

**(2011) 04 MAD CK 0310**

**In the Madras High Court**

**Case No :** Criminal Original Petition No. 23479 of 2010

J. Duraimunusamy

APPELLANT

Vs

State by The Additional Superintendent of Police

RESPONDENT

**Date of Decision :** 06-04-2011

**Acts Referred:**

Constitution of India, 1950 — Article 136  
Criminal Procedure Code, 1973 (CrPC) — Section 164(5), 218, 219, 220, 221  
Evidence Act, 1872 — Section 145, 155, 30  
Penal Code, 1860 (IPC) — Section 120(B), 166, 379, 380, 409  
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

**Citation :** (2011) 04 MAD CK 0310

**Hon'ble Judges :** S. Nagamuthu, J

**Bench :** Single Bench

**Advocate :** A.E. Chelliah for K. Ramanujam, for the Appellant; N. Chandrasekaran, Special Public Prosecutor for CBI cases, for the Respondent

**Final Decision :** Allowed

## Judgement

S. Nagamuthu, J.—The Petitioners are A1 to A5 and A28 in C.C. No. 10 of 2009 on the file of the learned Special Judge [IX Additional Judge, City Civil Court] for CBI Cases, Chennai. Seeking to quash the charges framed against them on 23.08.2010 by the learned Special Judge, the Petitioners have come up with these original petitions.

2. Since all these petitions arise out of the same case and there are also common grounds, all these petitions were heard together and they are disposed of by means of this common order.

3. The brief facts of the prosecution case would be as follows: The Government of Tamil Nadu in G.O. Ms. 1080, Home [Police-III] Department dated 08.09.2004 directed the Tamil Nadu Uniformed Services Recruitment Board [in short, "the TNUSRB"] to recruit 1997 Grade-II Police Constables. Based on the same, the TNUSRB issued a notification calling for applications from eligible aspirants. After

the receipt of the applications, physical measurements, endurance test and physical efficiency test were conducted between 21.02.2005 and 07.03.2005. The qualified candidates were called for written test which was held on 27.03.2005. After the examination was over, it was suspected that there had been leakage of question paper relating to general knowledge. Therefore, the Government in its letter No. SC/2062/2005 dated 26.04.2005 ordered for a re-test in General Knowledge. Accordingly, the re-test was conducted on 01.06.2005. It came to light that there was again leakage of question of paper relating to General Knowledge examination held on 01.06.2005 also. Therefore, the examination held on 01.06.2005 was again cancelled.

4. In those circumstances, the Government ordered an enquiry into the leakage of question papers pertaining to the examinations held on 27.03.2005 as well as on 01.06.2005. One Mr. P. Thamaraikannan, IPS, the then Deputy Commissioner of Police, Saint Thomas Mount held enquiry and he sent a report to the Director General of Police on 25.07.2005. According to his report, there was leakage of question papers in respect of both the examinations held on 27.03.2005 and 01.06.2005.

5. The report further revealed that the leakage of question paper on 27.03.2005 was through two clearly identified sources. One source of leakage was two police constables [PC 1025 Durai Munusamy of TNUSRB (A1) and PC 571 Chinna Thambi of Dharmapuri Armed Reserve (A2)] who was also serving in the TNUSRB. The report further alleged that on 23/24.03.2005 around 2.00 a.m. they scaled over the wall of TNUSRB office from the rear side entry into the chamber of the Director General of Police / Chairman, TNUSRB and had stolen away the question papers pertaining to the general knowledge examination and psychology. The question papers were thereafter leaked out by Durai Munusamy and Chinna Thambi to 21 candidates and 22 police constables.

6. According to the report, the 2nd source of the leakage was Mr. T. Radhakrishnan, IPS, the Inspector General of Police, who was holding Additional Charge of post of Inspector General of Police and Member Secretary, TNUSRB. The report further revealed that he gave the question paper to a retired Head Constable Jani Basha [A16] through whom Mr. T. Radhakrishnan, IPS gave question paper to another person also. Mr. Jani Basha passed on the said question paper to three police constables who in turn handed over the same to 9 candidates.

7. The said report further proceeded to say that the second leakage in respect of the examination held on 01.06.2005 was only through Mr. T. Radhakrishnan, IPS and Mr. Jani Basha, Head Constable [A16]. Mr. Jani Basha [A16] allegedly collected a question paper and passed on to 33 police men and 41 candidates. The question papers were sold for monetary consideration to several recipients. The report further gave flow chart for the leakage of question paper passed on from one accused to another.

8. Based on the above report, Mr. K. Natarajan, IPS, Additional Director General of Police and Member secretary, TNUSRB forwarded a complaint to the Inspector of Police, Chinddripet Police Station. The Inspector of Police registered a case in Cr. No. 2600 of 2005 u/s 120(B) , 457, 380, 166, 409 of IPC and Section 13(1) (c) and 13(1)(d) of the Prevention of Corruption Act, 1988. When the investigation was in progress, a writ petition came to be filed in W.P. No. 25153 of 2005 by one Mr. A. Dhandapani seeking investigation of the above allegations by CBI. Accordingly, this Court by order dated 28.10.2005 directed the registration of case by CBI and for investigation. That was taken up by way of SLP before the Hon''ble Supreme Court by the State of Tamil Nadu and the same was dismissed on 10.10.2006. In the mean while, as per the orders of the Director General of Police, the said case was transferred to Special Investigation Team, C.B.C.I.D., Chennai. As per the directions of the Hon''ble Supreme Court and the High Court as referred to above, the said case was again transferred to the CBI and accordingly, it was re-registered in Crime No. RC MA1 2006 A 58 dated 26.12.2005 for offences under Sections 120-B, 457, 380, 166 and 409 of IPC and Sections 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. As per the FIR , there were as many as 87 accused. On completing the investigation charge sheet was laid against 31 accused and the other accused were omitted. As per the charge-sheet, the Petitioners are A1 to A5 and A28. In the final report, it was alleged that the Petitioners along with other accused had committed offences under Sections 120(B) r/w 420 of IPC and Section 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

9. The Petitioners filed Crl. M.P. Nos. 400, 399, 397, 398 and 395 of 2009 in C.C. No. 10 of 2009 before the Special Judge seeking discharge. All the said petitions were dismissed on 21.08.2009 by the learned Special Judge. Challenging the same, they filed Crl. R.C. No. 1013 to 1018 of 2009 before this Court. By common order dated 26.04.2010, this Court dismissed all the said criminal revision petitions holding that there are grounds to proceed against the accused by framing appropriate charges. Challenging the same, the Petitioner - R. Anbalagan [A28] approached the Hon''ble Supreme Court by way of SLP and the same was dismissed on 08.07.2010. Thereafter, the Petitioner [A28] - R. Anbalagan filed a second round of petition before the Special Judge u/s 227 of Code of Criminal Procedure seeking discharge which was also dismissed by order dated 23.08.2010. Thereafter, the learned Special Judge framed charges against all the 31 accused. The following are the charges framed by the learned Special Judge against the Petitioners and others:

Charge No. 1: Under Sections 120-B r/w 420 of IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act against A1 to A10, A12 to A26, A28 to A31;

Charge No. 2: u/s 420 of IPC against A8 to A10, A12 and A20 [not relating to the Petitioners herein];

Charge No. 3: u/s 420 of IPC against punishable u/s 420 IPC A10, A20, A23 to A26 [not relating to the Petitioners herein];

Charge No. 4: Under Sections 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against A1 to A7, A14, A15, A17, A18, A28, A29; and

Charge No. 5: u/s 13(2) r/w 13(1)(d) of the Prevention of Corruption Act against A4 to A7, A13, A17 to A19, A21, A22, A28, A30.

After the above charges were framed, the Petitioners have come up with these petitions seeking to quash the charges framed against them. That is how, the Petitioners are, now, before this Court with these petitions.

10. Before going into the rival contentions, let me reproduce the statement relating to the charges framed against all the accused:

FIRSTLY, that you A-1 J. Duraimunusamy, PC 1025, A2 S. Chinnathambi, PC 571, A3 S. Anbalagan, PC 20178, A-4 N. Ravichandran, PC 24030 (PC 1400 in TSP), A-5 A. Karrupusamy, HC 2403, A6 S. Devanath, then PC 20207 HC 3488, A7 R. Manibalan, PC 21181, A-8 S. Meena, Candidate, A-9 M. Elamathi, Candidate, A-10 N. Elangovan, Candidate, A12 -G. Thirumuthu Vallideivanai, candidate, A-13 D. Balaji, PC 18430, A-14 A. Gopalakrishnan, PC 6266, A-15 A. Jeyamani, HC-1389, A-16 Y. Jani Basha, Retd. HC, A-17 B. Udhaya Kumar, HC 1396, A-18 S.A. Sekhar, HC 23875, A-19 S. Parthiban, PC-3510, A-20 S. Sathish, Candidate, A-21 S. Gurumoorthy, PC 17147, A-22 C. Pushparaj, PC 18505, A23 E. Kannan, Candidate, A-24 K. Mathivanan, Candidate, A-25 K. Kuttiraj, Candidate, A-26 M. Devika, Candidate D/o Munusamy, A-28 R. Anbalagan, HC-444, PEW, Tiruvallur, A-29 R. Muthukumarasamy, HC-811, Q Branch, Tirunelveli, A-30 N. Anandan, PC-23432, Tirumullaivoil PS and A-31 C. Ramamurthy (private person), deceased accused A11 and A27, deceased Jeevaratinam, Head Constable and S. Raja (approver), Kaleeswaran (approver), S. Mohan (approver), K. Sivaraj (approver) D. Alamelu (approver) C. Senthil (approver), V. Rajasekar (approver), P. Sudhakar (approver), Arunkumar (approver), during the year 2005, entered into a criminal conspiracy at Chennai and other places of Tamilnadu to cheat Tamilnadu Uniformed Services Recruitment Board (TNUSRB) in the matter of obtaining Question paper fraudulently in advance for the PC Examination held on 27.03.2005 and re-examination held on 1.6.2005 and in furtherance of the criminal conspiracy, that you J. Durai Munusamy (A1) and you Chinnathambi (A2), while working in TNUSRB, Chennai on deputation, by abusing your official position, fraudulently and dishonestly obtained Question papers viz. General Knowledge and Psychology for the written exam for recruitment of Grade.II Police Constables in advance for the exam held on 27.3.2005, that you J. Durai Munusamy (A1), in furtherance of the said criminal conspiracy, abused your official position and handed over copy of the Question papers for the written exam for recruitment of Grade.II Police Constables in advance to your relative Ms. S. Meena (A8) at Madurai. In furtherance of the criminal conspiracy, knowing fully well that the Question paper given to her by you J. Durai Munusamy (A1) was fraudulently obtained, you Ms. S. Meena (A8) received the same, used the said Question paper and scored high marks in the exam held on 27.3.2005. Further, in pursuance of the criminal conspiracy, you J. Duraimunusamy (A1) also

distributed the question papers to your friend A. Gopalakrishnan (A14) at Madurai whose fiancée Ms. G. Thirumuthu Vallideivanani (A12) was appearing for the exam from Madurai. In addition, you J. Duraimunusamy (A1) also parted with a copy of the question papers to your friend Anbu @ S. Anbalagan (A3), that you A. Gopalakrishnan (A14), by abusing your official position and fraudulently obtained the Question papers for the written exam for recruitment of Grade.II Police Constables in advance from your friend J. Duraimunusamy (A1), handed over the same to his fiancée Ms. G. Thirumuthu Vallideivanai (A12) and you Ms. G. Thirumuthu Vallideivanai (A12), in furtherance of the criminal conspiracy, in spite of knowing fully well that the question papers given to you by A. Gopalakrishnan (A14) was fraudulently obtained, received and used the same and scored high marks in the exam. In furtherance of the criminal conspiracy you A. Gopalakrishnan (A14) by abusing your official position parted copy of Question papers for the written exam for recruitment of Grade.II Police Constables in advance to your friend A. Jeyamani, HC (A15). Further, you A2 handed over the copy of the said Question paper to your relative M. Elamathi (A9) at Dharmapuri and you Ms. M. Elamathi (A9), in pursuance of conspiracy, knowing fully well that the Question papers given by S. Chinnathambi (A2) was fraudulently obtained, received the same and used the said Question paper and scored high marks in the said exam. In pursuance of conspiracy, you S. Anbalagan, PC 20178 (A3) fraudulently obtained the Question papers for the written exam for recruitment of Grade.II Police Constables in advance for the exam held on 27.3.2005 from J. Duraimunusamy (A1), by abusing your official position, distributed the same to your friend N. Ravichandran (A4) and in pursuance of conspiracy, you N. Ravichandran (A4) by abusing your official position and knowing fully well that the question paper given by S. Anbalagan (A3) was obtained in a fraudulent manner, received the same and distributed it to candidates S. Mohan (Approver, K. Sivaraj (Approver), B. Nagamani (A11-deceased accused) and D. Alamelu (Approver) and received Rs. 20,000/- each from them as consideration. Further, you N. Ravichandran (A4) also parted with the copy of Question papers to your friends A. Karuppasamy (A5) and S. Devanath (A6). In pursuance of conspiracy, B. Nagamani (A11-deceased accused) knowing fully well that the Question paper given to him by N. Ravichandran (A4) was fraudulently obtained, received the same and used the said Question paper and scored high marks in the exam held on 27.3.2005. In pursuance of conspiracy, you A. Karuppasamy (A5) by abusing your official position and knowing fully well that the Question paper obtained by you from N. Ravichandran (A4) was obtained in a fraudulent manner, dictated the Question paper over phone to R. Kaleeswaran, (Approver) a candidate for consideration. In furtherance of the criminal conspiracy, R. Kaleeswaran (Approver) knowing well that the Question papers dictated by A. Karuppasamy (A5) obtained in a fraudulent manner, received and used the same and scored high marks in the Examination for the recruitment for the post of Grade.II Police Constables. In furtherance of the criminal conspiracy, you S. Devanath (A6), by abused your official position and obtained the question paper fraudulently from N. Ravichandran (A4), conspired with your friend R. Manibalan (A7) and in

pursuance of the said conspiracy, you abused your official position and passed on the Question paper to candidates S. Raja (Approver) and N. Elangovan (A10) through V. Santhosh Kumar and C. Ramamurthy (A31) respectively for monetary consideration and obtained Rs. 60,000/-each from them. In pursuance of the conspiracy, S. Raja (Approver) obtained the question paper in advance fraudulently from S. Devanath (A6) and R. Manibalan (A7) for getting good marks. In furtherance of the criminal conspiracy, you C. Ramamurthy (A31) knowing fully well that the question paper given to you by S. Devanath (A6) and R. Manibalan (A7) was obtained fraudulently, received the same and passed it on to your nephew N. Elangovan (A10). In pursuance of the conspiracy, you N. Elangovan (A10) knowing fully well that the question paper given to you by S. Devanath (A6) and R. Manibalan (A7) through your uncle C. Ramamurthy (A31) was obtained fraudulently, received and used the same for scoring high marks in the exams, In pursuance of the conspiracy, you A. Jeyamani (A15) fraudulently obtained the Question papers for the written exam for recruitment of Grade.II Police Constables in advance from A. Gopalakrishnan (A14) at Madurai, conspired with your friend R. Muthukumarasamy (A29) and in furtherance of the criminal conspiracy passed on the same to Murugesan S/o Raju, a Retired Head Constable, for consideration and obtained Rs. 9,000/-. In pursuance of the conspiracy, you Y. Jani Basha (A16), entered into a criminal conspiracy with B. Udayakumar (A17) and S.A. Sekar (A18) and in furtherance of the same, you fraudulently obtained the Question papers for the written exam for recruitment of Grade.II Police Constables in advance held on 27.3.2005 and subsequently along with B. Udayakumar (A17) and S.A. Sekar (A18), passed on the Question papers to C. Senthil (Approver), S. Satish (A20), V. Rajasekar (Approver) and P. Sudhakar (Approver) after obtaining consideration of Rs. 50,000/-, Rs. 80,000/-, Rs. 80,000/-and Rs. 80,000/-respectively from them and part of the said money was also deposited in the SB account of B. Udayakumar (A17). In furtherance of the said criminal conspiracy, you S. Sathish (A20) knowing fully well that the Question paper given by Y. Jani Basha (A16), B. Udayakumar (A17) and S.A. Sekar (A18), was obtained in a fraudulent manner, received the same and used it for scoring high marks in the exam. In pursuance of the conspiracy, Senthil (Approver), V. Rajasekar (Approver) and P. Sudhakar (Approver) knowing fully well that the Question paper given by Y. Jani Basha (A16), B. Udayakumar (A17) and S.A. Sekar (A18), was obtained in a fraudulent manner, received the same and used it for scoring high marks in the exam. That K. Elumalai (A27deceased accused) who working as Head Constable -23917 in Stores Department of DGP's office, Chennai, in pursuance of the conspiracy with you R. Anbalagan (A28), to cheat TNUSRB in fraudulently obtaining the Question papers for the written exam for recruitment of Grade.II Police Constables in advance and in furtherance of the same, K. Elumalai (A27 - deceased accused) an you R. Anbalagan (A28) fraudulently obtained the Question paper for the written exam for recruitment of Grade.II Police Constables, abused their official position as public servants and K. Elumalai (A27-deceased accused) passed on the Question paper to D. Murali and R. Manimaran. In furtherance of the criminal conspiracy, K. Elumalai (A27-

deceased accused) along with you R. Anbalagan (A28) also distributed the Question paper to N. Sivakumar for consideration.

You Y. Jani Basha (A16), in furtherance of the criminal conspiracy with B. Udayakumar (A17) and S.A. Sekar (A18), fraudulently obtained the General Knowledge Question paper for the re-exam held on 1.6.2005 due to cancellation of the earlier exam held on 27.3.2005, in advance and distributed the same to you S. Satish (A20), C. Senthil (Approver), V. Rajasekar (Approver) and P. Sudhakar (Approver). In furtherance of the criminal conspiracy, you S. Satish (A20) C. Senthil (Approver), V. Rajasekar (Approver) and P. Sudhakar (Approver), knowing fully well that the re-exam Question papers were parted to you S. Satish (A20) by you Y. Jani Basha (A16), you B. Udayakumar (A17) and you S.A. Sekar (A18) and the same were obtained fraudulently, received and used the same and scored high marks in the re-exam held on 1.6.2005. You S. Parthiban (A19), by abusing your official position and fraudulently obtained Question papers for the written re-exam for recruitment of Grade.II Police Constables and in furtherance of the said criminal conspiracy you along with you S. Gurumurthy (A21) handed over copy of the Question paper in advance to you and you E. Kannan (A23) knowing fully well that the re-exam Question papers were obtained fraudulently, received the same and used it and scored high marks in the re-exam held on 1.6.2005. A Fixed Deposit for R.50,000/-was made by you E. Kannan (A23) with Indian Bank, Vandiwash Branch in the joint names of you E. Kannan (A23) and you S. Gurumurthy (A21) and later the proceeds were transferred to the S.B. Account of you S. Gurumurthy (A21) for having parted with the Question paper for the re-exam held on 1.6.2005. You S. Gurumurthy (A21) fraudulently obtained re-exam Question paper from you S. Parthiban (A19) by abusing your official position and passed over the copy of the same to N. Prasad who was introduced to them by you N. Anandan (A30). In furtherance of the criminal conspiracy, you N. Anandan (A30) received a consideration of Rs. 35,000/-from N. Prasad. In furtherance of the criminal conspiracy, you S. Devanath (A6) fraudulently obtained the question paper in advance for the re-exam held on 1.6.2005, parted with the same to you A. Karuppasamy (A5) and you N. Ravichandran (A4). You S. Devanath (A6) further by abusing your official position and passed over the re-exam Question paper to S. Raja (Approver) and to you R. Manibalan (A7), you R. Manibalan (A7) in turn by abusing your official position parted with the same to you N. Elangovan (A10) through your uncle C. Ramamurthy (A31). You A. Karuppasamy (A5), by abusing your official position and fraudulently obtained the re-exam Question paper from S. Devanath (A6) in advance, passed over the same to R. Kaleeswaran (Approver) and you A. Karuppasamy (A5). In furtherance of the criminal conspiracy, R. Kaleeswaran (Approver), knowing fully well that the Question paper given by A. Karuppasamy (A5) was obtained fraudulently, received and used the same and scored high marks in the re-exam. You A. Mathivanan (A24) fraudulently obtained the question paper from Jeevarathinam, (since expired) and in furtherance of the criminal conspiracy knowing fully well that the said Question paper has been

obtained fraudulently, received and used the same and scored high marks in the re-exam. You D. Balaji (A13) by abusing your official position and fraudulently obtained re-exam Question paper in advance and passed over the same to your friend C. Pushparaj (A22). You C. Pushparaj (A22) fraudulently obtained the re-exam Question paper from D. Balaji (A13), knowing fully well that the Question paper was obtained in a fraudulent manner, abusing your official position and passed over the same to you K. Kuttiraj (A25), you M. Devika (A26) and D. Arunkumar (Approver). You D. Balaji (A13) obtained consideration of Rs. 10,000/- from Arunkumar (approver) through you C. Pushparaj (A22) for having parted with the Question paper. In pursuance of the criminal conspiracy, D. Arunkumar (approver), you K. Kuttiraj (A25) and you M. Devika (A26), knowing fully well that the re-exam Question paper was obtained fraudulently, received and used the same and scored high marks in the re-exam. You N. Ravichandran (A4), by abusing your official position and fraudulently obtained the Question paper in advance from you S. Devanath (A6), passed over the Question paper to S. Mohan (Approver), K. Sivaraj (Approver), B. Nagamani (A11-deceased accused) and D. Alamelu (Approver) for consideration, S. Mohan (Approver), K. Sivaraj (Approver), B. Nagamani (A11-deceased accused) and D. Alamelu (Approver) got the Question paper from you N. Ravichandran (A4), knowing fully well that the Question papers were obtained by fraudulent manner, received and used the same to score high marks in the re-exam held on 1.6.2005. K. Elumalai (A27-deceased accused) in pursuance of conspiracy with you R. Anbalagan (A28) fraudulently obtained the Question paper for the re-exam in advance and you R. Anbalagan (A28) and K. Elumalai (A27-deceased accused) fraudulently obtained the Question paper, by abusing your official position as public servants and K. Elumalai (A27-deceased accused) passed on the Question paper to D. Murali and R. Manimaran and further along with you R. Anbalagan (A28) distributed the Question paper to N. Sivakumar for monetary consideration.

And thereby you A1 to A10, A12 to A26, A28 to A30 and A31 and A11 (deceased accused), A27 (deceased accused), Jeevaritinam (deceased), S. Raja (approver), Kaleeswaran (approver), S. Mohan (approver) K. Sivaraj (approver) D. Alamelu (approver) C. Senthil (approver), V. Rajasekar (approver), P. Sudhakar (approver), Arunkumar (approver), committed offences punishable u/s 120-B r/w Section 420 IPC and Section 13(2) r/w 13(1)(d) of PC Act, 1988 and I hereby charge you A1 to A10, A12 to A26, A28 to A31 for the offences punishable u/s 120-B r/w Section 420 IPC and Section 13(2) r/w 13(1)(d) of PC Act and within my cognizance.

SECONDLY, that you A8 S. Meena, A9 M. Elamathi, A10 N. Elangovan, A12 G. Tirumuthu Vallideivanai and A20 S. Sathish in pursuance of conspiracy, during the period and place as stated in the first charge, cheated Tamilnadu Uniformed Service Recruitment Board by dishonestly obtained question papers i.e. General Knowledge and Psychology as mentioned in the previous charge for the exam held on 27.3.2005 in advance from the persons as mentioned in the previous charge and appeared in the said exam and got high marks from TNUSRB and

thereby you A8 S. Meena, A9 M. Elamathi, A10 N. Elangovan, A12 G. Tirumuthu Vallideivanai and A20 S. Sathish committed offence punishable u/s 420 IPC and I hereby charge you A8 to A10, A12 and A20 for the offences punishable u/s 420 IPC and within my cognizance.

THIRDLY, that you A10 N. Elangovan, A20 S. Sathish, A23 E. Kannan, A24 K. Mathivanan, A25 K. Kuttiraj and A26 M. Devika in pursuance of conspiracy, during the period and place as stated in the first charge, cheated Tamilnadu Uniformed Service Recruitment Board by dishonestly obtained question paper i.e. General Knowledge as mentioned in the previous charge for the exam held on 1.6.2005 in advance from the persons as mentioned in the previous charge and appeared in the said exam and got high marks and thereby you A10 N. Elangovan, A20 S. Sathish, A23 E. Kannan, A24 K. Mathivanan, A25 K. Kuttiraj and A26 M. Devika committed offence punishable u/s 420 IPC and I hereby charge you A10, A20, A23 to A26 for the offences punishable u/s 420 IPC and within my cognizance.

FOURTHLY, you J. Duraimunusamy, PC 1025 (A1), S. Chinnathambi, PC 571 (A2), S. Anbalagan, PC 20178 (A3), N. Ravichandran, PC 1400 (A-4), A. Karrupasamy, HC 2403 (A5), S. Devanath, HC 3488 (A6), R. Manibalan, PC 21181 (A7), A. Gopalakrishnan, PC 6266 (A14), A. Jeyamani, HC-1389 (A15), B. Udhaya Kumar, HC-1396 (A-17), S.A. Sekhar, HC 23875 (A18), K. Elumalai, HC-23917, Stores Department, O/o DGP, Tamil Nadu (A27), R. Anbalagan, HC -444, PEW, Tiruvallur (A28), R. Muthukumarasamy , HC-811, Q Branch, Tirunelveli (A29) in pursuance of the conspiracy during the period and place as mentioned in the first charge being public servants posted as respective designations mentioned above in the Police Department of Tamilnadu by the use of corrupt or illegal means or abusing your position as public servants obtained the question papers i.e. General Knowledge and Psychology for the exam held on 27.3.2005 in advance for the respective candidates mentined in the first charge respectively and thereby you J. Duraimunusamy (A1), S. Chinnathambi (A2), S. Anbalagan (A3), N. Ravichandran (A4), A. Karrupasamy (A5), S. Devanath (A6), R. Manibalan (A7), A. Gopalakrishnan (A14), A. Jeyamani (A15), B. Udhayakumar (A17), S.A. Sekhar (A18), K. Elumalai (A27-deceased), R. Anbalagan (A28) , R. Muthukumarasamy (A29) committed offence punishable u/s 13(2) r/w 13(1)(d) of PC Act , 1988 and I charge you A1 to A7, A14, A15, A17, A18, A28, A29 for the offences punishable u/s 13(2) r/w 13(1)(d) of PC Act 1988 and within my cognizance.

FIFTHLY, that you N. Ravichaandran, PC 1400 9A4), A. Karrupasamy, HC 2403 (A5), S. Devanath, HC 3488 (A6), R. Manibalan, PC 21181 (A7), D. Balaji, PC 18430 (A-13), B. Udhaya Kumar, HC 1396 (A-17), S.A. Sekhar, HC 23875 (A-18), S. Parthiban, PC-3510 (A-19), S. Gurumoorthy, PC 17147 (A-21), C. Pushparaj, PC 18505 (A-22) K. Elumalai, HC-23917, Stores Department, O/o DGP Tamil Nadu (A-27-deceased), R. Anbalagan, HC-444, PEW, Thiruvallur (A-28) and N. Anandan, PC-23432, Tirumullaivoil PS (A-30) in pursuance of the conspiracy

during the period and place as mentioned in the first charge being public servants posted as respective designations mentioned above in the Police Department of Tamilnadu by the use of corrupt or illegal means abusing your position as public servants obtained the question papers i.e. General Knowledge for the exam held on 1.6.2005 in advance for the respective candidates mentioned in the first charge respectively and thereby you N. Ravichandran (A-4), A. Karrupasamy (A-5), S. Devanath (A-6), R. Manibalan (A-7), D. Balaji (A-13, B. Udhaya Kumar (A-17), S.A. Sekhar (A-18), S. Parthiban (A-19), S. Gurumoorthy (A-21), C. Pushparaj (A-22), K. Elumalai (A27-deceased), R. Anbalagan (A-28) and N. Anandan (A-30 committed offence punishable u/s 13/2 r/w 13(1)(d) of PC Act, 1988 and I charge you A4 to A7, A13, A17 to A19, A21, A22, A28, A30 for the offence punishable u/s 13(2) r/w 13(1)(d) of PC Act, 1988 and within my cognizance.

11. In these petitions, the Petitioners have contended that the charges are not based on any material on record making out any offence. It is further contended that there is misjoinder of charges as well as the accused. It is also contended that allowing the prosecution to proceed further on the charges impugned in these petitions shall only be wastage of precious time of the trial court and abuse of process of court and, therefore, in order to secure the ends of justice, the proceedings are to be quashed. In respect of the individual pleas taken by each Petitioner, I will elaborately deal with the same in the later part of this order.

12. At the out set, Mr. N. Chandrasekaran, the learned Special Public Prosecutor for the Respondent [CBI] would submit that having failed in their attempt in the earlier round of petitions filed for discharge, which was later on confirmed by this Court as well as the Hon'ble Supreme Court, it is not open for the Petitioners again to approach this Court in a different form by way of petitions u/s 482 of Code of Criminal Procedure seeking to quash the charges. He would further submit that all the grounds, which have been now raised in these petitions, were raised earlier and, therefore, nothing new has been brought on record requiring consideration of this Court.

13. Per contra, Mr. A.E. Chelliah, the learned senior counsel for the Petitioners, reiterating the grounds raised in the original petitions, would submit that there has been misjoinder of charges as well as the accused and if the proceedings are allowed to be continued by the special judge, it would cause very serious prejudice to the Petitioners. He would further submit that the scope of the petitions for discharge, which were earlier considered, is totally different. According to him, while considering a petition u/s 227 of Code of Criminal Procedure for discharge, the Special Judge is not empowered to analyze the documents, which are produced by the accused; whereas while considering a petition filed u/s 482 of Code of Criminal Procedure the High Court is fully empowered to look into the documents produced by the accused and the final report filed by the police so as to ensure that at last the ends of justice is secured. He would, therefore, submit that as of now there is no bar for this Court

to entertain the original petitions and to quash the charges framed against the Petitioners. He would also submit that though several points were raised earlier in the criminal revisions before this Court and they were argued, they were not answered by this Court in the common order passed in the criminal revisions. Therefore, according to the learned senior counsel, those points which have not been dealt with by this Court in the earlier proceedings are very much available for this Court to consider afresh. The learned senior counsel would, therefore, pray for quashing the charges framed against the Petitioners.

14. Since this is a second round of litigation, it is necessary to analyze the legal position regarding the maintainability of the original petitions u/s 482 of Code of Criminal Procedure at first.

15. In the earlier round of petitions which the Petitioners filed u/s 227 of Code of Criminal Procedure though it was argued on behalf of the Petitioners that there are no sufficient materials available for proceeding against the accused, the trial court found that there are sufficient materials available for proceeding against the accused further. However, the said court had no occasion to give any finding as to what are the penal provisions under which the accused are to be tried by framing charges based on the materials available on record. A perusal of the order of this Court in the criminal revision petitions would also go to show that it does not indicate as to what are the penal provisions under which charges are to be framed. The SLP was dismissed by the Hon''ble Supreme Court at the admission stage itself. At this juncture, I may refer to a recent judgment of the Hon''ble Supreme Court in *Gangadhara Palo v. The Revenue Divisional Officer and Anr.* 2011 (2) CTC 451 wherein after referring to the land-mark Judgments in *Kunhayammed and Others Vs. State of Kerala and Another*, ; *S. Shanmugavel Nadar v. State of Tamil Nadu* JT 2002 (7) SCC 568; *State of Manipur Vs. Thingujam Brojen Meetei*, ; and *U.P. State Road Transport Corporation through its Chairman Vs. Omaditya Verma and Others*, , the Hon''ble Supreme Court in paragraphs 8 and 9 has held as follows:

8. When this Court dismisses a SLP by giving some reasons, however, meagre [it can be even of just one sentence], there will be a merger of the judgment of the High Court into the order of the Supreme Court dismissing the Special Leave Petition. According to the Doctrine of Merger, the judgment of the lower court merges into the judgment of the higher court. Hence, if some reasons, however, meagre, are given by this higher court while dismissing the Special Leave Petition, then by the Doctrine of Merger, the judgment of the High Court merges into the judgment of this Court and after merger there is no judgment of the High Court. Hence, obviously, there can be no review of a judgment which does not even exist.

9. The situation is totally different where a SLP is dismissed without giving any reasons whatsoever. It is well settled that Special Leave under Article 136 of the Constitution of India is a discretionary remedy, and hence a SLP can be dismissed for a variety of reasons and not necessary on merits. We cannot say

what was in the mind of the court while dismissing the SLP without giving any reasons. Hence, when a SLP is dismissed without giving any reasons, there is no merger of the judgment of the High Court with the order of this Court. Hence, the judgment of the High Court can be reviewed since it continues to exist, though the scope of the Review Petition is limited to errors apparent on the face of record.

16. In the cases on hand, the dismissal of SLP by the Hon''ble Supreme Court was not by giving any reason. Therefore, the dismissal of the SLP cannot be a bar to entertain the original petitions. However, as held by the Hon''ble Supreme Court, the common order passed in the criminal revision petitions by this Court continues to exist. That is the reason why the learned Special Public Prosecutor would submit that the present petitions are not maintainable u/s 482 of Code of Criminal Procedure. In my considered opinion, as I have already stated, though the Special Judge as well as this Court found that there are sufficient grounds for proceeding against the accused, after dismissal of such petitions filed u/s 227 of Code of Criminal Procedure the trial court ought to have framed appropriate charges against the accused correlating to the materials. For any reason, if this Court is satisfied that the charges framed against the accused are not based on any material or if the charges framed are erroneous and not relevant to the materials available on record, surely, this Court can interfere with the same in exercise of its inherent jurisdiction u/s 482 of Code of Criminal Procedure so as to rectify the error. In this regard the learned Counsel relies on a judgment of the Hon''ble Supreme Court in *Bajinath Jha Vs. Sita Ram and Another*, wherein the Hon''ble Supreme Court in paragraph 3 has held as follows:

3. ...While exercising the powers under Section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito* justifies to do real and substantial justice for the administration of which alone the courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers the Court would be justified to quash any proceeding if it finds that initiation /continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. ....

17. Therefore, as held by the Hon''ble Supreme Court, while exercising the power of this Court, it should be the paramount concern of this Court to exercise such power for the advancement of justice and to prevent abuse. At this juncture, I may also refer to a judgment of the Hon''ble Supreme Court in *State Orissa v. Debendra Nath Padhi*, AIR 2004 SCW 6813 wherein the Hon''ble Supreme Court has held that while deciding to frame charges, the trial court is not permitted to

look into any other documents other than the documents filed along with the police report. The phrase "hearing the submission of the accused" as found in Section 227 of Code of Criminal Procedure cannot mean as if it is an opportunity granted to the accused to file any material or document at the stage of framing of charge thereby challenging the settled law. The Hon"ble Supreme Court further proceeded to say that at the stage of framing of charges, hearing the submission of the accused has to be confined only to the material produced by the police.

18. Keeping in mind the above principles laid down by the Hon"ble Supreme Court, in the cases on hand, now we have to analyze as to whether any injustice will be caused to the accused, if the trial is allowed to be proceeded with into the charges framed by the learned Special Judge.

19. For this purpose, the learned senior counsel for the Petitioners would submit that there is misjoinder of charges. According to him, under Sections 218 and 219 of Code of Criminal Procedure there can be a joint trial of three offences of same nature committed within a period of one year. But, in the instant cases, there were two different occurrences in which two different offences had been committed by different accused. Therefore, according to the learned senior counsel, there cannot be joinder of charges in respect of both the occurrences and joint trial of the accused. The learned senior counsel would submit that this point was not earlier considered by this Court in the criminal revision petitions.

20. In order to appreciate the said contentions, let us have a look into the charges framed against the Petitioners. Undoubtedly, according to the final report of the police, there were two independent occurrences. The first occurrence relates to leakage of question paper pertaining to the examination held on 27.03.2005. The second occurrence relates to the leakage of question paper relating to the examination held on 01.06.2005. Thus, there are two different and distinct offences committed on two different occasions. However, the trial court has framed charge No. 1 as against all the 31 accused under Sections 120-B r/w 420 of IPC and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act. But, it is not even the case of the prosecution that all these 31 accused had ever conspired to commit the offence on both occasions namely, leakage of question papers in respect of the examinations held on 27.03.2005 as well as on 01.06.2005. A1 and A2 are stated to have fraudulently and dishonestly obtained the question paper relating to the examination held on 27.03.2005 and leaked out the same to some of the other accused. A3 to A5 are stated to have obtained the question paper from either A1 or A2 and supplied the same to the rest of the accused relating to the examination held on 27.03.2005. A28 is stated to have distributed the said question paper having obtained from A27 to one Sivakumar.

21. In respect of the re-examination held on 01.06.2005 and the leakage of question paper, it is stated that A6 fraudulently obtained the question paper and parted with the same to A4 and A5. In respect of this examination, again A28 is stated to have obtained the question paper from A27 and gave the same to one

Sivakumar for monetary consideration.

22. The charges 2 and 3 relate to the beneficiaries of the leaked out question papers. The Charge No. 4 , as we have already noticed, is against A1 to A5 and A28 and few others. This charge specifically relates to the leakage of question paper pertaining to the examination held on 27.03.2005.

23. Now, we have to look into Charge No. 5 which indicates that under this charge among the Petitioners A4, A5 and A28 few others stand charged. This pertains to the leakage of question paper in respect of the examination held on 01.06.2005.

24. A cursory comparison of these charges would go to show that A1 to A3 have got nothing to do with the leakage of question of paper pertaining to the examination held on 01.06.2005. A4 , A5 and A28 and few others are common accused in respect of both the occurrences. But, the accused , who stand charged under Charge No. 2 namely A8 to A10, A12 and A20 relates to the leakage of question paper in respect of the examination held on 27.03.2005 have got nothing to do with the leakage of question paper in respect of the examination held on 01.06.2005. Similarly, under Charge No. 3, A10, A20, A23 to A26 stand charged in respect of the occurrence relating to the leakage of the question paper pertaining to the examination held on 01.06.2005 and they have got nothing to do with the leakage of question paper relating to the examination held on 27.03.2005. Thus, from the charges it could be seen that among the Petitioners, A3, A4 and A28 alone are common in respect of both the occurrences.

25. The learned senior counsel would submit that the joinder of these persons commonly under charge No. 1 for conspiracy as though there was a common conspiracy in respect of two different occurrences and charging all the accused and trying them jointly violates Section 218 of Code of Criminal Procedure

26. Section 218 of the Code of Criminal Procedure, 1973 reads as under:

218. Separate charges for distinct offences.

(1) For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately:

Provided that where the accused person, by an application in writing, so desires and the Magistrate is of opinion that such person is not likely to be prejudiced thereby the Magistrate may try together all or any number of the charges framed against such person.

(2) Nothing in Sub-section (1) shall affect the operation of the provisions of Sections 219, 220, 221 and 223.

27. Section 219 of the Code of Criminal Procedure, 1973 reads as under:

219. Three offences of same kind within year may be charged together -

(1) When a person is accused of more offences than one of the same kind

committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local laws:

Provided that, for the purposes of this section, an offence punishable u/s 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable u/s 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

28. Obviously, Section 219 of Code of Criminal Procedure cannot be made applicable to the facts of the present case inasmuch as there are two different set of accused, except few accused who are common in respect of both the occurrences. Therefore, as provided in Section 218 of Code of Criminal Procedure the trial court ought to have framed separate charges in respect of distinct offences committed in respect of the question papers pertaining to two different examinations held on 27.03.2005 and 01.06.2005 and should have tried them separately. In my considered opinion, Charge No. 1 which covers both the occurrences against all the accused is surely illegal. Similarly, in respect of the other charges also though the charges have been distinctly framed, joint trial relating to two different occurrences has been ordered. This is again illegal. If the trial is allowed to be continued based on the above charges, which in my considered opinion, are erroneous, surely, this will result in serious prejudice resulting in injustice to the accused. At this juncture, I may also refer to Section 464 of the Code of Criminal Procedure which would indicate that if the failure of justice has in fact been occasioned due to irregularity in the charge including the misjoinder of charges, even the appellate court or revisional court shall be bound to order for re-trial. In the cases on hand, as I have already concluded, allowing the trial to be proceeded into the charges as framed in the case, which are erroneous and having a joint trial, will surely result in failure of justice. On this ground by itself the entire charges are liable to be quashed.

29. The next ground of attack made by the learned senior counsel for the Petitioners is that the charges framed against each Petitioner are not based on any material and, therefore, on that ground also the charges are to be quashed. Though this Court had already held in the revisions that there are materials to frame charges, there is no bar for this Court to consider the request for quashing the charges framed based on any fresh material filed by the accused along with the material produced before the special judge which were considered by the trial court at the time when the discharge petitions were heard. In this regard, we may refer to the judgment of the Hon'ble Supreme Court in *State Orissa v. Debendra Nath Padhi*, AIR 2004 SCW 6813 wherein in para 21, the Hon'ble

Supreme Court has held as follows:

21. It is evident from the above that this Court was considering the rare and exceptional cases where the High Court may consider unimpeachable evidence while exercising jurisdiction for quashing u/s 482 of the Code. In the present case, however, the question involved is not about the exercise of jurisdiction u/s 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing, but is about the right claimed by the accused to produce material at the stage of framing of charge

Keeping in mind, this Court is now required to look into the documents produced by the accused to see whether these documents are unimpeachable so as to be considered as observed by the Hon'ble Supreme Court and whether, the said documents would go to show that the allegations against the petitioners are baseless and that allowing the trial to proceed further would not serve the ends of justice.

30. Let me now take up the case of A28 R. Anbalagan. According to the final report submitted by the police, in respect of the first instance, i.e. the leakage of question paper pertaining to the examination held on 27.03.2005, as against A28 it is alleged in paragraph 34 and 35 of the final report as follows:

34. Shri K. Elumalai [A27], who was working as Head Constable - 23917 in Stores Department of DGP's office, Chennai entered into a criminal conspiracy with Shri R. Anbalagan, Head Constable - 444, PEW [A28] , to cheat TNUSRB in fraudulently obtaining the Question paper for the written exam for recruitment of Grade -II Police Constables in advance and in furtherance of the same they fraudulently obtained the Question paper for the written examination of Grade -II Police Constables, abused their official position as public servants and Shri K. Elumalai, HC-23917 [A27] passed on the Question paper to candidate Shri D. Murali and Shri R. Manimaran.

35. In furtherance of the criminal conspiracy , Shri K. Elumalai [A27] along with Shri R. Anbalagan, HC-444 [A28] also distributed the Question paper to candidate Shri N. Sivakumar.

31. In respect of the second instance , namely the leakage of question paper pertaining to the examination held on 01.06.2005, as against A28 it is alleged in paragraph 55 and 56 of the final report as follows:

55. Shri K. Elumalai [A27], Head Constable, Stores Department of DGP's office, Chennai entered into a criminal conspiracy with Shri R. Anbalagan, Head Constable-444, PEW [A28], to cheat TNUSRB in fraudulently obtaining the Question paper for the re-exam in advance and they fraudulently obtained the Question paper, abused their official position as public servants and Shri K. Elumalai, HC [A27] passed on the Question paper to candidates Shri D. Murali and Shri R. Manimaran and further along with Shri R. Anbalagan, HC-44 [A28]

distributed the Question paper to candidates Shri N. Sivakumar for monetary consideration.

56. The above candidates Shri N. Sivakumar, R. Manimaran and D. Murali, who got the Question paper through Shri K. Elumalai [A27], used the same and secured high marks in the exam. Shri N. Sivakumar has given statement u/s 164(5) Code of Criminal Procedure before the Judicial authority , wherein he has clearly stated that the question paper was obtained by him from Shri K. Elumalai [A27] through Shri R. Anbalagan [A28] and Rs. 20,000/-was paid in this regard. Similarly, Shri Manimaran had also confirmed in his statement u/s 164(5) of Code of Criminal Procedure give to the Judicial authority that Shri K. Elumalai [A27] has collected Rs. 20,000/-for parting with the Question paper. Shri D. Murali had confirmed in his statement recorded u/s 164(5) of Code of Criminal Procedure that Shri K. Elumalai [A27] has collected Rs. 20,000/-from him and parted with the Question paper.

32. The above report is based on the statement recorded by the Inspector of Police, CBI from Mr. Sivakumar on 18.07.2007 and the statement recorded u/s 164 of Code of Criminal Procedure from Mr. Sivakumar by the learned VIII Metropolitan Magistrate on 29.10.2007. In both the statements, he has stated that one Mr. Rajendran was contacted by him and his father for recommendation for getting a job in the police department. He in turn contacted A28 - R. Anbalagan over mobile phone and thereafter, A28 asked him to pay Rs. 20,000/-to A27. After paying the said amount to A27, he got the question paper. After the first examination was cancelled again, he contacted A27 and in turn A27 supplied the question paper. It is on these materials, the trial court as well as this Court earlier held that A28 - R. Anbalagan is liable to be charged.

33. The learned senior counsel would submit that subsequently, a disciplinary proceeding was initiated against A28 in which Mr. Sivakumar was cited as a witness. When he was examined before the enquiry officer in the disciplinary proceeding in P.R. No. 16/10 Mr. Sivakumar, had deposed that he did not know A28 - R. Anbalagan at all. He has not stated that A28 wanted him to pay Rs. 20,000/-to A27 who allegedly issued the question paper. He was treated as hostile before the enquiry office. The said deposition is now produced by A28 - R. Anbalagan for consideration in this petition. The learned senior counsel has taken me through the said deposition. Based on the same, the learned senior counsel for the Petitioner would submit that if this deposition is taken into account, surely, there will be no purpose in allowing the trial to be continued insofar as A28 is concerned inasmuch as the entire case of the prosecution is based on the statement of Mr. Sivakumar. In my considered opinion, though this Court can look into the said deposition of Sivakumar made before the enquiry officer in the disciplinary proceeding, the same cannot be treated as substantive evidence during trial of the criminal case. As of now, there are two different versions available, one made before the Metropolitan Magistrate u/s 164 of Code of Criminal Procedure and the other made before the enquiry officer in the

disciplinary proceedings. Both the statements have been recorded on oath. Both are of course contradictory. But, it is needless to point out that any former statement which contains a contradictory statement can be used by the adverse party only to contradict the maker of the statement during trial of the criminal case when he is examined as a witness. Here, in the cases on hand, at the time when Mr. Sivakumar is examined before the trial court by the prosecution, the defence would be at liberty to use the statement made before the enquiry officer for the purpose of contradicting him as provided in Section 145 of the Evidence Act. Equally, Mr. Sivakumar would be at liberty to offer explanation in respect of the said contradiction. Based on such contradiction and explanation, if any, the court may appreciate his evidence in the light of Section 155 of the Evidence Act. Despite the said contradiction, if sufficient explanation is offered in respect of the said contradiction, the trial court may even be prepared to act upon his evidence. Therefore, at this stage, it cannot be decided as to whether the evidence of Mr. Sivakumar will be accepted by the trial court during trial in view of the above contradictory statement made before the disciplinary authority. In such view of the matter, at this stage itself, this Court cannot presume that he will stick on to his statement made before the disciplinary authority and that he may not offer any explanation regarding his earlier statement made before the court u/s 164 of Code of Criminal Procedure. As of now, the statement made by Mr. Sivakumar before the police [CBI] and before the Metropolitan Magistrate u/s 164 of Code of Criminal Procedure are very much available upon which charges have been framed. Truthfulness or otherwise of such allegations are to be tested by examining Mr. Sivakumar. At that time, as I have already stated, the former statement made by Mr. Sivakumar before the disciplinary authority may be made use of by the accused to contradict. As held by the Hon'ble Supreme Court in Debendra Nath Padhi's case cited supra, it is only in a rarest of rare cases, while exercising the inherent jurisdiction this Court can consider a document produced by the accused provided the said document is unimpeachable in character. In the instant case, the statement made by Sivakumar before the disciplinary authority cannot be stated to be a document of unimpeachable character so as to quash the charges. Thus, on the basis of the statement made by Sivakumar before the disciplinary authority, the charges framed against A28 cannot therefore be quashed.

34. Insofar as A1-J. Duraimunusamy is concerned, now, the statement of A2-S. Chinnathambi in the disciplinary proceeding and the statement A4-Ravichandran and the news report in Times of India have been submitted by the accused for consideration by this Court. In my considered opinion, the news item appeared in Times of India Newspaper cannot be treated as evidence for any purpose while considering the request for quashing the charges. If the contents of the news paper report are to be used if they are in favor of the accused, first of all, it requires to be proved in the manner known to law. Therefore, at this juncture, the news item appeared in Times of India cannot be looked into as it cannot be stated to be an unimpeachable document.

35. Regarding the statement of A2 in the disciplinary proceeding, in my considered opinion, it is not a material to be considered at this stage. If the statement amounts to confession it can be used against the co-accused u/s 30 of the Evidence Act. If the statement of a co-accused tries to exculpate any accused, the same is not relevant as per the provisions of the Evidence Act and, therefore, the court cannot look into the same for any purpose. Similar is the statement of A4 also. In the earlier proceedings, the trial court as well as this Court found that there are materials to frame charges against A1. If the documents which are now relied on by the accused, as I have already stated, are rejected as they do not deserve consideration, then there is nothing available in favor of A1 to have the charges quashed on the ground of want of sufficient materials.

36. In respect of A2 -S. Chinnathambi, A3 -S. Anbalagan, A4 -Ravichandran and A5 -A. Karuppasamy, no fresh materials have been produced by the accused for consideration. The entire argument is based on the materials already available on record by way of police report. These materials had already been considered by this Court and after consideration, the trial court as well as this Court have found grounds to frame charges. The said findings can not be reopened now as the inherent power of this Court u/s 482 of Code of Criminal Procedure cannot be converted into either as an appellate power or revisional power. Thus, there are no fresh materials produced by the accused for A2 to A5 to quash the charges on the ground of want of sufficient grounds to proceed with the trial.

37. In view of the above, though I am not inclined to quash the charges on the ground of want of sufficient materials and on the basis of any fresh material, nevertheless, the charges are liable to be quashed on the ground of misjoinder of charges and misjoinder of accused. It is for the trial court to split up the case into two , one pertaining to the occurrence relating to the leakage of question paper in connection with the examination held on 27.03.2005 and the other pertaining to the occurrence relating to the leakage of question paper in connection with the examination held on 01.06.2005 and try the accused in each case separately and not by means of a joint trial. Similarly, after splitting up the case, the trial court shall frame appropriate charges in respect of each occurrence against the accused concerned and such charges shall be based on the materials available on record pertaining to each case.

38. In the result, the criminal original petitions are allowed; the charges framed by the trial court are quashed and the matter is remitted to the trial court with a direction to split up the case into two and to frame appropriate charges based on the materials available against each accused as indicated above and then to proceed with the trial in accordance with law.