

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE B.KEMAL PASHA

MONDAY, THE 9TH DAY OF NOVEMBER 2015/18TH KARTHIKA, 1937

OP(Crl.).No. 376 of 2015 (Q)

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AGAINST THE COMMON ORDER DATED 29/10/2015 IN VC.6/2014/SIU-I/TVPM &
CRL. MP. NOS.736/2015, 921/2015, 922/2015, 923/2015, 928/2015, 980/2015, 1061/2015,
1062/2015, 1135/2015, 1155/2015 & 877/2015 OF ENQUIRY COMMISSIONER &
SPECIAL JUDGE, THIRUVANANTHAPURAM.**

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PETITIONER(S):

**THE VIGILANCE & ANTI CORRUPTION BUREAU,
DIRECTORATE, THIRUVANANTHAPURAM,
REPRESENTED BY ITS ADDITIONAL DIRECTOR
GENERAL OF POLICE DR.SHAIK DARVESH SHAHEB IPS.**

**BY SRI.K.P. DANDAPANI, ADVOCATE GENERAL
SRI.KAPIL SIBAL, SENIOR ADVOCATE.**

RESPONDENT(S):

- 1. NEYYATTINKARA P. NAGARAJ,
S/O.S.P. THYAGARAJAN, AYYAPPA NIVAS,
OPP. COURT COMPLEX, NEYYATTINKARA.**
- 2. V. MURALEEDHARAN,
STATE PRESIDENT, BHARATHIYA JANATHA PARTY,
THIRUVANANTHAPURAM.**
- 3. P. VISWANATHAN NAIR @ VAIKOM VISWAN,
CONVENER, LEFT DEMOCRATIC FRONT,
AKG NAGAR, THIRUVANANTHAPURAM.**
- 4. SARA JOSEPH, CONVENER,
AAM ADMI PARTY KERALA, GITANJALI,
MULAMKUNNATHUKAVU, THRISSUR.**
- 5. SUNNY MATHEW, S/O.MATHEW,
PALAKKATTUKUNNEL HOUSE,
ARAKKULAM P.O., IDUKKI.**
- 6. V.S. SUNIL KUMAR, MEMBER,
KERALA LEGISLATIVE ASSEMBLY,
THIRUVANANTHAPURAM.**

7. VIJU A.R., ADVOCATE, THIRUVANANTHAPURAM.
 8. V.S. ACHUTHANANDAN, LEADER OF THE OPPOSITION,
KERALA LEGISLATIVE ASSEMBLY,
THIRUVANANTHAPURAM.
 9. BIJU RAMESH,
S/O.RAMESAN, SAMTHRIPTI, EAST FORT,
THIRUVANANTHAPURAM.
 10. NOBLE MATHEW,
S/O.LATE M.D. MATHEW, MANNAMPLACKAL HOUSE,
CHIRAKKADAVU P.O., KOTTAYAM.
 11. ALL KERALA ANTI -CORRUPTION AND
HUMAN RIGHTS PROTECTION COUNCIL,
PALAKKAD.
 12. K.M. MANI,
MINISTER FOR FINANCE, LAW & HOUSING,
THIRUVANANTHAPURAM.
- R3 BY ADVS. SRI.K.K.RAVINDRANATH,
SRI.P.N.SUKUMARAN,
SRI.N.MANOJ KUMAR.
- R4 BY ADV. SRI.AJITH JOY.
- R5 BY SRI.P. VIJAYABHANU, SENIOR ADVOCATE.
- R6 BY SRI.RENJITH THAMPAN, SENIOR ADVOCATE.
ADV. SMT.P.R.REENA.
- R8 BY SRI.K.GOPALAKRISHNA KURUP, SENIOR ADVOCATE.
ADVS. SRI. T.B.HOOD,
SRI. MANU V.,
SMT.M.ISHA,
SRI.AMAL KASHA.
- R10 BY ADV. SRI.NOBLE MATHEW (PARTY IN PERSON).
- R11 BY ADVS. SRI.MANSOOR.B.H.,
SMT.NITHYA SASI.

THIS OP (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 09-11-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

rs.

OP(Crl.).No. 376 of 2015 (Q)

APPENDIX

PETITIONER'S EXHIBITS:-

P1: TRUE COPY OF THE ORDER DATED 29.10.2015 OF THE VIGILANCE COURT.

P2 TO P2 (E): TRUE COPIES OF THE NEWS ITEMS PUBLISHED IN VARIOUS PRINT MEDIAS.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.S. TO JUDGE

rs.

[CR]

B. KEMAL PASHA, J.

.....
O.P.(Crl) No. 376 of 2015
.....

Dated this the 9th day of November, 2015

J U D G M E N T

Sri. V.S. Achuthanandan, the 8th respondent herein, filed a petition before the Director of Vigilance regarding the disclosure made by the 9th respondent herein Sri.Biju Ramesh in certain T.V. Channels that the 12th respondent herein Sri.K.M. Mani, the Finance Minister, has demanded ₹5 crores as illegal gratification to facilitate the renewal of Bar licence, and obtained ₹1 crore from the members of the Kerala Bar Hotel Owners' Association during the period between 20.03.2014 and 03.04.2014 and thereby, the 12th respondent committed criminal misconduct.

2. As the 6th respondent Sri.V.S. Sunilkumar, MLA

has felt that the matter was not being properly investigated into, he approached this Court through W.P.(C)No.29856 of 2014 seeking the registration of a crime by the Vigilance Department. The Writ Petition was disposed of by this Court on 03.12.2014 with a direction to the Director of Vigilance to take a decision for registering an FIR or not in accordance with the provisions of the Code of Criminal Procedure and in tune with the decision of the Apex Court in ***Lalitha Kumari v. Government of U.P. And others*** (2014 (2) SCC 1) rendered by the Constitution Bench.

3. It seems that even prior to the above direction of this Court, the Director had, on 04.11.2014, ordered a quick verification by the Dy.S.P. Vigilance and Anti-Corruption Bureau, Southern Range, Thiruvananthapuram in the matter. The said officer submitted a report on 06.11.2014 recommending a detailed investigation in the matter. The report was forwarded to the Director. Consequently, the Director, VACB, on scrutinising the quick verification report,

directed the Superintendent of Police, Vigilance and Anti-Corruption Bureau(SIU-1) to register a vigilance case for the offences under Sections 7 and 13(1)(d) of the Prevention of Corruption Act and to conduct an investigation.

4. The investigating officer conducted an investigation and prepared a factual report. At first, he submitted the factual report before the Additional Legal Adviser, Vigilance Department. The Legal Adviser, after a scrutiny, furnished an opinion that there was no evidence for demand and, therefore, the offences would not lie. Thereafter, the file was forwarded to the Additional Director General of Police, Vigilance and Anti-Corruption Bureau. The Additional Director General of Police, Vigilance in writing, asked the investigating officer as to whether there was any evidence for demand by the accused. Precisely, a reply was furnished by the investigating officer that *“there were no direct/oral/recordical evidence to indicate any demand from the part of the accused.”* The Additional

Director General of Police, Vigilance concluded that there was no material available to prosecute the accused since no offence was made out. With such a scrutiny report, the matter was placed before the Director, Vigilance and Anti-Corruption Bureau, which according to the petitioner, is a normal procedure in the Vigilance Department, in accordance with the Vigilance Manual.

5. The Director General of Vigilance and Anti-Corruption Bureau, thereafter, approached the Attorney General of India as well as the Solicitor General of India seeking legal advice in the matter. Having responded negatively in giving the legal advice, ultimately, the Director of Vigilance obtained legal advice from two designated Senior Advocates of the Supreme Court, who were former Solicitors General of India. Based on the said legal opinions, the Director, VACB, has taken the view that there was no sufficient material to prove the ingredients of Sections 7 and 13(1)(d) r/w Section 13(2) of the Prevention

of Corruption Act, 1980. He gave a direction to the investigating officer in the following lines:

“From the documentary, oral and circumstantial materials presented in the factual report by the investigating officer, I am of the opinion that there is no sufficient material to prove the ingredients of S.7, S.13(1)(d) r/w S.13(2) of P.C. Act, 1988. Hence the investigating officer is directed to file the final report before the court after considering the foregoing discussions.”

6. Through the covering letter of the scrutiny report, the investigating officer was further directed,

“The scrutiny report on the factual report in V.C. 6/14/SIU/1 is forwarded herein for further necessary action and report compliance”.

Based on the aforesaid directions, the investigating officer prepared a final report stating that there would be no successful prosecution against the accused, thereby seeking to get the proceedings dropped.

7. In substance, a refer report was filed to that effect. The court below on getting the refer report as aforesaid, has come down heavily on the Director of Vigilance by criticising that the directions issued by the Director of Vigilance has intruded into the arena of the investigation. The court below further observed that the Director of Vigilance through the said directions, has substituted the opinion of the investigating officer with his opinion. The court below, through the impugned order, has chosen to direct the investigating officer to conduct a further investigation in the matter, under Section 173(8) Cr.P.C.

8. The present Original Petition(Crl.) is filed by the Vigilance and Anti-Corruption Bureau through its Additional Director General of Police, Dr. Shaik Darvesh Shaheb, IPS.

9. Heard the learned Advocate General Sri. K.P Dandapani, learned Senior Advocate Sri. Kapil Sibal, learned Senior Counsel Sri. K. Gopalakrishna Kurup, learned Senior Counsel Sri. Ranjith Thampan, learned

Senior Counsel Sri. P. Vijayabhanu, learned counsel Sri.K.K.Ravindranath, Sri.Ajith Joy, Sri.Mansoor B.H., and Adv.Noble Mathew in *extenso*, on the legal questions involved. There is no dispute with regard to the facts regarding the investigation noted in the impugned order.

10. The first point raised by the learned Advocate General is that the factual report does not form part of the case diary, and consequently, the scrutiny report also does not form part of the case diary. The argument is that, therefore, the court below ought not to have called for the factual report or the scrutiny report for passing the impugned order.

11. Section 172(1) Cr.P.C. deals with the diary proceedings in investigation which reads as follows:

“(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he

began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.” (emphasis supplied)

12. When the said provision shows that the case diary proceedings includes the statement of the circumstances ascertained by the investigating officer through his investigation, the factual report falls within the contents of the case diary, under Section 172(1) Cr.P.C. In the light of the said statutory provision, this Court is of the view that the same is no more open to further challenge.

13. Section 172(2) Cr.P.C. says:

“(2) Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial.”

14. There is no quarrel with the said proposition that the stage at which the court below is dealing with the matter of final report was 'inquiry'. 'Inquiry' is defined under Section

2(g) of Cr.P.C. as:

“2(g) : “Inquiry” means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court.”

15. When a final report is filed before the court below, it seems that, that was the end of the investigation. Investigation culminates, and the trial begins on the framing of charges. Therefore, till that time, from the filing of the final report onwards, the proceedings before the court below is 'inquiry' within the meaning of Section 2(g) Cr.P.C. Matters being so, the court below has got ample power under Section 172(2) Cr.P.C. to call for the case diary as such for a perusal; not as evidence in the case, but to aid in such inquiry. In such case, the court below cannot be found fault with in perusing the factual report or the scrutiny report, which forms part of the case diary.

16. The court below can assess the investigation and look into the case diary to note down whether there is any

factual error in the factual report regarding the materials collected in the investigation conducted by the investigating officer. To that extent, the court below has the liberty to peruse the case diary.

17. The next point is with regard to the powers conferred on the Director of Vigilance and Anti-Corruption Bureau through paragraph 72 of the Vigilance Manual. Paragraph 72(1) says:

“72(1) After completion of the investigation a report giving the facts, evidence and circumstances in each case (both for and against the prosecution) shall be forwarded by the Deputy Superintendent of Police to the Superintendent of Police concerned, who will forward the same along with his Forwarding Endorsement to the Director, through the IGP/DIP of Police concerned for further transmission to Government(in cases personally investigated by the Superintendent of Police or other senior officers, the Factual Report will be

prepared by them. The final decision on a Factual Report either to prosecute an accused subject him/them to an enquiry by Vigilance Tribunal or otherwise will be taken at the Directorate after assessing the quality and quantum of evidence.”

“72(2). The factual Reports, after examination and approval by the Director, shall be forwarded by him to the Government in the Vigilance Department. Where the decision in the case is for prosecution the Director shall forward along with it, copies of FIR, statement of witnesses, mahazars and all other connected documents relied upon for the proposed prosecution as well as the opinion of the LA/ALAs. to the Sanctioning Authority.”

18. The learned Advocate General as well as the learned Senior Counsel Sri.Kapil Sibal have pointed out that the investigation of vigilance cases as well as CBI cases is on a separate footing, than the investigation in a normal case. Certain powers are conferred on the Director of CBI

as well as the Director of Vigilance to deal with the matters during investigation. The learned Senior Counsel Sri.Vijayabhanu also supports the said view. The other learned Senior Counsel as well as the other counsel for other parties have vehemently opposed the said argument, and by relying on ***Lalitha Kumari***(*supra*) argued that the CBI manual has no force of law as it is not a statute enacted by the legislature. It has to be noted that the Government have approved Vigilance and Anti Corruption Bureau Manual as per G.O(Rt.)No.4/2002/dated 03.01.2002. So, it is evident that through the Government Order, the Government has approved the Vigilance Manual as such. On going through the catena of decisions on the point, this Court is of the view that the Vigilance Manual holds good in the field of investigation, provided those provisions are not contrary to the provisions contained in the Cr.P.C. Paragraph 59(ii) of the Vigilance Manual says that '*the vigilance case should be registered within 10 days on getting orders to that effect*

from the Directorate'. Therefore, the Directorate is given power, precisely the Director is given power, to order registration of the Vigilance case. If that provision is not contrary to the provisions of the Cr.P.C., it would hold good.

19. Section 158(1) Cr.P.C. says:

“ Report how submitted - (1) Every report sent to a Magistrate under section 157 shall, if the State Government so directs, be submitted through such superior officer of police as the State Government, by general or special order, appoints in that behalf.”

20. When the Government, by general or special order, is appointing a superior officer of police under Section 158(1) Cr.P.C., there cannot be a quarrel with regard to the legality of the proposition contained in paragraph 59(ii) of the Vigilance Manual. It is evident that by general order, the State Government has appointed the Director of Vigilance being a Superior Police Officer, to order the registration of a vigilance case. It is not contrary to the similar power

conferred under Section 158(1) Cr.P.C. Therefore, paragraph 59(ii) of the Vigilance Manual is not contrary to the power conferred on the Superior Police Officer under Section 158 (1) Cr.P.C.

21. In such case, what is the power of the Director of Vigilance, and whether he has an unbridled power in all matters concerning the investigation and the filing of final report in the case, are the next questions to be decided.

22. As per Section 158(2) Cr.P.C.,

“Such superior officer may give such instructions to the officer in charge of the police station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.”

23. On going through the wordings of Section 158(2) Cr.P.C., it is evident that 'such report' mentioned in Section 158(2) Cr.P.C. does not take in the 'final report'. At the same

time, till the filing of the final report, the said Superior Police Officer shall have every power to give instructions to the officer in charge of the Police Station, as he thinks fit, under Section 158(2) Cr.P.C. Such a power is available to the Director of Vigilance also.

24. In this case, what has been done is that certain specific directions were given by the Director of Vigilance to the investigating officer, as reproduced above. Whether those instructions were given by him during the course of investigation or not, is the next question. What was submitted before the Director by the investigating officer in this case, is a factual report and not a final report. A factual report is one being filed in the course of investigation as the investigation culminates on the filing of the final report only. Therefore, the factual report does not take in a report under Section 173 Cr.P.C. A report under Section 173(2) Cr.P.C. alone is the final report. Matters being so, it cannot be said that the Director had no power at all to issue specific

directions to the investigating officer to the way in which the investigation has to be conducted. At the same time, it has to be examined whether the Director of Vigilance has unbridled power to direct the investigating officer to file a final report in a particular manner.

25. In ***Lalitha Kumari*** (*supra*), it was held:

“Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. It is true that the concept of “preliminary inquiry” is contained in Chapter IX of the Crime Manual of CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that

CBI is constituted under a special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act.”

26. In paragraph 120.6 of ***Lalitha Kumari*** (*supra*), it was held:

“As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a. Matrimonial disputes/family disputes*
- b. Commercial offences*
- c. Medical negligence cases*
- d. Corruption cases*

e. Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

It was categorically held by the Constitution Bench that the provisions of the CBI Manual overrides the provisions of the Code of Criminal Procedure.

27. Section 173(3) Cr.P.C. reads as follows:-

“Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.”

28. Apart from the power under Section 173(3) Cr.P.C. as well as Section 158(2) Cr.P.C., no further power has been granted by the Cr.P.C. to the superior officer, who has been appointed under Section 158 Cr.P.C. It has to be noted that the report contemplated under Section 173(3) Cr.P.C. is necessarily the final report. In case of general or special order by the State Government to that effect, such Superior Police Officer appointed under Section 158(1)

Cr.P.C. has got the power to scrutinize the final report in the case, and pending orders by the Magistrate on such final report, he can order a further investigation in the matter.

29. It seems that here in this particular case, the Director of Vigilance has gone to the extent of directing the investigating officer to submit a final report in tune with the scrutiny report furnished by him. In such case, this Court is of the view that there is no conflict with regard to the power conferred on the Director of Vigilance as per Section 72(1) of the Vigilance Manual and powers of such superior officer under Section 173(3) Cr.P.C. It seems that the Director of Vigilance has not exercised his powers in this case under Section 173(3) Cr.P.C., as he has not gone through the final report in the matter and as he has not ordered a further investigation in the matter under Section 173(3) Cr.P.C.

30. It seems that in the matter of investigation made by the investigating officer, the scrutiny report was furnished by the Director of Vigilance on considering the materials

contained in the factual report in the light of the materials collected by the investigating officer during investigation. The Director of Vigilance has no occasion to see the demeanour of any of the witnesses examined by the investigating officer. One cannot say that, even through a threadbare examination, the Director of Vigilance, may be able to scrutinize all the materials collected by the investigating officer word by word. When he has obtained legal opinion that there was no evidence of any demand and therefore, no ingredients are there to bring out the offences under Section 7 or 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, instead of directing the investigating officer to file a final report in tune with the scrutiny report, the Director of Vigilance ought to have exercised his powers under Section 173(3) Cr.P.C. In all probability, this Court is of the view that the Director of Vigilance ought to have exercised his powers under Section 173(3) Cr.P.C. by ordering a further investigation in the

matter concerning the demand and all like that.

31. Therefore, the criticism that the Director of Vigilance has, in fact, attempted to substitute the opinion of the investigating officer to be formed in the final report, with his opinion, cannot be said to be not correct. The court below has discussed the materials collected by the investigating officer from the witnesses, in detail. This Court is not stating anything regarding the merits or otherwise of the materials collected by the investigating officer. At the same time, it has to be noted that the Director of Vigilance had also entertained a doubt whether the offences would lie or not and that was why he had opted to get the legal opinions from two designated Senior Advocates of the Supreme Court of India in the matter. He was guided by those legal opinions. Whether at that stage, the Director of Vigilance was justified in taking a decision on the merits of the evidence relating to the offences, is a question that has to be considered at present.

32. In ***M.C. Mehta v. Union of India and others*** (2007 (1) SCC 110), it was held in paragraph 22 as follows:

“ In Union of India v. Sushil Kumar Modi investigation was entrusted to CBI in the Fodder Scam case by the High Court to ensure proper and honest performance of duty by CBI. This Court directed CBI officers to inform the Chief Justice of the Patna High Court about the progress of the investigation and to obtain his directions if so required for conducting the investigation. The Joint Director of CBI submitted his report on the investigation carried out by him to the Chief Justice of the High Court. The High Court found that the Director was trying to interfere with the investigation and, therefore, the High Court directed that all reports of the CBI officers shall be submitted directly to the Court without being forwarded to the Director, CBI. This order of the High Court was challenged. It was held that the Director, CBI was responsible and accountable for the proper investigation of the case and, therefore, he cannot be excluded from the investigation.

It was, however, observed that the Director, CBI was duty bound to make a fair, honest and complete investigation and officers associated with the investigation have to function as members of a cohesive team engaged in common pursuit of such an investigation so as to uphold the majesty of the law and preserve the rule of law. It was held that, in case of any difference of opinion between officers of CBI in respect of the investigation, final decision would not be taken by the Director himself or by the Director merely on the opinion of the Legal Department of CBI, but the matter would be decided according to the opinion of the Attorney General for India for the purpose of investigation and filing of the charge-sheet against any such individual. In that event, the opinion would be sought from the Attorney General after making available to him the opinions expressed on the subject by the persons associated with the investigation as a part of the materials. We quote hereinbelow paras 13 and 14 of the said judgment: (SCC pp.505-06)

“13. We make it clear that in case of any difference of opinion between the officers of the CBI in relation to the implication of any individual in the crimes or any other matter relating to the investigation, the final decision in the matter would not be taken by the Director, CBI, himself or by him merely on the opinion of the Legal Department of the CBI; and in such a situation, the matter would be determined according to the opinion of the Attorney General for India for the purpose of the investigation and filing of the charge-sheet against any such individual. In that event, the opinion would be sought from the Attorney General after making available to him all the opinions expressed on the subject by the persons associated with the investigation as a part of the materials.

14. It appears necessary to add that the Court, in this proceeding, is concerned with ensuring proper and honest performance of its duty by the CBI and not the merits of the accusations being investigated, which are to be determined at the trial on the filing of the charge-sheet in the competent court, according to the ordinary procedure prescribed by law. Care must, therefore, be taken by the High Court to avoid making any observation which may be construed as the expression of its opinion on merits relating to the accusation against any individual. Any such observation made on the merits of the accusation so far by the High Court, including those in para 8 of the impugned order are not to be treated as final, or having the approval of this Court. Such observations should not, in any manner influence the decision on merits at the trial on the filing of the charge-sheet. The directions given by this Court in its aforesaid order dated 19.3.1996 have to be understood in this manner by all concerned, including the high Court.” ”

33. The crux of the matter is whether the Director of Vigilance was justified in making a threadbare examination of the offences alleged against the accused at the stage prior to the stage of Section 173(2) Cr.P.C.? As I have

already pointed out, the Director of Vigilance has not gone through the final report in the matter as he has directed the investigating officer to file a final report in line with the scrutiny report and report compliance. In such case, even the stage under Section 173(2) Cr.P.C. was not there. Even at the stage of Section 173(2) Cr.P.C., even the court cannot consider whether there are materials to invite a conviction or not. What is contemplated at the stage of Section 173(2) Cr.P.C. is discernible from Section 169 Cr.P.C. as well as Section 170 Cr.P.C.

34. As per Section 169 Cr.P.C., if there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the investigating officer has to order the release of the accused. As per Section 170(1) Cr.P.C., if there is sufficient evidence or reasonable ground as aforesaid, then, the Magistrate has to take cognizance of the offence upon a police report and try the accused as per the provisions of the Code. Therefore,

what is contemplated under the Code at the stage of Section 169 Cr.P.C. as well as Section 173(2) Cr.P.C. is whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate. So, if there is even a reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, the investigating officer is bound to file a final report under Section 173(2) Cr.P.C. to that effect. If the court is satisfied that there are reasonable grounds to forward the accused for trial, the court has to take cognizance of the offences.

35. In this particular case, it cannot be said that the Director of Vigilance was fully satisfied that there are no reasonable grounds of suspicion to justify the forwarding of the accused for trial. On the contrary, it seems that based on the legal opinion received by him, he had acted mechanically by holding that there are no grounds to bring out the offences under Sections 7 and 13(1)(d) read with

Section 13(2) of the P.C. Act.

36. It seems that the court below has, in fact, criticised the Director of Vigilance in seeking legal opinion from outside. At the same time, the learned Advocate General has explained that the accused, being the Law Minister of the State, the Advocate General himself had advised the Director of Vigilance to seek opinion from outside.

37. In **Sarala Vs. Velu** [AIR 2000 SC 1731], the Apex Court has held that-

“The question here is not simply whether an investigating officer, on his own volition or on his own initiative, can discuss with the Public Prosecutor or any legal talent, for the purpose of forming his opinion as to the report to be laid in the court. Had that been the question involved in this case it would be unnecessary to vex our mind because it is always open to any officer, including any investigating officer, to get the best legal

opinion on any legal aspect concerning the preparation of any report. But the real question is, should the High Court direct the investigating officer to take opinion of the Public Prosecutor for filing the charge sheet?"

38. The Director of Vigilance cannot be found fault with in his obtaining the legal opinion from legal expert or experts. There is nothing wrong in it. When the Advocate General of the State has also advised him to have such a recourse, the same cannot be found fault with. At the same time, it has to be considered whether at that particular stage, in order to consider whether there was reasonable ground to justify the forwarding of the accused to the court, any such legal opinion was required or not.

39. I am reminded of the Shakespearian saying that '*Caesar's wife must be above suspicion*'. The fundamental principle that justice is not only done but it should appear that it is done, is applicable not to the judiciary alone; whereas, it is equally applicable to the other two pillars of

the State also. In a case like this, it is quite natural that the common man may entertain a feeling that there cannot be a proper investigation by a State Machinery when the accused, against whom fingers are pointed out, is continuing as a Minister. I have noted an instance wherein even the learned Advocate General had to be bypassed by the Director of Vigilance to obtain a legal opinion from outside. Of course, I am not finding fault with the Director of Vigilance on that score. I have gone through Ground K in the Original Petition, which says:-

“The opinion of the Advocate General of the State or any Law Officer under him was not attempted, since the accused is also the Law Minister of the State and the Director made an honest attempt to get the best opinion from other experts on the issue.”

Whether the common man should pay for that also? I am not making any further comments on it, as this Court is not invited to answer such questions. I am leaving that question

to the conscience of the accused!

40. The main complaint forwarded by the learned Senior Counsel Sri.Kapil Sibal is that the court below has unnecessarily gone into the details of the materials collected by the investigating officer and has virtually entered some findings with regard to demand and acceptance etc. According to him, those observations were not at all warranted for exercising the powers conferred on the court below within the meaning of Section 173(8) Cr.P.C. On going through the matter, it seems that some how in his anxiety to justify the taking cognizance of the offence or of ordering a further investigation, the court below has made those observations in detail. The court below could have avoided those observations. It is made clear that those observations made by the court below shall not have the effect of any finding entered by the court below on merits or any direction issued by the court below. Such observations made by the court below shall not prejudice the accused in

any manner in the continued investigation or a trial, in case it is necessitated.

In the result, this Original Petition is disposed of with the aforesaid directions. The observations made by the court below against the Director of Vigilance that he has no power to give timely directions to the investigating officer, are expunged. It is made clear that the Director of Vigilance has got sufficient power and authority by exercising his powers under paragraph 72(1) of the Vigilance Manual read with Section 158(2) Cr.P.C., to give timely directions in the matter of investigation, and not after that. The Director of Vigilance ought to have exercised the powers under Section 173(3) Cr.P.C. in this case, in the absence of which, the court below is perfectly justified in ordering a further investigation under Section 173(8) Cr.P.C.

Sd/-

B. KEMAL PASHA, JUDGE

ul/aks/09.11.2015

// True Copy //

PA to Judge