

ITEM NOS.37+38+61

COURT NO.4

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No(s). 16221/2024

[Arising out of impugned judgment and order 29-10-2024 in SMCRLRC No. 1524/2023 passed by the High Court of Judicature at Madras at Chennai]

O PANNEERSELVAM

Petitioner(s)

VERSUS

STATE REP BY DEPUTY SUPERINTENDENT OF POLICE & ORS. Respondent(s)

(IA No. 268928/2024 - EXEMPTION FROM FILING O.T. and IA No. 268932/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 268934/2024 - PERMISSION TO FILE LENGTHY LIST OF DATES)

WITH

SLP(Crl.) No(s). 16281/2024

(FOR ADMISSION and IA No.269742/2024-EXEMPTION FROM FILING O.T., IA No.269743/2024-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.269741/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

SLP(Crl.) No(s). 16288/2024

(IA No. 270149/2024 - EXEMPTION FROM FILING O.T., IA No. 270146/2024 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No. 270141/2024 - PERMISSION TO FILE LENGTHY LIST OF DATES)

WITH

SLP(Crl) No. 16242/2024 (II-C)

(FOR PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES ON IA 269250/2024, FOR EXEMPTION FROM FILING O.T. ON IA 269254/2024 and FOR PERMISSION TO FILE LENGTHY LIST OF DATES ON IA 269256/2024)

SLP(Crl) No. 16342/2024 (II-C)

(FOR ADMISSION and I.R.; IA No.270481/2024-EXEMPTION FROM FILING O.T. and IA No.270483/2024-PERMISSION TO FILE LENGTHY LIST OF DATES and IA No.270485/2024-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 29-11-2024 These matters were called on for hearing today.

**CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE S.V.N. BHATTI**

For Petitioner(s) Mr. S Nagamuthu, Sr. Adv.
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Ms. Devanshi Singh, Adv.

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 Mr. Shubham Arun, Adv.
 Mr. Shaurya Katoch, Adv.

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 Mr. Aranya Sinha, Adv.
 Ms. Vanshika Dubey, Adv.
 Ms. Ujala Singh, Adv.
 Ms. Vediccaa Ramdane, Adv.
 Ms. Kiran Gaur, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
 O R D E R

Heard Mr. Mukul Rohatgi, Dr. Abhishek Manu Singhvi, Mr. S.
 Nagamuthu, and Mr. Sidharth Luthra, learned Senior Counsel

appearing for the respective petitioners in these batch of cases.

2. The special leave petition (Crl.) No.66221/2024 is taken as the lead case for this order.

3. The challenge here is to the impugned Judgment and order of the learned Single Judge of the High Court of Judicature at Madras exercising powers 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/discharge order after 12 years. The matters pertain to a disproportionate assets case for the check period i.e. 19.05.2001 to 12.05.2006. On 03.12.2012, there was withdrawal of prosecution under Section 321, CrPC and the accused persons stood discharged.

5. The Learned Judge, however, ordered for restoration of the special cases, to the file of the concerned special Court. In doing so, the Court directed that the final closure report should now be treated as a supplementary report under Section 173(8) of the CrPC. The Court has also directed the Special Court to proceed to frame charges with the observation that prima facie materials are available to frame charges.

6. The accused were directed to immediately appear before the Special Court and the Learned Judge was directed to proceed on a day to day basis for early conclusion of the Trial by 30.06.2025.

7. The learned counsel for the petitioners would 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. If

merit is not found, the Judge concerned should discharge the accused. 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.

8. The counsel would rely upon *Vinay Tyagi vs. Irshad Ali @ Deepak* reported in 2013 5 SCC 762 (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."

9. 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."

10. Issue notice, returnable in four weeks.
11. Dasti notice on the Standing Counsel for the State, in addition.
12. In the meantime, the operation of the impugned judgment(S) shall remain stayed.

(GEETA JOSHI)
SENIOR PERSONAL ASSISTANT

(KAMLESH RAWAT)
ASSISTANT REGISTRAR