

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14-02-2019

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THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.Nos.25213, 23292, 23293 and 23846 of 2018
And

W.M.P.Nos.27173, 27174, 27781, 27782, 29320 and 29321 of 2018

W.P.No. 25213 of 2018:

Dr.S.Murugan
Joint Director,
Directorate of Vigilance and Anti Corruption,
H 3-1, TAISHA, Near Natesan Nagar West,
Virugambakkam,
Chennai 600 092. ...Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by its Chief Secretary to the Government,
Fort St George,
Chennai, Tamil Nadu.
- 2.The State of Tamil Nadu,
Represented by its Home Secretary to the Government,
Fort St George,
Chennai, Tamil Nadu.
- 3.The Director General of Police,
Radhakrishnan Salai,
Mylapore,
Chennai-Tamil Nadu.
- 4.The Director,
Vigilance and Anti Corruption Department
No.293, MKN Road,
Alandur,
Chennai 600016.
- 5.The Internal Complaints Committee,
Represented by its Chairman,
Office of the Director General of Police
Radhakrishnan Salai, Mylapore,
Chennai, Tamil Nadu.

6.Tmt.H Jayalakshmi
Superintendent of Police
1-B, CID, Mandaveli,
Chennai- 600 028.

7.CBCID, Egmore, Chennai - 8.
(Suo Motu impleaded as per
order dated 10.09.2018)

...Respondents

W.P.Nos. 23292 & 23293 of 2018:

H.Jayalakshmi ...Petitioner in both Petition
Vs.

1.The State of Tamil Nadu,
Represented by its Principal Secretary,
Home Department
Fort St George, Chennai-09.

2.The Director General of Police,
Kamrajar Salai, Kailasapuram
Chennai-600005

3.The Director,
Vigilance and Anti-Corruption
No.293, MKN Road,
Collector Nagar,
Alandur,
Chennai-600016.

4.Dr.S.Murugan
Joint Director, DVAC
293, MKN Road,
Collector Nagar,
Alandur, Chennai-600 016.

...Respondents in both Petitions

W.P.No. 23846 of 2018:

H.Jayalakshmi ...Petitioner
Vs.

1.The State of Tamil Nadu,
Represented by Additional Chief Secretary to Government,
Home Prohibition and Excise Department
Fort St George,
Chennai-09.

2.The Director General of Police,
Kamrajar Salai, Kailasapuram
Chennai-600005

3.The Director,
Vigilance and Anti-Corruption
No.293, MKN Road,
Collector Nagar,
Alandur,
Chennai-600016.

4.Dr.S.Murugan
Joint Director, DVAC
293, MKN Road, Collector Nagar,
Alandur,
Chennai-600 016.

5.The Internal Complaints Committee,
Represented by its Presiding Officer,
Office of the Director General of Police
State Crime Records Bureau
Chennai-28. ...Respondents

W.P.No.25213 of 2018: WRIT PETITION under Article 226 of the Constitution for issuance of Writ of Certiorari calling for the records in the impugned proceedings of the 3rd respondent in RC.NO.Staff.I(1)/ 183780/ 2017/ C.O.O.No. 170/2018 dated 17.08.2018 constituting the 5th respondent as far as petitioner is concerned, and consequential proceedings in C.No.01/ICC/ADGP/SCRB/Camp/2018-2 dated 30.08.2018 of the 5th respondent and quash the same.

W.P.No.23292 of 2018: WRIT PETITION under Article 226 of the Constitution in the nature of Mandamus to direct the 1st respondent to transfer the 4th respondent to any non-sensitive post outside the directorate of Vigilance and Anti-Corruption pending enquiry into the petitioner's complaint dated 04.08.2018 and further ensure that he does not in any manner handle any work-related file pertaining to the petitioner.

W.P.No.23293 of 2018: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorarified Mandamus calling for the record of the 2nd respondent in proceedings in RC.NO.Staff.I(1)/ 183780/2017 dated 17.08.2018 and quash the same and direct the 1st and 2nd respondent to reconstitute the internal complaints committee in accordance with Section 4 of the Act.

W.P.No.23846 of 2018: WRIT PETITION under Article 226 of the Constitution in the nature of Certiorarified Mandamus calling for the records of the 5th respondent in proceedings dated

30.08.2018 in C.No.01/ICC/ADGP/Camp/2018-2 and quash the same in so far as the 5th respondent states that it is not the competent authority to decide on the petitioner's request for transfer of the 4th respondent and further direct the 5th respondent to recommend transfer of the 4th respondent.

W.P.No.25213 of 2018:

For Petitioner : Mr.AR.L.Sundaresan, Senior Counsel
For Ms.Abitha Banu

For Respondents : Mr.Vijay Narayanan, Advocate General
assisted by Mr.Jayaprakash Narayanan,
Government Pleader and Mr.A.N.Thambi
Durai, Spl. Govt. Pleader R1 to R5 and R-7
and Mr.D.Jayasingh - R6

W.P.Nos.23292 and 23293 of 2018:

For Petitioner : Mr.D.Jayasingh

For Respondents : Mr.Vijay Narayanan, Advocate General
assisted by Mr.Jayaprakash Narayanan,
Government Pleader and Mr.A.N.Thambi
Durai, Spl. Govt. Pleader R1 to R3
Mr.R.Thiagarajan, Senior Counsel
For Ms.Abitha Banu - R4

W.P.No.23846 of 2018:

For Petitioner : Mr.D.Jayasingh

For Respondents : Mr.Vijay Narayanan, Advocate General
assisted by Mr.Jayaprakash Narayanan,
Government Pleader and Mr.A.N.Thambi
Durai, Spl. Govt. Pleader R1 to R3 and R5
Mr.R.Thiagarajan, Senior Counsel
For Ms.Abitha Banu - R4

C O M M O N O R D E R

"An ounce of practice is worth more than tons of preaching", Mahatma Gandhi said.

An attempt to follow the words, this Court is inclined to direct the Registrar (Administration), High Court of Madras to install Closed Circuit CCTV Camera in the Chambers of Hon'ble Justice S.M.SUBRAMANIAM, within a period of two weeks from the date of receipt of a copy of this order. With these directions, this Court would prefer to adjudicate the issues raised in all these writ petitions.

2. The Commissioner of Police of all Cities across the State as well as the Director General of Police and other Higher Police Officials are preaching with responsibility that all the Residents, Apartment owners, Traders and others shall install the CCTV Cameras in their respective premises, enabling the Police Department to nab the offenders. Such advertisements are frequently issued by the Police Department and the Higher Officials are repeatedly insisting for installation of Closed Circuit CCTV Cameras in all the places to improvise the vigil over the crimes and the offenders. This being the preachings of the Police Department to the citizen at large of this Great Nation, what about the offenders and Black Sheeps in the Police Offices, Chambers and Office Rooms of the higher officials and what measures are taken to nab the offenders and Black Sheeps inside the Police Department and other public offices and institutions etc.

3. The lis on hand is a significant one, where the allegation of sexual harassment is made by a Senior Level Police Officer, which is an unfortunate situation aroused in the Police Department and the way in which the case was handled by the Executives concerned is also a concern for this Court and therefore, this Court thought fit to take up all these writ petitions on out of turn basis and hear the parties and accordingly, pass this order.

4. At the outset, the writ petitioner Dr.S.Murugan in WP No.25213 of 2018, challenged the constitution of the Internal Complaints Committee as well as the direction issued by the Presiding Officer of the Internal Complaints Committee to register a criminal complaint by the CBCID Wing of the Police Department. The other three writ petitions, namely, WP Nos.23292, 23293 and 23846 of 2018 are filed by Smt.H.Jayalakshmi, who is the complainant, in respect of the complaint given against Dr.S.Murugan.

5. WP No.23292 of 2018 is filed for a direction to direct the first respondent to transfer the fourth respondent (Dr.S.Murugan) to any other Non-sensitive Post outside the Directorate of Vigilance and Anti-Corruption pending enquiry into the petitioner's complaint dated 4.8.2018 and further ensure that he does not in any manner handle any work related file pertaining to the writ petitioner.

6. WP 23293 of 2018 is filed challenging the proceedings of the second respondent dated 17.8.2018 in relation to the Internal Complaints Committee in accordance with Section 4 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

7. WP 23846 of 2018 is filed challenging the proceedings of the fifth respondent dated 30.8.2018 stating that the incompetency and lack of jurisdiction expressed by the Internal Complaints Committee is contrary to law and further direction is sought for to direct the fifth respondent to recommend transfer of the fourth respondent (Dr.S.Murugan) to a Non-Sensitive Post outside the Directorate of Vigilance and Anti-Corruption Department.

8. The facts in nutshell to be considered in these writ petitions are that the Principal Secretary to Government, Home Department, issued G.O.Ms.No.429, Home Department, dated 1.7.2013, constituting the Internal Complaints Committee in the line of the judgment of the Hon'ble Supreme Court of India in the case of Vishakha vs. State of Rajasthan [AIR 1997 SC 3011] regarding the sexual harassment against working women.

9. Smt.H.Jayalakshmi was posted as Superintendent of Police at the Directorate of Vigilance and Anti-Corruption. Dr.S.Murugan, IPS was posted as the Joint Director of Directorate of Vigilance and Anti-Corruption on 14.7.2017. Smt.H.Jayalakshmi, Superintendent of Police had given a oral complaint to the Director of Vigilance and Anti-Corruption on 3.8.2018 and on the very next day i.e., on 4.8.2018, the complainant Smt.H.Jayalakshmi filed a written complaint before the Director of Vigilance and Anti-Corruption against Dr.S.Murugan, IPS under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

10. On receipt of the complaint from Smt.H.Jayalakshmi, the second respondent Director General of Police constituted an Internal Complaints Committee on 17.8.2018. There was an objection from the complainant that the said Committee was constituted in violation of Section 4 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Thus, the writ petitioner had submitted an objection on 28.8.2018 in respect of the

constitution of the Committee by the Director General of Police in proceedings dated 17.8.2018.

11. This apart, Smt.H.Jayalakshmi requested to transfer Dr.S.Murugan, IPS out of Directorate of Vigilance and Anti-Corruption Department, enabling her to pursue the complaint without any interference and influence. The Director General of Police in his letter dated 29.8.2018, through online reply, stated that the constitution of the Committee is in accordance with the provisions of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Thus, the writ petitioner is constrained to move the Hon'ble High Court for appropriate remedy by way of filing the writ petition in WP No.23292 of 2018.

12. The other two writ petitions in WP Nos.23293 and 23846 of 2018 are also filed by Smt.H.Jayalakshmi questioning the order dated 17.8.2018 and 30.8.2018. Thus, the orders are also in relation to the constitution of the Internal Complaints Committee.

13. Dr.S.Murugan, IPS also challenged the constitution of the Committee and the Committee's decision to register a criminal case against him through CBCID. Thus, the issue raised by the complainant as well as by Dr.S.Murugan, IPS are interconnected and both the officials are questioning the constitution of the Internal Complaints Committee and Dr.S.Murugan, IPS has challenged the registration of a criminal case through CBCID Wing of the Police Department.

14. The learned counsel, appearing on behalf of Smt.H.Jayalakshmi vociferously contended that even a Senior Women Police Officer in the Rank of IPS, is unable to redress her grievances in the manner known to law. Even the enquiry proceedings are prolonged and protracted on certain flimsy grounds. The entire enquiry proceedings and the criminal case investigations are stalled on account of the interim stay granted by this Court. सत्यमेव जयते

15. The learned counsel for Smt.H.Jayalakshmi, Superintendent of Police states that Smt.H.Jayalakshmi is now working as Superintendent of Police in the Tamil Nadu Police Commercial Crime Investigation Wing (CCIW). She was inducted in the Police Department in the cadre of Deputy Superintendent of Police during the year 2003. On completion of 10 years of clean service, she was promoted to the post of Superintendent of Police in the year 2013.

16. The writ petitioner was posted as Superintendent of Police in the Directorate of Vigilance and Anti-Corruption, Chennai and even before the posting of Smt.Jayalakshmi in the

Department of Vigilance and Anti-Corruption, Dr.S.Murugan, IPS was already working in the Department of Vigilance and Anti-Corruption from 14.7.2017. Dr.S.Murugan, IPS was the Superior Officer and Smt.H.Jayalakshmi, Superintendent of Police had to report to him and she was in-charge of Central Range.

17. The learned counsel for Smt.H.Jayalakshmi further states that right from the date on which she assumed the Office as S.P. of Police, his attitude towards Smt.H.Jayalakshmi has been unprofessional and his behaviour was highly condemnable. Even the examples narrated in the affidavit, are reiterated and it reads as under:-

"(a) Initially, Mr.Murugan used to call me during late hours and asked me about work related issues. However, within few days, he began asking me personal questions and making personal comments during late night hours. This forced me to avoid his calls.

(b) On the pretext of discussing files, Mr.Murugan used to call me to his room and make comments about my personal and physical attributes including my dressing, hair-style etc. He used to make lewd and offensive comments which made me uncomfortable.

(c) Whenever I entered his room, he used to take photos of me on his mobile phone despite my strong objection.

(d) After I began resisting such behaviour, his attitude towards me became intimidating. He started threatening me with serious consequences for my career.

(e) He used to make 20 to 25 calls on Whats App in one stretch after office hours. His behaviour was obsessive.

(f) Mr.Murugan had the habit of calling me to his room after lunch, when no body was allowed to enter in. He used to make me to sit in his room and ask me all sorts of personal questions.

(g) On 1.8.2018, Mr.Murugan called me to his room at around 1.30 P.M. After asking some personal questions, he locked his room from inside. When I questioned him about his action and tried to open the lock of the room, he hugged me physically. I had to forcefully push him away and got out of the room."

18. Smt.H.Jayalakshmi unable to tolerate the harassment, constrained to give a oral complaint to the Head of the Department of Vigilance and Anti-Corruption, namely, the

Director on 3.8.2018 and a written complaint was given on 4.8.2018, explaining the series of events. Smt.H.Jayalakshmi requested the third respondent to treat the complaint as a complaint under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. However, no reply was given by the Director of Vigilance and Anti-Corruption. Smt.H.Jayalakshmi came to understand that on 6.8.2018, a meeting was held by the Director regarding the constitution of an Internal Complaints Committee in terms of the Sexual Harassment Act pursuant to the complaint.

19. Smt.H.Jayalakshmi further requested that she was continuing as a Chairperson of existing Internal Complaints Committee in the Directorate of Vigilance and Anti-Corruption Department and therefore, a Senior Level Officer must be appointed to enquire into her complaint. Further she expressed her apprehension that the continuance of Dr.Murugan as Joint Director of Directorate of Vigilance and Anti-Corruption in the same office would cause prejudice and there is a likelihood of force and influence made in the enquiry proposed to be conducted pursuant to the complaint given by Smt.Jayalakshmi and she met several higher level officers in the Police Department, including the Director General of Police and the Director of Vigilance and Anti-Corruption Department. She met Smt.Vidya Kulkarni (IGP-Headquarters), Shri Sathyamurthy (IGP Intelligence) and Shri Mohan Pyare, IAS (Vigilance Commissioner) and she expressed her grievances to them and they assured her of firm action against the alleged unfortunate incident and the complaint.

20. Smt.H.Jayalakshmi received a letter on 27.8.2018 from the Director General of Police, directing her to appear before the Internal Complaints Committee constituted. She made an objection with reference to the constitution of the Committee and thereafter, Smt.H.Jayalakshmi approached this Court for the purpose of directing the Principal Secretary to Government, Home Department, to transfer Dr.S.Murugan to any Non-Sensitive Post during the pendency of the enquiry. It is further contended by the learned counsel for Smt.H.Jayalakshmi that the Hon'ble Supreme Court in the case of Vishakha vs. State of Rajasthan [AIR 1997 SC 3011] held in the context of criminal proceedings that "where such conduct amounts to a specific offence under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims or witnesses are not victimised or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer". However, Smt.H.Jayalakshmi herself sought for her own

transfer and she was transferred from the Department of Directorate of Vigilance and Anti-Corruption and now working in the Commercial Crime Investigation Wing.

21. To summarise the legal contentions raised by the learned counsel appearing for Smt.H.Jayalakshmi, which are narrated as under:-

The initial written complaint given by Smt.H.Jayalakshmi on 4.8.2018 categorically states as follows:-

"I am lodging this complaint against the activities of Thiru Murugan, IPS whose behaviour are fit to be dealt by law provisions laid down by The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It defies sexual harassment as laid down by the Supreme Court in Vishakha and Others vs. State of Rajasthan case.

Unable to work under prevailing circumstances which has caused me anxiety, physical and mental stress, I have entered on medical leave.

I seek to initiate criminal action against Thiru Murugan, IPS and seek your protection from him to establish any form of communication with me or my immediate family members or friends.

I also request you to issue direction to concern to protect my privacy and details of my complaint from Right to Information Act, as laid down by provisions of law."

22. Reiterating the original complaint dated 4.8.2018, Smt.H.Jayalakshmi once again sent a representation to Smt.Seema Agrawal, IPS/Presiding Officer, Internal Complaints Committee, Chennai dated 27th August, 2018. In the said representation also, Smt.H.Jayalakshmi reiterated her request to initiate criminal action against Dr.S.Murugan as follows:-

"D. Considering the culpability of the Act of the respondent, it is also incumbent on the Establishment to assist the " aggrieved woman" Officer to initiate criminal proceedings under Sections 341, 354 and 509 IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 under the enabling provision of Section 19(g) of THE SEXUAL HARASSMENT OF WOMEN AT WORKPLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013.

As sought in my complaint dated 4.8.2018, it is requested that the complaint may be forwarded to the appropriate police authorities for taking criminal action also, apart from enquiry by the ICC, since it discloses a cognizable offence."

23. Citing the above specific complaint made by Smt.H.Jayalakshmi, the learned counsel for Smt.H.Jayalakshmi solicited the attention of this Court that Section 19(g) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, reads as under:-

"19(g) To provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force."

24. When the victim/complainant made a specific request in her written complaint that a criminal action is to be initiated, there is no irregularity in registering a complaint through CBCID Wing of the Police Department. The person against whom the sexual harassment complaint is made is not an ordinary level of official. Dr.S.Murugan is holding the higher position of Inspector General of Police and therefore, there is a likelihood of influencing the other subordinate police officials in the matter of investigation and also to conduct enquiry in an unbiased manner. Thus, the case was directed to be registered by CBCID Wing of the Police Department, who in turn had registered an FIR and on account of the interim order granted, the investigations are stalled in entirety.

25. The learned counsel for Smt.H.Jayalakshmi reiterated that under Section 19(g) of the Act, it is the duty of the employer and therefore, they have no option except to register an First Information Report and proceed with the investigation as per the Code of Criminal Procedure. Thus, the writ petition filed by Dr.S.Murugan is liable to be dismissed.

26. Distinguishing the ingredients of Section 11 and Section 19(g) of the Act, the learned counsel for Smt.H.Jayalakshmi argued that Section 11 is to conduct an enquiry by the Internal Complaints Committee and thereafter, if any prima facie case is made out for registering of a criminal case under Indian Penal Code, then forward the complaint to the police for registration of First Information Report. The said question does not arise in view of the fact that the complainant herself is a Senior Level Police Officer and has knowledge about the provisions of the Indian Penal Code and the nature of the offences committed against her and with this knowledge, she made a specific request in her written complaint dated 4.8.2018

stating that a criminal action also is to be taken by the competent authority.

27. Therefore, such a request, if any, made by the complainant, having aware of the nature of the offences committed against her, then Chapter VI of the Act would be attracted and it became the duty of the employer under Section 19(g) to provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force. These two limbs of the provisions of the Act, must be harmoniously interpreted to facilitate the complainant to redress her grievances in the manner known to law. Therefore, Dr.S.Murugan cannot take any undue advantage of these provisions contemplated under Section 11 of the Act, by stating that an enquiry is a precondition for the purpose of registering an FIR by the police under the Indian Penal Code.

28. The learned counsel, appearing on behalf of Smt.H.Jayalakshmi states that she is willing to pursue both the criminal complaint already registered in FIR No.2 of 2018 on the file of CBCID Chennai as well as the enquiry to be conducted by the Internal Complaints Committee constituted by the authorities concerned.

29. In proceedings dated 4.10.2018, the Internal Complaints Committee was reconstituted and the following persons are appointed as Committee Members:-

"6. Accordingly, the Internal Committee formed vide fourth reference is reconstituted with the following officials by including a third party member, as per Section 4 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013:

1.	Tmt.Srilakshmi Prasad, IPS, Additional Director General of Police, Vigilance, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai.	Presiding Officer
2.	Tmt.P.Kannammal, IPS, SP, CR, DVAC, Chennai	Member
3.	Tmt.M.Kanaga, Manager, Confidential Branch, DVAC, Chennai.	Member
4.	Tr.S.Ramados, DSP, HQRS, DVAC, Chennai.	Member
5.	Tmt.K.M.Valsalakumari, Advocate, MHC.	

30. Smt.H.Jayalakshmi has filed the copy of the statement sent to CBCID on 12.2.2019 before this Court reiterating her complaint and further has stated that even in her original complaint dated 4.8.2018, she has clearly stated that a criminal action also must be initiated against Dr.S.Murugan. Such a request was reiterated once again in her letter dated 27.8.2018 to the Presiding Officer, Internal Complaints Committee. Thus, she stands by her complaint and she states that the allegations are very much true and a thorough impartial and fair enquiry is certainly imminent for getting justice.

31. The learned Advocate General, appearing on behalf of the State, made a submission that the State on receipt of the written complaint from Smt.H.Jayalakshmi acted promptly and the complaint dated 4.8.2018 was dealt in accordance with the provisions of the Women Harassment Act. As per the request of the Superintendent of Police Smt.H.Jayalakshmi her medical leave was recommended by the Director of DVAC and thereafter, Smt.H.Jayalakshmi/complainant was transferred at her request to the post of Superintendent of Police, Commercial Crime Investigation Wing, CBCID, Chennai. Thus, the request of the complainant Smt.H.Jayalakshmi was favourably considered and she was transferred at her own request and further action was also initiated based on the written complaint given by Smt.H.Jayalakshmi on 4.8.2018.

32. The learned Advocate General further states that as the complainant herself was the Chairperson of the Internal Complaints Committee of the DVAC, another Committee was constituted under the Chairmanship of Smt.A.Radhika, IPS, Deputy Director of DVAC, Chennai, against the said Committee an objection was raised. Further objection is also raised on the ground that the Senior Level Official is to be appointed, so as to conduct a fair enquiry as the person against whom the complaint is made is an I.G. level Police Officer. Dr.S.Murugan is holding the post in the rank of Inspector General of Police. Thus, the request was considered accepting the ground and the Director of Vigilance and Anti-Corruption in proceedings dated 4.10.2018 constituted the Internal Complaints Committee consists of the following persons:-

(i) Tmt.Srilakshmi Prasad, IPS, Additional Director General of Police, Vigilance, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai as the Presiding Officer;

(ii) Tmt.P.Kannammal, IPS, SP, CR, DVAC, Chennai as a Member;

(iii) Tmt.M.Kanaga, Manager, Confidential Branch, DVAC, Chennai as a Member;

(iv) Thiru S.Ramadoss, DSP, HQRS, DVAC, Chennai as a

Member; and

(v) Tmt.K.M.Valsalakumari, Advocate, Madras High Court.

An outsider also has been included in the Committee as a Member and therefore, the said Committee should be allowed to continue the enquiry in accordance with the provisions contemplated under the Sexual Harassment Act.

33. The learned Advocate General is of an opinion that the newly constituted Committee further directed for registration of a criminal case as per the request of the complainant and accordingly, the CBCID Wing of the Police, registered a criminal complaint and on account of the stay granted in the writ petitions, the investigations are kept in abeyance.

34. The learned Advocate General solicited the attention of this Court with reference to Sections 10, 11 and 19 (g) of the Sexual Harassment Act. It is contended that the case was directed to be registered under the Indian Penal Code and an FIR has already been registered. This apart, the complaint submitted by the complainant was duly considered for conducting further enquiry in accordance with the procedures and the Committee constituted is headed by a Senior Woman Police Officer in the rank of the Director General of Police. Thus, there is no infirmity in respect of the constitution of the Internal Complaints Committee by the Competent Authority. Thus, the State is ready and willing to proceed with the enquiry by following the procedures contemplated in order to cull out the truth and pass all such necessary orders with reference to the provisions of the Act.

35. The learned Senior Counsel, appearing on behalf of Dr.S.Murugan, made a submission that the ICC was constituted by DVAC on 1.7.2013. Smt.H.Jayalakshmi was posted as Superintendent of Police, DVAC on 30.6.2016 and she became the Chairperson of ICC. On 3.8.2018, a oral complaint was given by Smt.H.Jayalakshmi and the written complaint was submitted on 4.8.2018 i.e., on the next day. With reference to the facts and circumstances, the learned Senior Counsel appearing on behalf of Dr.S.Murugan contended that the constitution of the Committee itself is not in accord with law.

36. The writ petition filed by Dr.S.Murugan in WP No.25213 of 2018, wherein it is stated that the fifth respondent Committee/ICC in the proceedings dated 30.8.2018 directed the CBCID to register a criminal case against Dr.S.Murugan without having any jurisdiction. Thus, an unilateral decision taken by the ICC to register a criminal complaint against Dr.S.Murugan by the CBCID is untenable and liable to be scrapped. It is further contended that the very constitution of the Committee/ICC in

vide proceedings dated 17.8.2018 itself is without jurisdiction. However, the said Committee constituted in proceedings dated 17.8.2018 was subsequently reconstituted with the Chairmanship of Tmt. Srilakshmi Prasad, IPS, in the rank of the Additional Director General of Police, Vigilance, Tamil Nadu Generation and Distribution Corporation Ltd., Chennai.

37. The learned counsel appearing for Dr.S.Murugan raised a ground that the Internal Complaint Committee is not entrusted with nor having any power to refer the complaint to the CBCID for registration of an FIR with reference to Section 11(1) of the Women Harassment Act. Relying on Section 11(1) of the Women Harassment Act, the learned Senior Counsel advanced his arguments by stating that only after conducting a preliminary enquiry if the Internal Complaints Committee arrived a conclusion that a criminal offence is made out under any of the provisions of the Indian Penal Code, then alone a direction can be issued to register an FIR.

38. However, the present Committee constituted had taken an unilateral decision and directed the CBCID to register a complaint under the Indian Penal Code. Thus, such a complaint is registered without any jurisdiction and the Internal Complaints Committee has no authority to direct the CBCID to register the complaint with reference to Section 11(1) of the Women Harassment Act. On these grounds, the learned Senior Counsel for Dr.S.Murugan submitted that Second Proviso to Section 11 of the Act and the Rules 7(2) and 7(4) of the Rules, which mandates an opportunity of hearing and representation be afforded to Dr.S.Murugan before taking any decision for registration of a criminal complaint. Second Proviso to Section 11 of the Act states that where both the parties are employees, the parties shall, during the course of inquiry, be given an opportunity of being heard and a copy of the findings shall be made available to both the parties enabling them to make representation against the findings before the Committee. Rules 7(2) and 7(4) states as follows:-

"7(2). On receipt of the complaint, the Complaints Committee shall send one of the copies received from the aggrieved woman under sub-rule (1) to the respondent within a period of seven working days."

"7(4). The Complaints Committee shall make inquiry into the complaint in accordance with the principles of natural justice."

39. Relying on the above provisions of the Act and the Rules, the learned Senior Counsel appearing on behalf of Dr.S.Murugan, contended that none of the procedures contemplated

under the Act were followed before issuing a direction to register a complaint under the Indian Penal Code by the CBCID. Thus, the order dated 17.8.2018 passed by the third respondent/Director General of Police as well as the order of the fifth respondent/Internal Complaints Committee dated 30.8.2018, directing the CBCID to register a criminal complaint are liable to be quashed. The non-adherence of the mandatory rules provided under the Proviso to Section 11 and the Rules 7 (2) and 7(4) would vitiate the entire proceedings as well as the FIR registered against Dr.S.Murugan.

40. It is further contended that the order dated 30.8.2018 issued by the Internal Complaints Committee had not been served to Dr.S.Murugan. Therefore, for all these reasons, these orders are to be quashed as well as the consequential registration of an FIR is liable to be scrapped.

The arguments advanced by the respective learned counsels, appearing for the parties to the lis on hand, are considered by this Court carefully.

41. Violence against women is perhaps most shameful human rights violation and it is perhaps the most pervasive. It knows no boundaries of geography, culture or wealth. As long as it continues, we cannot claim to be making real progress towards equality, development and peace.

42. The concept of equality of status and the resolutions adopted by "We the people of India" in the preamble of the Constitution shall be achieved only when all citizen equally respect everybody without any discrimination on gender basis. Equal protection of laws is the constitutional mandate.

43. Importantly, the fundamental duties enunciated under Article 51-A, Clause (e) states that "to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional to sectional diversities; to renounce practices derogatory to the dignity of women". It is the fundamental duty of every citizen of this Great Nation, to renounce the practices derogatory to the dignity of women.

44. When such being the fundamental duty of a citizen, this Court is of an opinion that the responsibility of the higher Police Officials stands in a higher footing. The responsible Police Officials are the law implementing authorities of the law of the land. When the Police Force is responsible and accountable for maintenance of Law and Order, prevention of crimes, offences against women and all other antisocial activities in this Great Nation, the fundamental

duties of a citizen, who is holding the higher post of a Police Official is to be construed as mandate under the Constitution.

45. An ordinary citizen of this Great Nation may plead ignorance of laws, which itself is impermissible. However, the Higher Police Officials in the present case, serving in the rank of Inspector General of Police as well as the Superintendent of Police can never be allowed to plead ignorance of laws or ignorance of responsibility and accountability to be shown by virtue of their status as higher level Police Officials.

46. When the fundamental duties itself enumerates that to renounce the practices derogatory to the dignity of the women, Police Officials are certainly bound by that principles and this apart, sexual harassments are offences under various Statutes.

47. "It is not enough to focus on the harm to women as sexual beings; the law must also focus on women's systematic disadvantages ... and facilitate women's equal empowerment ... as creative, committed workers. We need an account of hostile work environment harassment that highlights its dynamic relation to larger forms of general hierarchy at work."

48. Feminism arose as a result of unequal laws created by men through whom women were denied certain fundamental rights. Simone de Beauvoir, a French philosopher, has been the most important feminist thinker. She has shown as how from the earliest times men enslaved women due to their physical structure. Women, as it happened generally became weak due to repeated child birth, so they were thought to be less important than the male members of the group.

49. This inferior and unequal status of women is the main reason behind sexual violence behind them.

50. While gender violence is as old as humanity it is only in the past two decades that it has been publically recognized, systematically structured and legislated against to a significant degree. In 1990's such violence was finally admitted on international level with recognition of human rights issue. Internationally, the World Conference on Human Rights (1993) at Vienna, which was one of the main turning points in women's right declared that human rights of women and of the girl child are inalienable, integral and indivisible part of universal human rights. The Vienna Declaration specifically condemned gender based violence and all forms of sexual harassment and exploitation. The Conference concluded that:

"The human rights of women and of the girl child are an inalienable, integral and

indivisible part of universal human rights. The full and equal participation of women in political, civil, economic and social and cultural life at national, regional and international levels, and eradication of all forms of discrimination on grounds of sex are primary objectives of the international community.... The world governmental and non-governmental organisations to intensify their efforts for the protection on human rights urges governments, institutions, intergovernmental and non-governmental organisations to intensify their efforts for the protection and promotion of human rights of women and the girl-child."

51. Sexual Harassment at the work place is an extremely sensitive issue. For most it is taboo, due to the limitations of traditional gender hierarchies.

52. However, keeping in mind the principles of our great Nation, the Government thought fit of enacting laws in this regard and accordingly, the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 was enacted.

53. The Act provides protection against the sexual harassment for woman at workplace, for complaints of sexual harassment and matters connected therewith and incidental thereto.

54. The statement of objects and reasons are extracted hereunder:

"Statement of Objects and Reasons:

Sexual harassment at a workplace is considered violation of women's right to equality, life and liberty. It creates an insecure and hostile work environment, which discourages women's participation in work, thereby adversely affecting their social and economic empowerment and the goal of inclusive growth.

2. The Constitution of India embodies the concept of equality under Articles 14 and 15 and prohibits discrimination on grounds of religion, race, caste, sex or place of birth or any of them. Article 19(1) (g) gives the fundamental right to all citizens to practise any profession, or to carry on any occupation, trade or business.

This right pre-supposes the availability of an enabling environment for women, which is equitable, safe and secure in every aspect. Article 21, which relates to the right to life and personal liberty, includes the right to live with dignity, and in the case of women, it means that they must be treated with due respect, decency and dignity at the workplace.

3. Article 11 of the Convention on Elimination of All Forms of Discrimination (CEDAW), to which India is a party, requires State parties to take all appropriate measures to eliminate discrimination against women in the field of employment. In its General Recommendation No.19(1992), the United Nations Committee on CEDAW further clarified that equality in employment can be seriously impaired when women are subjected to gender-specific violence, such as sexual harassment at the workplace. India's commitment to protection and promotion of women's constitutional rights as well as respect for its obligations under various international treaties is unequivocal.

4. With more and more women joining the workforce, both in organized and unorganized sectors, ensuring an enabling working environment for women through legislation is felt imperative by the Government. The proposed legislation contains provisions to protect every woman from any act of sexual harassment irrespective of whether such woman is employed or not.

5. The Supreme Court of India in the case of Vishaka & Ors. V. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation.

6. It is, thus, proposed to enact a comprehensive legislation to provide for safe, secure and enabling environment to every woman, irrespective of her age or employment status (other than domestic worker working at home), free from all forms

of sexual harassment by fixing the responsibility on the employer as well as the District Magistrate or Additional District Magistrate or the Collector or Deputy Collector of every District in the State as a District Officer and laying down a statutory redressal mechanism.

7. The notes on clauses explain in detail the various provisions contained in the Bill.

8. The Bill seeks to achieve the above objectives."

55. The term "aggrieved woman" is defined in Section 2 (a) of the Act as below:

(a) "aggrieved woman" means - (i) in relation to a workplace, a woman, of any age whether employed or not, who alleges to have been subjected to any act of sexual harassment by the respondent;

(ii) in relation to a dwelling place or house, a woman of any age who is employed in such a dwelling place or house."

56. The term "employer" was defined under Section 2(g) of the Act. The term "Internal Committee" means an Internal Committee constituted under Section 4 of the Act. Thus, the Internal Committee should be constituted pursuant to the requirements stipulated under Section 4 of the Act.

57. Section 3 deals with "Prevention of sexual harassment". Section 4 Chapter II deals with constitution of Internal Committee, which is relevant for the case on hand.

58. Section 4 reads as follows:-

"4. Constitution of Internal Complaints Committee - (1) Every employer of a workplace shall, by an order in writing, constitute a Committee to be known as the "Internal Complaints Committee".

Provided that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

(2) The Internal Committee shall consist of the following members to be nominated by the employer, namely:-

(a) a Presiding Officer who shall be a

woman employed at a senior level at workplace from amongst the employees: Provided that in case a senior level woman employee is not available, the Presiding Officer shall be nominated from other offices or administrative units of the workplace referred to sub-section (1):

Provided further that in case the other offices or administrative units of the workplace do not have a senior level woman employee, the Presiding Officer shall be nominated from any other workplace of the same employer or other department or organization;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge;

(c) one member from amongst nongovernmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Provided that at least one-half of the total Members so nominated shall be women.

(3) The Presiding Officer and every Member of the Internal Committee shall hold office for such period, not exceeding three years, from the date of their nomination as may be specified by the employer.

(4) The Member appointed from amongst the non-governmental organisations or associations shall be paid such fees or allowances for holding the proceedings of the Internal Committee, by the employer, as may be prescribed.

(5) Where the Presiding Officer of any Member of the Internal Committee,-

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, Such Presiding Officer or Member, as the case may be, shall be removed from the Committee and the vacancy so

created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this section.

This clause provides for the constitution of Internal Complaints Committee. It provides that every employer of a workplace shall constitute, by an order in writing, a Committee to be known as the "Internal Complaints Committee". It further provides that where the offices or administrative units of the workplace are located at different places or divisional or sub-divisional level, the Internal Committee shall be constituted at all administrative units or offices.

It also provides that employer shall nominate members of the Internal Committee which shall consist of-

(a) a Presiding Officer who shall be woman employed at a senior level at workplace from amongst the employees;

(b) not less than two Members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge and

(c) one member from amongst non-governmental organisations or associations committed to the cause of women or a person familiar with the issues relating to sexual harassment. Out of these members at least onehalf shall be nominated from amongst women.

It also provides that the term of the Presiding Officer and every Member of the Internal Committee shall be specified by the employer which shall not exceed three years from the date of their nomination and their fees or allowances for holding the proceedings of the Internal Committee, as may be prescribed by rules made in the behalf, shall be paid by the employer.

It also provides that the Presiding Officer or any Member of the Internal Committee shall be removed from the Committee, if he -

(a) contravenes the provisions of section 16; or

(b) has been convicted for an offence or an inquiry into an offence under any law for the time being in force is pending against him; or

(c) he has been found guilty in any

disciplinary proceedings or a disciplinary proceeding is pending against him; or

(d) has so abused his position as to render his continuance in office prejudicial to the public interest, and the vacancy so created or any casual vacancy shall be filled by fresh nomination in accordance with the provisions of this clause."

59. Chapter IV deals with "complaint of sexual harassment" under Section 9 a complaint to be filed. Section 10 deals with "Conciliation" and Section 11 provides "Inquiry into complaint".

60. The "action to be taken during the pendency of enquiry" is contemplated in Chapter V Section 12 and Section 13 deals with Inquiry report. Section 14 prescribes "Punishment for false or malicious complaint and false evidence" and Chapter VI Section 19 deals with the Duties of employer.

61. The Supreme Court of India in the case of Vishaka and Others Vs. State of Rajasthan & Ors. [1997 (7) SCC 323], also reaffirmed that sexual harassment at workplace is a form of discrimination against women and recognised that it violates the constitutional right to equality and provided guidelines to address this issue pending the enactment of a suitable legislation. While dealing with various aspects of the matter, the Hon'ble Supreme Court held as follows:-

Page No. 247 Paragraph No.6:

"5. Apart from Article 32 of the Constitution of India, we may refer to some other provisions which envisage judicial intervention for eradication of this social evil. Some provisions in the Constitution in addition to Articles 14, 19(1)(g) and 21, which have relevance are:

Article 15: नित्यमेव जयते

"15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth -

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place or birth or any of them.

(2) * * *

(3) Nothing in this article shall prevent the State from making any special provision for women and children."

Article 42:

"42. Provision for just and humane

conditions of work and maternity relief. The State shall make provision for securing just and humane conditions of work and for maternity relief."

Article 51-A:-

"51-A. Fundamental duties: It shall be the duty of every citizen of India. (a) to abide by the Constitution and respect its deals and institutions,,

(b)-(d)

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;"

6. Before we refer to the international conventions and norms having relevance in this field and the manner in which they assume significance in application and judicial interpretation, we may advert to some other provisions in the Constitution which permit such use. These provisions are:

Article 51:

"51. Promotion of international peace and security. The State shall endeavour to (a)- (b) (C) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and

Article 253:

"253. Legislation for giving effect to international agreements. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

Seventh Schedule:

"List 1 - Union List 14. Entering into treaties agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

Page No. 249 Paragraph No.11:

"11. The obligation of this Court under Article 32 of the Constitution for

the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of judiciary envisaged in the Beijing Statement of Principles of the Independence of the Judiciary in the LAWASIA region. These principles were accepted by the Chief Justices of Asia and the Pacific at Beijing in 1995 as those representing the minimum standards necessary to be observed in order to maintain the independence and effective functioning of the judiciary. The objectives of the judiciary mentioned in the Beijing Statement are:

"Objectives of the Judiciary:

10. The objectives and functions of the Judiciary include the following:

(a) to ensure that all persons are able to live securely under the Rule of Law;

(b) to promote, within the proper limits of the judicial function, the observance and the attainment of human rights; and

(c) to administer the law impartially among persons and between persons and the State."

Page No. 250 Paragraph No.12:

12. Some provisions in the 'Convention on the Elimination of All Forms of Discrimination against Women', of significance in the present context are:

Article 12 :

"1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on basis of equality of men and women, the same rights, in particular:

(a) The right to work as an inalienable right of all human beings;

xxxx xxxxx xxxx

(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

xxx xxxxx xxxxx

Article 24:

"States Parties undertake to adopt all necessary measures at the national level

aimed at achieving the full realization of the rights recognised in the present Convention."

Page No. 252 to 254 Paragraph No.17:

17. The GUIDELINES and NORMS prescribed herein are as under:-

HAVING REGARD to the definition of 'human rights' in Section 2(d) of the Protection of Human Rights Act, 1993, TAKING NOTE of the fact that the present civil and penal laws in India do not adequately provide for specific protection of women from sexual harassment in work places and that enactment of such legislation will take considerable time, It is necessary and expedient for employers in work places as well as other responsible persons or institutions to observe certain guidelines to ensure the prevention of sexual harassment of women:

1. Duty of the Employer or other responsible persons in work places and other institutions: It shall be the duty of the employer or other responsible persons in work places or other institutions to prevent or deter the commission of acts of sexual harassment and to provide the procedures for the resolution, settlement or prosecution of acts of sexual harassment by taking all steps required.

2. Definition: For this purpose, sexual harassment includes such unwelcome sexually determined behaviour (whether directly or by implication) as: a) physical contact and advances; b) a demand or request for sexual favours; c) sexually coloured remarks; d) showing pornography; e) any other unwelcome physical verbal or non-verbal conduct of sexual nature. Where any of these acts is committed in circumstances where under the victim of such conduct has a reasonable apprehension that in relation to the victim's employment or work whether she is drawing salary, or honorarium or voluntary, whether in government, public or private enterprise such conduct can be humiliating and may constitute a health and safety problem. It is discriminatory for instance when the woman has reasonable grounds to believe

that her objection would disadvantage her in connection with her employment or work including recruiting or promotion or when it creates a hostile work environment. Adverse consequences might be visited if the victim does not consent to the conduct in question or raises any objection thereto.

3. Preventive Steps: All employers or persons in charge of work place whether in the public or private sector should take appropriate steps to prevent sexual harassment. Without prejudice to the generality of this obligation they should take the following steps: (a) Express prohibition of sexual harassment as defined above at the work place should be notified, published and circulated in appropriate ways. (b) The Rules/ Regulations of Government and Public Sector bodies relating to conduct and discipline should include rules/regulations prohibiting sexual harassment and provide for appropriate penalties in such rules against the offender. (c) As regards private employers steps should be taken to include the aforesaid prohibitions in the standing orders under the Industrial Employment (Standing Orders) Act, 1946. (d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work places and no employee woman should have reasonable grounds to believe that she is disadvantaged in connection with her employment.

4. Criminal Proceedings: Where such conduct amounts to a specific offence under the Indian Penal Code or under any other law the employer shall initiate appropriate action in accordance with law by making a complaint with the appropriate authority. In particular, it should ensure that victims, or witnesses are not victimized or discriminated against while dealing with complaints of sexual harassment. The victims of sexual harassment should have the option to seek transfer of the perpetrator or their own transfer.

5. Disciplinary Action: Where such conduct amounts to mis-conduct in employment as defined by the relevant service rules, appropriate disciplinary action should be initiated by the employer in accordance with those rules.

6. Complaint Mechanism: Whether or not such conduct constitutes an offence under law or a breach of the service rules, an appropriate complaint mechanism should be created in the employer's organization for redress of the complaint made by the victim. Such complaint mechanism should ensure time bound treatment of complaints.

7. Complaints Committee: The complaint mechanism, referred to in (6) above, should be adequate to provide, where necessary, a Complaints Committee, a special counsellor or other support service, including the maintenance of confidentiality. The Complaints Committee should be headed by a woman and not less than half of its member should be women. Further, to prevent the possibility of any under pressure or influence from senior levels, such Complaints Committee should involve a third party, either NGO or other body who is familiar with the issue of sexual harassment. The Complaints Committee must make an annual report to the government department concerned of the complaints and action taken by them. The employers and person in charge will also report on the compliance with the aforesaid guidelines including on the reports of the Complaints Committee to the Government department.

8. Workers' Initiative: Employees should be allowed to raise issues of sexual harassment at workers meeting and in other appropriate forum and it should be affirmatively discussed in Employer-Employee Meetings.

9. Awareness: Awareness of the rights of female employees in this regard should be created in particular by prominently notifying the guidelines (and appropriate legislation when enacted on the subject) in suitable manner.

10. Where sexual harassment occurs as a result of an act or omission by any third

party or outsider, the employer and person in charge will take all steps necessary and reasonable to assist the affected person in terms of support and preventive action.

11. The Central/State Governments are requested to consider adopting suitable measures including legislation to ensure that the guidelines laid down by this order are also observed by the employers in Private Sector.

12. These guidelines will not prejudice any rights available under the Protection of Human Rights Act, 1993."

62. Thus, all the aspects in this regard are unambiguously provided under the Act itself. Such being the provisions enacted for the welfare and protection of women at workplace, it is the duty of the employer to ensure that such an environment is created for the purpose of creating the society in which women can work in peace and put their efforts for the development of our great nation and contribute their services.

63. With reference to the specific ground raised by the learned Senior Counsel appearing on behalf of Dr.S.Murugan, this Court is bound to consider the scope of the provisions. Undoubtedly, Section 10 deals with conciliation. In the present case, the matter travelled beyond the scope of conciliation and the complainant in clear terms expressed her consent to initiate criminal action against Dr.S.Murugan. Section 11 denotes inquiry into the complaint. Undoubtedly, an enquiry by the Internal Complaints Committee is mandatory to initiate all further actions under Section 11 of the Act. If the Committee after conducting an enquiry into the complaint in accordance with the provisions of the Service Rules applicable to the respondents found that there is a prima facie case exists, then forward the complaint to the Police within the period of seven days for registering a case under Section 509 under the Indian Penal Code and any other relevant provisions of the said Code were applicable.

64. Section 11 of the Act contemplates an enquiry to be conducted before forwarding the complaint and for registration of a criminal complaint under the Indian Penal Code. The very object of Section 11 is to ensure that no criminal complaint is registered before conducting an enquiry in respect of the complaint made against any person or a co-employee or the higher official. When Section 11 specifically states that an enquiry is to be conducted before forwarding the complaint to the police for registration of a criminal complaint, this Court cannot brush aside the independent

provisions enumerated in Chapter VI of the Sexual Harassment Act.

65. Chapter VI of the Sexual Harassment Act deals with duties of an employer. Section 19(g) of the Act enumerates that every employer shall provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code (45 of 1860) or any other law for the time being in force.

66. Thus, two distinct and different aspects are to be considered by this Court.

67. Firstly, if a complaint is filed by any aggrieved woman employee or a person, the employer must constitute an Internal Complaints Committee in consonance with Section 4 of the Act. The Internal Complaints Committee so constituted may suggest for a conciliation to be arrived between the parties with reference to Section 10 of the Sexual Harassment Act. If there is no possibility of conciliation under Section 10, then the Internal Complaints Committee must conduct an enquiry under Section 11 of the Women Harassment Act.

68. Section 11 contemplates that on conducting the enquiry, if the Internal Complaints Committee found a prima facie case against the person against whom such a complaint is made, then forward the complaint to the police within the period of seven days for registering the case under Section 509 of the Indian Penal Code. Chapter VI of the Sexual Harassment Act, is to be read harmoniously as well as independently. The duties of the employer under Chapter VI of the Act, enumerates that provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian penal Code or any other law for the time being in force.

69. Section 19(g) of the Act is an enabling provision for an aggrieved woman to straight away prefer a complaint and if such an aggrieved person has chosen to do so, then it is the duty of the employer to provide assistance to the aggrieved woman. Thus, this provision is to be interpreted constructively and independently with reference to the purpose and object sought to be achieved through the enactment.

70. The Constitutional Courts time and again ruled that the statement of the sexual harassment victim or the statement of a woman under the pressure of sexual harassment is to be considered as valid first information. For the purpose of registering the criminal case and to proceed with the investigation, the statement of an aggrieved woman against such heinous offences are to be taken into account as the first evidence in view of the fact that the social and cultural

background prevailing in our Great Nation is that, where the woman in normal circumstances would not prefer such a complaint of sexual harassment against any person. The statements are to be taken for consideration by the officials concerned/competent authorities for the purpose of conducting investigation or enquiry in accordance with law.

71. Examining the case on hand, the complainant Smt.H.Jayalakshmi is serving in the rank of the Superintendent of Police, who is an IPS rank official. The complaint is made against the Inspector General of Police rank official. The complainant, who is also a Senior Police Officer, knows the consequences and other impacts in respect of the complaint made by her. When she is the responsible higher level Police Officer serving in the Department for more than 15 years, this Court is of an undoubted opinion that such a complaint filed by a responsible higher Police Officials can never be brushed aside or kept aside in a casual manner. Such a complaint must be looked into seriously and appropriate actions must be taken by the authorities concerned. Thus, this Court has no hesitation in coming to a definite conclusion that the complaint cannot be taken so lightly and the seriousness of the complaint must be realised by the State as well as by the other Superior Officials.

72. This Court has shown an anxious consideration that if a higher level Woman IPS Officer is unable to initiate action in respect of such allegations, then the plight of the woman employees, who all are working in subordinate cadres in various offices, organisations and Government Departments are certainly a great concern for everybody.

73. This Court has carefully gone through the affidavit filed by Dr.S.Murugan in support of the writ petition filed by him in WP No.25213 of 2018. He has stated in the affidavit that the complainant has given a false complaint against him alleging sexual harassment. The complaint is filed with ulterior motive. It is further stated that such a complaint is filed to sabotage his career and reputation. However, the writ petitioner has not narrated the facts, circumstances or events relating to the allegations set out in clear terms in the complaint dated 4.8.2018.

74. May that it be. Dr.S.Murugan would have thought that all such grounds are to be enquired into and he would be provided with an opportunity by the ICC to rebut all those contentions. However, the manner in which the defence is made in the writ petition in respect of the complaint is also to be looked into, to draw an inference that the complaint cannot be brushed aside or neglected in a casual manner.

75. Straight reading of the provisions of the Sexual Harassment Act, Section 19(g) is unambiguous in respect of the assistance to be provided by the employer. It stipulates that it is the duty of the employer to provide assistance to the woman, if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force. The very object of incorporating such a provision as a duty to the employer by the Legislators are that there may be some circumstances for a woman to realise that the offence of sexual harassment committed by a person is of such a nature warranting a criminal action. A woman, who is inside the official chamber of a higher level official alone may have the knowledge about the nature of the offence committed by the person against whom the complaint is made. That is the reason why the Courts have consistently held that the statement of a woman under those circumstances in a private place must be taken as it is as a first information and appropriate actions and investigations must be set in motion.

76. Let us consider the circumstances. A Senior Police Official is calling the subordinate officials for discussion about the official files very frequently and even in an unusual manner. The woman police official is duty bound to go to the Chambers of the higher official and explain the official's duties and responsibilities performed by them. In those circumstances, if the higher official advances certain sexual acts, then it may be a surprise or it may be a compelling circumstance for the woman employee to defend herself. She may be in an utter confusion. What so high position of the woman officer is. She may not be in a position to defend quickly in view of the fact that she will be having concern about her career and other consequences. Thus, she required some breathing time to react.

77. In the present case, the complainant, who is an Officer in the rank of Superintendent of Police, had immediately reacted and went out from the chambers of Dr.S.Murugan as per the complaint dated 4.8.2018.

78. It is pertinent to note that an immediate information was provided to the higher official by the complainant. On the next day i.e., on 4.8.2018, a written complaint was also submitted for all further actions.

79. Let us now look into the nature of the complaint submitted by Smt.H.Jayalakshmi. The complaint submitted by Smt.H.Jayalakshmi reads as under:-

"Strictly confidential

Date: 04.08.2018

From

H.Jayalakshmi,
Superintendent of Police,
Directorate of Vigilance and Anti-Corruption,
Chennai.

To
The Director,
Vigilance and Anti-Corruption,
Chennai.

Subject: Complaint on sexual harassment
(provisions attracting Visaka guidelines)
against Thiru Murugan, IPS, Joint Director,
Directorate of Vigilance and Anti-Corruption,
Chennai.

Respected Sir,

With deepest anguish and agony, I am
writing this complaint to you.

I am levelling charges of harassment and
intimidation against Thiru Murugan, IPS, Joint
Director, Directorate of Vigilance and Anti-
Corruption, Chennai. I am posted as
Superintendent of Police at Chennai since
30.8.2016 and I report to him from the date of
his assumption of office on 14.7.2017.

I am committed to work with excellence
and efficient and hold an impeccable integrity
throughout my service in Police department. I
have always accomplished my task and duties to
utmost satisfaction of my superiors and
sincerely discharge my duties to my conscience
and satisfaction of my superiors.

I believe that since Thiru Murugan, IPS
assured office as Joint Director, DVAC, I
noticed that his behaviour towards me was
unprofessional.

After Thiru Murugan, IPS joined DVAC, he
used to call me during night hours and since
he was my superior, I respond to him and
update him about the surprise checks and
office work. But very sooner, I observed that
his night calls were unprofessional since he
posing questions too personal and close to my
personal life. Hence when I understand that
there was no other office work to be reported,
I started avoiding attending his voice calls
and if any situation warrant to keep him
posted, I send him message pertaining to my
office work.

After this, Thiru Murugan, IPS often
called me to his room at office separately in
name of "discussion of office files", and then

his conversation will turn on my dressing, looks, and hairstyle. He personally made lewd and sarcastic comments and spoke in double meaning manner which was unwarranted and made me feel uncomfortable.

Since he was my superior, I refrained from responding to such talks and say him that, "Sir, There is nothing official to continue this and I have to leave your room to do my work."

Even after this incident, Thiru Murugan, IPS started taking photos of mine using the mobile whenever I enter his room and leave despite my strong objections but he would claim that he want to show them to his wife.

Though I am a police officer and want to handle this issue myself initially, by giving him time to understand his official capacity and hinted him that I totally disown his activities.

But after my action, Thiru Murugan, IPS used to shout at me over the office files seeking doubts despite I clarify them to him by phone and in person. He often mentioned in file noting as "Discuss" and return the files which I respond him whenever he needs clarification or briefing on those files.

Despite these, I found that Thiru Murugan, IPS has not changed his approach and rather than changing his attitude, he started to threaten me that, "I am in an official position to ensure that I would prevent you from getting into IPS since I can write adverse remarks in your Annual Confidential Report (ACR)." He indirectly meant to convey the message that he may act against me if I don't cooperate with him.

Thiru Murugan, IPS started making me calls for 20-25 times in whatsapp when I am not in office and particularly he calls me during late night hours.

Thiru Murugan, IPS being my Superior, I respond to his calls and questions on official lines. I believe I have maintained a good official relation of a professional police officer with him.

But in the instance began when Thiru Murugan, IPS went to attend training at National Police Academy at Hyderabad during the month of May and June 2018.

In an unusual manner, he kept calling me and asked my location details and started making unwanted conversations which made me anxious but avoided the calls. But I had to talk to him since he is my superior authority in office when he called under the garb of official matter.

Another instance was within the office, when Thiru Murugan, IPS often started calling me often to his room as a habit during afternoon post lunch which he prefer to take rest and others are not allowed to meet him. During those time, he attempt to make me sit in his room in the form of posing questions related to cases or seeking clarification on them. But gradually, he will ask too many personal questions, which make me feel uncomfortable.

When I respond and meet him, he would say that "There is no reason but just want to see you". I have faced this harassment very often and I have always excused myself when he expressed such desire.

Thiru Murugan, IPS activities, continued when I am on leave or on holiday attending my family commitments, and since his intention was not good, I expressed my dislike on his approach.

There were so many utterances, which I have not been mentioned here. I have maintained decency throughout my office and it prevented me to divulge these incidents to anyone these days.

Moreover, I was not prepared to face any kind of adverse publicity if I lodge such a complaint against Thiru Murugan, IPS since I am aware that ultimately women officers would be the sufferer at such instance of lodging complaint. It might even tarnish the image of the complainant. Hence I tolerated his activity and tried to get myself out of the DVAC.

To get out of this torture, I approached few senior officers to get me a transfer. I also sent a request to the DGP in this regard by Whatsapp. I did everything to handle this harassment smoothly without creating a controversy.

I have made the best of my tolerance in maintaining the dignity of women police

officer but Thiru Murugan, IPS took my tolerance level for granted and emboldened to harass me physically.

On 1.8.2018, Thiru Murugan, IPS at around 1.30 pm to 2 pm, while I was in my chamber, I was called by Thiru Murugan, IPS to his room. Once I entered he again started to talk personally and at one stage, he locked his room from inside. When I questioned his action, he approached near me and tried to "hug me physically".

I was deeply upset over his action and heavily shocked over his behaviour. I refrained to abide his desire and left his room.

After this incident, I came to a decision that, as a woman, I am no longer safer while serving under Thiru Murugan, IPS.

Thereafter, I met Tmt.Vidya Kulkarni, IPS and briefed the incident and with her support, we met the Director General of Police and IGP-Intelligence and orally brought to their knowledge that I am facing such intense harassment by Thiru Murugan, IPS.

I believe that I am not the only person who has undergone such harassment in the service by Thiru Murugan, IPS and sincerely want this nature of behaviour should be disowned and eradicated.

I have joined Police Service with deepest commitment and interest to serve the department and society. I have used the opportunities offered to me in various positions I have been posted all these years. I have greatest regards and devotion to my service but has never come across such mischievous actions during my service.

I experienced a mental and thereafter a physical sexual harassment attempt by Thiru Murugan, IPS, I am forced to lodge this complaint in writing seeking to initiate an enquiry against him and ensure safety of women is protected in letter and spirit in our glorified Police Force.

I am lodging this complaint against the activities of Thiru Murugan, IPS whose behaviour are fit to be dealt by law provisions laid down by The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. It defies sexual

harassment as laid down by the Supreme Court in the Vishakha and Others vs. State of Rajasthan (1997) case.

Unable to work under prevailing circumstances which has caused me anxiety, physical and mental stress, I have entered on medical leave.

I seek to initiate criminal action against Thiru Murugan, IPS and seek your protection from him to establish any form of communication with me or my immediate family members or friends.

I also request you to issue direction to concern to protect my privacy and details of my complaint from Right to Information Act, as laid down by provisions of law.

Thanking you Sir,

Yours sincerely,

s/d.....

4.8.18

H.Jayalaks

hmi

Superintendent of
Police

Mobile: 9444772222

Copy to: (Marked as strictly confidential)

- 1) Tmt.Girija Vaidiyanathan, IAS, State Chief Secretary, Government of Tamil Nadu, Chennai.
- 2) Thiru Mohan Pyare, IAS, State Vigilance Commissioner, Government of Tamil Nadu, Chennai.
- 3) Dr.Niranjan Mardi, IAS, State Home Secretary, Government of Tamil Nadu, Chennai.
- 4) The Director General of Police, Head of Police Force, Tamil Nadu Police, Chennai."

80. Pursuant to the complaint, an action was taken. Not satisfied with the constitution of the Internal Complaints Committee, the complainant met all the higher officials for fair and free enquiry to be conducted under the Harassment Act. The Higher Authorities immediately would have analysed the situation and acted promptly in constituting the higher level Committee. However, no such higher level Committee was constituted.

81. At the first instance, the Committee was constituted under the Chairmanship of Smt.A.Radhika, IPS, Deputy Director, DVAC. It is a mockery on the part of the authorities concerned to appoint an Officer in the rank of Deputy Director, DVAC as the Presiding Officer to conduct an enquiry against the

Inspector General of Police/Joint Director, working in the same Department of Vigilance and Anti-Corruption.

82. The police personnels, serving in the Department of Vigilance and Anti-Corruption, are expected to be prudent, vigilant and independent. Day-in and Day-out, they are dealing with corruption cases against the public servants under the Prevention of Corruption Act. Department of Vigilance and Anti-Corruption is prosecuting the public servants for their corrupt activities. These Police personnels are well versed with the process of investigation and the procedures of trial etc., conducted by the Criminal Courts. Such being the factum, one cannot expect that an officer in the rank of the Director of Vigilance and Anti-Corruption, treated the complaint lightly.

83. One can easily visualise that such an exercise is done either to frustrate the enquiry or to compromise or to settle the complaint. However, on objection, another Internal Complaints Committee was reconstituted with the Chairmanship of Smt.Srilakshmi Prasad, IPS in the rank of Director General of Police. This Court is of an opinion that the State, being a model employer, is bound to appoint a Committee consisting of higher officials in respect of the complaint submitted by the higher level women officials against their own higher officials. However, the present Committee constituted in proceedings dated 4.10.2018 under the Chairmanship of Smt.Srilakshmi Prasad, IPS in the rank of Director General of Police is in compliance with the statutory requirements so as to conduct an enquiry under the provisions of the Women Harassment Act. Thus, the reconstitution of the Committee issued in order dated 4.10.2018 is in consonance with the provisions of the Harassment Act. Thus, there is no impediment for the present Committee to proceed with the enquiry by providing opportunity to all the parties concerned under Section 11 of the Act.

84. As far as Section 19 of the Sexual Harassment Act is concerned, this Court is of an opinion that the constructive interpretation is certainly warranted. The plain reading and adopting the principles of constructive interpretation, it is the duty of the employer to provide assistance to the aggrieved woman, if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force.

85. In respect of the present case, the complainant Smt. H.Jayalakshmi filed a complaint before the Director of Vigilance and Anti-Corruption Department on 4.8.2018. The very complaint states that "I seek to initiate criminal action against Thiru Murugan, IPS and seek your protection from him to establish any form of communication with me or my immediate

family members or friends". The complainant in unambiguous terms stated that she seeks to initiate criminal action against Dr.S.Murugan. Thus, the complainant intended to register a police complaint. If such an intention is expressed in the original complaint dated 4.8.2018, the employer is duty bound to provide an assistance to the woman under Section 19(g) of the Harassment Act.

86. Reiterating the said complaint, Smt.H.Jayalakshmi complainant in her letter dated 27.8.2018 addressed to Smt.Seema Agrawal, IPS, Presiding Officer, Internal Complaints Committee that "considering the culpability of the Act of the respondent, it is also incompetent on the establishment to assist the aggrieved woman Officer to initiate criminal proceedings under Sections 341, 354 and 509 IPC r/w Section 4 of Tami Nadu Prohibition of Harassment of Women Act, 1998 under the enabling provision of Section 19(g) of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013." This made the Committee to forward the complaint to the CBCID for registration of a criminal case against Dr.S.Murugan.

87. Let us now look into the procedures adopted by the Internal Complaints Committee. Undoubtedly, the Internal Complaints Committee forwarded the complaint to the CBCID for registration of a police complaint. Section 19(g) of the Sexual Harassment Act provides that if an intention is expressed by the complainant in her complaint, then it is the duty of the employer to provide assistance to the woman to file a complaint under the Indian Penal Code. Thus, forwarding of the complaint for registration of an FIR by the ICC, though questioned, the very registration of an FIR cannot be found fault with, because the original complaint dated 4.8.2018 submitted by the complaint Smt.H.Jayalakshmi unambiguously enumerates her intention to initiate criminal action against Dr.S.Murugan, IPS and seek protection from him to establish any form of communication with the complainant. The intention expressed by the complainant in her original complaint portrays that she had intended to initiate criminal action and therefore, it is duty mandatory on the part of the employer, namely, the Director of Vigilance and Anti-Corruption to provide assistance to the complainant under Section 19(g) of the Act, to register a police complaint under the Indian Penal Code in forwarding the said complaint to the Police Officer concerned.

88. The complaint submitted by Smt.H.Jayalakshmi was forwarded by the Internal Complaints Committee to the CBCID for registering an FIR and for investigation. Accordingly, the FIR also was registered under Section 19(g) of the Sexual Harassment Act. On receipt of the written complaint from Smt.H.Jayalakshmi on 4.8.2018, the employer ought to have forwarded the complaint

for registering an FIR. However, the lapse occurred on account of the reasons known to the employer. The subsequent forwarding of the complaint for registration of an FIR by CBCID cannot be found fault with in view of the fact that registration of a criminal case requires only an information and it is not necessary that it must be forwarded only by the employer and cannot by the Internal Complaints Committee.

89. In the present case on hand, the Internal Complaints Committee has to conduct an enquiry under Section 11 of the Act for the purpose of initiation of all further actions under the provisions of the Sexual Harassment Act. Under these circumstances, forwarding the complaint to CBCID for registration of an FIR can never be construed as an action initiated by the Internal Complaints Committee under Section 11 of the Sexual Harassment Act.

90. The employer ought to have forwarded the complaint for registration of an FIR. Contrarily, the ICC forwarded the complaint for registering an FIR. Thus, the procedure adopted would not vitiate the entire FIR itself. Ultimately the investigation alone would reveal all further truths and only after trial, the case is to be disposed of in accordance with law.

91. On these technical grounds, an FIR cannot be vitiated. Even considering the circumstances that the ICC forwarded the complaint to the CBCID, instead of to the regular police. This Court is of an opinion that the complaint is given by a higher level woman police officer in the rank of Superintendent of Police. The complaint is against a Police Officer in the rank of Inspector General of Police. Such a decision is taken in order to conduct fair and impartial investigation. CBCID is a specialised Wing investigating limited number of cases and therefore, the ICC thought fit that CBCID would be an appropriate Agency to conduct the investigation in an impartial manner.

92. It is brought to the notice of this Court that CBCID has been allotted with restricted number of cases and therefore, investigations in such nature of cases are to be entrusted with the CBCID for effective and impartial investigation. Thus, this Court is of an opinion that registering an FIR through CBCID is done to meet out the facts and circumstances and to ensure an impartial investigation and proceed with accordingly.

93. The learned counsel, appearing on behalf of Smt.H. Jayalakshmi, cited the judgment of the Hon'ble Supreme Court of India in the case of P.Sirajuddin vs. State of Madras [AIR 1971

SC 520], and the relevant paragraph 23 of the said judgment is extracted hereunder:-

"23. The office of the Directorate of Vigilance and Anti-Corruption Department, Madras, became a police station for the purpose of the Criminal Procedure Code under sub-clause (s) of sub-section (1) of Section 4 of the Code by a notification, dated 25th May, 1964. Prior to that it was only functioning under a Memorandum No. 1356/64-2, dated 8th April, 1964 when it was set up to ensure the maintenance of the highest standard of integrity and probity in public servants. If the investigation had been taken up after May 25, 1964 it would have been one under Chapter 14 of the Code without any doubt."

94. Importantly, the Supreme Court of India in the case of S.P.S.Rathore vs. CBI and Another [LAWS (SC)-2016-9-36], wherein in paragraph 22 it has been held as follows:-

"22. In order to constitute the offence under Section 354 of the IPC, mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. A careful approach has to be adopted by the Court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under Section 354 IPC are as under:-

- (i) that the person assaulted must be a woman;
- (ii) that the accused must have used criminal force on her; and
- (iii) that the criminal force must have been used on the woman intending thereby to outrage her modesty."

95. In the case, cited supra, the Hon'ble Supreme Court categorically enumerates that "mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object."

96. The term is to be construed carefully and with reference to the facts and circumstances of the case. On a plain reading of the complaint given by the complainant dated

4.8.2018, it is stated in unambiguous terms and one paragraph alone reads as under:-

"On 1.8.2018, Thiru Murugan, IPS at around 1.30 pm to 2 pm, while I was in my chamber, I was called by Thiru Murugan, IPS to his room. Once I entered he again started to talk personally and at one stage, he locked his room from inside. When I questioned his action, he approached near me and tried to "hug me physically".

97. When a woman Police Officer in the rank of Superintendent of Police, making such a statement, this Court is of the considered opinion that such a statement requires a serious consideration warranting a deeper enquiry and appropriate action against the person, the allegation is made. Enquiry is mandatory and the higher officials by this time ought to have conducted an enquiry. The matter is kept in abeyance for the past about six months unfortunately by raising the dispute regarding the constitution of the Internal Complaints Committee.

98. Therefore, this Court has shown an anxious consideration in respect of the nature of the complaint made against the Police Officer in the rank of I.G. of Police. On a plain reading of the complaint itself is sufficient to note that the allegations raised are affecting the modesty of a woman and therefore, registration of a criminal case under the Indian Penal Code is just and necessary.

99. The complainant, beyond her capacity as an IPS, level officer, basically, she is a citizen of this great Nation. Thus, registering of a criminal case is her fundamental right ensured under the Constitution of India. Such a valuable right provided under the Indian Constitution to a women, as a citizen, cannot be taken away by interpreting the provisions of the Sexual Harassment Act, that it is a pre-condition to conduct an enquiry by the Internal Complaints Committee. Thus, Section 19 (g) of the Sexual Harassment Act is to be constructively interpreted in conjunction with the fundamental rights ensured under the Constitution of India. Accordingly, there is no infirmity in respect of the registration of an FIR by the CBCID, at the instance of the Internal Complaints Committee, even before conducting an enquiry under Section 11 of the Sexual Harassment Act. Such an enquiry is to be proceeded with hereafter. Thus, the insensitiveness shown by the authorities competent on receipt of a Sexual Harassment complaint, cannot be appreciated by this Court.

100. Thus, this Court has to come to the conclusion that registration of an FIR is not infirm and the same is in

accordance with law and further investigations and prosecutions are certainly warranted in view of the fact that the allegations set out in the original complaint dated 4.8.2018 is serious in nature.

101. The learned counsel, appearing on behalf of Smt.H.Jayalakshmi, further solicited the attention of this Court with reference to Section 28 of the Women Harassment Act, which stipulates "Act not in derogation of any other law". Accordingly, the provisions of the Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Therefore, it is unambiguous that the action under the Sexual Harassment Act by the employer is independent and the complaint registered under the Indian Penal Code is also independent. In other words, two fold actions are permissible with reference to the sexual harassment complaint. The employer is empowered to constitute the Internal Complaints Committee under Section 4 of the Act and proceed with the enquiry and based on the report, initiate all further actions under the provisions of the Act as well as under the Service Rules in force, more specifically, under the Conduct and Discipline Rules.

102. This apart, the FIR registered by the CBCID under the Indian Penal Code must be proceeded with separately and criminal trial must be conducted in accordance with law. Two separate actions are independent, unconnected and permissible.

103. The Constitutional Courts have repeatedly held that registration of a criminal case is not a bar for continuing the departmental disciplinary proceedings under the Discipline and Appeal Rules. Therefore, the provisions of the Sexual Harassment Act are to be invoked by the employer and appropriate actions are to be initiated after conducting an enquiry under Section 11 of the Act. If the employer is of an opinion that an offence or a misconduct is made out, then the employer has to initiate all further actions.

104. The CBCID, who registered the FIR is also empowered to conduct the investigation and proceed with the same in accordance with law.

105. Beyond this, Chapter V of the Sexual Harassment Act deals with enquiry and complaint. Section 12 deals with action during pendency of inquiry. During the pendency of an inquiry, on a written request made by the aggrieved woman, the Internal Committee or Local Committee, as the case may be, may recommend to the employer to transfer the aggrieved woman or the

respondent to any other workplace. This apart, as far as the person against whom the complaint is made, registration of an FIR is also a ground to initiate departmental disciplinary proceedings. Thus, if the investigation is commenced by the CBCID police, then all appropriate actions are to be initiated under the relevant Service Rules, enabling the Investigating Officer as well as the Internal Complaints Committee to proceed with the matter in an unbiased manner and fairly. All such required actions are to be initiated by the State as well as the Head of the Department to conduct free, fair and unbiased enquiry and investigations are done properly.

106. In view of the adjudication made in the aforementioned paragraphs, this Court is inclined to pass the following orders:-

(1) The Internal Complaints Committee/fifth respondent in WP No.25213 of 2018 constituted under Section 4 of The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 by the Director of Vigilance and Anti-Corruption in proceedings Rc.No.A5/3572/2018 dated 4.10.2018 consists of Smt.Srilakshmi Prasad, IPS, Additional Director General of Police, Smt.P.Kannammal, IPS, SP, CR, DVAC, Chennai, Smt.M.Kanaga, Manager, Confidential Branch, DVAC, Chennai, Thiru S.Ramadoss, DSP, HQRS, DVAC, Chennai and Smt.K.M.Valsalakumari, Advocate, Madras High Court stands confirmed.

(2) The ICC constituted is directed to proceed with the enquiry by following the procedures contemplated under the Sexual Harassment Act and by affording opportunity to all the parties concerned and submit a report, within a period of two weeks from the date of receipt of a copy of this order. If any further time is required, the Internal Complaints Committee is at liberty to approach this Court by filing appropriate petitions, seeking extension of time.

(3) The CBCID, Headquarters is directed to proceed with all further actions pursuant to the registration of FIR No.2 of 2018 by commencing the investigation and to proceed with the case by following the procedures contemplated under law.

(4) The Chief Secretary to Government/first respondent in WP No.25213 of 2018, is directed to initiate all required further actions against Dr.S.Murugan, IPS under the relevant Service Rules, which are necessary under the facts and circumstances of the case and, with reference to the complaint dated 4.8.2018 submitted by Smt.H.Jayalakshmi as well as the FIR No.2 of 2018 registered by the CBCID Headquarters;

(5) This Court strongly recommends to the Chief Secretary to Government/first respondent in WP No.25213 of 2018, for installation of CCTV Cameras inside the official Chambers and office rooms of all the higher officials, in order to avoid all such allegations/complaints against the higher officials and to safeguard the interest of women officers and women employees

from the offences of sexual harassment.

107. With the above directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

The Registry, High Court of Madras, is directed to list the matter under the caption "For Reporting Compliance" on 6.3.2019.

Sd/-
Deputy Registrar

//True copy//

Sub Assistant Registrar

Svn

To

- 1.The Chief Secretary to the Government,
State of Tamil Nadu,
Fort St George,
Chennai, Tamil Nadu.
- 2.The Home Secretary to the Government,
State of Tamil Nadu,
Fort St George,
Chennai, Tamil Nadu.
- 3.The Principal Secretary,
State of Tamil Nadu,
Home Department
Fort St George, Chennai-09.
- 4.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Home Prohibition and Excise Department
Fort St George,
Chennai-09.
- 5.The Director General of Police,
Kamrajar Salai, Kailasapuram
Chennai-600005
- 6.The Director,
Vigilance and Anti-Corruption
No.293, MKN Road,
Collector Nagar,
Alandur,
Chennai-600016.

7.The Director General of Police,
Radhakrishnan Salai,
Mylapore,
Chennai-Tamil Nadu.

8.The Internal Complaints Committee,
Represented by its Chairman,
Office of the Director General of Police
Radhakrishnan Salai,
Mylapore,
Chennai,
Tamil Nadu.

9.CBCID, Egmore, Chennai- 8.

Copy forwarded to:

1. The Registrar (Administration),
High Court, Madras.
2. The Section Officer, Writ Section,
High Court, Madras.
(Post the Matter no 06.03.2019 for Reporting Compliance)

+2ccs to Mr.D.Jaya Sing, Advocate SR.No.13281,13282

+4ccs to M/s.Abitha Banu, Advocate SR.No.13245 to 13248

+1cc to Government Pleader SR.No.13497

W.P.Nos.25213, 23292,
23293 and 23846 of 2018

GMY (19/02/2019)

सत्यमेव जयते

WEB COPY