BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON: 05.01.2016

ORDERS DELIVERED ON: 11.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.VENUGOPAL

Crl.O.P.(MD).No.23535 of 2015

B.Selvam : Petitioner

Vs.

The Director,
Vigilance and Anti-Corruption,
Chennai-28. : Respondent

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the Respondent to register a case/FIR on the complaint given by the Petitioner dated 03.10.2015 and investigate into the matter in accordance with law and file a final report within a period prescribed by this Court.

For Petitioner : Mr.N.Sathish Babu

For Respondent : Mr.K.Chellapandian
Additional Advocate General
Assisted by Mr.C.Ramesh

ORDER

The Petitioner has focussed the instant Criminal Original Petition praying for passing of an order by this Court in directing the Respondent to register a case/FIR on the complaint given by the Petitioner, dated 03.10.2015 and investigate into the matter in accordance with law and file a final report within a period prescribed by this Court.

2.The Petitioner is working as a Shop Supervisor II in Sholp No.5276, Thirumangalam, Madurai District. According to the Petitioner, one S.Dhanabal, who is serving as Senior Regional Manager, Tamil Nadu State Marketing Corporation (TASMAC), Madurai, his Assistant viz., M.Ravi and Shop Supervisors II working at Shop No.5225 viz., S.Saravanakumar, P.Kanagaraj, K.S.Kathiravan and one S.Muthupandi, who is working as retailer at Shop No.5291 and some other persons by colluding themselves had made illegal appointments and transfers to the persons, who are all working in the shops under their control against the Government Rules by getting bribe from them.

3.Further, the Petitioner had averred in the present Criminal Original Petition that the aforesaid Dhanabal and others are collecting an amount of Rs.5,000/- to Rs.10,000/- from the aforesaid illegally appointed persons in the name of monthly commission. Moreover, one Senthil, who is the Personal Assistant to the Hon'ble Minister Natham R.Viswanathan is colluding with the aforesaid persons and thereby whenever vacancies arise in the shops in the Districts, which come under their Region, they got bribe from the illegal persons and made appointments and transfers to them fraudulently by using the forged recommendation letter without the knowledge of the Hon'ble Minister cum Chairman, Tamil Nadu State Marketing Corporation (TASMAC).

4.The stand of the Petitioner is that on 03.10.2015 he lodged a complaint with the Respondent/Director of Vigilance and Anti-Corruption Wing, Chennai-28 and requested to take action against the said S.Dhanabal and others. However, no case was registered by the Respondent police and also no effective steps were taken by the Respondent, based on his complaint. Therefore, he has approached this Court by invoking its inherent jurisdiction under Section 482 of Cr.P.C. praying for passing of an order by this Court in directing the Respondent/Director of Vigilance and Anti-Corruption Wing, Chennai-28 to register a case/FIR based on the complaint given by him dated 03.10.2015 and to investigate into the matter in accordance with law and to file a 'Final Report' within a period to be fixed by this Court.

5.In the counter filed on behalf of the Respondent, it is among other things, averred that the Petitioner's two similar petitions dated 03.10.2015 addressed to the Director of Vigilance and Anti-Corruption Wing, Chennai-28 were received and they were processed in the Directorate of Vigilance and Anti Corruption and that the said petitions had not disclosed specific information/acceptance of bribe/corruption and contained only general allegations unaccompanied by supporting documents. Therefore, the said petitions were forwarded to the Managing Director, Tamil Nadu State Marketing Corporation, 4th Floor, CMDA Building -2, Egmore, Chennai-8 as per instructions issued in Government Memo No.1356/64/2, Public (Services-B), dated 08.04.1964 and incorporated in Para 10(3) of the Manual of the DVAC, considering the fact that the petitions had not disclose any specific cognizable offence.

6.Apart from that, it is mentioned in the counter that the Managing Director, TASMAC vide his proceedings dated 10.12.2015 has directed the Chief General Manager (Finance), Corporate Office, TASMAC to enquire into the allegation contained in the petition. Also, one Senthil Kumar, Additional Senior Personal Assistant to the Hon'ble Minister for Electricity, Prohibition and

Excise, was relieved from the office of the said Minister with effect from 11.12.2015 A.N. And reverted to the Parent Department (i.e) Home, Prohibition and Excise Department vide the office proceedings No.3090, Public (Estt.IV) Department, Secretariat, Chennai-9, dated 11.12.2015.

7.The Learned counsel for the Petitioner brings it to the notice the Part II of Manual of the Directorate of Vigilance and Anti-Corruption, under the caption 'Disposal of petitions/complaints' paragraph No.10 'Action on petitions received' (1 to5), which reads as under:-

"(1) Petitions containing allegations of corruption and malpractices by Government Servants are usually addressed to one of the three authorities, viz, the Government, the Head of the Department or other Administrative Officers, and the Directorate of Vigilance and Anti-Corruption.

(2) When petitions are received by the Directorate of Vigilance and Anti-Corruption, a Preliminary Enquiry may be conducted afler qbtaining the specific orders of the Director, except in respect of All-India Service Officers, Heads of Departments and Collectors, in which case, the petitions will invariably be forwarded to the Chief Secretary to the Government straightaway, for necessary action, without conducting any form of enquiry.

(3) Petitions which contain allegations of corruption, misconduct or irregularities of a nature on which the Director considers that the Directorate need not initiate action, will be forwarded to the Heads of Departments concerned. If the petitions signed or otherwise, contain specific allegations which prima facie can be verified to be correct or otherwise by a scrutiny of the relevant files/accounts, etc., they will be referred to the Head of the Department concerned with a covering letter, appropriately worded, suggesting that he may have the allegations examined by reference to the relevant files.

(4) Every petition received, either in the Directorate Headquarters or in the Detachment Offices, will be affixed with the date seal and assigned a current number. Petitions received directly in the Detachments should be forwarded to the Directorate Headquarters for disposal and no enquiry should be initiated on them without prior orders of the Director, nor endorsements made on them. The endorsements of the Detachment Deputy Superintendent of Police or Inspector of Police, as the case may be, forwarding such petitions to Headquarters Office should be on separate sheets of paper and should bear the Detachment Office current number and date. In the case of enquiries to be

instituted, only copies and not the originals of petitions will normally be sent to the field officers for enquiry, the originals being retained in the Headquarters Office. The originals can be sent to the field officers, in appropriate cases.

(5) Petitions received in the Directorate should be properly scrutinised with the purpose of identifying whether an acknowledgement or reply should go to the petitioner and petitions received from well-known or identifiable organisations should invariably be replied to. Petitions addressed to the Directorate and received in succession to similar petitions received earlier from individuals who desire to know the result of their earlier complaints, should also be replied to."

8.Further, the Learned counsel for the Petitioner contends that the Petitioner was not summoned for the purpose of enquiry by the Respondent and that as per Department Head's recommendation (based on the recommendation of Union Secretary V.Pandian) two Supervisors viz., one S.Saravanakumar and A.Athimurthy were transferred, which is evident from the proceedings of Senior Regional Manager of TASMAC, Madurai. Further, he refers to the proceedings of the District Manager, TASMAC, Madurai, dated 28.07.2013 to the effect that based on the reference No.1 of the telephonic information of Senthil, Personal Assistant to the Hon'ble Minister for Electricity, Prohibition and Excise, appointment order of one retail sale shop No.5420, Supervisor Natarajan's appointment was cancelled.

9.Added further, the Learned counsel for the Petitioner brings it to the notice of this Court the proceedings of the District Revenue Officer/Senior Regional Manager, TASMAC Limited, addressed to the District Manager, TASMAC, Madurai South, in Na.Ka.No.2711/2015/அ, dated 01.10.2015 and submits that even in the reference No.1 of the said proceedings, there was a mention of TASMAC Chairman's recommendation letters dated 23.08.2015, 11.09.2015 and 27.09.2015 and also there was a reference to the Madurai South District Mangers proceedings dated 01.10.2015 to the effect that ten transfers were effected and therefore, the Petitioner had addressed a complaint dated 03.10.2015 to the Respondent, but the same is of no use.

10.Apart from that, the Learned counsel for the Petitioner refers to the proceedings of the District Revenue Officer/Senior Regional Manager, TASMAC addressed to the District Manager, TASMAC Limited, Madurai South in Na.Ka.No.2711/2015/அ, dated 06.11.2015 and submits that the TASMAC Chairman's recommendation letter dated 23.10.2014 was mentioned in the reference and one Supervisor by name R.Salamon was transferred based on administrative exigency.

11.Continuing further, the Learned counsel for the

Petitioner refers to the proceedings of the District Revenue Officer/Senior Regional Manager, TASMAC Limited, Madurai addressed to the District Manager, Madurai South, dated 11.11.2015 in and by which, it was mentioned that as per reference No.1 of the office letter dated .11.2015, the transfer which was effected was cancelled based on administrative exigency and two persons viz., Sathish Kumar, Salesman, Shop No.5279, Madurai and Anbalagan, Salesman, Shop No.5546, Madurai were transferred to the Shop Nos 5280 and 5279 respectively. At this stage, the Learned counsel for the Petitioner submits that the aforesaid proceedings were only samples, which exhibits the illegal actions, for which the Petitioner had lodged a complaint dated 03.10.2015 to the Respondent, which proved futile.

12.The Learned counsel for the Petitioner seeks in aid of the Part II of Manual of the Directorate of Vigilance and Anti-Corruption, under the caption 'Enquiry and Investigation Procedures', paragraph Nos.14 and 15, which speak as under:-

14. Nature of Enquiriesllnvestigations:-

The Directorate of Vigilance and Anti-Corruption undertakes enquiries/investigations into complaints/information about specific acts of bribery or corruption and allied malpractices in the exercise of official authority by Public Servants under the controal of the State Government and also employees of the Public Undertakings, Corporations set up by the State Government. Usually, the first enquiry into a complaint/ information is in the nature of a Preliminary Enquiry. If the Preliminary Enquiry discloses material which merits an open probe, a Detailed Enquiry is taken up. If the material thrown up in a Preliminary Enquiry or a Detailed Enquiry makes out a prima facie case for a criminal prosecution, a Regular Case is registered under Section 154 of the Code of Criminal Procedure, 1973, and investigation taken up in terms of relevant provisions of the Code of Criminal Procedure 1973. When specific information is received that a particular Public Servant is demanding money for discharge of his official duty in a specified instance, a 'Trap' is also attempted.

15.Authority for taking up Enquiries/lnvestigations:

(1) Enquiries and investigations of regular criminal cases, including traps, may be taken up by the Directorate of Vigilance and Anti-Corruption, in accordance with the following orders only:-

(i) Preliminary Enquiries against Government Servants falling under Groups A,B,C and D (excepting

Members of All-India Services, District Collectors and Heads of Departments) may be taken up on the orders of the Director of Vigilance and Anti-Corruption;

(ii) Detailed Enquiries against Government Servants falling under Groups C and D may be taken up on the orders of the Director of Vigilance and Anti-Corruption;

iii) Detailed Enquiries against Government Servants falling under Groups A and B (excepting Members of All-India Services, District Collectors and Heads of Departments) may 1 be taken up only with the concurrence of the Vigilance Commissioner;

(iv) Regular Cases other than Trap Cases may be registered against Government Servants falling under Groups A, B, C or D (excepting Members of All-India Services, District Collectors and Heads of Departments) only with the prior permission of the Vigilance Commissioner, provided that where a Magistrate orders investigation under Section 156 (3) of the Code of Criminal Procedure 1973, no such prior permission of the Vigilance Commissioner need be obtained;

(v) Trap cases against Gwornn~ent Sewants tailing under Groups C and D may be organised on the orders ai the Superintendents of Police in the Oirectorale of Vigilance and Anti-Corruption;

(vi) Trap cases against Government Servants failing under Groups A and B (excepting Members of All-India Services, District Collectors and Heads of Departments) may he organised on the orders of the Director of Vigilance and Anti-Corruption obtained through the Additional/Deputy Director of Vigilance and Anti-Corruption or direct; and

(vii) In respect of Members of All-India Services. District Collectors, Heads of Departments and Managing Directors/ Chief Executives of Statutory Bodies, Corporations and State owned Companies, the following procedure will be followed-

(a) the Director of Vigilance and Anti-Corruption shall not start a Preliminary Enquiry, unless specifically authorised by the Government, in consultation with the Vigilance Commissioner;

(b) the Government may order Detailed Enquiries, grant permission to register criminal cases and trap cases; and

(c) the Vigilance Commissioner may also give concurrence for Detailed Enquiry on the basis of Preliminary Enquiry reports.

(2) The procedure in respect of Government Servants falling under Groups A and 5 shall be followed in the case of employees of Statutory Bodies,

Corporations and State owned Companies whose starting pay is Rs.1,640 and above per month, and the procedure in respect of Government Servants falling under Groups C and D shall be followed in the case of such employees whose starting pay is below Rs.1,640 per month and contends that till date, no preliminary enquiry has been conducted by the Respondent."

13.The Learned counsel for the Petitioner submits that when the Crl.O.P.(MD)No.23535 of 2015 came up for hearing before this Court on 11.12.2015, the Learned Additional Advocate General took notice on behalf of the Respondent and sought time for filing of the counter and thereafter, the Additional Senior Personal Assistant to the Hon'ble Minister for Electricity, Prohibition and Excise, viz., G.Senthil Kumar was relieved from the office of the Minister with effect from 11.05.2015 and reverted to his parent department i.e. Home, Prohibition and Excise Department and this will strengthen the case of the Petitioner.

14.The Learned counsel for the Petitioner contends that the Respondent soon after receipt of the complaint of the Petitioner dated 03.10.2015 has not registered a First Information Report and to lend support to his contention, that First Information Report ought to have been registered by the Respondent based on the complaint of the Petitioner, he relies on the decision of the Hon'ble Supreme Court in ***LALITHA KUMARI v. GOVERNMENT OF UTTAR PRADESH AND OTHERS*** reported in ***2014 (1) SCC (Cri) 524*** and at page Nos.525 and 526, whereby and where under, it is observed and held as follows:-

> "The object sought to be achieved by registering the earliest information as FIR is inter alia two fold: one, that the criminal process is set into motion and is well documented from the very start; and second, that the earliest information received in relation to the commission of a cognizable offence is recorded so that there cannot be any embellishment etc., later. Principles of democracy and liberty demand a regular and efficient check on police powers. One way of keeping check on authorities with such powers is by documenting every action of theirs. Accordingly, under the Code, actions of the police etc., are provided to be written and documented. The police is required to maintain several records including Case Diary as provided under Section 172 of the Code, General Diary as provided under Section 44 of the Police Act etc., which helps in documenting every information collected, spot visited and all the actions of the police officers so that their activities can be documented. Moreover, every information received relating to commission of a non-cognizable offence also has to be registered

under Section 155 of the Code. The underpinnings of compulsory registration of FIR is not only to ensure transparency in the criminal justice delivery system but also to ensure 'judicial oversight'. Section 157 (1) deploys the word 'forthwith'. Thus, any information received under Section 154(1) or otherwise has to be duly informed in the form of a report to the Magistrate. Thus, the commission of a cognizable offence is not only brought to the knowledge of the investigating agency but also to the subordinate judiciary."

15.He also cites an order of this Court dated 03.06.2015 in Crl.O.P.(MD)No.7847 of 2015 between ***N.GOVINDARAJU v. THE SUPERINTENDENT OF POLICE, PREVENTION OF ANTI CORRUPTION AND VIGILANCE (SOUTH ZONE), P.S.KUMARASAMY RAJA SALAI, RAJA ANNAMALAIPURAM, CHENNAI AND ANOTHER***, whereby and where under in paragraph Nos.2 to 4 and 7, it is observed as follows:-

"2. In the counter affidavit filed by the 2nd Respondent, it is stated that it is true that such an enquiry was held by him in PE05/2015/TNSTC/HQ dated 29.02.2012 in Trichy Detachment and the enquiry report was sent to the Vigilance Commissioner, Chennai, by letter No.910/VC/111/2012 dated 09.03.2012 of the Directorate of Vigilance and Anticorruption, Chennai. It is further stated in the counter that during the enquiry, 62 witnesses were examined and 56 documents were collected and on completing the enquiry, a final report was submitted to the Directorate of Vigilance and Anticorruption, Chennai, stating that the allegation against one Mr.Selvaraj, Deputy Manager, Mr.Rajendran, Senior Grade Assistant and 16 others stands substantiated. In the counter, it is further admitted that the Inspector of Police, Vigilance and Anticorruption, Trichy had recommended for departmental action against 18 officials and accordingly, departmental action has been taken. So far as the present complaint is concerned, it is stated that since the evidence collected by the Investigating Officer is not sufficient for the reason that the guilt of the accused could not be proved beyond reasonable doubt before the Court of law, case was not registered.

3. The Learned counsel for the Petitioner would submit that the said stand taken by the Respondent is not legal in view of the law laid down by the Hon'ble Supreme Court in ***Lalita Kumari vs. Govt. of U.P.& Others (2013 (4) Crimes 243 (SC))***. According to the Learned counsel, since there are prima facie materials making out offence under the Prevention of Corruption Act as

well as for misappropriation, a case should have been registered against the then Hon'ble Minister and the officials concerned.

4. The Learned Additional Public Prosecutor would submit that a case has not been registered because the earlier Inspector of Police, who held enquiry has recommended only for departmental action.

7. As I have already pointed out, in the counter it is stated that the materials collected during preliminary enquiry may not be sufficient to prove any offence against the accused beyond reasonable doubt and that is the reason why a case has not been registered. This reasoning cannot be accepted because during the preliminary enquiry, the purpose of examining the witnesses and collecting documents is only to find out a prima facie case for the purpose of registering a case. Only during investigation, after registering the case, sufficient evidence is to be collected in order to prove the guilt, if any, of the accused. Therefore, this reasonings stated in the counter cannot be accepted."

and contends that in the instant case also, the Respondent should have registered a case and investigated the matter based on the complaint of the Petitioner, dated 03.10.2015.

16.Conversely, it is the submission of the Learned Additional Advocate General that since the allegations in the petition of the Petitioner dated 03.10.2015 had not disclosed any specific information of cognizable offence, the Respondent/Director, Vigilance and Anti Corruption Wing, Chennai-28 had addressed a communication in Petn.No.8876/2015/TASMAC/MU, dated 09.10.2015 to the Managing Director of TASMAC, Egmore by stating that the petition in original was sent herewith for necessary action on his end. As per instructions issued in Government Memo No.1356/64/2, Public (Services-B), dated 08.04.1964 and incorporated in Paragraph 10(2) of the Mannual of the DVAC etc. It was also mentioned that the Directorate had not caused any enquiry into the contents of the said petition.

17.The Learned Additional Advocate General by referring to paragraph Nos.3 and 4 of the petition filed in Crl.O.P.(MD) No.23535 of 2015 filed by the Petitioner contends that the Petitioner had stated that one Senthil, who is the Personal Assistant to the Hon'ble Minister Natham R.Viswanathan colluding with the aforesaid persons and thereby whenever vacancies arise in the shops in the District, which come under the Region, they got bribe from the illegal persons and made appointments and transfers to them fraudulently by using the forged recommendation letter without the knowledge of the Hon'ble Minister cum Chairman, Tamil Nadu State Marketting Corporation (TASMAC).

18.The Learned Additional Advocate General contends that the Petitioner had not given any specific instance for taking cognizance and in fact, by the proceedings of Senior Regional Manager, TASMAC, Madurai, dated 13.08.2012, the individual shop Supervisors were transferred based on their submission of applications for mutual consent and therefore, there is no question of receiving bribe.

19.The Learned Additional Advocate General for the Respondent by referring to the proceedings dated 28.07.2013 of the District Manager, TASMAC, Madurai South (wherein the office proceedings dated 19.07.2013 was referred to) submits that even this document does not substantiate the commission of any offence. Besides the above, the Learned Additional Advocate General refers to the transfer proceedings of the Senior Regional Manager, TASMAC Limited, Madurai, dated 06.11.2015 (wherein one Salamon, Supervisor, Shop No.5501, Madurai was transferred and appointed as Supervisor in the vacant post of Shop No.5280) and points out that this document does not also disclose any cognizable offence. Moreover, the Learned Additional Advocate General by referring to the proceedings dated 01.10.2015 of the Senior Regional Manager, TASMAC Limited, Madurai points out that the said proceedings only refers to some persons were transferred based on administrative exigency and this document also does not exhibit any commission of ffence.

20.The Learned Additional Advocate General for the Respondent submits that the Respondent/Director in reference No.8973/2015/TASMAC/MU, dated 15.10.2015 addressed to the Managing Director of TASMAC, Chennai had returned the petition of the Petitioner in the original for necessary action at his end (with a copy being marked to the Petitioner) stating that the allegations mentioned in the petition do not disclose any specific information of cognizable offence under the Prevention of Corruption Act and that apart it was also mentioned in the letter of the Respondent dated 15.10.2015 that the petition dated 03.10.2015 was addressed to many officers/Departments for the same allegations and in fact, even prior to the filing of the present Criminal Original Petition by the Petitioner on 09.12.2015 before this Court, the Respondent had acted and as such, there is no delay or inaction on the part of the Respondent as regards taking of necessary action.

21.The Learned Additional Advocate General for the Respondent brings it to the notice of this Court that the Managing Director of TASNAC through his proceedings dated 10.12.2015 had directed the Chief General Manager (Finance), Corporate Officer, TASMAC to enquire into the allegation contained in the petition of the Petitioner and to submit a report and further that the Petitioner had given another complaint on 09.10.2015 containing the very same allegations.

22.The Learned Additional Advocate General for the Respondent contends that the facts of the case in the order dated 03.06.2015 in Crl.O.P.(MD)No.7847 of 2015 cited by the Petitioner are not similar to that of the facts in the present case and in the present case, the complaint pertains to illegal appointments. Moreover, the Chief General Manager (Finance), Corporate Office, Tamilnadu State Marketing Corporation (TASMAC) was appointed as enquiry officer to enquire into the complaint of the Petitioner.

23.The Learned Additional Advocate General for the Respondent submits that the Petitioner was an employee of TASMAC and indulged in malpractices and caused loss to an extent of Rs.2 Lakhs and therefore he was removed from service on 08.04.2015 and such a person wants to throw mud on officials and to take vengeance against the concerned officials by filing the present frivolous Criminal Original Petition. The Learned Additional Advocate General for the Respondent cites the order of this Court dated 02.06.2015 in ***Crl.O.P.(MD)No.8654 of 2015*** between ***S.MAYILRAJ v. THE DEPUTY SUPERINTENDENT OF POLICE, VIGILANCE AND ANTI CORRUPTION DEPARTMENT, TIRUNELVELI DISTSRICT, TIRUNELVELI***, wherein at paragraph No.3, it is observed as follows:-

> "A perusal of the complaint would go to show that the allegation is so vague, which do not make out any allegation warranting interference. It states that a huge amount has been obtained by way of bribe for plan approval etc. There are no material allegations even to make out a prima facie case. In such view of the matter, this petition deserves only dismissal."

and resultantly dismissed the Criminal Original Petition.

24.The Learned Additional Advocate General for the Respondent refers to the order dated 06.08.2014 passed by this Court in ***Crl.O.P.(MD)No.14584 of 2014*** between ***P.GANESAN v. THE DIRECTOR, VIGILANCE AND ANTI CORRUPTION WING, CHENNAI-28 AND ANOTHER***, wherein at paragraph No.2, it is observed as follows:-

> "Nowadays, it has become a fashion to throw allegations against persons and want to subject the proposed accused for enquiry unnecessarily. The criminal jurisdiction is not meant for wrecking vengeance or put a person unnecessarily into enquiry. Therefore, the petition requires dismissal. Accordingly, the Criminal Original Petition is dismissed."

25.By means of reply, the Learned counsel for the Petitioner submits that enquiry to be conducted by the Chief General Manager (Finance), Corporate Officer of TASMAC against the Petitioner cannot be construed to be an enquiry by the Vigilance and Anti Corruption Department and in fact, TASMAC is a separate board and indeed the Petitioner had addressed the complaint dated

28.09.2014 to the Home Secretary, Chennai against the District Manager, TASMAC, Madurai and another. Further more, the proceedings of the District Revenue Officer/Senior Regional Manager, TASMAC addressed to the District Manager, TASMAC, Madurai South, dated 01.10.2015 exhibits that ten persons were transferred indicating a clear case of interference.

26.The Learned counsel for the Petitioner contends that in the Petitioner's case no enquiry was conducted and straight away the impugned order of termination dated 08.04.2015 was passed by the District Manager, TASMAC, Madurai (South). At this juncture, the Learned counsel for the Petitioner brings it to the notice of this Court that the Petitioner on an earlier occasion filed W.P.(MD)No.5129 of 2015 and this Court on 07.04.2015 in paragraph Nos.3 and 4, had observed the following:-

> "3.When the matter is taken up for hearing, it is represented by the Learned counsel appearing for the third Respondent has decided to withdraw the impugned order with liberty to give fresh notice.
>
> 4.In view of the submissions made by the Learned counsel appearing for the third Respondent, the impugned order is set aside by giving liberty to the third Respondent to pass fresh order. Till the final order is passed, the Petitioner shall not be disturbed. It is open to the third Respondent to issue fresh notice if so advised, within a period of two weeks from the date of receipt of a copy of this order."

and disposed of the writ petition accordingly.

27.The Learned counsel for the Petitioner submits that the Petitioner filed W.P.(MD)No.5786 of 2015 before this Court challenging the order of his termination dated 08.04.2015 and this Court in M.P.(MD)No.1 of 2015 in W.P.(MD)No.5786 of 2015, dated 23.04.2015, had passed the following order:-

> "There shall be an order of interim stay till 15.06.2015. List this Miscellaneous Petition for further hearing.
>
> 2.It is made clear that in the event of non payment of Batta within five working days from the date on which a copy of this interim order is made ready, the interim order granted shall stand automatically vacated and the stay petition shall also stand dismissed without any further reference to this Court."

28.It is also brought to the notice of this Court that W.P.(MD)No.5786 of 2015 filed by the Petitioner is pending as on date.

29.It is to be borne in mind that inherent powers of the Court is to be used separately and with circumspection. At this stage this Court worth recollects and recalls the decision in ***JOHN***

C.V. ALIAS JOHN PERUVANTHANAM v. STATE OF KERALA AND OTHERS reported in ***2008 Crl.L.J. 1305*** at special page 1312, wherein at paragraph No.27, it is among other things observed as under:-

> ".... The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his F.I.R. Has not been registered by the police, or after being registered, proper investigation has not been done by the police, or this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail under Section 156(3) Cr.P.C. Before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C."

30.At this stage, this Court relevantly points out that the answer to question whether the registration of a Criminal Case under Section 154(1) of Cr.P.C. *ipso facto* warrants the setting in motion of an investigation under Chapter XII of Cr.P.C. is provided by Section 157 (1) proviso of Cr.P.C. In reality, Section 156(3) of Cr.P.C. does not empower a Magistrate to stop an investigation undertaken by the Police, as per the decision of ***PARKASH SINGH BADAL v. STATE OF PUNJAB*** reported in ***AIR 2007 SC 1274.***

31.Apart from that, this Court significantly points out that in a perfect system of prevention and deduction of crimes, undeniably, the prime duty of a police officer to whom the commission of a cognizable offence is reported to register a case without causing any delay and promptly commence the investigation without perverting or subverting the law. However, before a public servant is publicly charged with acts of dishonesty and corruption and an First Information Report is lodged against him, there should be some preliminary enquiry into the allegations by a responsible officer as per decision of Hon'ble Supreme Court in ***SATE OF HARYANA v. BHAJANLAL*** reported in ***AIR 1992 SC 604.***

32.It is also in the decision of the Hon'ble Supreme Court in ***E.S.MILLS SHRI VIRENDRA KUMAR v. RAJIV PODDAR*** reported in ***1985 SC 1668***, the Hon'ble Supreme Court has observed that 'interference by High Court is permissible only if non-interference would result in miscarriage of justice.' Further, in the decision of the Hon'ble Supreme Court in ***M.C.ABRAHAM v. STATE OF MAHARASHTRA*** reported in ***(2003) 2 SCC 649*** at special page 650, it is observed and held that 'while the investigation is in progress, the Court cannot direct the Investigating Agency to submit a report in regard to its view.'

33.At this juncture, it is to be pointed out that jurisdiction cannot be assumed by a Court of Law under an inherent power. Although the inherent power of a Court of Law is wide, it is to be used with great care, caution and circumspection and the same must be pressed into service sparingly.

34.In this connection, it is to be pointed out that the word 'gratification' must be treated in the context to mean any payment for giving satisfaction to the public servant who received it, as per decision of the Hon'ble Supreme Court in ***MADHUKAR BHASKARRAO JOSHI v. STATE OF MAHARASHTRA*** reported ***2001 Cr.L.J. 175 (S.C.).*** Also that it cannot be lost sight of that for the purposes of establishing the case under Sections 7 and 12 of the Prevention of Corruption Act, 1988, the prosecution is obliged to prove that there was demand of money, which was not legal or in other words that the public servant was demanding illegal gratification in respect of an official act and he in fact received or obtained the money as an illegal gratification, by corrupt or illegal means or by abusing his position as a public servant, or while holding office as a public servant only then a person can be convicted. The recovery de hors the demand would not be sufficient to convict the accused as per decision in ***RAM SWAROOP RATHORE v. STATE OF MADHYA PRADESH,*** reported in ***2000 Cr.L.J. 1882 (Madh. Pra.).***

35.On a careful consideration of respective contentions; this Court taking note of the fact that the Respondent in Petn.No.8876/2015/TASMAC/MU, dated 09.10.2015, addressed to the Managing Director, Tamilnadu State Marketting Corporation (TASMAC), Chennai-28, had mentioned that the allegations made in the petition of the Petitioner, dated 03.10.2015 do not disclose any specific information of cognizable offence under the Prevention of Corruption Act and therefore, returned the original petition for necessary action at his end, in terms of the instructions issued in Government Memo No.1356/64/2, Public (Services-B), dated 08.04.1964 and incorporated in Para 10(3) of the Manual of the DVAC and resultantly, the Respondent/Director had not caused any enquriy on the Petitioner's petition; this Court bearing in mind the another fact that the Managing Director of TASMAC through his proceedings, dated 10.12.2015 had directed the Chief General Manager (Finance) Corporate Office, TASMAC, to enquire into the allegation contained in the petition of the Petitioner and in view of the fact that the Petitioner's two petitions had not pinpointed out any clear-cut specific information of demand/acceptance of bribe/corruption, but the same contained only general allegations and not accompanied by relevant documents and also this Court taking note of the entire conspectus of the attendant facts and circumstances of the present case, which float on the surface, comes to an inescapable, inevitable and irresistible conclusion that the relief sought for by the Petitioner in the present Criminal Original Petition for issuance of direction to the Respondent to register a case/FIR on the basis of his complaint, dated 03.10.2015 cannot be acceded to. Viewed in that perspective, the Criminal Original Petition fails.

36.In the result, the Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar

/True copy/

Sub Assistant Registrar

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To
1. The Director,Vigilance and Anti-Corruption,Chennai-28.
2. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court, Madurai.
+one cc to M/s.N.Sathish Babu, Advocate in SR.No.1721

Pre-Delivery Order made in
Crl.O.P.(MD).No.23535 of 2015
11.01.2016

CSL/SK-SKN/19.01.2015
15P/4C