

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.04.2015

CORAM :

THE HONOURABLE MS.JUSTICE R.MALA

Cr1.O.P.No.20882 of 2014

Date of Reserving the Order 27.03.2015	Date of Pronouncing the Order 01.04.2015
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G.Mohana Sundaram
S/o.A.Ganesan

... Petitioner/Accused No.1

Vs.

1) State by Inspector of Police
Directorate of Vigilance and
Anti-Corruption, Chennai ... Respondent/Complainant

2) M.Chandrababu
S/o.Muthu ... Respondent/de facto complainant

3) Revathy
D/o.Jayamurthi ... Respondent/Accused No.2

Prayer:

Petition filed under Section 482 of Cr.P.C. to call for the records in Cr.No.14/AC/2014/CC-I pending investigation on the file of the respondent police, quash the same.

For Petitioner : Mr.I.Subramaniam, Senior Counsel
for M/.K.P.Anantha Krishna

For Respondents : Mr.S.Shanmugavelayutham,
Public Prosecutor, for R1

Mrs.M.E.V.Thulasi, for R2

Mr.D.Ravichander, for R3

O R D E R

The petitioner who is arrayed as A1 has come forward with this petition to call for the records in Cr.No.14/AC/2014/CC-I pending investigation on the file of the first respondent police and quash the same.

2. The case of the petitioner is as follows:

(a) The petitioner who was arrayed as A1 was working as District Revenue Officer (Stamps), Chennai. While so, the second respondent/de facto complainant had purchased vacant land of an extent of 66 cents at Panankootur Village for Rs.20,46,000/- in the name of his wife Pagutharivu and the same was registered on 10.04.2013 at Chengalpet SRO. A sum of Rs.1,84,800/- was paid as stamp duty and a sum of Rs.26,500/- was collected as registration fee by the Sub Registrar, Chengalpet. However, based on the apprehension that the property has been undervalued, the Sub Registrar, Chengalpet without handing over the document to the second respondent, had forwarded the same to the District Revenue Officer (Stamps), Chennai, as contemplated under Section 47A of the Indian Stamp Act.

(b) On receipt of the said document by the District Revenue Officer (Stamps), a demand notice was served on the wife of the second respondent demanding a sum of Rs.6,20,928/- to be paid as deficit stamp duty. The second respondent/de facto complainant visited the officer of the DRO (Stamps) on 27.02.2014 at 03.30 P.M. It is alleged that during the said meeting, the petitioner demanded a bribe of Rs.75,000/-. Again on 03.07.2014, the second respondent met the petitioner and it is alleged that during the said meeting the petitioner/A1 reiterated his earlier demand and when the second respondent expressed his inability, the petitioner reduced his demand to Rs.60,000/- and directed the second respondent to pay the said amount by 11.07.2044.

(c) Thereafter, on 11.07.2014, the second respondent lodged a complaint before the Directorate of Vigilance and Anti-Corruption and based on the instruction of the officials, the second respondent visited the office of the petitioner/A1 with the bribe money. After meeting the petitioner, when the second respondent handed over the money to the third respondent/A2 at the instance of the petitioner, the trap party came into the office of the petitioner and arrested the petitioner/A1 as well as the third respondent/A2.

(d) It is the case of the petitioner that no money has been recovered from the petitioner/A1. But the money had been recovered only from the third respondent/A2 who was outside the cabin of the petitioner/A1. Further, the petitioner had passed an order in the file of the second respondent as early as 03.07.2014 itself and so, there is no necessity for the petitioner to demand bribe from the second respondent on 11.07.2014. Further, the second respondent had

preferred the complaint on 11.07.2004 at 7.00 A.M and the Trap laying officer had registered the complaint at 10.00 A.M without verifying the antecedents of the petitioner/A1 and the genuineness of the complainant. Though, the FIR got registered at 10.00 A.M, the copy of the FIR reached the court only by 4.55 P.M. So, the endorsement was made in the complaint as well as the FIR by the Trap Laying Officer only after initiating the trap proceedings.

(e) Furthermore, the witnesses to the trap proceedings are the stock witnesses of the first respondent police. Moreover, the petitioner has been in a race for promotion, to be included in the list for being conferred the rank of an IAS officer. Hence, there exist some animosity between him and some other government officer of the same rank. The said issue was also under litigation and the Supreme Court by its order dated 21.07.2014 made in SLP(c) No.26223 of 2013 had directed the State Government to include the name of the petitioner in the A-list of candidates for promotion. Thus, by setting out the above facts the petitioner prays for quashing the FIR registered against him.

3. The first respondent has filed a detailed counter affidavit, wherein the following averments have been set out:

(a) The case was registered in Cr.No.14/AC/2014/CC-I against Tr.G.Mohanasundaram who was working as District Revenue Officer (Stamps), Chennai for the allegation of demand of bribe amount to the tune of Rs.60,000/- from Tr.M.Chandrababu, for the purpose of reducing the stamp duty for the agricultural land purchased at Panangattur Village in Survey No.121/F in the name of his wife Tmt.Pagutharivu. The land was registered on 10.04.2013 at Sub-Registrar Office, Chengalpattu vide Document No.3858/2013. The said document was not released by SRO, Joint II, Chengalpattu and it was forwarded to DRO (Stamps), Chennai, as the stamp paper purchased by Tmt.Pagutharivu was less than the guideline value fixed by the Inspector General of Registration.

(b) The said document was received by the petitioner/A1 through his office at Chennai on 27.08.2013. The form-1 notice was issued to Tmt.Pagutharivu on 04.09.2013 by the office of the DRO (Stamps). Thereafter, the second respondent herein met the petitioner/A1 on 27.02.2014 at about 15.30 hrs, in his office. At that time, the accused made the initial demand of Rs.75,000/- as illegal gratification other than the legal remuneration for fixing the guideline value to Rs.230/sq.ft and to release the document. Further, on 03.07.2014 at about 16.00 hrs when the second respondent/de facto complainant met the petitioner/A1 at this office, the accused reiterated his earlier demand of Rs.75,000/- and when the second respondent expressed his inability to pay the said amount as bribe, the accused reduced the bribe amount to Rs.60,000/- and directed the complainant to pay the bribe amount on 11.07.2014 and receive the

document. The complainant who was not willing to give the bribe amount preferred a complaint against the accused/A1 and based on the said complaint, a case was registered on 11.07.2014.

(c) Thereafter, a trap was organized on 11.07.2014 and the second respondent/de facto complainant, accompanied by the official witness, R.Manonmani met the petitioner/A1 at about 15.10 hrs. The petitioner/A1 reiterated his earlier demand of Rs.60,000/- from the second respondent/de facto complainant and directed him to handover the bribe money to the third respondent/A2, Revathi, an unauthorised staff working in the office of the DRO (Stamps), Chennai. As per the direction of the petitioner/A1, the third respondent/A2 received the amount knowing that the said amount is illegal gratification other than the legal remuneration for doing a public duty and counted the money by her both hands and kept the bribe money in her hand bag.

(d) On receiving the signal from the second respondent/de facto complainant, the trap party went into the office of the petitioner/A1. Thereafter, the phenolphthalein test was conducted on both the hands of the third respondent/A2 and it proved to be positive. So, the petitioner/A1 and the third respondent/A2 were arrested. When the third respondent/A2 was enquired as per Rule 47 of the Vigilance Manual, she stated that she received the money as per the instruction of the petitioner/A1 and kept the money in her bag and she will handover the money when asked by the petitioner/A1. Further, an unaccounted cash of Rs.1,06,950/- was also seized in three brown covers kept in the bag of the third respondent/A2 for which she explained that she received the money from some other persons, on instruction of the petitioner/A1 and kept the money in her bag.

(e) It has been further stated that the Vigilance and Anti-Corruption office is a public office and is functioning round the clock and throughout the year. The report from the second respondent/de facto complainant was received by the Inspector at about 7.00 A.M and only after verifying the antecedent of the petitioner/A1 and also after verifying the genuineness of the allegations in the report, the case was registered after getting oral permission from the higher authority as per the procedure in the department at 10.00 A.M.

(f) As per G.O.No.269/1990, dated 04.06.1990 of P&AR Department, the Inspector of police who is working in Vigilance and Anti-Corruption is entitled to receive, register and investigate. Even as per Rule 41(3) of DVAC manual, if necessary Inspector of Police could lay a trap after obtaining permission from the Director, Vigilance and Anti-Corruption but he cannot exercise the powers of arrest. In the instant case, only the trap was laid by the Inspector of Police, however the arrest was made by the Additional Superintendent of Police.

Thus, by stating the above facts, the first respondent prayed for the dismissal of the petition.

4. Counter Affidavit was also filed on behalf of the second respondent, wherein the following facts have been set out:

(a) The second respondent had purchased a property in the name of his wife Mrs.Pagutharivu in S.No.121/1F measuring to an extent of 66 cents for a sum of Rs.20,46,000/- and purchased stamp papers for a sum of Rs.1,84,800/- and taken demand draft for Rs.26,500/- by considering the above said land as agricultural land as it is a punjay land and registered the same at S.R.O, Chengalpet on 10.04.2013 vide Document No.3858/2013 and said document was kept pending.

(b) The Sub Registrar, Chengalpet informed the second respondent/de facto complainant that the stamp duty paid is undervalue and hence he will keep the document pending and refer the same to the DRO (Stamps) and the document was registered on the same day. Thereafter, in the month of October 2013 a letter was received from the DRO (Stamps) Chennai directing the second respondent to pay a further sum of Rs.6,20,928/- as stamp duty. Due to personal inconvenience, the second respondent could not meet the DRO immediately.

(c) On 27.02.2014, around 03.30 P.M, the second respondent met the DRO (Stamps) at this office. After perusing the document standing in the name of the wife of the second respondent, the DRO demanded a sum of Rs.75,000/- as bribe amount to value the property at the rate of Rs.230/sq.ft and to release the document. The DRO (Stamps) further instructed the second respondent that if he failed to pay the demanded bribe amount then, he will value the property at the rate of Rs.400/sq.ft.

(d) Thereafter, the second respondent waited for nearly three months to get the document released on a routine manner. As there was no intimation for nearly four months from the office of the DRO (Stamps), on 03.07.2014, around 4.00 P.M, the second respondent met the DRO (Stamps) and enquired the status of the document. Again the petitioner/A1 reiterated his demand of Rs.75,000/-. When the second respondent expressed his inability to arrange the demanded bribe amount, the petitioner/A1 reduced the amount to Rs.60,000/- and instructed him to give the bribe amount on 11.07.2014.

(e) Thereafter, the second respondent preferred a complaint with the first respondent police on 11.07.2014 at 7.00 A.M and after making necessary arrangements, the trap party went to the office of the petitioner/A1 at 3.10 P.M and as per the prior plan, the trap procedure was initiated and ultimately, trapped the petitioner/A1 and the third respondent/A2.

(f) The second respondent has also stated that he is not a government employee and his confirmation as IAS does not affect him for any reasons.

Thus, by stating the above averments, the second respondent prayed for the dismissal of the petition.

5. The learned Senior Counsel appearing for the petitioner would submit that the petitioner was working as District Revenue Officer (Stamps), Chennai. While so, on 10.04.2013, the second respondent herein had purchased 66 cents of land in Panankottur Village in the name of his wife Pagutharivu for Rs.20,46,000/- and the same was registered at Chengalpet Sub-Registrar Office. Since it was an agricultural land, a stamp duty of Rs.1,84,800/- and registration fee of Rs.26,500/- was collected. However, the document was not handed over the second respondent herein and instead it was forwarded to District Revenue Officer (Stamps), Chennai viz., the petitioner herein, as contemplated under Section 47 of the Indian Stamp Act in respect of valuation.

6. While so, in the month of October 2013, the second respondent received a demand notice for payment of deficit stamp duty of a sum of Rs.6,20,928/-. Since the second respondent was busy with other works, he could not take steps immediately. Thereafter, the second respondent visited the office of the District Revenue Officer and met him on 27.02.2014 at 3.30 P.M. At that time, it is alleged that the petitioner herein demanded a sum of Rs.75,000/- as bribe for fixing the guideline value at Rs.230/sq.ft instead of Rs.400/sq.ft. Subsequently, when the second respondent again met the petitioner on 03.07.2014 at 4.00 P.M in his office, it is alleged that the petitioner/A1 reiterated the earlier demand and later on reduced the demand to Rs.60,000/-. Further, the petitioner/A1 had demanded that the bribe amount has to be paid by 11.07.2014 and hence, the second respondent/de facto complainant had preferred the complaint at 7.00 A.M on 11.07.2014. Thereafter, the FIR was registered at 10.00 A.M and trap was initiated.

7. The learned Senior Counsel appearing for the petitioner would further submit that the petitioner had never demanded any money, that too as illegal gratification from this second respondent. Further, the petitioner had already passed an order on 03.07.2014, thereby fixing the guideline value at Rs.230/sq.ft. Thereafter, on 11.07.2014, RBI Challan has been issued for the remaining amount and the said amount was also paid on 14.07.2014 and the document was also released. In such circumstances, there is no necessity for the petitioner to demand money from the second respondent/de facto complainant, as already the work has been completed. The learned Senior Counsel would further submit that even as per the 161 statement of L.W.4/Imtiaz Ahmed, Special Tahsildar, the petitioner/A1 had passed an order on 03.07.2014 fixing the guideline value at Rs.230/sq.ft and on 11.07.2014, the RBI challan was issued for

payment of the remaining amount. So, there is no necessity for the petitioner/A1 to demand any bribe.

8. It is further submitted that the tainted money has been recovered only from A2 and not from him. Further, it is also alleged that the petitioner is in the verge of being conferred with I.A.S and so, a false case has been foisted against him. Moreover, before registering the case, the Trap Laying Officer has not made any preliminary enquiry in respect of the antecedent of the petitioner and the genuineness of the complaint given by the second respondent.

9. The other issues raised on behalf of the petitioner is that there is delay in preferring the complaint. Further, since the petitioner/A1 is a Group-A officer, a concurrence must be obtained from the superior officer for registering the case, laying the trap and investigate the matter. Mere oral concurrence is not sufficient. Further, the endorsement in the FIR in respect of the preliminary enquiry has been made after the trap proceeding. The learned Senior Counsel would further submit that Rule 47 of the DVAC manual has not been complied with. Thus, by making the above submissions, the learned Senior Counsel prayed for quashing the FIR. To substantiate the said contentions, the learned Senior Counsel relied upon the following decisions:

1. 2006 CRI.L.J.4598(1), State, Inspector of Police, Visakhapatnam v. Surya Sankaram Karri.
2. 1970 (1) Supreme Court Cases 595, P.Sirajuddin v. State of Madras.
3. Criminal Appeal (MD) No.189 of 2005, dated 25.04.2011.
4. 2014 SCC OnLine Mad 4930, MCR. Vyas v. Inspector of Police.
5. CDJ 2011 MHC 6618, Thulasiram v. State through the Inspector of Police.
6. (2005) 6 Supreme Court Cases 211, Ganga Kumar Srivatsava v. State of Bihar.
7. Criminal Appeal Nos.1082 of 2006 and 239 of 2007, dated 13.03.2015.
8. 2007 CRI.L.J. 754, V.Venkata Subbarao v. State represented by Inspector of Police, A.P.

10. Resisting the same, the learned Public Prosecutor appearing for the first respondent would submit that it is true that the amount has been recovered from A2 and no tainted money has been recovered from A1. However, only on the instruction of A1, the third respondent/A2 had received the amount. The said factum was clearly mentioned in the explanation given by the second respondent/de facto complainant. To substantiate the same, he relied upon the decision reported in (2004) 3 Supreme Court Cases 753, T.Shankar Prasad v. State of A.P., wherein the the petitioner/A1 is convicted for the offences under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, on whose instruction A2 had received the bribe money.

11. The second limb of the argument is that the as soon as the complaint has been received, the Trap Laying Officer made preliminary discreet enquiry and only having been satisfied with the antecedent of the petitioner/A1 and also the genuineness of the complaint, the case has been registered. The said factum was also incorporated in the complaint as well as the FIR. For making discreet enquiry, no procedure has been contemplated under the law or statute. So, the discreet enquiry conducted by the Trap Laying Officer is not fatal to the case of the prosecution. To substantiate the said contention, the learned Public Prosecutor relied upon the decision reported in (1987) 1 Supreme Court Cases 288, Sheonandan Paswan v. State of Bihar and Others.

12. The learned Public Prosecutor further contended that sufficient protection is available to the public servant while according sanction. To substantiate the same, he relied upon the decision reported in 2013 (1) CWC 136, Duraimurugan v. State and 2014 CRI.L.J.470, Lalita Kumari v. Govt. of U.P. and Others wherein it was held that merely because the relevant rules were not followed by the officials of the Directorate of Vigilance and Anti-Corruption, the same is not fatal to the case of the prosecution and that only the erring officer must face the disciplinary proceeding. He further submitted that FIR has been dispatched at 10.15 A.M and so, there is no possibility of making any alteration either in the complaint or in the FIR in respect of the discreet enquiry, after trap. As per proviso 1 of Section 17 of the Prevention of Corruption Act, the Government is empowered to pass a Government Order by conferring powers to the officer to conduct enquiry. In pursuant of the same, G.O.No.15, dated 19.02.2003 came to be passed in which the Inspector is a competent person to register the case and investigate the matter.

13. The learned Public Prosecutor would also submit that the delay in respect of the first demand dated 27.02.2014 and the second demand dated 03.07.2014 has been properly explained by the second respondent/de facto complainant in paragraph 3 of the complaint. The delay between 03.07.2014 and 11.07.2014 has also been properly explained by the second respondent. So, the said delay is not fatal to the case of this nature.

14. As regards the other contention made by the learned Senior Counsel appearing for the petitioner that since an order has been passed on 03.07.2014 itself, the cause for demand has disappeared, it is submitted by the learned Public Prosecutor that even as per the records the petitioner/A1 had passed an order on 03.07.2014, but there is no evidence to show that the same has been communicated to the second respondent/de facto complainant. Even as per the evidence of the witnesses, the RBI challan for payment of the balance stamp duty was issued to the second respondent/de facto complainant only on 11.07.2014, after payment of the bribe amount. The learned Public

Prosecutor would also contend that it is very premature to quash the FIR and hence, he prayed for the dismissal of the petition.

15. The learned counsel appearing for the second respondent/de facto complainant would submit that since the petitioner/A1 had demanded bribe, the second respondent was forced to lodge a complaint with the first respondent police. It was further submitted by the learned counsel that the second respondent was directed to pay the amount by 11.07.2014 and so, he was forced to give the complaint on 11.07.2014 at 7.00 A.M and after making enquiry only, the case was registered. The learned counsel would also contend that it is very premature to decide the matter and hence, he prayed for dismissal.

16. Considered the rival submissions made by both sides and perused the typed set of papers.

17. The gist of the case is as follows:

It is the case of the prosecution that on 10.04.2013, the second respondent herein had purchased 66 cents of land in Panankottur Village in the name of his wife Pagutharivu for Rs.20,46,000/- and the same was registered at Chengalpet Sub-Registrar Office. Since it was an agricultural land, a stamp duty of Rs.1,84,800/- and registration fee of Rs.26,500/- was collected. However, the document was forwarded to District Revenue Officer (Stamps), Chennai viz., the petitioner herein, as contemplated under Section 47 of the Indian Stamp Act in respect of valuation. In the month of October 2013, the second respondent received a demand notice for payment of deficit stamp duty of a sum of Rs.6,20,928/- after calculating the guideline value at Rs.400/sq.ft. Since the second respondent was busy with other works, he could not take steps immediately. Thereafter, the second respondent met the petitioner/A1 on 27.02.2014 at 3.30 P.M, he demanded a sum of Rs.75,000/- as bribe to fix the guideline value at Rs.230/sq.ft and on 03.07.2014 at 4.00 P.M, when the second respondent again met the petitioner/A1 at his office, the petitioner reiterated his first demand and later on reduced the bribe amount to Rs.60,000/- and insisted to pay the amount by 11.07.2014. So, the second respondent preferred a complaint on 11.07.2014 at 7.00 A.M before the Trap Laying Officer.

18. Delay :

18.1. The first point that has to be decided is whether the delay in preferring the complaint is fatal ?

It is pertinent to note that in the complaint itself, the second respondent has been specifically stated that he registered the document on 10.04.2013 and he received the communication only in the month of October 2013 directing him to pay additional stamp duty of Rs.6,20,928/-. However, as he was busy with other works, the second respondent had met the petitioner/A1 only on 27.02.2014 at 3.30 P.M

in his office. It is the case of the prosecution that when the second respondent met the petitioner, the petitioner demanded a bribe of Rs.75,000/- stating that only if he pays the bribe amount, he would fix the value of the land at Rs.230/sq.ft, else he would fix the value at Rs.400/sq.ft. Without giving answer the second respondent returned back and again after a gap of nearly four months, he again met the petitioner/A1 on 03.07.2014 at 4.00 P.M. Even then, the petitioner reiterated his first demand and when the second respondent insisted him to reduce the amount, the petitioner/A1 reduced the demand to Rs.60,000/- and insisted the second respondent to pay the amount on 11.07.2014. So, the second respondent preferred the complaint on 11.07.2014. Thus, the averment made in the complaint itself would be sufficient to explain the delay in preferring the complaint.

18.2. At this juncture, it would be appropriate to consider the decisions relating to the point of delay.

(i) The learned Senior Counsel appearing for the petitioner relied upon the decision reported in 2007 CRI.L.J. 754, V.Venkata Subbarao v. State represented by Inspector of Police, A.P., wherein it was held in paragraphs 10 and 11 as follows:

"10. P.W.2 had sold away his land to P.W.3. The casurina growth was being cut by its owner, namely, P.W.3. The purported obstruction in his activity came from the Mandal Revenue Officer and not from the appellant. A complaint was made against four persons, the MRO being one of them. Indisputably, it was the MRO who had asked for the said sum. P.W.2, although, went to the said MRO continuously for a few days, no attempt was made by him to offer the sum to the said officer himself. The complaint was made 15 days after the alleged demand. In the meanwhile, the casurina growth was cut and removed by P.W.3 without any further hindrance purported to be relying on or on the basis of the assurances made by P.W.2 that the dispute had been settled. The complaint was made to the Inspector of Police after a period of fifteen days from the date of original demand.

11. The purported role played by the appellant, when the demand was made by the MRO, was said to be a mere intervention resulting in reduction of the amount of demand from Rs.5,000/- to Rs.2,000/-, which could not be substantiated. It is not the case of the prosecution that he demanded any sum for himself."

(ii) The next decision relied on by the learned Senior counsel appearing for the petitioner is reported in 2012 (1) MWN (Cr.) 448, R.Venkatraj v. Inspector of Police. It is appropriate to incorporate paragraph 10 of the said decision:

"10. Even though PW1 decided that no bribe should be given for getting the certificate on 25.1.2000, he made the Complaint only on 30.1.2000 after 6 days. In the Complaint there is no explanation for the said delay. But in the evidence, he says that he was waiting for 2 or 3 days but he would not secure the money, however, he did not want to get the certificate after paying the illegal gratification. The absence of explanation for delay in lodging the Complaint is fatal to the prosecution as to the evidence."

But the above citation is not applicable to the facts of the present case because sufficient explanation has been given for the delay. That too in the case of this nature, viz., cases under the Prevention of Corruption Act, the delay is not fatal.

19. Discreet enquiry :

19.1. The next point that has to be decided is whether before the registering the case, a discreet enquiry has to be made against the accused. In the present case, an endorsement has been made by the Trap Laying Officer which reads as follows:

"Honoured Madam, Received the complaint on 11.07.2014 at 07.00 hrs. A discreet enquiry was caused against R.Mohanasundaram, DRO (Stamps), Chennai - 01 and confirmed about their corrupt activities and also verified the bonafide of the complainant. After getting concurrence from the senior officer, I registered a case in Cr.No.14/AC/2014/CC-I u/s 7 of the P.C.Act, 1988 on 11.07.2014 at 10.00 hrs and took up investigation."

19.2. According to the learned Senior Counsel appearing for the petitioner, the said endorsement was made after the trap proceeding has been initiated. He had also taken me through the alteration in this endorsement and also the FIR. In the FIR, it was stated that "confirmed about their corrupt activities and also verified the bonafide of the complaint and after getting the concurrence from the senior officer, the case has been registered". However, the issue whether there is any material alteration has to be decided only at the time of trial after considering the oral and documentary evidence and not at this stage.

19.3. Per contra, the learned Public Prosecutor would submit that no alteration has been made as was contended by the learned Senior Counsel appearing for the petitioner. Even as per the FIR, the copy of the same was dispatched to the Court at 10.15 A.M. So, it would prove that the Trap Laying Officer has conducted the discreet enquiry before registering the case. At this juncture, it is appropriate to consider the decision relied on by the learned Public

Prosecutor reported in (1987) 1 Supreme Court Cases 288, Sheonandan Paswan v. State of Bihar and Others, wherein in paragraph 18, it was held as follows:

"18.It would, in our opinion, be perfectly legitimate for the successor Government to initiate a prosecution of a former Chief Minister or a person who has held high political office under the earlier regime without first having an inquiry made by a Commission of Enquiry, provided, of course, the investigation is fair and objective and there is sufficient material to initiate such prosecution. There are, under the existing law, sufficient safeguards for the purpose of ensuring that no public servant is harassed by false and vexatious prosecution or charges of corruption because no such prosecution can be initiated without sanction under section 6 of the Prevention of Corruption Act or section 197 of the Code of Criminal Procedure, 1973. These safeguards cannot be said to be inadequate even if they do not afford adequate protection in any particular case, the Magistrate is always there to protect an innocent accused because if in the opinion of the Magistrate, there is not sufficient evidence and the charge against the accused appears to be groundless, the Magistrate may straightaway discharge the accused without taking any evidence. It would become very difficult--almost impossible--to bring, to use the words of Krishna Iyer, J. "the higher inhabitants of Indian public and political decks" within the net of the criminal law if an additional requirement is imposed that there should first be an inquiry by the Commission of Enquiry before any prosecution can be launched against them. This contention urged on behalf of Dr. Jagannath Misra must also, therefore, fail."

Thus, by relying on the above decision, the learned Public Prosecutor had gone to the extent of saying that even if no enquiry is conducted, it is not fatal. But protection is available to the Government servant at the time of according sanction.

19.4. On the other hand, the learned Senior Counsel appearing for the petitioner relied upon the decision reported in 1970 (1) Supreme Court Cases 595, P. Sirajuddin v. State of Madras, wherein at paragraph 25, it was held as follows:

"25. There can be no excuse for the Directorate of Vigilance and Anti-Corruption for proceeding in the manner adopted in the Preliminary enquiry before the lodging of the first information report. As soon as it became clear to them-- and according to the High Court it was before March 13, 1964 in which we concur--that the appellant appeared to be guilty of serious misconduct. it was their duty to lodge

such a report and proceed further in the investigation according to Chapter XIV of the Code. Their omission to do so cannot but Prejudice the appellant and the State ought not to be allowed to take shelter behind the, plea that although the steps taken in the preliminary enquiry were grossly irregular and unfair, the accused cannot complain because there was no infraction of the rules of the 'Evidence Act or the provisions of the Code."

19.5. In the decision of this Court made in the case of Dr.MCR.Vyas v. The Inspector of Police, CBI Anti Corruption Branch, Shastri Bhavan, Chennai, at paragraph 49, it was held as follows:

"49. Mr.R.Thiagarajan, the learned senior counsel appearing for some of the Petitioners strenuously contended inter alia reiterating the arguments advanced by other learned counsel appearing for the Petitioners that even the provisions of the CBI Manual have not been followed in the present case. The learned senior counsel pointed out that as per the Chapter 6 of the CBI Manual, the Director of CBI should be informed of all important matters and his advice/instructions should be obtained wherever it is necessary. He would submit that if there is any source information by CBI or its office with regard to persons described in paragraph 6.2.1 (c) then the source information has to be immediately referred to the Director, CBI and the CBI Directors after due application of his mind shall take decision as to whether there is any basis for further verification of the referred source of information. The learned senior counsel also referred to Chapter 8 of the CBI Manual which deals with the complaints and source information and submitted that no complaint shall be initiated for verification, unless the same is approved by the Competent Authority. He also referred to the other provisions of the CBI Manual and submitted that the Respondent/CBI has registered First Information Report in violation of paragraph 8.27, 8.28, 8.29 and 8.33 of Chapter 8 of the CBI Manual which has caused serious prejudice to the accused/Petitioners. According to him, if the Respondent/CBI had followed the above mentioned provisions, the Competent Authority would not have approved for further verification/ investigation of the case against the Petitioners."

19.6. Considering all the above aspects, I am of the view that the endorsement made in the complaint and in the FIR would prima facie prove that the discreet enquiry has been conducted about the antecedent of the petitioner and also the genuineness of the complaint and only thereafter, the case has been registered. The genuineness of the endorsement made by the Trap Laying Officer in the

complaint has to be decided only after examining the officer who registered the case during the course of the trial.

19.7. The learned Senior Counsel appearing for the petitioner would further contend that oral permission is not sufficient and that written permission must be obtained. To substantiate the said argument, he relied upon the decision reported in 2006 CRI. L. J. 4598(1), State, Inspector of Police, Visakhapatnam v. Surya Sankaram Karri, wherein it was held that the issuance of an oral direction is not contemplated under the Act. It is appropriate to incorporate paragraph 16 of the said decision:

"16. The approach of the learned Special Judge, to say the least, was not correct. When a statutory functionary passes an order, that too authorizing a person to carry out a public function like investigation into an offence, an order in writing was required to be passed. A statutory functionary must act in a manner laid down in the statute. Issuance of an oral direction is not contemplated under the Act. Such a concept is unknown in Administrative Law. The statutory functionaries are enjoined with a duty to pass written orders."

19.8. However, the decision reported in 1970 (1) Supreme Court Cases 595, P.Sirajuddin v. state of Madras and 2006 CRI. L. J. 4598 (1), State, Inspector of Police, Visakhapatnam v. Surya Sankaram Karri was made by two Judges of the Hon'ble Apex Court. Whereas the decision reported in (1987) 1 Supreme Court Cases 288, Sheonandan Paswan v. State of Bihar and Others as referred in paragraph 19.3 was made by the constitution bench of the Hon'ble Apex Court. In such circumstances, I am of the view that even if the Court held that the discreet enquiry about the antecedent of the accused person has not been conducted before registering the complaint, it will not be a reason for quashing the complaint.

20. Necessity to make the demand on 11.07.2014 ?

20.1. As regards the other issue raised by the learned Senior Counsel appearing for the petitioner that there is no necessity for making the demand on 11.07.2014, as already the petitioner/A1 had passed an order on 03.07.2014 in the matter related the second respondent, the learned Senior Counsel for the petitioner had also drawn my attention to the 161 statement of L.W.4/Imtiaz Ahmed, Special Tahsildar. On persual of the same would reveal that though the order has been passed on 03.07.2014, there is no evidence to show that the same has been communicated to the wife of the second respondent/de facto complainant. It is pertinent to note that on 11.07.2014 also, the second respondent/de facto complainant had given another requisition to reduce the stamp duty. Even on 03.07.2014, the petitioner/A1 had made spot inspection and passed an order on

03.07.2014 in respect of both the documents viz., Document Nos.3857 and 3858. As per the evidence of L.W.4, the petitioner herein only after holding discussions with him had passed an order fixing the price at Rs.230/sq.ft. Only thereafter, RBI challan was prepared for payment of Rs.2,78,495/- in respect of Survey No.121/1F. In respect of another sale deed No.10884/2013 pertaining to Survey No.119, the price was fixed at Rs.225/sq.ft on 18.02.2014 and proceedings was also issued by the DRO. It was further stated in the evidence that after obtaining the receipt of the payment, a note will be made in the objection letter and the same would be placed before the DRO. Thereafter, DRO would issue the proceedings and the same would be forwarded to the Sub-Registrar Office.

20.2. On perusal of the additional typed set of papers, it is seen that the order was passed on 03.07.2014, however there is no material to show that it has been dispatched or communicated to the second respondent/de facto complainant.

20.3. As per the additional typed set of papers submitted by the learned counsel for the petitioner, in page 9 finds place the proceeding of the District Revenue Officer which came to be passed on 11.07.2014. In the said proceeding, the value has been fixed at Rs.230/sq.ft and the deficit stamp duty has been mentioned as Rs.2,70,060/- and Rs.2,78,495/- in respect of Document Nos. 3857/13 and 3858/13.

20.4. To substantiate the argument that there is no necessity for demand as on the date of the trap proceeding, the learned Senior Counsel appearing for the petitioner relied upon the decision reported in (2005) 6 Supreme Court Cases 211, Ganga Kumar Srivastava v. State of Bihar, wherein at paragraphs 22 and 23, it was held as follows:

"22. There is yet another aspect of the matter. Admittedly, supply of electricity was restored or his house was connected with electric supply. According to the prosecution case, the supply of electricity was restored in the month of July 1985 whereas the appellant took a stand that before the complaint was made by him regarding the allegation of bribe the electric supply was already given to the complainant. According to the appellant, such connection was given to the complainant on 22nd June 1985. If this restoration of electric connection dated 22nd June 1985 to the complainant can be accepted to be correct then there could have been no occasion for demand and acceptance of bribe either on 25th June 1985 and 28th June 1985 for the supply of electric connection. As noted hereinafter, according to the prosecution case and also from the materials on record the electric connection to the complainant was alleged to have been given on 8th July 1985. As noted hereinafter, the appellant however took a

stand that the electric connection was made on 22nd June 1985. The necessary entry regarding electric connection was proved by the appellant by relying on Ext.F. Ext.G was also relied on by the appellant which was an intimation by Shri Bachhu Tiwary bearing endorsement of the appellant to the effect that connection was given on 22nd June 1985. However, the complainant refused to give any certificate and thereby the appellant advised Shri Tiwary to get certificate from Local Mukhia which is Ext.C in the present case. Ext.K is an application of Ram Deo Rai to the Executive Engineer stating that electric connection had been given to the complainant on 22nd June 1985.

23. In order to prove that the electric connection was given to the complainant on 22nd June 1985, a report of Shri Bachu Tiwary was submitted in which it has been categorically stated that the Junior Engineer had already given the certificate regarding giving electric connection to the complainant. Ext.G. was produced to show that the complainant did not give any certificate and therefore the certificate was taken from the local Mukhia. An adverse inference was drawn by the courts below for non-production of Shri Tiwary in the witness box. It is an admitted position that Ext.F was the document which clearly shows that electric connection was given to the complainant on 22nd June 1985. It is also not in dispute that the report was submitted to that effect by Bachu Tiwary, the then Junior Engineer. Since Bachu Tiwary was not examined the courts below could not rely on the report of the Bachu Tiwary. However, electric connection was sought to be proved by producing a certificate from the local Mukhia to show that electric connection was given on 22nd June 1985. The materials on record and also from the Ext.I it is clear that the work order was signed on 11th June 1985. Ext.I is the letter said to have been written to the complainant by the Electrical Executive Engineer, Electricity Division, Sitamarhi. Ext.K is also the report of the Headline Man to show that electric connection was given on 22nd June 1985 and it was re-connected on 8th July 1985 when the meter was brought by the complainant from his residence. The accused-appellant also sought to explain by Ext.L series to show that he was making all efforts for giving electric connection to the complainant and so is Ext.M. From all these documents, we are of the view that electric connection was given to the complainant on 22nd June 1985 and the same was re-connected on 8th July 1985. Therefore, we are of the view that the courts below were manifestly in error in discarding the materials produced by the appellant

to show that the electric connection was given on 22nd June 1985 and not on 8th July 1985 whereafter the vigilance enquiry was started against the appellant."

It is pertinent to note that in the additional typed set of papers filed on behalf of the petitioner, it is seen in page 1 that an order has been passed on 03.07.2014 fixing the price at Rs.230/sq.ft. Whereas in page 9 it is seen that an order dated 11.07.2014 was passed by the petitioner/A1, wherein the price was fixed at Rs.230/sq.ft. So, when an already an order had been passed on 03.07.2014 fixing the price at Rs.230/sq.ft, this Court is unable to understand what prompted the petitioner to pass another order on 11.07.2014 fixing the price at Rs.230/sq.ft. Hence, I am of the view that the contention raised by the learned Senior Counsel appearing for the petitioner that there is no need for demand as on the date of trap proceeding cannot be accepted.

21. The learned Senior Counsel appearing for the petitioner would submit that the Investigating Officer has not recorded the 161 statement of the petitioner/A1, after the trap proceeding and the same is fatal. To substantiate his argument he relied upon the following decisions:

21.1. In the unreported decision of this Court made in Criminal Appeal (MD) No.189 of 2005, dated 25.04.2011, at paragraphs 34 and 35, it was held as follows:

"34. Though a Single Bench of this Court in the decision reported in 2004 CrI.L.J. Page 3754 after taking into consideration the earlier judgments of this Court reported in 2002 (1) Mad LW (Cri) 136 : (2001 Cri LJ 4139) G.A.Ethiraj v. State, has held that rules in Vigilance Manual are only administrative and non-observance of the same cannot be termed as mandatory violation, which would affect the validity of the prosecution, this Court is of the considered opinion that certain procedure safeguards had also been given to the accused to explain the circumstances immediately after he was kept in the trap for the alleged bribe money, the relevant provision in the DVAC Manual namely Rule No.47 should have been complied with by the Appellant/Investigating Officers in a letter and spirit. The Hon'ble Supreme Court of India in a decision reported in (2008) 3 page 484 after taking into consideration paragraphs 704 and 705 of Railway Vigilance Manual has held that if the safeguards are provided to avoid false implication of the Railway Employee, the procedures laid down therein, could not have been given a complete go bye. The earlier decision reported in (2007) 1 SCC page 630, CBI Manual which is similar to that of DVAC Manual came up for consideration with regard to the

preliminary enquiry and the Hon'ble Supreme Court after taking into consideration Vineet Narain's case reported in (1998) 1 SCC page 226 wherein it has been held that it is imperative that the CBI adheres scrupulously the provisions in the Manual in relating to its investigative functions like raids, seizure and arrests and any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the official concerned and thus approving the procedures contemplated under CBI Manual for preliminary enquiry before registration of a regular case.

35. This Court keeping in mind the above cited two decisions of the Hon'ble Supreme Court of India and after careful analysis of the testimonies of P.Ws.12, 13 and 14 is of the view that the non-following of the DVAC Manual especially Rule No.47 with regard to the non-recording of the statement of the Accused immediately after the trap was laid is fatal to the case."

21.2. In the decision of this Court reported in CDJ 2011 MHC 6618, Thulasiram v. State through the Inspector of Police, it was held at paragraph 12 as follows:

"12. The learned counsel for the appellant places strong reliance upon a recent decision of this Court rendered by M.Sathyannarayanan.J. in CrI.Appeal (MD) No.189 of 2005 [State rep.by Inspector of Police, Vigilance and Anti- Corruption, Dindigul v. P.Paraman] on 25.04.2011 in which the learned Judge has referred and followed a decision of the Supreme Court as regards observing the settled procedures contained in the manual which is earmarked for the Departmental officials in the matter of investigation in the trap cases. It is contended that as per Rule of 47 of the Directorate of Vigilance and Anti Corruption Manual, immediate version of the accused after trap assumes great importance and non-recording of the statement of the accused immediately after trap, under Rule 47 of the DVAC Manual is fatal to the case of the prosecution. Rule 47 of the DVAC Manual reads as follows:

"47. Questioning of Accused Officer (1) Questioning of the Accused Officer and recovery of the bribe money should be after thephenolphthalein test. If the test proves positive, arrest of the Accused Officer may be made and recovery of notes effected on the basis of Accused Officer's statement, if any. In this event, the provisions of Section 27 of the Indian Evidence Act would be available to the prosecution.

(2) Immediately after recovery and seizure of the bribe money or article, the Accused Officer must be further interrogated and his detailed statement separately recorded in the case diary under section 162 of the Code of Criminal Procedure, 1973. If there is any need to examine him still further in the light of any fresh evidence that might come up later during the investigation of the case, the same can be done at a later stage and further statement of the Accused Officer recorded. [DVAC Circular Memo No.33979/VAC-4/76, dated 10th December, 1976]"

21.3. On the other hand, the learned Public Prosecutor appearing for the first respondent relied upon the decision reported in 2013 (1) CWC 136, Duraimurugan v. State, rep by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore, wherein it was held that though the Investigating Agency did not comply with the procedure contemplated in the DVAC Manual, the accused cannot take advantage of non-following of procedure contemplated under the Manual and it is for the concerned department to take action against concerned officer for alleged deviation. It is appropriate to incorporate paragraphs 38 and 39 of the said decision:

"38. A careful reading of the above cited decision would disclose that the accused cannot make any complaint with regard to the non-following of the procedures contemplated under the Vigilance Manual and as per the decision rendered in Vineet Narain's case, cited supra, any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

39. Assuming for the sake of argument that the respondent has failed to follow Rule 76 of the DVAC Manual in letter and spirit, it is for the concerned department to take action against the concerned official and it is not open to the writ petitioner/appellant to take advantage of the same. Moreover, the respondent in the counter-affidavit in the earlier writ petition in W.P.No.8931 of 2012 as well as the present writ petition in W.P.No.13788 of 2012 took a specific stand that they had followed the Vigilance Manual and accordingly, issued the Final Opportunity Notice as per Proforma 28 of the said Manual. In the light of the stand taken by the respondent in the counter-affidavit in the above said writ petitions, it cannot be said that the respondent/investigating officer has not followed the provisions of the DVAC Manual."

Thus, the non-recording of the statement from the accused after the trap proceeding is not fatal to the case of the prosecution and only

the disciplinary proceeding alone can be taken against the officer concerned. So, I am of the view that the non-recording of the statement of the accused cannot be a ground to quash the FIR.

22. The learned Public Prosecutor would further contend that not following the rules as contemplated under the manual is not fatal to the case of the prosecution. Furthermore, a defect or illegality in investigation is not a reason for setting aside the conviction. To substantiate the said argument, he relied upon the decision reported in CDJ 1954 SC 004, H.N.Rishbud and Another v. State of Delhi, wherein it was held that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. It is appropriate to incorporate the relevant portion in the said decision:

"The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon. Here we are not concerned with the effect of the breach of a mandatory provision regulating the competence or procedure of the Court as regards cognizance or trial. It is only with reference to such a breach that the question as to whether it constitutes an illegality vitiating the proceedings or a mere irregularity arises. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in section 190 of the Code of Criminal Procedure as the material on which cognizance is taken."

Hence, I am of the view that not following the rules as contemplated under the manual and the defect or illegality in investigation is not a reason for quashing the FIR.

23.1. The learned Senior Counsel appearing for the petitioner would submit that the prosecution has not proved the second demand and recovery. The recovery has been made only from the third respondent/A2, who is not a public servant. However, the said argument does not hold good because as per the decision of the Hon'ble Apex Court made in (2004) 3 Supreme Court Cases 753, T.Shankar Prasad v. State of A.P., relied on by the learned Public Prosecutor, wherein it was held the offence can be proved by even by factual presumption and not necessarily by direct evidence.

23.2. At this juncture, it is also appropriate to consider the fact that the petitioner/A1 joined as DRO (Stamps) only on 23.08.2013 and he held the said post till 11.07.2014 viz., date of trap. Whereas, the third respondent/A2 had been working in the said office for more than two years, as per the statement of the witnesses. In such circumstances, whether the third respondent/A2 received the amount at the instruction of the petitioner/A1 is a question of fact and the same has to be decided only on the basis of the oral evidence. Furthermore, the petitioner/A1 is having protection while obtaining sanction.

24. Thus, summing up the above arguments, the following conclusions are arrived at:

1. The delay in preferring the complaint is not fatal and that too in the cases under the Prevention of Corruption Act.
2. Whether the discreet enquiry has been conducted and the genuineness of the complaint was verified before registering the case or after registering the case is a matter of fact and the same has to be decided only at the time of trial after letting in oral evidence.
3. The non following of the procedures laid down in the DVAC manual is not fatal.
4. The document filed by the petitioner itself shows that the order on the document belonging to the wife of the second respondent/de facto complainant came to be passed only on 11.07.2014.
5. Merely because the tainted money has not been recovered from the petitioner/A1, it is not a ground for quashing the FIR, as per the decision of the Hon'ble Apex Court made in (2004) 3 Supreme Court Cases 753, T.Shankar Prasad v. State of A.P.

In such circumstances, I am of the view that the petitioner herein has not made out the case for quashing the FIR.

25. In fine, the Criminal original petition deserves to be dismissed as devoid of merits and it is hereby dismissed.

pgp

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. Inspector of Police
Directorate of Vigilance and
Anti-Corruption, Chennai

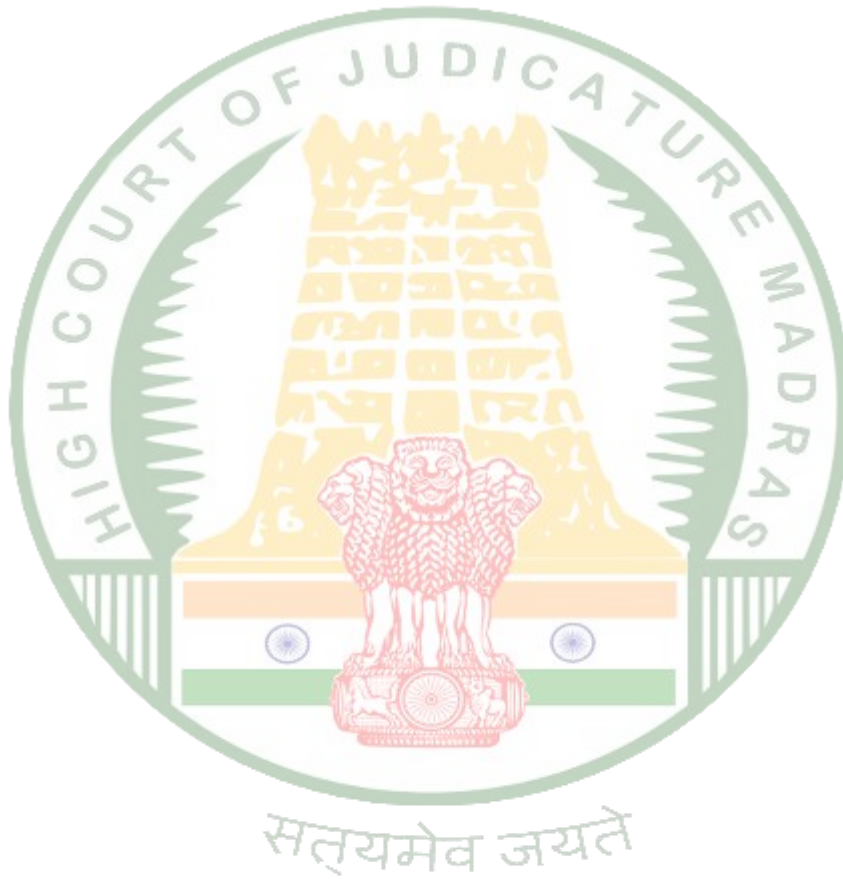
2.The Public Prosecutor
High Court, Chennai.

+ 1 cc to M/s.K.P.Ananthakrishna, Advocae SR 18913

+ 3 ccs to Public Prosecutor, High Court, Madras SRs.18799 18564 18485

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