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**(2021) 08 KL CK 0111**  
**In the High Court Of Kerala**  
**Case No : Crl.Rev.Pet No. 1519 Of 2017**

Shiv Charan Lal Meena @ S.C.L. Meena APPELLANT  
Vs  
State Of Kerala RESPONDENT

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**Date of Decision :** 12-08-2021

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 227, 239, 245(1)  
Prevention of Corruption Act, 1988 — Section 13  
Indian Penal Code, 1860 — Section 120B, 420

**Citation :** (2021) 08 KL CK 0111

**Hon'ble Judges :** R. Narayana Pisharadi, J

**Bench :** Single Bench

**Advocate :** K.Babu Thomas Rekha.S, P.Vijayakumar

**Final Decision :** Allowed

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## Judgement

R. Narayana Pisharadi, J

1. The petitioners are the first and the second accused in the case C.C.No.10/2011 pending in the Court of the Special Judge (SPE/CBI),

Thiruvananthapuram.

2. The offences alleged against the petitioners in the above case are punishable under Section 13(1)(d) read with 13(2) of the Prevention of Corruption

Act, 1988 (for short 'the Act') and also under Sections 420 and 120B of the Indian Penal Code.

3. The first accused was the Chief Engineer (Constructions) in the Southern Railway, Thiruvananthapuram during the period 2004-2006. He was

responsible for planning and execution of civil projects, finalisation of alignments, approval of the working plan and also for calling tenders and

awarding them. It is alleged that the first accused was competent to accept

tenders for an amount varying between forty lakhs to five crores rupees.

4. The second accused was a Civil Contractor. He was the person who was awarded the execution of earth work in connection with the gauge

conversion of railway line between Quilon and Tenkasi.

5. The prosecution case, in short, is as follows: The first and the second accused entered into a criminal conspiracy in respect of awarding the earth

work mentioned earlier. Pursuant to such conspiracy, the first accused, without considering the recommendations made by the Tender Committee,

manipulated the tender proceedings and awarded the earth work mentioned above in favour of the second accused on a very high rate. Subsequently,

the second accused could not complete the work within the time stipulated and the remaining work had to be retendered and awarded to another

person. Consequently, the Indian Railways incurred a loss of Rs.91,89,483/-.

6. The first and the second accused filed separate applications for discharge as Crl.M.P.Nos.21/2011 and 19/2014 in the trial court under Section 239

of the Code of Criminal Procedure, 1973 (for short 'the Code').

7. As per the order dated 28.11.2017, the trial court dismissed the aforesaid applications and found that charge has to be framed against the petitioners

for the offences alleged against them.

8. The first and the second accused have filed this revision petition challenging the legality and validity of the aforesaid order passed by the trial court.

9. Heard the learned counsel for the petitioners and also the learned counsel who appeared for the CBI.

10. Learned counsel for the petitioners invited the attention of this Court to various documents produced by the prosecution along with the charge-

sheet and contended that a perusal of those documents would show that the prosecution has not produced any materials to prove the offences alleged

against the petitioners. Learned counsel for the petitioners also contended that, the impugned order was passed by the trial court without application of

mind to the allegations raised against the petitioners and the documents produced by the prosecution and also that the trial court did not consider,

whether on the basis of the materials produced by the prosecution, a prima facie case against the petitioners is made out or not.

11. Learned counsel who appeared for the CBI also invited the attention of this Court to various documents produced by the prosecution and

contended that the first petitioner intentionally and dishonestly acted in violation of the recommendations made by the Tender Committee and awarded

the work to the second accused pursuant to the conspiracy hatched by them and thereby, the accused obtained pecuniary advantage.

12. A bare perusal of the impugned order passed by the trial court would show that it was passed without due application of mind to the materials

produced by the prosecution. The trial court did not make any attempt to evaluate the materials produced by the prosecution to ascertain whether such

materials were sufficient to establish a prima facie case against the petitioners.

13. The trial court has, in the impugned order, at first referred to the offences alleged against the accused in the case and thereafter narrated the

prosecution case against them. Thereafter, the trial court quoted some decisions and stated the principles regarding framing of charge against the

accused in a case and the matters to be considered under Section 239 of the Code.

14. Thereafter, the trial court found as follows:

“Though C.M.P No.21/11 and C.M.P No.19/14 were preferred by the 1st and the 2nd accused respectively with several contentions in support of the claim of

discharge and at the bar the learned counsel for the respective accused has made vehement submissions canvassing discharge of accused, when the materials

brought on record by the prosecution such as statement of witnesses and the documentary evidence are considered in the light of the legal position emerging from

the precedents cited supra, this court is of the considered view and opinion that it cannot be stated, at this stage, that the allegations levelled against the accused are groundless.”

15. The aforesaid finding was made by the trial court without adverting to any of the contentions raised by the petitioners and without making

reference to the statement of any particular witness or any specific document.

16. After making the above finding, the trial court again narrated the prosecution case against the accused and the allegations against them.

Thereafter, the trial court made a general observation as follows:

“The prosecution has produced statement of witnesses u/s 161 Cr.P.C and documents, which the prosecution claims, are sufficient enough to substantiate

the

criminal conspiracy hatched by both accused, the corrupt and illegal acts of the 1st accused in abuse of his official position as a public servant to make undue pecuniary advantage to the accused and conversely wrongful loss to the Railways.â??

17. Thereafter, the trial court referred to the contention raised by the first accused that he was not the ultimate authority in finalising the alignment of the railway line. The trial court found that, whether the first accused could have finalised the alignment of the railway track or whether the Railway

Board was the authority competent to finalise the alignment, and the other contentions raised by the petitioners, are factual matters which can be ascertained during trial only and those matters cannot be ascertained from the materials brought on record by the prosecution.

18. Thereafter, the trial court concluded as follows:

â??On the other hand, the witness statement and the documents pressed into service by the prosecution would show a serious probability for commission of offence u/s 120B of Section 420 IPC, 120B IPC read with Section 13(2) of P.C Act, 1988 read with Section 13(1)(d) of the said Act and the substantive offences thereof. It cannot be stated now that the allegations against the accused are groundless. On the other hand, a reasonably prudent man can discern from the materials now brought on record by the prosecution that there are grounds to presume that the accused have committed the aforesaid offences. In these circumstances, neither the petitioner in C.M.P 20/11 nor the petitioner in C.M.P 19/14 can be discharged. Therefore a charge is to be framed against both the accused for the aforesaid offences as the materials produced on record by the prosecution would prima-facie disclose commission of those offences by the accused.

As a corollary C.M.P 21/2011 and C.M.P 19/2014 are to be dismissed and a charge is to be framed against the accused for offence u/s 120B of Section 420 IPC,

120B IPC read with Section 13(2) of P.C Act read with Section 13(1)(d) of the said Act, 420 IPC and 13(2) of P.C Act, 1988 read with Section 13(1)(d) of P.C Act, 1988. It is ordered accordingly.â??

19. The impugned order would show that the trial court did not consider the specific contentions raised by the petitioners in the applications for

discharge filed by them. The trial court also did not advert to the question, whether the materials produced by the prosecution, if accepted on their face value, would be sufficient to constitute the ingredients of the offences alleged against the petitioners/accused.

20. 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 of the Code can be ordered when “the Magistrate considers the charge against the accused to be groundless”. The power of discharge under Section 245(1) of the Code has to be exercised by the Magistrate 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”.

21. There is difference in the language employed in the above provisions. But, notwithstanding this difference, whichever provision may be applicable, the court is required at that stage to see that there is a prima facie case for proceeding against the accused (See *Tarun Jit Tejpal v. State Of Goa* : 2019 SCC OnLine SC 1053).

22. In *Asim Shariff v. National Investigating Agency* : AIR 2019 SC 3083, the Apex Court has held as follows:

“It is settled that the Judge while considering the question of framing charge under Section 227 Cr.P.C in sessions cases (which is akin to Section 239 Cr.P.C pertaining to warrant cases) 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 material placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing the charge; by and large if two views are possible and one of them giving rise to suspicion only, as distinguished from grave suspicion against the accused, the trial Judge will be justified in discharging him. It is thus clear that while examining the discharge application filed under Section 227 Cr.P.C, it is expected from the trial Judge to exercise its judicial mind to determine as to whether a case for trial has been made out or not. It is true that in such proceedings, the Court is not supposed to hold a mini trial by marshalling the evidence on record”.

(emphasis supplied)

23. In State v. M.R.Hiremath : AIR 2019 SC 2377, it has been held as follows:

“It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which

has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on

its face value, disclose the existence of the ingredients necessary to constitute the offence.”

(emphasis supplied)

24. In State v. S.Selvi : AIR 2018 SC 81, it has been held as follows:

“The Judge cannot act merely as a Post Office or a mouth - piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of

the statements 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 materials as if he was conducting a trial.”

(emphasis supplied)

25. In State v. Anup Kumar Srivastava : AIR 2017 SC 3698, the Apex Court has held as follows:

“Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith

before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where

the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial..... The legal position is

well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it

for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine

the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. The court is

required to consider the record of the case and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it

appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. The satisfaction of the

court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction.

(emphasis supplied)

26. Moreover, while considering an application for discharge filed in terms of Section 239 of the Code, the trial court shall go into the details of the

allegations made against each of the accused persons so as to form an opinion as to whether any case at all has been made out or not (See Rumi

Dhar v. State of West Bengal : AIR 2009 SC 2195).

27. The decisions referred to above would show that, while considering an application for discharge, the trial court has to exercise its judicial mind to

determine as to whether a prima facie case against the accused has been made out or not. At that stage, the trial court has the undoubted power to

sift and weigh the evidence. It has to proceed on the assumption that the materials brought on the record by the prosecution are true and evaluate the

materials. It has to consider the broad probabilities of the case and the total effect of the statements and the documents produced before the Court by

the prosecution. Such sifting and weighing of evidence and evaluation of materials produced by the prosecution have to be undertaken by the trial

court only for the limited purpose of finding out whether or not a prima facie case against the accused has been made out and to determine whether

the facts emerging from such materials, taken on their face value, disclose the existence of the ingredients necessary to constitute the offence or

offences alleged against the accused and not for deciding whether such materials are sufficient to enter a conviction against the accused. As held in

Anup Kumar Srivastava (supra), the satisfaction of the court in relation to the existence of the ingredients of an offence and the facts leading to that

offence is a sine qua non for exercise of the jurisdiction of the trial court at that stage.

28. In the present case, the trial court has not specifically considered the merits of any of the contentions raised by the petitioners in the applications

for discharge filed by them. The trial court did not refer to the statement of any prosecution witness. The trial court also did not evaluate any materials produced by the prosecution to ascertain whether or not the facts emerging from such materials would constitute the offences alleged against the petitioners/accused. The trial court only made some general observations that the statement of witnesses and the documents produced by the prosecution would show a serious probability of the commission of the offences by the accused and it cannot be found that the allegations levelled against the accused are groundless. Such observations were made by the trial court without considering the materials on record produced by the prosecution. Making such general observations can be no substitute for the exercise to be undertaken by the trial court at that stage.

29. The discussion above would show that this is a clear case of non-exercise of jurisdiction by the trial court. Therefore, the impugned order is liable to be set aside.

30. Consequently, the revision petition is allowed and the impugned order is set aside. The applications for discharge filed by the petitioners are restored to the file of the trial court. The trial court is directed to consider afresh the applications for discharge filed by the petitioners and pass appropriate orders thereon, in accordance with law.

All pending interlocutory applications are closed.