

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.10.2019
Pronounced on : 21.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.4149 of 2017 and W.P.Nos.14114 of 2012 & 34444 of
2018 and
Crl.M.P.No.3090 of 2017 and W.P.No.40015 of 2018

Crl.O.P.No.4149 of 2017

K.Rani ... Petitioner

Vs.

State represented by its,
Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Ariyalur ... Respondent

W.P.No.14114 of 2012

K.V.Karthalingam ... Petitioner

Vs.

- 1.The Secretary to Government,
Home Department,
Secretariat, Chennai-9.
- 2.The Transport Commissioner,
Chepauk,
Chennai-5.
- 3.Deputy Superintendent of Police,
Vigilance & Anticorruption,
No.10, Quaide Milath Street, Kaja Nagar,
Mannarpuram, Tiruchirapalli-20. ... Respondents

W.P.No.34444 of 2018

K.V.Karthalingam ... Petitioner

Vs.

- 1.The Transport Commissioner,
Chepauk, Chennai.
- 2.The Secretary to Government,
Home Department,
Secretariat Chennai. ... Respondents

PRAYER in CrI.O.P.No.4149 of 2017: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in Special Case No.15 of 2012 on the file of the learned Chief Judicial Magistrate/Special Judge, Ariyalur and quash the same.

PRAYER in W.P.No.14114 of 2012: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records in impugned order in R.C.No.13621/VB1/2009, dated 24.11.2010 passed by the 2nd respondent and quash the same.

PRAYER in W.P.No.34444 of 2018: Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Mandamus, directing the 2nd respondent to consider the recommendation of the 1st respondent dated 22.03.2011.

In all cases:

For Petitioner : Mr.R.Shanmuga Sundaram,
Senior Counsel
for M/s.Black N Red Law Associates
for Mr.R.Neelakandan

For Respondent : M/s.M.Prabhavathy
Additional Public Prosecutor

COMMON ORDER

(i) W.P.No.14114 of 2012 has been filed to quash the impugned order dated 24.11.2010 in R.C.No.13621/VB1/2009 passed by the 2nd respondent/The Transport Commissioner, Chepauk under Section 19(1)(c) of the Prevention of Corruption Act, 1988 for prosecuting the petitioner in Special C.C.No.15 of 2012, which is pending on the file of the Chief Judicial Magistrate Court, Ariyalur.

(ii) W.P.No.34444 of 2018 has been filed to direct the 2nd respondent to consider the recommendation of the 1st respondent dated 22.03.2011.

2.CrI.O.P.No.4149 of 2017 has been filed by K.Rani/Petitioner/A2, who is facing trial in Special Case No.15 of 2012, on the file of the Chief Judicial Magistrate Court/Special Judge, Ariyalur.

3.The case of the prosecution is that the Deputy Superintendent of Police, Vigilance and Anti-corruption, Thiruchirapalli registered a case in Crime No.8 of 2006, for the offence under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 109 of IPC. On completion of the investigation, charge sheet came to

be filed against the petitioner/A1/K.V.Karthalingam and his wife/K.Rani/A2/petitioner, which is pending trial as Special Case No.15 of 2012, before the learned Chief Judicial Magistrate/Special Judge, Ariyalur.

4.The petitioner when working as Motor Vehicle Inspector Grade-II during the period from 09.02.1995 to 31.10.2002, acquired assets disproportionate to his known sources of income to the extent of Rs.70,04,414/- and the percentage of the disproportionate assets is 321 %. During the beginning of the check period i.e., on 09.02.1995, the value of the assets and pecuniary resources that stood in the credit of the petitioner and his wife was only Rs.2,43,000/-. At the end of the check i.e., on 31.10.2002, the value of the assets and the pecuniary resources that stood in credit of the petitioner and his wife was Rs.77,58,268/-. The income derived by the petitioner and his wife during the check period was Rs.21,81,230/-. The expense incurred by them was Rs.16,72,372/-. Thus the disproportionate assets at the end of the check period worked out to Rs.70,04,414/-. The petitioner/K.V.Karthalingam had acquired properties in his name and in name of his wife/K.Rani, such as agricultural land, gold ornaments, housing plots, constructed house and has made other investments and also acquired other immovable properties. On these allegations, charge sheet has been filed against the petitioner/K.V.Karthalingam and his wife/petitioner/K.Rani. Initially, the charge sheet was taken on file by the learned Chief Judicial Magistrate/Special Judge, Perambalur in Special C.C.No.1 of 2011 on 19.01.2011, later transferred to the file of the Chief Judicial Magistrate Court/Special Judge, Ariyalur and taken as Special C.C.No.15 of 2012. The petitioner/K.Rani filed discharge petition in C.M.P.No.2768 of 2016 in Special C.C.No.15 of 2012 before the learned Chief Judicial Magistrate/Special Judge, Ariyalur, which came to be dismissed on 25.02.2016. Thereafter, revision was filed before this Court in CrI.R.C.No.413 of 2016 and the same was dismissed on 23.11.2016.

5.The learned Senior Counsel for the petitioner would submit that the sanction for prosecuting the petitioner was granted by the Transport Commissioner, Chepauk on 24.11.2010. There were several allegations against the petitioner. Earlier the sanction for prosecution was refused on 29.04.2010, due to malafides and the prosecution was able to get the sanction order from the Transport Commissioner, Chepauk only on 24.11.2010. Earlier, the Transport Commissioner on 29.04.2010 had communicated to the Deputy Superintendent of Police, Vigilance and Anti Corruption that sanction cannot be accorded to prosecute the petitioner. The petitioner made a representation dated 10.12.2010 to the Government and the same was forwarded to the sanctioning authority. The sanctioning authority after considering the representation of the petitioner had stated that the plea for withdrawal of sanction cannot be considered, as sanction once

granted can be rectified only by the Government.

6.The learned Senior Counsel for the petitioner would further submit that the petitioner's wife/K.Rani, who is an earning member, had meticulously filed her income tax returns, as per the rules and declared her income to the competent authorities and it has been taken up for scrutiny and resurvey of her entire account by the Income Tax Department. The prosecution did not consider the income tax returns in proper perspective and had gone on a wrong notion that the income tax returns were false. The petitioner was put in meritorious service, in recommendation and appreciation to the same, the petitioner was recommended for accelerated promotion. When the petitioner was appointed as Motor Vehicle Inspector, Grade II, he detected and brought to book irregularities in tax evasion. A big racket involving tampering of chassis and other illegalities, the Managing Director, Tamil Nadu State Transport Corporation, Kumbakonam Division-I and Managing Director Cholan Roadways Corporation recommended for accelerated promotion to the petitioner, which the government initially did not consider. After a round of litigation, the Government issued G.O.(4D)No.91, Home (Tr-II) Department including the petitioner name in the panel for appointment as Regional Transport Officer for the year 1996-1997 and issued orders appointed him as RTO with effect from 26.05.1997, it is the reason for the petitioner earning animus with others.

7.The petitioner was not given due promotion, hence he filed applications before the Tribunal in O.A.No.429 of 2002, before the Tamil Nadu Administrative Tribunal and the petitioner obtained favourable order. Against the order of the tribunal, the respondents 2 and 3 in W.P.No.14114 of 2012, preferred W.P.No.21562 of 2003 before this Court. This Court by order dated 13.10.2004 dismissed the said writ petition and the respondents 2 and 3 preferred S.L.P.(Civil) C.C.No.11538 of 2005 before the Hon'ble Apex Court, later withdrawn the same. Pursuant to the order of the tribunal, the Transport Commissioner sent proposal to the Government on 19.07.2006, recommending the name of the petitioner for the post of Joint Transport Commissioner.

8.The learned Senior Counsel for the petitioner would further submit that the properties purchased through the business income of his wife and her brother were shown as disproportionate assets and charges were framed against him in the departmental proceedings. On enquiry, the department dropped the proceedings on 15.12.2008 in consultation with the Tamil Nadu Public Service Commission and the former Principal Secretary and Transport Commissioner by letter dated 29.04.2010 addressed to the Director of the Vigilance and Anti Corruption, denying the permission to prosecute the petitioner. However, on the very same allegations, the succeeding Transport Commissioner took a contrary view and accorded sanction for prosecution on 24.11.2010. The petitioner was deprived of his accelerated promotion as

ordered by the tribunal, upheld by this Court, which was not agreeable to the respondent. The respondent had adopted various dilatory tactics and tried to water down the orders of the tribunal, citing criminal case is pending against the petitioner for possessing assets disproportionate to the known sources of the income. Thus the impugned order is ordeal, illegal and not sustainable and passed without application of mind without any basis or reason.

9.The main allegation is that the petitioner had purchased the properties in the name of his wife, who has no regular source of income. In the report dated 15.12.2009, the Vigilance and Anti Corruption stated that the petitioner has not obtained prior permission from the competent authorities for carrying out the business by his wife. Therefore all her assets has to be construed to be accumulated by the petitioner in his name. Further, Rule 8(1)(b) of the Tamil Nadu Government Servants Conduct Rules, 1973 provides for reporting the fact of her business avocation, if any, to the competent authority and the said rule does not require to obtain prior permission. The petitioner has promptly reported the avocation of his wife as contemplated under the rule. When that is so the entire case of the prosecution is demolished.

10.Further it is submitted that the the petitioner is not bound to intimate the assets acquired by his wife from out of her own business as per Rule 7(1)(a) of the Tamil Nadu Government Servants Conduct Rule, 1973, which reads that "A Government Servant is not required to give notice to the prescribed authority or seek prior permission from the prescribed authority for acquisition or disposal of immovable properties by the members of his family under clause (a), if the immovable property in question is not acquired from the resources of the Government Servant Concerned." Hence, Section 13(1)(e) of the Prevention of Corruption Act, 1988 will not get attracted in the case as contented by the prosecution. In view of the same there is no prima facie case for according sanction for prosecution.

11.Further, the purpose behind the concept of according sanction by the Government is that when allegations are made against a public servant, he has to be protected from harassment. The sanctioning authority uninfluenced by any external materials or other considerations should independently apply his mind to the facts of the case and then he should decide the question for grant of sanction. In this case, the sanctioning authority failed to apply his mind independently, while according sanction for prosecution, which is forfeited by the communication of the 1st respondent dated 17.06.2009, vide letter No.30908/Tr.II/2009-3 sent to the 2nd respondent, directing him to accord sanction for prosecuting the petitioner immediately. This would clearly vitiate the sanction order.

12.Further submitted that earlier the petitioner was issued with a charge memo in R.No.57642/V3/2005, dated 04.01.2006. One of the charge is that the business avocation of the petitioner's wife and her family members were not informed to the concerned authorities, which is in violation of Rule 8(1)(a) & (b) read with Rule 7(1)(2)(3) of the Tamil Nadu Government Servant Conduct Rules, 1973. After detailed enquiry and thorough investigation, the enquiry officer found that the petitioner had informed the business avocation of his wife and her brothers even at the time of entering into the government service at the first instance. The Transport Commissioner/Prosecution cum disciplinary authority was not satisfied with the report and a re-enquiry was ordered, where the Income Tax Returns of the petitioner and his wife and her brothers from the 1992-1993 before the petitioner joining the service till the year 2006-2007 were scrutinized and came to conclusion that the charges were not proved. Based on the report of the enquiry officer, the Transport Commissioner by his proceedings dated 15.12.2008 ordered dropping of further action on these charges.

13.The prosecution in the final investigation report in R.C.97/2006/TPT/TR had stated that the petitioner did not obtain prior permission for the private business of his wife and on that basis the prosecution sought for sanction of prosecution that the petitioner had accumulated assets disproportionate to the known sources of income, during the check period 09.02.1995 and 31.10.2002. The Transport Commissioner/Sanctioning Authority by his proceedings dated 29.04.2010 refused to grant sanction unless fresh evidence is adduced and clearly opined that the materials produced did not make out a prima facie case for sanction of prosecution. Subsequent, the Transport Commissioner by letter dated 24.11.2010, without even referring to the earlier observations of refusal, granted sanction for prosecution. Moreover after according sanction for prosecution, the sanctioning authority sent a communication to the Government, that the sanction has been granted as instructed by the Government, which shows that the sanctioning authority was not acting independently, which is the subject matter in W.P.No.14114 of 2012. The learned counsel for the petitioner would further submit that TDP case No.39 of 2009 and the prosecution case in Special C.C.No.15 of 2012, both being one and the same, the 2nd respondent by communication dated 22.03.2011 had given a favourable forward to the 1st respondent to consider the same and no further orders passed which is the Subject matter in W.P.No.34444 of 2018.

14.The sanctioning authority failed to consider the earlier sanctioning authority on 29.04.2010, who had observed as follows:-

"Therefore Section 13(1)(e) of the Prevention of Corruption Act will not be attracted in this case as contended by the Investigation authority. It is therefore considered that there is no prima facie case for according sanction for the prosecution in the instant case as already decided by the competent authority in the absence of fresh grounds to be adduced by the Investigating agency."

15. By ignoring the above decision of the competent sanctioning authority, the subsequent sanctioning authority/Transport Commissioner has accorded sanction for the prosecution, hence the sanction dated 24.11.2010 is untenable. The sanction order suffers from infirmity, lacks application of mind and hence it is not a sanction in the eye of law.

16. The learned Senior Counsel for the petitioner in Crl.O.P.No.4149 of 2017 would submit that the husband of the petitioner/A2 is the 1st accused, who was working as Motor Vehicle Inspector/Public Servant. The petitioner along with the 1st accused were charged for the offence under Sections 13 (2) r/w Section 13(1)(e) of the Prevention of the Corruption Act, 1988 read with Section 109 of IPC.

17. The petitioner has been roped in as an accused since she happens to be wife of the 1st accused. Even prior to her marriage, the petitioner had been in the business of running taxies. Infact she had constructed the house on her own income, gifted by her mother and she is an income tax assessee, submitted income tax returns, even before the check period and she served as Member of the District Consumer Forum for a specific period. Ignoring all these aspects and financial status of the petitioner, she has been described in the charge sheet as housewife, which reflects bias and unfair investigation conducted by the investigating agency. Even before the registration of the case, the income tax authorities conducted an enquiry for the assessment year 1998-1999 to 2004-2005 and the income tax department accepted the income tax of the petitioner.

18. Further, the learned Senior Counsel for the petitioner/K.Rani in Crl.O.P.No.4149 of 2017 placed reliance on the decision of the Hon'ble Apex Court in the case of "State of Punjab and Ors. Versus Mohammed Iqbal Bhatti reported in 2010(4)CTC 458", wherein it is clearly stated that "reviewing authority granting sanction after change in Government without any fresh order or new materials held improper". The investigating agency failed to take into consideration that the petitioner had got independent income and the prosecution without going to the financial status of the petitioner had mechanically added as an accused. Except

for bald statement that the petitioner had abetted the 1st accused and there is no allegations against her. The allegations in the charge sheet are vague and bereft of particulars.

19. The learned counsel for the petitioner relied upon the following decisions:-

(i) "State of Punjab and another Versus Mohammed Iqbal Bhatti reported in (2009) 17 Supreme Court Cases 92". It has been held that the case pertains to sanction under Section 197 Cr.P.C. The relevant portion is extracted here under:-

"20. It was, therefore, not a case where fresh materials were placed before the sanctioning authority. No case, therefore, was made out that the sanctioning authority had failed to take into consideration a relevant fact or took into consideration an irrelevant fact. If the clarification sought for by the Hon'ble Minister had been supplied, as has been contended before us, the same should have formed a ground for reconsideration of the order. It is stated before us that the Government sent nine letters for obtaining the clarifications which were not replied to.

21. The High Court in its judgment has clearly held, upon perusing the entire records, that no fresh material was produced. There is also nothing to show as to why reconsideration became necessary. On what premise such a procedure was adopted is not known. Application of mind is also absent to show the necessity for reconsideration or review of the earlier order on the basis of the materials placed before the sanctioning authority or otherwise."

(ii) "State of Himachal Pradesh Versus Nishant Sareen reported in (2010) 14 Supreme Court Cases 527". It is held the Vigilance and Anti Corruption was called to produced relevant records and the same has been perused. The relevant portion is extracted here under:-

"13. In our opinion, a change of opinion per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction. However, in a case where fresh materials have been collected by the investigating agency subsequent to the earlier order and placed before the sanctioning authority and on that basis, the matter is reconsidered by the sanctioning authority and in light of the fresh materials an opinion is formed that sanction to prosecute the public servant may be granted, there may not be any impediment to adopt such course.

14. Insofar as the present case is concerned, it is not even the case of the appellant that fresh materials were collected by the investigating agency and placed before the sanctioning authority for reconsideration and/or for review of the earlier order refusing to grant sanction. As a matter of fact, from the perusal of the subsequent order dated March 15, 2008 it is clear that on the same materials, the sanctioning authority has changed its opinion and ordered sanction to prosecute the respondent which, in our opinion, is clearly impermissible."

(iii) "Sanjay Kakkar Versus Commissioner of Customs reported in MANU/TN/2420/2017". It is held as follows:-

"11. It is legally settled that the power of review is possible only when there is an express provision enabling the Authority to review the earlier stand. It is equally settled that in respect of the grant of sanction to prosecute, when once on certain materials the Sanctioning Authority decides not to grant sanction, certainly, on the same materials, the Sanctioning Authority cannot change its opinion. By a catena of decisions, it has been held that the authority entitled to grant sanction must apply its mind to the facts of the case, evidence collected and other incidental facts before according sanction. A grant of sanction is not an idle formality but a solemn and sacrosanct act, which removes the umbrella of protection of Government servants against frivolous prosecutions and the aforesaid requirements must, therefore, be strictly complied with before any prosecution could be launched against public servants. The mind of the Sanctioning Authority should not be under pressure from any quarter nor should any external force be acting upon it to take a decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration."

"12. While law is thus settled, on the facts of the present case, the impugned sanction that has been given by the authority on the same material, which was available before the authority on the earlier occasion, when the refusal was made, cannot stand. The Sanctioning Authority having taken a lenient view earlier of declining to grant sanction has changed its opinion without any fresh materials and granted sanction, which cannot be allowed to stand. It is

not permissible for the Sanctioning Authority to review or reconsider the matter on the same materials again. It is so because unrestricted power of review may not bring finality to such exercise and on change of the Government or change of the person authorised to exercise power of sanction, the matter concerning sanction may be reopened by such authority for the reasons best known to it and a different order may be passed. The opinion on the same materials, thus, may keep on changing and there may not be any end to such statutory exercise. Per se on the same materials cannot be a ground for reviewing or reconsidering the earlier order refusing to grant sanction."

20. The learned Additional Public Prosecutor filed written arguments and the status report of the Deputy Superintendent of Police, Vigilance and Anti Corruption, Ariyalur/respondent. The relevant portion is extracted here under:-

"1. Trichy Vigilance and Anti Corruption Crime No.08/2006, u/s 13(2), r/w 13(i)(e) of the P.C.Act, 1988. Registered Dt:24.07.2006.

2. Accused 1) Tr. Karthalingam, S/o. Veerappan, (Formerly) Motor Vehicle Inspector Grade II, Perambalur. A2) Tmt. Rani, W/o. Karthalingam, Jayankondam, Ariyalur.

3. In the beginning of the check period i.e., 09.02.1995 the value of the assets and pecuniary resources that stood in the credit of the petitioner/accused and her husband was only Rs.2,43,000/-. But at the end of the check period i.e., on 31.10.2002 the value of the assets and pecuniary resources that stood in the credit of the petitioner/accused and her husband was Rs.77,58,268/-. The income derived by the accused (including the salary of petitioner's husband and income from all other sources) during the check period i.e., 09.02.1995 to 31.10.2002 was Rs.21,81,230/-. The expenditure incurred by her and by the petitioner's family during the check period was Rs.16,72,367/-. Thus, the total disproportionate assets stood at the end of the check period works out as Rs.70,04,414/- and the percentage of the disproportionate assets is 321%.

4. After completion of the investigation, the charge sheet has been laid by the respondent before the Hon'ble CJM/Special Judge, Perambalur against the petitioner's husband

Tr.Karthalingam/Accused No.1 and the petitioner/Accused No.2 being the wife of Tr.Karthalingam u/s 13(2) r/w 13(1)(e) of the Prevention of Corruption Act 1988 and u/s 109 of IPC for having been found in possession of disproportionate assets exceeding their known sources of income during the check period. Since, the petitioner Tmt.Rani has abetted her husband in committing criminal misconduct by aiding in acquiring properties in her name and actively assisted in holding the properties on behalf of her husband which they could not satisfactorily account. The above charge was taken on the file of the Hon'ble Special Judge/CJM / Spl. Judge, Ariyalur and it was taken on file in Spl.C.C.No.15 of 2012 and then copies of all the documents relied upon by prosecution were furnished to the accused u/s 207 Cr.P.C."

21.The Additional Public Prosecutor would further submit that the petitioner/wife of the public servant(A1) had filed discharge petition in C.M.P.No.1 of 2016 before the Chief Judicial Magistrate/Special Judge, Ariyalur, in which the petitioner had produced some defence documents. The trial Court rejected the same and observed that at this stage the Court need not look into these documents produced by the accused, after framing the charges the accused can prove her innocence during the trial in accordance with law and found that prima facie material are available to proceed against the accused. Hence, the trial Court dismissed the discharge petition of the petitioner/A2. Thereafter, a revision in Crl.R.C.No.413 of 2016 came to be filed against the order of the trial Court in C.M.P.No.2768 of 2016 and the same was dismissed by this Court, confirming the order of the trial Court by order dated 23.11.2016. In the said order, it observed as follows:-

"20.Admittedly, the petitioner is wife of the public servant A1 she has purchased the properties during the check period. Under the said circumstances, at this stage Court need not look into the documents would be produced by the petitioner. After framing the charges, the petitioner can prove her innocence during the trial in accordance with law. On face of the records, the petitioner has no merits in the revision petition. On perusal of the order of the trial Court, the learned Chief Judicial Magistrate/Special Judge has discussed everything in the said order. This Court comes to an irresistible and in escapable conclusion that there are enough materials in the form of records to bring home the role played by the petitioner Therefore, the petition filed by the revision

petitioner/A2 before the trial Court seeking to discharge her from the case in Spl.C.C.No. 15 of 2012 in Crime No.8/AC/2006 u/s.13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 on 24.07.2006 is per se not maintainable. Looking at from any angle, the order passed by the trial Court, in dismissing the Crl.M.P.No.2768 of 2016 in Spl.C.C.No.15 of 2012 dated 25.02.2016 does not suffer from any material irregularity or patent legal infirmity in the eye of law. Hence, the criminal revision petition is liable to be dismissed."

22.The learned Additional Public Prosecutor would further submit that the public servant/A1 had filed Crl.O.P.No.23647 of 2018 to quash the proceedings in Special Case No.15 of 2012 and the same was withdrawn on 20.02.2018. Further, W.P.No.14114 of 2012 is filed for similar prayer for quashing the proceedings. It is further submitted by the learned Additional Public Prosecutor that there are enough materials submitted by the prosecution to prove the case during the trial.

23.It is also brought to the notice that in Special C.C.No.15 of 2012, PW1 to PW12 have been examined and Ex.P1 to Ex.P16 have been marked and the case has been posted for examination of further witnesses. The public servant/A1 and his wife/petitioner by filing one petition or other is protracting and prolonging the trial before the lower Court. The case is of the year 2012 and for the past seven years the trial has been successfully dragged by the accused. Further the points raised by the petitioner are to be decided only during the trial. Hence, the prosecution may be allowed to lead in evidence and to prove its case beyond all reasonable doubts.

24.Further, the learned Additional Public Prosecutor relied upon the following decisions:-

(i) "State of Madhya Pradesh Versus Virendra Kumar Tripathi reported in (2009) 15 SCC 533". It is held that the validity of sanction to be determined, once the trial commenced and evidence was lead. The relevant portion is extracted here under:-

"6.A bare perusal of the paragraph shows that before giving approval for prosecution, advice of the concerned Department was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative. The State government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by Additional Secretary, Department of Law and Legislative Affairs. The advice at the

most is an inter-departmental matter. Further the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of /or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the Court a failure of justice has in fact been occasioned thereby. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established yet to be reached since the case is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was lead. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [2004(7) SCC 763] and in Prakash Singh Badal v. State of Punjab [2007(1) SCC 1] need to be noted."

(ii) "Dilip Kumar Sharma Versus State of Chhattisgarh and others and reported in 2018(3)RCR(Criminal)31". It is held that the power of review can be exercised, when irrelevant consideration has been ignored while passing the order. The relevant portion is extracted here under:-

"24.Thus, from the aforesaid authoritative pronouncement of the Supreme Court, it is quite vivid that the courts are not supposed to quash the proceeding under the Act of 1988 on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice. Therefore, the overriding principle which permeates the judgment is that unless there is failure of justice on account of error, omission or irregularity in grant of sanction for prosecution, the proceedings under the Act of 1988 could not be vitiated.

25.In the instant case, neither it has been pleaded nor it has been demonstrated that the order granting sanction has resulted into failure of justice as it has clearly been held that the power of review can be exercised when irrelevant consideration has been taken into account in the earlier order and relevant consideration has been ignored while passing the order. I do not find any error of jurisdiction in the impugned order. The sanctioning authority is justified in granting sanction for

prosecution against the petitioner under Section 19 of the Act of 1988 for his prosecution under Sections 13(1)(e) and 13(2) of the Act of 1988."

25. This Court considered the rival submissions and perused the material available on record.

26. The petitioner sent a representation that as per G.O. (2D) No. 382, Home (Tr-II) Department, dated 04.08.2010 orders were passed to drop the charges levelled against him. The prosecution had split up the case No. 49/TPT/1999/TRY as Part A and Part B and the Part B was converted into regular case as 97/2006/TPT/Tr, dated 30.08.2008 in Crime No. 8 of 2006, under the Prevention of Corruption Act, 1988. The Transport Commissioner examined charges and ordered dropping of charges in proceedings No. 57642/VB1/2005 dated 15.12.2008. Further requested the authority to withdraw the sanction for prosecution and TDP case. The Transport commissioner vide letter No. 13621/VB1/2009, dated 04.02.2011 addressed the Principal Secretary to Government Home Department to take appropriate decision since the Government is the competent authority.

27. The primordial submission is that the Transport Commissioner addressed letter dated 29.04.2010 to the Director of the Vigilance and Anti Corruption and opined that there is no need to proceed further in the matter, unless further evidence is adduced to accord sanction for prosecution. This according to the petitioner is refusal for granting of sanction. In view of the same, it is contended that the sanction for prosecution dated 24.11.2010 is a sanction order issued by the sanctioning authority without any fresh materials and hence it amounts to reviewing the earlier order dated 29.04.2010, which is impermissible in law. For better appreciation, the communication dated 29.04.2010 and the sanction order dated 24.11.2010 are extracted below:-

"TRANSPORT DEPARTMENT

From	To
Thiru. S. Machendranathan, I.A.S.	The Director,
Transport Commissioner	
	Vigilance and Anti -Corruption
Chepauk, Chennai-5.	Chennai-28.

Letter No. 13621/VB1/2009 Dated: 29.04.2010.

Sir,

Sub: Public Services - Transport Department -
Allegations
possessions of assets disproportionate to the
known sources of income against
Tr.K.V. Karthalingan, MVI

Gr-11, O/o the RTO, Peramballur now RTO,
Chennai
(West) - Sanction for prosecution - Requested
- Regarding.

Ref: 1.Government letter No.30908/Tr-11/2009-
3, dated 17.6.09.
2.My D.O.letter in even No., dated
8.9.2009.
3.Your letter No.97/06/TPT/TR, dated 15.12.09
from the DVAC, Chennai-28.
4.This office letter even No., dated 5.1.10 &
reminder dated 4.3.10.

In the letter 1st cited, it was directed to pursue immediate action to accord necessary sanction u/s 19 (1) (b) of the PC Act 1988, for prosecuting Thiru.K.V.Karthallingan, formerly Motor Vehicle Inspector Grade-II and now Regional Transport officer, Chennai (West). It is seen on a perusal of the enclosures to the letter 1st cited, that the same has been necessitated with reference to your request in letter RC 97/2006/TPT/TR, dated 18.4.09, based on the Investigation Report RC 97/2006/TPT/TR, dated 20/02/2009, on the conclusion of the final report or the detailed Enquiry in DE 96/2004/REV/ TK, dated 18.06.05.

2) It is also seen from the abstract of the final investigation report RC 97/2006/TPT/TR, that the case relates to the allegation that the accused has accumulated assets to the tune of Rs.68,74,706/- (321%) between the check period 09.02.1995 and 31.10.2002 in his name and in the name of his family members.

3) You were requested in my D.O. Letter 2 cited, to verify the claims of the individual regarding the income of his wife, as each of the transactions was reported to the Income Tax Department. Since these are his wife's earnings, he has not reported them to the Government. In the reply 3 cited, you have stated among others, that, prior permission of HOD for private business done by his spouse should have been obtained by the A.O., as per the Rules. But, a perusal of Rule 8 (1) (b) of the TNGS Conduct Rules 1973, relating to the "private trade of Employment" reveals that every Government Servant shall, if any member of his family is engaged in a trade or business, report the fact to the Government, irrespective of the fact whether his/her spouse has own income or

not. Therefore, prior permission need not be taken in this Case, Besides, you cannot prosecute any officer for not keeping the Government informed of the business of his wife. Moreover, none of the details pertaining to this alleged boosting of income by the spouse of the A.O., was furnished in the reply. You were therefore addressed again in the letter 4 cited, (dated 5.1.2010) requesting to clarify the discrepancies. You have, however, not clarified the correct position till date.

4) In these circumstances, the competent authority, in this case is of the opinion that there is no need to proceed further in the matter so as to accord sanction for prosecution of the accused officer.

Principal Secretary
Transport Commissioner
Chennai-5.

Copy to:- The Principal Secretary to Government,
Home (Tr.II) Department, Secretariat
Chennai-9."

PROCEEDINGS OF THE TRANSPORT COMMISSIONER CHEPAUK,
CHENNAI-5.

Present: Dr. M.Rajaram, IAS.

RC.No.13621/VB1/2009
Dated:24.11.2010

Sub: Public Servants-Transport Department -
Ariyalur

District-Allegation of Possession of
disproportionate assets
against
Thiru.KV.Karthalingan, formerly Motor
Vehicles Inspector, Grade-, Perambalur, now
Regional Transport Officer, Chennai
(West)- Sanction for prosecution
accorded.

Ref: 1. From the Director of
Vigilance & Ant corruption Letter

R.C.No.97/2003/TPT/TR, dated:
18.04.2009

2. Government letter No.30908/Tr-
/2009-3, Home
Department, dated: 17.05.2009.
3. Government letter No.35667/Tr-
II/2010-4, Home department,
dated: 06.09.2010.

ORDER:

1) Whereas Thiru.K.V.Karthalingan, formerly Motor Vehicles Inspector Grade-11, Perambalur Regional Transport Officer, Chennai (West) from 9.2.1995 to 31.10.2002 is a Public Servant as defined under section 2(c) of the Prevention of Corruption Act, 1988.

2) Whereas it is alleged that, as on 9.2.1995 Thiru.K.V.Karthalingan was found to have been in possession of properties worth Rs.2,43,000/These include agricultural land, investment, gold ornaments and also other movable properties.

3) Whereas it is alleged that as on 31.10.2002 the said Thiru.K.V.Karthalingan is found to have acquired pecuniary resources and properties worth Rs.7758,285 in his name and in the name of his wife Tmt.K.Rani, (40/2008) No.28A/ Andal Street, Jayankondam, Ariyalur District. These include agricultural land, gold ornaments, housing plots, constructed house and other investments and also other movable properties.

4) Whereas it is alleged that when Thiru.K.V.Karthalingan was working a Motor Vehicles Inspector, Grade-11, Unit office, Perambalur, Unit office, Trichy, Unit office, Kumbakonam as Motor Vehicles Inspector, Grade-, Unit office, Neyveli and Unit office, Kumbakonam is found to have acquired and kept in possession of properties and pecuniary resources to the extent of Rs.75,15,268/-

5) Whereas it is alleged that Thiru.K.V. Karthalingan has a total income from his known sources i.e. Rs.21,83,230/- being the salary and the loan borrowed by his wife. His family expenditure during the above check period as assessed comes to Rs.16,72,376/- and the likely savings of Thiru.K.V.Karthalingan and his wife would have been only Rs.5,10,854/-

6) Whereas it is alleged that

Thiru.K.V.Karthalingan is thus found to have acquired and possessed during the period between 9.2.1995 and 31.10.2002 in his name and in the name of his wife pecuniary resources and properties disproportionate to his known sources of income to the extent of Rs.70,04,414/ Thus, Thiru.K.V.Karthalingan, a public servant, during the chack period between 9.2.1995 and 31.10.2002, at Kanukudi, Jayankondam and other places, committed an offence of criminal misconduct by acquiring and possessing pecuniary resources and properties in his name and in the name of his wife, which are disproportionate to Thiru.K.V.Karthalingan's known sources of income to the extent of Rs.70,04,414/- for which he has not satisfactorily accounted and thereby Thiru. KV.Karthalingan appears to have committed an offence punishable under section 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act, 1988.

7) Whereas it is alleged that in the course of the same transaction, during the period Tmt.K.Rani abetted Thiru.K.V.Karthalingan in the commission of the said offence of Criminal misconduct by intentionally aiding Thiru.K.V.Karthalingan to acquire' properties in their names and by holding such properties on behalf of Thiru.K.V.Karthalingan, which are disproportionate to the known sources of income of Thiru.K.V.Karthalingan and for which Thiru.K.V.Karthalingan has failedo satisfactorily account and thereby Tmt. K.Rani appears to have committed an offence punishable ws TUPCTIW T32) TW 13 (1) (0) of Prevention of Corruption Act 1988 (Central Act 49 of 1988).

8) Whereas it is alleged that the Director, Vigilance& Ant-Corruption, Trichirapalli has sought sanction for the prosecution of the said Thiru.K.V.Karthalingan, formerly Motor Vehicles Inspector, Grade-1. Unit office, Perambalur now Regional Transport Officer, Chennai (West).

9) Whereas , M.Rajaram, Transport Commissioner, Chepauk, Chennai being the authority competept to remove the said Thiru. K.V. Karthalingan, formerly Motor Vehicles Inspector, Grade-1, Unit office, Perambalur now Regional Transport Officer, Chennai (West) from service after fully and carefully considering the materials such as copy of the FIR, Statements of witnesses and the said Thiru K.V.Karthalingan, and other connected records placed before me in this regard and other circumstances of the case, having

applied my mind, am satisfied myself fully, that the said Thiru. K.V.Karthalingan should be prosecuted for the said offence u/s109 IPC r/w 13 (2) r/w 13 (1)(e) of Prevention of Corruption Act 1988 (Central Act 49 of 1988).

10) And therefore, I, M. Rajaram, Transport Commissioner, Chepauk, Chennai, do hereby accord sanction u/s 19(1) (c) of the Prevention of Corruption Act, 1988 for the prosecution of the said Thiru.K.V.Karthalingan, formerly Motor Vehicles Inspector, Grade-, Unit office, Perambalur now Regional Transport Officer, Chennai (West) for the said offences and for taking cognizance of the said offences by a court of competent jurisdiction.

Transport Commissioner
Chepauk, Chennai-5

To
The Director,
Vigilance & Anti-Corruption
Chennai-28."

28. On comparison of the both letters, it is apparent that the letter dated 29.04.2010 is only a communication and it is not rejection or denial of sanction order. The said letter mentions about the Rule 8 (1)(b) of the Tamil Nadu Government Servants Conduct Rules, 1973. There is no deliberation with regard to the statements of witnesses, documents submitted by the investigating agency. Further, there is no mention about applying mind independently for arriving at subjective satisfaction on the materials placed before him. The letter dated 29.04.2010 is not in first person, which is sinquanon for according sanction under Section 19 of the Prevention of Corruption Act, 1988. In the sanction order dated 24.11.2010, the sanction authority deliberates the allegations against the public servant and the materials placed before him and thereafter, applying his mind and satisfying himself, the sanctioning authority had accorded sanction. Hence, in this case there is only one sanction dated 24.11.2010 and by no stretch, the letter dated 29.04.2010 could be construed as refusal of sanctioning order. The letter dated 29.04.2010 does not say that the sanction has been refused expressly. It is settled legal proposition that the order of sanction under Section 19 of the Prevention of Corruption Act, 1988 must ex facie disclose that the sanctioning authority had considered the evidence and materials placed before it. In this case the sanction order dated 24.11.2010 depict the same.

29. Further on perusal of the materials, file notings and note file, it is seen that the petitioner/A1 made representation to the Principal Secretary Home Department,

which was forwarded to the Transport Commissioner. The Transport Commissioner in turn had forwarded the same to the Director of Vigilance and Anti Corruption and was awaiting for response, the file was kept pending. In the meanwhile, another representation has been given to the Deputy Chief Minister of Tamil Nadu to revoke the criminal case as well as 17(b) proceedings pending against the petitioner. The Transport Commissioner had written back to the Government to take appropriate action.

30. On the representation of the petitioner, the Transport Commissioner had called the investigating officer to produce records. Since the records were not complete further details were called for from the Vigilance and Anti Corruption. Thereafter, there was no immediate response and the file was kept pending in the Transport Commissioner office. On 29.04.2010, the Transport Commissioner sent a letter observing details pertaining to boosting of income by the petitioner's wife was not furnished and hence no need to proceed further. Later the Director of the Vigilance and Anti Corruption sent communication particulars. For reasons best known the file was out of circulation for several months. Finally on 01.11.2010, the file surfaced. It is to be seen that multiple representation added to complicity in dealing with the file. The Transport Commissioner taking strong exception for delay in processing the file, sought for explanation for the inordinate delay. Thereafter, the proceedings for sanction for prosecution dated 24.11.2010 had been put up and sanction for prosecution was accorded. The note file dated 22.11.2010 is extracted here under for clarity and better appreciation.

"R.No.13621/VB1/2009

ON SUBMITTED:

This case relates to the sanction of prosecution in respect of Thiru.K.V.Karthalingan, formerly Motor Vehicle inspector Gr-11 and now Regional transport Officer, Chennai (West) for certain alleged possession of assets disproportionate to the known sources of income.

Government in their letter No.30908/Home Tr-II/2009-4, dated 26.06.2009 have requested the DVAC to produce all relevant documents in respect of the disproportionate case involving the said Thiru.K.V.Karthalingan before the Transport Commissioner to enable him to accord sanction of prosecution.

The DVAC in his letter dated 03.08.2009 has requested the Transport Commissioner to sanction prosecution for the reasons specified therein without producing any documents as requested directed by the Government.

The Transport Commissioner in his letter dated 8.9.2009 addressed the DVAC, that the Accused Officer has sent a letter dated 16.6.2009 to the Principal Secretary to Government, Home

Department, Chennai- 9, wherein he has made certain claims regarding the income of his wife Mrs.K.Rani and he has claimed that each of these transactions was reported to the Income Tax Department also and that since these are of his wife's earnings, he has not reported them to the Government and to take a decision on the further action in this matter.

The DVAC after examining the case furnished his clarifications in his letter dated 15.12.2009 to the Transport Commissioner. After perusing the clarification furnished by the DVAC the Transport Commissioner has raised further clarifications in letter No13621/VB1/09, dt:05.1.2010 regarding the discrepancies found in the report of the Directorate of Vigilance and Anti-Corruption.

Further the then Transport Commissioner in his letter No.13621/NB1/09, dated 29.4.2010 addressed to the DVAC has opined that there is no need to proceed further in the matter unless further evidence is adduced to accord sanction of prosecution. The DVAC in his letter dated. 11.8.2010 among others requested to accord sanction to prosecute the accused before the court of competent jurisdiction. And further informed that as per para 85(3) of DVAC Manual. if the sanctioning authority does not propose to accord sanction as sought for by the DVAC,. It would forward the case, together with its views and the reason thereof and other relevant records to the Vigilance Commissioner for advice through the department of the Secretariat concerned.

The Government in letter No.35667/TrII/2010-4 dated 06.09.2010 have stated that the Public Prosecutor, High Court, Madras has already opined that this a fit case to accord sanction of prosecution in respect of Thiru.K.V.Karthalingan, before the competent jurisdiction of the court. No.35667/Tr-1/2010-9, dated 4.11.2010 Government have requested to furnish the action taken in this case since the DVAC has informed that he had already sent a reply to you on 11.8.2010 clarifying the points raised by you in your letter dated 29.4.2010 and also requested to look into the matter personally and to arrange to send your report in the matter to Government immediately."

31.Thus on perusal of the documents, statement of witnesses getting clarification from the Vigilance and Anti Corruption, the Transport Commissioner had accorded sanction on 24.11.2010 under Section 19 of the Prevention of Corruption Act, 1988. Under any circumstances, the letter of Transport Commissioner dated 29.04.2010 could not be construed as

refusal of sanction. The entire relevant facts have been placed before the sanctioning authority and the authority had applied its mind while granting sanction in accordance with law, as could be seen from the sanction letter dated 24.11.2010. Once sanction has been accorded the question of recalling does not arise.

32. In view of the same this Court finds that the sanction order dated 24.11.2010 is the sanction accorded under Section 19 of the Prevention of Corruption Act, 1988.

33. The contention of the learned counsel for the petitioner that she was having own business of running taxies and had constructed a house on the land gifted by her mother, has been considered by the investigating officer and also her income tax returns. Not satisfied with the explanation and finding materials against her she had been arrayed as abettor in this case. The petitioner/A2 earlier filed Crl.R.C.No.413 of 2016 against dismissal of the discharge petition. This Court by order dated 23.11.2016 dismissed the same on merits. Again, the petitioner/A2 had filed Crl.O.P.No.4149 of 2017 for the same relief, which amounts to second revision, further on facts and law merits no consideration. Hence, it is liable to be dismissed.

34. Further after granting of sanction, the question of considering the recommendation of the 2nd respondent by the 1st respondent does not arise. The recommendation cannot be acted upon. The sanction for prosecution has been already accorded on 24.11.2010.

35. In the result, Writ Petition in WP.Nos.14114 of 2012 & 34444 of 2018 and Crl.O.P.No.4149 of 2017 stand dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

vv2

To

1. The Secretary to Government,
Home Department,
Secretariat, Chennai-9.

2. The Transport Commissioner,
Chepauk,
Chennai-5.

3.The Deputy Superintendent of Police,
Vigilance & Anticorruption,
No.10, Quaide Milath Street, Kaja Nagar,
Mannarpuram,
Tiruchirapalli-20.

4.The Public Prosecutor,
High Court Madras.

5.The Deputy Superintendent of Police,
Vigilance and Anti -Corruption
Ariyalur.

6. The Chief Judicial Magistrate/Special Judge, Ariyalur
Crl.O.P.No.4149 of 2017
and
W.P.Nos.14114 of 2012 & 34444 of 2018

A.SK(18/12/2019)