

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-05-2017

CORAM

THE HON'BLE DR. JUSTICE T. MATHIVANAN

Crl.O.P.No. 2159 of 2017

S. Murali Mohan

No.28/35, Iyyamperumal Street

Balaji Nagar, Royapettah, Chennai – 14 .. Petitioner / Accused-7

Vs.

State by: Inspector of Police

Central Bureau of Investigation

SPE, ACB, Chennai

.. Respondent/Complainant

Criminal original petition filed under Section 482 Cr.P.C to call for the records of the F.I.R. No. RC MA1 2016 A 0019 on the file of the SP/Inspector of Police, CBI, ACB, Chennai and quash the same.

For Appellant : Mr. K. Suresh Babu

For Respondent : Mr. K. Srinivasan,
Spl. Public Prosecutor (for CBI cases)

ORDER

Invoking the provisions of Section 482 of the Code of Criminal Procedure, this Petition is filed by the Petitioner to quash the Criminal Proceedings of the case in respect of him concerned in FIR No RC MA1 2016 A 0019 which is registered on the file of the Respondent Police (Inspector of Police CBI/ACB) Chennai.

2. This case appears to have been registered against 12 persons and the Petitioner herein has been ranked as A7. On perusal of the First Information Report, it is manifested that the Respondent Police had received an information about the criminal conspiracy of the accused 1,2,3 in this case viz. Sanjay Bhandari, Shreyans Bhandari and Divyang Bhandari, with the officials of Income Tax Department viz. S.K. Mittal (A4), T.N. Prakash (A5), R.V.Aroon Prasad (A6), S. Murali Mohan (A7), Tmt. Vijayalakshmi (A8), Dr. S.Pandian (A9), G. Lakshmi Varaprasad (A10), Vikram gaur (A11), Dr. Rajendrakumar (A12) and other unknown public servants of the Income Tax department and private individuals during the period between 2012 and 2015 at Chennai and other places and in pursuance of the said conspiracy, the public servants 4 to 12 had abused their official position and accepted various favours which including valuable things etc. from A1 to A3 who are Chartered Accountants represented before the Income Tax authorities on behalf of the Assesseees.

3. In furtherance of the said conspiracy, the accused public servants (4 to 12) and their friends and relatives had availed facilities while they were on personal visits at various places in India and abroad at the cost of A1 to A3 without any consideration. It is also alleged that the above acts of the accused public servants and accused 1 to 3 constitute the offences

punishable under sections 120(B) IPC r/w section 11, 12,14 r/w 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

4. As above stated, the Petitioner herein being ranked as A7 has come forward with this Petition to quash the Criminal Proceedings initiated against him on the following grounds:

- i) No prima facie case is made out against him to launch the prosecution;
- ii) He had no official transactions with the Chartered Accountants, namely Sanjay Bhandari (A1), Shreyans Bhandari (A2) and Divyang Bhandari (A3);
- iii) The Prosecuting Agency had abruptly violated the procedure enunciated under Chapter 8 and 9 of CBI Manual for the simple reason that they had deliberately failed to conduct preliminary enquiry to ascertain the source information as to whether he had really abused his official position and thereby availed pecuniary benefits from the Chartered Accountants (A1 to A3)

5. As revealed from the averments of FIR, the Petitioner Mr. S.Muralimohan(A7) is a public servant and currently employed with the Income Tax department as Additional Commissioner of Income Tax, Range CR-2, Chennai. It appears that he had joined the Income Tax

department in the year 1999 and according to Mr. K. Suresh Babu, the Learned Counsel for the Petitioner, the Petitioner has been serving for the past 17 years and put an exemplary service in the department as he being an IRS officer.

6. The specific overt act attributed against the Petitioner is that he had abused his official position and accepted favours from the accused 1 to 3 (Chartered Accountants) during the period 2012 to 2015 to the tune of Rs.1,69,621/- being the conveyance for visiting the places without consideration and therefore the Respondent has registered a case under Sec.11,12,14 r/w 12 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988.

7. While advancing his argument, Mr. K.Suresh Babu has invited the attention of this Court to paragraph no.4 and 5 of the petition, from where it is revealed that during the month of May 2013, the Petitioner was posted as Additional Director of Income Tax (Inu), Unit-1, Chennai, While so he had been on pilgrimage on LTC to Kedarnath, Badrinath, Rishikesh and Haridhwar (via) Dehradun during the period 15-5-2013 to 24-5-2013. The conveyance, tickets for this trip was purchased by the Petitioner himself at the ticket counter located in the Chennai Airport. At that time, the Petitioner was in the regular course of employment located inside the Chennai

Airport. The Petitioner had purchased the air tickets against tendering payment by himself. He had later got the air fare, conveyance reimbursed from the department under LTC. He had difficulty to book accommodation at Kedarnath, Badrinath, Rishikesh and Haridhwar, as these places are at remote location and are away from Chennai. The local travel agents had found difficulty to book accommodation in these places as they had no tie-up with any agents in those remote locations. It is also revealed, that while the Petitioner was making further enquiry, he learnt about the service person by name Mr. Vimal Jain, who knew some travel agents and hence he would be able to book accommodation and food at the respective places.

8. That on 14-5-2013, the said Vimal Jain had approached the Petitioner at his office and furnished details of accommodation booked for the trip from 15-5-2013 to 23-5-2013 at some places as per the program. Since Mr. Vimal Jain had informed the Petitioner that these service providers had to be paid in cash, he had requested him to pay a sum of Rupees one lakh in cash. The Petitioner had immediately drawn a self cheque on State Bank of India, Nungambakkam Branch bearing Account No.32196836667 for rupees two lakhs and requested the Income Tax Inspector attached to his office to go and withdraw cash from the Bank. After withdrawal, the

Petitioner had retained rupees one lakh with him and paid the remaining amount of rupees one lakh to Vimal Jain and obtained the receipt. Mr. Suresh Babu has also canvassed that after returning from pilgrimage, Mr. Vimal Jain had approached the Petitioner and settled the transactions. This is the case of defence put forth on behalf of the Petitioner.

9. As observed earlier, this Court based on the averments of FIR and relevant material finds that the Respondent had violated the CBI Manual and the procedure laid down therein. It is to be noted that since the procedure enshrined under CBI Manual is mandatory, the Respondent Police must be scrupulous in tracking the pen print.

10. As submitted by Mr. Suresh Babu, the learned counsel for the Petitioner, before a public servant, whatever may be his status, is publicly charged with acts of dishonesty which amounts to serious misdemeanour, there must be some suitable preliminary enquiry into the allegations by the Respondent Police being the responsible officer.

11. On coming to the instant case on hand, it is explicit that no such preliminary enquiry was conducted by the Respondent Police prior to the registration of the First Information Report. The act of the Respondent

Police, in accordance with the view of this court, as well as of Hon'ble Supreme Court of India, has caused incalculable harm not only to the Petitioner in particular but also to his family members and his department as well.

12. This Court has carefully perused the Chapter 8 and 9 of CBI Manual. While Chapter 8 deals with complaints and service information, Chapter 9 deals with preliminary enquiries.

13. As stated in Clause 8.26, the Respondent Police is required to collect quality information regarding graft, misuse of official position, possession of disproportionate assets, fraud, embezzlement, serious economic offences, illegal trading in narcotics and psychotropic substances, Counterfeiting of currency, smuggling of antiques, cyber crimes, serious frauds on banking, Financial institutions, forgery of passport etc. and other materials falling within the purview of CBI and verify the same to ascertain whether any prima facie material is available to undertake an open probe.

14. Clause 8.27 says that source information once developed must be submitted in writing, giving all details with specific acts of omissions and commissions

and copies of documents collected discreetly. The Superintendent of Police concerned after satisfying himself that there is prima facie material meriting action by CBI and further verification is likely to result in registration of regular case, would order verification if it falls within his competence. It further reads that verification of SIR must begin only after competent authority has approved this registration.

15. As indicated in Clause 8.29, after registration verification may be entrusted to an officer other than who had submitted the SIR.

16. As contemplated under Clause 8.32, the verification of SIR should be completed within a period of 3 months. In case of delay, approval of competent authority should be obtained to carry out further verification beyond the prescribed time limit.

17. Clause 8.33 says that after verification, the verifying officer should submit his detailed report wherein it should be specified whether the allegation of the SIR have been substantiated or not.

18. Clause 9.7 mandates that as soon as it is decided to register a PE, the Superintendent of Police

will take action to get the PE registration report prepared which will invariably be vetted by him and in case of important enquiry even drafted by him.

19. As per Clause 9.10, the preliminary enquiry relating to allegations of bribery and corruption should be limited to the scrutiny of records and interrogation of bare minimum persons which may be necessary to judge whether there is any substance in the allegations which are being enquired into and whether the case is worth pursuing further or not.

20. As enacted under Clause 9.14, the Superintendent of Police must personally satisfy themselves that if a preliminary enquiry is converted into an RC it should result in prosecution. They should exercise due care and caution in such conversion and avoid hasty or premature action in this regard. Converting the PE into an RC solely with a view to get the PE out of the list of time barred cases should not be resorted to.

21. It is significant to note here, that the procedures laid down in CBI Manual are mandatory and not merely directory in nature. It is apparent from the face of records that the Respondent Police has miserably failed to comply with the mandatory procedures laid down in CBI Manual.

22. In Vineeth Narain Vs Union of India (1998 1 SCC 226) the Apex court has held that non-compliance with the mandate of law is violative of Article 21 of the Constitution of India.

23. In MCR Vyas Vs Inspector of Police 2014 SCC on line Mad 4930, a Learned Single Judge of this Court has observed that according to the CBI Manual, if information is received against an officer of high rank, even for verification of source information, the CBI has to get approval from the competent authority and after such approval by competent authority, the verification officer shall submit his detailed report to the competent authority after obtaining orders. Then after due application of mind the competent authority shall pass orders for preliminary enquiry.

24. In the above cited decision the Learned Judge in paragraph no.44 has made reference to the decision of the Apex Court in Manusharma Vs State (NCT of Delhi 2010 6 SCC 1). In this case, the Hon'ble Mr. Justice P. Sadasivam, Judge, Supreme Court of India, as he then was, has observed as under :

" The Delhi Special Police Establishment Act 1946 (hereinafter referred to as the DSPE Act) is a special Statute. By reason of the said enactment, the CBI was constituted. My attention has been drawn to the provisions of

the CBI Manual, from a perusal whereof, it appears that guidelines and procedures have been enumerated. If source information is received against an officer of high rank, even for verification of source information the Respondent/CBI has to get approval from the competent authority (in this case Director of CBI) and after such approval by competent authority, the verification officer shall submit his detailed report to the competent authority for obtaining orders. Then, after due application of mind, the competent authority shall pass orders for preliminary enquiry. The preliminary enquiry may either result in registration of regular case or in departmental action or refer to the concerned department through a self contain note for such action. For registration of regular case in cases of officer of high rank, orders should be obtained from the competent authority. Chapter 8 of CBI Manual clearly states about the above said procedures to be followed."

25. In Vineet Narain Vs Union of India (1998) 1 SCC

226, the Apex Court has observed as under:

" The CBI Manual based on statutory provisions of Cr.PC provides essential guidelines for the CBI's functioning. It is imperative that CBI adheres scrupulously to the provisions in the Manual in relation to ;its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action

taken against the officials concerned."

26. In *Nirmal Singh Kahlon Vs State of Punjab* (2009) 1 SCC 441, the importance of preliminary enquiry has been focussed as follows:

"Lodging of a First Information Report by CBI is governed by a manual. It may hold a preliminary enquiry, it has been given the said power in Chapter VI of the CBI Manual. A prima facie case may be held to have established only on completion of a preliminary enquiry."

27. To add more on this point, this court would like to place reliance upon the decision made in *R.Subramanian* (Crl OP No.8348 of 2011), *Green Signal Bio Pharma Pvt. Ltd.* Represented by its Managing Director *Sundaraparipooranan* (Crl OP No.9611 of 2011) Vs *Union of India* by Addl. Superintendent of Police, CBI/ACB/Chennai decided on 27-3-2012.

28. In this case in para 14, this Court has made reference to *Noor Aga Vs State of Punjab* and another reported in 2008 (56) BLJR 2254. In this case, while speaking on behalf of the Division Bench, His Lordship Hon'ble Mr. Justice S.B.Sinha has observed in paragraph Nos.122,123 and 124 in the following manner:-

"122. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another

important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.

123. In *State of Kerala and Ors Vs Kurian Abraham (P) Lt. and Anr.* MANU/SC/0801/2008 (2008) 3031 ITR 284(SC), following the earlier decision of this Court in *Union of India Vs Azadi Bachao Andolan* MANU/SC/0784/2003 (2003)263 ITR 707 (SC) it is observed that statutory instructions are mandatory in nature.

124. Logical corollary of these discussions is that the guidelines such as those present in the Standing order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect that had such evidence been produced, the same would have gone against the prosecution.

29. In the given case on hand, it appears that the FIR was registered on 20-6-2016 at 11.30 hrs.

Serial No.3(a) is relating to suspected offence. In this column it is stated as "Criminal conspiracy,

Habitually obtaining pecuniary benefit without consideration, abetment, criminal misconduct and abuse of official position".

Serial No.4 is about type of information. In this column, it is simply stated as source information. It has not been stated as to whether the information was in writing or in oral.

In Column 3(c) it is stated that information was received on 20-06-2016 at 11.30 hrs. In Column 15 of FIR it is stated that the FIR was dispatched to the Court on 20-6-2016 at 12.30 hrs. It shows that within one and half hour of its registration it was dispatched to Court which would go to disclose that no such preliminary enquiry was conducted to ascertain the genuineness and credit worthiness of the source information.

30. This Court with due care caution has gone through the averments of the FIR. Having regard to the averments of FIR, this Court is of considered opinion that no prima facie case is made out pertaining to the incident, alleged in the FIR to proceed against the Petitioner.

31. Mr. K. Srinivasan, Learned Special Public Prosecutor for CBI cases has contended that the said Vimal Jain is the Manager of M/s S.H.Bhandari & Co., Chartered Accountants and that adequate grounds are

available to substantiate the allegations that the Petitioner had utilized the services of Mr. Vimal Jain, since he was the Manager of M/s S.H. Bhandari and Co., Chartered Accountants.

32. He has also continued that the investigation has revealed that Mr. Vimal Jain was not at all involved in the booking of the aforesaid tickets and the payment of cash was made to Smt. Jothie of M/s Yes Yes travels. He has also maintained that from the investigation it is revealed that Smt Jothie of M/s Yes Yes travels had done the booking for Petitioner and that she had not met Mr. Vimal Jain in this regard.

33. He has continued further that it is evident from e-mail correspondence between Shreyans Bhandari and Smt Jothie that on 9-5-2013, Smt Jothie had sent a mail to Shreyans that she had received an amount of Rs.1,10,000/- through Rama Rao, as advance payment for the trip organized for the Petitioner Mr. Muralimohan starting May 15 for 11 nights and had also sought the contact numbers of Mr. Muralimohan for informing the hotels.

34. He further states that the FIR would clearly prove the various offences committed by the Petitioner and therefore he has submitted that the Petition filed by the Petitioner to quash the criminal proceedings, which

is in progress against him, has no legs to stand and therefore liable to be dismissed as devoid of any merits.

35. He has also contended that the CBI had registered the FIR against the Petitioner and other accused persons duly adhering and following the guidelines and procedures established by Law.

36. He has submitted further that the preliminary enquiry vide PE No.2 of 2015 was registered by CBI ACB Chennai in the subject matter and that the enquiry revealed that the Petitioner and other public servants had prima facie committed various offences and accordingly after completion of enquiry this case was registered.

37. He has also added that the investigation revealed that the Petitioner had official dealings with the accused Chartered Accountants. In support of his contention he has placed reliance upon the following decisions;

"R.P.Kapur Vs State of Punjab - AIR 1960 SC 866, Kunhammed Vs Abdul Khader - 1977 KLT 840, Mathew Vs State of Kerala-2000 (1) KLT 294, State of Punjab Vs Kasturi Lal and others - AIR 2005 SC 4135, AIR 2006 SC 2872, Monica Kumar Vs State of Uttar Pradesh - (2008) 8 SCC 781 - AIR 2008 SC 1614)"

38. In the above cited decisions, a common ratio has been applied to that effect that "even though the inherent jurisdiction of the High Court under Section 482

is very wide, it has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section.

39. Mr. Srinivasan has also placed reliance upon R.K.Lakshmanan Vs A.K. Srinivasan and another - AIR 1975 SC 1741 wherein it is observed that the inherent power has to be exercised sparingly with circumspection and in the rarest of rare cases.

40. In the given case on hand, this Court is able to find from Pages 7, 8 and 9 to 14 of the typed set of papers, that a hand written slip seems to have been issued by Mr. Vimal Jain signed on 15-5-2013 wherein it is stated that a sum of rupees one lakh was received from Mr. Muralimohan towards the expenses for room booking and travelling arrangements for trip to Kedarnath via Dehradun etc.

Page 8 of the typedset contain the Xerox copy of self cheque bearing no.391256 for the value of rupees two lakhs which appears to have been drawn on SBI.

Page 9 to 14 encompasses statements of account of Mr. Muralimohan in respect of his SB Account bearing No.32196836667 maintained by him at SBI, Nungambakkam branch, Chennai. On perusal of this statement of account it reveals that on 14-5-2013, on the presentation self cheque of Mr. Muralimohan bearing no.391256, a sum of rupees two lakhs was paid to him which is in fair

congruence with the self cheque bearing no.391256 find a place on page 8 and the statement of account find a place at page no.11 of the typed set of papers.

41. This Court has therefore, concluded on perusal of the grounds of the Petition as well as on perusal of averments of counter statement filed by the Respondent Police that the FIR does not prima facie disclose a triable offence as against the Petitioner.

42. In this connection, this Court would like to place reliance upon the decision of the Apex Court made in Sathish Mehra Vs State of NCT of Delhi - AIR 2013 SC 506 wherein it is held that the broad principle for exercise of the extraordinary power is that in case the allegations made against an accused, prima facie do not disclose a triable offence, there can be no reason as to why the accused should suffer the agony of legal proceedings. A prosecution which is bound to become lame or a sham ought to be interdicted in the interest of justice as continuance thereof will amount to abuse of the process of Law.

43. In another case, viz State of UP Vs K.K.Gupta -AIR 1970 SC 1279 it is observed as under :

The powers conferred on the High Court by Sec.482 are no doubt very wide but they are not unlimited. They can be exercised only when;

- The Code makes no specific provision for dealing

with the matter.

- The exercise of the inherent power would not be inconsistent with any express or specific provisions of the code and
- The Court is satisfied that there is an abuse of its process which calls for its interference or
- The order proposed is necessary - (i) for giving effect to some other order passed under the code or (ii) otherwise to secure the ends of justice.
- Where any of the foregoing grounds does not exist, the High Court cannot exercise its power under Sec.482 to quash an order, however erroneous it may be.
- Nor can the Court allow an application under Sec.482 without giving any reasons therefore.

44. Of course, investigation into cognizable offence is a statutory power of Police and Superintendence thereof is vested with the Government. So, the High Court can not interfere with it without justifiable reasons. But the question would be otherwise, if the FIR does not disclose a cognizable offence and the High Court can quash the investigation by invoking Sec.482 of CrPC.

45. The Apex Court in STATE OF HARYANA and others Vs BHAJANLAL and another (1992 Supp 1 SCC 335) has held as follows:

"6. The investigation of an offence is the

field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds. A noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorized to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court, on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders”

In the very same decision, the Apex Court has laid down

certain categories of cases by way of illustration wherein such power can be exercised either to prevent abuse of process of court or otherwise to secure the ends of justice.

46. In the circumstances illustrated in the above cited case; circumstance nos.1,2,3,5 and 7 are very much relevant.

- 1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;
- 2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;
- 3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and

make out a case against the accused;

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

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge (305D-H; 306A-E).

47. Having taken into consideration of all the relevant facts and circumstances, this Court finds that the entire allegations made against the Petitioner in the FIR are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Petitioner.

48. Finally, this Court is of considered view that the Criminal proceedings initiated by the Respondent is manifestly attended with malafide with an ulterior motive for wreaking vengeance on the Petitioner with a view to spite him due to private and personal grudge.

In the result, the Criminal Original Petition is allowed and the Criminal Proceedings initiated as against the Petitioner in FIR bearing No. RC MA1 2016 A 0019 on the file of the Respondent Police (CBI/SPE/ACB) Chennai are quashed.

15-05-2017

Index : yes / no
Internet : yes

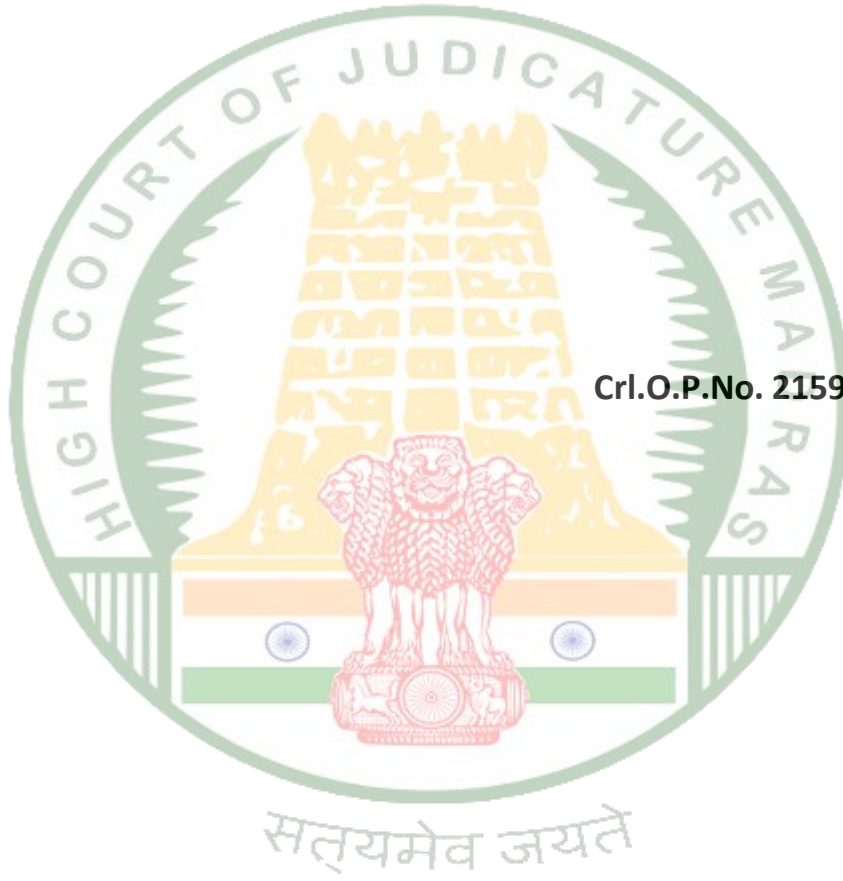
To

- 1) Inspector of Police,
Central Bureau of Investigation
SPE, ACB, Chennai
- 2) The Special Public Prosecutor
CBI Cases, Madras High Court
Chennai.



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