

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26 .02.2015

CORAM:

THE HONOURABLE MS. JUSTICE R. MALA

Crl.O.P.Nos.7587/2013, 8097/2012, 16320/2014,  
14681/2014 and 29814/2014  
and M.P.Nos.1/2013, 1,2/2012 and 1,1,1 of 2014

Order reserved on :17.02.2015

Order pronounced on:26.02.2015

B.Krishnan

... Petitioner in/Accused 1  
Crl.O.P.No.7587/2013

Y.Sam Daniel

... Petitioner in/5<sup>th</sup> Accused  
Crl.O.P.No.8097/2012

1.R.Palaniswamy

2.K.Chandrasekaran

3.S.Mohandoss

4.C.Manavalan

5.R.Manoharan

... Petitioners in/Accused  
(A10,A12,A14,A18 & A20)  
Crl.O.P.No.16320/2014

1.M.Balan

2.V.Thangavelu

3.P.Srinivasan

4.M.Anotony Raja Pazham

5.N.Balasubramanian

6.K.Arumugam

... Petitioners in/Accused  
(A3,A4,A11,A15,A21 & A22)  
Crl.O.P.No.14681/2014

1.M.Harinarayanan

2.K.Shanmugam

3.S.Gnanashanmugam

4.A.Easwaran

... Petitioners in/Accused  
(A8,A9,A16 & A17)  
Crl.O.P.No.29814/2014

vs.

The Deputy Superintendent of Police,  
Vigilance and Anti Corruption Wing,,  
Udhagamandalam, Nilgiris  
(Crime No.3/AC/88/HQ)

... Respondent in/Complainant  
all Crl.O.Ps

Prayer in all Crl.O.Ps : Petition filed under Section 482 Cr.P.C. to call for the records relating to the proceedings in C.C.No.126 of 2011 on the file of the Special Court for the Directorate of Vigilance and Anti Corruption, Coimbatore and quash the same.

For Petitioner in  
Crl.O.P.No.7587/2013 : Mr.Shajahan & Mr.C.V.Kumar

For petitioner in  
Crl.O.P.No.8097/2012 : Mr.N.Rajan

For petitioners in  
Crl.O.P.Nos.16320/2014  
14681/2014 & 29814/2014 : Mr.K.Doraisami  
Senior Counsel  
for M/s.Muthumani Doraisami

For Respondents in  
all Crl.O.Ps. : Mr.V.Arul  
Government Advocate (Crl. Side)

COMMON ORDER

The petitioner in Crl.O.P.No.7582 of 2013 is the Accused No.1, the petitioner in Crl.O.P.No.8097 of 2012 is the Accused No.5, the petitioners in Crl.O.P.No.14681 of 2014 are the Accused Nos.3,4,11,15,21 and 22, the petitioners in Crl.O.P.Nos.16320 of 2014 are the Accused Nos.10,12,14,18 and 20 and the petitioners in Cr.O.P.No.29814 of 2014 are the Accused Nos.8,9,16 and 17 in C.C.No.126 of 2011 on the file of the Special Court for the Directorate of Vigilance and Anti Corruption, Coimbatore.

2.For the sake of convenience, the petitioners herein are referred to as A1, A3, A4, A5, A8, A9, A10, A11, A12, A14, A15, A16, A17, A18, A20, A21 and A22.

3.The brief facts of the case is as follows:

(i) The Government of Tamil Nadu in G.O.Ms.No.25 Planning and Development (HADP) dated 08.04.1982 accorded sanction for implementation of Rural Water Supply Scheme in about 140 villages under Social Input Programme. The Rural Water Supply Scheme was formulated and a rural water supply division was formed in TWAD Board in the year 1982 with Head quarters at Udhagamandalam to implement the said RWS Scheme. It functioned under the control of one Executive Engineer, TWAD Board, who was assisted by a team of Technical and Administrative staff for the implementation of Rural Water Supply Schemes in the Nilgiris District. There were four sub divisions having offices at Kothagiri, Gudalur, Coonoor and Udhagamandalam headed by Assistant Executive Engineers with Assistant Engineers and other supporting staff. In the Board proceedings No.153 dated 13.05.1974 of TWAD Board authorised only the Chief Engineer to split up all major tender works into convenient parts as contemplated in the abstract of the estimate. As per the Board proceedings No.387 dated 11.10.1977, the Executive Engineer other than Rural Water Supply Division are empowered to procure the unlisted item of materials upto Rs.10,000/- only. As per Board proceedings No.118 dated 12.05.1987 the HDPE Specials are included as listed items of materials and the Executive Engineer, RWS is empowered to procure the unlisted item of materials upto Rs.20,000/-.

(ii) During the period 1982 to 1987, at Udhagamandalam, A1 along with one M.Prabakaran (expired) in the capacity as Executive Engineer, TWAD Board, RWS Supply Division, Udhagamandalam having been entrusted and having dominion over the funds of TWAD Board had in violation of the tender procedures, PWD Codal Provisions and instructions of TWAD Board in the purchase of HDPE Flanges and Pipe ends committed criminal breach of trust in respect of a total sum of Rs.1,82,24,293/- pertaining to 1036 forged tender documents/agreements of A28 to A31 and A33, who claimed themselves to be the representatives of 10 non-existent and fictitious firms.

(iii) A2 and A3 in collusion with the said M.Prabakaran, Executive Engineer (expired) in the process of the said tender documents, intentionally and knowingly omitted to observe the existing Rules and Orders of TWAD Board in respect of the said tender transaction in calling for the tenders, issue of tender schedules, settling of contracts, execution of agreements, etc. with A28 to A31 and A33 and in passing the bills without pointing out the violation of TWAD Board's proceedings for splitting up purchase of HDPE Flanges and Pipe ends and without placing any objection on record for making the payment by the said M.Prabakaran (expired) to A28 to A31 and A33 for the supply of the said materials.

(iv) A4 to A22 and one C.Manoharan (expired) in collusion with the said M.Prabakaran (expired) in the process of the said tender documents intentionally prepared unwanted requirements of the HDPE

Flanges and Pipe ends for RWS Scheme for where there is no provision in the technically sanctioned OP estimates and detailed working estimates and also intentionally and knowingly omitted to check up and ensure the quality of HDPE Flanges and Pipe ends supplied by A28 to A31 and A33 countersigned the bills for the supply of the said materials.

(v) A23 to A27 in collusion with the said M.Prabakaran (expired) in the process of the said tender documents intentionally omitted to verify the genuineness about the existence, I.T. Clearance, Salex Tax Clearance, Financial Capacity and also the Proprietorship of those 10 non-existent firms of A28 to A31 and A33 and thereby recommended the said M.Prabakaran (expired) to place supply orders and to make payments of the said amount to A28 to A31 and A33 for the supply of HDPE Flanges and Pipe ends under those 1036 false tender documents/agreements.

(vi) As there was a large scale misconduct in the implementation of the scheme was noticed, the then Superintendent of Police, Western Range, Vigilance & Anti Corruption conducted a preliminary enquiry and filed a report. Based on the Enquiry Report, originally FIR was filed against 13 persons under Sections 120-B, 420 IPC, 5(1)(d) r/w. 5(2) of P.C. Act, 1947 and 109 IPC in Cr.No.3/AC/88/HQs dated 14.10.1988.

(vii) Thereafter, the then Inspector of Police, City Special Unit II, Vigilance and Anti Corruption, Chennai took up the case for further investigation and pending completion, he found out the involvement of 30 more persons in the irregularities in the implementation of the scheme. The Investigating Officer has filed an application to include 30 persons as accused before the Competent Court and included the other accused persons also. Thereafter, the case was transferred from City Special Unit II, Vigilance and Anti Corruption, Chennai to the respondent police on 30.06.2005 and the then Deputy Superintendent of Police took up the case for further investigation and examined 119 witnesses, collected and perused 3064 documents including 1178 forged tender schedules/agreements with forged signatures of fictitious persons.

(viii) Based on the examination of witnesses and documents, the then Deputy Superintendent of Police laid a charge sheet against the accused persons for the offences punishable under Sections 120-B r/w. 409, 467, 468, 477A, 471 r/w. 467 and 420 IPC and 5(1)(A)(a)(c) and (d) of Prevention of Corruption Act, 1947 on 10.10.2007 and the same was taken as C.C.No.9/2008 on the file of the learned Special Judge/District Sessions Judge at Udthagamandalam, The Nilgiris District on 23.04.2008. Subsequently, the case was transferred to the Court of Special Judge under Prevention of Corruption Act, Coimbatore on 10.11.2011 and the same was taken on file as C.C.No.126 of 2011 and it is still pending. Hence, the petitioners have come

forward with these petitions to quash the same.

4. Even though the learned counsel for the petitioners have raised so many grounds for quashing the proceedings, during arguments, they mainly focused upon only the following two grounds:

(i) There is inordinate delay in respect of conducting trial, which amounts to violation of right of life and liberty as enshrined in Article 21 of the Constitution of India.

(ii) The alleged occurrence was said to have taken place in the year 1982 - 1987 and disciplinary proceedings have been initiated against the accused were quashed as charges not proved and hence, no purpose would be served to get along with the trial.

5. Learned counsel for A5/Sam Daniel by adopting the above submissions contended that during 1982-87, it is alleged that the petitioners herein had conspired and agreed to commit and abet one another to commit the offences of criminal breach of trust, dishonestly using as genuine the forged tender documents. But there is no overt act against the petitioner/A5 and he has joined duty only on 02.06.1986 as Assistant Executive Engineer and he is working till 01.07.1988 and he has only verified the material receipts and he is not a person to authorise to give work to the tender for implementation of rural water supply scheme in about 140 villagers as per G.O.Ms.No.25 Planning and Development (HADP) dated 08.04.1982. Therefore, he prayed for quashing the proceedings. To substantiate their arguments, learned counsel for the petitioners have relied upon the following judgments:

- (i) (2002) 1 SCC 149 (Mahendra Lal Das v. State of Bihar and others);
- (ii) 2007 (2) CTC 434 (K.Krishnasingh v. State, rep. by its Inspector of Police, Prohibition & Enforcement Wing, Krishnagiri District);
- (iii) (2008) 16 SCC 117 (Pankaj Kumar v. State of Maharashtra and others);
- (iv) (2009) 3 SCC 355 (Vakil Prasad Singh v. State of Bihar);
- (v) (1996) SCC (Cri) 897 (P.S.Rajya v. State of Bihar);
- (vi) 2006 Cri.L.J.4765 (Moti Lal Saraf v. State of Jammu and Kashmir and another);
- (vii) 2011 (3) MWN (cr) 175 (Selvi J. Jayalalitha and others v. C.B.I., Chennai);
- (viii) 1992 SCC (Cr1) 426 (State of Haryana and others v. Bhajan Lal and others);
- (ix) 2010-2-L.W.(cr1.) 1183 (S.P.Ganesan and S.Vasanth v. State by, Inspector of Police, City Crime Branch, Trichy and another);

6. Resisting the same, learned Government Advocate (Cr1.side) submits that it is true, case has been registered in Crime No.3/AC/88/HQ 14.10.1988 and now the case is ripe for trial. Hence,

a direction may be given to the trial Court to dispose of the case as early as possible. It is further submitted that the petitioners are public servants and when they were discharging their duties, they conspired together and in pursuance of the criminal conspiracy, in the course of transaction during 16.05.1985 to 20.04.1987, having been entrusted and having dominion over the funds of TWAD Board, they had in violation of the tender procedures, PWD Codal provisions and instructions of TWAD Board in the purchase of HDPE Flanges and pipe ends committed criminal breach of trust in respect of total sum of Rs.1,82,24,293/- wherein the said M.Prabakaran (since deceased) has misappropriated a sum of Rs.1,44,18,670/- which being the difference between the boosted price paid pertaining to 1036 agreements to A28 to A31 and A33, who claimed themselves to be the representatives of the ten non-existent and fictitious firms and thereby caused loss to the Exchequer. Therefore, he prayed for dismissal of the petitions.

7.Considered the rival submissions made on both sides and perused the materials available on record.

8.The facts of the case are as follows:

A case has been registered in Crime No.3/AC/88/HQ stating that during 1982-1987, these petitioners are working in TWAD Board, which passed G.O.Ms.No.25 Planning and Development (HADP) dated 08.04.1982 for implementation of rural water supply scheme for 140 villages under social input programme with UICEF assistance to a tune of Rs.107.54 lakhs. The rural water supply scheme was formulated and a rural water supply division was formed in TWAD Board in the year 1982 with Head quarters at Udhagamandalam to implement the said RWS scheme. For implementing the same, TWAD Board authorised only the Chief Engineer to split up all major tender works into convenient parts as contemplated in the abstract of the estimate. As per the Board proceedings No.357, dated 11.10.1977, the Executive Engineer other than rural water supply division are empowered to procure the unlisted item of materials up to Rs.10,000/- only. As per Board proceedings No.118 dated 12.05.1987 the "HDPE Specials" are included as listed items of materials and the Executive Engineer, RWS is empowered to procure the unlisted item of materials up to Rs.20,000/-. During the period between 1982 and 1987, the accused 1 to 34 were conspired along with approver namely, K.Elango and deceased C.Manoharan and one Prabakaran, former Executive Engineer (died) obtaining illegal gratification and criminal misconduct in the procurement of HDPE flanges and pipe ends for the execution of 140 rural water scheme works of TWAD board in 141 habitations in Nilgiris District and after due investigation, charge sheet has been levelled against 34 persons. F.I.R. was registered on 14.10.1988 and charge sheet was taken on file on 23.04.2008.

9. Now this Court has to decide whether the inordinate delay in respect of conducting trial amounts to violation of right of life and liberty as enshrined in Article 21 of the Constitution of India? At this juncture, it is appropriate to consider the following decisions relied upon by the learned counsel for the petitioners:

(i) In (2002) 1 SCC 149 (Mahendra Lal Das v. State of Bihar and others), wherein it was held that the right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and re-trial. Further, it was held that while determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions, etc. In para-5, it is held as follows:

"5. It is true that interference by the court at the investigation stage is not called for. However, it is equally true that the investigating agency cannot be given the latitude of protracting the conclusion of the investigation without any limit of time. This Court in Abdul Rehman Antulay & Ors. v. R.S. Nayak & Anr, [ 1992] 1 SCC 225 while interpreting the scope of Article 21 of the Constitution held that every citizen has a right to speedy trial of the case pending against him. The speedy trial was considered also in public interest as it serves the social interest also. It is in the interest of all concerned that guilty or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and re-trial. While determining the alleged delay, the court has to decide each case on its facts having regard to all attending circumstances including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions, etc. Every delay may not be taken as causing prejudice to the accused but the alleged delay has to be considered in the totality of the circumstances and the general conspectus of the case. Inordinate long delay can be taken as a preservative proof of prejudice."

(ii) In 2006 Cri.L.J.4765 (Moti Lal Saraf v. State of Jammu and Kashmir and another), wherein it was held that no single witness examined in the last 26 years without there being any lapse on part

of accused. Its continuation further would be total abuse of process of law. It is appropriate to extract para-50 and 52, which reads as follows:

"50. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch.

51. . . .

52. In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on behalf of the appellant. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the criminal proceedings are quashed. The appeal is accordingly allowed and disposed of."

(iii) The above decision has been followed by this Court in 2007 (2) CTC 434 (K. Krishnasingh v. State, rep. by its Inspector of Police, Prohibition & Enforcement Wing, Krishnagiri District), in para-7 to 9, it is held as follows:

"7. This Court is surprised to note that only now after a period of more than a decade the learned Magistrate directed the authorities concerned to reconstruct the documents for the purpose of trial in this case. The materials available on record does not disclose that the documents and records relating to the case were available for re-construction. However, this Court is of the considered view that allowing the proceedings to continue against the petitioner after a long period, viz., more than two decades would amount to clear case of abuse of process of law.

8. The Hon'ble Supreme Court has held in Moti Lal Saraf v. State of Jammu and Kashmir, reported in (2006) CCR 141 (SC) that,

"49. It is the bounden duty of the Court and the prosecution to prevent unreasonable delay.

50. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the Courts and on the prosecution an obligation to proceed with reasonable dispatch.

51. In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the State Governments, and all

concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality.

52. In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on behalf of the appellant. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the Criminal proceedings are quashed".

9. The principle of law laid down by the Apex Court in the decision cited supra is squarely applicable to the instant case as in this case, the First Information Report was registered as early as in the year 1986 and the final report was filed as early as in the year 1993 and till date there is absolutely no progress and added to that even the records of the case were not available and as such the proceedings initiated against the petitioner pending in P.R.C.No.16 of 2000 on the file of the learned Judicial Magistrate, Poochampalli, is liable to be quashed . Accordingly, the entire proceedings is quashed. In view of allowing this petition, the connected Miscellaneous Petitions are closed."

(iv) In (2008) 16 SCC 117 (Pankaj Kumar v. State of Maharashtra and others), wherein it was held that right to speedy trial in all criminal prosecutions is an inalienable right under Article 21 of the Constitution of India. This right is applicable not only to the actual proceedings in the Court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases. Para-22 to 24 and 27 are extracted hereunder:

"22. It is, therefore, well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Article 21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well. The right to speedy trial extends equally to all criminal prosecutions and is not confined to any particular category of cases.

23. In every case, where the right to speedy trial is alleged to have been infringed, the court has to perform the balancing act upon taking into consideration all the attendant circumstances, enumerated above, and determine in each case whether the right to speedy trial has been denied in a given case. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial.

24. Tested on the touchstone of the broad principles, enumerated above, we are of the opinion that in the instant case, appellant's constitutional right recognised under Article 21 of the Constitution stands violated. It is common ground that the First Information Report was recorded on 12-5-1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations, involving aforesaid three financial irregularities; the charge sheet was submitted in Court on 22-2-1991. Nothing happened till April 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court.

27. Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear.

(v) The above proposition was held in para-24 and 25 of the decision reported in (2009) 3 SCC 355 (Vakil Prasad Singh v. State of Bihar), para-24 and 25 are extracted hereunder:

"24. It is, therefore, .. ..

25. Where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial."

(vi) In 2011 (3) MWN (cr) 175 (Selvi J. Jayalalitha and others v. C.B.I., Chennai), wherein it was admitted by both sides that special leave petition has been pending before the Apex Court.

10. Considering the facts and circumstances of the case along with the above decisions, the speedy trial in criminal case is inalienable right under Article 21 of the Constitution of India, but the trial includes not only the Court's proceedings and also investigation as well. During 1982-1987, the alleged occurrence was said to have taken place and F.I.R. has been registered on 14.10.1988 and after due investigation, charge sheet was filed on 23.04.2008 that too after 20 years. But no plausible explanation has been offered on the side of the prosecution.

11. This Court on 05.02.2015 called for status report from the trial Court in respect of the crime number relates to this case pending in C.C.No.126 of 2011 on the file of the Special Court (vigilance and anti corruption cases) Coimbatore and the same was received, which reveals that 34 accused have been charge sheeted by the prosecution and copies of charge sheet are yet to be furnished to the accused. It was specifically stated that A13 and A26 were dead. N.B.W. is pending against A30 and fresh summons issued to A29. It clearly shows that copies are yet to be furnished to the accused under Section 207 Cr.P.C. and it is pending more than 7 years. So after registering the case, it is pending for more than 27 years without seeing the light of the day. As per Section 207 Cr.P.C., copies of police report have to be furnished to the accused. In such circumstances, I am of the view, delay in respect of investigation itself violates the right as enshrined under Article 21 of the Constitution of India.

12. One more adding circumstance is that on the basis of the approver statement only, all the accused were implicated in this case. According to both sides counsel, approver namely, K.Elango was dead. Except the approver statement, nothing has been stated against

A5. In such circumstances, the delay in speedy justice is fatal to the case of prosecution.

13. According to the learned counsel for the petitioners, since the disciplinary proceedings were initiated against the accused in parallel, the same have to be quashed by the Court of law and on the basis of the Government orders issued, nothing has been survived and hence, no purpose would be served to get along with the trial and hence, they prayed for quashing the proceedings against the petitioners herein. To substantiate their arguments, they relied upon the following decisions:

(i) In 1992 SCC (Cr1) 426 (State of Haryana and others v. Bhajan Lal and others), the Apex Court has issued guidelines for quashing F.I.R. In para-102, it is held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R do not disclose a cognizable offence, justifying an investigation by police officers under Section 156 (1) of the Code except under an order of Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the F.I.R. or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the F.I.R. do not

constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

(ii) In (1996) SCC (Cri) 897 (P.S.Rajya v. State of Bihar), in para-25, it is held as follows:

"25. In this connection, it will be useful to set out a portion from the rejoinder-affidavit filed on behalf of the appellant which reads as follows :

"It seems, however, that the reluctance of the Regional C.B.I. in dropping the proceedings against the petitioner stems (sic stems) from the fact that they used to forge the house valuation report as the sole basis for charging the petitioner. The fact that this report is forged is abundantly clear from the facts and circumstances set out in the S.L.P. By this report the house of the petitioner was sought to be valued at Rs. 3 lakhs and odd above the original valuation by the same Engineer which was accepted by the Income Tax Department. On this basis the petitioner's assets were shown to be Rs. 3 lakhs and odd and above as income.

The petitioner has in fact filed a complaint under Section 340 Cr.P.C. for taking cognizance against the officer concerned for using a forged document in charging the petitioner. This complaint of the

petitioner is pending before the Special Judge (CBI) Patna. It is perhaps on account of the fear of being found guilty on forgery document that the Regional C.B.I. Officers are reluctant to withdraw the charge against the petitioner. That is why after having a short adjournment on 6 occasions from this Court to enable them to withdraw the proceedings against the petitioner, the C.B.I. has changed its stand and even their Senior Counsel in his place."

(iii) In 2010-2-L.W.(crl.) 1183 (S.P.Ganesan and S.Vasanth v. State by, Inspector of Police, City Crime Branch, Trichy and another), the earlier judgment has been followed by the Court and quashed the proceedings stating that since the petitioners were exonerated from the charges levelled against them in the disciplinary proceedings, to continue the criminal case against the petitioners would amount to a clear case of abuse of process of Court. It is appropriate to incorporate para-11 of the judgment, which is as follows:

"11. Considering the above said citation, I am accept the view taken by the learned judge. Hence, as per the decision reported in State of Haryana V. Bhajan Lal reported in 1992 Supp. (1) SCC 335 and P.S.Rajya V. State of Bihar reported in 1996 SCC (Cri.) 897, I am of the view that since the petitioners were exonerated from the charges levelled against them in the disciplinary proceedings to continue the criminal case against the petitioners would amount to a clear case of abuse of process of court and as such this court is constrained to quash the proceedings."

14. On perusal of additional typed set of papers filed by the learned counsel for the petitioners would reveal that on 17.12.2007, in respect of accused/Harinarayanan, charges have not been proved and it was found that he was not responsible for the loss and hence, the Board has given a direction to drop the charges framed against him in B.P.Ms.No.144/2007. Likewise, other petitioners viz., K.Shanmugam, A.Easwaran, N.Balasubramanian were challenged the suspension orders and their suspension orders were revoked by the Board and the proceedings initiated against them were dropped on 17.12.2007, against which, Tamil Nadu Water Service and Drainage Board preferred special leave petitions against M.Balan and others, which was dismissed by the Apex Court stating that "it is a gross case where the respondents, in our opinion, have been harassed by the petitioner-Board for reasons best known to its officers. We are satisfied that the action of the authorities of the petitioner-Board is malafide. The special leave petitions are dismissed."

15. On considering the above, disciplinary proceedings were initiated against the petitioners simultaneously, but charges have not been proved. Hence, they were exonerated from the charges levelled against them, against which, the Board preferred special leave petitions, which were dismissed. As per the decision of the Apex Court, in the departmental proceedings, the charges against the petitioners could be proved only by preponderance of probabilities not by beyond reasonable doubt as required in criminal case.

16. Considering the facts and circumstances of the case along with the above decisions, I am of the view, once the accused/petitioners herein were exonerated from the charges levelled against them, no purpose would be served to conduct trial which lacks proof, because in criminal case, guilt of the accused to be proved beyond all reasonable doubt. So far, no copies of charge sheet have been furnished to the accused as per Section 207 Cr.P.C. for the past 27 years. In such circumstances, I am of the considered opinion, delay itself is the main ground for quashing the proceedings. Since the petitioners were exonerated from the charges levelled against them in the disciplinary proceedings, to continue the criminal case against the petitioners would amount to a clear case of abuse of process of court and as such this court is constrained to quash the proceedings. Accordingly, the charge sheet against the petitioners are hereby quashed.

17. In fine, the Criminal Original Petitions are allowed and charge sheet against A1, A3, A4, A5, A8, A9, A10, A11, A12, A14, A15, A16, A17, A18, A20, A21 and A22/petitioners herein are quashed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Asst. Registrar

/true copy/

Sub Asst. Registrar.

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KJ/CSE

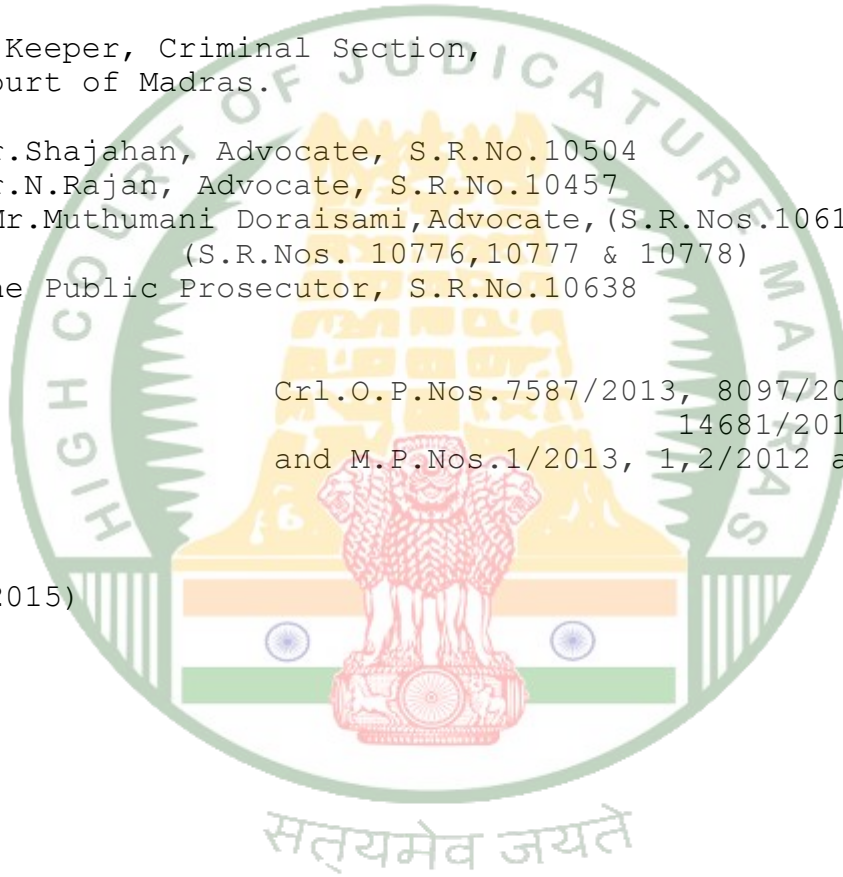
To

1. The Deputy Superintendent of Police,  
Vigilance and Anti Corruption Wing,,  
Udhagamandalam, Nilgiris
2. Special Court for the Directorate of Vigilance  
and Anti Corruption, Coimbatore
3. The Public Prosecutor,  
High Court of Madras.
4. Record Keeper, Criminal Section,  
High Court of Madras.

+2cc to Mr.Shajahan, Advocate, S.R.No.10504  
+1cc to Mr.N.Rajan, Advocate, S.R.No.10457  
+15cc to Mr.Muthumani Doraisami, Advocate, (S.R.Nos.10614,10615 & 10616)  
(S.R.Nos. 10776,10777 & 10778)  
+1cc to the Public Prosecutor, S.R.No.10638

Crl.O.P.Nos.7587/2013, 8097/2012, 16320/2014,  
14681/2014 and 29814/2014  
and M.P.Nos.1/2013, 1,2/2012 and 1,1,1 of 2014

RV(CO)  
CA(03/03/2015)



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