

ITEM NO.29

COURT NO.5

SECTION II-C

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s).11664/2024

(Arising out of impugned final judgment and order dated 07-08-2024 in SMCRLRC No.1481/2023 passed by the High Court Of Judicature at Madras)

T. THENNARASU (A) THANGAM THENNARASU

Petitioner(s)

VERSUS

THE STATE OF TAMIL NADU &amp; ORS.

Respondent(s)

(FOR ADMISSION )

WITH

SLP(Crl) No. 11722/2024 (II-C)

(FOR ADMISSION and I.R. and IA No.192635/2024-EXEMPTION FROM FILING O.T.)

SLP(Crl) No. 11733/2024 (II-C)

(FOR ADMISSION and IA No.192781/2024-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.193879/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(Crl) No. 11738/2024 (II-C)

(FOR ADMISSION and I.R. and IA No.192801/2024-PERMISSION TO FILE LENGTHY LIST OF DATES)

Date : 06-09-2024 These petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY

HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRA

For Petitioner(s)

Mr. Kapil Sibal, Sr. Adv.

Mr. N.R. Elango, Sr. Adv.

Mr. Mariappan, Adv.

Ms. Devyani Gupta, AOR

Ms. Tanvi Anand, Adv.

Ms. Aparajita Jamwal, Adv.

Dr. Abhishek Manu Singhvi, Sr. Adv.

Mr. Anand Varma, AOR

Mr. Saravana Kumaran, Adv.

Mr. Ayush Gupta, Adv.

Ms. Apoorva Pandey, Adv.  
Ms. Adyasha Nanda, Adv.  
Mr. Siddharth Seem, Adv.

Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Vikram Choudhari, Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Anshuman Srivastava, Adv.  
Ms. Misha Rohatgi, Adv.  
Mr. M. Thangathurai, Adv.  
Ms. Kamakshi Sehga, Adv.  
Mr. Himanshu Saraswat, Adv.  
Mr. E. C. Agrawala, AOR

Dr. S. Muralidhar, Sr. Adv.  
Mr. Sidharth Luthra, Sr. Adv.  
Mr. Vivek Singh, AOR  
Mr. Ritik Dwivedi, Adv.  
Mr. Kartikeye Dang, Adv.  
Mr. Sahir Seth, Adv.  
Mr. Shariq Ansari, Adv.  
Ms. Pallak Bhagat, Adv.  
Mr. M.A. Karthik, Adv.  
Mr. Maitreya Subramaniam, Adv.

For Respondent(s) Mr. P.S. Raman, AG  
Mr. D. Kumanan, AOR (physical appearance slip given)  
Ms. Deepa S., Adv.  
Mr. Sheikh F. Kalia, Adv.  
Mr. Veshal Tyagi, Adv.  
Mr. Chinmay Anand Panigrahi, Adv.

UPON hearing the counsel the Court made the following

#### O R D E R

Heard Mr. Mukul Rohatgi, Dr. Abhishek Manu Singhvi, Mr. Kapil Sibal, Dr. S. Muralidhar and Mr. Sidharth Luthra, learned Senior Counsel appearing for the respective petitioners in these batch of cases.

2. The SLP(Crl.) No. 11664 of 2024 is taken as the lead case for this order. The challenge here is to the impugned Judgment and orders of the learned Single Judge of the High Court of Judicature at Madras exercising power of suo motu criminal revision, under

Section 397 of the Criminal Procedure Code, 1973 (CrPC). Following such an exercise, the Court has interfered with the closure report whereby the accused were discharged. The learned Judge then ordered for restoration of the special case(s) to the file of the concerned Special Court. In doing so, the Court directed that the final closure report filed by the Directorate of Vigilance and Anti-Corruption (DVAC) should now be treated as supplementary report under Section 173(8) of the CrPC. Thereafter, the Court has directed the Special Court to proceed to frame charges with the observation that *prima facie* materials are available to frame charges.

3. In consequence of the above, the accused were directed to immediately appear before the Special Court on different dates in September 2024 and directed the matters to proceed on a day to day basis for early conclusion of the *de novo* Trial.

4. The first contention of the learned counsel for the petitioners is in reference to Rule xiv of the *Madras High Court Rules*, which reads as under:-

*"xiv. If any quash application or revision against discharge is admitted by a Single Judge of the High Court, whether on the petition filed by the MP/MLA or by a co-accused in that case, the Principal District Judge should inform the same to the Administrative Committee, which in turn shall bring the matter to the knowledge of the Hon'ble Chief Justice. The Hon'ble Chief Justice being the Master of the Roster, may thereafter assign the case to his own board or to any other Division Bench for disposal."*

5. The argument of the counsel is that while the learned Chief

Justice is the Master of the Roster, while assigning the suo motu criminal revision pertaining to MPs/MLAs, the matter should have been assigned to a Division Bench. But here the assignment was made to the Single Judge's Court. This is projected to be contrary to the Rules of the High Court and it is argued that without amendment of the Rules, the consideration of the matters by the Division Bench was warranted.

6. The counsel would then advert to the provisions of Section 227 of the CrPC, to argue that on the basis of the materials and documents and the arguments of the accused and the prosecution, the Special Judge is required to consider whether there is sufficient ground for proceeding against the accused. Otherwise he should discharge the accused by recording reasons for doing so.

7. But in the impugned judgment, the learned Judge of the High Court has expropriated the power conferred by the CrPC on the Special Judge and decided that the Special Judge shall proceed to frame charge. The Court also ordered for closure of the discharge petitions filed by the accused.

8. It is then pointed out that the final closure report dated 28.10.2022 filed by DVAC is ordered to be treated as a supplementary report under Section 173(8) of the CrPC. But there are contrary reports in these cases, of the year 2012. It is therefore argued by the learned counsel for the parties that both sets of reports have to be weighed by the learned Special Court and thereafter the Court should arrive at a conclusion to either discharge the accused or proceed with the Trial, as envisaged under Section 227 of the CrPC. But instead, the learned Judge in the

impugned judgment had himself directed the final closure report dated 28.10.2022 favouring the accused, to be treated as a supplementary report.

9. The counsel would rely upon *Vinay Tyagi vs. Irshad Ali @ Deepak and Others* reported in 2013 5 SCC 762 and para 42, where the following was pronounced in reference to the provisions of Section 227 of the CrPC.

*"42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the court shall discharge an accused in compliance with the provisions of Section 227 of the Code."*

10. The above ratio in *Vinay Tyagi (supra)* was followed by the Supreme Court in the later decision in *Luckose Zachariah alias Zak Nedumchira Luke and Others vs. Joseph Joseph and Others* reported in 2022 SCC OnLine SC 241 (para 16), where this Court while following the ratio in *Vinay Tyagi (supra)* declared the law pertaining to the reports under Section 173(2) and 173(8) of the CrPC, in the following manner:-

*"16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and Vinubhai Haribhai Malaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to*

*take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence. While the High Court has relied upon the decision in Vinay Tyagi (supra), it becomes necessary for this Court to set the matter beyond any controversy having due regard to the fact that the Sessions Judge in the present case had while remitting the proceedings back to the Magistrate relied on the judgment of the Single Judge of the Kerala High Court in Joseph (supra) which is contrary to the position set out in Vinay Tyagi. Hence, the JFCM - I Alappuzha shall reexamine both the reports in terms of the decisions of this Court in Vinay Tyagi v. Irshad Ali alias Deepak and Vinubhai Haribhai Malaviya v. State of Gujarat as noted above and in terms of the observations contained in the present judgment. The Magistrate shall take a considered decision expeditiously within a period of one month from the date of the present order."*

11. Issue notice, returnable in four weeks.

12. Dasti notice on the Standing Counsel for the State, in addition.

13. In the meantime, the operation of the impugned judgments shall remain stayed.

(DEEPAK JOSHI)  
ASTT. REGISTRAR-cum-PS

(KAMLESH RAWAT)  
ASSISTANT REGISTRAR