

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.06.2018

PRONOUNCED ON : 16.07.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

W.P.No.28079 of 2017

K.Ganesan

.. Petitioner

Vs

1.The Government of Tamil Nadu
Represented by its Chief Secretary,
Public (Special-A) Department,
Fort St. George, Chennai - 600 009.

2.The Registrar General,
High Court of Judicature at Madras
Chennai - 600 104.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari calling for the records in G.O.Ms.No.360 Public (Special A) Department dated 24.04.2017 passed by the 1st Respondent dismissing the Petitioner from service and to quash the same.

For Petitioner : Mr.V.Lakshminarayanan
For Mr.M.Mohideen Pitchai

For 1st Respondent : Mr.K.Rajendra Prasad
Additional Government Pleader

For 2nd Respondent : Mr.M.Santhana Raman

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M.VENUGOPAL, J.

Prologue:

The Petitioner has focussed the present Writ Petition praying for an issuance of Writ of Certiorari in calling for the records in G.O.Ms.No.360 Public (Special A) Department dated

24.04.2017 passed by the 1st Respondent in dismissing him from service and to quash the same.

2.Seminal Facts:

2.1.The Petitioner was selected and appointed as District Munsif - cum - Judicial Magistrate through the Tamil Nadu Public Service Commission and was posted as Judicial Magistrate, Padmanabhapuram on 09.11.1988. He served as Judicial Magistrate, District Munsif, Sub-Judge and District Judge in various places and lastly served as Principal District Judge, Tiruppur from 14.07.2012. After completion of 58 years of service, he was to retire on 30.11.2012. However, the Hon'ble High Court was pleased to extend his service beyond 58 years by the Proceedings in R.O.C.14/2012-Con.B2 dated 23.11.2012 by taking into account of his past records of service. He retired from service after attaining the superannuation on 30.11.2014.

2.2.The Petitioner was placed under suspension from service with effect from 16.09.2014 by virtue of the proceedings in R.O.C.No.433/2013/VC,118/2014/VC 441/2014/VC, 449/2014/ VCand 519/2014/VC in C.No.90/2013/VC/B2 dated 15.09.2014 and the 2nd Respondent in view of the disciplinary proceedings contemplated to be initiated against him on some allegations. He had not received any further communication from the 2nd Respondent with regard to the alleged disciplinary proceedings till date of retirement on 30.11.2014. During December 2014, he received an order in R.O.C.No.433/2013/VC, 118/2014/VC 441/2014/VC, 449/2014/VC and 519/2014/VC in C.No.90/2013/VC/ B2 dated 28.11.2014 from the 2nd Respondent retaining him in service as 30.11.2014 for the purpose of the disciplinary proceedings to be initiated against him.

2.3.It is the stand of the Petitioner that the Government of Tamil Nadu, being the Appointing Authority for the post of all Subordinate Judicial Officers including the District Judges, alone is competent to pass an order to retain the service of a District Judge under Fundamental Rule 56(1)(c). That apart, the order of this Court retaining him in service beyond 30.11.2014 reached the office of the Principal District Judge, Tiruppur only on 01.12.2014 and it was served on him in December 2014 i.e. beyond the date of retirement and such order ought to have been served on him on or before 30.11.2014. As such, the order passed by the 2nd Respondent in the above proceedings retaining him in service beyond 30.11.2014 is irregular and the disciplinary proceedings initiated thereafter by issuing the show cause notice dated 26.12.2014 is an illegal one, besides the same being not a maintainable one.

2.4.According to the Petitioner, the 2nd Respondent/High Court, Madras issued an Official Memorandum in R.O.C.No.83/2014/

VC dated 26.12.2014 calling for explanations from him on the complaint of one N.Thangavel of Tiruppur dated 10.02.2014 and to show cause as to why charges should not be framed against him on the said complaint. As a matter of fact, a copy of the complaint from the said N.Thangavel alone was enclosed with the Official Memorandum.

2.5.A perusal of complaint shows that the Complainant (P.W.1) is the father of the minor victim girl involved in the concerned Crime No.225 of 2013, Gudimangalam Police Station for offences punishable under Sections 449, 376 and 302 I.P.C. and Sections 3 & 4 of the Protection of Children from Sexual Offences Act, 2012. Also, in the complaint, it was alleged that in the Complaint, he, as the Principal District Judge, Tiruppur released the Accused one Arun Kumar involved in the case on bail after receiving huge amount, that the Public Prosecutor failed to oppose the bail and that the Accused was threatening the witnesses, while coming to Police Station.

2.6.The Petitioner ascertained that the alleged occurrence in the case took place on 03.11.2013 and that the Accused was arrested and remanded on 04.11.2013 and that he moved bail application on 02.01.2014. After issuance of notice to the Learned Public Prosecutor, the application was taken up for hearing on 07.01.2014 and the Learned Public Prosecutor had not raised any serious objection. As the Accused was in custody for more than 65 days, he passed orders releasing him on bail on condition that he should appear before the Inspector of Police, Gudimangalam Police Station daily twice at 10.00 a.m. and 5.00 p.m. until further order. He had not received any petition from the complainant N.Thangavel or others alleging any threat by the Accused. He submitted his explanation dated 09.01.2015 narrating the above facts and that the Bail Order was passed on merits.

2.7.The 2nd Respondent, without accepting the Petitioner's explanation, framed two charges against him, as per Proceedings in R.O.C.No.83/2014/VC dated 27.07.2015 and the same runs as under:

Charge 1:

"Thiru.K.Ganesan, on 07.01.2014, while functioning as Principal District Judge, Tiruppur, on receipt of illegal gratification without considering the gravity of the offences, granted bail to the Accused Arun alias Arunkumar, S/o. Mani, resident of Konaththottam, Veliampalayam, Gudimangalam (PO), Udumalaipet, Tiruppur District in the bail application filed by him in Cr.M.P.No.20/2014 (on the file of this Court) in Crime No.225/2013,

Gudimangalam Police Station registered for heinous offences punishable under Sections 449, 376, 302 of I.P.C. and Section 3 r/w Section 4 of the Protection of Children From Sexual Offences Act, 2012, in relation to a house trespass with intention to commit grave offence, rape and murder of a 16 year old school going minor girl.

Further, he, Thiru.K.Ganesan, had imposed very lenient conditions permitting the Accused to stay in the very same locality and to appear and sign before the very same Gudimangalam Police Station, in the native place of the victim deceased minor school girl and her family. Thus, he, Thiru.K.Ganesan, on receipt of illegal gratification, failed to note the gravity of offences and released the Accused on bail with lenient conditions within a short period of time from the date of remand.

Charge 2:

Thiru.K.Ganesan, on 07.01.2014, while functioning as Principal District Judge, Tiruppur, on receipt of illegal gratification without considering the gravity of the offences, granted bail to the Accused Arun alias Arunkumar, S/o.Mani, resident of Konththottam, Veliampalayam, Gudimangalam (PO), Udumalaipet, Tiruppur District in the bail application filed by him in Cr.M.P.No.20/2014 (on the file of his court) in Crime No.225/2013, Gudimangalam Police Station registered for heinous offences punishable under Sections 449, 376, 302 of I.P.C. and Sections 3 r/w Section 4 of the Protection of Children from Sexual Offences Act, 2012, in relation to a house trespass with intention to commit grave offence, rape and murder of a 16 year old school going minor girl.

Further, he, Thiru.K.Ganesan, had deliberately did not consider the serious objections raised by the Public Prosecutor and written counter filed by the Deputy Superintendent of Police and he had further deliberately mentioned in the bail order that the Public Prosecutor had not raised any objection and hereby he not only failed to note the gravity of the offences but also failed to consider the objections raised by

the Public Prosecutor and written counter filed by the Investigating Officer and on receipt of illegal gratification released the Accused on bail with lenient conditions within a short period of time from the date of remand."

2.8. The Petitioner submitted his Written Statement of his defence on 26.08.2015. Along with a charge memo, eight documents were enclosed and since he denied the charges and opted for an 'oral enquiry' and that the Hon'ble Mr. Justice K.Ravichadrabaabu was appointed as an Enquiring Judge to conduct a departmental enquiry. In fact, after completion of enquiry, the Hon'ble Enquiring Judge submitted his findings on 10.08.2016 holding that the Charges No.1 and 2 were proved. Thereafter, the 2nd Respondent sent a copy of the Enquiry Report and called for Petitioner's representations as per Proceedings in R.O.C.No.83/ 2014/VC dated 07.09.2016.

3. Petitioner's Contentions:

3.1. The Learned Counsel for the Petitioner submits that the Report of the Hon'ble Enquiring Judge dated 10.08.2016 and the order of the 1st Respondent in G.O.Ms.No.360 dated 24.04.2017 in accepting the recommendations of the 2nd Respondent's proceedings in R.O.C.No.83/2014/VC dated 15.03.2017 are contrary to Law and evidence and probabilities of the case.

3.2. The Learned Counsel for the Petitioner contends that the Report of the Hon'ble Enquiring Judge dated 10.08.2016 and that the impugned order passed by the 1st Respondent dated 24.04.2017 are per se perverse, inherently improbable and suffer from material infirmity on the face of record.

3.3. The Learned Counsel for the Petitioner takes a stand that the Report of the Hon'ble Enquiring Judge dated 10.08.2016 and the impugned order of the 1st Respondent dated 24.04.2017 are altogether against the preponderance of probabilities and the available documentary evidence on record, which had resulted in serious miscarriage of justice.

3.4. The Learned Counsel for the Petitioner proceeds to point out that the findings arrived at by the Hon'ble Enquiring Judge were based on 'conjectures', 'surmises' and 'presumptions'.

3.5. It is represented on behalf of the Petitioner that the 'allegation of corruption' against a Public Servant requires to be established to the hilt and beyond any shadow of doubt and that it cannot be established on 'mere probabilities'. However, this principle was not considered by the Hon'ble Enquiring Judge in his report against the Petitioner.

3.6.The Learned Counsel for the Petitioner submits that the Respondents failed to appreciate that apart from the vague 'uncorroborated Hearsay Evidence' of the Complainant/P.W.1, there is no material to establish that the Petitioner granted bail to the Accused on receiving illegal gratification and further that, the Hon'ble Enquiring Judge erred in relying upon P.W.1's testimony in support of the charges levelled against the Petitioner.

3.7.The Learned Counsel for the Petitioner contends that the Public Prosecutor/P.W.2 had not filed any written objection, when the bail application was heard by the Petitioner that the alleged objection in Ex.P3 of P.W.3 (Deputy Superintendent of Police) was falsely created during the course of preliminary enquiry before framing the charges against the Petitioner. But, these relevant aspects were not taken into account by the Hon'ble Enquiring Judge.

3.8.The Learned Counsel for the Petitioner submits that the Hon'ble Enquiring Judge had failed to consider the statement of P.W.3 (Deputy Superintendent of Police) before the Registrar (Vigilance) of the High Court, Madras that the Bail Application was not available in the Case Diary and Case File and that he did not know about any notice issued thereon. In fact, it is projected on the side of the Petitioner that P.W.3 in his statement had not stated anything in regard to the sending of his objection to the Bail Application to the Public Prosecutor, which would fortify the fact that Ex.P3 was falsely created in the course of preliminary enquiry.

3.9.The Learned Counsel for the Petitioner strenuously projects an argument that even though there is no direct and reliable evidence available to establish the charges against the Petitioner, the Hon'ble Enquiring Judge erred in relying on the 'uncorroborated Hearsay Evidence' of the Complainant/P.W.1, the exculpatory evidence of P.W.2, the evidence of P.W.3 and the document in Ex.P3, which came to light only during the preliminary enquiry and gave a finding that the said charges against the Petitioner were proved.

3.10.The Learned Counsel for the Petitioner submits that suspicion, however grave cannot be a substitute for proof even in 'Departmental Enquiries' and that 'Hearsay Evidence' cannot be accepted as 'Proof', especially when there was no evidence in the present case for the 'Source of Hearsay'. But, this aspect was not taken note of by the Hon'ble Enquiring Judge.

3.11.The Learned Counsel for the Petitioner comes out with a plea that the evidence of P.W.1 to P.W.3 coupled with Ex.P3 should have been rejected by the Hon'ble Enquiring Judge as

'untrustworthy' and given a finding of 'innocence' in favour of the Petitioner.

3.12.The Learned Counsel for the Petitioner submits that the 1st Respondent/Appointing Authority for the post of District Judge is the Authority competent under Rule 56(1)(c) of the Fundamental Rules to extend the service beyond the period of retirement, in respect of a District Judge under suspension for the purpose of taking disciplinary proceedings and such an order ought to have been served on the officer under suspension on or before the date of Retirement.

3.13.The Learned Counsel for the Petitioner contends that the 2nd Respondent, who is not the Appointing Authority, had committed illegality in passing orders in R.O.C.No.433/2013/VC, 118/2014/VC 441/2014/VC, 449/2014/VC and 519/2014/VC in C.No.90/2013/VC/ B2 dated 28.11.2014 retaining the Petitioner in service beyond 30.11.2014 for the purpose of disciplinary proceedings to be initiated against him.

3.14.The Learned Counsel for the Petitioner submits that the order retaining the Petitioner in service reached the office of the Principal District Judge, Tiruppur only on 01.12.2014 and it was served on the Petitioner thereafter in December 2014, beyond the date of retirement. Therefore, it is the plea of the Petitioner that he should be deemed to have retired on the evening of 30.11.2014 as per Law and consequently, all the proceedings taken after 30.11.2014 are invalid in Law.

3.15.The Learned Counsel for the Petitioner vehemently puts forward an argument that the 2nd Respondent should have rejected the Enquiry Report of the Hon'ble Enquiring Judge because of the reason that the Disciplinary Authority had failed to establish the charges levelled against the Petitioner beyond any shadow of doubt. Further, the 1st Respondent should have rejected the proposal of the 2nd Respondent to impose the punishment of dismissal from service upon the Petitioner.

3.16.The Learned Counsel for the Petitioner contends that the 2nd Respondent has no jurisdiction to retain the Petitioner (Delinquent Officer) after his superannuation.

3.17.The Learned Counsel for the Petitioner submits that the Petitioner passed the Bail Order in Cr.M.P.No.20 of 2014 on 07.01.2014 and that the Complainant (P.W.1) lodged a complaint on 10.02.2014 (nearly one month later) and in fact, the Bail was granted after the Accused (Petitioner in Cr.M.P.No.20 of 2014 on the file of the Principal Sessions Judge, Tiruppur) was in jail for 65 days and that the Public Prosecutor (P.W.2) had not opposed the Bail Petition, by raising objections.

3.18.The Learned Counsel for the Petitioner points out that no copy of Bail Application was filed by the Accused and that the copy of Bail Application was not in the Case File and that the copy of objections was not available and further that, when Bail Application was came up for hearing before the Petitioner, already the charge sheet was filed. Moreover, no copy of the Bail Application/Petition was available in Case Diary.

3.19.The Learned Counsel for the Petitioner proceeds to point out that for the first time, counter for the Bail Application was produced before the Hon'ble Enquiring Judge by the Deputy Superintendent of Police (P.W.3) and that the Public Prosecutor had not raised objection.

3.20.The Learned Counsel for the Petitioner brings it to the notice of this Court that P.W.2 in his evidence before the Hon'ble Enquiring Judge had deposed that the Bail Application in this case was taken on file on 03.04.2014 and further that, he had not seen the Bail Order.

3.21.The Learned Counsel for the Petitioner refers to the evidence of P.W.1 (in cross examination) and points out that the Public Prosecutor had not objected to the Bail Application, when it came for hearing.

3.22.The Learned Counsel for the Petitioner points out that P.W.2 (Public Prosecutor) had stated that the Ex.P3 (copy of counter) was prepared even before the filing of the Bail Petition and in fact, P.W.2 had deposed that the notice on the Bail Application was given at 4.00 p.m. on that date when Bail Applications were taken on file by the Court. Further, P.W.3 (Deputy Superintendent of Police), in his evidence, had stated that he sent his Objection Petition (Ex.P3) through the Head Constable on 03.01.2014 in which his signature was found.

3.23.The Learned Counsel for the Petitioner brings it to the notice of this Court that P.W.3 in his evidence (during the cross examination) had deposed that Ex.P3 was kept in his office by him.

3.24.The Learned Counsel for the Petitioner contends that apart from the evidence of P.W.1 (Complainant) no witness had spoken about corruption.

3.25.The Learned Counsel for the Petitioner refers to the complaint of P.W.1 (Complainant) dated 10.02.2014 wherein it was averred by name that '... the Petitioner (Delinquent) and the Public Prosecutor (P.W.2) received huge amount and released the Accused. However, P.W.1 (Complainant) in his evidence (in chief examination) had stated that the Accused (Arunkumar) was openly saying in the trial Court that he came out on bail by

giving money etc. In fact, P.W.1 (in his cross examination) had stated that he could not say as to whom, at which place the Accused made such statement. In short, it is the contention of the Petitioner that only based on the evidence of P.W.1, the Petitioner (Delinquent) was dismissed from service which is not correct in the eye of Law.

3.26.The Learned Counsel for the Petitioner brings it to the notice of this Court that till date the Public Prosecutor (P.W.2) has not filed any petition before the Hon'ble High Court to expunge the remarks made by the Complainant against him and in the Complaint dated 10.02.2014 wherein the Complainant had stated that he came to know that the Petitioner (Principal District Judge, Tiruppur) and Public Prosecutor K.N.Subramaniam were received huge amount and released the Accused. Further, P.W.2 has not moved this Court to displace the statement in the Bail Order in Cr.M.P.No.20 of 2014 dated 07.01.2014 to the effect that the Public Prosecutor has got no serious objection to grant bail and in fact, Ex.P1 - Complaint was not opposed by P.W.2.

3.27.The Learned Counsel for the Petitioner refers to para 36 of the Report of the Hon'ble Enquiring Judge wherein it was inter alia mentioned that '... 'Even though such contention is made by him during the enquiry, it is not evident from the reading of the bail order, since he himself has observed therein that "investigation could have reached a considerable stage by then". Therefore, it is clear that on the date of passing such an order, he was not aware of the fact that a charge sheet was already filed in that case' and points out that if Ex.P3 was filed, then, the Petitioner would have known that the charge sheet was filed.

3.28.The Learned Counsel for the Petitioner submits that P.W.2 (Public Prosecutor) had deposed that Ex.P3 was placed before the Delinquent Officer (Petitioner), who after reading the contents of such objection, returned the same.

3.29.The Learned Counsel for the Petitioner points out that the Petitioner (Delinquent Officer) had specifically recorded as if the Public Prosecutor had not raised any serious objection to grant bail and he presumed that the investigation could have reached a considerable stage by then. In this connection, the Learned Counsel for the Petitioner urges before this Court that the question is whether the power was exercised judiciously or with an intention to release the Accused by deliberately not recording certain vital facts which, if recorded, would have resulted in rejecting the bail, as alleged by the prosecution.

3.30.The Learned Counsel for the Petitioner submits that as per the Proviso 2 to Rule 56(1)(a) of the Fundamental Rules enables the Hon'ble High Court to extend the services of

Subordinate Judicial Officers beyond the age of 58 years upto 60 years. Furthermore, as per Proviso to Rule 4 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, the Appointing Authority for appointment by promotion to categories 1. District Judge (Super time Scale) 2. District Judge, (Selection Grade), 3. Senior Civil Judge/Chief Judicial Magistrate/Chief Metropolitan Magistrate/Metropolitan Magistrate shall be the High Court, Madras in accordance with Article 235 of the Constitution of India.

3.31. The Learned Counsel for the Petitioner points out that as per Article 233(1) of the Constitution of India, appointments to the post of District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. As per the said provision, the Governor of Tamil Nadu is the Appointing Authority for the post of District Judge in Tamil Nadu and as per Article 235 of the Constitution of India, the control over the Subordinate Judiciary is vested with the Hon'ble High Court.

3.32. The Learned Counsel for the Petitioner contends that the 2nd Respondent is only the 'Controlling Authority' as per Article 235 for the post of District Judge and not an 'Appointing Authority' as contemplated under Article 233(1) of the Constitution of India. Furthermore, it is represented that the Hon'ble High Court, Madras is not specifically conferred with powers to retain a Judicial Officer under F.R.56(1)(c) and the provisions contained in F.R. 56(1)(a) and Rule 4 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 operate under different circumstances and they cannot be extended to F.R. 56(1)(c).

3.33. The Learned Counsel for the Petitioner submits that the 2nd Respondent had wrongly exercised power under 56(1)(c) of the Fundamental Rules in retaining the Petitioner in service beyond the date of retirement on 30.11.2014 and therefore, the order in R.O.C.No.433/2013/VC, 118/20-14/VC, 441/2014/VC, 449/2014/VC and 519/2014/VC in C.No.90/2013/VC/B2 dated 28.11.2014 is invalid for want of jurisdiction. Resultantly, the Petitioner should be deemed to have retired from service on 30.11.2014 and the disciplinary proceedings initiated against the Petitioner subsequently by means of Official Memorandum in R.O.C.No.83/2014/VC dated 26.12.2014 calling for explanation from the Petitioner, on the complaint of P.W.1 and all other proceedings are invalid in Law.

3.34. The Learned Counsel for the Petitioner points out that the statement of P.W.2 (Public Prosecutor) was recorded by the Inspector of Police, Vigilance Cell, Coimbatore detachment on 30.10.2014 during the preliminary enquiry.

3.35.The Learned Counsel for the Petitioner refers to the P.W.2's statement regarding the aspect of 'Raising Objection' which runs as under:

"The petition came up for hearing on 07.01.2014 before the court. The Court called for my objections. I got reply from the Deputy Superintendent of Police (Udumalaipettai) and raised serious objection on behalf of the prosecution on 7.1.2014 against the release of the Accused on bail. But, the District Court, Tiruppur granted condition bail to the Accused."

3.36.The Learned Counsel for the Petitioner projects an argument that P.W.2 had not stated anything about the date of receipt of the reply from the Deputy Superintendent of Police (P.W.3) and about the handing over of the reply to the Petitioner during the arguments on 07.01.2014 for perusal and it's return after perusal. Also that, he had not handed over Ex.P3 or it's copy to the Inspector of Police, Vigilance Cell, Coimbatore Detachment at the time of examination on 30.10.2014.

3.37.The Learned Counsel for the Petitioner refers to the relevant portion of P.W.2 which runs as follows:

"The reply shown to me is the reply given by the Deputy Superintendent of Police, Udumalaipettai Division regarding the bail application in Cr.No. 225/2013. Its original is with me. It is Ex.P.3. In general, the written replies given by the Police Officers will not be filed in the Court. But objections will be raised orally on the basis of of such replies. In some cases, considering the nature of the offence, if the Judge wants to see the reply from the Police, the same will be handed over to the Judge. In this case, Judge Mr.Ganesan wanted to read the reply. So, Ex.P3 reply was handed over to him. After reading the same, he returned it back. I raised serious objections for the grant of bail in this case by stating that a young girl has been raped and murdered and that it is a premeditated crime."

and submits that P.W.2 (in his cross examination) had admitted that he had not reported to the Vigilance Inspector (when he was examined) in regard to the reading of 'Reply' from the Police and returning it back.

3.38.The Learned Counsel for the Petitioner refers to the Bail Order in Cr.M.P.No.20 of 2014 dated 07.01.2014 wherein the Petitioner (Delinquent Officer) had recorded the following reasons for the grant of Bail to the Accused and the same is as follows:

"The occurrence is said to have taken place on 03.11.2013. The Petitioner is said to be in custody from 04.11.2013. The Public Prosecutor has got no serious objection to grant bail. Considering the representation of the petitioner and considering that investigation could have reached a considerable stage now, it is decided to grant bail with condition."

3.39.The Learned Counsel for the Petitioner proceeds to submit that P.W.2 (Public Prosecutor) himself was not aware of the fact that the charge sheet in the case was filed on 05.12.2013 before the Judicial Magistrate-II, Udumalaipettai and had not therefore informed the Petitioner in Court about the stage of the case. Further, it is projected on the side of the Petitioner if Ex.P3 was actually available on 07.01.2014 at the time of hearing the bail application and if it was handed over to the Presiding Officer, then, P.W.2 would have definitely informed about the filing of the charge sheet on 05.12.2013 and that the Petitioner would have recorded it in the Bail Order. Besides this, it is represented on behalf of the Petitioner that the Petitioner would have noticed the factum of filing of charge sheet, if Ex.P3 was actually placed for his perusal by P.W.2 and the said fact clearly proved that Ex.P3 was actually not available with the Public Prosecutor (P.W.2) from 03.01.2014 to 07.01.2014 and that it was neither handed over to the Petitioner at the time of hearing the Bail application for perusal nor it was returned.

3.40.The Learned Counsel for the Petitioner contends that P.W.3 (Deputy Superintendent of Police) was examined by the Registrar (Vigilance) of High Court, Madras on 31.10.2014 during the preliminary enquiry and that he had pleaded ignorance about the filing of any bail application and issuance of notice. In fact, P.W.3 had stated the following:

"When I perused the case file with us, there was no copy of bail application filed by the Accused. I don't know directly whether he filed any petition. I don't know directly whether any notice was given."

3.41.The Learned Counsel for the Petitioner points out that P.W.4 (Inspector of Police) in his statement on 28.10.2014 (before the Registrar (Vigilance) of High Court), had, among

other things, stated as under:

"On the basis of the notice given to me, I am giving evidence, after going through the case file and case diary. On perusal of records, it is seen that there is no copy of the bail petition in the Case Diary. There is no document to show that a reply was given to the bail petition. When our case file was perused, there is no proof to show that either the Inspector or other police personnel went to Court regarding the bail petition."

3.42.The Learned Counsel for the Petitioner contends that had P.W.3 (Deputy Superintendent of Police) really sent his objection to the bail petition, he would either kept a copy of it in the 'Case File' or recorded the said fact.

3.43.The Learned Counsel for the Petitioner takes a forceful plea that when there is no document for sending a reply to the bail petition, the same would clinchingly prove that Ex.P3 was not really sent by the Deputy Superintendent of Police (P.W.3) to the Public Prosecutor (P.W.2) and that it was created only after their appearance before the Registrar (Vigilance) for 'enquiry' in December, 2014.

3.44.The Learned Counsel for the Petitioner contends that the Petitioner, by letter dated 14.08.2015 addressed to the the 2nd Respondent, has sought for information as to from where and from whom Ex.P3 enclosed with the charge proceedings was obtained or seized during the preliminary enquiry and that the 2nd Respondent/ High Court, through its Registrar General furnished a reply on 26.08.2015 informing that the said document was collected from P.W.2 (Public Prosecutor) and in short, the reply was silent about the date on which it was collected from P.W.2.

3.45.The Learned Counsel for the Petitioner takes a plea that P.W.1 (Complainant) in Ex.P1 - Complaint, both in the departmental enquiry and in his statement dated 28.10.2014 before the Registrar (Vigilance) had stated that the Public Prosecutor (P.W.2) failed to oppose the bail on 07.01.2014 and that he also received huge amount for releasing the Accused on 'Bail'.

3.46.The Learned Counsel for the Petitioner points out that in view of the allegations levelled against the Petitioner, the Public Prosecutor (P.W.2) had manoeuvred and created Ex.P3 - Reply after 31.10.2014 with the help of the Deputy Superintendent of Police (P.W.3) with a view to exculpate him from the said allegation of corruption and handed it over to the

Registrar (Vigilance) after the completion of the preliminary enquiry held from 28.10.2014 to 31.10.2014.

3.47.The Learned Counsel for the Petitioner submits that P.W.2 (Public Prosecutor) to save his own skin, had created a false story and that the entire evidence surrounding Ex.P3 is to be discountenanced as false one.

3.48.The Learned Counsel for the Petitioner contends that the Petitioner dictated the Bail Order in the open Court in the presence of the Public Prosecutor (P.W.2) who had knowledge about the recording of the fact that he had no serious objection to grant bail then itself and also that, the copy of the bail order dated 07.01.2014 was marked to the Public Prosecutor, Tiruppur and the version of the P.W.2 (Public Prosecutor) is to the effect that he raised serious objection on 07.01.2014 against the release of the Accused on bail, he should have objected to the said recording by the Petitioner then itself in Open Court or he should have filed a petition to correct the order at the earliest point of time. However, the Petitioner had kept silent all along.

3.49.The Learned Counsel for the Petitioner submits that P.W.2 (Public Prosecutor) cannot be allowed to state that he raised serious objection against the release of the Accused on Bail etc., in the Departmental Proceedings against the Petitioner.

3.50.The Learned Counsel for the Petitioner points out that the present disciplinary proceedings initiated against the Petitioner based on the allegations contained in Ex.P1-Complaint of P.W.1 which are completely 'Hearsay' in nature and in fact, P.W.1 had stated in Ex.P1 (Complaint) as well as during preliminary enquiry that he has filed an application before the High Court for cancellation of bail.

3.51.The Learned Counsel for the Petitioner raised a plea that no one came forward to tender evidence either in the Preliminary Enquiry or in the Departmental Proceedings to corroborate the fact that the Accused was ever heard saying that he came out on bail by giving bribe to the Petitioner and in short, the vague and uncorroborated Hearsay Evidence of P.W.1 is devoid of any merits.

4.Petitioner's Citations:

4.1.In support of the contention that Judge's record was conclusive and that the Court is bound to accept the statement of Judge recorded in the statement as to what transpired in Court, the Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in State of Maharashtra V. Ramdas Shirnivas Nayak and another, AIR 1982 Supreme Court 1249, at special page 1251, wherein at paragraph 4, it is observed as

under:

"4. When we drew the attention of the learned Attorney General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation". (I) Per Lord Atkinson in *Somasundaran v. Subramanian*, A.I.R. 1926 P.C. 136. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error. (Per Lord Buckmaster in *Madhusudan v. Chanderwati*, A.I.R. 1917 P.C. 30. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an Appellate Court may permit him in rare and appropriate cases to

resile from a concession on the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

4.2.The Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in *Nirmala J.Jahala V. State of Gujarat and another*, (2013) 4 SCC 301 at special page 308, wherein at paragraph 11, it is held as follows:

"I. Standard of proof in a Departmental Enquiry which is Quasi Criminal/Quasi Judicial in nature :

A. In *M. V. Bijlani v. Union of India and Ors.*, AIR 2006 SC 3475, this Court held : (SCC p.95, para 25)

"25. ... Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures." (Emphasis added) (See also : *Narinder Mohan Arya v. United India Insurance Co. Ltd. & Ors*, AIR 2006 SC 1748; *Roop Singh Negi v. Punjab National Bank and Ors*, AIR 2008 SC (Supp) 921; and *Krushnakant B. Parmar v. Union of India & Anr*, (2012) 3 SCC 178)"

4.3.Also, the Learned Counsel for the Petitioner refers to the aforesaid decision, at special page 310, wherein at paragraphs 18 to 20, it is observed and held as follows:

"18.In *Ishwar Chand Jain v. High Court of Punjab and Haryana & Anr*, AIR 1988 SC 1395, it was held:

"14 Under the Constitution the High Court has control over the subordinate

judiciary. While exercising that control it is under a constitutional obligation to guide and protect, judicial officers. An honest strict judicial officer is likely to have adversaries in the mofussil courts. If complaints are entertained on trifling matters relating to judicial orders no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. An independent and honest judiciary is a sine qua non for Rule of law..... It is therefore imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants."

19. In *Yoginath D. Bagde v. State of Maharashtra & Anr*, AIR 1999 SC 3734, it was held:

"48. The Presiding Officers of the Court cannot act as fugitives. They have also to face sometimes quarrelsome, unscrupulous and cantankerous litigants but they have to face them boldly without deviating from the right path. They are not expected to be overawed by such litigants or fall to their evil designs."

20. A subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure - contestants and lawyers breathing down his neck. If the fact that he renders a decision which is resented by a litigant or his lawyer were to expose him to such risk, it will sound the death knell of the institution.

"Judge bashing" has become a favourite pastime of some people. There is growing tendency of maligning the reputation of judicial officers by disgruntled elements who fail to secure an order which they desire. For functioning of democracy, an independent judiciary, to dispense justice without fear and favour is paramount. Judiciary should not be reduced to the position of flies in the hands of wanton boys. (Vide : *L.D. Jaikwal v. State of U.P.*, AIR 1984 SC 1374; *K.P. Tiwari v. State of Madhya Pradesh*, AIR 1994 SC 1031; *Haridas*

Das v. Smt. Usha Rani Banik & Ors., etc. AIR 2007 SC 2688; and In Re : Ajay Kumar Pandey, AIR 1998 SC 3299)"

4.4.The Learned Counsel for the Petitioner adverts to the decision in Madhu Sudan Chowdhri and others V. Mst.Chandrabati Chowdhri and others, 1917 AIR (PC) 30 wherein at paragraph 6, it is observed as under:

"6. It was pointed out to their Lordships that the actual judgment was given some 14 days after the hearing of the appeal, and it is suggested that the learned Judges might have misunderstood the action of the pleader in the conduct of the case. Their Lordships are quite unable to accept this contention had there been any mistake in this respect it would have been incumbent upon the appellants while the matter was still fresh in the minds of the Judges, to have caused their pleader to call the attention of the Court to the fact that the statement made with regard to his conduct was a statement that had been made in error, no such step was taken and, apart from the argument of counsel, there is nothing before their Lordships to make them think that any such mistake occurred; an affidavit has indeed been filed by a person who said he was present at the trial, that he would certainly have noticed any such admission, that such admission was not made, and that the learned pleader is now unable to recall whether in fact it did or did not occur. After such a lapse of time this is wholly insufficient, and their Lordships therefore, do not feel at liberty to express their views upon the case as it stood when it felt the District Court, but consider that they are bound to accept the clear conclusion of the High Court, that the documents in question were fraudulently put forward as the actual sale proclamations affixed to the properties in pursuance of the Code, and that in fact no such proclamations were affixed at all; and this conclusion is sufficient to support the judgment which is the subject of this appeal."

4.5.The Learned Counsel for the Petitioner points out the decision in Sarat Chandra Maiti and others V. Bibhabati Debi and

others, 1921 AIR (Calcutta) 584, wherein at paragraph 11, it is, among other things, observed as follows:

"11. In the case of Damodar Narayan v. Dalglish (45) 9 Ind. Cas. 913 : 38 I. A. 65 : 38 C. 432 : 13 C. L. J. 512 : 10 C. W. N. 311 : 9 M. L. T. 381 : 8 A. L. J 411 : 13 Bom. L. R. 396; (1911) 2 M. VV. N. 188 (P.C.), it appeared from the judgment of the Subordinate Judge that at the trial before him it was admitted with regard to some of the lands in suit that those lands were the private lands of the proprietor the case proceeded before the Subordinate Judge and was dealt with by him on the footing of that admission. On appeal, this Court went behind the admission. Sir Arthur Wilson observed that the High Court was in error in going behind the admission and re-opening the question whether the smaller area was the private land of the proprietor. Again, in Nellavadi v. Sabra-manian Pillai (46) Mr. Justice Sadasiva Iyer observed that a statement in a judgment as to an admission made before the Court of first instance should not be doubted lightly by the Appellate Court, specially in the absence of an affidavit by the Vakil who appeared in the Court of first instance. It is plain that in cases of this character where a litigant feels aggrieved by the statement in a judgment that an admission has been made, the most convenient and satisfactory course to follow, wherever practicable, is to apply to the Judge without delay and ask for rectification or review of the judgment. This course was not pursued in the case before us, nor is the proof of the allegation that the Trial Judge was under a misapprehension. We must consequently, hold that the appellants cannot be permitted to re-open the question in this Court."

4.6. The Learned Counsel for the Petitioner cites the decision in R.M.K.R.M. Somasundaram Chetty V. M.R.M.V.L. Subramanian Chetty, 1926 AIR (PC) 136, wherein at paragraphs 26 & 27, it is observed as under:

"26. It may possibly be, but it is not proved in evidence, that the plaintiff in Suit No.120, the attorney, agent or partner

of or in the firm of M.R.M.V.L., was under the impression that he could obtain a judgment for \$7,400 against the defendant the attorney, agent or partner of or in the firm of R.M.K.R.M. which would not merely be a personal judgment against the attorney or agent but a judgment against the defendant attorney's firm. If the plaintiff attorney was under that impression it was wholly due to his ignorance of the law, and it is because he instituted and prosecuted to judgment Suit No.120 in that state of ignorance that he or his principal now claims to have this judgment set aside. No fraud was practised upon the plaintiff in that suit, or his principal; no false representation was made to them; no inducement held out to the agent to sue in the way he did; and no misleading steps were taken or acts done with the consent of the defendant attorney or his principal. It appears to their lordships that the claim to have this judgment set aside resembles very much the case of a litigant who, with erroneous and exaggerated notions of his rights, brings an action to enforce those rights as he understands them and is beaten because the Judge comes to a wholly different conclusion as to the extent of those rights and directs judgment to be entered against him, and then the defeated litigant applies to have this judgment set aside because he had mistakenly formed an extravagant opinion of his own rights which misled him to litigation.

27. It is, of course, open to the plaintiffs, both attorney and principal, to bring an action to have the judgment entered up in Suit No.120 set aside. They do not take that course; they apparently want to have it set aside by motion. It is not necessary to cite on this point any authorities in addition to Ainsworth v. Wilding [1896] 1 Ch.673: 65 L.J.Ch. 432 : 74L.T. 193:44 W.R.540 Romer, J., in giving Judgment in that case, said at page 676:

The Court has no jurisdiction after the judgment at the trial has been passed and entered to rehear the case. Formerly the Court of Chancery had power to rehear cases

which had been tried before if even after decree had been entered, but that is not so since the Judicature Acts. So far as I am aware the only cases in which the Court can interfere after the passing and entering of the Judgment are these (1) where there has been an accident or slip in the Judgment as drawn up, in which case the Court has power to rectify it under Order 28, Rule 11 and (2) where the Court itself finds the judgment as drawn does not correctly state what the Court actually decided and intended."

4.7.The Learned Counsel for the Petitioner brings it to the notice of this Court that the Judgment of this Court in CrI.A.No.123 of 2017 [being dissatisfied with the Judgment in S.C.No.125 of 2014 dated 20.01.2017 on the file of the II Additional District Judge, Mahila Court, Tiruppur, whereby and whereunder, the Accused was convicted and sentenced to undergo 10 years Rigorous Imprisonment and a fine of Rs.5,000/- with usual default clause for the offence under Section 449 I.P.C.; he was imposed with a punishment of life imprisonment and a fine of Rs.5,000/- with usual default clause for the offence under Section 376(A) I.P.C. and life imprisonment with a fine of Rs.5,000/- with usual default clause for the offence under Section 302 I.P.C.], wherein, this Court, while dismissing the said CrI.A.No.123 of 2017, on 09.10.2017, had confirmed the conviction and sentence imposed in S.C.No.125 of 2014 dated 20.01.2017 passed by the II Additional District Judge, Mahila Court, Tiruppur.

4.8.The Learned Counsel for the Petitioner cites the decision of this Court in The State of Tamil Nadu, represented by the Commissioner and Secretary to Government Home Department, Chennai & others V. R.Karuppiyah, Inspector of Police (Under Orders of Suspension) Manamadurai Circle, Sivagangai District and others, vide CDJ 2005 MHC 1829, wherein at paragraph 15, it is observed as under:

"15.Rule 56 (1) deals with the Retirement on Superannuation, which reads as follows:
56(1) Retirement on Superannuation - (a)
Every Government servant in the superior service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty-eight years. He shall not be retained in service after that age except with the sanction of the Government on public grounds, which must be recorded in writing but he shall not be

retained after the age of sixty years except in very special circumstances:
Provided that this clause shall not apply to Government servants who are treated as in superior service for the purpose of these rules but as in the Tamil Nadu Basic Service for the purpose of pension. Such Government servants as well as all basic servants shall retire on attaining the age of sixty years:
Provided further that on and from the 1st January 1993, a District Judge, Chief Judicial Magistrate, Sub-ordinate Judge or District Munsif-cum-Judicial Magistrate, who, in the opinion of the High Court, Madras, has potential for continued useful service beyond the age of fifty-eight years, shall retire from service on attaining the age of sixty years."

Also, in the aforesaid decision, at paragraphs 20 to 22, it is held as under:

"20. In such circumstances, we can come to a conclusion that without fulfilling the requirement of Rule 56(1)(c) of the Fundamental Rules, which is mandatory, the initiation of Disciplinary Proceedings against the first respondent is not sustainable under law and therefore, we are of the view that the very proceedings are liable to be set aside.

21. In the decision relied on by the learned counsel for the first respondent, same view was taken by the Division Bench of this Court when it has an opportunity to deal with a similar matter.

22. The Division Bench of this Court in N.M. Somasundaram v. The Director General of Police, Madras -4 and Ors. (1997 Writ L.R.120) has held as follows:

"A reading of Rule 56(a) and (c) together would lead to an irresistible conclusion that in order to retain a public servant or a Government servant in service on attaining his age of superannuation, a positive order in writing shall have to be passed by the Government giving the reasons as to on what grounds which should be on public grounds, a Government servant is retained in service. No doubt Rule 56(c) says that a Government servant under suspension on a charge of

misconduct should not be required or permitted to retire of his reaching the date of compulsory retirement. It further says that he should be retained in service until the enquiry into the charge is conducted and a final order passed thereon by the Competent Authority. Therefore, even though it may not be necessary to permit to Government servant against whom a disciplinary proceeding is pending, to retire from service, in order to retain him in service for the purpose of disciplinary proceedings, a positive order in writing is required to be passed. The public ground for passing the said order is the pendency of the disciplinary proceeding. But, what is necessary is that there should be an order passed by the Government not permitting a Government Servant to retire from service. The instruction under Rule 56(c) also does not help the State Government. The instruction reads thus:-

"Whether a Government servant referred to in clause (c) is fully exonerated or not he shall be considered to have been on extension of service for the period from the date of compulsory retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant, shall freeze at the level reached on the date of compulsory retirement and the salary during the period shall not exceed the pension which has accrued to the Government servant on the date."

It only provides that in a case where a Government servant is exonerated or not, he shall be considered to have been on extension of service for the period from the date of termination of the proceedings. The further words in this instruction are, during such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of compulsory retirement and the salary during that period shall not exceed the pension, which has accrued to the Government servant on the date. The instruction only takes away the effect, if any, of the orders passed by the State Government in writing, retaining a Government servant even after

attaining the age of superannuation. Therefore, it states that even retention does not help him for obtaining any service benefits and those service benefits will freeze on the date he attains the age of superannuation."

4.9.The Learned Counsel for the Petitioner refers to the Full Bench decision of the Hon'ble Supreme Court in Civil Appeal No.2015 of 2006 in C.M.W.P.No.31769 of 2000 (vide CDJ 2007 SC 264) [between Ramesh Chander Singh V. High Court of Allahabad and another], wherein at paragraph 9, it is held as follows:

"9.The learned Judge who conducted the enquiry held that in the facts of the case where a heinous and daring offence had been committed in broad daylight and two persons had been shot dead in a crowded area next to the Collectorate at Jhansi and the Accused were named in the FIR as well as in the dying declarations and their bail applications having been considered and rejected twice on merits by the respective courts, the third bail application granted by the charged officer in utter disregard of the judicial norms and on insufficient grounds appears to be based on extraneous consideration. The learned enquiry Judge did not care to take notice of the fact that the co-Accused who were similarly situate had been granted bail by the High Court and that Accused Ram Pal, who was a student and had been in jail for more than one year was granted bail for cogent reasons, set out in the order passed by the appellant. In the bail order, the appellant stated that there was an allegation that the Magistrate who recorded the dying declaration was once upon a time a tenant in one of the houses owned by the complainant. Taking cognizance of this fact by the appellant in the order could not be said to be a totally unwarranted and a superfluous reasoning."

Also, in the aforesaid Judgment, at paragraphs 11 to 14, it is observed as follows:

"11.We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the

High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant-officer was well within his right to grant bail to the Accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or NDPS Act, there was no statutory bar in granting bail to the Accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently.

12. This Court on several occasions has disapproved the practice of initiation of disciplinary proceedings against officers of the subordinate judiciary merely because the judgments/orders passed by them are wrong. The appellate and revisional courts have been established and given powers to set aside such orders. The higher courts after hearing the appeal may modify or set aside erroneous judgments of the lower courts. While taking disciplinary action based on judicial orders, High Court must take extra care and caution.

13. In *Iswar Chandra Jain v. High Court of Punjab and Haryana*, AIR 1988 SC 1395, this Court observed that while exercising control over subordinate judiciary under Art. 235 of the Constitution, the High Court is under a Constitutional obligation to guide and protect subordinate judicial officers. An honest and strict judicial officer is likely to have adversaries. If complaints are entertained in trifling matters and if the High Court encourages anonymous complaints, no judicial officer would feel secure and it would be difficult for him to discharge his duties in an honest and independent manner. It is imperative that the High Court should take steps to protect honest judicial officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants.

14. In *K.P. Tiwari v. State of Madhya*

Pradesh, AIR 1994 SC 1031, where the High Court reversed the order passed by the lower court making remarks about interestedness and motive of the lower court in passing the unmerited order, this Court observed that one of the functions of the higher court is either to modify or set aside erroneous orders passed by the lower courts. Our legal system acknowledges fallibility of judges. It has to be kept in mind that a subordinate judicial officer works mostly in a charged atmosphere. He is under a psychological pressure -- contestants and lawyers breathing down his neck. He does not enjoy the detached atmosphere of the higher court. Every error, however gross it may be, should not be attributed to improper motives. The Judges of the High Court have a responsibility to ensure judicial discipline and respect for the judiciary from all concerned. No greater damage can be done to the administration of justice and to the confidence of the people in the judiciary if the higher courts express lack of faith in the subordinate judiciary for some reason or other. That amounts to destruction of judiciary from within.

4.10. The Learned Counsel for the Petitioner refers to the decision of the Hon'ble Supreme Court in Union of India and others V. Gyan Chand Chattar reported in (2009) 12 SCC 785, at paragraph 16, it is observed as follows:

"16. So far as charge no.6 i.e. asking for 1% commission for making the payment of pay allowances is concerned, the learned Single Judge has appreciated the evidence of all the witnesses examined in this regard and came to the conclusion that not a single person had deposed before the Enquiry Officer that the respondent employee had asked any person to pay 1% commission for making payment of their allowances. It was based on hearsay statements. All the witnesses stated that this could be the motive/ reason for not making the payment. Such a serious charge of corruption requires to be proved to the hilt as it brings civil and criminal consequences upon the concerned employee. He would be liable to be prosecuted and would also be liable to suffer severest penalty awardable in such cases. Therefore, such a grave charge

of quasi criminal nature was required to be proved beyond any shadow of doubt and to the hilt. It cannot be proved on mere probabilities. Witnesses were examined before the Enquiry Officer that they have heard that the said respondent was asking but none of them was able to point out who was that person who had been asked to pay 1% commission. One of such witnesses deposed that some unknown person had told him. Learned Single Judge came to the conclusion that the knowledge of the witnesses in this regard was based on "hearsay statement of some unknown persons whom they did not know". This was certainly not legal evidence to sustain such a serious charge of corruption against an employee."

4.11. The Learned Counsel for the Petitioner adverts to the decision in N.M.Somasundaram V. The Director General of Police, Government Estate, Madras and others reported in 1997 Writ L.R. 120 at special page 122, wherein at paragraphs 8, 9 and 12, it is observed and held as follows:

"8. A reading of Rule 56(a) and (c) together would lead to an irresistible conclusion that in order to retain a public servant or a Government servant in service on attaining his age of superannuation, a positive order in writing shall have to be passed by the Government, giving the reasons as to on what grounds, which should be on public grounds, a Government servant is retained in service. No doubt, Rule 56(c) says that a Government servant under suspension on a charge of misconduct, should not be required or permitted to retire on his reaching the date of superannuation. It further says that he should be retained in service until the enquiry into the charge is conducted and a final order passed thereon by the Competent Authority. Therefore even though it may not be necessary to permit a Government servant against whom a disciplinary proceeding is pending, to retire from service, in order to retain him in service for the purpose of disciplinary proceeding, a positive order in writing is required to be passed. The public ground for passing the said order is the pendency of the disciplinary proceeding. But, what is

necessary is that there should be an order passed by the Government not permitting a Government servant to retire from service. The instruction under Rule 56(c) also does not help the State Government. The instruction reads thus :-

"Whether a Government servant referred to in clause (c) is fully exonerated or not he shall be considered to have been on extension of service for the period from the date of compulsory retirement to the date of termination of the proceedings. During such an extension of service, the service rights which have accrued to the Government servant, shall freeze at the level reached on the date of compulsory retirement and the salary during the period shall not exceed the pension which has accrued to the Government servant on the date."

It only provides that in the case where a Government servant is exonerated or not, he shall be considered to have been on extension of service for the period from the date of compulsory retirement to the date of termination of the proceedings. The further words in this instruction are, during such an extension of service, the service rights which have accrued to the Government servant shall freeze at the level reached on the date of compulsory retirement and the salary during that period shall not exceed the pension, which has accrued to the Government servant on the date. The instruction only takes away the effect, if any, of the order passed by the State Government in writing, retaining a Government servant even after attaining the age of superannuation. Therefore, it states that even retention does not help him for obtaining any service benefits and those service benefits will freeze on the date he attains the age of superannuation.

9. A similar Rule as contained in Rule 56(c) came up for consideration before the Supreme Court in the decision in State of Punjab v. Khemi Ram, reported in AIR 1970 SC 214. It has been held by the Supreme Court, thus :-

"This contention was raised on the strength

of Rule 3.26(d) of the Punjab Civil Service Rules, as it then stood. That Rule provided that a Government servant under suspension on a charge of misconduct shall not be permitted to retire on his reaching the date of compulsory retirement but should be retained in service until the enquiry into the charge was completed and a final order was passed thereon. The argument was that as the respondent was not served with the said order of suspension on or before August 4, 1958, and as he had retired on that day and was, therefore, no longer in service, the said enquiry and the said order of dismissal were in breach of Rule 3.26(d) and were illegal The question for determination thus is whether the said order of suspension admittedly made before the date of the respondent's retirement as required by the said Rule 3.26(d) did not take effect by reason only that it was received by the respondent after the said date of retirement and whether he must, therefore, be held to have retired on August 4, 1958, rendering the enquiry and the ultimate order of dismissal invalid.

There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said Rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed thereon."

Therefore, it is clear that in the absence of any order passed before October 31, 1984, the Competent Authority loses the Jurisdiction to continue the disciplinary proceedings.

12. It is next contended that the order of suspension was not served on the petitioner/appellant, but, it was only affixed on the door of the house of the petitioner, therefore it cannot be considered to be a valid service."

4.12. The Learned Counsel for the Petitioner refers to the Full Bench Decision of this Court in C.Mathesu V. The Secretary to Government, Revenue Department, Chennai - 9 and others, 2013 (3) CTC 369, at special pages 393 & 394, wherein at paragraphs 27 & 28, it is laid down as follows:

"27. Thus, the view taken by the Court which makes both the provisions viz., Rule 56(1)(c) of the Fundamental Rules and Rule 9 of the Pension Rules workable is to be preferred.

28. From the aforesaid discussion, the following broad principles emerge :

(i) If a Government servant has been placed under suspension and not permitted to retire even after his attaining the age of superannuation in terms of Rule 56(1)(c) of the Fundamental Rules, the enquiry against him can proceed, and in that case, if charges of misconduct are proved, depending upon the nature of the charges, even the extreme penalty of dismissal or removal from service can be imposed.

(ii) If there is any statutory provision for continuing the departmental proceedings like Rule 9(2) of the Pension Rules even after the Government servant has retired on attaining the age of superannuation, then the departmental proceedings already instituted before the retirement of the Government servant can be continued against the delinquent employee by treating him to be in service.

(iii) If the Government servant has retired on attaining the age of superannuation and subsequently any departmental proceeding is to be instituted against him, in that event, under Rule 9(2) (b) of the Pension Rules, sanction of the Government is required to be taken and the event in respect of which the departmental proceedings are sought to be initiated should not have taken place more than four years before such institution.

(iv) In cases where the Government Servant is allowed to retire on attaining the age of superannuation or where the departmental proceedings are to be initiated after the retirement, there is no question of passing the order of dismissal or removal

from service and only the pension can be withheld, withdrawn or reduced. The question of dismissal or removal of the said delinquent employee from service, therefore, does not arise.

(v) Since in the present case, the appellant was permitted to retire on attaining the age of superannuation without prejudice to the disciplinary proceedings pending against him, in our considered opinion, the said proceedings can be permitted to be continued in terms of Rule 9 (2) (b) of the Pension Rules.

4.13. The Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in Baradakanta Mishra V. High Court of Orissa and another, AIR 1976 Supreme Court 1899, at special page 1904, wherein at paragraphs 21 to 24, it is observed and held as under:

"21. In N.S. Rao's case (AIR 1975 SC 613) (Supra) this Court said "The Governor has power to pass an order of dismissal, removal or termination on the recommendations of the High Court which are made in exercise of the power of control vested in the High Court. The High court of course cannot terminate the service or impose any punishment on district Judge by removal or reduction. The control over District Judge is that disciplinary proceedings are commenced by the High Court. It as a result of any disciplinary proceeding any District Judge is to be removed from service or any punishment is to be imposed, that will be in accordance with the conditions of service.

22. It is indisputable that the appellant was promoted to the post of Additional District and Sessions Judge. That is the cadre of District and Sessions Judge. He was reduced in rank. Reduction in rank is one of the major punishment mentioned in Article 311. The major punishments are dismissal, removal or reduction in rank. The words "dismiss, remove or reduce in rank" have a stigma, namely, the meaning which they bear as three major punishments in Service Rules. The difference between dismissal and removal is that dismissal ordinarily disqualifies any future employment and removal ordinarily does not

(see Parshotam Lal Dhingra V. Union of India (1958 SCR 828) = (AIR 1958 SC36)). If one is reverted by way of punishment for misconduct Article 311(2) is attracted. The expression "reduction in rank" means that the person who holds the position of a subordinate Judge has been reduced to the post of a Munsiff. The rank of a Subordinate Judge is higher than that of the munsiff. But the Subordinate Judges in the same cadre hold the same rank though they have to be listed according to their seniority in the Civil List. Therefore, losing some places in the seniority list in the same cadre does not amount to reduction in rank under Article 311(2). (See High Court of Calcutta V. Amal Kumar Roy, (1963) 1 SCR 437 = (AIR 1962 SC 170)). Reduction in rank may be brought about in the garb of a reversion. (See Debesh Chandra Das V. Union of India (1970) 1 SCR 220 = (AIR 1970 SC 77)).

23. It was argued in N.N.Bagchi's case (AIR 1966 SC 447) (Supra) that the extent of control exercisable by the High Courts under Article 235 must be so cut down as to keep disciplinary jurisdiction out. This argument was not accepted by this Court. This Court said that the provisions that certain powers are to be exercised by the Governor and not by the High Court do not take away other powers from the High Courts. This Court however incidentally added that in exercising these special powers in relation to inquiries against District Judges, the Governor would always have regard to the opinion of the High Court in the matter. This Court concluded by holding that there is nothing in Article 311 which compels the conclusion that the High Court is ousted of the jurisdiction to hold the enquiry."

5.Respondents' Submissions:

5.1.Per contra, it is the submission of the Learned Counsel for the 2nd Respondent that the Petitioner, while serving as Principal District Judge, Tiruppur, was placed under suspension in contemplation of proceedings vide High Court's Proceedings in R.O.C.Nos.433/2013/VC, 118/2014/VC, 441/2014/VC, 499/2014/VC and 519/2014/VC in C.No.90/2013/VC/B2, dated 15.09.2014 and that he was due to retire on 30.11.2014 A.N. after attaining the age of superannuation of 60 years.

5.2.It is represented on behalf of the 2nd Respondent that the Hon'ble Administrative Committee in its meeting that took place on 27.11.2014, after considering the report of the Registrar (Vigilance) in the discreet enquiry conducted against the Petitioner on the allegations made in the complaint of one N.Thangavel of Tiruppur were made out, had resolved that the Petitioner (K.Ganesan, then Principal District Judge) shall continue to remain under suspension, and that he shall not be permitted to retire on attaining the age of superannuation at the age of 60 and further that, he shall be retained in service until the conclusion of the departmental/ disciplinary proceedings to be initiated against him in R.O.C.No.83/ 2014/VC, as per F.R.56(1)(c). Accordingly, by means of proceedings dated 28.11.2014, orders were issued to the Petitioner.

5.3.The Learned Counsel for the 2nd Respondent points out that the Hon'ble Administrative Committee, in its meeting on 13.10.2015, had considered the written statement of defence of the Petitioner and that an enquiry was ordered. In fact, the Hon'ble Enquiring Judge of this Court had conducted the departmental enquiry against the Petitioner and submitted an Enquiry Report dated 10.08.2016 holding that both charges were proved. Moreover, the Enquiry Report was placed before the Hon'ble Chief Justice of this Court, who directed to place the matter before the Hon'ble Administrative Committee. As a matter of fact, the Hon'ble Administrative Committee, in its meeting held on 30.08.2016, had resolved to issue a show cause notice to the Petitioner calling upon him to submit his further representation. The further representation of the Petitioner was submitted on 28.09.2016, which was placed before the Hon'ble Administrative Committee in its meeting that took place on 10.01.2017. In fact, the Committee had resolved to impose a punishment of dismissal from service in respect of the proceedings in R.O.C.No.83/2014/VC and directed to place the matter before the Hon'ble Full Court, for approval. When the matter was placed before the Hon'ble Full Court on 08.02.2017, it was resolved to approve the minutes of the Hon'ble Administrative Committee dated 10.01.2017, imposing the punishment of dismissal from service and directed the Registry to address the Government.

5.4.The Learned Counsel for the 2nd Respondent informs this Court that the 1st Respondent/Government of Tamil Nadu had issued G.O.Ms.No.360, Public (Spl-A) Department, dated 24.04.2017, imposing punishment of dismissal from service for the charges held proved, which the present Writ Petition is filed by the Petitioner.

5.5.The Learned Counsel for the 2nd Respondent brings it to the notice of this Court that the High Court's proceedings dated

28.11.2014 was communicated through 'Fax' to the Principal District Court, Tiruppur on 28.04.2014 itself around 19.46 hours and the same was served on the Petitioner on 29.11.2014 by the Learned Principal District Judge (Incharge), Tiruppur and that the Petitioner (Delinquent) had acknowledged the same by signing the copy of the proceedings.

5.6.The Learned Counsel for the 2nd Respondent contends that the Subordinate Judicial Officers are under the 'Administrative Control of the High Court' and as such, the High Court is competent to suspend/retain the delinquent officers in service beyond the date of superannuation. He further adds that as per Proviso 2 of the Fundamental Rule 56(1)(a), the High Court has been extending the service of the Judicial Officers beyond the stipulated age of 58 years upto 60 years and as such, the powers of the "Appointing Authority" referred to in Fundamental Rule 56(1)(c) is all along exercised by the High Court.

5.7.The Learned Counsel for the 2nd Respondent submits that from one N.Thangavel (P.W.1) of Tiruppur, a complaint dated 10.02.2014 was received against the Petitioner (then Principal District Judge, Tiruppur) complaining that the Petitioner and the Public Prosecutor K.N.Subramaniam (P.W.2) received huge amount and released the Accused involved in a criminal case under Sections 449, 376 and 301 I.P.C. and Section 3 read with Section 4 of the Protection of Children from Sexual Offences Act, 2012. As directed, an explanation was called for from the Judicial Officer to show cause as to why the charges should not be framed against him based on the said complaint. In fact, the Complainant was examined as P.W.1 in the departmental enquiry.

5.8.The Learned Counsel for the 2nd Respondent contends that the Public Prosecutor (P.W.2) in the departmental enquiry had stated that if the Accused was released on bail, then, the Accused would threaten the witnesses and tamper the evidence and as such, the contra plea taken on behalf of the Petitioner that P.W.2 (Public Prosecutor) had not raised any serious objection is a false one. Also that, the written objection of the P.W.3 (Deputy Superintendent of Police, Udumalpet) was marked as Ex.P3 in the departmental enquiry and in short, the Petitioner (Delinquent Officer) should have taken into account the 'sensitiveness' of the case (since the victim was 16 year minor girl) besides considering all other concrete evidences, before letting the Accused on 'Bail'.

5.9.The Learned Counsel for the 2nd Respondent strenuously projects an argument that in the instant case, for want of direct evidence alone, the charges cannot be brushed aside, because of the reason that in these types of allegations, having direct evidence is very difficult, unless the persons who paid the money himself come forward to depose. That apart, a

beneficiary out of such corrupt practice will not come forward to speak the truth and hence, the conclusion arrived at that there is allegation of bribe, is a true one.

5.10.The Learned Counsel for the 2nd Respondent takes a plea that Ex.P3 - Written Objection was placed before the Petitioner, but he deliberately and intentionally omitted to consider the same and the gravity of the offences and granted bail in a casual manner, by imposing a very lenient condition. Also that, why Ex.P3 was not taken on record by the Petitioner can only be for an obvious reason.

5.11.The Learned Counsel for the 2nd Respondent submits that the real question as to whether the power is exercised judicially on sound reasoning as claimed by the Petitioner or the said power was exercised with an intention to release the Accused by deliberately not recording certain vital facts, which, if recorded, would have resulted in rejecting the bail, as alleged by the prosecution.

5.12.The Learned Counsel for the 2nd Respondent points out that the Petitioner, on the date of passing the Bail order, was not aware of the fact that charge sheet was already filed in the case and further, filing of charge sheet does not automatically entitle an Accused person to be released on Bail. In short, the facts and surrounding circumstances of each and every case has to be looked into, considered and determined as to whether the bail in a given case is to be granted or not.

5.13.The Learned Counsel for the 2nd Respondent points out that in the present case, the Petitioner wanted to peruse the reply given by the Police and P.W.2 (Public Prosecutor) submitted Ex.P3 - Reply to him and that the Petitioner (Delinquent) read the same and returned it back. Further, P.W.2 had raised serious objection for the grant of bail stating that an young girl was raped and murdered which was a premeditated grave offence and therefore, bail should not be granted.

5.14.The Learned Counsel for the 2nd Respondent points out that P.W.2 (in his cross examination) had admitted that he had not stated that when the Vigilance Inspector enquired him about the perusal of Ex.P3 by the Delinquent Officer, but he had stated that the Vigilance Police had not asked him about that and hence, he had not informed them about the same. Further, P.W.2 had proceeded to state that he does not know about the fact that the Complainant has also made a complaint against him in his complaint dated 10.02.2014.

5.15.The Learned Counsel for the 2nd Respondent refers to the evidence of P.W.3 (Deputy Superintendent of Police of

Udumalpet) and contends that he had stated that on 03.01.2014 he submitted his Objection Petition (Ex.P3) to the District Public Prosecutor through Head Constable Ponraj and that the aforestated Head Constable had informed him that he had submitted the report as regards the objection to the Public Prosecutor on 04.01.2014.

5.16.The Learned Counsel for the 2nd Respondent takes a plea that P.W.3 in the oral enquiry had stated that normally the details such as the one as regards the proceedings in a case, along with the details pertaining to the bail petition, would be available in the diary and that he came to know of the details only on perusal of the Registers maintained in the office after the Registrar (Vigilance), High Court, Madras had enquired him and that the Registrar (Vigilance) of High Court required him to come to Chennai for an enquiry and when he came to Chennai, he had brought the CD File as well as the diary with him and that Ex.P3 - Reply copy was not included in the CD File and it was kept in the office. P.W.3 had also denied the statement of the Petitioner that he had prepared the Ex.P3 document only after the enquiry was made by the Registrar (Vigilance) of this Court and further that, he is tendering false evidence in the departmental enquiry.

5.17.The Learned Counsel for the 2nd Respondent vehemently contends that in Ex.P3 serious objection was raised that if the Accused was released on bail, he would tamper the witness and in spite of such apprehension by the prosecution, the Petitioner had granted bail and that too with a condition to report before the Police Station, situated in the place of occurrence.

5.18.Therefore, it is the submission of the Learned Counsel for the 2nd Respondent that the Accused in the present case was permitted to roam around freely at the place of occurrence which undoubtedly support the apprehension of the prosecution that he would tamper the evidence. Apart from that, when the commission of offence of rape and murder created commotion in the locality and the said incident was published in print and electronic media, the Petitioner had granted bail as if he was not aware of the sensitiveness of the case. As such, it is the stand of the 2nd Respondent that the Petitioner had granted bail to the Accused for an extraneous consideration which is spoken to by the Complainant (P.W.1). In brief, it is the categorical stand of the 2nd Respondent that the Report of the Hon'ble Enquiring Judge is a tenable and sustainable one in the eye of Law.

5.19.The Learned Counsel for the 2nd Respondent states that the findings of the Enquiring Judge was placed before the Hon'ble Administrative Committee and it was resolved to impose a punishment of 'dismissal from service' which was directed to be

placed before the Full Court, for its approval. Further, on 08.02.2017 when the matter was placed before the Hon'ble Full Court, it was resolved to approve the minutes of Hon'ble Administrative Committee Meeting, which was held on 10.01.2017 imposing the punishment of dismissal from service upon the Petitioner. Also that, the Registry of the High Court was directed to address the Government for issuing necessary orders and a letter was addressed to the 1st Respondent/Government by the Registry for obtaining the order of the Government imposing the punishment of dismissal from service upon the Petitioner for the charges held proved against him.

5.20. While summing up, it is the plea of the 2nd Respondent that the 'Scope of Judicial Review' against the departmental proceedings are limited only to an extent of violation of procedure, if any, or Principles of Natural Justice in imposing the impugned order of dismissal against him.

5.21. The Learned Counsel for the 2nd Respondent relies on the decision in Lalit Popli V. Canara Bank and others, (2003) 3 Supreme Court Cases 583 at special page 585 & 586, it is observed as under:

"The approach and objective in criminal proceedings and the disciplinary proceedings are altogether distinct and different. In the disciplinary proceedings the preliminary question is whether the employee is guilty of such conduct as would merit action against him; whereas in criminal proceedings the question is whether the offences registered against him are established and if established what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial are conceptually different. In case of disciplinary enquiry the technical rules of evidence have no application. The doctrine of "proof beyond doubt" has no application. Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct."

5.22. The Learned Counsel for the 2nd Respondent cites the decision of the Hon'ble Supreme Court in Registrar (Administration), High Court of Orissa, Cuttack V. Sisir Kanta Satapathy (dead) by L.Rs. and another, AIR 1999 Supreme Court 3265, wherein it is held as follows:

"However, by not making an order of compulsory retirement on the recommendation

of the High Court, a peculiar situation was created in the sense that the Judicial Officers were neither in service nor were they technically out of service. They, however, did not perform any work. Therefore, in order to balance equities between the parties and in order to give litigation a quietus the Court requested the Governor of State to pass a formal order of compulsory retirement of Judicial Officers with effect from the date when the recommendation was received by the Government. The Judicial Officers (which would include legal representatives in the case of deceased would, thus, be entitled to their salary, allowances and all other consequential benefits till said date."

5.23. The Learned Additional Government Pleader for the 1st Respondent reiterated the submissions made on behalf of the 2nd Respondent/High Court and hence, they are not repeated.
Discussions:

6. At the outset, it is to be pertinently pointed out that the Complainant (P.W.1) had addressed a complaint dated 10.02.2014 (marked as Ex.P1 during enquiry proceedings) to the Hon'ble Chief Justice of this Court stating that he is a farmer and that his daughter viz., Pushpalakshmi, aged 17 years studied +2 in R.G.M. Matric Higher Secondary School, Pethappanpatty and further that, on 03.11.2013 when she was in his house, his neighbour one Arunkumar S/o.Mani entered his house, raped and murdered his daughter and that the said Arunkumar was handed over to Kudimangalam Police, who registered a case under Sections 449, 376, 302 I.P.C. and under Section 3 read with Section 4 of the Protection of Children From Sexual Offences Act, 2012.

7. As a matter of fact, the Complainant, in his complaint (Ex.P1) dated 10.02.2014, had proceeded to state that the Accused Arunkumar was remanded to Judicial Custody on 04.11.2013 and that the entire public of Udumalpet Taluk, students and business community staged agitations and demanded serious action against the Accused, which was published in the Press and electronic media throughout the Country. Further, on 02.01.2014 the Accused Arunkumar moved bail before the Learned Principal District and Sessions Judge, Tiruppur and that on 07.01.2014 he was released on bail with a simple condition to appear and sign before the Inspector of Police, Gudimangalam Station (being a native place of the deceased and prosecution witnesses).

8. A perusal of the complaint dated 10.02.2014 of the

Complainant shows that during the hearing of the bail application on 07.01.2014, the Learned Public Prosecutor had failed to oppose the bail and that the Learned Principal District Judge had also failed to note the gravity of the offence and also on that day, charge sheet was also not filed and that the Accused was threatening the witnesses, while coming to Police Station. Furthermore, the complaint mentions that now they came to know that Shri.K.Ganesan, the Principal District Judge, Tiruppur (Petitioner) and the Public Prosecutor Shri.K.N.Subramaniam (P.W.2) received huge amount and released the Accused and that he already moved a petition to transfer the case to some other Court and another petition for cancellation of bail and those are pending and ultimately, had requested the Hon'ble Chief Justice to take suitable and necessary action against the Principal District and Sessions Judge, Tiruppur and Public Prosecutor, Tiruppur.

9. Based on the complaint of N.Thangavel of Tiruppur dated 10.02.2014 (P.W.1), the 2nd Respondent in R.O.C.No.83/2014/VC dated 26.12.2014 had issued an Official Memorandum to the Petitioner inter alia stating that 'On perusal of the complaint, the Hon'ble Administrative Committee has resolved to direct the Registry to issue a show cause notice to the Petitioner as to why charges should not be framed against him in respect of the proceedings in Roc.No.83/2014/VC and call upon him to submit his explanation within 15 days of receipt of this Official Memorandum'.

10. The Petitioner submitted his explanation dated 09.01.2015 addressed to the 2nd Respondent/High Court, among other things, mentioning that the Accused (Arunkumar) was in custody from 04.11.2013 and that on 07.01.2014 when the bail application came up for hearing, the Public Prosecutor had not raised any serious objection to grant bail and further that, considering the representations of the Accused's side and considering that the investigation would have reached a considerable stage by then (i.e. 65 days from the date of occurrence) and granted bail to the Accused with a condition that he should appear before the Inspector Police, Udumalpet Police Station daily twice at 10.00 a.m. and 5.00 p.m. and sign until further orders. Further, he denied the allegation that the Complainant came to know that himself and the Public Prosecutor received huge amount and released the Accused. Apart from that, he had proceeded to state that the order granting bail was passed only on merits and that no complaint was received by him that the Accused threatened the witnesses. The Petitioner concluded his explanation by stating that the complaint is a motivated and a false one.

11. The Administrative Committee of this Court considered

the explanation submitted by the Petitioner and found that the explanation was not satisfactory and ordered to frame charges. Accordingly two charges were framed against the Petitioner and on 27.07.2015, the Petitioner was issued with the charge proceedings in and by which, he was required to submit his written statement of defence. The Petitioner (Delinquent Officer), on 26.08.2015, submitted his written statement of defence together with the filled up Questionnaire Form.

12. Before the Hon'ble Enquiring Judge, on behalf of the Prosecution, witnesses P.W.1 to P.W.5 were examined and Exs.P1 to P8 were marked. The Petitioner (Delinquent Officer) had not examined any witness on his side and no document was marked.

13. Narration of Witnesses Evidence:

13.1. Before the Hon'ble Enquiring Judge in the Departmental Proceedings, P.W.1 (Complainant) had deposed that his daughter Pushpalakshmi (born on 20.06.1997) was studying in +2 in R.G.M. Matric Higher Secondary School, at the time of occurrence and that on 03.11.2013, the date of occurrence when he and his wife were returning after going out for some time Arunkumar, belonging to his village, [known to them and being their relative] had committed rape and murder of their daughter when she was alone in the house.

13.2. It is the further evidence of P.W.1 that the Accused was caught red handed at the same place and time by his village people and in the neighbouring grove. His daughter was lying unconscious and that he took her to a private hospital where the doctors declared her as dead and that they handed over the Accused Arunkumar to the Police.

13.3. Furthermore, P.W.1 had proceeded to state in his evidence that the District Court granted bail to the Accused in the first week of January, 2014 and that when the petition came up for enquiry, the Public Prosecutor (K.N.Subramaniam) had not raised any objections and that the Accused was heard saying that he got bail by giving bribe to the Judge (Petitioner). Hence, he made a complaint to the Hon'ble High Court to take action against the Petitioner.

13.4. P.W.1 had deposed that he was not aware of the fact that a charge sheet was filed on 05.12.2015 itself and that he could not say as to whom and where the Accused had stated as if he paid the money to get bail.

13.5. P.W.2 (Public Prosecutor) had uttered in his evidence that in the present case, the Petitioner wanted to read the reply and hence, Ex.P3 - Reply was handed over to him and after reading the same, he returned it back. Added further, he had stated that he raised serious objections for the grant of bail in this case by stating that a young girl was raped and murdered, which is a premeditated crime and even then, the Petitioner (Judge) had granted bail with condition. Apart from

that, P.W.2 had proceeded to state in his evidence that he does not know the reason as to why the Petitioner (Judge) granted bail in spite of his serious objections, even though it was the first application and of a grave offence.

13.6.P.W.2 (in his cross examination) had stated that it was wrong to state that he had not shown Ex.P3 - Reply to the Judge and further that, he had stated before the Court that he was not having any strong objection for grant of bail.

13.7.P.W.3 (Deputy Superintendent of Police) had (during the departmental enquiry proceedings) deposed that the Accused (Arunkumar) was arrested on 04.11.2013 and a charge sheet was filed on 05.12.2013 and besides this, he was informed by the Head Constable - Ponraj about the filing of bail application by the Accused and the objection to be filed on such application.

13.8.It is the evidence of P.W.3 that on 03.01.2014 he sent his objection petition (Ex.P3) to the Public Prosecutor, Tiruppur (P.W.2) through his Head Constable and that his signature found in Ex.P3 was that of him.

13.9.P.W.3 had proceeded to add in his evidence that the 'Murder' was a sensational one in the locality and they strongly objected for the grant of bail as per Ex.P3 and that he does not know for the reason for grant of bail by the Petitioner.

13.10.It is the evidence of P.W.4 (Inspector of Police, Kudimangalam Police Station) that Ex.P6 is the F.I.R. registered by the Sub Inspector (Sastha Indhu Sekaran) in Cr.No.225/2013 on the file of the Gudimangalam Police Station and tht Ex.P7 was the copy of the Post-mortem Certificate.

13.11.P.W.5 - Assistant of Principal District Court, Tiruppur had deposed that on 07.01.2014 the Petitioner had ordered a conditional bail for which P.W.1 (Complainant) had filed copy application - Ex.P8 seeking copy of the Bail Petition.

14.On 13.10.2015, the Petitioner's Written Statement of defence was considered by the Administrative Committee of this Court and an enquiry was ordered and that the Hon'ble Enquiring Judge, after conducting the Departmental Enquiry against the Petitioner, submitted an Enquiry Report dated 10.08.2016 holding that both the Charges 1 and 2 were proved.

15.The Hon'ble Enquiring Judge, in his Enquiry Report dated 10.08.2016, at paragraph 33, had observed the following:

"33. Perusal of the said order indicates that the Delinquent Officer has specifically recorded as if the Public Prosecutor has not made any serious

objection to grant bail and that he presumed that the investigation could have reached a considerable stage by then. Thus, he released the Accused with a condition that he should appear before the Inspector of Police, Gudimangalam Police Station twice daily, which is admittedly the place of occurrence. No doubt, the Delinquent Officer has judicial power to do so. But the question is whether the power is exercised judiciously on sound reasoning as claimed by the Delinquent Officer or exercised only with an intention to release the Accused by deliberately not recording certain vital facts, which if recorded, would have resulted in rejecting the bail, as alleged by the prosecution herein. Here, it is evident through Ex.P3 that the police has vehemently opposed the bail even though the charge sheet is filed. It is proved through PW2 that the bail application was opposed in the open court. It is also not in dispute that the present application is the first application. However by suppressing all these facts, the Delinquent Officer granted bail on the reasons which are against those suppressed facts. He also made an observation in the order as if the Public Prosecutor had not seriously objected. Such observation goes contrary to the written objection made by the police marked as Ex.P3 wherein they strongly objected for grant of bail. Apart from that the Public Prosecutor as PW2 has in clear and categorical terms stated that he strongly opposed the bail application. Such statement of the Public Prosecutor has not been rebutted by the Delinquent Officer by examining any witnesses. Therefore, it is evident that the observation made by the Delinquent Officer in the bail order that the Public Prosecutor has not seriously objected, is not only factually incorrect and also has been made with deliberate intention to release the Accused on bail at any cost."

and opined that the evidence of P.W.1 and P.W.2 supported by the written objection of the police (marked as Ex.P3) clearly support the allegations of illegal gratification though not on direct evidence, but on the principles of preponderance of

probabilities and in so far as the other allegations, came to the conclusion that they were proved with concrete evidence and material.

16.Proceeding further, the Hon'ble Enquiring Judge, in his Enquiry Report, at paragraph 36, had observed as follows:

"36. The Charged Officer contended before me that on the date of granting bail, charge sheet has been filed already in the criminal case and therefore, he cannot be found fault with in granting the bail. Even though such contention is made by him during the enquiry, it is not evident from the reading of the bail order, since he himself has observed therein that "investigation could have reached a considerable stage by then". Therefore, it is clear that on the date of passing such an order, he was not aware of the fact that a charge sheet was already filed in that case. Even otherwise such fact is available in the written objection made by the police while opposing the bail application. Needless to say that filing of charge does not automatically entitle the Accused person for grant of bail. Facts and circumstances of each and every case has to be seen, considered and decided as to whether the bail in such case is to be granted or not. Therefore, it is evident that the Delinquent Officer has not deliberately considered all these facts, only with an intention to grant bail for the obvious reason as set out in the charges."

17.Moreover, the Report of the Hon'ble Enquiring Judge was placed before the Hon'ble Chief Justice of this Court, who directed the Registry to post the matter before the Administrative Committee and the Hon'ble Administrative Committee, in its meeting that took place on 30.08.2016, had resolved to issue a show cause notice to the Petitioner requiring him to submit his further representation, which was submitted on 28.09.2016 and the same was placed before the Administrative Committee in its meeting held on 10.01.2017 whereby it was resolved to impose a punishment of dismissal from service in respect of R.O.C.No.83/2014/VC and directed the Office of the Registry to place the matter before the Hon'ble Full Court for 'Approval'.

18.The Petitioner was called upon by the 2nd Respondent/High Court through its Official Memorandum dated 07.09.2016 requiring

him to submit his further representation and ultimately the Petitioner submitted his further on 28.09.2016, among other things, mentioning that the allegations levelled and the charge against him that he received illegal gratification for granting bail, that he failed to consider the gravity of the offence, that he did not consider the objections of the Public Prosecutor and the written counter by the Police, that he had granted bail within a short period of remand of the Accused and that he imposed a lenient condition were not correct and that they were falsely levelled against him. The Petitioner/Delinquent Officer, in his further representation dated 28.09.2016, had also proceeded to state that there was no illegality in the order granting bail in Cr.M.P.No.20 of 2014 dated 07.01.2014 even though the offence was a serious one and further that, there was no illegality in imposing a condition directing the Accused (Arunkumar) to appear before and sign in the Gudimangalam Police Station.

19.Later, the Hon'ble Full Court on 08.02.2017 had resolved to approve the minutes of the Hon'ble Administrative Committee dated 10.01.2017 imposing the punishment of dismissal from service upon the Petitioner and directed the Registry to address the Government and on 15.03.2017, a D.O. Letter was addressed to the Government by the Registry and the 1st Respondent/Government issued G.O.Ms.No.360, Public (Spl-A) Department, dated 24.04.2017, imposing the punishment of dismissal from service for the charges held proved.

Salient Features of Direct, Indirect and Circumstantial Evidences:

20.It is to be relevantly pointed out that 'Direct Evidence' is the statement of an individual who had seen himself or heard a thing or took part in it. As a matter of fact, the real production of a thing for the purpose of proof is a 'Direct Evidence'. The 'Indirect' or 'Circumstantial Evidence' (the presumptive or inferential evidence) means other facts from which another fact is inferred. A Circumstantial Evidence although does not establish directly the 'Fact in Issue, equally it is a direct one. To put it differently, a 'circumstantial evidence' is to be proved by Direct Evidence of the circumstances.

21.It is to be noted that the term 'Hearsay' is one that which a witness does not speak of his own knowledge, but says that another person had said to him. At this stage, this Court points out the decision in Telikicherla Kandalai Venkataramanujacharyulu V. Telikicherla Kandalai Appalacharyulu and others, AIR 1926 Madras 1003, wherein it is observed and held as under:

"Under the Evidence Act hearsay evidence is

inadmissible to prove a fact which is deposed to on hearsay, but does not necessarily preclude evidence as to a statement having been made upon which certain action was taken or certain results followed."

22.It cannot be lost sight of that in a case where the case is of a circumstantial nature, the circumstances from which the conclusion guilt is drawn should, in their first instance, be fully established and then, although facts so proved ought to be consistent only with the hypothesis of the guilt of a person. An inference can be recorded as a permissible deduction from the evidence before the concerned authority/Court and the trier of fact may accept or reflect or accord such probative value as it desires. Further, while a presumption is characteristically a rule of law, fixed and relatively define its scope/purview and effect.

23.In brief, a 'presumption' is a deduction which the law requires a trier to make, an inference is a deduction which the trier may or may not make according to his own conclusion. A presumption is mandatory of course, an inference is permissible.

24.Section 114 of the Indian Evidence Act, 1872, gives a discretion to a Judge to infer one fact from the existence of another proved fact having regard to the common course of natural events or human conduct, as per decision In re Madugula Jermaiah, AIR 1957 Andra Pradesh 611.

25.It is to be pointed out that the Evidence Act, 1872 contains nothing more than Sections 3 and 114 of the Act to indicate and illustrate the standards and methods employed in assessing the evidence, as per decision of the Hon'ble Supreme Court in Laxman and others V. The State of Maharashtra, (1974) 3 SCC 704 at special page 709.

26.No wonder, a Circumstantial Evidence means a fact on which an inference is to be founded. In circumstantial evidence, the facts themselves must closely knitted to each other and must form a strong body which much convince the Judge's mind. In circumstantial evidence, one or more facts cannot be decisive, but all facts taken together are conclusive to prove the guilt, as per decision in The State of Andhra Pradesh V. I.B.S.Prasad Rao and others, AIR 1970 Supreme Court 648.

27.As per Section 3 of the Indian Evidence Act, 1872, a fact is said to be established when after considering the matters before it, the Court can either believes it to exist or considers its existence so probable that a prudent person must

under the circumstance of a given case to act upon the supposition that it exists. In this aspect, there is no difference between circumstantial and other evidences.

28. In the decision *Hawkins V. Powells Tillery Steam Coal Company Limited*, (1911) 1 KB 988, it is observed that 'proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion'.

29. Further, in the decision of the Hon'ble Supreme Court in *M. Narsinga Rao V. State of Andhra Pradesh*, AIR 2001 Supreme Court 318, it is observed that 'In reaching the conclusion, the Court can use the process of inferences to be drawn from the facts produced or proved. Such inferences are akin to presumptions in Law'. Also, in the aforesaid decision, the Hon'ble Supreme Court has held that 'From a certain fact or facts, the Court can draw an inference and that would remain until such inference is either disproved or dispelled'.

30. Be it noted that in the decision *Secretary to Government, Home Department V. Srivaikundathan*, 1998 (9) SCC 553, it is held that 'Inference in finding of Enquiry Officer is permissible only when finding is perverse or based on no evidence'.

31. It is to be relevantly pointed out that proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of prudent man acting in any vital matter which concerns him. Moreover, the Evidence Act does not insist on an absolute proof for the simple reason that perfect proof in this 'Imperfect World' is rarely to be found.

32. The word 'Presumption' is an inference of a certain fact drawn from other established facts. When inferring the existence of a fact from another, a Court of Law is applying a process to intelligent reasoning from the prudent man's point of view. As a matter of fact, 'presumption' is not the final conclusion to be drawn from other facts. However, the same can be final if it remains unaltered and undisturbed.

Aspect of Corruption:

33. It cannot be gainsaid that 'Greed' is a common weakness of a 'Human Being'. Indeed, the term 'Corruption' signifies the allowing decisions and actions to be influenced not by right or wrongs to a cause but by one's prospects of mandatory gains or other selfish consideration. To quote the words of 'Edmund Burke', 'Among people generally corrupt, liberty cannot last long'. The word 'gratification' according to Oxford Advanced

Learners Dictionary of Current English, means 'To give pleasure or satisfaction to'.

34. It is to be significantly pointed out that integrity is synonymous with 'Probity', 'Purity', 'Sincerity', 'Uprightness', 'Rectitude' etc. In so far as Government/Public Employment is concerned, receiving money or gratification other than 'Legal Remuneration' is 'Misconduct'. Such an 'Illegal Gratification' is 'Bribe'. An individual in his occupational position, discharging duties may possess some powers and may take advantage of a particular situation and demand illegal gratification of 'Bribe' from the prospective Beneficiaries.

35. To constitute 'Bribe', it is not necessary that an employee must be capable of doing favour for which the money is sought to be paid to him. So long as motive of giving or securing bribe is relating to his promise to do an official act in his favour, it will constitute 'Bribe'. Also that, it is not an important element of bribe that any 'Damage or Loss' should have been caused to an Employer. In fact, demanding, giving bribe in the form of 'Tips', 'Gift', 'Commission' and 'Inam' is certainly a Misdemeanour/Misconduct.

Apex Court Decision on Corruption:

36. It is to be pointed out that 'Corruption' is the greatest enemy of any civilised society. In this regard, it may not be out of place for this Court to make a relevant mention about the decision of the Hon'ble Supreme Court in Swatanter Singh V. State of Haryana, AIR 1997 SC 2105, it is held that 'It is sad but a bitter reality that corruption is corroding, like cancerous lymph nodes, the vital veins of the body politics, social fabric of efficiency in the public service and demoralising the honest officers. The efficiency in public service would improve only when the public servant devotes his sincere attention and does the duty diligently, truthfully, honestly and devotes himself assiduously to the performance of the duties of his post. The reputation of corrupt would gather thick and unchaseable clouds around the conduct of the officer and gain notoriety much faster than the smoke.'

Corruption in Judiciary - Duty of High Court:

37. The term 'Bribery' and 'Graft' by public officers are described as 'White Collar Crimes'. Also, in the decision of the Hon'ble Supreme Court in High Court of Judicature at Bombay through its Registrar V. Shrish Kumar Rangrao Patil, AIR 1997 SC 2631, wherein at paragraph 16, it is observed as follows:

"16. Corruption, appears to have spread everywhere. No facet of public function has been left unaffected by the putrefied stink of corruption. Corruption, the name is

depraved and degraded conduct. Dishonesty is thine true colour; thine corroding effect is deep and pervasive; spreads like lymph-nodes, cancerous cells in human body spreading as wild fire eating away the vital veins in the efficacy of public functions. It is a sad fact that corruption has its roots and semification in the society as a whole. In the widest connotation, corruption includes improper or selfish exercise of power and influence attached to a public office. The root of corruption is nepotism and apathy in control on narrow considerations which often extends passive protection to the corrupt officers. The source and succour for acceptability of the judgment to be correct, is the upright conduct, character, absolute integrity and dispassionate adjudication as hallmarks. The conduct displayed on and off the Bench becomes centre stage of the judicial officer. Fallen standard of rectitude is the bane for lost faith of the people, tending to defeat the constitutional scheme of conferment of the powers of judicial review or decision according to law unless checks and corrective measures are applied and enforced. The conferment of exclusive power of judicial review on the judiciary may become means to personal gain or advantage. The lymph-nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of judiciary and the need to stem it out by judicial surgery lies on judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection. What is most necessary is to stem out the proclivity of the corrupt conduct rather than to catch when the corrupt demands made and acceptance of illegal gratification etc."

38. In the decision of the Hon'ble Supreme Court in Municipal Board Pratabgarh V. Mahindra Singh Chawla, AIR 1982 SC 1493, it is observed that 'Accepting an illegal gratification

involves moral turpitude resulting in an employee liable to be dismissed without any enquiry'.

Exercise of Sovereign Power:

39. It is to be borne in mind that 'Judicial Service' is not a service in the sense of an employment. Indeed, the Judges are discharging their functions while exercising the Sovereign Power of the State.

Sacrosanct Qualities of a Judicial Officer/Judge:

40. The sterling qualities of a Presiding Deity of a Court of Law i.e., the Judicial Officer/Judge are: (a) Absolute Integrity; (b) Rectitude/Honesty; (c) Hard Work; (d) Humility; (e) Sincerity; (f) Fidelity; (g) Rumination of issues in a dispassionate manner and that too with a balanced mind; (h) Free from corrupt influence or motive; and (i) A character of unadulterated virtue.

Purview of Judicial Review:

41. Ordinarily, a 'Judicial Review' is competent when the punishment imposed was an irrational one and in defiance of logic. For the proved charges, the imposition of penalty must be commensurate with the gravity of misconduct. Although a choice and quantum of punishment are within the domain and jurisdiction of concerned authorities, yet, it must suit the offence.

42. In the decision of the Hon'ble Supreme Court in Union of India and others V. P.Chandra Mouli and others, (2003) 10 SCC 196, it is held that 'the power of punishment was within employer's discretion and the Court would not ordinarily interfere where there was no infirmity with the procedure'.

43. Furthermore, if there is some evidence within the Court or Tribunal in exercise of Judicial Review cannot sit as a Court of Appeal and interfere with the punishment by reassessing the evidence on its own as per decision in High Court of Judicature at Bombay V. Udaysingh reported in AIR 1997 SC 2286. No wonder, the 'proportionality' is a facet of principle of reasonableness.

44. The ambit of 'Judicial Review' is limited and the well settled legal principle is that the 'Judicial Review' is not directed against the decision. But it is directed against a 'Decision Making Process'.

45. Furthermore, in the decision of the Hon'ble Supreme Court in B.C.Chaturvedi V. Union of India, 1995 (6) SCC 749, it is held that 'a Judicial Review is not an Appeal from a decision but a review of the manner in which the decision is made. The Power of Judicial Review is exercised to ensure that a person

receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correctly, in the eye of the Court'.

46. In the decision of the Hon'ble Supreme Court in Karnataka Bank Limited V. A.L. Mohan Rao, 2006 SCC (L & S) 59 [Three Judges Bench], it is observed and held as under:

'Deal with the ambit of sympathy as a factor of 'Judicial Review'. In this case, a Bank Employee was charged with gross misconduct of colluding with a Branch Manager in regard to the grant of a fictitious loan. He admitted his guilt and he was dismissed from service. Before the Labour Court, the employee was successful. However, the Hon'ble High Court allowed the writ petition based on sympathy and ordered for his reinstatement. The Hon'ble Supreme Court held that the gross misconduct of this type does merit dismissal. Further, the Hon'ble Supreme Court opined that as long as the inquiry was 'Fair', 'Proper' and 'Misconduct' proved, then, 'it is not for the Courts to interfere with the decision of Disciplinary Authority in cases of gross misconduct of this type, on any mistaken notion of sympathy. In such matters, it is for the Disciplinary Authority to decide what is the fit punishment.'

Disciplinary Proceedings - Not a Criminal trial:

47. It is to be remembered that a 'Disciplinary Proceeding' is not a criminal trial and the standard proof required is that of preponderance of probability and not proof beyond reasonable doubt, as per decision Union of India V. Sardar Bahadur, (1972) 4 SCC 618.

Also, in the aforesaid decision at special pages 623, 624 wherein at paragraphs 16 & 19, it is observed as follows:

"16. The Division Bench said that the conclusion of the Single Judge that there was no evidence before the Inquiring Officer that Nand Kumar was likely to have official dealings with the respondent was not wholly unwarranted, and as there are limits to the powers exercised by a Single Judge under Article 226 of the Constitution, there are limits to the powers of a Division Bench while sitting in appeal over the Judgment of a Single Judge. If the inference that Nand

Kumar was a person likely to have official dealings with the respondent was in the circumstances of the proved facts in the case a reasonable one, we do not think there was anything which prevented the Division Bench from interfering with the order of the Single Judge. In Jugal Kishore Bhadani V. Union of India, AIR 1965 Pat. 196, the Court observed:-

"It is well established principle of law that unless the statute otherwise provides an appellate Court has the same power of dealing with all questions, either of fact or of law, arising in the appeal before it, as that of the Court whose judgment is the subject of scrutiny in the appeal."

19. Now it is settled by the decision of this Court in State of Orissa v. Bidyabhusan Mohapatra, 1963 SC 779 that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."

48. At this juncture, this Court worth recollects and recalls the decision in Tej Pal Singh V. State of U.P., AIR 1986 SC 1814 wherein it is held that 'The High Court has exclusive jurisdiction over the District Courts and Courts Subordinate thereto in respect of administrative and disciplinary matters excluding dismissal, removal or reduction in rank. Premature retirement is made in the exercise of administrative and disciplinary control. The State Government is not competent to order premature retirement of a District Judge without first obtaining recommendations of the High Court. The deviation is not a mere irregularity but an illegality.'

49. In the decision Chief Justice of Andhra Pradesh V. L.V.A. Dikshitulu, AIR 1979 SC 139, it is observed as follows:

"The word "control" accompanied by the word "vest" shows that the High Court alone is made the sole custodian of the control over the judiciary and this control being exclusive and not dual, an enquiry into the

conduct of a member of judiciary can be held by the High Court alone and no other authority and that the power of the High Court extend to suspension from service of a member of the judiciary with a view to hold a disciplinary enquiry."

50. In the decision *Yogmath D. Bagde V. State of Maharashtra*, (1999) 7 SCC 739, it is held as follows:

"Read with Articles 233 and 234, the word "control" used in Article 235 would indicate that although the Appointing Authority of the District Judge and officers other than District Judge is the Governor of the State, the words "control over district Courts and Courts subordinate thereto" which are words of wide connotation, vests in the High Court in other facets of service of those officers, namely, their confirmation on completion of probation period, their postings, transfers and disciplinary matters including power of recommend major punishments. Thus, the "control" vested in High Court is complete control over subject only to the powers of the Governor in the matter of appointment, initial posting and promotion to the post of District Judges. For imposing major punishment, including the punishment of dismissal, removal of reduction in rank, the High Court can, in exercise of its powers under Article 235 of the constitution, hold disciplinary proceedings and recommend punishment to the Governor who alone is competent to impose such punishment having regard to the provisions of Article 233 and 234."

51. At this stage, this Court worth recalls the decision of the Hon'ble Supreme Court in *K.L. Shinde V. State of Mysore*, AIR 1976 Supreme Court 1080, at special pages 1082 & 1083, wherein at paragraph 9, it is observed as follows:

"9. Regarding the appellant's contention that there was no cogent evidence to substantiate the charge against him, it may be observed that neither the High Court nor this Court can re-examine and reassess the evidence adduced in domestic enquiries of the nature with which we are at present concerned. Whether or not there is sufficient evidence against a delinquent to justify his

dismissal from service is a matter on which this Court cannot embark. It may also be observed that departmental proceedings do not stand on the same footing as criminal prosecutions in which high degree of proof is required. It is true that in the instant case, reliance was placed by the Superintendent of Police on the earlier statements made by the three police constables including Akki from which they resiled but that did not vitiate the enquiry or the impugned order of dismissal, as departmental proceedings are not governed by strict rules of evidence as contained in the Evidence Act. That apart, as already stated, copies of the statements made by these constables were furnished to the appellant and he cross-examined all of them with the help of the police friend provided to him. It is also significant that Akki admitted in the course of his statement that he did make the former statement before the P.S.I. Khadebazar police station, Belgaum, on November 21, 1961 (which revealed appellant's complicity in the smuggling activity) but when asked to explain as to why he made that statement, he expressed his inability to do so. The present case is, in our opinion, covered by a decision of this Court in State of Mysore v. Shivabsappa, where it was held as follows:-

"Domestic tribunals exercising quasi-judicial functions are not courts and therefore, they are not bound to follow the procedure prescribed for trial of actions in courts nor are they bound by strict rules of evidence. They can, unlike courts, obtain all information material for the points under enquiry from all sources, and through all channels, without being fettered by rules and procedures which govern proceedings in court. The only obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is a fair opportunity must depend on the facts and circumstances of each case, but where such an opportunity has been given, the

proceedings are not open to attack on the ground that the enquiry was not conducted in accordance with the procedure followed in courts."

52. In the decision of the Hon'ble Supreme Court in *State of Orissa V. Bidyabhushan Mohapatra*, AIR 1963 SC 779, it is held that 'The Courts will not interfere with the quantum of punishment and in the order could be sustained on any finding of substantial misdemeanour, it is not for the Court to consider whether the charge proved alone would have weighed with the authority in inflicting the punishment. Further, the Court is not concerned to determine, provided it is justified by rules whether punishment imposed is appropriate, having regard to the proved misdemeanour'.

53. It is apt to point out that in the decision *P. Joseph John V. State of Travancore, Cochin*, AIR 1955 SC 160, it is observed and held that 'The provisions of the Indian Evidence Act are not strictly applicable, so, it is not relevant to consider if facts have been "proved" according to law. It is permissible in a departmental enquiry to look into documents or records, which strictly speaking would not be evidence in a Court of law, but with one safeguard. Any document or record, which is looked into or relied upon must be disclosed to the delinquent and he must be afforded an opportunity of dealing with it'.

54. Moreover, in the decision *State of Mysore V. Shivabasappa Shivappa Makapur*, AIR 1963 SC 375, it is observed that 'Tribunals exercising quasi-judicial functions are not Courts and they are not bound to follow the procedure prescribed for trial of actions in Courts'.

55. Apart from that, in the decision *UOI V. H.C. Goel*, AIR 1964 SC 364, it is observed and held as follows:

"It may be that the technical rules which govern criminal trials in Courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty, scrupulous care must be taken to see that the innocent are not punished, applied as much to regular criminal trials as to disciplinary enquiries held under statutory rules. Though, it is fully appreciated that the Government is anxious to root out corruption from public service, but the Court cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take

the place of proof even in domestic enquiries."

Power of the High Court (in the teeth of Articles 233-235):

56.The Hon'ble High Court is vested with the power to see that the high traditions and standards of judiciary are maintained by the selection of competent persons to man the District Judiciary.

57.In this connection, it is significantly pointed out that an individual is found to be unworthy of a member of a judicial service or if it is found that he had committed a misconduct/misdemeanour, he can be removed from service by adhering to the procedure prescribed. Even for inflicting a penalty of dismissal or removal or reduction in rank, the High Court can conduct disciplinary proceedings and recommend such punishments. In fact, the Governor alone is competent to impose such punishment upon persons coming within Article 233-235 read with Article 311(2) of the Constitution of India. Likewise, such a power could be exercised by the High Court to dispense with an enquiry for a reason to be recorded in writing and such dispensation of an enquiry for valid reasons when recommended to the Governor, it is within the competence of the Governor to issue such orders in terms of the recommendation of the High Court in exercise of power under Article 311(2)(b) of the Constitution of India, as per decision of the Hon'ble Supreme Court in *Ajit Kumar V. State of Jharkhand*, (2011) 11 SCC 458.

58.It is needless for this Court that for the purpose of Disciplinary Enquiry, the Hon'ble High Court has every authority under Article 235 of the Constitution to retain a Judicial Officer of the Subordinate Judicial in Service beyond the date of his superannuation. Besides this, Rule 4 of the Tamil Nadu Judicial Service (Cadre & Recruitment) Rules, 2007 under the caption "Appointing Authority" reads as follows:

"The appointing authority for the categories posts shall be the authority vested with such authority under Article 233 and Article 234 of the Constitution of India.

Provided that the appointing authority for appointment by promotion to categories 1.District Judge (Supertime Scale) 2.District Judge (Selection Grade), 3.Senior Civil Judge/ Chief Judicial Magistrate/Chief Metropolitan Magistrate/Metropolitan Magistrate shall be the High Court, Madras in accordance with Article 235 of the Constitution of India."

59.Coming to the plea of the Petitioner that the 2nd

Respondent/High Court is only the Controlling Authority (as per Article 235 of the Constitution) and not the Appointing Authority as per Article 233(1) of the Constitution and in the present case, the 2nd Respondent/High Court, Madras is not specifically conferred with powers to retain a Judicial Officer under F.R.56(1)(c), it is to be pointed out that the control vested in the High Court by means of Article 235 of the Constitution is complete control subject only to the power of the Governor in the matter of appointment (including dismissal and removal) and posting and promotion of District Judges, and that the High Court can hold enquiries and impose punishment other than dismissal or removal subject, however, to the conditions of service and a right of appeal etc. mentioned in Article 235. As a matter of fact, the control is vested in the High Court to effectuate the purpose viz., the securing of the independence of the Subordinate judiciary and unless it includes disciplinary control, the very object would be frustrated, as per decision State of W.B. V. Nripendra Nath Bagchi, AIR 1966 SC 447.

60. In fact, earlier the Petitioner (Delinquent Officer) was promoted to the Selection Grade District Judge on 01.07.2010 and to the Super time Scale on 14.12.2013 as per the Tamil Nadu Judicial Service (Cadre and Recruitment Rules), 2007. The order of dismissal dated 24.04.2014 passed by the Government dealing with the order retaining the Petitioner in service beyond the date of his superannuation and the order dated 28.11.2014 passed by the High Court retaining the Petitioner cannot said to be without any authority. Even though the Petitioner (Delinquent) had asserted in the instant case that no order retaining him service was served on him before his date of superannuation on 30.11.2014, it is evident that the said order was served on him on 29.11.2014 which was duly acknowledged by him, by affixing his signature and that the contra plea taken by the Petitioner in this regard is not accepted by this Court.

An Analysis:

61. As far as the present case is concerned, in Ex.P1 - Complaint dated 10.02.2014, P.W.1 (Complainant) had inter alia stated that now we came to know that Shri.K.Ganesan, the Principal District Judge, Tiruppur and Public Prosecutor K.N.Subramaniam received huge amount and released the Accused etc. and requested the Hon'ble Chief Justice of this Court to take suitable necessary action against them. P.W.1 had deposed in the Departmental Enquiry, that when the bail petition came up for enquiry, the Public Prosecutor K.N.Subramaniam (P.W.2) had not raised any objections and further that, Arunkumar (Accused) was heard saying that he got bail by giving bribe to Judge Thiru.Ganesan. P.W.1 (in his cross examination) had stated that he was not aware of the fact that a charge sheet was filed on

05.12.2013 and he also uttered in his evidence that he could not say before whom and which place, the Accused had stated that he paid money to secure 'Bail'. Also that, P.W.1 (Complainant) denied the suggestion in his evidence that he was levelling imaginary accusations against the Petitioner (Delinquent).

62.At this juncture, this Court pertinently points out that only P.W.1 (Complainant) had spoken about the illegal gratification and the other witnesses had not spoken about the same. Really speaking, in the instant case, there is no direct evidence as regards the charge of illegal gratification against the Petitioner (Delinquent) for the grant of Bail.

63.It is to be pointed out that P.W.2 (Public Prosecutor) in his evidence had stated that the bail petition of the Accused came up for hearing on 07.01.2014 before the Principal Sessions Court, Tiruppur and that the Court called for his objections and he got the reply from the Deputy Superintendent of Police, Udumalaipettai and raised serious objection on behalf of the prosecution on 07.01.2014 against the release of the Accused on bail. Further, P.W.2 had stated that he gave Ex.P3 - Reply (given by the Police) to the Petitioner (Delinquent), since the Petitioner/Delinquent wanted to read the same and that the Petitioner after reading the Reply, returned the same. P.W.2 (in his cross examination) had stated that when he was examined by the Inspector of Vigilance, he had not informed the latter about the aspect of the Judge (Petitioner) receiving Ex.P3, reading it and returning the same thereafter. P.W.2 had also denied a suggestion that he had not raised any strong objection for the grant of bail.

64.It is the evidence of P.W.3 (Deputy Superintendent of Police) in his evidence had stated that he sent his Objection Petition - Ex.P3 to the Public Prosecutor (P.W.2), Tiruppur through the Head Constable (Ponraj) on 03.01.2014, in which, his signature was found (who had handed over it to P.W.2 on 04.01.2014). Further, it is the categorical evidence of P.W.3 (in cross examination) that he brought the CD File and Case Diary with him and Ex.P3 was kept in his Office without filing the C.D. File. P.W.3 had deposed that inasmuch as the occurrence of murder was a sensational one in the locality though objection - Ex.P3 for grant of bail.

65.Admittedly, the Accused (Arunkumar) (Petitioner in Cr.M.P.No.20/2014) had committed a wrong act and serious crime of rape and murder of the Complainant's (P.W.1's) minor school going daughter, aged about 16 years. In the Bail Order in Cr.M.P.No.20 of 2014 dated 07.01.2014 passed by the Petitioner, there was no reference about Ex.P3 - Reply, but the bail order proceeds to state that the Public Prosecutor has got no serious

objection to grant bail, which is quite contrary to the evidence of P.W.2 and P.W.3 before the Enquiry Officer. When the offence of rape and murder of the Complainant's (P.W.1's) daughter was a sensational one in the locality and more so, when the offences committed by the Accused were of heinousness in nature. It is quite evident that the Petitioner (Delinquent) had wantonly and in a deliberate manner not only omitted to take into account of the said Reply - Ex.P3, but also failed to record the objections in the order dated 07.01.2014 in Cr.M.P.No.20 of 2014 and granted Bail to the Accused in a cavalier and whimsical manner, by not imposing stringent stipulations.

66.To put it precisely, why Ex.P3 - Reply/Objection of the prosecution was not taken on file/record in Cr.M.P.No.20/2014 by the Writ Petitioner/Delinquent Officer. The reasons for not taking Ex.P3 (Objection/Reply) at the time of hearing Cr.M.P.No.20/2014 or disposal of the same by the Petitioner/Delinquent Officer, prima facie shows his Malevolent Conduct which speak for itself and the same was not dispelled, in the considered opinion of this Court.

67.Coming to the aspect of the Delinquent Officer mentioning in the Bail order in Cr.M.P.No.20 of 2014 dated 07.01.2014 (in respect of the Accused) to the effect that considering the representations of the Petitioner and considering that the investigation would be reached a considerable stage now, it is decided to grant bail with condition, this Court is of the considered view that when the charge sheet was already filed in Cr.No.225/ 2013 in respect of the Accused as early as on 05.12.2013, then, one is at a loss to know the fact that the Writ Petitioner (Delinquent Officer) was conspicuously ignoramus about this aspect. To put it emphatically that the sentence figuring in the bail order 'investigation could have reached a considerable stage by then' was contrary to ground reality and as opposed to facts and conscience.

68.In the present case, based on the evidence of P.W.1 to P.W.3 coupled with Ex.P3 - Reply/Objection, the charges levelled against the Petitioner including the allegation of illegal gratification were established in the domestic enquiry, based on the principle of preponderance of high degree of probabilities, reliable oral and documentary evidence of witnesses. Further, the findings arrived at by the Hon'ble Enquiring Judge, in its Report, dated 10.08.2016, cannot, by any stretch of imagination, be said to be one, based on no evidence or beset with surmises or conjectures.

69.It is to be pointed out that the Hon'ble Full Court on 09.02.2015, while approving the Minutes of the Administrative Committee Meeting dated 27.11.2014 imposing a punishment of withholding of the monetary value equivalent to the amount of

two increments from out of the terminal benefits payable to the delinquent judicial officer in terms of Rule 8 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, had resolved that the complaints now pending enquiry in R.O.C.Nos.433/13, 118/14, 441/4 & 519/14 and R.O.C.No.83/2014 be continued to take them to their logical end.

70. On behalf of the 2nd Respondent, it is brought to the notice of this Court that the Administrative Committee of the Hon'ble High Court on 10.01.2017 had passed the following resolution:

"Considered.

(i) A punishment of withholding of monetary value equivalent to the amount of two increments with cumulative effect for two years was earlier imposed on the officer quo the proceedings in Roc.No.674/2006/VC.

(ii) Now, in respect of the proceedings in Roc.No.83/2014/VC, a major punishment of dismissal from service is being imposed on the officer, subject to the approval of the Full Court.

(iii) As a result, the major punishment of dismissal from service will prevail.

(iv) It is, therefore, resolved to close the proceedings in R.O.C.No.674/ 2006/VC, with liberty to re-open the same, if need be."

71. Further, the Hon'ble Full Court on 08.02.2017 had approved the Minutes of the Meeting of the Administrative Committee dated 10.01.2017 imposing the punishment of dismissal from service upon the Petitioner and further the Registry was directed to address the Government for issuing necessary orders in this behalf.

72. It is the evidence of P.W.1 (Complainant) (in cross examination) that he came to know that the Accused got bail by giving money and this was because of the reason that the Accused was saying it. Further, he added in his evidence that he denied the suggestion that the Accused had not stated that he obtained bail by giving money. In fact, P.W.1 had stated in his evidence (in Chief) that the Accused was talking in the village that he came out on bail by giving money. Also, he had stated in his evidence (in cross examination) that he could not say as to whom, at which place and when the Accused made the statement that he secured bail by giving money.

73. It is to be remembered that except the Complainant (P.W.1), no other witness/witnesses (examined on the side of the

prosecution) had spoken about the allegation of illegal gratification. Even though in the present case, there is no direct evidence to speak about the receipt of illegal gratification by the Petitioner for the grant of bail, for lack of direct evidence, the charges levelled against the Petitioner cannot be overlooked because of the simple reason that in regard to an allegation of illegal gratification, finding/procuring a direct evidence is a Herculean task, since the 'Beneficiary of Bribe' will seldom come forward to depose about the tainted transaction.

74. In short, the evidence of P.W.1 (Complainant) that he came to know that the Accused got bail by giving money because of the reason that the Accused was so talking in the village and this evidence of P.W.1 (Complainant - Victim's father) cannot be turned over board (notwithstanding the fact that he had uttered in his cross examination that he could not say to whom, at which place and when the Accused made the statement) and his evidence in the 'Fact in Issue' in the present case, coupled with the evidence of P.W.2 and P.W.3 together with Ex.P3 - Reply clearly lend credence to the allegation of illegal gratification, of course, based on a reasonable high degree of preponderance of probabilities, (if not on direct evidence) thereby enabling the concerned Enquiring Authority to employ only the standard of a prudent man in Judging what is deemed to be established.

75. In regard to the plea taken on behalf of the Petitioner that the Petitioner in the Bail Order dated 07.01.2014 in Cr.M.P.No.20/ 2014 had mentioned in paragraph 2, to the effect that '... The Public Prosecutor has got no serious objection to grant bail. Considering the representations of the petitioner and considering that the investigation could have reached a considerable stage now, it is decided to grant bail with condition' and therefore, what was observed by the Petitioner is a 'conclusive record' and the same is a decisive one, at this stage, this Court very significantly points out that P.W.2 (Public Prosecutor), in his evidence, in a crystalline fashion, had deposed before the Hon'ble Enquiring Judge that he handed over Ex.P3 - Reply to him and after reading the same, the Petitioner returned it back and since the young girl was raped and murdered and it was a premeditated crime, he raised serious objections for the grant of bail.

76. Suffice it for this Court to make a pertinent mention that in view of the clear-cut evidence of P.W.2 and P.W.3 in regard to the factum of Ex.P.3 - Reply was given for perusal to the Petitioner/ Delinquent and in view of the serious objections raised by the prosecution, the contra plea taken that what was recorded by the Petitioner in the Bail Order in Cr.M.P.20/2014 to the effect that the Public Prosecutor had no serious

objection to the grant of bail was factually an incorrect one and therefore, the recording made by the Petitioner (Delinquent Officer) is not a conclusive one, which, in the present case, was duly repudiated by P.W.2 and P.W.3. It is quite obvious that by not incorporating objections raised by P.W.2 (Public Prosecutor) in the Bail Order in Cr.M.P.No.20 of 2014 dated 07.01.2014 by the Petitioner only leads to an irresistible and inevitable conclusion of presumption is to be drawn to the effect that the Petitioner/Delinquent Officer was bent upon releasing the Accused on Bail for palpable subjective reasons, best known to him.

Epilogue:

77.Be that as it may, in the light of natural, cogent, coherent, convincing evidence of P.W.1 (Complainant), P.W.2 and P.W.3 coupled with Ex.P3 - Reply and also this Court by taking note of the entire conspectus of attendant facts and circumstances of the present case and considering the materials available on record, comes to an irresistible conclusion that the Charge of Illegal Gratification against the Petitioner (Delinquent Officer) was proved based on the principles of preponderance of probabilities and in respect of other allegations levelled against the Petitioner (Delinquent Officer), they were proved by means of reliable, convincing oral and documentary evidence of witnesses in the Domestic Enquiry conducted and in this regard, the Hon'ble Enquiring Judge had rendered his findings through his detailed Reasoned Report dated 10.08.2016. The said findings, by any means, cannot be said to be a perverse one. In fact, the said findings arrived at by the Hon'ble Enquiring Judge are based on evidence and this Court, while exercising its 'Scope of Review' is not to act as a 'Court of Appeal' and to interfere with the said Report.

78.Apart from that, in the Administrative Committee Meeting that took place on 30.08.2016, the Enquiry Report of the Hon'ble Enquiring Judge was considered and it was resolved to furnish a copy of the Enquiry Report to the Petitioner, who was to make further representation and later, the Petitioner submitted his further representation on 28.09.2016. In fact, the Hon'ble Administrative Committee, in the meeting that took place on 10.01.2017, had considered the Enquiry Report rendered by the Hon'ble Enquiring Judge and perused the further representation submitted by the Petitioner. It was resolved by the Hon'ble Administrative Committee to reject further representation of the Petitioner and resolved to impose a punishment of dismissal from service in respect of the proceedings in R.O.C.No.83/2014/VC, which got the approval from the Hon'ble Full Court on 08.02.2017 and in regard to the imposition of punishment of dismissal from service and further, the 2nd Respondent/Registrar General, High Court, Madras had forwarded the records pertaining to the

disciplinary case to the Government and requested that the orders of the Appointing Authority imposing the punishment of 'dismissal from service' on the Petitioner, now under suspension and not permitted to retire from service on attaining the age of superannuation at 60 years on the afternoon of 30.11.2014, for the charges held proved in the departmental enquiry conducted against him in ROC.No.83/2014/ VC, may be obtained and communicated to the Registry. The Government, after careful and independent consideration of the case along with the connected records accepted the recommendation of the Hon'ble High Court for imposing the punishment of dismissal from service upon the Petitioner and imposed the punishment of dismissal from service upon the Petitioner, as per G.O.Ms.No.360, Public (Special-A) Department, dated 24.04.2017. The said punishment of dismissal is not an irrational and disproportionate one, considering the gravity of misconduct committed by the Petitioner. To put it succinctly, the penalty of punishment of dismissal imposed upon the Petitioner is quite commensurate with the seriousness of misconduct committed by the Petitioner. Viewed from any angle, the impugned order of the 1st Respondent in G.O.Ms.No.360, Public (Special - A) Department, dated 24.04.2017, does not suffer from any material irregularities and patent legal infirmities in the eye of Law. Consequently, the Writ Petition fails.

79.In fine, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

Sgl
To

1.The Chief Secretary to Government,
Public (Special-A) Department,
Fort St. George, Chennai - 600 009.

2.The Registrar General,
High Court of Judicature at Madras
Chennai - 600 104.

+3cc to Mr.M.MOHIDEEN PITCHAI, Advocate, S.R.No.46325
+1cc to the Government Pleader, S.R.No.47045

ORDER in
W.P.No.28079 of 2017

SSV(CO)
TR(25/07/2018)