



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2016

CORAM

THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) Nos.14067, 14967 and 16023 of 2016 and
Crl.M.P.(MD) No.7425 of 2016 in Crl.O.P.(MD) No.14067 of 2016

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| 1. Subbaiah | ... Petitioner in Crl.O.P.(MD)14067/2016 |
| 2. V.Vel Murugan | ... Petitioner in Crl.O.P.(MD)14967/2016 |
| 3. Rengarajan | ... Petitioner in Crl.O.P.(MD)16023/2016 |

-vs-

State represented by

- | | |
|--|--|
| 1. The Superintendent of Police,
Sivagangai District,
Sivagangai. | |
| 2. The Inspector of Police,
District Crime Branch,
Sivagangai, Sivagangai District. | ... Common Respondents in
Crl.O.P.(MD)14067 & 14967 /2016 |
| 1. The State of Tamil Nadu,
Rep. by the Special Sub Inspector of Police,
District Crime Branch,
Sivagangai District.
(Crime No.15 of 2016) | |

2. U.Subbaiah ... Respondents in Crl.O.P.(MD)16023/2016
Prayer in Crl.O.P.(MD)14067/2016: Criminal Original Petition is
filed under Section 482 of Cr.P.C., to direct the 2nd respondent to
register the complaint lodged by the petitioner dated 25.07.2016.

Prayer in Crl.O.P.(MD)14967/2016: Criminal Original Petition is
filed under Section 482 of Cr.P.C., to direct the 1st respondent to
direct the 2nd respondent to register and investigate the case
against the accused on the basis of the petitioner's complaint
dated 05.08.2016.

Prayer in Crl.O.P.(MD)16023/2016: Criminal Original Petition is
filed under Section 482 of Cr.P.C., to call for the records
relating to the case in Crime No.15 of 2016 on the file of the 1st
respondent herein registered on 10.08.2016 and to quash the same
as against the petitioner herein.



WEB COPY

For Petitioners : Mr.Ajmalkhan, Senior Counsel

For Mr.K.R.Badurus Zaman
(in Crl.O.P.(MD)14067/2016)

Mr.A.Prasanna Rajadurai

For Mr.S.Muthalraj

(in Crl.O.P.(MD)14967/2016)

Mr.K.Chellapandian, Senior Counsel

For Mr.D.Sivaraman

(in Crl.O.P.(MD)16023/2016)

For Official Respondents : Mr.A.P.Balasubramani
Govt. Advocate (Crl.Side)For Intervenor : Mr.G.R.Swaminathan
For Mr.K.Balasubramani
(in Crl.M.P.(MD) No.7425 of 2016
in Crl.O.P.(MD) No.14067 of 2016)

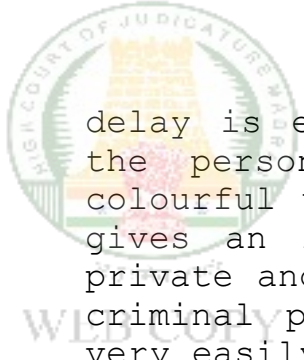
Orders Reserved on	Orders Pronounced on
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C O M M O N O R D E R

Who is the accused? Who is the victim? Who is the victim and who is the accused, when allegations and counter allegations are made by both against each other? These are the perplexing questions raised in all the three cases.

2. The petitioner Subbaiah points out Babu, the erstwhile Managing Director of TNSTC, Rengarajan, the successor of Babu and the erstwhile Transport Minister Senthil Balaji and claim that they are the accused persons and he is the victim. But the petitioner Vel Murugan alleges that it is only Subbaiah, who was claiming influence with the higher authorities of the Corporation and also the Minister, who had illegally collected money is the accused and he is one among the victim. On the complaint of some prospective candidates, who are seeking appointment, case has been registered, arranging both Subbaiah and Vel Murugan as accused in Crime No.226 of 2016 of Town Police Station, Pudukottai. The erstwhile Managing Director Rengarajan and the erstwhile Transport Minister Balaji seek quashing of the criminal complaint against them on the ground that they have nothing to do with the transaction alleged by Subbaiah.

3. The plea for registration of FIR always presents difficulties, when the plea is made belatedly. Prompt and early reporting of the occurrence gives some assurance regarding the truthfulness of the occurrence. When there is a delay, unless



delay is explained, it causes a reasonable doubt in the mind of the person entertaining the complaint that afterthoughts and colourful versions are likely to take the place of truth. It also gives an impression that the allegations may be on account of private and person grudge to entrap the accused in the net work of criminal proceedings and thus, the valuable right of liberty is very easily taken away.

4. At the initial stage, when the First Information Report is lodged, the information should provide some details giving opportunity to the Investigating Officer to enquire and find out whether the allegations stated could be true or not. But when the allegations are vague and bald, it is difficult to find out the truth.

5. Under such circumstances, the petitioner / Subbaiah herein has filed the application to give direction to the respondent to register the First Information Report. Similar prayer is made by the petitioner / Vel Murugan seeking registration of FIR as against Subbaiah.

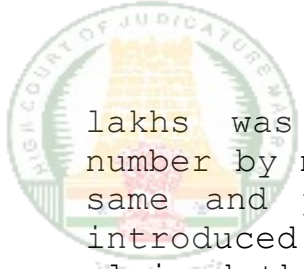
6. If the allegations in the complaint do not make out any case or the allegations are patently absurd or inherently improbable, so that no prudent person can ever reach to such a conclusion, then there is no sufficient ground for proceeding against the accused. Then the High Court would be competent to quash the complaint or the FIR. This is the dictum laid down in the case of ARNAVAZ v. ALCOBEX METALS LTD., reported in 2005 Cr.LJ 610, where the FIR did not disclose the commission of offence, without anything being added or subtracted from the recital therein, quashing of FIR was held proper.

7. In the case reported in 1998 SC 128 (M/s.Pepsi Foods Limited and another vs. Special Judicial Magistrate and others) also, it has been held that when the complaint and preliminary evidence makes out no case against the accused, complaint is liable to be quashed.

8. While exercising the power under Section 482 Cr.P.C., the Court is supposed to consider whether the complaint by itself de hors other matters, discloses commission of offence alleged (HARI GOVIND HATWAR v. STATE OF MAHARSHTRA, 2010 CrLJ (NOC) 218 BOM.)

9. Criminal Original Petition (MD)No.14067 of 2016, has been filed by the petitioner Subbiah, seeking direction to the Inspector of Police, District Crime Branch, Sivagangai to register the complaint lodged by the petitioner, dated 25.07.2016.

9.1. The sum and substance of the allegation is that the petitioner was working as Technical Assistant in TNSTC, Karaikudi from 2011; that he was approached by one Babu, the Managing Director, TNSTC, Karaikudi in the year 2014 towards getting illegal recruitment for the purpose of getting appointment (in the cadre of Junior Assistant; Office Assistant and Technical Assistant) in TNSTC, Karaikudi Region; that the amount of Rs.60



lakhs was deposited in the petitioner's Savings Bank account number by more than 30 individuals and the petitioner withdrew the same and paid it to Babu; when Babu retired from service, he introduced his successor Rengarajan; both Babu and Rengarajan claimed that the amount that they are collecting are on behalf of Transport Minister Senthil Balaji; that after prolonged insistence, the Managing Director, instead of giving appointment, issued fake appointment orders, which were received by the aspiring candidates; that the fake appointment orders were issued at the instance of the Transport Minister Senthil Balaji; that despite the complaint dated 25.07.2016; as there was no action, this Criminal Original Petition has been filed on 04.08.2016.

9.2. Along with the complaint, call letters for interview addressed to various candidates have been enclosed.

9.3. When this petition was taken up for admission on 08.08.2016, on which date at request, when it was adjourned to 19.08.2016, in the meantime, a case came to be registered in Crime No.15 of 2016 on 10.08.2016, in respect of offences under Sections 409, 420, 468 and 120(b) IPC against Babu, Rengarajan and Senthil Balaji, who are shown as A1 to A3 respectively.

10. Thereafter, Senthil Balaji filed CrI.M.P.(MD).No.7425 of 2016 seeking to intervene in the matter and sought for quashing of FIR in Crime No.15 of 2016 dated 10.08.2016.

11. Rengarajan filed CrI.O.P.(MD) 16023 of 2016, seeking to quash the FIR in Crime No.15 of 2016 dated 10.08.2016.

12. Strangely and curiously, the petitioner Vel Murugan filed a petition in CrI.O.P.(MD) No.14967 of 2016, seeking registration of FIR against Subbaiah / petitioner in CrI.O.P.(MD) No.14067 of 2016.

13. Preliminary objection was raised regarding maintainability of the petition filed for intervening in CrI.M.P.(MD) No.7425 of 2016 in CrI.O.P.(MD) No.14067 of 2016.

Maintainability of Intervening petition:

14. The learned counsel for the petitioner in CrI.O.P.(MD) No.14067 of 2016 submitted that the application to quash the FIR in a petition filed by the petitioner Subbaiah is not maintainable and separate petition ought to have been filed.

14.1. It is also pointed out that the petitioner Rengarajan (CrI.O.P.(MD)No.16023 of 2016) has filed a separate petition to quash the proceedings, i.e. FIR.

15. The learned counsel for the intervenor submitted that as per the precedent available i.e. the order passed by this Court in CrI.O.P.(MD)No.13114 of 2012, FIR can be quashed in a petition filed seeking registration of FIR.



15.1. In the cited case, the petition was filed by Kadar Maideen to register FIR alleging that his property has been encroached by the proposed accused persons, thus blocking the entrance to his property. The intervenor/proposed accused filed a petition stating that it is only the petitioner Kadarmaideen, who was trying to encroach upon his property and therefore, the complaint against him must be quashed. As a matter of fact, Commissioner was appointed and from the Commissioner's report, it was found that there was no encroachment by the proposed accused and the FIR registered against the intervenor was thus quashed. Therefore, it is clear that there is no legal bar to quash the FIR in a case filed by the opponent, provided there are material to substantiate that it is a fit case to quash the First Information Report. Even assuming that quashing of FIR cannot be filed in a petition filed by the opponent seeking registration of FIR, the application filed to quash the same should be treated as a separate application to quash the First Information Report and it cannot be dismissed on technical grounds.

15.2. This proposition is supported by the decision reported in 1998 SC 128 (M/s.Pepsi Foods Limited and another vs. Special Judicial Magistrate and others), where-under, it has been held as under:

"26. Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one the court find that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Cod. it ay not however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

16. Therefore, this Court holds that the petition filed to quash the FIR in an application to register the FIR is maintainable.

17. The contentions of the Intervenor / Senthil Balaji are as follows:

i) The parameters 1 and 5 (a & e), as set out in Bajanlal's case reported in 1992 Supplementary (1) SCC 335, are fully satisfied and hence, it is a fit case for quashing of FIR.

<https://hcservices.courts.gov.in/hcservices>
17.1. In the cited case, another contention is that the process of the Court is misused only to damage the political prospects of the petitioner.



18. Normally, the registration of Criminal case involves serious consequences i.e. Loss of liberty, loss of reputation, the right to apply for the job, loss of job, loss of income, suspension from service and right to apply for passport etc., which are put in jeopardy. But at the same time, if persons involved in public service are left, without being proceeded with, where there are materials to prosecute, then public interest would suffer. Therefore, Court has to be vigilant in finding out, whether a case is made out against the intervenor, who is stated to be the person involved in public service.

18.1. In order to appreciate the contentions raised, it is necessary to consider the parameters laid down in the case of Bhajan Lal as under:

"8.1. In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide kinds of cases wherein such power should be exercised:

(a) 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;

(b) 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;

(c) 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;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) 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

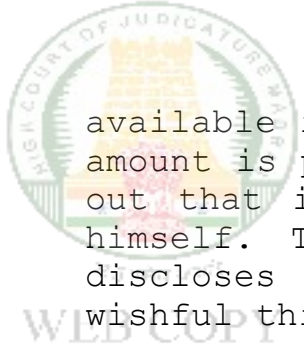


there is sufficient ground for proceeding against the accused;

18.2. It is contended that there are absolutely no materials to arraign Senthil Balaji as an accused in the First Information Report. The defacto complainant has nowhere stated that Senthil Balaji ever told him that if illegal gratification is obtained from prospective candidates, appointment is possible. It is not the case of the petitioner / Subbaiah that money was ever credited to the account of the then Transport Minister. It is his own case that the prospective candidates numbering more than 30 credited to the extent of Rs.30 lakhs in his account. There is not even allegation regarding at which point of time, it was withdrawn from his account and it was either given to the Minister or credited to the account of Minister. There is no averment that who are all the persons having knowledge regarding the alleged transaction. The alleged statement of the Managing Director that money has been collected for being paid to Transport Minister cannot make the Minister as an accused, unless there are materials to show that it was either paid or proposed to be paid. When Subbiah himself was admittedly not working as Technical Assistant but as a contract labourer, the claim that the Managing Director of a Public Sector undertaking had the contact and contract with a contract labourer, stipulating appointment for gratification appears to be highly improbable.

19. Admittedly, case has been registered under Sections 409, 468, 420 and 120(b) IPC. It is the admitted case of the petitioner Subbiah that amount of Rs.61 lakhs paid by 38 candidates had been credited only in his account. The narration appears as if he collected the statutory amount due from the person liable to pay tax / cess / fees. There is no document or there is no allegation to show that those amount was paid to either to Senthil Balaji or to the petitioner in CrI.O.P.(MD)No.16023 of 2016 (Rengarajan). The allegation is that it was paid by way of cash to Babu.

20. According to the petitioner Vel Murugan, he was informed by Subbiah that he had to spend lakhs of money to the Ministers and officials and he was informed that Minister Senthil Balaji will get the appointment by accepting lesser amount. This part of the statement would go to show that Subbaiah would have misused the names of officials and Ministers so that it is easy for him to get illegal gratification from the prospective candidates, but still, it is the matter to be enquired into. It is nowhere stated that the assurance of the job on giving gratification was a statement of the Minister himself or any Personal Assistant confidentially attached to the office of the Minister. It is also the statement of the petitioner Subbiah that he was informed by the Managing Director Babu that in respect of vacant post



available in TNSTC, which is to be filled up, can be done, if some amount is paid to the Transport Minister. It is pertinent to point out that it is not stated that it is a version of the Minister himself. The nature of the statement of the Managing Director discloses that it may be the anticipation or expectation or wishful thinking of the Managing Director himself.

21. It is necessary to look into the ingredients to be made available in the complaint, in order to make out the offence under Sections 409, 468, 420 and 120(b) IPC.

1. Section 409 IPC (Criminal breach of trust by public servant, or by banker, merchant or agent);
2. Section 468 IPC (Forgery for purpose of cheating)
3. Section 420 IPC (Cheating and dishonestly inducing delivery of property)
4. Section 120(B) IPC (Punishment of criminal conspiracy)

21.1. There is no allegation pertaining to the ingredients of those four sections.

22. The learned counsel for the petitioner (Subbiah), relied upon the following decisions in order to support his contentions that it is not proper to quash the First Information Report:-

(1) In CHAND DHAWAN v. JAWAHAR LAL reported in AIR 1992 SC 1379, wherein the Hon'ble Supreme Court has held as follows:-

"This court has in various decisions examined the scope of the power under Section 482 Cr.P.C., and has reiterated the principle that the High Court can exercise its inherent jurisdiction of quashing a criminal proceedings only when the allegations made in the complaint do not constitute an offence or that the exercise of the power is necessary either to prevent the abuse of the process of the court or otherwise to secure to ends of justice."

22.1. The principle enunciated cannot be disputed, but in this case, the contention is the ingredients in the FIR do not make out the offence against the accused.

(2) AIR 1992 SC 1379 (Union Of India vs B.R. Bajaj;

"In Janata Dal v. H.S. Chowdhary, this Court has exhaustively dealt with the scope of inherent powers conferred by Section 482 CrPC and it was held thus: (SCC p. 356, para 137) "This inherent power conferred by Section 482 of the Code should not be exercised to stifle a legitimate prosecution. The High Court being the highest



court of a State should normally refrain from giving a premature decision in a case wherein the entire facts are extremely incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of great magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard and fast rule can be laid down in regard to the cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. This Court in State of Haryana v. Ch. Bhajan Lal to which both of us were parties have dealt with this question at length and enunciated the law 2 (1992) 4 SCC 305: 1993 SCC (Cri) 36 listing out the circumstances under which the High Court can exercise its jurisdiction in quashing proceedings."

22.2. This Court has considered the case in the light of the guidelines given in Bhajanlal's case.

(3) 2006 (4) SCC 359 (MINU KUMARI AND ANOTHER v. STATE OF BIHAR AND OTHERS);

"It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "*quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest*" (when the law gives a person anything it gives him that without which it cannot exist)."

22.3. The nature of power to be exercised under Section 482 Cr.P.C., is highlighted in this decision, which always help the Court to take a decision.

<https://hcservices.ecourts.gov.in/hcservices/>

(4) (2000) 4 SCC 447 (State of W.B. vs. Narayan K.Patodia)



"Where only FIR was registered and no investigation had yet commence, the High Court cannot quash the FIR"

22.4. This decision had been rendered under a different context. However, in this case, investigation has already commence.

(5) (2004) 1 SCC 691 (State of M.P. vs. Awadh Kishore Gupta and another)

"Annexure to the petitions cannot be termed as evidence without being tested and proved and should not be acted upon by the High Court."

(6) (2002) 3 SCC 89 (State of Karnataka vs. Devendrappa and another)

"6. While exercising powers under the Section, the Court does not function as a Court of appeal or revision. Inherent jurisdiction under the section though wide 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 itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone Courts exist. Authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the Court has power to prevent abuse."

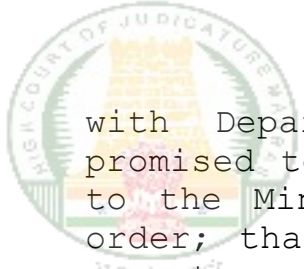
(7) 1996 SCC (Cri.) 497 (State of U.P. Vs. O.P.Sharma)

"10. F.I.R. does not contain all the ingredients of the offence and, therefore, the High Court was right in quashing the F.I.R. It is seen that the complaint is self-explanatory and has specifically mentioned about the storage of oil and oil seeds without licence under the respective Orders. It is not in dispute that the F.I.R. did mention that he purchased and kept in store the above quantity. Thus the ingredients have been specified. Whether he has applied for licence or not, we are not concerned with that controversy in this case."

22.5. In this case, the decision itself is self-explanatory and in a case where the FIR mentioned the ingredients of the offence, it was held that it is not proper to quash the FIR.

23. One Velmurugan filed CrI.O.P.(MD)No.14967 of 2016, seeking registration of FIR against the petitioner in CrI.O.P.(MD)No.14067 of 2016 (Subbiah).

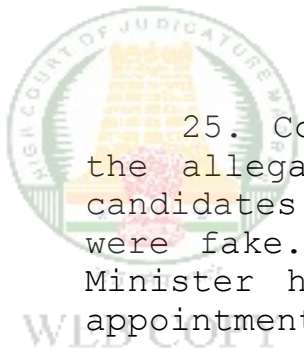
23.1. The sum and substance of the allegation in the complaint in CrI.O.P.(MD)No.14967 of 2016, is that in respect of certain appointments at TNSTC, one Subbiah, alleging himself to be close



with Department Higher officers and the Transport Minister, promised to get appointment; that he had to spent lakhs of rupees to the Ministers and officials in order to get the appointment order; that he alone may be able to get appointment for a meagre amount, as the Transport Minister Senthil Balaji used to give appointment order for the meagre amount; that nearly 50 persons, seeking appointments, have made payments that he remitted a sum of Rs.2,50,000/- through his bank account; that an interview call letter was sent for an interview on 10.09.2015; thereafter, the petitioner was asked to be patient, as the Senthil Balaji was removed from the Ministership; that he received an appointment order on 01.08.2016, directing him to joint at Thiruppathur Branch; that after going to Thiruppathur, the petitioner came to know that it is a fake appointment order; that the petitioner Subbiah was assuring that soon appointment orders will be received by the petitioner; that 18 persons made remittance to the tune of Rs.61 lakhs and action must be taken against the petitioner Subbiah.

24. CrI.O.P.(MD)No.16023 of 2016, has been filed by one Rengarajan, seeking to quash the FIR registered in Crime No.15 of 2016 under Sections 409, 468, 420 and 120(b) IPC. The petitioner is the Managing Director of TNSSTC, Kumbakonam Limited, Thanjavur District.

24.1. The sum and substance of the allegation made in CrI.O.P. (MD)No.16023 of 2016, is that on 01.08.2016, 9 persons approached the General Manager, TNSSTC, Pudukottai Region, claiming that they have been appointed to various posts and they also claimed that they paid money to one Velmurugan and Subbiah for securing the job and on the complaint being laid, the Town Police Station, Pudukottai, registered a case in Crime No.226 of 2016 against Velmurugan and Subbiah; that Subbiah posing himself as an employee of the TNSSTC (Technical Assistant) made false promises to some persons and received money to secure the job in the Transport Corporation; that he forged fake appointment orders and sent it to person who paid money to him; sensing that case will be registered against him, he lodged false complaint shifting the responsibility on the shoulders of others; that the allegations made by Subbiah (R2 in CrI.O.P.(MD)No.16023 of 2016), is false; that the second respondent never worked as employee in the Transport Corporation; that Babu worked as Managing Director from 20.04.2013 to 10.01.2014, followed by Mr.Alfred Dinakaran; therefore, the possibility of Babu to have introduced Rengarajan to Subbiah; that the appointing authority is only the General Manager and not the Managing Director; that no offence is made out as against this petitioner; hence, FIR must be quashed.



25. Considering the probability of the case in the light of the allegations made that appointment orders were given to the candidates and later on, the candidates found that those orders were fake. Assuming it to be true, if really, the officials and Minister had been in the picture, then the probability of fake appointment orders being issued is very remote.

26. This Court called upon the Investigating Officer to produce the CD file relating to Crime No.15 of 2016, in which, statement of witnesses so far recorded have been enclosed. From the statements recorded, it is evident that nobody has spoken about accused Rengarajan or against Senthil Balaji. Pending investigation, this Court is of the view that it is not advisable to elaborate those statements.

27. Investigating Officer has specifically mentioned that a case has been registered against Subbiah and Velmurugan in Pudukottai Police Station Crime No.222 of 2016 under Sections 406, 465, 468, 471, 420 and 120(b) IPC. It is also pointed out that the petitioner Subbiah is absconding and even after sending summons through registered post, the summons returned as person not available and that his house also remains locked.

28. When the materials enclosed, disclose that money has been credited to the account of the petitioner Subbiah and there is no other material to show that to whom it was handed over, and when the witnesses also did not speak anything about the involvement of either the petitioner Rengarajan or the intervenor Senthil Balaji, then the inevitable consequence is that proceedings against them must be quashed.

29. In the result, Crl.M.P.(MD)No.7425 of 2016 in Crl.O.P.(MD) No.14067 of 2016, is allowed and the FIR in Crime No.15 of 2016 in respect of the petitioner / Senthil Balaji is quashed.

29.1. Crl.O.P.(MD)No.14067 of 2016 is closed.

29.2. The Crl.O.P.(MD)No.16023 of 2016 is allowed and the proceeding in Crime No.15 of 2016 is quashed as against the petitioner herein.

30. In respect of Crl.O.P.(MD)No.14967 of 2016, there appears to be prima facie materials to show the involvement of the petitioner Subbiah. The dictum laid down in the case of Lalitha Kumari vs. Govt. of U.P & others [2013 (4) Crimes 243 (SC) is the service reports govt info services the field of registration of First Information Report. The essential directions are extracted for reference:



i) 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.

ii) 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.

iii) 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.

iv) 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.

v) 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.

vi) 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.

vii) 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.



viii) 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.

31. As the complaint against Subbaiah pertains to corruption, this Court thought of ordering preliminary enquiry before registration of FIR, but the fact that Subbaiah received the money by promising appointment from various candidates is not in dispute.

32. Normally, this Court issue direction to follow the dictum laid down in the case of Lalitha Kumari (supra) and leave it open to the respondents to take a decision. When such directions are issued, the respondents would be legally bound to take into consideration the parameter laid down in the said case. But in this case, as there are prima facie materials, which require investigation, this Court direct the respondent to register a case instead of directing them to follow the dictum laid down in the case of Lalitha Kumari (supra).

33. CrI.O.P.(MD)No.14967 of 2016 is allowed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To:

1. The Superintendent of Police,
Sivagangai District,
Sivagangai.
2. The Inspector of Police,
District Crime Branch,
Sivagangai, Sivagangai District.
3. The Special Sub-Inspector of Police,
District Crime Branch,
Sivagangai District.



4. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/s.V.KANNAN, Advocate SR.No.53536

+1cc to M/s.Na.Palaniyandi, Advocate SR.No.53408

+1cc to M/s.D.Sivaraman, Advocate SR.No.53670

+1cc to M/s.K.Balasubramni, Advocate SR.No.53662

PRE-DELIVERY ORDERS IN
Cr1.O.P.(MD) Nos.14067, 14967 and 16023 of 2016 and
Cr1.M.P.(MD) No.7425 of 2016 in Cr1.O.P.(MD) No.14067 of 2016

19.09.2016

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SD/SS3/21.09.2016/15P/9C