

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2016

Pronounced on : 03.10.2016

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Crl.O.P.No.1024 of 2016 and
Crl.O.P.No.5589 of 2016 and
Crl.M.P.No.2881 of 2016

Chinnasamy ... Petitioner in both OPs./Accused No.1

V.

1.State represented by
The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Dharmapuri,
Dharmapuri District. ...Respondent in Crl O.P.No.5589/2016
...Ist Respondent in both OPs/Complainant

2.A.Vellaiyan .. Intervenor/Defacto Complainant

(Intervening Petition is ordered on
31.08.2016 in Crl.M.P.No.7659/2016) ...2nd Respondent in
Crl.o.P.No.1024/2016

Prayer in Crl.O.P.No.1024/2016: Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.2 of 2015 on the file of the Special Judge for Prevention of Corrupt Cases Act Court, Salem and quash the same as illegal.

Prayer in Crl.O.P.No.5589/2016: Petition filed under Section 482 Cr.P.C. praying to call for the connected records in impugned Supplementary Charge Sheet based on the Second Sanction Order dated 27.01.2016 passed by the District Collector, Salem made in ROC.No.48144/2010/A2, pending on the file of Special Judge for Prevention of Corruption Act, Spl.C.C.No.2 of 2015 and quash the same as illegal.

In both cases
For Petitioner : Mr.R.Sankarasubbu

For Intervenor : Mr.S.Karithikeyan
Mr.R.S.Sethuraman AAG
Assisted by
For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

COMMON ORDER

The Petitioner/Accused has preferred the instant Crl.O.P.No. 1024 of 2016 praying for passing of an order by this Court to call for the records in C.C.No.2 of 2015 on the file of the Special Judge for Prevention of Corrupt Cases Act, Salem and to quash the same.

2.The Petitioner/Accused has focussed the present Crl.O.P.No.5589 of 2016 praying for passing of an order by this Court to call for the connected records in the impugned Supplementary Charge Sheet based on the Second Sanction Order dated 27.01.2016 passed by the District Collector, Salem in ROC.No.48144/2010/A2, pending on the file of Special Judge for Prevention of Corruption Act, Salem in Spl.C.C.No.2 of 2015 and to quash the same.

3. The Averments and Contentions of the Petitioner (in Crl.O.P.No.1024 of 2016):

(i) According to the Petitioner, he was posted as Tahsildar in Valapadi Taluk, Salem on 07.06.2010 and he deducted several irregularities in the quarry operations of local influential persons like SDM & VNC JV Company Private Limited, who illegally quarried in Survey No.158/1, Periya Gaundapuram Village, Valapadi Taluk and submitted a report dated 26.06.2010, 29.06.2010 and 23.12.2010 to the Government and subsequently, levied penalty of Rs.32 Crores. Further, it is the stand of the Petitioner that one Vellaiyan, S/o.Ayyanperumal was imposed with a penalty of Rs.25,340/- as fine for seizure of 1600 tracks load unit of red sand and further 13,000 bricks and 6,41,500 bricks were seized. Moreover, the lorry was forfeited to the Government during the period 20.10.2010 and 25.10.2010 and he submitted a report to the Revenue Divisional Officer and the District Collector, Salem. In this connection, the plea taken on behalf of the Petitioner is that the said Vellaiyan and the Corporate Company conspired with each other to trap the Petitioner under the Prevention of Corruption Act and he submitted a petition to the Government on 24.09.2010 narrating the conspiracy of the offenders who had suffered in his hands.

(ii) It is represented on behalf of the Petitioner that SDM & VNC JV Company employee one Dharmaraj S/o.Jaganathan was deputed to work as Village Assistant at the instance of local Member of Parliament and he was used as a witness and he allegedly received a sum of Rs.10,000/- on his behalf from Vellaiyan to do an official favour and the demand was made on 22.12.2010 as per F.I.R. However, in the impleading petition filed by one Vellaiyan, it was mentioned as on 22.10.2010 before this Court in M.P.No.1 of 2013 in CrI.O.P.No.22428 of 2011, but as per Section 161 Cr.P.C. Statement of Vellaiyan, it was stated as 14.10.2010 and that the said act of the complainant is 'Malice in Law' and that the said Dharmaraj again joined the SDM-VNC- JV Company after the case during 2011. In fact, he had worked only for 29 days as Village Assistant.

(iii) Proceeding further, the version of the Petitioner is that the said conspiracy of demand on 22.10.2010 was executed through Dharmaraj on 30.12.2010 and the case was registered on 29.12.2010 and after investigation, a final report was filed based on the Sanction Order of the District Collector K.Maharabhusanam. It comes to be known that the Petitioner had lodged a complaint against the District Collector K.Maharabhusanam for the loss of Rs.32 Crores sustained to the Government and further, he had renewed the licence to the same person without recovering Rs.32 Crores and the enquiry is pending in this regard.

(iv) Therefore, it is the stand of the Petitioner that the Sanction Order is 'Malice in Law'. Added further, it is the plea of the Petitioner that there are infirmities in the Sanction Order that the 'Demand' was on 14.10.2010 as per Sanction Order, but in the First Information Report, the Remand Report, Arrest Card, V & AC Report dated 22.12.2010, the demand was stated to be '22.12.2010' and that the said material discrepancies vitiate the Sanction Order of Charge Sheet.

(v) It is the case of the Petitioner that the District Collector, Salem is incompetent to prosecute 'B' Grade Officers and in fact, the Government alone is competent to prosecute them.

4. The Learned Counsel for the Petitioner submits that the prosecution is 'Malice in Law' as the Petitioner had initiated penalty proceedings against the Complainant-Vellaiyan and his relative Nallathambi right from his assumption of office on 07.06.2010 as Tahsildar and his lorries and bricks were seized and a penalty was imposed running into several lakhs of rupees. Therefore, it is projected on the side of the Petitioner that there is no question meeting him by the Petitioner during the period from 07.06.2010 to 22.12.2010, the crucial date of demand of illegal gratification of Rs.10,000/- for official favour.

Furthermore, it is the case of the Petitioner that he refused to accept the order of B.D.O. permitting Vellaiyan to transport red sand from patta land. Hence, it is contended on behalf of the Petitioner that the prosecution case is an improbable and unacceptable one.

5.The Learned Counsel for the Petitioner submits that the order of the District Collector, Salem is without jurisdiction as the sanctioning authority has to get approval from Vigilance Commission and the remittal order by the Government as the Tahsildar is a 'B' Grade Officer. As such, without remittal order and approval from Vigilance Commission, the Sanction Order is non-est in the eye of Law.

6.At this stage, the Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in R.P.S. Yadav V. Central Bureau of Investigation, 2015(1) Crimes 286 (SC) at page 287, wherein it is held that 'Unless both the ingredients of demand and acceptance of bribe is established, a person cannot be convicted under Section 7 and 13 of Prevention of Corruption act, 1988'.

7.The Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in Satvir Singh V. State of Delhi Through CBI reported in 2014 (3) Crimes 420 (SC) at page 421, it is observed and held that 'Demand, acceptance and recovery of gratification is sine quo non of offence under Section 7 and 13 of the Prevention of Corruption Act'. Also, it is observed that 'Unless ingredients of Section 7 are proved, there cannot be any presumption and its rebuttal under Section 20 of the Act.'

8.The Learned Counsel for the Petitioner seeks in aid of the decision of the Hon'ble Supreme Court in Kashmira Singh V. The State of Madhya Pradesh, AIR 1952 Supreme Court 159, wherein it is observed as follows:

"It follows that the testimony of an accomplice can it law be used to corroborate another though it ought not to be so used save in exceptional circumstances and for reasons disclosed. The tendency to include the innocent with the guilty is peculiarly prevalent in India and it is very difficult for the Court to guard against the danger. The only real safeguard against the risk of condemning the innocent with the guilty lies in insisting on independent evidence which in some measure implicates such accused."

9. The Learned Counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in Mehendra Singh Chotela Bhargad V. State of Maharashtra and others, AIR 1998 Supreme Court 601 at page 602, wherein at paragraph 4, it is held as follows:

"... On a plain reading of the said Section it is manifest that to convict an accused for the above offence the following ingredients are required to be proved.

(i) The accused accepted or agreed to accept, obtained or attempted to obtain for himself or anyone on his behalf, a gratification;

(ii) The gratification must be as a motive or reward to induce a public servant by the exercise of personal influence:-

(a) to do or to forbear to do any official act, or

(b) to show in exercise of his official functions favour or disfavor; or

(c) to render or attempt to render any service or disservice. any person with the Central Government or State Government or with any public servant, as such.

The gist of the offence, therefore, is that the person arraigned must accept the gratification to induce a public servant by the exercise of his personal influence (emphasis supplied) to do any of the acts mentioned in the Section. It is the positive case of the prosecution, as testified by P.W.1, that it was A1 and A2 who initially demanded the money from him (P.W.1) and in terms of an arrangement that he had with A1 and under his instruction and direction that he paid the money to A1. It was not the appellant who struck the deal and received the money to induce A1 and A2 who had struck the deal and received the money to induce A1 and A2 who had struck the deal and the appellant was the recipient of the money in terms of an arrangement which he has (obviously) entered into with A1 and A2. By no stretch of imagination, therefore, can it be said that the appellant is guilty of the

offence under Section 163 I.P.C. Of course the acceptance of the money by the appellant from P.W.1 for handing over same to A1 and A2 would certainly constitute an abetment of the offences allegedly committed by A1 and A2, but then this aspect of the matter need not detain us: firstly because, such was not the charge framed against the appellant and secondly, because, A1 and A2 stand acquitted of the offence alleged against them.

10.The Learned Counsel for the Petitioner cites the Division Bench Judgment of this Court in Writ Appeal No.69 of 2010 dated 12.03.2012 (between M.S.Vijayakumar V. The Chairman and Managing Director, Indian Overseas Bank, Central office Main Building, Chennai - 600 002) wherein at paragraph 35, it is observed as follows:

"35.It is unfortunate that in spite of the alleged grave nature of the offences stated to have been committed by the appellant as well as the petitioner, the employer, being the Sanctioning Authority, having taken a lenient view earlier of declining to grant sanction has changed its opinion due to the pressure from the extraneous sources, which is certainly not expected of the Sanctioning Authority in the light of the well settled principles of law. Unfortunately, the learned Judge has not taken note of the said relevant fact, which in our view vitiates the impugned sanction order. It cannot be said that the impugned sanction order has been passed based on the new materials. Even though the learned Judge has referred to the judgment in Ramanad Chaudhary V. State of Bihar and others in (2002) 1 SCC 153 wherein the Hon'ble Supreme Court has reiterated that the Sanctioning Authority has no jurisdiction to review the order and grant sanction on the same materials, she has chosen to come to a conclusion that there are new materials available. On fact, we do not see any new materials which were either placed by the CBI or CVC before the Sanctioning Authority for the purpose of enabling the Sanctioning Authority to come to a different conclusion."

11.The Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in State of Himachal Pradesh V. Nishant Sareen, (2010) 14 Supreme Court Cases 527 at page 528, wherein it is held and observed as follows:

"It is true that the Government in the matter of grant or refusal to grant sanction exercises statutory power and that would not mean that power once exercised cannot be exercised again or at a subsequent stage in the absence of express power of review in no circumstance whatsoever. The power of review, however, is not unbridled or unrestricted. It seems to us sound principle to follow that once the statutory power under Section 19 of the 1988 Act or Section 197 of the Code has been exercised by the Government or the competent authority, as the case may be, it is not permissible for the sanctioning authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise.

A change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course."

12.The Learned Counsel for the Petitioner cites the decision in State of Punjab and another V. Mohammed Iqbal Bhatti, reported in 2010 (1) MLJ 116, at page 117, wherein it is held as follows:

"When no fresh materials were produced before the sanctioning authority for the second time and when there is nothing to show as to why reconsideration became necessary, the order of High Court holding that State had no power to review the earlier order declining sanction is justified."

13. Apart from the above, the Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in Biswanath Prasad Singh V. State of Bihar, 1994 CRI. L.J. 242, whereby and whereunder, it is observed as follows:

"The most glaring one is that even though the F.I.R. was issued on 10th December, 1977, the charge sheet was filed only on 9th February, 1983, i.e., after a lapse of 5 years. No explanation is forthcoming for this extraordinary delay. May be, this being a case of misappropriation of public funds, the investigation may have taken a longer time but it cannot certainly take more than five years, having regard to the facts and circumstances of the case. Added to the said circumstance is the fact that even though there was no stay in this Special Leave Petition/ Criminal Appeal, the case has not progressed much as stated above. Moreover, the appellant has been dismissed from service on these very allegations. His provident fund and gratuity amounts have been forfeited and he has crossed the age of superannuation. Calling upon him now to enter upon defence, after 16 years, in all the facts and circumstances of the case, is bound to cause prejudice to him."

14. The Learned Counsel for the Petitioner draws the attention of this Court to the decision of the Hon'ble Supreme Court in Superintendent and Remembrancer of Legal Affairs, W.B. V. Mohan Singh and others reported in AIR 1975 Supreme Court 1002, at paragraph 2, wherein it is, among other things, observed as follows:

".... Section 561-A preserves the inherent power of the High Court to make such Orders as it deems fit to prevent abuse of the process of the Court or to secure the ends of justice and the High Court must, therefore, exercise its inherent powers having regard to the situation prevailing at

the particular point of time when its inherent jurisdiction is sought to be invoked. The High Court was in the circumstances entitled to entertain the subsequent application of Respondents Nos. 1 and 2 and consider whether on the facts and circumstances then obtaining the continuance of the proceeding against the respondents constituted an abuse of the process of the Court or its quashing was necessary to secure the ends of justice. The facts and circumstances obtaining at the time of the subsequent application of respondents Nos. 1 and 2 were clearly different from what they were at the time of the earlier application of the first respondent because, despite the rejection of the earlier application of the first respondent, the prosecution had failed to make any progress in the criminal case even though it was filed as far back as 1965 and the criminal case rested where it was for a period of over one and a half years."

15. Respondent's Submissions:

(i) Per contra, it is the submission of the Learned Additional Public Prosecutor for the Respondent that the Petitioner/Accused had fabricated a letter of Proceedings in Na.Ka. No.4900/2010/M1 dated 20.10.2010, as if he sent a letter to the District Revenue Officer Salem, stating that the Defacto Complainant A.Vellaiyan and his relative Nallathambi transported 13,000 bricks in two lorries without permits and that the lorries were seized by him in the presence of Village Administrative Officer, Belur and the Revenue Inspector, Belur and the seized bricks were handed over to the Block Development Officer, Vazhappadi for the purpose of utilising it for the beneficiaries under the Government's Scheme of Kalaignar Veedu Vazhangum Thittam (KVVVT).

(ii) The Learned Additional Public Prosecutor for the Respondent contends that a verification of the above fabricated letter showed that the Petitioner never seized either bricks or any lorries belonging to A.Vellaiyan and his relative Nallathambi as alleged in the petition, before either the Village Administrative Officer, Belur or Revenue Inspector, Belur during his entire tenure at Vazhappadi as Tahsildar and this was well spoken to by the Village Administrative Officer V.Sellappan and Revenue Inspector C.N.Ramani, Belur, who served under him during his period of entire tenure at Vazhappadi as Tahsildar.

(iii) The Learned Additional Public Prosecutor for the Respondent proceeds to state that the Revenue Divisional Officer, Salem Tmt.P.Lalithawathi, in her letter dated 8.7.2014, had stated that she had not received any letter in Na.Ka.No.4900/2010/M1 dated 20.10.2010 from the Petitioner/Accused regarding the seizure of 13,000 bricks and handing over the same to the Block Development Officer, Vazhappadi. Apart from that, as per the report of the Assistant Director, Geology and Mining, Salem dated 02.07.2014, the Tahsildar has no power to seize country made bricks under the Tamil Nadu Minor and Mineral Concession Rules, 1959. In fact, it is the stand of the Respondent that the Government is not determining any rate for the sale of country kiln bricks and there is also no restriction to make the sale of the country made bricks to other Districts. Besides this, no transport permit is required for the transportation of country made bricks under Tamil Nadu Minor and Mineral Concession Rules, 1959. While that be the fact situation, vehemently, it is pleaded on behalf of the Respondent that the Petitioner/Accused could not have seized any such bricks from Vellaiyan and Nallathambi as averred in his report. The categorical stand of the Respondent/Complainant is that the Petitioner had wilfully fabricated a false report as if he had sent it on 20.10.2010 viz., prior to the date of trap, with a mala fide intention of creating motive for the trap case and also damaging the character of the Defacto Complainant A.Vellaiyan and his relative Nallathambi, in order to escape from the trap case against him.

(iv) At this juncture, the Learned Additional Public Prosecutor for the Respondent draws the attention of this Court to the fact that one C.R.Jayachandran, who served as Block Development Officer at Vazhappadi, during the relevant period, had clearly mentioned that the Petitioner/Accused had never handed over 13,000 bricks to him as alleged in the petition. Also, V.Sellappan, Village Administrative Officer, Tmt.C.N.Ramani, Revenue Inspector of Belur and C.R.Jayachandran, Block Development Officer at Vazhappadi, had given statements in writing that the averments made in para No.1 of the Criminal Original Petition, filed by the Petitioner is an utter falsehood.

(v) The Learned Additional Public Prosecutor for the Respondent invites the attention of this Court to the letter of Tahsildar viz., Prabakaran in C.No.10264/2010/m3 dated 18.06.2012 which clearly points out that only 3 references in Na.Ka.4900/2010/M1 were initiated by the Petitioner/Accused during his tenure as Tahsildar, Vazhappadi and all of them relates to seizure of vehicles at Koottathupatti, Masinaickenpatty and Karipatti villages and not related to the seizure of vehicles, belonging to Defacto Complainant

A.Vellaiyan and his relative Nallathambi, at Belur or Chinnamanaickenpalayam villages.

(vi) The Learned Additional Public Prosecutor for the Respondent contends that the Petitioner/Accused had another spurious letter in Na. Ka.No.7898/2010/B1(2) dated 18.10.2010 (purported to have been addressed by him) to the Revenue Divisional Officer, Salem as if he sent a report against the Defacto Complainant - Vellaiyan and his relative Nallathambi and 3 others that they indulged in illicit quarrying of red soil from patta land and it's transport in vehicles and that he recommended to the Revenue Divisional Officer, Salem for imposing penalty on them, in fact, the Petitioner had not send any letter to R.D.O. Salem knowing fully well that such incident had not took place at any point of time during his tenure as Tahsildar, Vazhappadi.

(vii) The Learned Additional Public Prosecutor for the Respondent submits that in the spurious letter dated 18.10.2010 by the Petitioner, the Revenue Divisional Officer, Salem, Tmt.P.Lalithawathi wrote a letter in C.Pa.No.2350/2014/A2 Dated 8.7.2014 addressed to the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Salem stating that on scrutiny of records in the office, it was found that the Petitioner/Accused, during his tenure as Tahsildar, Vazhappadi, had not either seized any vehicle or made any recommendation for imposing any fine on Vellaiyan and Nallathambi at any point of time. It is further represented that the Petitioner had fabricated a letter by mentioning false dates and spurious proceedings with a dishonest and fraudulent intention to make it believe that such documents were sent by him without actually sending them at any point of time.

(viii) The Learned Additional Public Prosecutor for the Respondent brings it to the notice of this Court that the Petitioner/Accused had mentioned the incidents of seizure of lorries with bricks belonging to the Defacto Complainant Vellaiyan and his relative Nallathambi and illicit quarrying and transportation of red sand by them, as one of the grounds, in W.P.No.11498 of 2012 filed against the District Collector, Salem and to support his version had enclosed a copy of the fabricated letter dated 18.10.2010 to his aid. Further, it is represented that the District Collector, Salem, at paras 11 and 12 of his counter affidavit mentioning that the seizure report sent by the Petitioner/Accused for illicit quarrying and transport (TN 24 X 2715) were related to one Sathishkumar S/o.Nallathambi and Govindaraju S/o.Ponnaiyan (vehicle No. TN 24 X 7777) and File No. 7898/2010/(B1) Dated 18.10.2010 is not related to Vellaiyan (Defacto Complainant).

(ix) The Learned Additional Public Prosecutor for the Respondent submits that the District Collector is the competent authority to remove the Tahsildar from service as per the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore, he rightly issued sanction order under Section 19(1) (c) of the Prevention of Corruption Act, 1988 for taking cognizance of the offence punishable under Sections 7 and 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 by the Court of Special Judge. In short, the plea of the Respondent that the District Collector, Salem, on scrutiny of material records and on application of mind to the given facts of the case, had accorded sanction for prosecuting the Accused.

(x) According to the Learned Additional Public Prosecutor for the Respondent, at the time of issuance of Sanction Order, a typographical error crept in while typing the month of the respective day of demand and the initial demand made by the Petitioner/Accused for illegal gratification from Vellaiyan (Defacto Complainant) prior to the day of trap was made on 3 occasions viz., on 14.10.2010 evening, on 22.12.2010 at about 15.00 hours and on 27.12.2010 at about 08.00 hours. As a matter of fact, it is the stand of the Respondent/ Complainant that the said demand on 30.12.2010 was between 14.30 hours and 15.00 hours and that the Petitioner reiterated his demand of advance of Rs.10,000/- from the Defacto Complainant (Vellaiyan) at his office, in the presence of the accompanied Official Witness T.V.Ramachandan and accepted it through J.Dharmaraj, Village Assistant of Muthampatty Village, who was the acting Driver for the Accused on that day, as a motive or reward for allowing the brick kiln owners to transport red soil from their patta lands for manufacturing bricks in order to supply for construction of houses under the said scheme and as such, the Petitioner/Accused has committed an offence punishable under Section 7 of the Prevention of Corruption Act, 1988.

(xi) The Learned Additional Public Prosecutor takes a stand that while typing the Sanction Order, a typographical error had crept in and instead of 22.12.2010 and 27.12.2010, it was typed as 22.10.2010 and 27.10.2010 and the same was rectified. As such, the fresh Order of Sanction typing the correct dates of demand as mentioned in F.I.R. and 161 Cr.P.C. statements was issued by the District Collector, Salem. Therefore, it is projected on the side of the Respondent that just because there was a clerical error in discovering the dates only the month in the dates, the Sanction Order cannot be said to be an invalid one and further that, the sanctioning authority had not applied his mind. Only after perusing the relevant material records and apply its mind and an offence against the Petitioner/ Accused under Section 19 of the Prevention of Corruption Act, 1988 was taken cognizance of by the Special Judge. Also that, a fresh Sanction Order was accorded by the District Collector one

Mr.V.Sampath, I.A.S., under Section 19(1)(c) of the Prevention of Corruption Act against the Petitioner for his prosecution under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act before the Competent Court.

(xii)The Learned Additional Public Prosecutor for the Respondent contends that actually there was no complaint registered against the former District Collector, Salem, viz., Mr.K.Maharabushanam, I.A.S. by the Petitioner at any point of time during his tenure as Tahsildar, Vazhappadi. In fact, the Petitioner had created a false report as if he had sent a letter to the District Collector on 23.12.2010 levelling allegations against the District Collector, Salem relating to the issue for permits to quarry owners with criminal intention of bringing motive against the District Collector, who had accorded sanction of prosecution against him in the trap case. Moreover, the Sanctioning Authority, Mr.K.Maharabushanam, I.A.S. was the District Collector, Salem from 06.06.2011 and as such, there was no possibility for the Petitioner/Accused to register a complaint against the District Collector /Sanctioning Authority on 23.12.2010.

(xiii)The Learned Additional Public Prosecutor for the Respondent invites the attention of this Court to the fact that as per Taluk Office, Vazhappadi Tapal Distribution Register in Na. Ka. 246/2010 was originally assigned to A2 Assistant which dealt with Social Security Scheme file, the funeral assistance to the family of poor farmer of "Uzhavar Pathukappu Thittam" by name Chinnasamy of M.Perumapalayam village in Vazhappadi Taluk and hence, the Petitioner/Accused could not have actually sent any such report in Na.Ka. 246/2010/A4 dated 23.12.2010 and these facts in detail were presented by the District Collector, Salem in his counter affidavit to the W.P.No.11498 of 2012.

(xiv)The Learned Additional Public Prosecutor for the Respondent contends that the file pertaining to the appointment of J.Dharmaraja of Muthampatti village Assistant revealed that interview was conducted on 23.11.2010 by the Petitioner himself and he only selected Dharmaraja among the candidates who attended the interview and during the selection process, their records were duly compared and verified for selecting of J.Dharmaraja and the Petitioner had expressed his view on the file in his own hand writing. Also that, it is only the Petitioner/Accused sent the appointment order in letter No. Na. Ka. No.2156/2010(m) dated 25.11.2010 to J.Dharmaraja and he joined on 02.12.2010 as Village Assistant at Muthampatti village and not on 03.12.2010 as stated by the petitioner.

(xv)The Learned Additional Public Prosecutor for the Respondent submits that the Petitioner had created a false letter allegedly sent to him by SDM-VNC J.V Company, while he

was working as Tahsildar Vazhappadi, with a request to assist their sub contractor J.Dharmaraja in replacing the Mettur Drinking Water pipe line on the Route NH 68, where the said company was laying 4 lane road, to establish as if the said J.Dharmaraja was working in their Company. Further, the said Dharmaraj was implicated as a Sub contractor to the SDM - VNC (Joint Venture) company and the signature of R.Rajkumar, Project Manager of the said company was also technically forged by the Petitioner and used this document to project J.Dharmaraja as if he was a Sub contractor of SDM - VNC J.V Company. In effect, the plea taken on behalf of the Respondent is that the Petitionre as Tahsildar had nothing to do with the Drinking Water pipe line by the side of the Highways and it is the duty of TWAD Board and hence, such a letter could not have been actually sent by the said Company.

(xvi) In this connection, it is projected on the side of the Respondent that the Project Manager Rajkumar in his letter dated 10.11.2011 addressed to the Deputy Superintendent of Police, Vigilance and Anti-Corruption, Dharmapuri had categorically denied the letter dated 5.7.2010 and stated that the same was to be a forged one, not at all issued from their office. Moreover, the Project In-charge Officer, T.V.V.Satyanarayana of Vijay Nirman Company camp at Vazhappadi Taluk, Salem District in his letter dated 12.11.2011 has also stated that Tr.J.Dharmaraja S/o.Jaganathan was not a sub contractor to them and these facts would clearly point out that the Petitioner/Accused with a view to induct a document on his side had created the forged letter dated 5.7.2010 to show as if the said J.Dharmaraja was sub contractor to SDM -VNC J .V Company.

(xvii) The Learned Additional Public Prosecutor for the Respondent proceeds to add that the Petitioner had fabricated a communication as if he addressed the same to the District Collector, Salem in Na.Ka.246/2010/m4/2 dated 24.9.2010 in which he had reported to have seized lorries transporting rough stones and gravels from Government land and recommended to the Revenue Divisional Officer, Salem for levying fine against certain private companies including SDM-VNC (J.V.) Company.

(xviii) As a matter of fact, it is represented on behalf of the Respondent that the Petitioner had cleverly created this false letter with a view to project a motive between him and the SDM - VNC J.V company and to show that J.Dharmaraja as if their sub contractor etc. In fact, it was the Petitioner who had questioned J.Dharmaraja, Village Assistant of Muthampatti village to act as his Driver and caught during the trap proceedings. Further, no other person had sent the said Dharmaraja to the Petitioner/Accused.

(xix)The Learned Additional Public Prosecutor for the Respondent contends that the Petitioner/Accused had managed to get a letter from the Taluk Office, Karur on 25.06.2011 to show that the co-accused J.Dharmaraja, S/o.Jaganathan was working in the VNC Company from 2011 which was camp at Yemur in Karur District where the expansion work of Highways 67 was on. Although the said letter was prepared after the trap against the Petitioner, the same was done with a purpose to show motive between him and the VNC company. In fact, J.Dharmaraja had not actually worked there as alleged and in fact, the Tahsildar, Karur in his letter Na.Ka.m6/10800/2011 dated 18.11.2011 had clearly stated that the said Jaganathan S/o.Dharmaraja had not worked in the VNC company. Further, the Managers of the Company also denied the employment of the J.Dharmaraja.

(xx)The Learned Additional Public Prosecutor for the Respondent submits that there is clinching oral and documentary evidence against the Petitioner for having demanded and accepted an illegal gratification from A.Vellaiyan (Defacto Complainant in the present case) and since he was caught for making a demand and accepting the gratified amount of Rs.10,000/- along with his Village Assistant Dharmaraj is taking up the defences that only Dharmaraj (Co-accused) has implicated in the trap case. In short, it is represented on behalf of the Respondent that there is prima offence made out against the Petitioner under Section 7 and 13(2) and 13(1)(d) of the Prevention of Corruption Act.

16.The Learned Additional Public Prosecutor for the Respondent cites the decision of the Hon'ble Supreme Court in D.Velayutham V. State Represented by Inspector of Police, Salem Town, Chennai reported in (2016) 1 Supreme Court Cases (Cri) 105 : (2015) 12 Supreme Court Cases 348, wherein it is observed as follows:

"5.The conviction of Accused 2 is unproblematic. Accused 2 was successfully entrapped by the trap team with Rs.2000 recovered from his possession. He has admitted the receipt of the bribe amount. The only effort at proving his innocence has been the submission that receipt of the entire sum was on behalf of Accused 1, no part of which was demanded by Accused 2 for his own keeping and consumption. This specious defence would have us believe that Accused 2's mala fides extended only to being an abettor to the principal perpetrator, Accused 1, and went no further. We are more inclined to accept PW2's more robust and rounded account that Accused 2 accepted the sum both for himself and on behalf of Accused 1, in preference to Accused 2's claim that he was personally uninvolved,

but merely an abettor custodian on Accused 1's behalf. Since the defence of Accused 2 stands already breached by his admission of his facilitation of an illegal at albeit allegedly on Accused 1's behalf, we can safely proceed further and affirm the concurrent conclusion from the complainant's evidence that part of that sum would have been for the fulfillment of the bribe demand of Accused 1."

Intervenor's Stand:

17.This Court very relevantly points out that the Petitioner/ Defacto Complainant filed a petition in Crl.M.P.No.7659 of 2016 in Crl.O.P.No.1024 of 2016 in C.C.No.2 of 2015 before this Court seeking to implead himself as Intervenor with a view to assist the prosecution in a proper manner and also according to him, he is a crucial witness in the present case and the same was ordered by this Court on 31.08.2016.

Petitioner's Submissions (in Crl.O.P.No.5589 of 2016):

18.The Learned Counsel for the Petitioner/Accused contends that the Respondent/Complainant followed a strange procedure and filed a final report and later without the leave of the Court purported to have further investigated the case and filed a Sanction Order dated 27.01.2016 in ROC.No.48144/2010/A2 on the file of the District Collector, Salem which has no sanction in the eye of Law.

19.The Learned Counsel for the Petitioner urges before this Court that the first Sanction Order cannot be nullified by subsequent sanction order from some other District Collector and in fact, the first Sanction Order could not be amended under the plea of arithmetic and clerical error.

20.The Learned Counsel for the Petitioner projects an argument that the dates specified in the Sanction Order dated 14.10.2010, 22.12.2010 and 27.12.2010 and on these dates, as per official records, the Petitioner was on duty at various places other than Valapadi. Therefore, it is just and necessary to quash the Special C.C.No.2 of 2015 on the file of the Learned Special Judge under the Prevention of Corruption Act, Salem especially the supplementary charges before the first Sanction Order dated 27.01.2016 on the file of the District Collector, Salem in ROC.No.48144/2010/A2.

21.The Learned Counsel for the Petitioner takes a stand that the Respondent passed the Sanction Order dated 27.01.2016 and that the impugned Supplementary Charge Sheet and the first Sanction Order itself are subject matter of Revision before this

Court in CrI.O.P.No.1024 of 2016 and as such, it is just and necessary to quash the Supplementary Charge Sheet based on the subsequent Sanction Order dated 27.01.2016 passed by the District Collector, Salem.

Respondent's Counter Pleas:

22.Per contra, it is the submission of the Learned Additional Public Prosecutor for the Respondent that as per the power given to an Investigation Officer under Section 173(8) Cr.P.C. further investigation can be conducted by the police after forwarding the final report to the Magistrate and after completing the further investigation further or supplementary report can be forwarded to the trial court and there is no prohibition under Law. Moreover, for carrying out further investigation even after filing the charge sheet, the same is within the domain of the police and as such, the plea taken on behalf of the Petitioner as regards the filing of subsequent final report without leave of the court is not sustainable in law.

23.The Learned Additional Public Prosecutor for the Respondent contends that the Sanctioning Authority has an ample power to alter or amend the Sanction Order issued to earlier occasions and then, the subsequent Sanction Order supersedes the first Sanction Order. Further, the power to issue an amended/alterd Sanction Order within the purview of the Sanctioning Authority and therefore, such an act cannot be found fault with.

24.The Learned Additional Public Prosecutor for the Respondent takes a plea that no prior permission of the Court is necessary for carrying out further investigation under Section 173 (8) Cr.P.C. Besides this, it is the plea of the Respondent that even after the District Collector is not the competent to issue Sanction Order against the Tahsildar, the prosecution is entitled to obtain fresh Sanction Order from the competent authority. It is further represented that the District Collector, Salem, who issued the Sanction Order in the present case, is a higher authority of the Petitioner and therefore, he is competent to issue the prosecution sanction order against the Petitioner and in short, the Sanction Order is valid in Law. Apart from that, when the Supplementary Charge Sheet is forwarded to the concerned competent Court, it is the duty of the said Court to accept the same and no notice is required to be sent to the Petitioner/ Accused for accepting the same.

25.The Learned Additional Public Prosecutor for the Respondent proceeds to take a fervent plea that in the previous Sanction Order, the alleged date of previous demand at one place was mentioned as 22.10.2010 instead of 22.12.2010 and in another

place 27.10.2010 instead of 27.12.2010 even though it was correctly written in the F.I.R. and statements of witnesses. In fact, the clerical error was later corrected by the Competent Sanctioning Authority and a fresh Sanction Order was issued and the trial Court had accepted the same.

26.The Learned Additional Public Prosecutor for the Respondent submits that the witnesses had specifically spoken about the illegal acts and omissions committed by the Petitioner which are corroborated by documentary evidence and the final report in the instant case shows the involvement of the Petitioner in the said crime and the materials submitted by the prosecution will prove the prima facie offence made out against the Petitioner.

Discussions and Findings:

27.At the out set, it is to be pointed out that the Petitioner as Tahsildar, Vazhappadi addressed a letter to the District Collector, Salem in Na.Ka.No. 246/2010/A4/2 dated 24.09.2010 wherein he had mentioned in detail about the names of two persons, their actions, political interference, misuse of power and foisting of false case and for arresting him through Vigilance and Anti Corruption Department and ultimately, prayed for his life safety, service safety and for informing the State Government, as a special case (with a copy being submitted to the (i) Principal cum Secretary, Revenue Department, Secretariat, Chennai, (ii) the Secretary cum Revenue Administrative Commissioner, Chennai and (iii) the Revenue Divisional Officer, Salem).

28.Further, in the communication dated 14.10.2010 of Block Development Officer, Vazhappadi addressed to Tahsildar, Vazhappadi wherein it was stated that since in the Village Panchayats coming under Vazhappadi Panchayat Union for the scheme of Kalaingar Veedu Vazhangum Thittam, for the purpose of house construction bricks were required and that for taking the sand from the place mentioned by brick kiln owner Vellaiyan, proper permission and co-operation was sought for.

29.Moreover, in the letter of the Petitioner (as Tahsildar, Vazhappadi) dated 18.10.2010 addressed to the Revenue Divisional Officer in connection with the seizure of tractor and taking sand from Chandirapillai Valasu Village land in S.No.3/1 (contrary to Government Rules) by one Sathishkumar S/o.Nallathambi for the purpose of sale, it was opined that for the aforesaid persons a fine can be levied, for taking the sand.

30.A perusal of the letter dated 05.07.2010 of SDM Projects Private Limited, Mettupatty Post, Vazhappadi Taluk, Salem District addressed to the Tahsildar, Vazhappadi Taluk Office, Vazhappadi Post, Salem District indicates that a request was

made by the Company's Project Manager to assist their sub contractor, by name Dharmaraja S/o.Jaganathan, Valappady - 636 115 (who is working from September 2009) to replace the Mettur Drinking Water Pipeline on the route NH 68 from Masinaickenpatti Village to S.Valappady village with 13 villages in Valappady Taluk in view of the formation of four lane roads etc.

31.In fact, in the letter of the Petitioner (as Tahsildar, Vazhappadi) addressed to the Revenue Divisional Officer, Salem, it was, inter alia, stated that one Annamalai (land owner), in his statement, had mentioned that without permit chit contrary to Government's Rules at S.No.3/1 land at Chandrapillai Valasu Village, the sand was dug to a level of more depth and further, he had stated that the five persons viz., 1) Vellaiyan S/o.Iyamperumal, 2) Vellaiyan's uncle Nallathambi, 3) Ramachandran, 4) Chinnaiyan and 5) Pachamuthu in 0.5 cents in 1600 tractors have dug up the sand at a depth of two meters and that the aforesaid five persons had violated the Government Rules and also the Tamil Nadu Minor Mineral Concession Rules 21 (5) of the Development Act, 1957, as per which, it is an offence etc. In short, the Petitioner (as Tahsildar, Vazhappadi) had opined that the aforesaid five brick kiln owners can be imposed with a fine under the Tamil Nadu Minor Mineral Concession Rules, 35(A) (i) (3) (4) and 36(A) (5) etc.

32.It is also brought to the notice of this Court that in October, 2010 the Petitioner had imposed so many fine on the defaulters. Moreover, on behalf of the Petitioner, a reference is made to the letter addressed by the Petitioner (as Tahsildar) to the District Revenue Officer-cum-District Collector (Additional charge) Salem dated 20.10.2010 wherein he had, among other things, mentioned that two lorries were seized with bricks and for supply of 13,000/- bricks to the beneficiaries of Kalaingar Veedu Vazhangum Thittam, they were handed over in two lorries to the Vazhappadi Block Development Officer.

33.It is quite evident from the proceedings of Salem District Revenue Officer dated 21.10.2010 wherein a vehicle bearing Registration No.TN 24 x 2715 belonging to Nallathambi S/o. N.Sakthivel was released since on 21.10.2010 a fine of Rs.25,340/- was deposited at Salem State Bank, which was levied as per Tamil Nadu Minor Mineral Concession Rules 35(A) (1) (3) (4) and 36(A) (5). Further, in the letter of the Petitioner dated 22.10.2010 addressed to the District Revenue Officer cum District Collector (Additional charge), Salem wherein it was mentioned that the illegal transportation of 5,25,000/- brick kilns to be transported to another District was prevented and it was handed over to the Block Development Officer, as informed. Likewise, the Petitioner refers to his letter dated 26.10.2010 addressed to District Collector, Salem wherein he had inter alia

stated that 6,41,500/- bricks were seized (for the period from 20.10.2010 till 25.10.2010) and handed over to the Block Development Officer with a view to benefit the beneficiaries of Kalaingar Veedu Vazhangum Thittam etc.

34.A reliance is placed to the Petitioner's Daily Diary for the month of October 2010 wherein it was mentioned that on 15.10.2010, the Petitioner had gone to Belur, Sa.Vazhappadi, Aa.Vazhappadi and in connection with the Kalaingar Veedu Vazhangum Thittam in regard to the land, he went to the District Collector Office and attended the work. Also, he worked in connection with the land statics preparation for the Kalaingar Veedu Vazhangum Thittam and from morning 9'o clock till 9.30, he scrutinised the 16 petitions in regard to the seeking of permission for crackers licence and also made a spot inspection etc. and on 22.10.2010 he went to Vazhappadi Government Higher Secondary School compound and attended the practical class conducted through Fire Service Department. In October 2010, the Petitioner was on camp for 27 days and for 4 days he attended work at Head Quarters and aggregating in all 31 days.

35.On the side of the Petitioner, a reference is made to the Village Administrative Officer Certificate given by Emoor Village dated 18.07.2011 wherein it was mentioned that one Jaganathan S/o.Dharmaraja of Vijay Nirman Company from the past 2011 with JCB was working in pipeline and road work. The Petitioner on 18.07.2012 had addressed a letter to the Chief Secretary of Government of Tamil Nadu (Vigilance Commissioner) in connection with the recovery of outstanding sum of Rs.32 Crores and also sought for registration of a criminal case against one Chandramouli, Vigilance and Anti Corruption Department, Salem and 3 others and also requested for taking departmental action.

36.The stand taken by the Petitioner by virtue of the October month Diary Note, is that on 08.10.2010, he went to Salem for the purpose of bifurcation of ward and submitted proposals at District Collector's Office on 14.10.2010 and he went to CN Palayam Puluthikottai and inspected AGAMT works. Likewise, a reference is made to the December 2010 Diary Note of the Petitioner that on 22.12.2010, he went to Valathur GTR Malai Gramam from 9.30 a.m. till 12.40 p.m. and inspected the residential school and that on 17.12.2010, he went to Karumapuram from morning 7.00 a.m. till 1.00 p.m. and took part in the Government function for handing over of 485 television sets, which were presided over by Panamarathupatti MLA. Further, on 30.12.2010 he went to Salem and took part in the meeting in connection with TNPSC Group IV V.A.O. exam conducted by the District Revenue Officer.

37.It is the stand of the Petitioner that the Sanction of Prosecution Order dated 27.03.2015 issued by the District Collector, Salem (K.Maharabhusanam) and submits that in para 3 of the Sanction Order, the date of original demand (first demand) was mentioned as '14.10.2010'. Also, in paragraph 4 of the Sanction Order, there was a mention of the dates as 22.10.2010 and 27.10.2010. Similarly, on the side of the Petitioner, a reference is made to the First Information Report wherein Serial No.3, the occurrence of offence day was mentioned as '22.12.2010 at 15.00 hrs and 27.12.2010 at 08.00 hrs. However, in the Final Report (Charge Sheet) filed under Section 173(2) Cr.P.C. the changed date to 14.10.2010, 22.10.2010 and 27.10.2010. At this stage, the Petitioner contends that on 14.10.2010 he had attended the District Collector office and did some other work.

38.The plea of the Petitioner is that the recovery of Rs.10,000/- was from Dharmaraja and in the said Dharmaraja is not a trusted person and he worked only for 4 days and he was prayed to weed out the Petitioner. In fact, it is the submission of the Petitioner that there was no meeting of mind between the Complainant and himself and the so-called other people and that the Sanction Order is issued by an incompetent authority viz., the District Collector, Salem [B Grade Officers]. In fact, the Revenue Secretary through Government is the competent person to pass the prosecution Sanction Order.

39.On behalf of the Respondent, it is represented before this Court that the Petitioner earlier filed Crl.O.P.No.22428 of 2011 before this Court and obtained a stay and later the Original Petition was dismissed by this Court on 19.03.2015 and a 'Systemic Delay' is not fatal to the side of Respondent/Complainant. Further, in the instant case, the charge sheet was filed on 31.03.2015. In short, the stand taken on behalf of the Respondent/Complainant is that all the pleas raised in the Criminal Original Petitions (filed by the Petitioner) are to be tested before the trial Court in C.C.No.2 of 2015 [because of the reason that there are prima facie materials against the Petitioner], where the Petitioner can work out his remedy in accordance with Law.

40.It is to be borne in mind that Section 482 Cr.P.C. saves inherent powers of the High Court and such a power is to be exercised to prevent an abuse of process of any Court or otherwise to advance the cause of Justice. It is to be remembered that the power under Section 482 Cr.P.C. is to be pressed into service by the High Court in a sparing fashion with a view to deliver substantial Justice to the parties.

41.As a matter of fact, the High Court under Section 482 Cr.P.C. is not called upon to conduct an enquiry whether the

allegations in the F.I.R. and the Charge Sheet are reliable or not and to give its finding about the truthfulness or veracity of the allegations. Furthermore, these are all matters which can be examined by the appropriate Court after the whole gamut of materials are produced before it on a completion of investigation and the evidence is adduced in the case. Where the averments made in the complaint do disclose the commission of offence, a complaint cannot be quashed on a petition under Section 482 Cr.P.C., as opined by this Court.

42.It is to be noted that after framing of the necessary charges, ordinarily an Accused is to face the trial of a criminal case and to await either for his conviction or an acquittal, in the considered opinion of this Court. There is no provision for canceling or dropping the charges.

43.In fact, in the instant case, the plea of 'Malice in Law' raised on behalf of the Petitioner is disputed in a serious fashion on the side of the Respondent/Complainant. Before any such aspects of 'Malice in Law' are to be accepted, a person, who avers the same, should establish the same either on admitted facts or proved facts, as opined by this Court. It is needless for this Court to make a significant mention that if the allegations pertaining to 'Malice in Law' are also disputed seriously on the other side, then, it is for the aggrieved person to seek redressal of his grievances before the Competent Forum, of course, in the manner known to Law and in accordance with Law.

44.As far as the present case is concerned, the Charge Sheet was filed by the Respondent/Deputy Superintendent of Police, Vigilance and Anti Corruption, Dharmapuri on 31.03.2015, together with Sanction Order of the District Collector, Salem, it was taken on file on 27.04.2015 in Special C.C.No.2 of 2015 on the file of the Learned Special Judge for Prevention of Corruption Act Cases, Salem and just because there is a creeping in of an error inadvertently in describing the dates (only the month in the dates), the Sanction Order cannot be assailed as one suffering from non application of mind by the Sanctioning Authority. Moreover, a fresh Sanction Order under Section 19(1) (c) of the Prevention of Corruption Act, 1988 was issued by the District Collector, Salem against the Petitioner for first prosecution under Section 7 and 13(2) and 13(1)(d) of the Prevention of Corruption Act.

45.In so far as the issue of Sanction whether the same is just and necessary or not will have to be determined from stage to stage. Also that the necessity in this regard may arise in the course of progress of the case. Further, the grant of Sanction being an Administrative Act, the need to provide an opportunity of hearing the Accused before according sanction

does not arise on any score, in the considered opinion of this Court. A valid sanction by a Sanctioning Authority can be established by producing the original Sanction Order which itself contains the facts consisting of the offence and the grounds of satisfaction etc.

46. It is to be pointed out that under Section 19(1) of the Prevention of Corruption Act, 1988, sanction of the appropriate Government is very much essential. As a matter of fact, the said provision was came to be introduced to shield a public servant from needless harassment of prosecution. In fact, the said protection of sanction is an assurance of a honest and sincere officer to do his public duty to the best of his ability. Therefore, the act of according sanction is a sacrosanct and it is not an empty/idle ritualistic formality.

47. At this stage, this Court makes a pertinent reference to Section 19(3) and (4) of the Prevention of Corruption Act, 1988 which enjoins as follows:

"(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in, the sanction required under sub-section (1), unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby;

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice;

(c) no Court shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

(4) In determining under sub-section (3) whether the absence of, or any error, omission or irregularity in, such sanction has occasioned or resulted in a failure of justice, the Court shall have regard to the

fact whether the objection could and should have been raised at any earlier stage in the proceedings.

Explanation.- For the purposes of this section,-

(a) error includes competency of the authority to grant sanction;

(b) a sanction required for prosecution includes reference to any requirement that the prosecution shall be at the instance of a specified authority or with the sanction of a specified person or any requirement of a similar nature."

48.No wonder, a sanction accorded by an authority, who is not competent to do so, is not sanction in Law. Under Section 114(e) of the Indian Evidence Act, when the competent authority had accorded sanction, it raises a presumption that the official acts were regularly performed and a heavy burden is on the Accused to rebut the statutory presumption. In this connection, this Court aptly points out that whether the documents were material or whether those were not considered can only be gone into at the time of trial, as per decision of the Hon'ble Supreme Court in State of Madhyapradesh v. Dr.Krishna Chandra Saksena, (1996) 11 SCC 439.

49.It cannot be brushed aside that the issue as to the validity of sanction can be raised at any stage of the trial or appeal, since it goes to the root of the matter and it cannot be gainsaid that the same is a condition precedent for a valid prosecution.

50.Further, the order granting sanction must be demonstrative of the fact that there was proper application of mind on the part of the sanctioning authority, as per decision of the Hon'ble Supreme Court in State of Karnataka V. Amir John reported in 2008 Cr.L.J. 347 (SC). Besides this, a mere error, omission or irregularity in sanction is not considered fatal unless it has resulted in failure of Justice or has been occasioned thereby as per decision of the Hon'ble Supreme Court in Parkash Singh Badal V. State of Punjab reported in AIR 2007 SC 1274.

51.Indeed, it is an axiomatic principle in Law that it is not the duty of the competent authority to weigh the evidence as it is for the Court to decide whether the allegations are true or not, if there is a prima facie case, then, the grant of sanction, undoubtedly, is a valid one. After all, the aim of insistence upon 'a prior sanction' before cognizance is taken,

is meant only to prevent a dubious, frivolous, doubtful and more importantly impolitic prosecutions.

52. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court (Three Judges Bench) in A.K. Singh and others V. Uttarkhand Jan Morcha and others, AIR 1999 Supreme Court 2193 at special page 2197, whereby and whereunder, at paragraph 23, it is laid down as follows:

"23. The question of necessity of sanction need be considered by the Sessions Judge if and when raised by the accused. We have no doubt that the High Court should not have embarked upon a discussion regarding sanction at such a premature stage, that too in the writ petition filed by the Samity. If the finding of the High Court is that no sanction is required such finding has to be treated as bad mainly because that question has to be decided after taking into account various considerations including the fact situation in each case."

53. To put it precisely, 'an appreciation of evidence' is impermissible in exercise of inherent powers. Also that, the complaint has to be read in entirety. Apart from that, the High Court cannot indulge in an enquiry under Section 482 Cr.P.C. as to whether the evidence in question is trustworthy, reliable or otherwise as that is the function of the trial Court, as per decision Rajendra Nath V. Deputy Superintendent of Police, Purulia, AIR 1972 SC 470. The High Court also cannot exercise its primary powers under Section 482 Cr.P.C. if ex facie offences were made out on the basis of averments made in the complaint without going into the truthfulness or otherwise of the allegations. In fact, an inherent power of the High Court under Section 482 Cr.P.C. ought not to be exercised to stifle the legitimate prosecution, as per decision of the Hon'ble Supreme Court in Monika Kumar (Dr.) V. State of Uttar Pradesh, 2008 (8) SCC 781 at page 798.

54. In the upshot of detailed qualitative discussions and in view of the divergent stand taken on behalf of the respective parties and especially in the light of a categorical plea taken on the side of the Respondent/Complainant that the Petitioner/Accused had created series of false documents for his defence in the present case and also the Respondent/Prosecution placing its reliance on the oral and documentary evidence against the Petitioner/Accused in regard to the allegations levelled against him and also this Court bearing in mind another pivotal fact that the Petitioner had come out with the plea that

the Respondent/Complainant had falsely laid a case against him and the same is Malice in Law, at this stage, this Court, on an overall assessment of the facts and circumstances of the present case in a cumulative fashion, comes to a conclusion that it is not proper for this Court to analyse the case of the Complainant in the depth of all probabilities in order to determine whether a conviction would be sustainable and based on such premises to come to a conclusion that the proceedings are to be quashed.

55.Be that as it may, on a careful consideration of the facts and circumstances of the present case which float on the surface, this Court holds that the present cases are not an exceptional one, where this Court can exercise its plenary powers under Section 482 Cr.P.C. Furthermore, this Court is not unmindful of the fact that the High Court is to exercise its power under Section 482 Cr.P.C. with care, utmost caution and circumspection and in rarest of rare cases and also based on sound principles. Of course, the exercise of power under Section 482 Cr.P.C. will certainly depend upon the facts and circumstances of a given case.

Disposition:

56.In view of the foregoing, both the Criminal Original Petitions are dismissed. However, this Court makes it clear that the dismissal of the Original Petitions will not preclude the Petitioner to raise all factual and legal pleas [including the aspects of 'Validity of Sanction Order' and 'Alibi'] before the trial Court in C.C.No.2 of 2015 at the time of final hearing of the case and to seek appropriate remedy if he so desires/advised. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar(CO)

सत्यमेव जयते

//True Copy//

Sub Assistant Registrar

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To

1.The Special Judge for Prevention
of Corrupt Cases Act Court,
Salem .

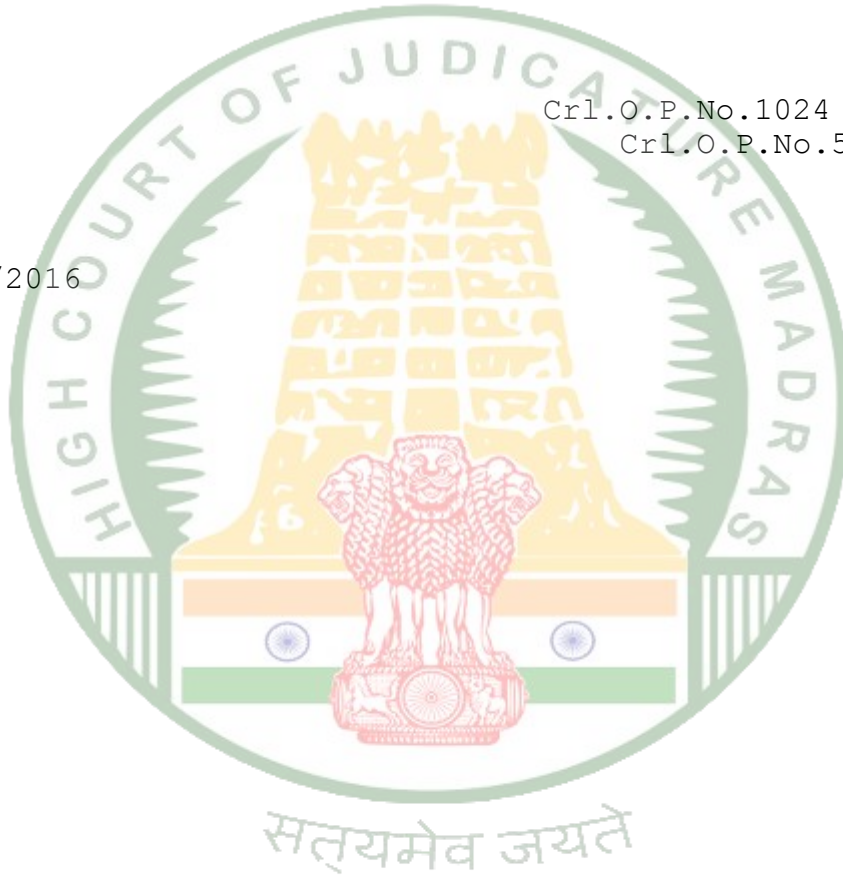
2.The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Dharmapuri, Dharmapuri District.

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.M.Ravi, Advocate Sr.56627
2cc to Mr.R.Sankarsubbu, Advocate Sr.56568
+1cc to the Public Prosecutor, Sr.56526

Crl.O.P.No.1024 of 2016 and
Crl.O.P.No.5589 of 2016

msm[co]
srg 06/10/2016



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