

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.07.2016

DELIVERED ON: 05.08.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. Nos.30625 of 2015 and M.P. Nos.1 & 2 of 2015
Crl.O.P. No.30626 of 2015 and M.P. No.1 of 2015

Kavin Vivek

Petitioner in Crl.O.P.
No.30625 of 2015

D. Vivekanandan

Petitioner in Crl.O.P.
No.30626 of 2015

vs.

1 State
represented by the Inspector of Police
V-5 Police Station
Thirumangalam
Chennai 600 101

2 A. Ganapathy

Respondents in Crl.O.P.
No.30625 of 2015

(R2 impleaded vide order dated 08.02.2016 passed in
Crl.M.P. No.1415 of 2015)

1 State
represented by the Inspector of Police
V-5 Police Station
Thirumangalam
Chennai 600 101

2 A. Ganapathy

Respondents in Crl.O.P.
No.30626 of 2015

(R2 impleaded vide order dated 08.02.2016 passed in
Crl.M.P. No.1416 of 2015)

Prayer in Crl.O.P. No.30625 of 2015:

Criminal Original Petition filed under Section 482, Cr.P.C.,
seeking to quash the final report in C.C. No.99 of 2015 on the
file of the X Metropolitan Magistrate, Chennai.

Prayer in Crl.O.P. No.30626 of 2015:

Criminal Original Petition filed under Section 482, Cr.P.C., seeking to quash the final report in C.C. No.99 of 2015 on the file of the X Metropolitan Magistrate, Chennai.

For petitioner in :Mr. I. Subramanian, Sr. Counsel
Crl.O.P. No.30625/2015 for M/s. Abdul Hameed

For petitioner in :Mr. P.H. Pandian, Sr. Counsel
Crl.O.P. No.30626/2015 for M/s. Abdul Hameed

For R1 in :Mr. C. Emalias
both the Crl.O.Ps. Addl. Public Prosecutor

For R2 in :Mr. A. Selvendran and
both the Crl.O.Ps. :Mr. R. Sankara Subbu-Intervenor

COMMON ORDER

These Criminal Original Petitions are filed seeking to quash the final report in C.C. No.99 of 2015 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai.

2 The facts obtaining in this case embody the anxiety of India's educated village youth to get State employment and how their yearnings can be exploited by charlatans at high places.

3 For the sake of convenience, the parties will be referred to by their name.

4 A. Ganapathy, aged 60 years, is a Press Reporter and he knows D.Vivekanandan, I.A.S. (A2) and his son Kavin Vivek (A1) intimately. D.Vivekanandan, I.A.S., (A2) during 2013, was working as Project Director in Tamil Nadu State AIDS Control Society in the cadre of Secretary to the Government of Tamil Nadu and he was living with his son at No.26, A.B.E.A. Nagar, Thiruvannamiyur, Chennai.

5 It is common knowledge that appointment to the posts of Public Relations Officer in the Department of Information and Public Relations in the State Government is neither through the Tamil Nadu Public Service Commission nor through Employment Exchange, but, by direct appointment by the State Government. Every political party that comes to power in the State makes appointments to the posts of Public Relations Officer in every district in order to do propaganda of the works done by the

Government throughout the State. Therefore, whichever party comes to power, there will be a scramble for appointment to these posts.

6 It is the case of Ganapathy that ten persons, viz., K.Vijayarajan, N.L.Jameema, T. Dinesh, R. Solai Ganesh, C.Vijayakumar, M. Sumathi, R.Jagannathan, K. Sudha, M.S. Aruna and M.S. Anand (hereinafter referred to as "the victims") approached him for getting appointment as Public Relations Officer with the help of his contacts with the Government.

7 According to Ganapathy, he took the victims to the Thiruvannamiyur residence of D. Vivekanandan, I.A.S., (A2) where, each of the victims paid Rs 13 lakhs on 14.09.2013 to D. Vivekanandan, I.A.S. (A2) and his son Kavin Vivek (A1) and that D. Vivekanandan, I.A.S. (A2) promised to get them the job. Thus, a total sum of Rs.1.30 crores was received by D.Vivekanandan, I.A.S. (A2) and Kavin Vivek (A1) and according to Ganapathy, Kavin Vivek (A1) gave a receipt on a 20 rupee non-judicial stamp paper, acknowledging receipt of Rs.1.30 crores from the 10 victims and promised them to get the job or otherwise, return the money. As time passed, the promised job was not got for the victims and so, the victims started putting pressure on Ganapathy.

8 It is the contention of Ganapathy that on 16.12.2013, he met Kavin Vivek (A1) and at that time, Kavin Vivek (A1) told him that he would bring the money to a place near S.B.O.A. School in Anna Nagar-West around 11 a.m. on 25.12.2013. Accordingly, on 25.12.2013, around 11 a.m., Kavin Vivek (A1) came to the agreed spot and showed a suitcase that was kept in his car and told Ganapathy that it contains cash of Rs.1.30 crores and asked Ganapathy to return the original receipt. When Ganapathy handed over the original receipt, Kavin Vivek (A1) got into his car and sped away. According to Ganapathy, he had taken a photocopy of the receipt which was available with him.

9 Thereafter, Ganapathy prepared a complaint and lodged the same on 25.12.2013, along with the photocopy of the receipt, to the Inspector of Police, V-5 Thirumangalam Police Station, within whose jurisdiction, S.B.O.A. School falls. Since the Inspector of Police did not register F.I.R., Ganapathy filed CrI.O.P.No.26 of 2014 seeking a direction to the police to register F.I.R. When CrI.O.P. No.26 of 2014 came up for hearing (before C.T. Selvam, J.) on 10.01.2014, the learned Additional Public Prosecutor informed the Court that the police have registered a case based on the complaint dated 25.12.2013 given by Ganapathy in V-5 Thirumangalam P.S. Crime No.2603 of 2013 on

31.12.2013 for offences under Section 420, 406 and 506(II) IPC. Recording the said submission, Crl.O.P. No.26 of 2014 was closed by this Court on 10.01.2014. The Inspector of Police, V-5 Thirumangalam P.S., completed the investigation in Crime No.2603 of 2013 and filed a final report on 09.01.2015 against Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) and the same was taken on file as C.C. No.99 of 2015 by the X Metropolitan Magistrate Court, Egmore, Chennai, for offences under Section 406, 420 and 506(II) IPC and non-bailable warrants were issued for securing the presence of the accused.

10 Since the police were not executing the non-bailable warrants, Ganapathy filed Crl.O.P. No.6827 of 2015 for a direction to the police to execute the non-bailable warrants against the accused. When this case came up for hearing before this Court on 22.06.2015 (before P.N. Prakash, J.), Mr. R. Sankarasubbu, learned counsel appearing for Ganapathy submitted that the police are soft-pedaling the whole case and are not executing the non-bailable warrants in view of the pressure that is being brought upon the police by the I.A.S. lobby. After hearing Mr. R. Sankarasubbu and Mr.S.Shanmugavelayutham, the learned State Public Prosecutor, this Court passed the following order in Crl.O.P. No.6827 of 2015 on 22.06.2015.

"It is seen that the second accused in this case, D. Vivekanandan is a former IAS officer, who had retired from service very recently. The 1st accused in this case is his son. The allegations against the accused is that they received Rs.1.3 crores from 13 persons for getting job in the Secretariat. Therefore, the respondent police registered a case in Crime No.2603 of 2013 and proceeded with the investigation. Even during the course of investigation, it appears that the accused were not arrested by the police perhaps, because, A2 was a serving IAS officer then.

2. The respondent police have conducted a fair investigation and they have filed a final report before the learned XX Metropolitan Magistrate, Egmore and the same has been taken on file as C.C. No.99 of 2015. The accused did not appear before the learned Magistrate and Non-Bailable Warrant is pending against them, which the police are not able to execute.

3. In the meantime, it appears that there is some pressure on the police from serving bureaucrats lobby to torpedo the main case itself and therefore, the police have filed a petition under Section 173(8)

Cr.P.C. for further investigation. While so, smelling rat, one of the victims has approached this Court for a direction to the police to execute the Non-Bailable Warrant and bring the offenders to justice.

4 Mr. C. Ramalingam, Inspector of Police, V-5 Thirumangalam Police Station, Anna Nagar, Chennai - 40, has filed a status report, wherein, he has stated that a special party has been formed to nab the accused. This Court directs the Deputy Commissioner of Police, Anna Nagar, to supervise the case and take steps for apprehending the accused. Since this Court is monitoring the case, post the matter after three weeks for the police to file status report.

Post on 13.07.2015."

11 Immediately, Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) filed CrI.O.P. No.16044 of 2015 before this Court for anticipatory bail. In the meantime, Kavin Vivek (A1) surrendered before the X Metropolitan Magistrate Court, Egmore, Chennai in C.C. No.99 of 2015 and he was released on bail and therefore, his counsel withdrew the prayer for anticipatory bail for him in CrI.O.P. No.16044 of 2015. As regards D. Vivekanandan, I.A.S. (A2), this Court (R.Subbiah, J.) granted anticipatory bail in CrI.O.P. No.16044 of 2015 on 02.07.2015 on condition that he should surrender before the X Metropolitan Magistrate Court, Egmore, Chennai and furnish a bond for Rs.10,000/- with two sureties.

12 On 13.07.2015, when CrI.O.P. No.6827 of 2015 filed by Ganapathy came up for hearing before this Court (P.N. Prakash, J.), the learned Public Prosecutor brought to the notice of this Court that Kavin Vivek (A1) had surrendered and D. Vivekanandan, I.A.S. (A2) was granted anticipatory bail. Recording this development, CrI.O.P. No.6827 of 2015 was closed on 13.07.2015.

13 Thereafter, Kavin Vivek (A1) filed CrI.O.P. No.18766 of 2015 and D.Vivekanandan, I.A.S. (A2) filed CrI.O.P. No.18767 of 2015 for quashing the charge sheet in C.C. No.99 of 2015 pending on the file of the X Metropolitan Magistrate Court, Egmore, Chennai. When these two petitions came up for hearing on 28.07.2015 (before P.N. Prakash, J.), the following order was passed:

"3. When this Court was about to dismiss these petitions on merits, the learned counsel for the petitioners sought permission to withdraw these petitions and also for dispensing with the personal appearance of the petitioners before the Trial Court and has made an endorsement to that effect.

In view of the above, these Criminal Original Petitions are dismissed as withdrawn.

As regards the request for dispensing with the personal appearance as the petitioner is 60 years old, this Court directs the petitioner to appear before the Trial Court for collecting the papers under Section 207 Cr.P.C., for answering the charge, for answering questions under Section 313 Cr.P.C. and on the day of judgment. For the other hearings, the petitioner shall file a petition before the Trial Court that his counsel will cross examine the witnesses without insisting for his presence and that he will not dispute his identity. On such petition being filed, the Trial Court is directed to liberally consider the same. If the petitioner adopts dilatory tactics, the Trial Court is entitled to insist the presence of the petitioner. Consequently, connected Miscellaneous Petitions are closed."

14 Thereafter, the second round of quash petitions commenced with Kavin Vivek (A1) filing CrI.O.P. No.30625 of 2015 and D. Vivekanandan, I.A.S. (A2) filing CrI.O.P. No.30626 of 2015, both under Section 482 Cr.P.C. through a different counsel for quashing the prosecution in C.C. No.99 of 2015, but, without impleading Ganapathy as a party. In these petitions, they have also not disclosed the factum of having filed CrI.O.P. Nos. of 18766 and 18767 of 2015 earlier, for the same relief which were dismissed by this Court, as stated above. It may be necessary to state here that in both the earlier quash petitions, viz. CrI.O.P. Nos. 18766 and 18767 of 2015, Ganapathy was shown as second respondent, as he being the de facto complainant.

15 Getting wind by this second attempt by Kavin Vivek (A1) and D.Vivekanandan, I.A.S. (A2) to have the prosecution quashed, Ganapathy filed an impleading application on 02.02.2016, seeking to implead himself as a party in the two quash applications, viz., CrI.O.P. Nos.30625 and 30626 of 2015 filed by Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) respectively, which were allowed by this Court on 08.02.2016 (by R. Mala, J.).

16 When the present quash petitions were listed before learned Sister R.Mala,J., all the facts were brought to her notice and hence, the learned Judge passed the following order on 09.03.2016:

"5. But now, after giving another portfolio to brother Judge P.N. Prakash, the petitioners/A.1 and A.2 have filed the present petitions seeking for the same relief and during the course of argument, the learned counsel for the petitioners has also raised additional ground for quashing the proceedings in C.C. No.99 of 2015.

6 In the petitions filed for quashing the proceedings in C.C. No.99 of 2015, though already, an order has been passed by brother Judge P.N. Prakash, as soon as the Portfolio of the learned Judge has been changed, the petitioners have filed the present petitions seeking the same relief. So, it would amount to forum shopping and therefore, this Court is of the view that it is a fit case for placing the matter before the same Judge.

7 Hence, the Office is directed to post the matter before Justice P.N. Prakash, after obtaining necessary orders from My Lord, the Hon'ble The Chief Justice."

17 Only under such circumstances, these matters were listed before this Court (P.N. Prakash, J.), on the orders of the Hon'ble Chief Justice.

18 Heard Mr. I. Subramanian and Mr. P.H. Pandian, learned Senior Counsel, appearing for Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) respectively, Mr. C.Emalias, Additional Public Prosecutor, appearing for the respondent State and Mr. A. Selvendran and Mr. Sankarasubbu for Ganapathy.

19 This Court would have dismissed these petitions in limine on the short point that Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) have adopted sharp practices and were resorting to forum shopping, but for certain startling facts that were brought to the notice of this Court during the course of arguments.

20 The learned Senior Counsel for Kavin Vivek (A1) and D.Vivekanandan, I.A.S. (A2) submitted that Ganapathy, the de facto complainant, is a shady character and that he had engineered this prosecution in connivance with A. Shankar, the Inspector of Police, V-5, Thirumangalam Police Station, with whom he was very close. They contended that Kavin Vivek (A1) had not executed the receipt dated 14.09.2013 on a 20 rupee non-judicial stamp paper, as alleged by Ganapathy and he had contrived a story, as if the original receipt was snatched away by Kavin Vivek (A1) on 25.12.2013 near S.B.O.A. School.

21 This Court gave its anxious consideration to this aspect and perused the photocopy of the alleged receipt. Admittedly, even according to Ganapathy, he had given only

photocopy of the receipt when he gave the complaint on 25.12.2013, because according to him, the original was snatched away by Kavin Vivek (A1) on 25.12.2013 near S.B.O.A. School. On a perusal of the same, it is seen that the 20 rupee non-judicial stamp paper has been purchased on 12.09.2013 in the name of Ganapathy and the receipt strangely has the attestation of one A. Mani, Advocate and Notary Public at No.151, Thambu Chetty Street, Room No.4, I Floor, Chennai. This Court can take judicial notice of certain notorious facts, viz., that Thiruvananthapuram in Chennai is at the South end; S.B.O.A. School at Anna Nagar (West) is at the western end and Thambu Chetty Street, Chennai -1 is near the High Court in North Chennai. All these three places will easily form a big triangle. The failure of the police to investigate this aspect is indeed disturbing.

22 During the course of arguments, learned Senior Counsel for Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) produced typed set of papers containing the photocopies of the applications given by the 10 victims with their photographs affixed thereon, for the post of Public Relations Officers, which are found in pages 52 to 62 of the typed set of papers titled "Index to Additional typed set" dated 04.01.2016 signed by the counsel on record in Crl.O.P. No.30626 of 2015.

23 This Court asked a pointed question to Mr. I. Subramanian, learned Senior Counsel, as to how the accused-Kavin Vivek and D. Vivekanandan, I.A.S., got the photocopies of the application given by the 10 victims addressed to the Director of the Department of Information and Public Relations. After confabulation with the instructing counsel, Mr.I. Subramanian, learned Senior Counsel, submitted that he is not able to explain the source. Therefore, an adverse inference has to be perforce drawn against the accused with respect to this.

24 On a reading of the application of the ten victims, it is seen that most of them belong to Dalit community and hail from far flung villages in the State. They have the minimum degree qualification and it is obvious that they are in dire need of employment. In their statement to the police, they have all stated that they have paid Rs.13 lakhs each through Ganapathy to Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2). Therefore, I have no reason to conclude that a false case has been foisted against Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) by the police.

25 On the contrary, the conduct of Ganapathy, Kavin Vivek (A1) and D.Vivekanandan, I.A.S. (A2) arouses a strong suspicion that all three of them were in league to cheat the 10 victims on the promise of getting them State employment.

26 Admittedly, Ganapathy is aged 60 years and he is a Press man. It is not his case that he is also one of the victims. It is his clear admission that he knows Kavın Vivek (A1) and D. Vivekanandan, I.A.S. (A2) and that he collected Rs.1.30 crores from the ten victims and handed over the same to the accused at their residence in Thiruvanniyur on 14.09.2013.

27 The learned Senior Counsel appearing for Kavın Vivek (A1) and D.Vivekanandan, I.A.S. (A2) prayed in chorus for ordering re-investigation of the case either by the C.B.I. or by C.B.-C.I.D.

28 Now, the question is, can Ganapathy be let off as a whistleblower? Though apparently, Ganapathy is the first informant, that cannot be a reason to continue him in that status. Cases in which complainants are transposed as accused are a legion. In this case, the very complaint dated 25.12.2013 given by Ganapathy, which formed the basis for registration of the FIR, proprio vigore, prima facie, discloses the following offences:

i Conspiracy amongst D.Vivekanandan, I.A.S (A2) and Kavın Vivek (A1) and Ganapathy to illegally collect Rs.1.30 crores from the 10 victims for getting them appointment as Public Relations Officers in the State Government and cheat them thereby, attracting Section 120-B, IPC read with Sections 7 and 13(1)(d) of the Prevention of Corruption Act and Section 120B read with Section 406 and 420, IPC;

ii Against D. Vivekanandan, I.A.S. (A2) under Sections 7 and 13(1)(d) of the Prevention of Corruption Act for obtaining Rs.1.30 crores from the 10 victims for getting them appointment in the Government by abusing his official position and under Section 406 and 420 IPC for receiving the sum of Rs.1.30 crores and not returning the said amount;

iii Against Kavın Vivek (A1) under Sections 8 and 9 of the Prevention of Corruption Act and under Section 406 and 420 IPC; and

iv Against Ganapathy under Sections 8 and 9 of the Prevention of Corruption Act, under Section 406 and 420 IPC and under Section 12 of the Prevention of Corruption Act for abetment of the offence under Section 7 of the Prevention of Corruption Act.

29 Though Kavin Vivek (A1) and Ganapathy are private persons, they can be prosecuted under Sections 8 and 9 of the Prevention of Corruption Act in the light of the categorical statement of law by the Supreme Court in State through Central Bureau of Investigation vs. Jitender Kumar Singh [(2014) 11 SCC 724]. As regards the 10 victims, though they are bribe givers, they are protected by Section 24 of the Prevention of Corruption Act.

30 When the complaint dated 25.12.2013 given by Ganapathy discloses so many offences, as stated above, the Inspector of Police, V-5, Thirumangalam Police Station, ought not to have registered the F.I.R. only for offences under Section 406 and 420 IPC. In the city of Chennai, an offence under the Prevention of Corruption Act can be investigated only by an officer of the rank of Assistant Commissioner of Police, as laid down in Section 17, *ibid*. Therefore, he should have forwarded the complaint dated 25.12.2013 given by Ganapathy to the Assistant Commissioner of Police. Of course, even after registering the F.I.R. under Sections 406 and 420 IPC, he could have still forwarded the case for investigation to the Assistant Commissioner of Police, which, he did not do.

31 The next line of enquiry is as to whether there are any pitfalls in the investigation done by the Inspector of Police, V-5, Thirumangalam Police Station, warranting re-investigation of the case.

32 After going through the final report and the accompanying documents, this Court finds the following defects shaking the very edifice of the investigation:

i When Ganapathy presented the complaint, he should have been made an accused on his own showing that he collected Rs.1.30 crores from the 10 victims and acted as a conduit of Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2).

ii The stamp vendor who is said to have sold the 20 rupee stamp paper was not examined.

iii A. Mani, B.Sc., M.L., Notary Public, who is said to have attested the receipt, was not examined.

iv No person in and around S.B.O.A. School was examined to confirm the veracity of Ganapathy's assertion that the receipt was taken away by Kavim Vivek (A1) on 25.12.2013 and that he sped away in his car.

v No steps were taken to get the admitted signatures of Kavim Vivek (A1) for comparison with the one in the photocopy of the receipt.

vi No steps were taken even to interrogate Kavim Vivek (A1) and D. Vivekanandan, I.A.S. (A2) before the final report was filed.

vii No enquiry was conducted to trace the destination of the sum of Rs.1.30 crores and recover it.

viii The Inspector of Police, V-5, Thirumangalam Police Station, has failed to recover the applications given by the 10 victims, from Kavim Vivek (A1) and D. Vivekanandan, I.A.S. (A2), the photocopies of which were filed in the typed set of papers, as stated above.

33 On the whole, the Inspector of Police, V-5, Thirumangalam Police Station, has acted as the guard of the milk and friend of the cat. In (1) Disha vs. State of Gujarat and others [(2011) 13 SCC 337, (2) State of Punjab vs. Central Bureau of Investigation and Others, [2012 (2) MLJ CrL. 420 (SC) and (3) Sudipta Lenka vs. State of Odisha and Others [(2014) 11 SCC 527], the Supreme Court has recognised the power of the High Court to quash the final report and order re-investigation of a case, where, facts and circumstances warrant.

34 In the considered opinion of this Court, this is a fit case in which, the final report filed by the Inspector of Police, V-5, Thirumangalam Police Station in Crime No.2603 of 2013 has to be quashed and re-investigation requires to be ordered.

35 The next question that arises for the consideration of this Court is as to what would be the status of the complaint dated 25.12.2013 given by Ganapathy.

36 The complaint dated 25.12.2013 given by Ganapathy, which forms the basis for the registration of the F.I.R., cannot be totally effaced, just because Ganapathy is made an accused. (See Bheru Singh vs. State of Rajasthan - Paras 15 to 19 [(1994)

2 SCC 467]. In the complaint, there are several admissions which are not confessions. They are: (i) Ganapathy is a Press Reporter; (ii) he knows Kavin Vivek (A1) and D.Vivekanandan, I.A.S., (A2) well; (iii) he knows the 10 victims well; (iv) he knows that the 10 victims wanted employment as Public Relations Officer in the State Government; (v) he introduced 10 victims to D.Vivekanandan, I.A.S. (A2) and Kavin Vivek (A1) and took them to their Thiruvannamiyur residence; (vi) the 10 victims did not get the post of Public Relations Officer and (vii) Ganapathy went to the police on 25.12.2013 and lodged the complaint.

37 Coming to the photocopies of the application forms given by the victims which are found in pages 52 to 62 of the typed set of papers about which there is copious reference above, can this Court close its eyes and leave them at that? The answer is an emphatic "no". The documents from pages 52 to 62 of the typed set of papers are photocopies and they are secondary evidence. They were produced by the accused voluntarily in the typed set of papers filed before this Court. When an opportunity was given to the learned Senior Counsel for the accused to explain the source, he could not. In the ordinary course, the police should have taken steps to arrest the accused, interrogate them and conduct recovery, based on their disclosure which is relevant under Section 27 of the Evidence Act. This has not been done in this case and now, the accused are on bail and the final report has also been filed. The option of issuing summons under Section 91 Cr.P.C. calling upon Kavin Vivek (A1) and D.Vivekanandan, I.A.S. (A2) to produce the originals of these documents is also not open in the light of the Constitution Bench judgment of the Supreme Court in State of Gujarat vs. Shyamlal Mohanlal (AIR 1965 SC 1251], wherein, Section 93 of the old Code, which is in pari materia with Section 91 of the new Code came up for consideration and the Supreme Court has held that the accused cannot be compelled to produce any document incriminating himself. Under such circumstances, photocopies of the applications given by the victims with their photographs affixed thereon, assume great significance.

38 Since the final report in V-5, Thirumangalam Police Station Cr.No.2603 of 2013 in C.C. No.99 of 2015 on the file of the X Metropolitan Magistrate Court, Egmore, Chennai, is quashed and re-investigation ordered, the consequential issue that arises for the consideration of this Court is what would be the effect of the bail obtained by Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) for the offences under Sections 406, 420 and 506(II) IPC.

39 A learned Single Judge of this Court in Dhivan vs. State, represented by the Inspector of Police, Vadalur Police Station, Vadalur, Cuddalore District [2010 (2) MWN (Cr.) 5], has

held that when once a person is granted bail for smaller offences and during investigation, if the commission of higher offences by him comes to light, the earlier bail should be cancelled and only thereafter, he can be arrested. For arriving at this conclusion, the learned Single Judge has relied upon the judgment of the Patna High Court, Rajasthan High Court and Orissa High Court and also the judgment of the Supreme Court in Hamida vs. Rashid @ Rasheed and others [(2008) 1 SCC 474].

40 In ordinary circumstances, if this Court is to disagree with the statement of law made by a learned Single Judge of this Court, the matter should be placed before the Hon'ble Chief Justice for a decision by a Division Bench. In this case, in the humble opinion of this Court, the learned Single Judge, in Dhivan's case, had not noticed the categorical statement of law made by the Supreme Court in Prahlad Singh Bhati vs. NCT, Delhi and another, [(2001) 4 SCC 280], which is as follows:

"9. The mere initial grant of anticipatory bail for lesser offence, did not entitle the respondent to insist for regular bail even if he was subsequently found to be involved in the case of murder. Neither Section 437(5) nor Section 439(1) of the Code was attracted. There was no question of cancellation of bail earlier granted to the accused for an offence punishable under Sections 498A, 306 and 406 IPC. The Magistrate committed a irregularity by holding that "I do not agree with the submission made by the learned Prosecutor in as much as if we go by his submissions then the accused would be liable for arrest every time the charge is altered or enhanced at any stage, which is certainly not the spirit of law". With the change of the nature of the offence, the accused becomes disentitled to the liberty granted to him in relation to a minor offence, if the offence is altered for an aggravated crime. Instead of referring to the grounds which entitled the respondent- accused the grant of bail, the Magistrate adopted a wrong approach to confer him the benefit of liberty on allegedly finding that no grounds were made out for cancellation of bail."

41 In Dhivan's case, the learned Single Judge has considered Hamida's case and has distinguished it on facts by saying that the observations of the Supreme Court in the said judgment, were in relation to the power of the High Court under Section 482, Cr.P.C.

42 In the considered opinion of this Court, in Hamida's case also, the Supreme Court has, in no uncertain terms, held that the accused should apply for fresh bail when once the offence is converted from a minor one to a major one. That is why, the Supreme Court in paragraph no.12 of the said judgment, has directed that the respondent / accused therein shall be taken into custody forthwith. This means that the bail that was granted to the accused in that case for the lesser offences under Section 324, 352 and 506, IPC will not enure to their benefit when the offences were converted into one under Section 304 IPC.

43 Since this Court is bound by the categorical pronouncements of the Supreme Court in Prahlad Singh Bhati's case and also Hamida's case, it may not be necessary to place the matter before the Hon'ble Chief Justice for a decision by a Division Bench.

44 In the light of the aforesaid authoritative pronouncements of the Supreme Court, in the considered opinion of this Court, the bail that was granted to Kavin Vivek (A1) and D. Vivekanandan, I.A.S. (A2) for the lesser offences will not enure to their benefit, if the offence under the provisions of the Prevention of Corruption Act is added. It is open to the Investigating Officer to arrest or not to arrest them, inasmuch as it is the exclusive prerogative of the Investigating Officer, as held by the Supreme Court in Joginder Kumar vs. State of U.P. [(1994) 4 SCC 260].

45 To whom should the re-investigation be ordered, is the next question that falls for consideration of this Court. Admittedly, D. Vivekanandan, I.A.S., though retired now, was a senior officer in the rank of Secretary in the Tamil Nadu bureaucracy. Even in the order dated 22.06.2015 in CrI.O.P. No.6827 of 2015, which has been extracted in paragraph 10 above, this Court has observed that heavy pressure is being brought upon the Inspector of Police by the serving bureaucrats lobby to torpedo the main case itself, on account of which, the Investigation Officer of the State Police himself appears to have filed an application under Section 173(8) Cr.P.C., for further investigation. Therefore, it will not be advisable to hand over the re-investigation of the case to the State Police. That apart, the Central Bureau of Investigation is a specialised agency adept in investigation of cases arising under the Prevention of Corruption Act and in this case, there are ten victims who are crying for justice from 2013.

46 In view of the foregoing discussion:

- i The final report dated 09.01.2015 in C.C. No.99 of 2015 is quashed and the case in Crime No.2603 of 2013 on the file of V-5 Thirumangalam

Police Station, is hereby transferred to the file of the Central Bureau of Investigation, Chennai, for re-investigation.

ii The Inspector of Police, V-5 Thirumangalam Police Station, is directed to hand over the case diary in Crime No.2603 of 2013 to the Office of the Joint Director, Central Bureau of Investigation, E.V.K. Sampath Building, College Road, Chennai 600 006, within a period of two weeks from the date of receipt of a copy of this order.

iii The Joint Director, Central Bureau of Investigation, Chennai, is directed to assign the investigation of the case to a competent officer of the rank of the Deputy Superintendent of Police, DSPE, for re-investigation.

iv The X Metropolitan Magistrate, Egmore, Chennai, is directed to transfer the entire original records in C.C. No.99 of 2015 in Crime No.2603 of 2013 by a special messenger to the Court of the VIII Additional Judge (Principal Judge for CBI Cases), City Civil Court, Chennai, within a period of one week from the date of receipt of a copy of this order. The Investigating Officer of the Central Bureau of Investigation will be entitled to inspect the original records and obtain certified extracts from the VIII Additional Judge (Principal Judge for CBI Cases), City Civil Court, Chennai.

v. The Central Bureau of Investigation is directed to proceed with the investigation uninfluenced by what is stated in the body of this order.

vi. The Registry is directed to put the entire typed set of papers marked "A" in red ink by this Court for easy identification, which contains the photocopies of the applications of the victims in pages 52 to 62, in a sealed cover and transmit the same through a special messenger, to the Office of the Joint Director, Central Bureau of Investigation, E.V.K. Sampath Building, College Road, Chennai 600 006.

With the above directions and observations, the Criminal Original Petitions stand disposed of. Connected Crl. M.Ps. are closed.

Sd/-
Assistant Registrar(V)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector of Police
V-5 Police Station
Thirumangalam
Chennai 600 101
- 2 The X Metropolitan Magistrate
Chennai
- 3 The VIII Additional Judge
(Principal Judge for CBI Cases)
City Civil Court, Chennai
- 4 The Joint Director
Central Bureau of Investigation
E.V.K.Sampath Building
College Road
Chennai-6
- 5 The Public Prosecutor
High Court, Madras

+2ccs to Mr.Abdul Hameed, Advocate, S.R.No.45279, 45280
+1cc to Mr.a. Selvendran, Advocate, S.R.No.44701

NM(CO)
EU(10/08/2016)

Crl.O.P. Nos.30625 & 30626 of 2015