

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Crl.O.P.No.5835 of 2017
and
Crl.M.P.Nos.4349 and 4350 of 2017

G.Easwaran Petitioner/Accused

Vs

State represented by
The Deputy Superintendent of Police
Vigilance & Anti Corruption
Chennai City - I Department
Chennai
(Crime No 11/AC/2009/CC III) Respondent/Complainant

Prayer:- Criminal Original Petition filed under section 482 Cr.P.C to call for the records pertaining to the proceedings of the case in C.C.No.30 of 2013 on the file of Special Court for Cases under the Prevention of Corruption Act, Chennai and quash the same.

For Petitioner : Mr.Nirmal Kumar
For Mr.M.C. Govindan

For Respondent : Mr.E.Raja
Additional Public Prosecutor (V&AC)

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 pending against him in the criminal case in C.C. No.30 of 2013 on the file of the learned Special Judge (Prevention of Corruption Act), Chennai.

2.Heard Mr.Nirmal Kumar, learned Counsel assisted by Mr.M.C.Govindan, learned Counsel who is on record for the petitioner and Mr.E.Raja, learned Additional Public Prosecutor (V & AC) appearing for the State.

3.The petitioner has been facing the charges under section 13 (2) read with 13 (1) (e) of Prevention of Corruption Act 1988 in the criminal case in C.C. No.30 of 2013.

4.He was appointed as Surveyor on 07.01.1980 and subsequently promoted to the rank of Draughtsman Grade-III and as Assistant Director/Member Secretary (In-charge Officer), in Tirupur Local Authority.

5.It may be relevant to note here that the petitioner was due to retire from service on 28.02.2017. However, prior to his retirement the Government had passed an Order in G.O. 3(D) No.45 dated 24.02.2017 and placed him under suspension from service on the ground of pendency of the above said criminal case in C.C.No.30 of 2013 on the file of the learned Special Judge (Prevention of Corruption Act), Chennai.

6.As per the case of prosecution, the petitioner was in possession of properties and pecuniary resources to the value of Rs.37,07,703/- as described in Statement No.2 annexed with the charge. The check period is between 01.01.2001 and 31.08.2008 and during this period it is alleged that he had acquired quantum of assets to the value of Rs.30,18,665/- as shown in Statement No.5.

7.During the check period the petitioner had the total income from known sources of income to the extent of Rs.17,85,781/- as shown in Statement No.3. The expenditure incurred by the petitioner for himself and for his family members has been worked out at Rs.14,55,173/- as shown in Statement No.4. In accordance with the case of the prosecution, the petitioner had a resultant savings of Rs.3,30,608/- at the end of the check period as shown in Statement No.6. Thus, the prosecution alleges that as on 31.08.2008, he was found to have acquired and possessed with the properties and pecuniary resources in the name of his daughter and wife to the extent of Rs.26,88,057/- which is disproportionate to his known sources of income and therefore, the Deputy Superintendent of Police attached to Vigilance and Anti Corruption had laid a final report against the petitioner on the file of the learned Special Judge (Prevention of Corruption Act), Chennai saying that he had committed an offence punishable under section 13(2) read with 13 (1) (e) of Prevention of Corruption Act 1988.

8.Mr.Nirmal Kumar, learned counsel while advancing his arguments has adverted to that the Investigation Officer had taken note of the value of the construction of the house erroneously and in fact a part of the house was constructed after the check period viz. July 2009. The Officer who had valued the house, had estimated the value approximately to the extent of Rs.5,00,000/- and hence this amount of Rs.5,00,000/-

ought to have been deleted from the total value of Rs.36,00,000/- and on account of the failure of the Investigation Officer to do this simple calculation, the petitioner need not undergo the ordeal of trial. The learned Counsel had drawn the attention of this Court to Page 35 of the typed set of papers wherein the Statement No.1 is available. The Statement No.1 contains only six items.

9.It is significant to note here that as per the case of the prosecution the check period is between 01.01.2001 and 31.08.2008. Item Nos. 1 to 5 seems to have been acquired prior to the check period. Item No.6 is Jewellery presented to the wife of petitioner at that time of her marriage and therefore, it stands in the name of his Wife. Obviously, the wife of the petitioner is not an accused in this case.

10.On coming to Statement No.2, it is seen that Item Nos. 16 and 17 belongs to the daughter of the petitioner. She is also not an accused in this case. Item No.1 in Statement No.1 and Item No.2 and 15 in Statement No.2 are one of the same. Item No.15 stands in the name of the petitioner and it is valued at Rs.5,46,028/-. Item No.20 is the Bank balance to the extent of 1,70,982/- which appears to have been maintained jointly in the name of the petitioner and is Wife. Item No.21 is the Savings Bank Account bearing No.10922351695 being maintained in the name of petitioner. As on 31.08.2008, i.e. at the end of the check period, the balance in his account was found at Rs.40,766/-. Mr.Nirmal Kumar, has submitted that mere perusal of entire charges along with the material available on record would show that the prosecution had miserably failed to substantiate the allegation of disproportionate assets which are said to have been acquired by the petitioner.

11. Apart from this, Mr.Nirmal Kumar has argued that no notice of final hearing was given to the petitioner which is absolutely necessary on the part of prosecution. In support of his contention he has placed reliance upon the decision of this Court in Ramalakshmi Vs. The State represented by, The Inspector of Police, SPE/CBI/ACB: Chennai reported in 2013 of Law Weekly (Crl.) 358. In this case a learned Single Judge of this Court has observed as under:

"According to the first accused, who is a public servant, the Investigating Officer did not ask for any explanation from him to satisfactorily account the possession of assets. As per the counter filed before the Trial Court as well as the counter filed before this Court, the Investigating Officer has not given any notice in writing to the public servant/the first accused calling for his explanation by furnishing the copy of the

statements A to D. Though as per the counter it is only stated that the Investigating Officer called for explanation in person and the accused have not given any satisfactory explanation, this Court not in a position to accept it.

Though there is no specific procedure contemplated under the provision of Prevention of Corruption Act, normally it is expected that the Investigating Officer, while calling for explanation from the accused, must give notice to the accused in writing along with the statements showing the disproportionate amount and sufficient reasonable time must be given for his explanation. On receiving the explanation in writing and if not given in writing on recording his oral statement if any and thereafter if the Investigating Officer concludes that public servant has not satisfactorily accounted then he may file the final report and not before that".

12.It is explicit from the records that the case in Crime No.11/AC/2009/CC-III seems to have been registered in the year 2009, but the final report, after the completion of investigation appears to have been filed before the Special Court for Prevention of Corruption Act cases, Chennai on 23.09.2013. Hence it is thus clear that the prosecution has taken as nearly as four years for the completion of the investigation. In this connection, this Court would like to point out that the direction given by the Apex Court in Vineet Narain's case have been violated as there was delay in filing the charge sheet.

13.This Court is able to find out from the records that on 29.04.2013, the petitioner had given a representation to the Vigilance Commissioner, Government of Tamil Nadu, wherein he had stated that "it is settled law that it is not mere possession of assets but only the, failure, to account satisfactorily for the same, that offends the law". The word "Satisfactory Account" denotes or refers to the subjective satisfaction of the Investigation Officer during the course of investigation and to the satisfaction of Judge or Enquiry Officer during the course of trial or departmental enquiry.

14.The petitioner, in his representation, had also stated that the Investigation Officer having registered and investigated the case was biased and hence it is difficult to expect the appreciation of explanation which are supported by relevant documentary evidence produced on record in right

perspective with fair and open mind. Though the burden is heavily rested on the part of the prosecution to prove each and every item of assets and pecuniary resources which are described as disproportionate to his known source of income, it is sufficient for the petitioner to disprove or rebut the same by mere preponderance i.e. based on probabilities.

15. The petitioner had also stated in his representation that the Investigation Officer, had wrongly clubbed the properties /assets acquired by his family members viz. his wife, Smt.C.Amsaveni and daughter Selvi.E.Narmada out of their own sources/income derived by them from the Real Estate business, Xerox Machine, Ammonia Print, Lamination, Tailoring, Tuition taking, as Beautician and gifts received, etc with his assets. It is his main grievance that the assets acquired by his family members out of their own sources have not been deleted from his assets.

16.He had further stated in his representation dated 29.04.2013, that insofar as the Statement No.1 is concerned the value of the property specified in Sl.No.3 which was purchased by him as ready built house from Tamil Nadu Housing Board is only Rs.3,81,250/- and not Rs.3,81,500/- as shown in the Statement. Sl. Nos. 1, 2 to 6 are the assets exclusively acquired by his wife out of her own sources, and therefore, he had nothing to do with the above assets.

17.Insofar as Statement No.2 is concerned, he has stated that Sl.Nos. 2 and 15 are one and the same, and therefore Sl.No.15 has to be merged with Sl.No.2. With reference to Sl.No.15, he has stated that since it being the additional construction, the actual expenditure incurred by him during the period from 01.12.2001 to 15.06.2004 in 3 phases (in piece meal) was met out of his savings from GPF loan of Rs.1,98,000/-. Apart from this amount, he had received a sum of Rs.4,72,000/- from his wife; whereas the estimated value of PWD, by the Evaluating Engineer, was inflated and shown as Rs.5,46,028/-. Hence a sum of Rs.74,028/- has to be deducted from the value of Sl.No.15 and after merging of Sl.No.15 with Sl.No.2, the value becomes only Rs.8,53,250/-.

18.He has also stated that Sl.Nos. 1, 3, 4 & 5 are corresponding to Sl.Nos. 1, 2 & 4 to 6 of Statement No.1 being the assets held by his wife during the check period. Sl.Nos. 7 to 13, 16 & 17 are the assets acquired by his daughter Selvi.E.Narmada out of her own sources i.e. Tuition undertaking, Beautician profession and receipt of gifts of Rs.80,000/- and Rs.7,00,000/- from her grandfather which is supported by account note books and gift deed and hence, he has requested to delete the above assets from Statement No.2. Further, he would state that Sl.No.4 was acquired by his daughter out of her own sources

stated supra and Sl.Nos. 18 & 19, according to the petitioner, were acquired by his wife out of her own sources through the vehicle loan of Rs.2,00,000/- availed from HDFC Bank in Account No.0311000174669 on 14.10.2004, and Rs.3,00,000/- from Kotak Mahendra Car loan availed on 11.04.2008, and the said loans were repaid during the check period itself by remitting EMI through her earnings from Real Estate brokerage, Tailoring. Besides this, their son E.Sridhar, IRS had also paid EMI on several occasions on behalf of his mother.

19.Sl.Nos. 20 & 21 in Statement No.2 are reflecting the savings of his wife as well as his salary savings and as such, in the strict sense, it cannot be treated as assets, though not as income in the eye of law.

20.With reference to Statement No.3, he has stated that Sl.Nos. 1 to 3 to the value of Rs.14,85,781/-, items i.e. Sl.Nos. 4 to 17 were omitted to be considered and included in Statement No.3.

21.With reference to Statement No.4, he has stated that in Sl.No.1 it appears that the figures which included both verifiable and non verifiable (Kitchen expenditure) were purportedly arrived towards the family consumption expenditure of his family consisting of 5 adult members namely, himself, his wife, daughter and sons. The Education expenditure of all his children was separately taken into account in Sl.Nos. 31 to 34.

22.In this connection, he would state that no educational expenditure should be separately accounted for as it amounts to double entry. According to him, the figure shown in Sl.No.1 requires a drastic cut / deduction in view of the above submissions made by him. Eventually, he would state that Sl.Nos. 2, 4 to 7, 15, 16 and 20 are alone related to him and other assets, incidental expenditures given in Sl.Nos. 3, 8 to 14, 17 to 19 and 30 are not related to him.

23.On the other hand, Mr.E.Raja, learned Additional Public Prosecutor, (V & AC), has submitted that at the time of framing charges, the petitioner had filed a petition in CrI.M.P.No.67/2014 under section 239 of Cr.P.C for discharge and after hearing bothsides, the Trial Court had found that prima facie case was made out against the petitioner and therefore it was dismissed on 27.01.2016. He has also submitted that aggrieved by the said order dated 27.01.2016, the petitioner had filed a revision in CrI.R.C.No.850/2016 before this Court and the same was also dismissed on 23.08.2016 and therefore, the charges were framed against the petitioner.

24.He has also brought to the notice of this Court that the trial was commenced after framing necessary charges against the petitioner and 4 witnesses were already examined on the side of the prosecution and only at this stage, the petitioner had come forward with this petition to quash the charges without assigning any valid reason.

25.Learned Additional Public Prosecutor, has also contended that the Investigating Officer had considered all the relevant facts and ultimately he had found that the income of the wife is not supported by any documentary evidence which includes income tax returns.

26.He has also contended that there was no documentary evidence and book of accounts to show that the petitioner's son Mr.E.Sridhar had earned and contributed for the purchase of properties. Mr.E.Raja has also contended that the Trial Court had precisely held in its order that the source of income received by the grandfather of the petitioner's daughter Selvi E.Narmada had not been explained and that the unregistered gift deed was an after thought document and the same was not valid and further held that at this stage of framing of charges, validity of the said documents viz., gift deed, source of income of Chinnasamy to make gift of Rs.7,80,000/- could not be decided. He has further contended that the Investigating Officer had considered all the oral and documentary evidences including the income and expenditure claimed by the petitioner. The Investigating Officer had also considered the reply of the petitioner to the final opportunity notice and had come to the right conclusion that the petitioner had acquired property which was disproportionate to his known sources of income and therefore, he had laid the final report.

27.Learned Additional Public Prosecutor, while advancing his arguments, has invited attention of this Court to the order of Trial Court dated 27.01.2016 and made in CrI.M.P.No.67/2014 and in this connection, he has contended that the Trial Court had considered the reply given by the petitioner and observed, that during the check period he has only constructed the ground floor and the first floor was constructed after 31.08.2008 i.e. after the check period and the Trial Court has also observed that the final opportunity notice issued to the petitioner shows the value of assets as Rs.43,78,383/- and after receipt of the explanation, the valuation of the house, at Door no.921, Poonga Nagar, was revised from Rs.17,19,541/- to Rs.10,48,861/- after leaving the value of the first floor constructed after the check period and the value of the assets were reduced to Rs.37,07,703/- from Rs.43,78,383/-.

28.Learned Additional Public Prosecutor, has therefore, submitted that the charge sheet laid by the Investigating Officer was perfectly based on the evidence of both oral and documentary and therefore he has urged to dismiss the petition.

29.It is apparent from the records, that on 27.07.2009 Mr.S.M.Mohamed Iqbal, Deputy Superintendent of Police, (V & AC), Chennai City - III detachment (L.W.-34) had registered the case in Vigilance and Anti-Corruption Cr.No.11/2009/AC/CC-III under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988; as against the petitioner Easwaran. The above said officer who happened to register the case had also taken up the case for investigation on the basis of authorization under section 17 issued by Tmt.S.Lakshmi, Superintendent of Police, Central Range, (V & AC), Chennai - 28, (L.W.-32). After the transfer of Mr.S.M.Mohamed Iqbal, Deputy Superintendent of Police, different Investigating Officers had taken up the further investigation of the case. Ultimately, Mr.R.Murali, Deputy Superintendent of Police, Vigilance and Anti- Corruption, Chennai City-I detachment had taken up the case for further investigation and after the completion of the investigation, had laid the final report on 23.09.2013.

30.In A.S.Kannan Vs. State by Inspector of Police, Vigilance and Anti Corruption, Chennai City-II detachment Chennai-20 (2011) 4 MLJ (Crl) 950 in paragraph No.71 this Court has observed as follows:

It is settled proposition of law that a Police Officer, who registered a case cannot take up the case for investigation. He cannot play a dual role. Even if it is assumed that on the direction of Deputy Superintendent of Police, Mr.Sethuraman, PW-9 has taken up the case for investigation, then how much value could be attached to the investigation conducted by PW-10 Mr. Ponnusamy, Inspector of Police. In his opening evidence, PW-10 had stated that on 14.07.2000 as per the order of his Higher Officer, he had taken up the case for further investigation. Where is that order? and who is his higher officer? These questions are left unanswered.

31.Mr.Nirmal Kumar has adverted to that the Investigating Officer having registered and investigated the case was biased and hence it was difficult to expect the appreciation of explanation submitted by the petitioner with appropriate perspective.

32.Insofar as the Investigating Officer had totally examined 38 witnesses and collected 71 documents to substantiate their allegations levelled against the petitioner. This Court has perused the statements of witnesses which were recorded by the Investigating Officer under section 161 (3) of Cr.P.C. According to the Listed Witness No.32 Tmt.S.Lakshmi, Superintendent of Police, Mr.S.M.Mohamed Iqbal, Deputy Superintendent of Police, (V & AC) was authorized to investigate the case and in this connection she had also issued the proceedings in RC 306/09/RDP/CC-III dated 27.07.2009. As stated by Mr.A.T.Durai Kumar (L.W.-33) in his statement, after Mr.S.M.Mohamed Iqbal and 4 other Deputy Superintendent of Polices viz., Mr.K.Kannan, Mr.N.Stephan Jesupatham, Mr.K.Somasundaram and ultimately Mr.R.Murali were authorized by him to investigate the case. Mr.R.Murali, Deputy Superintendent of Police, Vigilance and Anti-Corruption had alone filed the final report on 23.09.2013 after the lapse of as nearly as four yours.

33.L.W.-1 Mr.Thanga Kaliyaperumal, I.A.S., Secretary to Government, Housing and Urban Development (UD2(1)) Department, Government of Tamil Nadu speaks about the order of sanction of prosecution to launch the prosecution against the petitioner Mr.G.Easwaran. He has stated that since 20.12.2013, the Government received a report from the Director, Vigilance and Anti-Corruption, Chennai-28 in RC 306/09/RDP/CC-III dated 15.08.2012 along with a copy of FIR, statement of witnesses, and connected documents. In the above said letter, the Director, Vigilance and Anti Corruption had sought sanction for the prosecution of the petitioner Easwaran.

34.It may be relevant to note here that the Director, Vigilance and Anti- Corruption had sought sanction for the prosecution of the petitioner from L.W-1-Mr.Thanga Kaliyaperumal who was the then Secretary to Government, Housing and Urban Development (UD2(1)) Department, Government of Tamil Nadu.

35.He would further state that the Government of Tamil Nadu, being the Authority Competent to remove Mr.G.Easwaran, Assistant Director, Member Secretary, Incharge Coimbatore Local Planning Authority, Coimbatore, Town and Country Planning Department, Coimbatore from his office, after fully and carefully examined the materials such as First Information Report in Crime No.11/AC/2009/CC III statement of witnesses and connected documents and the report of Directorate of Vigilance and Anti-Corruption with regard to the allegations levelled against the petitioner, were satisfied that it was necessary in the interest of justice to prosecute Thiru.G.Easwaran, Assistant Director, Member Secretary, Incharge Coimbatore Local Planning Authority, Coimbatore, Town and Country Planning Department, Coimbatore, in a Court of law for the said offence under clause

(b) of sub section (1) of section 19 of Prevention of Corruption Act, 1988. The Governor of Tamil Nadu accorded sanction for prosecution of the petitioner for the offences under section 13 (2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 vide Government Order in G.O. Ms.No.178, Housing and Urban Development (UD2(1)) Department, Government of Tamil Nadu dated 08.07.2013. The statement of Listed Witness No.1. Mr.Thanga Kaliyaperumal discloses three circumstances:

(a) The Government had received a report from the Director, Vigilance and Anti Corruption seeking sanction for the prosecution of the petitioner on 20.12.2013. This report is dated back to 15.08.2012.

(b) The Government of Tamil Nadu, being the Authority Competent to remove the petitioner, after examining the materials such as FIR, statement of witnesses, and connected documents, and the report of Directorate of Vigilance and Anti-Corruption, were satisfied that it was necessary in the interest of justice to prosecute the petitioner Easwaran.

(c) The Government of Tamil Nadu had accorded sanction for the prosecution of the petitioner for the offences under section 13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 vide Government Order in G.O. Ms.No.178, Housing and Urban Development (UD2(1)) Department, Government of Tamil Nadu dated 08.07.2013.

36.From the above circumstances enumerated under clauses a, b & c, the following crucial questions are arisen for the consideration of this Court:

(1) The request made by the Director, Vigilance and Anti- Corruption seeking order of sanction dated 15.08.2012 was received by the Government on 20.12.2013 i.e after one year four months and five days. What is the reason for the abnormal delay of one year and above to receive the report from the Director, Vigilance and Anti- Corruption even though it is dated back to 15.08.2012.

(2) It is revealed that the Governor had accorded sanction for the prosecution. When such being the case how the petitioner was authorized to speak about the order of sanction for the prosecution against the petitioner. Where is the authorization letter from the Government or from the Governor?.

(3) Who had perused the First Information Report, statement of witnesses and connected documents and

who had subjective to satisfaction after perusal of the records to launch prosecution against the petitioner. These questions are remained unanswered by the prosecution.

37.From the statement of L.W.-1 Mr.Thanga Kaliyaperumal it revealed that the Governor vide Government Order in G.O. Ms.No.178, Housing and Urban Development (UD2(1)) Department, Government of Tamil Nadu had accorded sanction for the prosecution on 08.07.2013. The requisition of the Director of Vigilance and Anti Corruption in RC 306/09/RDP/CC-III was made on 15.08.2012: But the requisition was received by the Government on 20.12.2013. When the request of the Director, Vigilance and Anti Corruption dated 15.08.2012 was received on 20.12.2013, how the Governor could have accorded sanction for the prosecution on 08.07.2013 i.e. with anti date. This serious defect or lacuna has not been explained by the prosecution.

38.In this regard, this Court would like to make reference to the decision of the Apex Court in State of Gujarat Vs. K.V.Joseph 2001 (1) Crimes 92: 2001 1 CCR 74 (SC). In its decision the Apex Court has observed that "once the proposal to grant sanction under section 19 of the Prevention of Corruption Act is forwarded by the investigating agency to competent authorities then to Bureau the same in passing appropriate order beyond the period of 2 months amounts to lack of devotion to duty and in absence of just proper explanation, the concerned officer would be liable to departmental proceedings and also for the contempt of Court.

39.Insofar as this Court is concerned the above narrated circumstances leave scope to suspect the order of sanction. This Court also is of view that the order of sanction might have been passed without application of mind, mechanically at the behest of higher officials.

40.In Viswanath Mahadev Karkhanis Vs. State of Maharastra 1991 Cri.L.J. 3146 it has been held that "where the authority concerned abdicates its responsibility by acting mechanically or where the sanction is obtained from an authority below the requisite rank as laid down by the law the pre-condition for the prosecution itself being wanting, the entire trial gets vitiated".

41.As decided by this Court in N.M.Rajendran Vs. The State Crl.L.J.4195, the sanctioning authority should necessarily apply its mind and get itself satisfied that a case for sanction has been made out constituting the offences.

42. In another decision i.e. in State of Karnataka Vs. T.R. Krishnamurthy 2003 Cri.L.J. 3977 (Karn) it has been held that "the power to grant sanction for prosecution may be conferred on any person. He need not be the same department in which an accused was working. But the authority must be in a position to judge the material on record before sanction to prosecute was accorded".

43. On coming to the given case on hand, as a matter of fact, at no stage the grievance of the petitioner regarding delay in granting sanction has been disputed by the respondent State. Not only that, but no justification has even been put forward explaining the delay in prosecution.

44. In State of Gujarat Vs. M.M. Damor 1996 (37) 3 Guj L.R. 620, it is observed that

"In this regard Government has repeatedly right from the year 1965, periodically issued circular after circulars to avoid delay in granting the sanction with a view to ultimately avoid the prosecution case being prejudiced and lost, but unfortunately, it appears to have fallen on deaf ears..... this Court accordingly, by this judgment hereby directs all the competent authorities under section 19 of the Corruption Act to strictly comply with first, the circular issued by the Government to avoid delay and pass appropriate order for sanction within two months, and secondly, to comply with the direction given by this Court in a decision rendered in case of State of Gujarat v. M.M. Damor failing which they shall be held liable for the departmental action and also contempt of Court proceedings and resultant punishment. This Court also thirdly, further directs that while forwarding the draft memo of the sanction, the Director, ACB and or the Investigating Officer shall bring it to the notice of the concerned competent authorities the possible departmental and contempt proceedings for their wilful default in not complying with the direction just given above.

However, it is still further required to be observed here that the competent authority appears to have been quite sluggish, irresponsible of its duty under the Corruption Act, which not only demonstrates lack of devotion but the clear defiance to act and not expeditiously complying with the

Government circumstances to grant sanction within the period of two months, and second, as directed by this Court had indeed the Counsel 'J' not drawn the attention of this Court, in any case sanction perhaps would not have been granted in near future. Be it a case under the Prevention of Corruption Act, and/or for that purpose any other act, where without the necessary sanction to prosecute, the Court cannot take cognizance of an offence, it shall be the duty of the sanctioning authority to expeditiously consider the same and pass appropriate orders".

45. It is also to be noted here that the delay in granting order of sanction itself is fatal to criminal investigation as well as to the trial. It gets worse if it can be attributed to lethargic and lackadaisical manner of investigation.

46. As observed in the foregoing paragraph, this Court has perused the statements of listed witnesses which were recorded by the Investigating Officer at the time of investigation. The Cumulative effect of perusal of those statements makes the Court to understand that some of the items of properties seems to have been purchased in the name of Narmada, who is none other than the daughter of petitioner, by his wife after obtaining Power of Attorney. No grounds are available to show that the petitioner had purchased those properties in the names of his wife and daughter. No satisfactory supporting evidences are also available to substantiate the allegations of benami transactions. This Court has there found that this is a fit case to be quashed. Even if the case is allowed to proceed further, the chance of conviction is bleak and very remote.

47. This Court also finds that the criminal proceedings as against the petitioner seems to be abuse of process of Court. Section 482 of Code of Criminal Procedure empowers the High Court to exercise its inherent powers to prevent abuse of the process of Court. In proceedings instituted on complaint exercise of the inherent power to quash the proceedings is called for only in cases where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance is taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482. It is not, however, necessary that there should be a meticulous analysis of the case, before the trial to find out whether the case would end in

conviction or not. The complaint has to be read as a whole. If it appears on the consideration of the allegations, in the light of the statement on oath of the complainant that the ingredients of the offence/offences are disclosed, and there is no material to show that the complaint is mala fide, frivolous or vexatious. In that event there would be no justification for interference by the High Court. This ratio is laid down in Mrs.Dhanalakshmi Vs. R.Prasanna Kumar and others (1990 AIR SC 494).

48.With reference to delay in granting of sanction for prosecution, this Court would like to place reliance upon the decision of the Apex Court in Vineet Narain's and others Vs. Union of India and another reported in (1998) 1 SCC 226. In this case, while penning down the judgment, Hon'ble Mr.Justice Verma, Chief Justice of the Supreme Court as he then was while issuing directions to the Central Bureau of Investigation (CBI) and Central Vigilance Commission (CVC) in clause 15 has held that "Time limit of three months for grant of sanction for prosecution must be strictly adhered to. However, additional time of one month may be allowed where consultation is required with the Attorney General (AG) or any other law officer in the AG's office".

49.In the given case on hand, this direction has not been followed and completely violated by the Investigation Officer. In Kurda Ram v. State of Rajasthan, 1987 (1) Crimes 171 (Raj) it is held that "to prosecute innocent persons in case where there appears not even a remote chance of conviction is nothing but an abuse of the process of the Court".

50.In an another case i.e. in Raju Timirharan Vs. State of Punjab 1991 (3) Crimes 79, 81 (P&H) it has been held that "Where in the opinion of the Court chances of an ultimate conviction are bleak and therefore no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding eventhough it may be at a preliminary stage".

51.On considering the relevant facts along with the submissions made by Mr.Nirmal Kumar, learned counsel appearing for the petitioner and Mr.E.Raja, learned Additional Public Prosecutor, V & AC, this Court is of considered view that this case is a fit case to be quashed as the chance of conviction is bleak even if the trial is allowed to continue.

In the result, this petition is allowed. The criminal proceedings of the case in C.C. No.30/2013 pending against the petitioner on the file of the Special Court for the Cases under

the Prevention of Corruption Act, Chennai are quashed.
Consequently, connected Criminal Miscellaneous Petitions are
closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

pam

To

1.The Deputy Superintendent of Police,
Vigilance & Anti Corruption
Chennai City - I Department,
Chennai.

2.The Special Court for cases under the
Prevention of Corruption Act,
Chennai.

+1cc to M.C.Govindan, Advocate Sr. 24220

+1cc to the Public Prosecutor, High Court,
Madras Sr. 24376

Crl.O.P.No.5835 of 2017
and
Crl.M.P.Nos.4349 and 4350 of 2017

SJ(CO)
vr(24/5/2017)

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