THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.09.2016

Pronounced on :07.10.2016

Coram

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

Crl.O.P.No.18563 of 2016

A.G.Gopal ... Petitioner

Vs.

1.The Chief Secretary cum Vigilance Commissioner,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Director,
Vigilance and Anti- Corruption,
Greenways Road, Raja Annamalaipuram,
Chennai - 28. ... Respondents

Prayer : Petition filed under Section 482 Cr.P.C. praying to direct the respondents to initiate appropriate criminal action against Murugiah, I.A.S., Sudha Malya, Deputy Inspector General of Registrations, Chennai Zone, Beach Road, Chennai - 1, V.N.Ranganathan, former Sub-Registrar, (presently dismissed from his service for professional delinquency) and presently residing at No.52/72, II Cross Street, Devi nagar, Arcot Vellore District R.Kavith Rani W/o Saravana Muthu Presently employed as District Registrar, Kodambakkam, Chennai 24, residing at No.4, Akalya Apartments, No.2/55, Mambalam High Road, T.Nagar, Chennai -17, G.Sankar, No.80, Perumal Koil Street, Edaiman Nagar, Madhavaram, Palpannai, Chennai - 51, by registering the Petitioner's complaint dated 25.05.20-16, investigate into the same.

For Petitioner : Mr.P.Karl Marx

For Respondent : Mr.P.Govindarajan
Additional Public Prosecutor

ORDER

The Petitioner has preferred the instant Criminal Original Petition praying for passing of an order by this Court in directing the Respondent to initiate criminal action against 1) Murugiah, I.A.S.; 2) Sudha Malya, Deputy Inspector General of Registrations, Chennai; 3) V.N.Ranganathan (former Sub-

Registrar and later dismissed from service); 4) R.Kavitha Rani W/o.Saravanamuthu (presently employed as District Registrar, Kodambakkam, Chennai - 24); 5) G.Sankar, Madhavaram, Palpannai, Chennai -51, by registering the Petitioner's complaint dated 25.05.2016 and to investigate the same.

2.According to the Petitioner, he is the owner of the landed property admeasuring 1 acre 6 cents situated at Mannivakkam Village, Chengalpattu Taluk, Kancheepuram District, he having purchased from one Lakshmiammal and four others, by means of a Sale Deed dated 16.04.2007. Furthermore, the said sale was effected in his favour by the aforesaid persons through their registered Power Agent viz., A.G.Subbulakshmi, who is none other than his wife. As a matter of fact, the Power of Attorney Deed dated 03.07.1990 was registered as Document No.128/1990 on the file of Sub-Registrar of Assurances, Guduvanchery, Chennai.

3.It is represented on behalf of the Petitioner that the said Lakshmiammal died on 13.02.2007 and the said Suseela died on 25.08.2003. Also that, one M.N.Murthy died in the year 2008. That apart, Yelanthaiammal had expired recently. The stand of the Petitioner is that the registered General Power of Attorney coupled with interest is valid in the eye of Law in the context of various judicial decisions.

4.The plea taken on behalf of the Petitioner is that through a receipt dated 11.10.1989, a receipt for a sum of Rs.1.53 lakhs was obtained in respect of both items of properties, on different occasions, signed by the legal heirs of Nagappan (including one Ramani W/o.M.N.Murthy, S/o.late Nagappan). Furthermore, the Petitioner had purchased another property measuring 26 cents of Mannivakkam Village in S.No.231/2B, proximate to the aforesaid property, from one Kannan and Murugesan on 16.04.2007 by means of registered Document No.5311. In fact, the sale was executed on the basis of a registered General Power of Attorney dated 01.06.1989 executed by Kannan and Murugesan in favour of his wife A.G.Subbulakshmi under Document No.125 of 1989 on the file of the Sub Registrar of Assurances, Guduvanchery, Chennai for monetary consideration.

5.Added further, the version of the Petitioner is that on 23.08.2012 when he applied for encumbrance certificates before the Sub Registrar of Assurances, Guduvanchery, Chennai and after securing the same, found that illegal entries in the said encumbrance certificates to the effect that the said Yelanthiammal, N.Murugesan and N.Muthan along with their legal heirs had illegally/fraudulently settled their alleged shares under three divergent release deeds in favour of one M.Ramani, W/o.M.N.Murthy, residing at No.3/55, Anna Street, Maniivakkam, Chennai - 48. Indeed, the said Murthy is one of the sons of late

Nagappan. Even before the execution of the aforesaid three divergent release deeds, they had cancelled the registered General Power of Attorney coupled with interest dated 03.07.1990 (vide Document No.128 of 1990) by virtue of a deed of cancellation of registered General Power of Attorney dated 05.02.2007 (vide Document No.462 of 2007).

6.The specific case of the Petitioner is that the cancellation deed bearing Document No.462 of 2007 was not entered and registered in Book IV, on the file of the Office of the Sub Registrar of Assurances, Guduvanchery, Chennai. It appears that the said Yelanthaiammal by means of Document No.7759 of 2010 dated 23.09.2010 had released her 1/5th share in Survey No.307/5, corresponding to 26 cents in favour of M.Ramani. Also that, the legal heirs of N.Murugesan and N.Muthan along with one M.Sarojini and M.Saraswathi, who are the daughters of late Murthy together with T.Reeta and M.Devi, daughters of late Suseela in concert with one Lakshmanan, Husband of late Suseela had released their alleged rights of 4/5th share in favour of the said Ramani pertaining to the property comprised in Survey No.307/5 corresponding to 1 acre and 6 cents and the other property comprised in Survey No.231/2B corresponding to 26 cents.

7.Besides the above, the released deed dated 17.08.2010 was executed by the legal heirs of deceased Suseela viz., K.Punniyakodi, L.Parivallal and U.Gomathi to and in favour of M.Ramani releasing their alleged 1/12 shares in the said Survey No.307/5, corresponding to 1 Acre 6 cents and the other property in Survey No.231/2B corresponding to 26 cents. Thereafter, the said Ramani executed a General Power of Attorney deed dated 12.10.2010 under Document No.1722 of 2010 in favour of one Chitra, W/o.Soundararajan.

8.On behalf of the Petitioner, it is represented that patta was secured by Ramani and his Cohort viz., Soundararajan and in this connection, a reliance is placed on behalf of the Petitioner that the Circular dated 08.08.1988 of the Inspector General of Registrations in clear fashion mentions that every Sub Registrar relating to any office of the Sub Registrar of Assurances should invariably trace the title deeds/parent documents/venture tracing of title in respect of a document, proposed to be registered before an office of the Sub Registrar of Assurances. Also that, the Inspector General of Registrations, Chennai on 18.12.2009 had clarified that 'in the Interest of the General Public and to sustain law and order and to avert fraudulent transactions, forging of documents, impersonation/s, land grabbing, it is mandatory that each and every General Power of Attorney and Deed should be registered'. In this connection, the prime stand of the Petitioner that the cancellation of Power Deed dated 05.02.2007 is non-est in the eye of Law.

9.The Petitioner comes out with a stand that the illegal cancellation of power, by legal heirs of Nagappan, favouring A.G.Subbhulakshmi, the subsequent execution of three release deeds in respect of S.No.307/5 of 1 acre 6 cents and S.No.231/2B of 26 cents, the execution of Power by Ramani in favour of Chitra, the Sale Deed dated 06.06.2011 (vide Document No.5933 of 2011) in respect of 50 cents in S.No.307/5 and the subsequent Mortgage Deed dated 13.12.2011 relating to the aforesaid 5 cents executed by Ramani in favour of C.Sundari through her Power Agent Chitra was void ab initio, in the eye of Law and in this regard, the Petitioner had filed W.P.No.20382 of 2012. It transpires that C.Sundari and M.Ramani had filed suit in O.S.No.199 of 2013 on the file of Learned District Munsif, Chengalpattu. Also that, for creation of false document by forging the Petitioner's signature as if he prayed for issuance of joint patta and for creation of joint patta in favour of Ramani, the Petitioner filed a criminal complaint on 05.07.2013 before the District Crime Branch, Kancheepuram and Inspector of Police, Mannivakkam Police Station, narrating the entire episode and prayed for initiation of criminal proceedings against the erring individuals in respect of the offences under Sections 465, 468, 471, 420 read with 120B and 34 of the Indian Penal Code. Later, he preferred Crl.O.P.No.22650 of 2013 before this Court and this Court on 01.10.2013 had directed the Inspector of Police, District Crime Branch, Kancheepuram to investigate the matter and to file a final report before this Court at an early date and accordingly, the Criminal Original Petition was disposed of. Because of this Court's order, the FIR No.71 of 2013 was registered and later the Petitioner filed Crl.O.P.No.27785 of 2013 and this Court issued directions on 28.10.2013 to the Inspector of Police, H-1, Otteri Police Station, Mannivakkam, Chennai to file the charge sheet in Crime No.71 of 2013.

10.At this stage, it is not out of place for this Court to make a significant mention that the Petitioner had filed a criminal complaint on 07.10.2013 against the officials belonging to the registration/revenue department of the Government of Tamil Nadu as well as the said Soundararajan, M.Ramani, S.Chitra, C.Sundari and the legal heirs of Nagappan, who had cancelled the Petitioner's wife's Power Deed relating to Survey No.307/5 of Mannivakkam Village, Chengalpattu Taluk, Kancheepuram District admeasuring 1 acre 6 cents etc. In reality, the Petitioner's complaint dated 07.10.2013 had resulted in filing of a charge sheet in Special Case No.6 of 2015 pending on the file of the Learned Chief Judicial Magistrate, Chengalpattu against Soundararajan, M.Ramani, S.Chitra and C.Sundari along with employees belonging to the

Revenue Department viz., the Zonal Deputy Tahsildar, Tahsildar, Assessor and Surveyor.

11.It comes to light that the Petitioner had addressed a representation on 08.09.2014 to the Secretary, Revenue Department, Government of Tamil Nadu, Chennai and the Commissioner of Revenue Administration, Chennai and other authorities and later he filed W.P.No.12365 of 2015 seeking to dispose of his representation dated 08.09.2014 and this Court on 24.04.2015 had directed the Secretary, Revenue Department, Secretariat, Chennai - 9 and the Commissioner of Revenue Administration, Chepauk, Chennai - 5 to dispose of the Petitioner's representation dated 08.09.2014 within twelve weeks from the date of receipt of a copy of this order.

12.The grievance of the Petitioner is that after the issuance of direction by this court in W.P.No.12365 of 2015 on 24.04.2015, the Inspector General of Registration, Chennai conducted an enquiry and passed an order on 24.11.2015 and the relevant portion at paragraph 17 runs as under:

> "17.That being the case, I find no error in the Registering Officer registering the cancelation of Power of Attorney. Once the Power of Attorney is cancelled, further registration of documents have to be viewed as registration done in the absence of Power of Attorney in document No.128/1990. There is no material evidence to prove or substantiate that there is fraud in registration of document Release deeds 7759/2010 dated 23.9.2010, 7769/2010 dated 30.7.2010, 9887/2010 dated 17.8.2010 and the sale deed 5933/2011 dated 6.6.2011."

and rejected the petition dated 08.09.2014.

13.As a matter of fact, the Petitioner had filed W.P.No.530 of 2016 challenging the order passed by the Inspector General of Registrations and the same is pending before this Court. The Learned Counsel for the Petitioner submits that Murugiah, Inspector General of Registration and her Deputy Mrs.Rathina had not applied their minds in proper perspective and further, one Sankar (then Sub Registrar, Guduvanchery), who registered the Document No.5933 of 2011 on 06.06.2011 thereby permitting alienation of sale of 50 cents in S.No.307/5 by S.Chitra favouring C.Sundari. In regard to Mrs.Sudha Malya, the Deputy Inspector General of Registrations, Chennai, the Learned Counsel for the Petitioner proceeds to state that she had given a unscrupulous opinion in her 161 Cr.P.C. Statement in F.I.R.No.1 of 2014, on the file of Vigilance and Anti Corruption, Kancheepuram, that failure to register a cancellation of a Power

Deed in Book IV, is an irregularity and would not affect the legal efficacy and the same is not correct and proper one.

14.The emphatic plea of the Petitioner is that the Director, Vigilance Commission had addressed a letter dated 14.06.2016 to the Secretary, Vigilance Commission, Secretariat, Chennai in Petition No.4354/2016/PUB/CC-HQ dated 14.06.2016 seeking sanction for prosecution in the context of G.O.(Ms).No.10 of Personnel and Administrative Reforms (N) Department, dated 02.02.2016 and since this Court in W.P.No.10624 of 2015 on 01.07.2016 had quashed the aforesaid G.O.(Ms).No.10 of P & AR dated 02.02.2016, the aspect of seeking sanction had become superfluous. Also that, the Petitioner filed W.P.No.22748 of 2016 seeking disciplinary action against the Inspector General of Registrations, Chennai.

15.Per contra, it is the submission of the Learned Additional Public Prosecutor for the Respondents that the allegations against the public servants (officials of Revenue and Registration Departments) pertain to their purported misconduct and suspected corrupt activities in regard to the issuance of patta (by the Revenue Officials) and cancellation and registration of Power of Attorney and Release Deeds (by Registration Officials) and further to decide about the title of the properties in question, a civil Suit in O.S.No.199 of 2013 on the file of the trial Court is pending.

16.The Learned Additional Public Prosecutor for the Respondents brings it to the notice of this Court that after completion of investigation, a charge sheet filed on 06.03.2015 under Sections 120B I.P.C. and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against the public servants viz., 1) P.Kuppusamy (formerly V.A.O.), Mannivakkam Village and 7 others on the file of the Chief Judicial Magistrate cum Special Judge, Chengalpattu, was taken on file in Special Case No.6 of 2015.

17.The Learned Additional Public Prosecutor for the Respondents proceeds to state that since Ranganathan (Sub Registrar, Guduvanchery) had failed to make a foot note in Book IV Register [a record maintained in the Sub Registrar Office to record all the registrations relating to Power of Attorneys in the year 2007] and as the investigation had not revealed any evidence of criminality for his negligent act, a departmental action alone could be initiated. But the said Ranganathan was dismissed from service on some other count and as such, no departmental action could be taken against him. Also that, the investigation had not revealed any criminality against the Sub Registrars viz., Kavitha and Shankar.

18.The Learned Additional Public Prosecutor for the Respondents draws the attention of this Court to the fact that the Petitioner had addressed a petition dated 25.05.2016 to various authorities making a request for taking criminal action against the Inspector General of Registrations and other officials of Registration Department that their alleged recalcitrant, unethical, biased and criminal acts and the petition was received on 02.02.2016 and in turn was forwarded to the Secretary, Vigilance Commission for taking necessary action as per letter dated 14.06.2016 and in fact, the Secretary, Vigilance Commission had forwarded the said petition to the Additional Chief Secretary, Commercial Taxes and Registration Department for taking necessary action vide letter dated 13.06.2016.

19.At this juncture, this Court pertinently points out that in the petition dated 25.05.2016 of the Petitioner addressed to the Secretary to the Government of India, Ministry of Personal Grievances and Pension, Department of Administration Reforms and Public Grievance, New Delhi and 10 others (including the Chief Secretary cum Vigilance Commissioner, Government of Tamil Nadu), the Petitioner, at paragraph 38, had averred that 'The impugned order fails to express the reasons to arrive at the conclusion, instead, lambast my counsel without any rhyme or reason etc.' Further, at paragraph 39, he had, among other things, stated that 'I came to understand that the said Mrs.Sudha Malya, Deputy Inspector General of Registrations, Chennai Zone, Beach Road, Chennai - 1, had indulged in quoting under rated land value than that of the guide line value in S.No.109/2A, 109/2B, 109/2C, 109/2D, 109/2E, 115/1A, 115/1A2A, 115/1A2B, 115/1A3, 115/1A4, 115/1A5, 115/1A6, 115/1A7 and 115/1A8 of V.I.P. Nagar, Uthiramerur Village, failing within the sub registration district of Uthiramerur, by fixing the rate at Rs.500/- when S.No.155/2DE and 155/3 had been fixed at Rs.900/- and that the district registrar having fixed the rate at Rs.1000/- per sq.ft., and that when the same (fixation of value per sq.ft.) was referred to the said Sudha Malya, Deputy Inspector General of Registrations, Chennai Zone, Beach Road, Chennai - 1, she had fixed the rate, ironically and for the reasons best known to her at Rs.500/-. As stated above, when S.No.155 having been fixed at Rs.900/- towards its guideline value, she have fixed at Rs.500/- causing a loss of Rs.400 Crores to the exchequer etc.' In short, the Petitioner had stated that the said Sudha Malya, Deputy Inspector General of Registrartions, Chennai Zone, Beach Road, Chennai had caused a loss of nearly 69 Lakhs to the exchequer relating to levy of Stamp duty.

20.Likewise, the Petitioner, at paragraph 49 of his petition, had, among other things, mentioned that '... Murugiah, Inspector General of Registrarions, Santhome, Chennai - 28 being a mute spectator, for monetary gain has to face criminal action and disciplinary proceedings'. Also, at paragraph 47 of the petition, the Petitioner had stated that '... This Nefarious act of V.N.Ranganathan has been deliberately inadverted to by Murugiah, I.A.S. I.G. Of Registrations and Rathina, Additional I.G. Of Registrations for monetary considerations. Thus, no criminal action has been initiated until this day by Murugiah and Rathina against V.N.Ranganathan'. Besides the above, the Petitioner had also in the petition dated 25.05.2016 mentioned about '... the infraction by Sankar, the then Sub-Registrar, Guduvanchery of Circular No.37131/01/88.1 dated 08.08.1988 would expose him to criminal vulnerability, so as to face the music of criminal prosecution under Section 418 I.P.C. read with 120B I.P.C. and under Section 10 to 12 of the Prevention of Corruption Act, 1988'.

21.Suffice it for this Court to point out that the Petitioner, in his petition dated 25.05.2016, while winding up, had stated the following:

> "Mrs.Sudha Malya, the Deputy Inspector General of Registrations, Chennai Zone, Beach Road, Chennai-1 had given a unscrupulous opinion in her 161 statement in F.I.R. No.1 of 2014 on the file of Vigilance and Anti-Corruption, Kancheepuram, that failure to register a cancellation of a power deed in Book IV, is only an irregularity and would not affect the legal efficacy, is a first order lie, to save the skins of her departmental subordinates like V.N.Ranganathan, Kavitha Rani and Sankar. This kind of practice, which is nothing short of abetting the offence of corruption practicing persons, which being a social menace and causing total uproot of social order, tranquillity, should not only be nibbed in the bud, but also to be eradicated to the core. As a cascading effect, Mr.Murugiah, ventures to make good the acts of Sudha Malya and therefore, she too, has to face appropriate criminal and departmental proceedings at the instance of your goodself.
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> Thus, the net result of these erratic conduct of registering authorities as referred above, ends up in causing loss, not only to the exchequer of the Registration Department, Government of Tamil Nadu, on account of levy of stamp duty and registration fee upon the under rated land

value beneath the guideline value in a registration transaction, but also causing loss to the department of Income Tax as they could not cover and compute up the real value/quantum in a given land registration transaction, ending up in a deflated computation of Capital gain upon a high volume land transaction."

and ultimately, prayed for initiation of appropriate departmental/ disciplinary action against 1) Murugiah, I.A.S., Inspector General of Registrations, Santhome, Chennai, 2) Mrs.Sudha Malya, Deputy Inspector General of Registrations, Chennai 3) V.N.Ranganathan, former Sub Registrar, (presently dismissed from service) 4)R.Kavitha Rani, W/o.Saravana Muthu, presently employed as District Registrar, Kodambakkam, Chennai 5) G.Sankar, Madhavaram, Chennai.

22.By means of Reply, the Learned Counsel for the Petitioner submits that there is no bar in Law for the departmental proceedings in a criminal case to proceed in a simultaneous fashion. Further, it is represented on behalf of the Petitioner that the standard of proof/ yardstick to determine the recalcitrant of a person in a criminal case is totally different from that of deciding the delinquency of the very same person in a departmental proceedings arising out of a common set of facts.

23.In effect, it is the plea of the Petitioner that a criminal case and a departmental proceeding can go hand in hand and the proof required in a criminal case is that the charges levelled against the Accused will have to be proved by the Prosecuting Agency beyond all reasonable doubt and in a departmental proceeding, the standard of proof required is one of preponderance of probabilities.

24.This Court has heard the Learned Counsel for the Petitioner and the Learned Additional Public Prosecutor for the Respondents and noticed their contentions.

25.At this juncture, it is to be pointed out that before public servant is publically charged with acts of dishonesty and if a Complaint/First Information Report is lodged against him, there ought to be some suitable preliminary enquiry into the allegations by a responsible officer. However, it is to be remembered that such preliminary enquiries does not become investigation by the police, in the considered opinion of this Court.

26.In the instant case on hand, the Petitioner, in his petition dated 25.05.2016 addressed to the Secretary, Government of India, Ministry of Personal Grievances and Pension, New Delhi and 10 others (including the Chief Secretary cum Vigilance Commissioner, Government of Tamil Nadu, Chennai), the Director, Vigilance and Anti Corruption, Raja Annamalaipuram, Chennai – 28, the Deputy Superintendent of Police, Vigilance and Anti Corruption, Chennai City-IV, Detachment, Tamil Nadu Housing Board Complex, Chennai – 35 etc. had prayed for initiation of appropriate departmental/disciplinary action/criminal action against Murugiah, I.A.S., Inspector General of Registrations, Chennai – 28 and also for taking necessary criminality/ departmental action against the rest of the persons by the appropriate authority.

27.It comes to be known that the Additional Chief Secretary to Government (FAC), Commercial Taxes and Registration (H) Department, Secretariat, Chennai – 9, in Letter No.7771/H/2016-5 dated 21.09.2016 addressed to the Director of Vigilance and Anti- Corruption, Alandhur, Chennai – 16, had informed him that the complaint against former Inspector General of Registration and other officials of Registration Department was sent to the Inspector General of Registration with a request to furnish a report to Government in respect of the allegations contained therein. Further, it was mentioned that the report of the Inspector General of Registration in this regard is still awaited and on receipt of his report, necessary further action would be pursued.

28.In this connection, it is not out of place for this Court to make a relevant mention that the Government, in G.O.(Ms)No.10 Personnel and Administrative Reforms (N) Department dated 02.02.2016, at paragraphs 3 and 4, had observed as under:

> "3) Therefore, in order to have uniformity in the processing of the allegations of corruption against all Government Servants and also in the light of orders of Hon'ble Supreme Court of India and Hon'ble High Court, the guidelines / orders issued for investigation against All India Service Officers on allegation of corruption in the Government orders viz.,
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> - G.O.Ms.No.2187, Public (Spl.A) Department, dated 20.12.1988.
> - G.O. (D) No.1, Personnel and Administrative Reforms (N) Department, dated 28.1.1992 and
> - G.O. Ms.No.374, Personnel and Administrative Reforms (N) Department, dated 10.10.1996
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> shall be rescinded with immediate effect.

4) In respect of allegations of corruption against public servants relating to acts made in an official capacity, irrespective of the rank or group of the public servants complained against, the Directorate of Vigilance and Anti-Corruption shall forward the complaints to the Vigilance Commission and the Vigilance Commission in turn shall seek and consider the remarks of the Government before ordering an appropriate enquiry by the Directorate of Vigilance and Anti-Corruption."

29.Further, the aforesaid G.O.(Ms) No.10, dated 02.02.2016 was challenged before this Court in W.P.No.10624 of 2015 and the Division Bench of this Court on 01.07.2016 at paragraphs 20 to 25 had observed the following and resultantly, allowed the Writ Petition.

"20.It is trite to say that the first enquiry into a complaint or information is in the nature of preliminary enquiry, which has to be conducted with utmost secrecy. There are three memos issued in this behalf, viz., D.V.A.C. Circular Memo No.22761/VAC-4/76, dated 30.09.1976, Govt. Memo No.2312/72-6, Public (Ser-B), dated 30.08.1972 and D.V.A.C. Circular Memo No.38901/VAC-4/80, dated 14.07.1981. The purport of these memos is that the witnesses should normally be contacted only through sources or otherwise, indirectly and even if they have to be contacted directly, the purpose of enquiry must be suitably camouflaged and willingness to make a statement may be ascertained, but actual statement should not be recorded. The departmental files and other records including that may be available with private sources may be looked into and departmental records may also be taken into custody wherever considered it desirable.

21.It is the common case that the headquarters of the Directorate has been notified as police station with jurisdiction over the entire State within the definition of Section 2 (s) of the Cr.P.C.

22.It is the own case of the respondent that allegation of corruption like demand and acceptance of bribe, possession of disproportionate assets and cases involving trap and arrest would not require obtaining of what is referred to as remarks of the Government and the department of Vigilance and Anti-Corruption is well within its powers to commence enquiry. It is hard to frankly understand that if this be the position, then what is the purpose of para 4, as it refers to ''allegation of corruption against public servants'' and follows with ''relating to acts made in official capacity''. On one hand, this is the stand sought to be taken, on the other hand, after instructions, learned Advocate General submits that even for holding a preliminary enquiry, the remarks are to be called for mandatorily. It is nobody's case that in the process of carrying out a preliminary enquiry, information cannot be sought for. In fact, even records can be sought for and witnesses identified. The purpose is to determine whether there is any grain of truth in the allegations, but that is the job of the police officer. The powers of the police officer, however, are sought to be restricted by superimposing a requirement of a mandatory prior remarks ''before ordering an appropriate enquiry by the Directorate of Vigilance and Anti-Corruption''. If offences are made out under the said Act on the complaint, preliminary enquiry is held, then in the course of preliminary enquiry, the police officer would take the necessary precautions to locate the relevant material. Undoubtedly, the expression used is ''remarks'' and not ''prior permission''. But, really speaking there would be no purpose of the mandatory requirement of such remarks which may themselves delay the investigation process even of a preliminary enquiry.

23.The fact is that the procedure prescribes a mandate on the Directorate of Vigilance and Anti-Corruption to first forward the complaints to the Vigilance

Commission, which, in turn, to first obtain remarks of the Government and thereafter, apply their mind and forward the result to the Directorate of Vigilance and Anti-Corruption before the Directorate of Vigilance and Anti-Corruption can exercise its jurisdiction of a police station. In our view, this is not permissible.

24.We would have thought that the controversy could have been put to rest if in answer to our query as to whether para 4 of the G.O. while reference to ''before ordering an appropriate enquiry'' would imply that even preliminary enquiry cannot start without those remarks or whether those remarks have to be necessarily obtained (though not binding) in the course of preliminary enquiry, a positive approach would have been adopted by the State Government with an assurance that there is no impediment at least to the preliminary enquiry being conducted. The contrary answers seems to convey an apparent lack of faith in the Directorate of Vigilance and Anti-Corruption to look into the matter even as a preliminary enquiry. This, in our view, cannot be countenanced.

25.We are, thus, left with no option but to quash para 4 of the G.O. dated 02.02.2016 as unsustainable in law."

30.At this juncture, this Court refers to the decision of the Hon'ble Supreme Court in P.Sirajuddin V. State of Madras, AIR 1971 Supreme Court 520, at special pages 528 & 529, at paragraph 23 to 27, it is observed and laid down as follows:

"23.The office of the Directorate of Vigilance and Anti-Corruption Department, Madras became a police station for the purpose of the Criminal Procedure Code under sub-cl. (s) of sub-s. (1) of s. 4 of the Code by a notification dated 25th May, 1.964. Prior to that it was only functioning under a Memorandum No. 1356/ 64-2 dated 8th April 1964 when it was set up to ensure the maintenance of the highest standard of integrity and probity in public servants. If the investigation had been taken up after May 25, 1964 it would have been one under Chapter XIV of the Code without any doubt.

24.Although we are not disposed to concur with the view that the investigation under Chapter XIV of the Code started as early as 15th April 1964 we are of opinion that there was no warrant for the Vigilance and Anti-Corruption Department which was in the charge of one of the highest police officers of the State to disregard the provisions of ss. 162 and 163 of the Code of Criminal Procedure. The investigation was of a type more I thorough and elaborate than is usually 'to be found : as noticed already it was in charge of a senior police officer who had the I assistance of two police inspectors in the matter. No blame attaches to them for making enquiries of a large number of persons but the whole course of investigation is suggestive of guidance by someone who was intimately familiar with the affairs of the appellant and his department 'and throwing out scents which the investigating officers were only too keen to pick up and follow. The appellant may have been guilty of all the charges levelled against him but we cannot approve of the manner in which the investigation against him was conducted and an attempt made to lay a guideline for the persons who were to be cited as prosecution witnesses in their evidence at the trial. To say the least it would be surprising to find so many persons giving confessional and self-incriminatory statements unless they had been assured of immunity from the evil effects thereof whether oral or in writing.

25.There can be no excuse for the Directorate of Vigilance and Anti-Corruption for proceeding in the manner adopted in the Preliminary enquiry before the lodging of the first information report. As soon as it became clear to them- and according to the High Court it was before March 13, 1964 in which we concur-that the appellant appeared to be guilty of serious misconduct. It was their duty to lodge such a report and proceed further in the investigation according to Chapter XIV of the Code. Their omission to do so cannot but Prejudice the appellant and the State ought not to be allowed to take shelter behind the, plea that although the steps taken in the preliminary enquiry were grossly irregular and unfair, the accused cannot complain because there was no infraction of the rules of the 'Evidence Act or the provisions of the Code.

26.In our view the granting of amnesty to two persons who are sure to be examined as witnesses for the prosecution was highly irregular and unfortunate. It was rightly pointed out by the High Court:

"Neither the Criminal Procedure-Code nor the Prevention of Corruption Act recognises the immunity from prosecution given under these assurances and that the grant of pardon was not in the discretion of police authorities."

27.We are not impressed by the argument that the appellant was singled out from a number of persons who had aided the appellant in the commission of various acts of misconduct and that they were really in the position of accomplices. It was pointed out by the High Court that the prosecution may have felt that "if the subordinate officers were joined along with the appellant as accused the whole case may fall for lack of evidence". In our view, if it be a fact that it was the appellant who was the head of the department actively responsible for directing the commission of offences by his subordinates in a particular manner, he cannot be allowed to take the plea that unless the subordinates were also joined as co-accused with him the case should not be allowed to proceed."

31.It cannot be gainsaid that the Hon'ble Supreme Court in the decision Rajinder Singh Katoch V. Chandigarh Admn. and others, (2007) 10 Supreme Court Cases 69, had observed that 'In an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made have any substance or not.'

32.Moreover, in the decision of the Hon'ble Supreme Court, in Lalita Kumari V. Government of Uttar Pradesh and others, (2014) 2 Supreme Court Cases 1, at special page 61 at paragraphs 120.1 to 120.8, had held as under:

> "120.1. Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.
>
> 120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.
>
> 120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.
>
> 120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.
>
> 120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.
>
> 120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

a) Matrimonial disputes/ family disputes

b) Commercial offences

c) Medical negligence cases

d) Corruption cases

e) Cases where there is abnormal delay/ laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7.While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8.Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”

33.It is to be noted that the purpose of registering a document is mainly meant to give notice to the public at large that the said document was executed to prevent fraud and forgery and to secure a reliable, comprehensive and complete account of all the transactions affecting title to the property, as per decision Latif Estate Line India Limited V. Hadeeja Ammal, 2011 (2) CTC 1. At this stage, this Court aptly points out that there is presumption in Law under Section 114 of the Indian Evidence Act, 1872 that all official acts were performed in accordance with the procedure prescribed under the Registration Act, 1908. In fact, the burden is on the prosecuting agency to establish that an individual had abutted in committing an offence of criminal conspiracy in crime and had misused his status/position and was a privy to the fraud.

34.Besides this, it cannot be forgotten that Section 81 of the Registration Act, 1908 speaks of 'Penalty for incorrectly endorsing, copying, translating or registering documents with intent to injure'. The issue as to whether an individual was aware of a particular document/deed or that such deeds were executed for securing an unlawful action which may cause injuries to another as defined under Section 44 of the Indian Penal Code, is certainly a matter to be established only on letting in of evidence by the concerned parties. No wonder, when a challenge is made against registration, then, it is a case of an instrument itself being void in the eye of Law.

35.Indeed, Section 34 of the Registration Act, 1908 speaks about an enquiry before registration by the Registering Officer and a reading of ingredients of Sections 32, 34, 35 of the Registration Act clearly point out that they prescribe the mode in which the Registrar is required to admit a document for registration. Section 77 of the Act gives a remedy to the party concerned to file a suit in the event of registration being refused. In fact, Sections 73, 74 and 75 of the Registration Act, lay down the procedure to be adhered to when an application against the order of the Sub Registrar refusing to register a document on the ground that the purported executant denies his execution.

36.In reality, Section 68 of the Registration Act, 1908 deals with 'Power of Registrar to superintend and control Sub-Registrars'. Further, the said power is an administrative one and if a particular document complies with the statutory requirements and formalities, the Registrar cannot issue any direction to the Sub-Registrars not to register a document. Section 68(2) of the Act confers power on the Registrars to pass any order quite consistent with the Registration Act, 1908 which he considers necessary in respect of any act or omission of any Sub-Registrars subordinate to him. Section 69 of the Act enjoins 'Power of Inspector General to superintend registration offices and make rules'. The power of general superintendence enjoined on the IG of Registration in such general terms enable him to issue necessary directions to the Registering Officers pertaining to the matter of registration of particular type of documents and in respect of certain type of lands and in respect of his obligation to register or refuse his registration in cases of certain types of disputes centering around the transactions in question.

37.Be that as it may, in view of the fact that this Court, in W.P.No.10624 of 2015, by means of an order dated 01.07.2016, had quashed the para 4 of the G.O.(Ms) No.10, P & AR Department, dated 02.02.2016 [as extracted already in detail in this order in paragraph No.28 i.e., In respect of allegations of corruption against public servants relating to acts made in an official capacity etc.] and in the teeth of detailed qualitative discussions as mentioned supra, this Court, taking note of the divergent contentions/submissions advanced on either side and also considering the facts and circumstances of the present case in a cumulative manner, at this stage, without delving deep into the merits of the matter and also not expressing any opinion one way or other, simpliciter, in the interest of Justice, Fair Play, Equity, Good Conscience, directs the Respondents to look/enquire into the Petition/Complaint of the Petitioner dated 25.05.2016 with a view to ascertain/find out as to whether the averments/allegations made in the Petition/Complaint do have any substance(s) or make out any cognizable offence(s) or otherwise and to proceed further in the manner known to Law and in accordance with Law. However, it is needless for this Court to state that the Petitioner must be informed duly as to the outcome of the Petition/Complaint dated 25.05.2016 in the subject matter in issue, so as to enable him to take such future course of action as he deems fit and proper if he so desires/advised.

38.With the aforesaid observation(s) and direction(s), the Criminal Original Petition stands disposed of.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The Chief Secretary cum Vigilance Commissioner,
Government of Tamil Nadu,
Secretariat, Chennai - 600 009.

2.The Director,
Vigilance and Anti- Corruption,
Greenways Road, Raja Annamalaipuram,
Chennai - 28.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Karl Marx, Advocate Sr.57750

Crl.O.P.No.18563 of 2016

skv[co]
srg 14/10/2016