

(2011) 08 MAD CK 0323

Madras High Court

Case No: Criminal R.C. No. 106 of 2009

A. Arunkumar and L. Santhosh
Kumar

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 22, 2011

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 227, 228, 239
- Customs Act, 1962 - Section 132, 136
- Penal Code, 1860 (IPC) - Section 120, 120(B), 201, 415, 420
- Prevention of Corruption Act, 1988 - Section 13(1), 15
- Right to Information Act, 2005 - Section 6

Hon'ble Judges: K.N. Basha, J

Bench: Single Bench

Advocate: K. Subramanian, SC for R.C. Paul Kanagaraj, for the Appellant; N. Chandrasekaran, Special Public Prosecutor for CBI, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

K.N. Basha, J.

The Petitioners, who have been arrayed as A4 and A5 out of five accused, have come forward with this revision challenging the order of the learned II Additional District Judge, Special Court (CBI Cases) (Full additional charge), Coimbatore, dated 19.12.2008 made in C.M.P. No. 243 of 2008 in C.C. No. 3 of 2008 dismissing the petition filed for discharge u/s 239 Code of Criminal Procedure

2. The First Information Report in this case was registered on the basis of source information, in which, the Petitioners were implicated for the alleged offences under

Sections 120(b) r/w 420 r/w 511 Indian Penal Code, 468, 471 and 201 IPC, Section 15 of the Prevention of Corruption Act, 1988 and under Sections 132 and 136 of the Customs Act, 1962. On completion of the investigation final report was instituted on which the lower court took cognizance.

3. The first Petitioner/A4 was working as Appraiser of Customs and the second Petitioner/A5 was working as Senior Tax Assistant at Inland Container Depot (ICD), Irugur, Coimbatore during the relevant period.

4. The sum and substance of the prosecution case is that A1 purported to be the Exporter along with A2, who was his employee, floated fictitious firms and with the help of A3 created false and fabricated documents and prepared two sets of shipping bills one containing actual quantity and value and another with inflated quantity and value and colluded and conspired with A4 and A5 to cheat the Customs Department by making an attempt to claim excessive Customs Duty Drawback from ICD, Irugur, Coimbatore.

5. The specific allegation against A4 and A5 is to the effect that A4 inspected the consignment and certified by signing the GR Form (Guaranteed Receipt Form) inspite of knowing that the quantity of weight, FOB Value and market value were inflated in one set of shipping bills and whereas A5 alleged to have made false entries in the customs document, viz., Shipping Bills Register and Customs Security Register in respect of inflated weight, FOB Value and market value and subsequently, after the detection of the fraud, he had erased the entries in the said Registers. It is further alleged that in view of the above said allegations, A4 and A5 have caused disappearance of certain evidence in respect of the offences committed, with the intention of screening the offender.

6. Mr. K. Subramaniam, learned Senior Counsel for the Petitioners as well as learned Special Public Prosecutor for CBI Cases brought to the notice of this Court that during the pendency of this revision, the learned trial Judge framed charges against all the accused including the Petitioners, who have been arrayed as A4 and A5. The learned Senior Counsel for the Petitioners produced a true xerox copy of the charges framed against the accused. A perusal of the said true xerox copy of the charges framed against the accused reveals that the following charges have been framed against the accused:

Charge No.	Accused	Offences under Section/s
I	A1 to A5	120-B r/w 420 r/w 511 IPC, 468, 471 and 201 IPC ; Section 15 of the Prevention of Corruption Act, 1988 and Sections 132 and 136 of the Customs Act.

II	A1 and A2	468 IPC
III	A1 and A2	468 r/w 471 IPC
IV	A1 to A3	511 r/w 420 IPC
V	A1 and A2	201 IPC
VI	A4 and A5	201 IPC
VI	A1 to A3	132 of the Customs Act
VIII	A4 and A5	136 of the Customs Act
IX	A4 and A5	15 of the Prevention of Corruption Act, 198

7. Mr. K. Subramaniyan, learned Senior Counsel for the Petitioners/A4 and A5 vehemently contended that there is No. material available on record to implicate the Petitioners for the offences alleged against them and the learned trial Judge without considering the contentions raised in the petition for discharge and without any materials available on record dismissed the application for discharge on the basis of presumption by merely referring the case laws in respect of the scope of provisions under the Code of Criminal Procedure for discharge of the accused and put forward the following contentions:

(1) There are No. two sets of documents as alleged by the prosecution and the prosecution failed to bring on record the genuine and the alleged fabricated set of shipping bills.

(2) There is No. material available on record to show that A4 endorsed two sets of shipping bills one with actual value and another with inflated value and the evidence available on record discloses that A4 signed only in one set of G.R.Forms.

(3) The G.R. Form is not mandatorily required for processing and sanctioning the Customs Duty Drawback.

- (4) There is No. material available to show that the alleged manipulated and fabricated shipping bills were produced for assessment or examination to A4.
- (5) There is No. material available on record to show that neither A4 nor A5 is the custodians of the shipping bills and as such, there is No. chance for removal of shipping bills or creating any false documents.
- (6) The G.R. Forms said to have been signed by A4 contains the actual value and not the inflated value.
- (7) There is No. material available on record to establish that A5 erased the original entries made in the Customs Shipping Register and the Security Register which were made on the basis of the inflated weight and corrected the same to the actual value of the weight.
- (8) A3, who has given a confessional statement u/s 164 Code of Criminal Procedure has not implicated the Petitioners/A4 and A5.
- (9) There is No. material either through the statements of witnesses u/s 161 Code of Criminal Procedure or documents produced by the prosecution to prove the allegations against A4 and A5.
- (10) The statements recorded by the Investigating Officer from P.Ws.18 to 26, the Preventive Officers at Cochin Customs House, u/s 161 Code of Criminal Procedure confirm the export of actual goods in actual quantity and value.
- (11) From the materials available on record, there is absolutely No. scope for framing the charge of conspiracy u/s 120(b) Indian Penal Code as there is absolutely No. material to show that there was any agreement between the main accused/A1 to A3 and A4 and A5 to do an illegal act by illegal means which is the very quintessence of the offence of conspiracy and there is also No. material to show that A4 and A5 were having knowledge about the alleged illegal acts of A1 to A3.
- (12) A departmental proceeding was initiated against A4 on the basis of the very same and identical charges as that of the charges in this criminal case and it was held that the charges were not proved and therefore, the criminal proceeding is also liable to be quashed.

8. The learned Senior Counsel for the Petitioners would also place reliance on the following decisions in support of his contentions:

- (1) [Sajjan Kumar Vs. Central Bureau of Investigation](#), ;
- (2) [State of Madhya Pradesh Vs. Mohanlal Soni](#), ;
- (3) [Suresh Budharmal Kalani @ Pappu Kalani Vs. State of Maharashtra](#), ;
- (4) V.R. Nedunchezian v. State reported in 2000 (106) CRLJ 976;
- (5) P.S. Rajya v. State of Bihar reported in 1996 SCC (Cri.) 897; and

(6) A. Mohammed v. State reported in 2007 (207) ELT 202.

9.0. Mr. N. Chandrasekaran, learned Special Public Prosecutor for CBI Cases, would contend that there is No. illegality or infirmity in the impugned dismissal order of the learned trial Judge dismissing the petition filed by the Petitioners for discharge. It is submitted that A1 exported the goods in the name of fictitious firms, namely, M/S. Ayyappan Industries, M/S. Shri J.S. Babu Inc. and M/S. Swamy Metal Industries and prepared the fabricated documents, namely, shipping bills, etc. with the help of A3. It is submitted that at the time of submitting the Shipping Bills for allotment of Shipping Bill Number at ICD, Irugar, Coimbatore, A1 to A3 in collusion with A4 and A5 made entries in the shipping bill register with higher value and weight, but actually they produced the shipping bills before the Customs officials with less value and weight by the employees of A1 and the same were exported. A4 and one Shri. Bindu Saran, Examiner, appraised and endorsed their remarks on the shipping bills. It is further submitted that after receiving the transference copies of the shipping bills from Gate Way Port Cochin, it was made entry in the shipping bills register and at that time, it was noticed that the value and weight were not tallying. In shipping bill register, high value and high rate were mentioned, whereas, in transference copy, No. value and No. weight were noticed. Thereafter, it was rectified as per the direction of A4 by using the white fluid in the register.

9.1. The learned Special Public Prosecutor would submit that A1/Exporter entered into a criminal conspiracy with A4 and A5 and made an attempt to claim excessive Customs Duty Drawback by allowing 40 shipping bills to export the stainless steel in the name of three fictitious firms. It is further contended that two sets of G.R. Forms were prepared, one with actual value of export and sent to the bank for realization and another inflated one to RBI for records. When such malpractice was exposed, A4 removed and destroyed the copies of shipping bills and G.R. Forms to be retained by the Department and also got the shipping bills register, etc., amended in connivance with A5. By the above misconduct, A4 and A5 favoured A1 and A2 to claim excessive Customs Duty Drawback to the tune of Rs. 2.50 Crores with dishonest intention.

9.2. It is further submitted by the learned Special Public Prosecutor that A4 in connivance with exporter failed to carryout necessary checks in detecting the manipulation of export documents and signed the G.R. Forms, shipping bills and gave "Let Export" order for two different values and thereby attempted to defraud the Government in order to gain ineligible claim of Customs Duty Drawback.

9.3. The learned Special Public Prosecutor would contend that the evidence of L.W.31, Shri. V. Vijayakumar, and other Customs officials clubbed with documentary evidence like shipping bills, extract of shipping bill register, G.R. Form, etc., would prove the offences committed by the Petitioners/A4 and A5.

9.4. The learned Special Public Prosecutor would contend that as per the ruling of the Hon"ble Apex Court at the stage of framing charges, the trial court need not look into the defence documents or the defence of the accused and prima facie evidence is sufficient to frame the charges. It is contended that the decision rendered by the Hon"ble Apex Court is to the effect that the test is whether there was sufficient ground to proceed and not whether there is sufficient ground for conviction and when there was prima facie evidence, even though the person charged of an offence in the complaint might have a defence, the matter had to be left decided by the trial Court. It is submitted that the Hon"ble Apex Court held that at the stage of framing charge, the duty of the Court is only to evaluate the materials and documents to find out whether the facts emerging there from disclose all the ingredients of the alleged offences and the probative value of the materials on record cannot be gone into.

9.5. The learned Special Public Prosecutor would place reliance on the following decisions in support of his contentions:

- (1) [Nirmaljit Singh Hoon Vs. The State of West Bengal and Another](#) ;
- (2) [State of Bihar Vs. Ramesh Singh](#) ;
- (3) [Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others](#) ;
- (4) [Niranjan Singh Karam Singh Punjabi and Others Vs. Jitendra Bhimraj Bijja and others](#) ;
- (5) [State of Jammu and Kashmir Vs. Sudershan Chakkar and another](#) ;
- (6) State Anti Corruption Bureau, Hyderabad and Anr. v. P. Suryaprakasam reported in 1999 SCC (Cri.) 373;
- (7) State of Orissa v. Debendra Nath Padhi reported in 2004 (8) SC 568; and
- (8) State of Delhi v. Gyan Devi and Ors. reported in 2001 MLJ (Cri.) 117;

10. I have given my careful and anxious consideration to the rival contentions put forward by either side and scrutinized the entire materials available on record including the statements recorded u/s 161 Code of Criminal Procedure and perused the First Information Report, Charge sheet, the charges framed against the Petitioners/A4 and A5 along with other accused and the impugned order passed by the trial court dismissing the discharge petition filed by the Petitioners.

11. At the outset, it is to be stated that the perusal of the impugned order does not disclose that the learned trial Judge has considered the points raised for seeking the relief of discharge by the Petitioners/A4 and A5. It is pertinent to note that a perusal of the discharge petition reveals that the Petitioners have raised substantial grounds highlighting that there are No. two sets of documents as alleged by the

prosecution and it is contended that the prosecution failed to bring on record the alleged fabricated set of shipping bills. It is stated in the discharge petition that even as per the version of the prosecution actual goods with actual value and weight were exported properly and there is No. evidence to show that A4 endorsed two sets of shipping bills, one with actual value and another with inflated value. It is stated that there cannot be two sets of G.R. Forms with same serial number. Apart from such substantial grounds in respect of the crux of the charges alleged and framed against the Petitioners, it is also stated in the discharge petition that the original G.R. Form is not anyone of the documents required for processing and sanctioning Duty Drawback.

12. It is also highlighted in the discharge petition that the corrections were carried out in the shipping bill register only to the correct value and not for higher value and it was based on the actual value reflected in the Transference copy of the shipping bills received from Gateway Port of Cochin, where another copy of the Transference copy of shipping bill was retained. The said value is also supported by the important document of Bank Realization Certificate received from the bank, which is used for sanctioning Customs Duty Drawback claim. It is further stated in the discharge petition itself that A4 has nothing to do with the shipping bill register and A5 is to make entries in the shipping bill register and assign numbers of the shipping bills and further stated that the said shipping bills register is not a statutory document and it is purely for statistical purpose and in normal course of day-to-day work any correction can be carried out in the said Register by the clerk who make entries in the shipping bill register. The shipping bill register is never referred to for the purpose of processing duty drawback claim. Therefore, it is stated that both A4 and A5 have not committed any misconduct. It is also further stated that A4 is not the custodian of shipping documents and A4 and A5 are not entrusted with the duty of collecting the shipping bills or to keep the records. It is specifically stated in the discharge petition itself that there is No. evidence, either statement of witnesses or documents produced by the prosecution, to prove the allegation levelled against A4 and A5 to the effect that they have knowledge about the fabrication of documents by A1 and A2.

13. Yet another important ground raised in the discharge petition is to the effect that none of the witnesses in their statements recorded by the Investigating Officer u/s 161 Code of Criminal Procedure implicated A4 and A5 for the commission of the offences alleged against them and it is stated that the statements recorded from witnesses 18 to 26, who were Preventive Officers at Cochin Customs House, u/s 161 Code of Criminal Procedure confirmed the export of actual goods in actual quantity and value. It is seen that the Petitioners also presented a memorandum of written arguments u/s 314 Code of Criminal Procedure

14. However, inspite of raising substantial grounds, as already pointed out, the learned trial Judge has simply ignored and overlooked the said grounds raised by

the Petitioners and without assigning any valid reason for rejecting the said grounds passed the impugned order. The learned trial Judge need not undertake the exercise of elaborate discussions by conducting fishing and roving enquiry. But the learned trial Judge is entitled to sift the evidence in order to find out whether or not there is sufficient ground for framing the charges against the accused and during such exercise, the trial Judge is expected to assign reasons for rejecting the points raised by the Petitioners. But a perusal of the impugned order reveals the non-application of mind to the specific grounds raised by the Petitioners as the learned trial Judge has not assigned any reason for rejecting the said contentions except highlighting the case laws regarding the scope and power of the trial court to discharge the accused. The learned trial Judge in paragraph 2 narrated the grounds raised for discharge; paragraph 3 reflects the counter filed by the prosecution; in paragraph 4, the learned Judge framed the point for determination; in paragraph 5, it is stated that both sides were heard and records were perused. Thereafter, the learned trial Judge in the remaining paragraphs 6 to 9 cited the decisions of the Hon"ble Apex Court relating to the scope of discharge under Sections 227, 239 and 245 Code of Criminal Procedure. The learned trial Judge has not given any specific finding for the grounds raised in the discharge petition.

15. It is relevant to note that only in paragraph 7, it is observed by the trial court as follows:

7. In the instant case, the Respondent put up a specific case that the Petitioners fraudulently made attempts to claim duty drawback by manipulated shipping bills by adding the digit from the total quantity of the shipment. The Respondent/CBI in their final report as well as the statement of the witness highlighted that the accused persons have committed the offence...

16. After observing, as stated above, the learned trial Judge immediately referred the decision of the Hon"ble Apex Court. Finally at paragraph 11, the learned trial Judge concluded hereunder:

11. In the present case, from a plain reading of the statement of the witness, it is clear that the facts mentioned in the Final Report, taken on their face value has clearly made out a prima facie case against the Petitioners. It is also manifestly clear from the statement of the witnesses and from the Final Report that there is allegation set out against the Petitioners/accused and in support of the allegation the Respondent/CBI Police examined the witnesses and filed the statement of the witnesses.

17. At this juncture, it is pertinent to note that the learned Judge has not pointed out the statement of any particular witness implicating the Petitioners with specific allegations. The above said finding is not only vague, but also not based on materials available on record. Except rendering the above vague findings, there is absolutely No. discussion whatsoever in respect of the grounds raised by the

Petitioners in the impugned order. The learned trial Judge has not pointed out even a single piece of material either through the statements of any witnesses or through the documents produced by the prosecution to arrive at the conclusion that the prosecution made out a prima facie case for framing the charges against the Petitioners, who have been arrayed as A4 and A5.

18. It is needless to state that merely reproducing the principles laid down by the Hon"ble Apex Court is not sufficient and the principles should apply to the facts and materials available on record in the instant case.

19. The Hon"ble Apex Court in CCE v. Srikumar Agencies reported in 2009 (1) SCC 469 has held as follows:

4. ... Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated.

20. There is No. doubt that at the stage of framing of charge, the trial court cannot conduct a fishing and roving enquiry and to go into the probative value of the materials on record. However, the settled principle laid down by the Hon"ble Apex Court is to the effect that at the stage of framing charge, the trial court is entitled to evaluate the materials available on record by sifting and weighing the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused.

21. It is relevant to refer the latest decision of the Hon"ble Apex Court in [P. Vijayan Vs. State of Kerala and Another](#), . The Hon"ble Apex Court in the said decision has held as hereunder:

10. 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. Further, the words "not sufficient ground for proceeding against the accused" clearly show that Judge is not a mere Post Office to frame charge at the behest of the prosecution, but has to exercise his judicial mind to fact of case in order to determine whether a case for trial has been made out by prosecution. In assessing this fact, it is not necessary for the Court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the Court, after the trial starts. At the stage of Section 227, the judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused.

(emphasis supplied)

The Hon"ble Apex Court in the said decision has clearly made distinction between suspicion and grave suspicion.

22. The Hon"ble Apex Court in [Sajjan Kumar Vs. Central Bureau of Investigation](#), has held as follows:

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.

23. At this stage, it is pertinent to state that Mr. K. Subramaniyan, learned Senior Counsel for the Petitioners, produced the copies of the statements recorded u/s 161 of the Code of Criminal Procedure from the witnesses. If the said statements are perused on the touch-stone of the principles laid down by the Hon"ble Apex Court in the decisions cited supra, the irresistible conclusion would be that this is a classic case of No. material, as far as the Petitioners/A4 and A5 are concerned, and the allegations were made against the Petitioners on mere surmises and assumptions. It is to be stated that this Court is also constrained to state that even for raising such suspicion much less very strong suspicion, the prosecution has not produced a scrap of material either through statement or through any other document to make out a prima facie case against the Petitioners for framing the charges.

24. At this juncture, it is pertinent to note that even the prosecution is not able to pinpoint any definite and specific material available on record to substantiate its contention to the effect that there are sufficient grounds to frame the charges against the Petitioners. A perusal of the counter filed by the prosecution to the discharge petition as well as the written submissions made by the prosecution before this Court do not disclose any specific material available on record to make out a prima facie case against the Petitioners. The entire prosecution case is revolving around the production of two sets of shipping bills, one reflecting the genuine value and another reflecting the inflated value and weight. But the fact remains that even as per the admitted case of the prosecution the second set of the alleged fabricated shipping bills do not exist and therefore, there is No. question of throwing allegation against the Petitioners for accepting the two sets of shipping bills one containing correct value and another containing inflated value. It is further alleged that the Petitioners caused disappearance of those documents, for such allegation there is not an iota of material available on record.

25. At the risk of repetition, it is to be reiterated that in respect of the above said vital and specific allegation made against the Petitioners/A4 and A5, the prosecution is not able to pinpoint any specific material available on record. It is to be stated that the prosecution has come forward with certain vague averments in the counter to the discharge petition as well as in the written submissions made before this Court to the effect that the statement of Shri.V.Vijayakumar/L.W.31 and other Customs officials coupled with documentary evidence like shipping bills, extract of shipping bill register, G.R. Forms etc. would make out the offences as alleged against the

Petitioners. I am unable to countenance such contention of the prosecution for the simple reason that a perusal of the statement of witness Shri V. Vijayakumar/L.W.31, Superintendent of Central Excise (Technical), who was on deputation as Senior Intelligence Officer, Regional Unit, Coimbatore, discloses that he has not made a whisper about A4 or A5. On the other hand, it is stated by him that he has received the source information that the exporters, viz., the other accused, have indulged in forging documents with a view to claim fraudulent duty drawback and he has come to the conclusion that the other accused floated three fictitious firms. It is pertinent to note that a perusal of the statements of L.Ws.24 and 26/Preventive Officers at Cochin Customs House, would also reveal that they have confirmed the export of actual goods in actual quantity and value and further the documents relied on by the prosecution, viz., shipping bills, G.R. Forms, etc., contained only actual quantity and value. Therefore, by No. stretch of imagination, it could be stated that the said documents and the statements make out a prima facie case for the offences alleged against the Petitioners/A4 and A5.

26. Even in the earlier decision in [Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others](#), , the Hon"ble Apex Court has held as follows:

The truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the Code of Criminal Procedure, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of that offence.

The principle laid down by the Hon"ble Apex Court in the above said decision makes it crystal clear that a mere suspicion is not enough at the stage of framing charge against the accused and such suspicion should be very strong suspicion founded upon materials available on record to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged. But as far as the instant case is concerned, there is not an iota of material available on record even to raise a suspicion much less very strong suspicion. On the other hand, learned trial Judge without pointing out any specific material available on record by assigning a vague reason rejected the petition filed by the Petitioners for discharge. Therefore, this Court is of the considered view that the learned trial Judge without assigning any valid reasons and without pointing out any specific material available on record, simply brushed aside and overlooked the substantial points raised by the Petitioners for seeking the relief of discharge.

27. At this juncture, it is relevant to refer Section 415 Indian Penal Code for the offence of cheating which reads hereunder:

415. Cheating - Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, any which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

28. At this juncture, it is relevant to refer a decision of this Court in *Kunju v. King-Emperor* reported in AIR 1927 Mad 199 and in that decision it was held as follows:

... To satisfy the definition of cheating there must be immediate causation and the act itself must involve the probability. It is not enough to say that the signed acknowledgment is likely to be used so as to cause damage; the act of signing itself must be likely to cause damage. Nor can there be said to have been an attempt as distinguished from a preparation as already shown in discussing the trial Court's judgment.

29. It is relevant to refer decision of the Hon"ble Apex Court in *K.C. Builders v. CIT* reported in 2004 SCC (Cri.) 1092. The Hon"ble Apex Court in that decision held as follows:

29. In this instant case, the charge of conspiracy has not been proved to bring home the charge of conspiracy within the ambit of Section 120B Indian Penal Code. It is also settled law that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or misrepresentation. From his making failure to keep up promise subsequently, such a culpable intention right at the beginning, that is, at the time when the promise was made cannot be presumed. As there was absence of dishonest and fraudulent intention, the question of committing offence u/s 420 Indian Penal Code does not arise.

30. The High Court without advertng to the above important questions of law involved in this case and examining them in the proper prospective disposed of the revisions in a summary manner and hence the impugned orders passed by the High Court and the learned Magistrate warrant interference.

It is relevant to note that to attract Section 420 r/w 511 Indian Penal Code, there should be two elements, (a) there must be fraudulent intention; and (b) something acted on that representation and in the case on hand, both the above two elements were totally absent and as such, offence of cheating or an attempt to commit cheating is not at all made out. Therefore, this Court has No. hesitation to hold that there is No. material available on record to attract the ingredients of the offence of cheating u/s 420 Indian Penal Code or attempt to commit cheating as per Section 511 Indian Penal Code.

30. It is seen that the Petitioners have also been charged for the offence u/s 15 of the Prevention of Corruption Act. Sections 15 of the Prevention of Corruption Act reads hereunder:

15. Punishment for attempt - Whoever attempts to commit an offence referred to in Clause (c) or Clause (d) of Sub-section (1) of Section 13 shall be punishable with imprisonment for a term which may extend to three years and with fine.

A reading of the above said provision makes it crystal clear that Section 15 of the Prevention of Corruption Act, 1988, punishment for attempt, could be invoked only in the event of charge framed under Clause (c) or Clause (d) of Sub-section (1) of Section 13. As far as the case on hand is concerned, the trial court has not charged the Petitioners for the offence u/s 13(1)(c) or (d). Apart from such factor, there is absolutely No. material available on record against the Petitioners/A4 and A5 to attract the ingredients of the above said offences under the Prevention of Corruption Act, 1988. Therefore, this Court has No. hesitation to hold that the said charge was framed in the absence of any material available on record.

31. As far as the charge of conspiracy is concerned, it is relevant to refer the decision of the Hon"ble Apex Court in [K.R. Purushothaman Vs. State of Kerala](#), . The Hon"ble Apex Court in the said decision held as follows:

13. To constitute a conspiracy, meeting of mind of two or more persons for doing an illegal act or an act by illegal means is the first and primary condition and it is not necessary that all the conspirators must know each and every detail of conspiracy. Neither it is necessary that every one of the conspirators takes active part in the commission of each and every conspiratorial acts. The agreement amongst the conspirators can be inferred by necessary implications. In most of the cases, the conspiracies are proved by the circumstantial evidence, as the conspiracy is seldom an open affair. The existence of conspiracy and its objects are usually deducted from the circumstances of the case and the conduct of the accused involved in the conspiracy.

The principle laid down in the decision cited supra makes it abundantly clear that to constitute an offence of conspiracy meeting of mind of two or more persons for doing an illegal act by illegal means as the first and primary condition. It is also held by the Hon"ble Apex Court that such agreement amongst the conspirators can be inferred by necessary implications and the prosecution can place reliance on the circumstantial evidence. But as far as the case on hand is concerned, as it is already pointed out, there is not even an iota of material available on record to infer the meeting of mind of A1 to A3 on one hand and A4 and A5 on the other hand to constitute the offence of conspiracy.

32. During the course of argument Mr. K. Subramanian, learned Senior Counsel for the Petitioners, brought to the notice of this Court that against the first Petitioner/A4 departmental proceeding was also initiated on the very same and

identical charges and the Inquiry Officer has held that the charges are not proved. Therefore, It is contended that allowing the criminal proceeding to continue against the Petitioners would amount to clear abuse of process of Court. The learned Senior Counsel for the Petitioners also produced a copy of the said Inquiry report.

33. In support of such contention, the learned Senior Counsel for the Petitioners placed reliance on the decision of the Hon"ble Apex Court in P.S. Rajya v. State of Bihar reported in 1996 SCC (Cri.) 897. The Hon"ble Apex Court in the said decision has held as follows:

17. The standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. In the instant case the charge in the departmental proceedings and in the criminal proceedings in one and the same. If the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the Appellant in criminal proceedings.

34. The learned Senior Counsel for the Petitioners submitted that the first Petitioner/A4 sought for the information in respect of the said departmental proceeding initiated against him under the Right to Information Act and a reply was furnished by the CPIO (Imports), Office of the Commissioner of Customs, Customs House, Chennai, dated 25.04.2011 in F. No. S.Misc.61/2011-RTI-Enq. which reads hereunder:

Please refer to your application dated 19.4.2011 seeking information u/s 6 of the RTI Act, 2005.

The point-wise reply as sought by you is furnished as under:

- i) The Inquiry Officer has submitted his report and the case has been referred to DGV, New Delhi, seeking II stage advice and the same is still awaite.
- ii) a copy of the Inquiry Report is enclosed.

35. A perusal of the above said document makes it crystal clear that the first Petitioner/A4 is yet to be exonerated in the departmental proceedings pursuant to the report of the Inquiry Officer by passing a final order by the disciplinary authority. Therefore, this Court is of the considered view that the first Petitioner/A4 cannot place any reliance on the Inquiry Report and this Court cannot look into the said report.

36. Lastly, it is to be stated that the learned Senior Counsel for the Petitioners as well as the learned Special Public Prosecutor brought to the notice of this Court that during the pendency of this revision, the learned trial Judge framed charges against the Petitioners and other accused. However, this Court is of the considered view that inspite of framing the charges, this Court can very well invoke the inherent power

u/s 482 Code of Criminal Procedure or the superintendence power under Article 227 of the Constitution of India to set aside the impugned order and to quash the charges framed against the Petitioners in order to secure the ends of justice and to prevent the abuse of process of law as this Court held that there is not an iota of evidence available against the Petitioners to proceed against them.

37. It is relevant to refer the principle laid down by the Hon"ble Apex Court in Pepsi Foods Ltd., v. Special Judicial Magistrate reported in 1998 SCC (Cri.) 1400. The Hon"ble Apex Court in the said decision held as hereunder:

22. It is settled that the High Court can exercise power of judicial review in criminal matters... Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and u/s 482 of the Code have No. limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226...

26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court finds that the Appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition as one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the code of revision and appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be restored to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

..

29. No. doubt the Magistrate can discharge the accused at any stage of trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial...

The principle laid down by the Hon"ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case. In this case, the Petitioners rightly filed petition for discharge highlighting that there is No. prima facie ground made out for framing charge against them. However, as already pointed out, the

learned trial Judge overlooking the substantial grounds raised in the discharge petition rejected the said petition without pointing out any specific material available on record to make out a prima facie case and without assigning any valid reasons by merely citing the principles laid down by the Hon"ble Apex Court regarding the scope and power of the trial court while considering the discharge petition.

38. In view of the foregoing reasons, this Court is left with the irresistible conclusion that the impugned order is not only unsustainable, but the charges framed against the Petitioners/A4 and A5 are liable to be quashed. Accordingly, the revision is allowed. The order passed by the learned II Additional District Judge, Special Court (CBI Cases) (Full additional charge), Coimbatore, dated 19.12.2008 made in C.M.P. No. 243 of 2008 in C.C. No. 3 of 2008 is hereby set aside and consequently, the charges framed thereafter by the trial court stands quashed insofar as the Petitioners/A4 and A5 are concerned.