

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.03.2016

Delivered on : 01.06.2016

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.3990 of 2014 and 3510 of 2015

and M.P.Nos.1 of 2014 and 1 & 2 of 2015

M.Manohar .. Petitioner in both W.Ps.

Vs.

1.Government of Tamil Nadu,
Rep. by Principal Secretary to Government,
Home (SC) Department,
Secretariat, Chennai-600 009.... R1 in W.P.No.3510 of 2015

2.The Director General of Police,
Tamil Nadu,
Kamarajar Salai,
Chennai-600 004. R2 in W.P.No.3510 of 2015
R1 in W.P.No.3990 of 2014

3.The Additional Director General of
Police (Admn.)
O/o.The Director General of Police,
Kamarajar Salai,
Chennai-600 004. R3 in W.P.No.3510 of 2015
R2 in W.P.No.3990 of 2014

4.Thiru.Abhay Kumar Singh, I.P.S.,
Inspector General of Police,
Southern Zone,
Madurai. R4 in W.P.No.3510 of 2015

Prayer in W.P.No.3990 of 2014: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the file of the second respondent herein in P.R.C.No.16/2013 dated 28.09.2013, signed on 10.10.2013 and quash the same.

Prayer in W.P.No.3510 of 2015: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records on the file of the first respondent herein in G.O.Ms.No.901, Home (SC) Department dated 03.12.2014 and and Lr.No.HSC.5/877-5/2014, Home (SC) Department dated 29.01.2015, the impugned order passed by the second respondent in Rc.No.ConII(1)175401/2013 dated 03.02.2015 and quash the same.

For Petitioner : Mr.M.Ravi
in both W.Ps.

For Respondents : Mr.A.L.Somayaji,
Advocate General
assisted by
Mr.A.Kumar, Special Govt. Pleader
for State Government

C O M M O N O R D E R

W.P.No.3990 of 2014 has been filed challenging the legality of the charge memo dated 28.09.2013, issued to the petitioner herein by the first respondent. W.P.No.3510 of 2015 has been filed challenging the appointment of the Inquiry Officer, vide G.O.Ms.No.901, Home (SC) Department dated 03.12.2014 passed by the first respondent. Since the facts are intertwined, all the writ petitions are disposed of by this common order.

2. Facts leading to the filing of these writ petitions, briefly narrated, are as follows:

2.1. The petitioner in the affidavit filed in support of these writ petitions would aver that he was initially appointed by direct recruitment as Deputy Superintendent of Police Category-I through Tamil Nadu Public Service Commission [TNPSC] and he joined the said post during 1998 and promoted as Additional Superintendent of Police, in the year 2006 and to the rank of Superintendent of Police, in the year 2008. According to the petitioner, he is rendering sincere, efficient and unblemished service to the satisfaction of higher officials and consistently awarded outstanding ratings in his Annual Confidential Reports [ACRs] and also earned various letters of appreciation and commendation from various superior officers and as such, he is fully qualified and eligible for being considered for appointment by promotion as a Member of Indian Police Service [IPS].

2.2. The petitioner would further state that to his shock and surprise, he was issued with the impugned charge memo dated 28.09.2013, signed on 10.10.2013, by the second respondent,

namely Additional Director General of Police (Admn.), Chennai-4 and the contents of the charges are as follows:

"Count 1: Reprehensible conduct in having abused Thiru.R.Samy, M.L.A., Melur Constituency, Madurai District and his followers, used force against them by way of lathi charge and foisted a case against them in Koodakovil P.S. Cr.No.155/08 u/s.14, 148, 353, 307 r/w.149 IPC & 3 of TNPPDL Act, during their return after Thirumangalam Bye-Election campaign on 29.12.2008 at Periyar Aalankulam.

Count 2: Neglect of duty in not having taken the injured to the hospital before the remand on 30.12.2008."

2.3. The petitioner would further aver that there is an inordinate and unexplained delay of nearly 5 years for initiation of disciplinary proceedings from the date of alleged occurrence i.e., 29.12.2008 and the impugned charge memo came to be issued based on the complaint given by Thiru R.Samy, Member of Legislative Assembly [MLA] of Melur Constituency, Madurai District, who is also an accused in Koodakovil P.S. Cr.No.155/2008 for the commission of offences under Sections 147, 148, 353, 307 r/w. 149 IPC and Section 3 of The Tamil Nadu Public Property (Prevention of Damage and Loss) Act. The petitioner would further aver that he took charge as Superintendent of Police, Madurai Rural District on 25.05.2008 as Thiru Veerakathiravan, then sitting MLA of Thirumangalam Constituency died and therefore, bye-election was announced to elect a member in the vacancy caused on account of his demise and with regard to the election campaigns undertaken by the candidates contesting in the election as well as their leaders, VIPs etc., arrangements have been made to maintain law and order and hectic election campaign was done by all political parties for the purpose of ensuring their victory.

2.4. It is further stated by the petitioner that on 29.12.2008, around 9.00 p.m., cadres belonging to All India Anna Dravida Munnetra Kazhagam [AIADMK] numbering about 100 led by Thiru O.Panneerselvam, Thiru Sengottaian, Thiru Pollachi Jayaraman, Thiru R.Samy, MLA, Melur Constituency and about 100 others had assembled at Kanniah Thottam, Aruppukottai Road and they abused the police personnel with filthy and unparliamentary language and also shouted slogans against him. Woman Sub-Inspector of Police, Koodakovil Police Station, Inspector of Police, Avaniapuram Police Station and their team enquired about the reasons for their demonstration and at that time, the mob turned violent and started attacking police personnel by throwing stones and started attacking with deadly weapons and

iron rods and also threw stones on police vehicles and they also chased the Woman Sub-Inspector Tmt.Sathyapraha of Koodakovil Police Station and Inspector Ramakrishnan of Avaniapuram Police Station and some of the police vehicles were also damaged.

2.5. The above said police officials in order to protect themselves from the mob, took shelter in a tea stall and informed the superior officers which include the petitioner. One of the Inspectors of Police also left the place, leaving the police vehicle on the spot and on hearing the said alarming information through police wireless, Thiru Sundaresan, Deputy Superintendent of Police, Thiruparankundram Sub Division rushed to the spot to control violence and intercepted the vehicle in which Thiru R.Samy, MLA of Melur Constituency and others were travelling and on search, the vehicle was found carrying deadly weapons and when they were questioned, the Deputy Superintendent of Police, Thiruparankundram was forcibly pushed down by Thiru R.Samy, MLA and his accomplice also threatened him with dire consequences. The Deputy Superintendent of Police informed the situation over police wireless and on hearing the same, the petitioner rushed to the spot along with striking force, however, Thiru R.Samy, MLA and his followers did not heed to his warnings and continued to attack the police and with much difficulty, the situation was controlled.

2.6. The persons indulged in violence and other criminal activities were secured. Thiru S.S.Krishnamoorthi, IPS, then Deputy Inspector General of Police also arrived at the spot and made enquiries about the incident and on his directions, secured persons were handed over to Thiru Balaji, jurisdictional Inspector of Police with instructions to take follow up action and to proceed in accordance with law. Accordingly, a case in Crime No.155/2008 was registered by the Inspector of Police, Koodakovil Police Station for the commission of offences on the basis of complaint given by Tmt.Sathyapraha, Woman Sub-Inspector of Koodakovil Police Station. The petitioner, in this regard, has also sent messages to all the officers including the Chief Electoral Officer, District Collector, Deputy Inspector General of Police, Madurai Range, Inspector General of Police, South Zone, Additional Directors General of Police, Intelligence, Law and Order and the Director General of Police, Tamil Nadu on the incident occurred and the action taken. The arrested accused including Thiru R.Samy, MLA were produced before the Judicial Magistrate, Thirumangalam on 30.12.2008 by Thiru R.Balaji, Inspector of Police, Thirumangalam Taluk and Thiru Shahjahan, Deputy Superintendent of Police, Thirumangalam Sub Division and all the accused were remanded to judicial custody for 15 days. At the time of remand, the accused persons induced by Advocates, stated before the Judicial Magistrate that police personnel caused injuries and no food and drinks were given and some of them were not given proper medical treatment.

2.7. The petitioner would further state that even at that time, there is no specific allegation levelled against him for having been responsible for causing injuries to the arrested persons. The petitioner, after receipt of the charge memo, submitted a detailed representation dated 23.10.2013, narrating the above mentioned facts and requested the first respondent to consider the same in proper perspective and to drop all further proceedings. However, it failed to evoke any kind of response and on the other hand, a charge memo has been issued to create an impediment and infringe his right to be considered for appointment by promotion as a member of All India Service, namely Indian Police Service. The petitioner would further aver that the case in Crime No.155/2008 registered by Koodakovil Police Station, after investigation, has culminated into a charge sheet, which was taken on file by the Court of Judicial Magistrate, Thirumangalam in P.R.C.No.30 of 2010 and the same is pending for committal to the Court of Principal Sessions Judge, Madurai.

2.8. Thiru R.Samy, MLA of Melur Constituency has also lodged a private complaint against the petitioner, Thiru Shahjahan, Deputy Superintendent of Police, Thiru Ramakrishnan, Inspector of Police and Tmt.Sathyaprabha, Woman Sub-Inspector of Police, who was the first informant in the above said crime number, on the file of the Court of Judicial Magistrate, Madurai under Section 294(b), 341, 342, 323, 325, 195, 506(ii) and 427 IPC and violation of Human Rights Act and it was also committed to the Principal Sessions Court at Madurai and taken on file in Special S.C.No.1/2011. The petitioner filed an application for discharge and it was dismissed by the Principal Sessions Judge, Madurai, vide order dated 23.01.2013 and challenging the same, CrI.Rc.(MD).No.146 of 2013 was filed before the Madurai Bench of this Court and it was dismissed on 07.08.2013 and challenging the legality of the same, Special Leave to Appeal (Criminal) No.9160 of 2013 was filed by him and the Hon'ble Supreme Court of India, vide order dated 29.11.2013, granted stay of further proceedings in Special SC.No.1/2011.

2.9. In W.P.No.3510 of 2015, the petitioner has challenged the appointment of Inquiry Officer to conduct inquiry in respect of the above said charge memo issued against him on the ground that when the Selection Committee for appointment was likely to be convened, the Government of Tamil Nadu, represented by Principal Secretary to Government had issued G.O.Ms.No.901, Home (SC) Department dated 03.12.2014 appointing Thiru Abhay Kumar Singh, IPS as the Inquiry Officer to conduct inquiry and the said officer, in-turn acted in a haste manner and without any application of mind to the fact that the matter is subjudice in W.P.No.3990 of 2014, vide proceedings dated 16.12.2014 issued summons to him to attend oral inquiry on 23.12.2014 and

24.12.2014. The petitioner, in response to the said summons, had submitted a representation dated 18.12.2014 by bringing to their notice about the pendency of W.P.No.3990 of 2014 and prayed for furnishing of copies of various documents. The Inspector General of Police, South Zone, vide Fax Message dated 22.12.2014, directed the petitioner to peruse the documents and attend the enquiry on 23.12.2014 and on receipt of the same, the petitioner submitted a representation dated 22.12.2014 requesting the said official to defer the enquiry. The Inspector General of Police, South Zone, Madurai, vide proceedings dated 07.01.2015, directed the petitioner to attend oral enquiry on 12.01.2015 and 13.01.2015 respectively without considering his representation.

2.10. The petitioner, on perusal of relevant documents, became aware of the fact that the Inspector General of Police, South Zone, Madurai himself, vide proceedings Endst.No.214/Camp/Ptn./IGP-SZ/2013 dated 30.07.2013, had directed the Superintendent of Police, Madurai District to conduct a personal enquiry and report the matter to him on the complaint given by Thiru R.Samy, MLA of Melur Constituency. Therefore, it is contended that the Inspector General of Police, South Zone, has already assumed the role of prosecutor for the reason that as per his directions, preliminary enquiry has been conducted by the Deputy Superintendent of Police on the complaint given by Thiru R.Samy, MLA and therefore, he cannot act as the Inquiry Officer. The petitioner also submitted a representation dated 09.01.2015 to the first respondent narrating the above facts and events especially with regard to the role played in appointing the Superintendent of Police, Madurai District to conduct preliminary enquiry and was under the bonafide impression and belief that further proceedings would be deferred. However to his shock and surprise, the Inspector General of Police, South Zone, Madurai has urgently proceeded with the enquiry and therefore, came forward to file this writ petition, challenging his appointment in W.P.No.3990 of 2014.

2.11. The second respondent, namely the Additional Director General of Police, Administration, Chennai-4, has filed a counter affidavit stating among other things that disciplinary proceedings were initiated against the petitioner based on the preliminary enquiry report submitted by Thiru V.Balakrishnan, IPS, then Superintendent of Police, Madurai District, based on the complaint given by Thiru R.Samy, MLA of Melur Constituency. It is further stated in the counter affidavit that Thiru R.Samy, MLA has also filed a private complaint against the petitioner and three others before the Chief Judicial Magistrate, Madurai which was committed to the Principal Sessions Court, Madurai and the petitioner filed a petition for discharge in CrI.M.P.No.1215 of 2013 and it was dismissed on 23.01.2013. The petitioner made

a challenge by filing a revision in Crl.R.C.(MD).No.146 of 2013 and it was dismissed on 07.08.2013 and challenging the same, the petitioner filed a Special Leave Petition in SLP(Crl.)No.9160 of 2013 and the Hon'ble Supreme Court of India has granted interim stay of further proceedings, vide order dated 29.11.2013. The second respondent would further state in the counter affidavit that Thiru R.Samy, MLA of Melur Constituency, has submitted a representation/complaint stating that the petitioner used unparliamentary words and charged him aggressively and he has also manhandled him and attacked the party cadres and also caused injuries to many of the party cadres and later on they were taken to a marriage hall and were arrested and the injured were not given any medical treatment and also food till next day morning viz., 30.12.2008 and they were produced before the learned Judicial Magistrate, Thirumangalam and they made a complaint, which was also recorded and orders were passed by the learned Magistrate directing to provide them medical treatment. The complaint given by Thiru R.Samy, MLA was enquired into by Thiru V.Balakrishnan, IPS and after conducting enquiry, he submitted his report in which the statement of Thiru R.Samy, MLA was enclosed and found that disciplinary proceeding was rightly initiated against the petitioner by issuing the charge memo. It is also stated by the second respondent that the contents of the charge memo are very serious in nature and with regard to the delay in initiating departmental proceedings, it is averred that the misconduct of the petitioner came to light only as a result of preliminary enquiry conducted by the above said officials and during the course of preliminary enquiry, witnesses were also examined and the learned Judicial Magistrate, while producing the accused, also recorded their statement that they were not given food, drinks and medical treatment and passed necessary orders to provide them with necessary facilities and after fair and proper appraisal of report only, disciplinary proceedings came to be initiated.

2.12. The second respondent, on legal plea, would submit that the Court at the stage of charge memo, cannot interfere with the same and that simultaneously it is permissible to initiate departmental as well as criminal prosecution and therefore, the petitioner cannot have any grievance and therefore, prays for dismissal of this writ petition. Additional counter affidavit has also been filed by the second respondent in W.P.No.3990 of 2014 and would state that pendency of W.P.No.3990 of 2014, Joint Secretary, Public (Law and Order - C) Department in D.O. Letter No.117/L&O-C/2014-1 dated 07.01.2014 instructed the Collector of Madurai District to obtain legal opinion as to whether the case registered in Koodakovil Police Station Cr.No.155 of 2008 in P.R.C Nos.30/2010 and 17/2014 is fit for withdrawal in public interest under Section 321 CrPC. The Public Prosecutor, Madurai District, in

his opinion dated 31.01.2014 in P.R.C.No.30/2010 opined that it is not a fit case for prosecution and it may not withstand stiff cross examination of defence and therefore, on the ground of public interest and in the interest of administration of justice, recommended for withdrawal of the prosecution under Section 321 CrPC. The Assistant Public Prosecutor Gr.I/Additional Chief Judicial Magistrate (E.O), I/c of Judicial Magistrate, Thirumangalam had also expressed the same view in his opinion dated 08.07.2014 and accordingly, the Collector of Madurai District sent a proposal to the Additional Secretary to Government, Public (Law & Order -C) Department, Secretariat, Chennai, requesting for withdrawal of the above said case and the Government, after consideration, had issued orders in G.O. (Ms.)No.2526, Public (Law & Order-C) Department dated 02.07.2014 and G.O.(Ms.)No.2802, Public (Law and Order-C) dated 21.07.2014 for withdrawal of the case in Koodakovil Police Station Cr.No.155/2008 in P.R.C.Nos.30/2010 and 17/2014, pending on the file of the learned Judicial Magistrate, Thirumangalam, based on which necessary applications were filed before the Court and the Court has also permitted the prosecution to withdraw the cases.

2.13. The petitioner has also filed a rejoinder to the counter affidavit and would submit that the case in Cr.No.155/2008 registered against Thiru R.Samy and others, after investigation, has resulted in filing of the final report, which was taken on file in P.R.C.No.30/2010 and later on split up as P.R.C.No.17/2014, as some of the accused did not choose to appear before the Court. It is further averred that though the case was posted on several times on several dates, the accused repeatedly filed petitions under Section 317 CrPC to dispense with their personal appearance and it was also entertained. Insofar as the stand of the second respondent as to the withdrawal of prosecution, it is submitted by the petitioner that the proposal for withdrawal of prosecution is not in accordance with Section 321 CrPC and in any event, pending disposal of W.P.No.3990 of 2014, such a step should not have been resorted to and without due and proper application of mind, the case was permitted to be withdrawn.

3. Mr.M.Ravi, learned counsel appearing for the petitioner in both the writ petitions would submit that there is an inordinate and unexplained delay in initiation of departmental proceedings as the incident relating to the case in Crime No.155/2008 happened on 29.12.2008 and the case after investigation, culminated into a charge sheet, which was taken on file in P.R.C.No.30 of 2010 by the learned Judicial Magistrate, Thirumangalam and nearly after 5 years, based on the representation given by one of the accused, namely, Thiru R.Samy, MLA of Melur constituency dated 28.09.2013, signed on 10.10.2013, preliminary enquiry was conducted based on which, charge memo came to be issued when the petitioner ranked as

Sl.No.2 for the selection for appointment to Indian Police Service, subject to clearance of disciplinary proceedings. It is the further submission of the learned counsel appearing for the petitioner that even for the sake of arguments, the preliminary enquiry report submitted by Thiru V.Balakrishnan I.P.S., then Superintendent of Police, Madurai District is unacceptable, still no case has been made out for launching departmental action and though allegations were levelled against the petitioner and other officials such as Deputy Superintendent of Police, Inspector of Police and others, they have not been proceeded departmentally and only the petitioner has been singled out, that too when he has been selected to join in Indian Police Service in the select list for the year 2013. It is the further submission of the learned counsel appearing for the petitioner that unfortunately the second respondent who ordered preliminary enquiry, became the Inquiry Officer and the timing of the disciplinary proceedings would indicate that the sole intention/attempt is to prevent the petitioner from entering into Indian Police Service in the select list for the year 2013 and that too nearly after 5 years from the date of the alleged occurrence.

4. The learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that the complaint given belatedly by Thiru R.Samy, MLA of Melur constituency, has been entertained immediately and preliminary enquiry was directed to be held and based on the enquiry report, disciplinary proceedings came to be initiated without any loss of time and the manner in which the case moved so fast would clearly indicate malafide intention on the part of the Government to deprive the petitioner's right to enter into Indian Police Service, despite the fact that he is the second senior most in the select list. The learned counsel appearing for the petitioner further drawn the attention of this Court to the impugned charge memo and would submit that the main crux of the charge is that petitioner used force against Thiru R.Samy, MLA of Melur constituency and his followers and not taken the injured to hospital before remand on 30.12.2008 and also drawn the attention of this Court to the charge sheet/final report in P.R.C.No.30/2010 and would submit that the the statement of defacto complainant, namely Tmt.Sathyaprabha, Woman Sub-Inspector of Police as well as the statements of other officials recorded under Section 161 CrPC would clearly indicate the criminal/unlawful act indulged by Thiru R.Samy and other accused persons and the Judicial Magistrate, after due application of mind, took it on file and issued summons to them and the accused had deliberately absented themselves and therefore, the case was split up in P.R.C.No.17 of 2014 and the accused did not cooperate with the committal Court for committing the case to the Sessions Court for trial and unfortunately, the Superintendent of Police, Madurai District

had gone into the merits of the prosecution case, which is pending on the file of the Judicial Magistrate in committal proceedings and he cannot do so.

5. The learned counsel appearing for the petitioner further submitted that most unfortunate is the contents of the charge memo wherein it had been stated that the case has been foisted against Thiru R.Samy, MLA of Melur constituency, overlooking the fact that the jurisdictional Magistrate, after due application of mind, had taken cognizance of the same in P.R.C.No.30/2010 and therefore, the contents of the charge memo are nothing but contemptuous, undermining the competent judicial authority and is to be condemned and therefore, the acts of the respondents deserve condemnation. The learned counsel appearing for the petitioner also submitted that the charges are also very vague and therefore, the petitioner is put to serious prejudice in defending the vague charges and unfortunately, the law officers, namely the District Public Prosecutor and the Assistant Public Prosecutor, without due and proper application of mind, had opined and had in fact adjudicated the criminal case as if they were the Presiding Officers and most unfortunate is the order of withdrawal of prosecution by the Government by issuing Government Orders. It is also contended by the learned counsel appearing for the petitioner that the jurisdictional Magistrate, namely the Judicial Magistrate, Thirumangalam, by a cryptic order, had permitted the prosecution to withdraw the cases, overlooking the statutory duty cast upon him under Section 321 CrPC and this Court, in exercise of its power under Sections 482 and 483 CrPC, have to recall the order. It is the further submission of the learned counsel appearing for the petitioner that the petitioner alone has been singled out for victimisation and though, Thiru R.Samy, MLA has also named other officials, they have been conveniently left out and thus, the impugned proceedings is smacked with arbitrariness and malafide and prays for quashment of the same. The learned counsel appearing for the petitioner, in support of his submissions, placed reliance upon the following decisions:

- (i) State of Andhra Pradesh v. N.Radhakrishnan [(1998) 4 SCC 154]
- (ii) P.V.Mahadevan v. M.D. Tamil Nadu Housing Board [(2005) 4 CTC 403]
- (iii) Ranjith Singh v. State of Haryana [2008 (3) CTC 781]
- (iv) Unreported decision of the Division Bench of this Court dated 05.11.2007 in W.A.Nos.586 & 587 of 2007]
- (v) Unreported decision of the Division Bench of this Court dated 06.03.2009 in W.A.(MD).No.610 of 2008
- (vi) The State of Tamil Nadu and another v. R.Ramarajan and Others [2009 (3) TLNJ 132 (Civil)]
- (vii) B.K.Gunasekaran v. The State of Tamil Nadu and another [(2010) 7 MLJ 161]

- (viii) Writ Petition No.3898/2008 dated 21.12.2012 [2012 SCC online Mad 5248]
- (ix) Somesh Tiwari v. Union of India [(2009) 2 SCC 592]
- (x) Division Bench judgment of this Court in Secretary to Government, Home Department v. V.H.Mohamed Hanifa [2005 (1) LLN 451]
- (xi) Judgment dated 30.11.2009 in W.P.No.10858/2009 [Dr.G.Ravivarman v. Government of Tamil Nadu]
- (xii) Surath Chandra Chakravarthi v. State of West Bengal [AIR 1971 SC 752]
- (xiii) State of U.P. v. Mohamed Sharif [(1982) 2 SCC 376]
- (xiv) Sawai Singh v. State of Rajasthan [AIR 1986 SC 995]
- (xv) Transport Corporation, Madras v. A.Radhakrishnamurthy [(1995) 1 SCC 332]
- (xvi) Government of Andhra Pradesh & Ors. v. A.Venkatanaidu [(2007) 1 SCC 338]
- (xvii) Division Bench judgment dated 25.03.2005 in W.A.No.77/2003 [Govt. of Tamil Nadu & Anr. v. K.Sambandam]
- (xviii) Union of India v. Gyan Chand Chattar [2009 (12) SCC 78]
- (xix) N.Nandagopalan v. Secretary to Government, P&AR Department [(2006) 3 MLJ 191]
- (xx) Director General of Police & Ors v. G.Dasaiyan [1998 (2) SCC 407]
- (xxi) T.R.Venkatachari v. Special Officer, Corporation of Madurai & Anr. [(2002) WLR 449]
- (xxii) Division Bench Judgment of this Court in M.Ranamanickam v. Executive Director, BHEL [1997 WLR 536]
- (xxiii) Sengara Singh v. State of Punjab [1983 (4) SCC 225]
- (xxiv) Mansingh v. State of Haryana & Ors. [2008 (8) MLJ 518 SC].

6. Per contra, Mr.A.L.Somayaji, learned Advocate General assisted by Mr.A.Kumar, learned Special Government Pleader, has invited the attention of this Court to the typed set of documents as well as counter affidavit and would contend that based on the complaint given by Thiru R.Samy, MLA of Melur constituency, the Inspector General of Police, South Zone, Madurai directed Thiru V.Balakrishnan IPS, then Deputy Superintendent of Police to conduct preliminary enquiry and the said official, after recording the statement of the concerned witnesses, had concluded that Thiru R.Samy was not part of the unlawful assembly that had damaged the police vehicles and hence, their involvement is highly doubtful and that the injured were also not taken to hospital for treatment and it was also recorded by the learned Judicial Magistrate and based on which charge memo came to be issued and the petitioner has been afforded with reasonable opportunity to defend the charge memo in an effective manner and without cooperating with the Disciplinary Authority, the petitioner has filed this writ petition solely for the purpose of dragging on the proceedings.

It is the further submission of the learned Advocate General that the State Government is acting in all fairness and that is why preliminary enquiry was ordered and thereafter, based on the enquiry report only, charge memo came to be issued and the State Government has no axe to grind against the petitioner and therefore, it cannot be said that the acts of the State Government in issuing the charge memo are actuated with malafides. It is also contended by the learned Advocate General that it is a well settled position of law that allegation of bias and malafides have to be alleged and strictly proved and in the case on hand, the petitioner has miserably failed to do so. The learned Advocate General has also made a legal plea by submitting that delay cannot be the sole ground to quash the charge memo and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot normally interfere with the disciplinary proceedings and the petitioner prima facie acted in violation of the guidelines issued by the Hon'ble Supreme Court of India in D.K.Basu v. State of West Bengal [AIR 1997 SC 610 = (1997) 1 SCC 416] in remanding the accused and would further add that the disciplinary proceedings may be allowed to continue and reach the logical conclusion and the petitioner may be afforded with reasonable opportunity to defend the charges framed against him and prays for dismissal of this writ petition. The learned Advocate General, in support of his submissions, placed reliance upon the following decisions:

- (i) Noida Entrepreneurs Association v. Noida and Others [(2007) 10 SCC 385]
- (ii) The State of Tamil Nadu rep by its Secretary to Government [Police.IA] Department and the Director General of Police v. S.Nagaraj, The Commissioner, Tribunal for Disciplinary Proceedings and The Registrar, Tamil Nadu Administrative Tribunal. [Manu/TN/0321/2004]
- (iii) Union of India and another v. Kunisetty Satyanarayana [1995-3-SCC-134]
- (iv) Chairman, Life Insurance Corporation of India and Others v. A.Masilamani [(2013) 6 SCC 530].

7. This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it as well as the decisions relied on by the learned counsel appearing for the petitioner and the learned Advocate General appearing for the State.

8. Thiru R.Samy, MLA of AIADMK party-Melur constituency has submitted a letter dated 24.07.2013 to the Director General of Police praying for initiating appropriate action against the petitioner, who was the then Superintendent of Police, Madurai District and other police officials. The Inspector General of Police, South Zone, Madurai, vide proceedings in Endst.No.214/Camp/Ptn./IGP-SZ/2013 dated 30.07.2013, had

directed the Superintendent of Police, Madurai District to conduct personal enquiry with regard to certain allegations levelled against the petitioner and the said official, after recording the statement of Thiru R.Samy, MLA of Melur constituency, Thiru Kamal, Students Secretary of ADMK, Melur Town, Madurai, Thiru Sekar, Sub-Inspector, Special Branch, Avaniyapuram, Madurai District, Thiru Easwaran, Sub-Inspector, Special Branch, Koodakovil, Madurai District, Thiru Nehru Doss, SSI, SBCID, Madurai District and on perusal of FIR and other documents in Crime No.155/2008 of Koodakovil Police Station, concluded as follows:

"Conclusion:

Pitched battled has been fought by the political parties in the by election to Thirumangalam assembly constituency in 2008. On 29.12.2008, the cinema star Ramarajan was campaigning for ADMK in villages Viz Eliyarpathi, Nedungulam etc., located on the sides of Madurai, Aruppukottai National high way. MLA of Marugapuri constituency Tr.Chinnasamy was campaigning for ADMK near Eliyarpathi. The police had received information about an attack on MLA of Marugapuri constituency Tr.Chinnasamy at Eliyarpathi. To prevent spreading of tension to other areas Mr.Ramarajan who had been campaigning in Nedumadurai had been asked to stay put at a house in Nedumadurai till problem gets over. As the information had spread about the assault on ADMK team at Eliyarpathi, ADMK leaders and cadres had assembled at Eliyarpathi and started putting pressure on the policemen posted there led by WSI Sathyaprabha and engaged in a heated argument with the policemen. Even while the argument was going on, some miscreants had started damaging the police vehicles and attempted to assault the police party. Overwhelmed by the situation, WSI Sathiya Prabha had spoken alarmingly to the Superintendent of Police Tr.Manohar which had prompted him and other Higher Officials to send additional strength led by Superintendent of Police Manohar to maintain law and order. The Superintendent of Police Manohar was on the ring road along with his striking force. Suddenly, he had seen a fleet of ADMK vehicles coming from Aruppukittai road side. He & his team had intercepted them near Mandela nagar junction. Both the petitioner and Mr.Manohar had got down from the vehicle which had prompted other police men and ADMK cadres also to come out of the vehicles. A heated argument had succeeded between the petitioner & Superintendent of Police Manohar and there was a use of force by way of lathi charge, subsequently, by the police, which had resulted minor injuries to ADMK party men including the petitioner. During the lathi charge

few vehicles had also been damaged. After the lathi charge the MLA and his supporters had been picked up by police and taken to Police Barracks in reserve line Madurai and they had been subsequently arrested in Koodalkovil PS R.No.155/08 u/s 147, 148, 353, 307 r/w 149 IPC & 3 of TNPPDL Act. From the enquiry, it is learnt that the 1) MLA and his followers had been subjected to force by way of lathi charge by the police party in the presence of Superintendent of Police Manohar. During the verbal duel between the Superintendent of Police and the petitioner some heated words had been exchanged which resulted in lathi charge and arrest. 2) MLA Samy was not part of the un-lawful assembly which damaged police vehicles at Eliyarpathi. Hence, their involvement in Koodakovil PS Cr.No.155/08 is doubtful. 3) It is also true that the injured were not taken to the hospital before remand and the same had been complained to the remanding magistrate which was recorded by him. But is not discernible in the hindsight, as to how surcharged the atmosphere was at time of keeping them in custody & practical possibility of taking them to the hospital, as so many issues were happening simultaneously in quick succession.

It is relevant to furnish the following particulars also for proper appreciation of the report. The petitioner had filed a private case vide CrI.M.P.No.343/2009 under the provisions of 200 & 190 (A) Cr.P.C in the file of Court of Principal Sessions in Spl SC.No.1/11 u/s 294(b), 341, 342, 323, 325, 506 (ii) and 427 IPC and Section 30 of Human Rights Act Madurai for the allegations detailed in the petition & it is pending trial now. Mr.Manohar had approached Hon'ble Madurai Bench of Madra High Court to stay the proceedings of the above case at the Court Principal Sessions Court but the Hon'ble Court has dismissed his petition on 07.08.2013. Similarly, the withdrawal proposal for Kodakovil PS Cr.No.155/08 is pending with the Government."

The Superintendent of Madurai District, in the said report, has also recorded the fact that withdrawal proposal for Koodakovil PS Cr.No.155/08 is pending with the Government.

9. The Joint Secretary to Government of Tamil Nadu, Public (Law and Order), Chennai-9 had addressed a letter dated 07.01.2014 to the Collector of Madurai District, calling upon his opinion as to the withdrawal of prosecution under Section 321 CrPC in public interest and in the interest of administration of justice. In the list annexed to the said letters, three case have been cited and all pertains to AIADMK cadre people and Sl.No.1 is the case in Crime No.155/08

registered by Koodakovil Police Station against the Hon'ble Minister Thiru O.Paneerselvam, Thiru Senkottaian, Pollachi Thiru V.Jeyaraman, Thiru Thanga Tamilsevan , Thiru M.Jeyaraman and Thiru R.Samy, MLA and 61 ADMK party cadres. In the annexure it has been indicated that the case in Crime No.155/08, after investigation, culminated in a charge sheet which was taken on file in P.R.C.No.30/2010 by the Judicial Magistrate, Thirumangalam and it is in trial stage.

10. Annexure-III to the said letter is the legal opinion given by Thiru M.Tamil Chelvan, Public Prosecutor, Madurai District and it is relevant to extract the same.

"Perused the case dairy in connection with Crime No.155/2008 of Koodakovil PS. registered under Section 147, 148, 353, 307 r/w 149 and 3(1) of TNPPDL Act and charge sheet is laid in P.R.C.30/2010 and the case pending before the Learned Judicial Magistrate Thirumangalam.

Though it is stated that 10 of the motor vehicles of the members of the unlawful assembly were seized objectionable material objects were said to have to been seized from only one vehicle TN 45W 3007 Ambassador Car.

The 161 Statements recorded from officers are not cogent and does not implicate which of the accused is said to have the intention of murder and whom it was intended to be murdered by the mob. Nowhere in the CD the prominent persons namely P.Pannerselvam, Sengottaiyan, Pollachi Jeyaraman, Thagathaizhselvan, Thirumangalam Jeyaraman, Melur MLA Samy and how they incited the mob to commit violence or they themselves involved in criminal activities is not spoken to either by the Superintendent of Police, Manoharan, or the Deputy Superintendent of Polices, namely Vijayaragavan, Sundaresan.

Moreover there is no evidence to the effect that who are all the injured, and the medical treatment underwent by them when such allegation of that entire mob throwing stones at the police force.

It is found that all the 161 statements were tailored at the table and doesn't invoke confidence for better prosecution before a Court of law.

Hence, I am of the opinion that it is not a fit case for prosecution and it may not withstand stiff cross examination of defence, and it also on the ground of public interest and in the interest of administration of Justice.

Hence the case may be withdrawn as per Sec. 321 Cr.P.C."

11. The Assistant Public Prosecutor Gr.I, Additional Chief Judicial Magistrate (E.O), I/c. Judicial Magistrate, Thirumangalam, after perusal of case diary and relevant documents, had given his legal opinion dated 8.7.2014 and it is relevant to extract the same:

"I have carefully perused the CD file and other relevant document given by the Inspector of Police Thirumangalam Taluk Circle, Koodakovil Police Station Cr.No.155/2008 U/S.147, 148, 353, 307 r/w 149 IPC and 3 (1) of T.N.P.P.D.L. Act.

In this case charge sheet is laid in P.R.C.No.17/2014 and the case is pending before the Judicial Magistrate Court Thirumangalam.

As per the FIR on 29.12.2008 at night 21.45 hours the Koodakovil police party enquired the driver about the damages cost of the vehicles numbered TN 45AZ 9999 & TN 45 AD 4667. At that time more than 10 motor vehicles came near them. Thiru O.PANNEER SELVAM and others A1 to A26 joined in unlawful assembly being armed with deadly weapons and damaged the police jeeps with dare consequences. So they charges u/s 147, 148, 353, 307 r/w 149 IPC Act and 3(1) of T.N.P.P.D.L. Act.

Though it is stated that more than 10 motor vehicles seized objectionable material objects were said to have been seized from only one vehicle.

And all the list witnesses Lw1 to Lw16 are police witnesses coded in the charge sheet. And Lw17 & Lw18 are only private witnesses and they are mahazer witnesses. No materials objects were seized from the occurrence place as per in the mahazar.

And also there is no evidence to the effect that who are all the injured and the medical treatment underwent by them when such allegation of entire mob throwing stones at that time of occurrence. No specific allegation in 161 statements as to which accused particularly with which weapons attracted to which witnesses.

And

- a) No public affected
- b) No public peace tranquility affected
- c) No Public order affected
- d) No public property damaged
- e) No material records and evidence available to warrant to Conviction.
- f) No injured person.

Hence As per my opinion this case is fit for withdrawal in public interest and in the interest of administration of justice."

12. The Superintendent of Police, Madurai District, in his letter dated 11.02.2014, addressed to the Collector of Madurai District, giving the list of 10 cases in the annexure and made a request to move the Government for withdrawal of prosecution in public interest and Sl.No.1 is Koodakovil Police Station Cr.No.155/2008 in P.R.C.No.30/2010, pending on the file of the Court of Judicial Magistrate, Thirumangalam. The very same official sent an yet another communication dated 09.07.2014 informing that withdrawal of prosecution has been ordered in respect of P.R.C.No.30/2010 pertaining to Koodakovil Police Station Cr.No.155/08 and it has been split up into P.R.C.Nos.30/2010 and 17/2014 and with regard to P.R.C.No.17/2014, no withdrawal of prosecution has been ordered and therefore, requested him to get appropriate orders from the Government. The Collector of Madurai District, in-turn, sent a letter dated 09.07.2014 to the Additional Secretary to Government, Public (Law and Order - C) Department, Chennai, indicating the list of cases to be withdrawn and forwarded necessary proposal for withdrawal of prosecution in the above said cases. In the interregnum, the petitioner filed W.P.No.3990 of 2014 challenging the Charge Memo and it was admitted on 12.02.2014.

13. The Public (Law and Order - C) Department of Government of Tamil Nadu passed G.O.(Vaalalayam) No.2526 dated 02.07.2014 and G.O.(Vaalalayam) No.2802 dated 21.07.2014 ordering withdrawal of prosecution in P.R.C.Nos.30/2010 and 17/2014 in Koodakovil Police Station Cr.No.155/08. The Superintendent of Police, Madurai District, vide letter dated 04.07.2014 addressed to the Assistant Public Prosecutor, Judicial Magistrate Court, Thirumangalam, Madurai District wherein it has been stated that the Inspector of Police, Thirumangalam Taluk Police Station shall meet the Assistant Public Prosecutor concerned and take necessary action for withdrawal of the case in respect of Koodakovil Police Station Cr.No.155/08 in P.R.C.No.30/2010 pending on the file of the Judicial Magistrate Court, Thirumangalam. The Superintendent of Police, Madurai District, vide letter dated 25.07.2014 addressed to the Judicial Magistrate Court, Thirumangalam, Madurai District, informed that as per G.O.(Vaalalayam) Nos.2802 and 2526 of the Public (Law and Order-C) Department dated 02.07.2014 and 21.07.2014 respectively, orders have been passed for withdrawal of the above said cases and the Judicial Magistrate, in-turn, has passed orders permitting the prosecution to withdraw the said cases.

14. This Court, during the course of arguments advanced in these writ petitions, on going through the counter affidavit, became aware of the withdrawal of the prosecution and therefore, passed an order dated 07.10.2015 directing the learned Judicial Magistrate, Thirumangalam to send a detailed report as to

whether all the accused viz., A1 to A27 in P.R.C.No.17/2014 had appeared before the said Court on the hearing dates and if not, the reasons for their absence and whether Non-Bailable warrants were pending against them and also to send entire records relating to the said case, by a special messenger and the respondents are also directed to file additional counter as regards additional typed set of documents filed by them on that date and accordingly, the entire records have been received by this Court. When these writ petitions were listed on 24.11.2015, on the request made by the learned counsel appearing for the parties, this Court permitted them to peruse the said records, subject to filing of memo and accordingly, the learned counsel appearing for the petitioner had perused the records sent by the learned Judicial Magistrate, Thirumangalam and filed his rejoinder dated 11.12.2015 to the additional counter affidavit filed by the official respondents.

15. The following questions arise for consideration:

I. Whether the charge memo is vague and baseless?

II. Whether the delay in commencement of disciplinary proceedings would vitiate the departmental action initiated against the petitioner?

III. Whether initiation of disciplinary proceedings on the verge of petitioner getting into Indian Police Service is actuated with malafides?

In the light of subsequent development, namely withdrawal of prosecution, the following incidental question also arises for consideration:

IV. Whether the order passed by the learned Judicial Magistrate, Thirumangalam, permitting to withdraw the prosecution is in accordance with Section 321 CrPC?

ISSUE NO.I - VAGUE AND BASELESS CHARGES

16. The petitioner at present, is in the rank of Superintendent of Police and the Ministry of Home Affairs of the Government of India, vide notification dated 12.06.2015, in exercise of provisions contained in sub-regulation(3) of Regulation 7 of the Indian Police Service (Appointment by Promotion) Regulations, 1955, in consultation with Union Public Service Commission, had approved the Select List of the year 2013 prepared by the Selection Committee in its meeting held on 09.02.2015. As per the said notification, names of seven persons were found in the Select List 2013 and the petitioner's name is found in Sl.No.2. It is indicated in the said notification among other things that the name of the petitioner in the provisional list subject to clearance in the disciplinary proceedings pending against him and also subject to the final

outcome of SLP(C)No.2459/2006 filed by T.Venmathi & Others v. State of Tamil Nadu & Others, pending on the file of the Hon'ble Supreme Court of India.

17. It is the case of the petitioner that he was appointed as Deputy Superintendent of Police Category-I by way of direct recruitment and joined in the said post during the year 1998 and got further promotions as Additional Superintendent of Police and Superintendent of Police and rendering sincere, efficient and unblemished service without any mole or stigma throughout this career and at the verge of his appointment by promotion to Indian Police Service, he was visited with disciplinary proceedings in the form of charge memo dated 28.09.2013, signed on 10.10.2013 and the substratum of the charge is on the basis of the complaint given by Thiru R.Samy, MLA of AIADMK Party, Melur constituency with regard to ill-treatment meted out by him and his followers by the acts of the petitioner. The Statement of Charges framed against the petitioner is enclosed as Annexure-I to the impugned charge memo dated 28.09.2013 issued by the Additional Director General of Police, Administration, Chennai and admittedly, the Statement of Charges does not contain any specific date as to the use of force against Thiru R.Samy, MLA and against his followers. Annexure-II is the Statement of Allegations, namely imputation of misconduct and misbehaviour in support of the charge framed against the petitioner. As per Annexure No.III, Thiru R.Samy, MLA of Melur Constituency, Madurai District has given a complaint dated 08.08.2013 to the Superintendent of Police, Madurai District stating about the happenings that took place on 29.12.2008. The complainant, namely Thiru R.Samy, MLA apart from making allegations against the petitioner as to the use of force and abusive words and also implicated Inspector Thiru Ramakrishnan, Deputy Superintendent of Police- Thiru Shanjahan and other policemen.

18. The Inspector General of Police, South Zone, Madurai, vide proceedings in Endst.No.214/Camp/Ptn./IGP-SZ/2013 dated 30.07.2013 had directed the Superintendent of Police, Madurai District to conduct personal enquiry with regard to certain allegations levelled against the petitioner by Thiru R.Samy, MLA and the said official, during the course of enquiry, had examined Thiru R.Samy, MLA of Melur constituency, Thiru Kamal, Students Secretary of ADMK, Melur Town, Madurai, Thiru Sekar, Sub-Inspector, Special Branch, Avaniyapuram, Madurai District, Thiru Easwaran, Sub-Inspector, Special Branch, Koodakovil, Madurai District, Thiru Nehru Doss, SSI, SBCID, Madurai District, Thiru V.Balakrishnan, IPS, Superintendent of Police, Madurai District and also taking into consideration the copy of the FIR in Cr.No.155/08 registered against some of the ministerial functionaries including Thiru R.Samy, MLA as well as the remand report in the said case. The said official has

reached the conclusion, which has already been extracted in para 8 above. The said official has submitted a report to the Inspector General of Police, South Zone, Madurai dated 08.08.2013 concluding among other things that the police had received information about the attack on MLA of Marugapurai constituency Tr.Chinnasamy at Eliyarpatti and as the information had spread about the assault on ADMK tem at Eliyarpatti, ADMK leaders and cadres had assembled at Eliyarpatti and started putting pressure on the policemen posted there, led by Woman Sub-Inspector of Police, Sathyaprabha [defacto complainant in Koodakovil Police Station Cr.No.155/08] and some miscreants damaged and attacked the police party. Woman Sub-Inspector of Police Tmt.Sathyaprabha, unable to control the situation, had spoken to the petitioner who is the Superintendent of Police, Madurai Rural District and the said information had promoted him and other officials to send additional strength led by the petitioner to maintain law and order and he came to the spot with striking force and suddenly he and his team seen a fleet of ADMK vehicles coming from Aruppukottai road side and they were intercepted near Mandela Nagar junction and a heated argument had succeeded between the petitioner and Thiru R.Samy, MLA of Melur constituency and there was use of force by way of lathi charge, which resulted in minor injuries to ADMK party cadres including Thiru R.Samy, MLA and number of police vehicles also got damaged. After the lathi charge was over, Thiru R.Samy, MLA and his followers were arrested and subsequently a case in Cr.No.155/2008 was registered by Koodakovil Police Station under Sections 147, 148, 353, 307 r/w. 149 IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act.

19. Thiru V.Balakrishnan, IPS, Superintendent of Police, Madurai District, after narrating the said facts, had proceeded to state in the Inquiry Report that it is learnt that Thiru R.Samy, MLA and his followers had been subjected to force by way of lathi charge by the police party in the presence of the petitioner and heated words were also exchanged between them. It has been further stated by Thiru V.Balakrishnan, IPS, in his Inquiry Report that Thiru R.Samy, MLA was not part of the unlawful assembly which damaged police vehicles at Eliyarpatti and hence their involvement in Koodakovil Police Station Cr.No.155/08 is doubtful and it is also true that the injured were not taken to the hospital before remand and the same had been complained to the Magistrate and the said fact was also recorded by him. Ultimately, the said official has concluded that "But it is not discreditable in the hindsight, as to how surcharged the atmosphere was at the time of keeping them in custody and practical possibility of taking them to the hospital, as so many issues were happening simultaneously in quick succession." It is to be pointed out at this juncture that it is an admitted fact that the impugned charge memo dated 28.09.2013, came to be issued based on the report of Thiru

V.Balakrishnan, IPS, Superintendent of Madurai District to the Inspector General of Police, South Zone, Madurai.

20. As already pointed out, the said official during the course of enquiry, has recorded the statement of five persons which include Thiru R.Samy, MLA of Melur constituency, however for the reasons best known to him, has not examined the defacto complainant, namely Tmt.Sathyaprabha, Woman Sub-Inspector of Police, who lodged the complaint which resulted in registration of the case in Koodakovil Police Station Cr.No.155/08 against Thiru R.Samy, MLA and high rank functionaries of AIADMK party. The case after investigation has culminated into a charge sheet which was taken on file in P.R.C.No.30/10 on the file of the Judicial Magistrate, Thirumangalam for the commission of offences under Sections 147, 149, 353, 307 r/w. 149 IPC and Section 3 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act and 67 persons are arrayed as accused and first accused is a Minister and third accused is the Deputy Speaker and Thiru R.Samy, MLA is arrayed as 6th accused.

21. This Court, during the course of hearing, on becoming aware that the prosecution launched against the said accused has been withdrawn, had summoned the records relating to the said case and also permitted the learned counsel appearing for the parties to peruse the records subject to filing of memo and peruse the same before the Deputy Registrar (Appellate Site), High Court, Madras and it has also been perused by junior counsel for the learned counsel appearing for the parties on 07.12.2015 and it seems that the learned counsel appearing for the official respondents did not avail the said opportunity.

22. In Surath Chandra Chakrabarty v. State of West Bengal [(1970) 3 SCC 548 = AIR 1971 SC 752], the Hon'ble Supreme Court of India held that it is not permissible to hold an enquiry on a vague charge as the same does not give a clear picture to the delinquent to make an effective defence because he may not be aware as what is the allegation against him and what kind of defence he can put in rebuttal thereof and in para 5 observed as under:

"5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the

allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

23. In *State of A.P. v. S.Sree Rama Rao* [AIR 1963 SC 1723], it has been held that in a case where the charge sheet is accompanied with the statement of facts and the allegation may not be specific in charge-sheet but may be crystal clear from the statement of charges, in such a situation as both constitute the same document, it may not be held that as the charge was not specific and definite charge and no statement of allegation is served along with the charge-sheet, the enquiry stands vitiated as having been conducted in violation of the principles of natural justice.

24. In *Sawai Singh v. State of Rajasthan* [(1986) 3 SCC 454], the Hon'ble Supreme Court of India held that where departmental enquiry entailing consequences like loss of job which nowadays means loss of livelihood, there must be fair play in action; in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice insofar as these are applicable in a particular situation.

25. In the case on hand, the statement of charges in Annexure-I appended to the impugned charge memo does not contain anything except the fact that the injured was not taken to the hospital before remand on 30.12.2008. Annexure-II is the statement of allegations and even there also nothing has been stated about the events which led to the registration of the case at the instance of Woman Sub-Inspector of Police Tmt.Sathyaprabha in Koodakovil Police Station Cr.No.155/08 against high rank AIADMK functionaries which include Thiru R.Samy, MLA of Melur Constituency and others. The statement of allegations not even referred to the date of the Inquiry Report and the contents of the same.

26. It is very pertinent to point out at this juncture that even in the said report, Thiru V.Balakrishnan, IPS, Superintendent of Police, Madurai District, has opined as to the surcharged atmosphere prevailing and also as to the happening of many issues simultaneously in quick succession. It is very unfortunate to note that the case in Cr.No.155/08 registered by Koodakovil Police Station, after investigation, has culminated

into a charge sheet, which has been taken on file by the learned Judicial Magistrate, Thirumangalam in P.R.C.No.30/2010 and it was not withdrawn at that point of time. However, the Disciplinary Authority, namely the Additional Director General of Police, overlooking the fact and without application of mind as to the pendency of criminal prosecution on the file of the Court of competent jurisdiction, had used the word in Charge No.I "foisted case" and it is also repeated in para 3 of the Statement of Allegations in Annexure-II. It is not even within the jurisdiction/realm of the Disciplinary Authority, namely Additional Director General of Police to conclude that the criminal case and that too registered at the instance of Woman Sub-Inspector of Police Tmt.Sathyaprabha, which after investigation, has resulted in a positive final report, is a "foisted one". Thiru V.Balakrishnan, IPS, who conducted the Inquiry, in pursuant to the directions of the Inspector General of Police, South Zone, Madurai, in his conclusion, has opined that Thiru R.Samy, MLA was not the part of the unlawful assembly which damaged police vehicles and therefore, their involvement in Koodakovil Police Station Cr.No.155/08 is highly doubtful. Here again, the said official has overlooked the fact that the case in the above said crime number, after investigation has resulted in the filing of charge sheet which has been taken cognizance by the learned Judicial Magistrate, Thirumangalam as early as on 29.10.2010 itself in P.R.C.No.30/2010. The Disciplinary Authority has assumed the role of judicial forum by stating that the case is a foisted one and he should not have stated so. Thus, the charge memo itself came to be issued without due and proper application of mind to the material facts and more particularly on account of pendency of the case in P.R.C.No.30/2010 on the file of the Court of Judicial Magistrate, Thirumangalam and that apart, the contents of the charge memo as well as statement of imputations are also vague and therefore, in the considered opinion of the Court, the writ petitioner, namely Thiru.M.Manohar is put to serious prejudice and handicapped in defending the charges framed against him in the impugned charge memo.

ISSUE NO.II - DELAY

27. The complaint given by Tmt.Sathyaprabha, Woman Sub-Inspector of Police, Koodakovil Police Station with regard to law and order incident which took place on 29.12.2008 at 21.45 hours, had resulted in registration of a case in Cr.No.155/08 on the same day at 23.15 hours against high ranking political functionaries of AIADMK party which include Thiru R.Samy, MLA of Melur constituency. As already pointed out, the case after investigation, has resulted in filing of positive charge sheet, which was taken on file by the Court of Judicial Magistrate, Thirumangalam on 29.12.2010 in P.R.C.No.30/2010 and summons had

been issued to all the accused and since some of them did not appear, the case was split up as P.R.C.No.17/2014 and both the cases were pending committal on the file of the said Court.

28. This Court had also gone through the records relating to the above said two Preliminary Register Cases pending on the file of the Court of Judicial Magistrate, Thirumangalam and found that repeatedly petitions were filed under Section 317 CrPC to condone the absence of the accused. Thiru.R.Samy, MLA, after waiting nearly for 3 years, suddenly thought fit to lodge a complaint in the form of representation against the writ petitioner and other officials and accordingly, gave representation to the Superintendent of Police, Madurai Rural District on 08.08.2013. It is to be noted at this juncture that at that point of time, Thiru V.Balakrishnan, IPS, was the Superintendent of Police, Madurai District and as per the endorsement of the Inspector General of Police, South Zone, Madurai dated 30.07.2013, he conducted enquiry based on the said representation/complaint and concluded that Thiru R.Samy, MLA of Melur constituency was not part of the unlawful assembly which damaged the police vehicles at Eliyarpatti and hence, their involvement in Koodakovil Police Station Cr.No.155/08 is doubtful. In the said Inquiry Report, no adverse comments have been made against the writ petitioner and in fact, nothing has been stated against the Inspector of Police Ramakrishnan and DSP - Thiru Shahjahan, against whom also Thiru.R.Samy had made allegations. The Disciplinary Authority, namely Additional Director General of Police, Administration, Chennai, solely on the basis of the Inquiry Report dated 28.08.2013 of Thiru V.Balakrishnan, Superintendent of Police, Madurai District, had issued the charge memo against the writ petitioner without any loss of time on 28.09.2013.

29. It is a well settled position of law that delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Articles 14 and 21 of the Constitution of India and each case depends upon its own facts. Delay by itself is not a ground to quash the charge memo and it depends upon the nature of offence and interest of justice which is paramount to determine as to whether the charge memo could be interfered in the given facts and circumstances.

30. This Court, in the order dated 21.01.2012 made in W.P. (MD).No.3898 of 2008 [2012 SCC OnLine Mad 5248], has considered the plea of 4 years delay in issuing the charge memo and after taking into consideration of the judgment of this Court K.Deivendran v. The District Collector, Dindigul District, Dindigul [(2012) 4 MLJ 576], which in-turn referred to number of judgments of the Hon'ble Supreme Court, held as follows:

"12. The Supreme Court repeatedly held that the

inordinate delay in initiation of the disciplinary proceedings is a ground for quashing the charge memo unless the respondent satisfactorily explains the delay. When no explanation is forthcoming with regard to the delay, necessary the unexplained delay would cause serious prejudice to the employee. Thereafter, the charge memo will have to be quashed as held the Supreme Court in *State of Andhra Pradesh v. N.Radhakrishnan*, (1998) 4 SCC 154; *P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board*, 2005 (4) CTC 403 and *Rangeet Singh v. State of Haryana*, 2008 (3) CTC 781. There are no special circumstances to explain the inordinate delay and therefore, the charge memo is vitiated...

14. Normally, the disciplinary proceedings should be allowed to take their course as per the relevant rules, but then the delay defeats justice, delay causes prejudice to the charged officer, unless it can be shown that he it to be blamed for the delay or where there is proper explanation for the delay in conducting disciplinary proceedings. In this case, the respondent has not explained the reason as to why there was an inordinate delay for the issuance of the charge dated 03.11.2009. Therefore, the delay caused in initiating the disciplinary proceedings for more than seven years appears to be inordinate and unexplained"

31. The petitioner has taken the said ground in ground No. (b) and the answering respondent, namely the Disciplinary Authority, who had issued the charge memo, in para 11 of the counter affidavit had denied that there is an inordinate delay in taking departmental action and stated that the petitioner's misconduct came into light only after the completion of preliminary enquiry conducted on the basis of the representation dated 24.07.2013 submitted by Thiru R.Samy, MLA and in paras 12 and 13 of the counter affidavit would state that the writ petitioner was very much available in the scene and the preliminary enquiry conducted by Thiru.V.Balakrishnan, IPS, then Superintendent of Police reveals the role of the petitioner indulging in reprehensible conduct and negligence of duty for the reasons best known to him.

32. This Court, while answering Question No.I had concluded that the preliminary enquiry report submitted by Thiru.V.Balakrishnan, IPS, nowhere had stated anything with regard to the alleged misconduct on the part of the petitioner and omitted to give any allegation against other named police officials and also held that pendency of criminal prosecution it is not open to the disciplinary authority to state that the case is a foisted one. The delay in issuing the charge memo assumes

great significance for the reason that the petitioner having become fully qualified to be considered for appointment by promotion as a member of Indian Police Service was visited with disciplinary proceedings in the form of charge memo dated 28.09.2013. In the additional typed set of paper No.II filed by the petitioner, Office of the Director General of Police, Chennai-4 had issued memorandum dated 26.03.2014, giving the names of the officers coming in the zone of consideration for inclusion in the IPS Select List for the year 2013 and they were called upon to furnish the required certificate on or before 28.03.2014 in triplicate in the prescribed proforma enclosed herewith and the name of the writ petitioner is found in Sl.No.1.

33. Ministry of Home Affairs, Government of India, vide Notification dated 12.06.2015, has approved the Select List of the year 2013 prepared by the Selection Committee in its meeting held on 09.02.2015, containing 7 persons and the name of the writ petitioner is in Sl.No.2 and his name has been included in the said provisional select list subject to the clearance of disciplinary proceedings pending against him.

34. This Court, during advancement of arguments in these writ petitions, had taken note of the submissions made by the learned counsel appearing for the petitioner that the Select List will remain in force till 31st December of the year in which the meeting of the Selection Committee was held up, had directed the Ministry of Home Affairs, Government of India as well as the Union Public Service Commission to keep the notification dated 12.06.2015 alive in force till the disposal of these writ petitions and therefore, the selection of the petitioner is not declared as lapsed. In the light of the selection of the petitioner to Indian Police Service (Appointment by Promotion) Regulations, 1955, timing of the charge memo assumes importance and as already pointed out it is also to be noted at this juncture that Thiru R.Samy, MLA, one of the accused in P.R.C.No.30/2010, had waited for nearly 5 years and at the verge of the petitioner becoming a member of Indian Police Service, thought fit to lodge a complaint against him on 08.08.2013 to the Superintendent of Police, Madurai District, which was promptly taken cognizance by the Inspector General of Police, South Zone, Madurai and the said official in-turn directed Thiru V.Balakrishnan, Superintendent of Police, Madurai District to conduct enquiry, who after conclusion of enquiry, has submitted a report on 28.08.2013 and the charge memo, based on the said report, came to be issued against the petitioner without any loss of time on 28.09.2013.

35. In the context of the above facts and circumstances, delay in initiating disciplinary proceedings, that too on the basis of the Inquiry Report dated 28.08.2013, would definitely result in prejudice to the petitioner.

ISSUE NO.III- MALAFIDE

36. It is also the submission of the learned counsel appearing for the petitioner that the timing of the charge memo is actuated by malice and time has been chosen only to prevent the petitioner from entering into Indian Police Service. Per contra, it is the submission of the learned Advocate General that malafide is to be alleged and strictly proved and in the case on hand, the Disciplinary Authority, based on the Inquiry Report dated 28.08.2013, had framed charges and the petitioner, either in the affidavit or in the form of other materials, has failed to prove and substantiate the malafide act on the part of the respondents and would further submit that this Court, at the stage of charge memo, cannot interfere over the same and thereby permit the disciplinary enquiry to go on to reach the logical conclusion.

37. In Prabodh Sagar v. Punjab State Electricity Board and Others [(2000) 5 SCC 630], it has been observed that 'Malice' means and implies spite or ill-will. Incidentally, be it noted that the expression "mala fide" is not meaningless jargon and it has its proper connotation. Malice or mala fides can only be appreciated from the records of the case in the facts of each case. There cannot possibly be any set guidelines in regard to the proof of mala fides. Mala fides, where it is alleged, depends upon its own facts and circumstances.

38. In State of A.P. v. Govardhanlal [(2003) 4 SCC 739], it has been observed that the legal meaning of 'malice' is ill-will or spite towards a party and any indirect or improper motive in taking an action. This is sometimes described as "malice" in fact. "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, "it is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite. It is deliberate act in disregard of the rights of others.

39. This Court, keeping in mind the above cited decisions, has carefully scanned through the entire materials placed before it.

40. This Court, while answering Issue No.II, had observed as to the timing of the charge memo especially with regard to the fact that the petitioner becoming a member of Indian Police Service in terms of Indian Police Service (Appointment by Promotion) Regulations, 1955. The Inquiry Report of Thiru V.Balakrishnan, IPS, then Superintendent of Police, Madurai District dated 28.08.2013, have not at all implicated the petitioner without any particular misconduct and in fact completely silent with regard to the complaint made by Thiru Samy, MLA against two other police officials. Even for the sake

of arguments that the case in Crime No.155/08 registered by Koodakovil Police Station is a foisted one, the fact remains that positive final report was taken cognizance by the Court of Judicial Magistrate, Thirumangalam in P.R.C.No.30/2010, which later on came to be withdrawn by the State under Section 321 CrPC after filing of these writ petitions.

41. This Court had also gone through the records in P.R.C.No.30/2010. The arrested accused, after remand, including Thiru R.Samy, M.L.A were produced before the Judicial Magistrate, Thirumangalam on 30.12.2008 at 12.25 p.m. and having taken note of the submission made by the accused that they were assaulted by police personnel on 29.12.2008 and further that they have not been given food and drinks, the learned Magistrate ordered to give them food and drinks and also to provide necessary medical treatment. Thiru R.Samy, MLA, for the reasons best known to him, had kept quiet for nearly 5 years and suddenly choose to lodge a complaint on 08.08.2013, which was immediately attended to and charge memo came to be issued against the writ petitioner on 28.09.2013.

42. This Court, while answering Question No.I, had noted that the wordings in the charge memo as well as statement of allegations made in Crime No.155/2008 registered by Koodakovil Police Station are foisted one, are unsustainable for the reason that by that time, final report was taken cognizance in P.R.C.No.30/2010 and committal proceedings are pending and therefore, it is not open to the Disciplinary Authority to assume the role of judicial forum to arrive at such a prima facie finding. In the considered opinion of the Court, it also undermines the competency and power of the judicial forum to try a criminal case and the charge memo has been issued to prevent/stall the petitioner from becoming a member of Indian Police Service.

43. It is an admitted fact that charge memo dated 28.09.2013 came to be issued on the basis of the Inquiry Report dated 28.08.2013 submitted by Thiru.V.Balakrishnan, IPS, then Superintendent of Police, Madurai District wherein there is no specific finding as to the misconduct of the writ petitioner and even as per the said report surcharge atmosphere was prevailing and as per the FIR in Crime No.155/08 lodged by Woman Sub-Inspector of Police, Tmt.Sathyaprabha, police personnel were chased by a mob belonging to AIADMK party and stones were pelted and police vehicles were damaged and the said information was passed on to higher officials as well as to the petitioner, who rushed to the spot with striking force. The said case, after investigation, has culminated into a positive final report, which was taken cognizance in P.R.C.No.30/2010 and since some of the accused did not appear, the case was split up as P.R.C.No.17/2014 and committal proceedings were not concluded.

Pendency of these writ petitions, the State sought to withdraw the said prosecution and accordingly, it was withdrawn, vide order of the Judicial Magistrate, Thirumangalam dated 27.08.2014.

44. The decisions relied on by the learned Advocate General did not lay down the proposition that the charge memo cannot be quashed at all, but lay down the proposition that it can be quashed if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. This Court while answering Question Nos.I to III had set out in detail as to the events that already took place which would clearly establish the fact that the charge memo has been issued only with a view to prevent the petitioner from becoming a member of Indian Police Service and that too at the instance of one of the charge sheeted accused, namely Thiru R.Samy, MLA of Melur Constituency of AIADMK party, who waited for nearly 3 years from the date of filing of the charge sheet and lodged the complaint belatedly not only against the petitioner but also against two other police personnel and they have been left out. The State had acted very promptly on the said complaint dated 08.08.2013 and issued the charge memo dated 28.09.2013. The urgency in which action was taken on the complaint of MLA of a ruling party/one of the charge sheeted accused, namely Thiru R.Samy would clearly indicate that departmental action initiated against the petitioner is actuated by malafide and there was an abnormal delay in launching departmental proceedings and further that the charges are also very vague which resulted in grave prejudice to the petitioner and therefore, departmental proceedings initiated against the petitioner, warrant interference.

45. In W.P.No.3510 of 2015, challenge is made to the appointment of Inquiry Officer and the rejection of the representation dated 09.01.2015 submitted by the petitioner. It is very pertinent to point out at this juncture that the officer, who has been appointed as Inquiry Officer, on an earlier occasion, ordered inquiry in respect of the complaint of Thiru R.Samy, MLA dated 08.08.2013 based on which, Inquiry Report dated 28.08.2013 was submitted and on that basis, charge memo came to be issued. The petitioner, in his representation dated 09.01.2015, in paras 2 and 3 had also pointed out the same. However, in the impugned order rejecting the said representation, it has not been dealt with at all and the said order is per se is cryptic and non speaking order.

46. In the light of the findings given above as to the impugned charge memo, this Court is inclined to quash the same and as a natural consequence, the impugned proceedings which are the subject matter of challenge in the later writ petition are also liable to be quashed.

QUESTION NO.IV - WITHDRAWAL OF PROSECUTION UNDER
SECTION 321 CrPC

47. The second respondent in W.P.No.3990 of 2014, namely the Additional Director General of Police, Administration, Chennai-600 004, has filed additional counter affidavit dated 12.11.2015, giving out certain facts as to the withdrawal of prosecution under Section 321 CrPC. It is stated in the additional counter affidavit that on 24.07.2013, Thiru R.Samy, MLA of Melur legislative constituency submitted a representation to the Office of the Director General of Police, Chennai to take action against the writ petitioner, namely Thiru M.Manohar, wherein he alleged certain series of allegations with regard to the conduct in relation to the incident leading to the registration of the FIR in Crime No.155 of 2008 on the file of Koodakovil Police Station. It is further stated in the additional counter affidavit that the Joint Secretary, Public (Law and Order-C) Department in D.O Letter No.117/L&O-C/2014-1 dated 07.01.2014, instructed the District Collector, Madurai District to obtain legal opinion of the Public Prosecutor or Assistant Public Prosecutor as to whether the case registered in Koodakovil Police Station Crime No.155/2008 under sections 147, 148, 353, 307 r/w. 149 IPC and Section 3 of The Tamil Nadu Public Property (Prevention of Damage and Loss) Act in P.R.C.Nos.30/2010 and 17 of 2014 is fit for withdrawal in public interest and in the interest of administration of justice in terms of Section 321 CrPC. The Public Prosecutor, Madurai District, in his opinion dated 31.01.2014 in P.R.C.No.30/2010, after going through the records, opined that nowhere in the case diary, the prominent persons, namely Tvl. O.Pannerselvam, Sengottaiyan, Pollachi Jeyaraman, Samy, have not been spoken out either by the petitioner or the Deputy Superintendent of Police, namely Tvl.Vijayaragavan and Sundaresan and moreover, there is no evidence to the effect that who are all injured and medical treatment undergone by them and that statements recorded under Section 161 CrPC have been tailor-made and it does not invoke confidence for better prosecution before the Court and therefore, opined that it is not a fit case for prosecution and it may not withstand stiff cross examination of defence and on the ground of public interest and in the interest of administration of justice, the case may be withdrawn as per Section 321 CrPC.

48. The Assistant Public Prosecutor Grade I/Additional Chief Judicial Magistrate (E.O) I/c. Judicial Magistrate, Thirumangalam, vide opinion dated 08.07.2014 in P.R.C.No.17/2014 has opined that all the witnesses LW1 to LW16 are police witnesses coded in the charge sheet and LW17 and LW18 are only private witnesses and they are mahazar witnesses and no material objects have been seized from the scene of occurrence as per

mahazar and there is no evidence to the effect as to who are all injured and medical treatment undergone by them and further that no specific allegations are found in the statements recorded under Section 161 CrPC as to the overt acts of the accused. It is further stated that no public or public peace and tranquility or public order got affected, no public property damaged and there are no material records and evidence available to warrant conviction and no person had sustained injury and therefore, opined that it is a fit case for withdrawal in public interest and in the interest of administration of justice.

49. The second respondent would further state in the additional counter affidavit that based on the above said two legal opinions, proposal for withdrawal of P.R.C.Nos.30/2010 and 17/2014 concerned in Koodakovil Police Station Crime No.155/2008 was sent by the Superintendent of Police, Madurai District to the District Collector, Madurai District, vide letters dated 11.02.2014 and 09.07.2014 respectively and the said official, in-turn sent a proposal to the Additional Secretary to Government, Public (Law & Order -C) Department, Secretariat, Chennai requesting for withdrawal of the above said case and the Government had issued orders in G.O.Ms.Nos.2526 and 2802 - Public (Law & Order-C) Department dated 02.07.2014 and 21.07.2014 respectively to withdraw the above said cases and based on the said Government Orders, both Preliminary Register Cases were withdrawn and the accused A1 to A39 and A1 to A27 in those cases were discharged.

50. The writ petitioner has filed a rejoinder to the additional counter affidavit stating that there is no whisper as to what could be the public interest or the interest of administration of justice that would justify the proposals for withdrawal and Section 161 CrPC statements recorded from the witnesses during the course of investigation were clear, cogent and that the charge sheet was also filed by the Public Prosecutor on 24.12.2010 and the learned Judicial Magistrate, Thirumangalam had taken cognizance of the case in P.R.C.No.30/2010 and thereafter, the case was posted and accused persons filed petitions under Section 317 CrPC to condone their absence and the trial Court had specifically observed that there is an inordinate delay and sincere steps are not being taken to serve the summons for appearance of the accused. It is further stated in the rejoinder that even as per the report of Thiru V.Balakrishnan, IPS dated 28.08.2013, the atmosphere was very much surcharged and criminal cases were withdrawn on 31.07.2014, after issuance of the charge memo dated 28.09.2013 and the events pointed out in the additional counter affidavit would make it abundantly clear that deterrent and retributive action is initiated against sincere officer for his bonafide act carried out, without any fear or favour, merely because the accused persons, who are MLAs and other leaders of a political

party, sought action with the sole aim to deprive him or prevent him from entering into Indian Police Service and prays for appropriate orders.

51. In *State of Bihar v. Ram Naresh Pandey and another* [AIR 1957 SC 389], the scope of Section 494 CrPC Old Code and 321 CrPC New Code came up for consideration and it has been held that the function of the Court, therefore, in granting its consent may well be taken to be a judicial function and it follows that in granting the consent the Court must exercise a judicial discretion and in understanding and applying the Section, two main features thereof have to be kept in mind. The initiative is that of the Public Prosecutor and what the Court has to do is only to give its consent and not to determine any matter judicially. The judicial functions, therefore, implicit in the exercise of the judicial discretion for granting the consent would normally mean that the Court has to satisfy itself that the executive function of the Public Prosecutor has not been improperly exercised, or that is it not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes and in this context, it is right to remember that the Public Prosecutor though an executive officer is, in a larger sense, also an officer of the Court and that he is bound to assist the Court with his fairly considered view and the Court is entitled to have the benefit of the fair exercise of his function.

52. In *Sheonandan Paswan v. State of Bihar and Others* [(1983) 1 SCC 438], it has been held that function of the Court under Section 321 CrPC is a limited one and intended only to prevent abuse. It is, however, a judicial function. It, therefore, becomes necessary for the Court before whom the application for withdrawal is filed by the Public Prosecutor, to apply its mind so that the appellate Court may examine and be satisfied that the Court has not accorded its consent as a matter of course but has applied its mind to the grounds taken in the application for withdrawal by Public Prosecutor. The court's duty in dealing with the application under Section 321 is not to re-appreciate the grounds which led the Public Prosecutor to request withdrawal from the prosecution but to consider whether the Public Prosecutor applied its mind as a free agent uninfluenced by irrelevant and extraneous or oblique considerations as the Court has a special duty in this regard inasmuch as it is the ultimate repository of legislative confidence in granting or withholding its consent to withdrawal from the prosecution.

53. This Court, keeping in mind the ratio laid down in the above cited decisions, has gone through the records relating to the Preliminary Register Cases.

54. The Assistant Public Prosecutor attached to the Court of Judicial Magistrate, Thirumangalam has submitted a petition dated 24.07.2014 in P.R.C.Nos.30/2010 and 17/2014 for advancement of hearing in both the cases by stating among other things that the Government had issued an order in G.O.Nos.2802 and 2826 dated 02.07.2014 and 24.07.2014 respectively for withdrawal of the above said Preliminary Registered Cases concerned in Koodakovil Police Station Crime No.155/2008 and the Superintendent of Police, Madurai District had also issued proceedings dated 04.07.2014 and 23.07.2014 respectively and after going through the proceedings, formed an opinion that the said cases are fit for withdrawal in public interest and therefore, prayed for advancing the hearing to 24.07.2014 and along with the petitions for Advance Hearing, two petitions dated 24.07.2014 signed by the Assistant Public Prosecutor Grade-I attached to the Additional Chief Judicial Magistrate, Madurai, I/c. Judicial Magistrate Court, Thirumangalam were filed and on the docket sheets of the above said two petitions, learned Magistrate had passed the following orders dated 27.08.2014 and 31.07.2014 respectively and it is relevant to extract the same:

Order dated 27.08.2014: Heard. Records perused. In the interest of justice, this petition is allowed. APP is permitted to withdraw the case in P.R.C.No.17/14.

Order dated 31.07.2014: Heard. Records perused. In the interest of justice, this petition is allowed and APP is permitted to withdraw the case in P.R.C.No.30/10.

The petition filed for withdrawal of prosecution in P.R.C.No.17/14 was returned on 30.07.2014 and it was resubmitted/represented on 28.08.2014. However it is very curious to note that though the application was represented on 28.08.2014, the learned Magistrate has passed the order permitting the APP to withdraw the prosecution even on 27.08.2014.

55. This Court, in the latter portion of the order, has dealt with the incidental issue as to the manner in which criminal proceedings have been withdrawn under Section 321 CrPC. A perusal of the records summoned by this Court from the Court of Judicial Magistrate, Thirumangalam in P.R.C.No.30/2010 would indicate that the learned Judicial Magistrate while passing orders permitting the prosecution to withdraw the case, had given a complete go-by to the said provision. The State, took a decision to withdraw the criminal prosecution despite the fact that there was a serious law and order problem, wherein police personnel were chased and Government vehicles were damaged, still choose to continue with the departmental proceedings

initiated against the petitioner based on the Inquiry Report dated 28.08.2013. The said report does not implicate the petitioner with any serious misconduct and in fact, the officer, who conducted the Inquiry, did not aware of the filing of the charge sheet in the said crime number and ignoring the said vital fact, has also chosen to give a finding as to the non-involvement of Thiru R.Samy, MLA, which falls within the exclusive domain of the competent judicial forum, namely the Court of Judicial Magistrate, Thirumangalam. The Disciplinary Authority, namely the Additional Director General of Police, Administration, in the charges framed against the writ petitioner as well as the statement of allegations/imputations had stated that the case in Crime No.155/08 is a foisted one and it is not open to him to say so for the reason that at the relevant point of time, criminal prosecution was pending in the form of committal proceedings.

56. This Court, on it's administrative side, also runs the Judicial Academy and imparting training at regular intervals to Subordinate Judicial Officers which include Judicial Magistrates and provide them with written materials also. Therefore, this Court is certain that the learned Judicial Magistrate, Thirumangalam, who passed the above said orders, could have been imparted with training and update of legal knowledge. Unfortunately the said Officer had failed to apply his mind to the relevant legal provisions as well as to the contents of the application filed by the prosecution for withdrawal. The concerned Court is under legal mandate to satisfy itself that the conclusion of the learned Public Prosecutor for withdrawal of the prosecution would serve public interest and that he has considered the materials in good faith to reach the said conclusion and the order passed by the Court permitting the prosecution to withdraw the case must reflect application of mind that it has done all that law requires to do before granting consent. However, in the case on hand, the learned Judicial Magistrate, Thirumangalam, without satisfying the legal requirement, permitted the prosecution to withdraw P.R.C.Nos.30/10 and 17/2014 concerned in Koodakovil Police Station Cr.No.155/08, for a mere asking.

57. This Court while answering Question No.III has held that the timing of the disciplinary proceedings initiated against the writ petitioner is most important for the reason that at that time he was already selected for appointment to Indian Police Service and inclusion of his name in the panel for promotion to Indian Police Service is subject to Disciplinary Proceedings. The State, pendency of these writ petitions, had obtained legal opinion and passed two Government Orders, based on which petitions were filed before the Court of Judicial Magistrate, Thirumangalam, who permitted them to withdraw the prosecution. Thiru R.Samy, MLA of Melur constituency had also

filed a private complaint against the writ petitioner, which was taken cognizance and committed to the Principal Sessions Court, which took it on file in Spl.SC.No.1/2011 and the petition filed by him for discharge in Crl.M.P.No.1215 of 2013 had ended in dismissal on 23.01.2013 and revision filed challenging the said order in Crl.R.C.(MD).No.146 of 2013 had also ended in dismissal on 07.08.2013 and Special Leave Petition in SLP(Crl.) No.9160/2013 was filed before the Hon'ble Supreme Court of India and vide order dated 29.11.2013, the Hon'ble Supreme Court had granted stay of further proceedings in the private complaint in Spl.SC.No.1/2011 pending on the file of the Principal Sessions Court, Madurai.

58. This Court, on an overall consideration and appreciation of the entire facts and circumstances, if of the considered view that the initiation of disciplinary proceedings per se is malafide and even otherwise, it cannot withstand the legal scrutiny in the light of the vagueness of the charges coupled with long delay in initiating the disciplinary proceedings.

59. In the result,

(i) W.P.No.3990 of 2014 is allowed and the proceedings of the second respondent in P.R.No.16/2013 dated 28.09.2013 is quashed. No Costs. Consequently, connected miscellaneous petition is closed.

(ii) W.P.No.3510 of 2015 is allowed and the proceedings of the first respondent in G.O.Ms.No.901, Home (SC) Department dated 03.12.2014 and Lr.No.HSC.5/877-5/2014, Home (SC) Department dated 29.01.2015 and the order passed by the second respondent in Rc.No.ConII(1)175401/2013 dated 03.02.2015 are quashed. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

jvm

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Home (SC) Department,
Secretariat, Chennai-600 009.
- 2.The Director General of Police,
Tamil Nadu, Kamarajar Salai,
Chennai-600 004.
- 3.The Additional Director General of Police (Admn.)
O/o.The Director General of Police,
Kamarajar Salai,
Chennai-600 004.
- 4.Thiru.Abhay Kumar Singh, I.P.S.,
Inspector General of Police,
Southern Zone, Madurai.
- 5.The Court of Judicial Magistrate,
Thirumangalam, Madurai District.
- 6.The Secretary to the Government,
Ministry of Home Affairs,
Government of India,
New Delhi.
- 7.The Secretary,
Union Public Service Commission,
Dholpur House,
Shahjahan House,
New Delhi.

+2 ccs to Mr.M.Ravi Advocate sr.29142/16
+1 cc to Government Pleader sr.29206/16

सत्यमेव जयते

Common Order
in W.P.Nos.3990 of 2014
and 3510 of 2015

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aa13/06/2016

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