(2014) 11 Supreme Court Cases 709 : (2014) 3 Supreme Court Cases (Cri) 529 : (2014) 2 Supreme Court Cases (L&S) 721 : 2014 SCC OnLine SC 10

In the Supreme Court of India

(BEFORE C.K. PRASAD AND M.Y. EQBAL, JJ.)

Criminal Appeals Nos. 22-23 of 2014[†]

STATE OF TAMIL NADU BY INSPECTOR OF POLICE VIGILANCE AND ANTI-CORRUPTION . . Appellant;

Versus

N. SURESH RAJAN AND OTHERS . . Respondents.

With

Criminal Appeals Nos. 26-38 of 2014[‡]

STATE REPRESENTED BY DEPUTY SUPERINTENDENT OF POLICE VIGILANCE AND ANTI-CORRUPTION . . Appellant;

Versus

K. PONMUDI AND OTHERS . . Respondents.

Criminal Appeals Nos. 22-23 of 2014 with Nos. 26-38 of 2014, decided on January 6, 2014

A. **Criminal Procedure Code, 1973 — Ss. 227, 228, 239 and 240 — Framing of charges/Discharge of accused — Exercise of jurisdiction/power by court — Scope of — No mini trial is contemplated at stage of considering discharge application — Court to proceed with assumption that materials brought on record by prosecution are true — Only probative value of materials has to be gone into to see if there is a prima facie case for proceeding against accused — Court is not expected to go deep into the matter and hold that materials would not warrant a conviction — If court, on basis of materials, thinks that accused prima facie might have committed offence, it can frame the charge**

B. **Criminal Procedure Code, 1973 — Ss. 227, 239, 244 and 245 — Provisions relating to discharge of accused — Difference in language employed in Ss. 227, 239 and 245 — Effect — Common approach to be adopted by court — Held, notwithstanding differences in provisions relating to discharge under Ss. 227, 239 and 245 and whichever provisions may be applicable, court at this stage of considering discharge of accused is only required to see if there is a prima facie case for proceeding against accused**

C. **Criminal Procedure Code, 1973 — Ss. 227, 239 and 245 — Discharge of accused — On facts, found not valid — Allegations against two Ministers (public servant) of acquiring and possessing properties disproportionate to their known sources of income in names of family members and friends (also made accused in the case) — All accused persons were discharged holding that properties were owned by such accused (family members and**

friends) who had independent sources of income and who were also assessed under income tax provisions and hence, properties could not be added as properties of accused Ministers — Order of discharge of accused persons set aside — Held, fact that accused (family members and friends) were assessed to income tax and they paid income tax cannot be relied upon to discharge accused persons particularly in view of allegation by prosecution that there was no independent income of these accused assessees to amass such huge properties — Property in name of income tax assessee itself, cannot be a ground to hold that it actually belongs to that assessee — Moreover, this was not the stage where court should have appraised evidence and discharged accused persons as if it was passing order of acquittal — Criminal proceedings restored — Prevention of Corruption Act, 1988 — S. 13(2) r/w S. 13(1)(e) — Penal Code, 1860 — S. 109 — Public Accountability, Vigilance and Prevention of Corruption — Discharge

D. **Property Law — Ownership and Title — Proof — Effect of being an income tax assessee —**

Property in name of income tax assessee — Held, not proof that such property actually belongs to that assessee

E. **Criminal Trial — Investigation — Defective or illegal investigation — Defect in investigation itself, reiterated, not a ground for discharge of accused — Criminal Procedure Code, 1973, Ss. 227, 239, 245 and 157**

Allegations were made against the respondent Ministers that they acquired and possessed pecuniary resources and properties in their names and in the names of respondents (their family members and friends), disproportionate to their known sources of income. The charges were also made against such family members and friends for abetting the commission of offence by holding properties in their names on behalf of the respondent Ministers. The charge-sheet was submitted against all the respondents under Section 109 IPC and Section 13(2) read with Section 13(1)(*e*) of the Prevention of Corruption Act, 1988. All the respondents were, however, discharged.

Allowing the appeal and setting aside the order of discharge of the respondents, the Supreme Court

Held :

The Criminal Procedure Code, 1973 (CrPC) contemplates discharge of the accused by the Court of Session under Section 227 CrPC in a case triable by it; cases instituted upon a police report are covered by Section 239 CrPC and cases instituted otherwise than on a police report are dealt with in Section 245 CrPC. 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 CrPC, 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 CrPC 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) CrPC when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if unrebutted, would warrant his conviction". Sections 227 and 239 CrPC 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 CrPC, on the other hand, is reached only after the evidence referred in Section 244 CrPC has been taken.

(Paras 31 to 31.2)

Thus, there is difference in the language employed in the provisions of Sections 227, 239 and 245 CrPC. But, 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.

(Para 31.3)

R.S. Nayak v. *A.R. Antulay*, (1986) 2 SCC 716 : 1986 SCC (Cri) 256, *followed*

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. 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.

(Para 29)

Sheoraj Singh Ahlawat v. *State of U.P.*, (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21; *Onkar Nath Mishra* v. *State (NCT of Delhi)*, (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507, *followed*

Sajjan Kumar v. *CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371; *Dilawar Balu Kurane* v. *State of*

Maharashtra, (2002) 2 SCC 135 : 2002 SCC (Cri) 310; *Union of India* v. *Prafulla Kumar Samal*, (1979) 3 SCC 4 : 1979 SCC (Cri) 609, *distinguished*

In the present case, 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, 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.

(Para 32.3)

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. 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. Therefore, the impugned orders suffers from grave error and are set aside.

(Paras 32.4, 33 and 34)

N. Suresh Rajan v. *Inspector of Police*, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad); *State* v. *K. Ponmudi*, (2007) 1 MLJ (Cri) 100, *reversed*

F. **Constitution of India — Art. 136 — Maintainability of SLP — Delay/Laches — Delay by State — When condonable — Corruption matter involving discharge of accused Ministers — Manipulation of criminal justice machinery by Ministers concerned — Delay condoned**

— Delay of 1954 days in filing SLPs against the order of the High Court affirming discharge of accused persons by Special Judge and 217 days' delay in refiling — Condonation sought on ground that Public Prosecutor earlier had given opinion that it was not a fit case to file SLPs — Government in which one of the accused was a Minister had accepted that opinion and decided not to file SLPs — However, after change of Government, when opinion was sought, Advocate General opined that it was a fit case to file SLPs, hence delay occurred — Opposing condonation, submission was made that mere change of Government would not be sufficient to condone inordinate delay — Held, order impugned in SLPs in which leave is granted, was passed relying on order which is impugned in the present SLPs — Hence, validity of order impugned in present SLPs has to be gone into in other SLPs as well and in the face of it, it shall be unwise to dismiss present SLPs on ground of limitation — Delay in filing and refiling SLPs, condoned — Limitation Act, 1963 — S. 5 — Criminal Procedure Code, 1973 — Ss. 227, 239 and 245 — Prevention of Corruption Act, 1988 — S. 13(2) r/w S. 13(1)(e) — Penal Code, 1860 — S. 109 — Public Accountability, Vigilance and Prevention of Corruption — People in Power/Politically Influential Personalities/MPs/MLAs/Ministers — Manipulating criminal justice machinery — Foiled by Supreme Court

(Para 13)

Postmaster General v. *Living Media India Ltd.*, (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649; *Pundlik Jalam Patil* v. *Jalgaon Medium Project*, (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907, *cited*

O-D/52761/SRL

Advocates who appeared in this case:

Ranjit Kumar, M.S. Ganesh and Soli J. Sorabjee, Senior Advocates (Devvrat, Anup Kumar, M.K. Subramaniam, M. Yogesh Kanna, R. Ayyam Perumal, K. Seshachary, Ms Anushree Kapadia, Sukun K.S. Chandele, R. Nedumaran, Ms Movita, Ms Meherwaz and Shaunak, Advocates) for the appearing parties.

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3. (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371, *Sajjan Kumar* v. *CBI* 720*f-g*, 72

4. Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad), *N. Suresh Rajan* v. *Inspector of Police* **(reversed)** 713*c*, 714*d-e*, 714*e-f*, 715*d*, 71 -*g*, 720*c*, 720*d*, 724*a*, 72

5. (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907, *Pundlik Jalam Patil* v. *Jalgaon Medium Project* 71

6. (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507, *Onkar Nath Mishra* v. *State (NCT of Delhi)* 722*b-c*, 72

7. (2007) 1 MLJ (Cri) 100, *State* v. *K. Ponmudi* **(reversed)** 714*e-f*, 716*e-f*, 716*f-g*, 717 719*a-b*, 720*c*, 720*d*, 72

8. (2002) 2 SCC 135 : 2002 SCC (Cri) 310, *Dilawar Balu Kurane* v. *State of Maharashtra* 721*b-c*, 72

9. (1986) 2 SCC 716 : 1986 SCC (Cri) 256, *R.S. Nayak* v. *A.R. Antulay* 72

10. (1979) 3 SCC 4 : 1979 SCC (Cri) 609, *Union of India* v. *Prafulla Kumar Samal* 72

The Judgment of the Court was delivered by

C.K. PRASAD, J.—

Criminal Appeals Nos. 22-23 of 2014 [arising out of Special Leave Petitions (Crl.) Nos. 3810-11 of 2012]

1. The State of Tamil Nadu aggrieved by the order dated 10-12-2010 passed by the Madras High Court in *N. Suresh Rajan* v. *Inspector of Police*[1], setting aside the order dated 25-9-2009 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.

2. The short facts giving rise to the present appeals are that Respondent 1, N. Suresh Rajan, during the period from 13-5-1996 to 14-5-2001, was a Member of the Tamil Nadu

Legislative Assembly as also a State Minister of Tourism. Respondent 2, K. Neelakanda Pillai is his father and Respondent 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 14-3-2002 against the Minister N. Suresh Rajan, his father, mother, elder sister and his bother-in-law.

3. During the course of the investigation, the investigating officer collected and gathered information 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.

4. Ultimately, the investigating agency came to the conclusion that during the check period, Respondent 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 2) and mother R. Rajam (Respondent 3) and his wife D.S. Bharathi for a total value of Rs 17,58,412.47.

5. The investigating officer also came to the conclusion that the 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 4-7-2003 against Respondent 1, the Minister and his father (Respondent 2) and mother (Respondent 3) respectively, alleging commission of an offence under Section 109 of the Penal Code, 1860, and Section 13(2) read with Section 13(1)(*e*) of the Prevention of Corruption Act.

6. The respondents filed application dated 5-12-2003 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 25-9-2009 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, the respondents filed criminal revision before the High Court.

7. The High Court by the impugned judgment[1] 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 1 to his mother and father, the 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[1] heavily relied on its earlier judgment in *State* v. *K. Ponmudi*[2], the validity whereof is also under consideration in the connected appeals.

8. The High Court while allowing the criminal revision observed as follows:

> "*12*. In the instant case, the properties standing in the name of Petitioners 2 and 3,

namely, A-2 and A-3 could not be held to be the properties or resources belonging to the first accused in the absence of any investigation into the individual income resources of A-2 and A-3. Moreover, it is not disputed that A-2 was a retired Headmaster receiving pension and A-3 is running a Financial Institution and an income tax assessee. In the absence of any material to show that A-1's money flow into the hands of A-2 and A-3, 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 A-2 and A-3 instigated A-1 to

acquire properties and resources disproportionate to his known source of income."

It is in these circumstances that the appellant is before us.

Criminal Appeals Nos. 26-38 of 2014 [arising out of Special Leave Petitions (Crl.) Nos. 134 -46 of 2013]

9. 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.

10. 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[1] deserves to be challenged. Accordingly, it is submitted that the cause shown is sufficient to condone the delay.

11. Mr Soli J. Sorabjee, learned Senior Counsel appearing for the respondents, however, submits that mere change of the 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 emphasises 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 *Postmaster General* v. *Living Media India Ltd.*[3], and our attention has been drawn to para 29 of the judgment, which reads as follows : (SCC p. 574)

"*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."

12. 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 *Pundlik Jalam Patil* v. *Jalgaon Medium Project*[4] and reference has been made to para 31 of the judgment, which reads as follows : (SCC p. 458)

> "*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."

13. 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[2] in these special leave petitions has to be gone into in criminal appeals arising out of Special Leave Petitions (Criminal) Nos. 3810-11 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[1] in the criminal appeals arising out of Special Leave Petitions (Criminal) Nos. 3810-11 of 2012, *State of T.N.* v. *N. Suresh Rajan*, has been mainly rendered, relying on the decision in *State* v. *K. Ponmudi*[2], which is impugned in the present special leave petitions. In fact, by order dated 3-1-2013, 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.

14. In these petitions the State of Tamil Nadu impugns the order dated 11-8-2006[2] passed by the Madras High Court whereby the revision petitions filed against the order of discharge dated 21-7-2004 passed by the Special Judge/Chief Judicial Magistrate, Villupuram (hereinafter referred to as "the Special Judge"), in Special Case No. 7 of 2003, have been dismissed. Leave granted.

15. Shorn of unnecessary details, the facts giving rise to the present appeals are that K. Ponumudi, Respondent 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 2) is his wife, whereas P. Saraswathi (Respondent 3) (since deceased) was his mother-in-law. A. Manivannan (Respondent 4) and A. Nandagopal (Respondent 5) (since deceased) are the friends of the Minister (Respondent 1). Respondents 3 to 5 during their lifetime were trustees of one Siga Educational Trust, Villupuram.

16. 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 1), as a Minister of Transport and a Member of the Tamil Nadu Legislative Assembly during the period from 13-5-1996 to 30-9-2001, 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 14-3-2002 under Section 109 of the Penal Code, 1860, read with Section 13(2) and Section 13 (1)(*e*) of the Prevention of Corruption Act (hereinafter referred to as "the Act").

17. During the course of investigation it transpired that between the period from 13-5-1996 to 31-3-2002, 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 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 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.

18. In the course of investigation, it further transpired that during the check period and in the places stated above, the other accused abetted the Minister in the commission of the offence by him. Respondent 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 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 4 and Respondent 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.

19. 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 Penal Code and Section 13(2) read with Section 13(1)(*e*) of the Act.

20. 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 Session. 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 10-5-1996 to 13-9-2001 which, during the investigation, was enlarged from 13-5-1996 to 31-3-2002. Not only this, according to the accused, the income was undervalued and the expenditures exaggerated.

21. According to Respondent 1, the Minister, the 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 1. The 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.

22. The Special Judge examined all these contentions and by order dated 21-7-2004 discharged the respondents on its finding that the investigation was not conducted properly. The Special Judge further held that the value of

the property of Respondents 2 to 5 ought not to have been clubbed with that of the individual properties and income of Respondent 1 and by doing so, the assets of Respondent 1 cannot be said to be disproportionate to his known sources of income. On the aforesaid finding the Special Judge discharged all the accused.

23. Aggrieved by the same, the State of Tamil Nadu filed separate revision petitions and the High Court, by the impugned order[2], 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 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 for 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.
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> * * *
>
> The theory of benami is totally alien to the concept of trust and it is not legally sustainable to array 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 material 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 A-1 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.
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> *19*. … Admittedly the accused are not possessed of the properties standing in the name of Trust and controlled by Accused 3 to 5. 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 A-1.
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> * * *

21. … All the properties acquired by A-2 and A-3 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 is 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."

24. The High Court ultimately concluded as follows:

"*24*. … Therefore, the trial court analysing 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 respondent-accused."

25. Now we proceed to consider the legal position concerning the issue of discharge and validity of the orders[1],[2] 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[1],[2], the evidence has been appraised and the case of the prosecution has been rejected, as is done after the trial while acquitting the accused.

26. Mr Sorabjee as also Mr N.V. Ganesh appearing on behalf of the respondent-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.

27. In support of the submission, reliance has been placed on a decision of this Court in *Sajjan Kumar* v. *CBI*[5], and our attention has been drawn to para 17(4) of the judgment, which reads as follows : (SCC pp. 374-75, para 17)

"*17*. In *Union of India* v. *Prafulla Kumar Samal*[6] the scope of Section 227 CrPC was considered. After adverting to various decisions, this Court has enumerated the following principles : (SCC p. 9, para 10)

'*10*. (*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.'"

28. Yet another decision on which reliance has been placed is the decision of this Court in *Dilawar Balu Kurane* v. *State of Maharashtra*[7], reference has been made to the following paragraph of the said judgment : (SCC p. 140, para 12)

> "*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…."

29. 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.

30. Reference in this connection can be made to a recent decision of this Court in *Sheoraj Singh Ahlawat* v. *State of U.P.*[8], in which, after analysing various decisions on the point, this Court endorsed the following view taken in *Onkar Nath Mishra* v. *State (NCT of Delhi)*[9] : (*Sheoraj Singh Ahlawat case*[8], SCC p. 482, para 15)

> "*15*. `*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 therefrom, *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*.' (*Onkar Nath case*[9], SCC p. 565, para 11)"
>
> (emphasis in original)

31. Now reverting to the decisions of this Court in *Sajjan Kumar*[5] and *Dilawar Balu Kurane*[7], 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 cannot 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 Session 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:

31.1. 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 unrebutted, would warrant his conviction".

31.2. 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.

31.3. 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 *R.S. Nayak* v. *A.R. Antulay*[10]. The same reads as follows : (SCC pp. 755-56, para 43)

> "*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."

32. Bearing in mind the principles aforesaid, we proceed to consider the facts of the present case:

32.1. Here the allegation against the accused Minister (Respondent 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, which 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.

32.2. Similarly, accused N. Suresh Rajan has acquired properties disproportionate to his known sources of income in the names of his father and mother.

32.3. 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.

32.4. While passing the impugned orders[1],[2], 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[1] suffers from grave error and calls for rectification.

33. 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 3-2-2014. 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.

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

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† Arising out of SLPs (Crl.) Nos. 3810-11 of 2012. From the Judgment and Order dated 10-12-2010 of the High Court of Judicature of Madras, Madurai Bench in Crl. RC No. 528 of 2009 and MP (MD) No. 1 of 2009

‡ Arising out of SLPs (Crl.) Nos. 134-46 of 2013

[1] *N. Suresh Rajan* v. *Inspector of Police*, Criminal Revision Case (MD) No. 528 of 2009, order dated 10-12-2010 (Mad)

[2] *State* v. *K. Ponmudi*, (2007) 1 MLJ (Cri) 100

[3] (2012) 3 SCC 563 : (2012) 2 SCC (Civ) 327 : (2012) 2 SCC (Cri) 580 : (2012) 1 SCC (L&S) 649

[4] (2008) 17 SCC 448 : (2009) 5 SCC (Civ) 907

[5] *Sajjan Kumar* v. *CBI*, (2010) 9 SCC 368 : (2010) 3 SCC (Cri) 1371

[6] (1979) 3 SCC 4 : 1979 SCC (Cri) 609

[7] *Dilawar Balu Kurane* v. *State of Maharashtra*, (2002) 2 SCC 135 : 2002 SCC (Cri) 310

[8] (2013) 11 SCC 476 : (2012) 4 SCC (Cri) 21 : AIR 2013 SC 52

[9] (2008) 2 SCC 561 : (2008) 1 SCC (Cri) 507

[10] (1986) 2 SCC 716 : 1986 SCC (Cri) 256