J. 625 [K. Sulochana v. State rep. by Inspector of Police] has held that it is not desirable to impose a conviction

solely on the evidence of expert without corroborative evidence either direct or circumstantial. In this decision the Court has followed the following

decisions of the Supreme Court.

1. 1996 SCC (Cri.) 792 [S. Gopal Reddy v. State of A.P.]

2. Magan Bihari Lal Vs. The State of Punjab,

3. Ram Chandra and Another Vs. State of Uttar Pradesh,

4. Ishwari Prasad Mishra Vs. Mohammad Isa,

5. Shashi Kumar Banerjee and Others Vs. Subodh Kumar Banerjee since deceased and after him his legal representatives and Others,

6. AIR 1967 SC 1326 : 1967 (2) A LT 38 [Fakruddin v. State of M.P.,]

30. The same opinion has been rendered by this Court earlier in 2003 M.L.J.217 [K. Dhanasekaran v. State by Inspector of Police, C.B., C.I.D.,

Erode].

(iv) with respect to conviction of non appealing accused:

31. In this case, A1 to A3 and A8 have filed petitions for discharge and the Court below has discharged them and also the other non petitioning

accused viz., A4 to A7. It is legally permissible. The learned Senior Counsel for respondents has cited the decisions of the Supreme Court for this

proposition. It is held by the Supreme Court in Hari Nath and Another Vs. State of U.P., that the conviction and sentence of non-appealing

accused cannot be sustained as the findings are inter-dependant and inextricably integrated.

32. A Full Bench of the Supreme Court in its decision Kameshwar Singh and Others Vs. State of Bihar, has held that when other accused are

granted benefit of doubt, the non-appealing co-accused are also entitled for the same grant and consequential acquittal. The same view has been

expressed by the Division Bench of this Court in 1999 (1) L.W. Cri.11 [Sobitharaj /6others v. State rep. by Inspector of Police, Kanyakumari

District.].

33. The learned Senior Counsel also submits that not only at the time of trial such benefit will go to the accused but also at the time of interlocutory

proceedings, such as, quashing of criminal proceedings against the accused or seeking for discharge from the case. In Ashok Chaturvedi and

Others Vs. Shitulh Chanchani and Another, the Supreme Court while quashing the private complaint laid against accused persons, it was also

quashed the criminal proceedings against other accused, who did not prefer special leave petition.

34. Following the above said decisions, this Court is of the view that even though A4 to A7 accused have not preferred application for discharge

they are entitled to get the benefit when other co-accused are receiving the same.

35. Mr. R. Anand, learned counsel appearing for the accused 4 to 7 would cite the decision of Prafulla Kumar Samal's case supra, in which the

Supreme Court has formulated the Guidelines and principles in the matter of discharge of the accused from a case followed by Courts. They are as

follows:

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) That the Judge while considering the question of framing the charges u/s 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.

(4) That in exercising his jurisdiction u/s 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act

merely as a Post office or a mouth-piece 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.

36. A conspectus of the materials available in this case in the light of the illuminating judicial pronouncements of the Supreme Court, it is concluded

that the accused are entitled to discharge from the case. This Court does not find any valid ground to disturb the findings of the court below. The

order of the lower Court is not suffering from any infirmity, legally or factually. It has to be confirmed and it is accordingly confirmed. These

revision petitions suffer dismissal.

37. In the result, both the Criminal Revision Cases are dismissed.