IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Wednesday, the Twenty Ninth day of January Two Thousand Twenty

PRESENT

THE HON`BLE MR JUSTICE M. SATHYANARAYANAN

and

THE HON`BLE MRS JUSTICE R. HEMALATHA

WMP NO.39025 OF 2018

IN WP.27876/2017

N.MARUTHU GANESH [PETITIONER]

Vs

1 THE UNION OF INDIA [RESPONDENT]
REP. BY THE CABINET SECRETARY TO GOVERNMENT
OF INDIA, CABINET SECRETARIAT, RASHTRAPATHI
BHAVAN, NEW DELHI 110 004

2 THE ELECTION COMMISSION OF INDIA,
REP. BY THE CHIEF ELECTION
COMMISSIONER, NIRVACHAN SADAN, NEW DELHI

3 THE CHIEF ELECTORAL OFFICER
OF, TAMILNADU, PUBLIC (ELECTIONS) DEPARTMENT,
FORT ST. GEORGE, SECRETARIAT,
CHENNAI 600 009

4 THE STATE OF TAMILNADU
REP. BY ITS CHIEF SECRETARY TO GOVERNMENT,
GOVERNMENT OF TAMILNADU, SECRETARIAT,
CHENNAI 600 009

5 THE PRINCIPAL CHIEF COMMISSIONER,
OF INCOME TAX, REGIONAL OFFICE, INCOME
TAX DEPARTMENT, AAYAKAR BHAWAN MAIN BUILDING,
NO.121, M.G.ROAD, NUNGAMBAKKAM, CHENNAI-34

6 THE RETURNING OFFICER
11, DR.RADHAKRISHNAN NAGAR ASSEMBLY
CONSTITUENCY, PRESENTLY THE JOINT DIRECTOR,
ADI DRAVIDAR WELFARE DEPARTMENT

7 THE DIRECTOR GENERAL OF POLICE,
TAMILNADU, KAMARAJAR SALAI, MYLAPORE,
CHENNAI 600 004

8 THE INSPECTOR OF POLICE
E-4, ABHIRAMAPURAM POLICE STATION, CHENNAI

9 THIRU.RAJESH LAKHONI, I.A.S.
CHIEF ELECTORAL OFFICER, PUBLIC (ELECTIONS)
DEPARTMENT, FORT ST. GEORGE, SECRETARIAT,
CHENNAI 600 009

10 TMT.T.N.PADMAJA DEVI
PRESENTLY WORKING AS ADDITIONAL DIRECTOR OF
MEDICAL EDUCATION, 162, EVR PERIYAR SALAI
KILPAUK, CHENNAI 600 010

11 THIRU.PRAVEEN P.NAIR,PRESENTLY,
WORKING AS THE MANAGING DIRECTOR,
TAMILNADU CORPN., FOR DEVELPT. OF WOMEN LTD.,
MOTHER TERESA WOMEN COMPLEX, 1ST FLOOR,
NUNGMABAKKAM, CHENNAI-34

12 CENTRAL VIGILANE COMMISSION
REP. BY THE CENTRAL VIGILANCE COMMISSIONER,
SATARKATA BHAVAN, A BLOCK, GPO COMPLEX, INA,
NEW DELHI 110 023

13 THE DIRECTOR GENERAL OF INCOME TAX (INV),
TN AND P, INVESTIGATION WING
(2ND FLOOR),NEW NO.46,OLD NO.108,
NUNGAMBAKKAM HIGH ROAD, CHENNAI.

14 CENTRAL BUREAU OF INVESTIGATION,
REP. BY ITS DIRECTOR, NEW DELHI

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to permit the petitioner to amend the prayer of the above Writ Petition in WP No.27876 of 2017 as follows- Writ of Mandamus, directing the 1st respondent to frame appropriate guidelines to ensures the accountability of the 2nd respondents for its actions and inactions while exercising its powers under Article 324 of the Constitution of India, order CBI Investigation by registering the Complaint of the 6th respondent dated 21.4.2017 and with regard to the involvement of the Public servants, non public servants and persons named in the 5th respondents report dated 8.4.2017 containing 34 pages involved in distribution of money during the rescinded by-election to No.11, Dr.Radhakrishnan Assembly Constituency in Tamil Nadu without first respondents report dated 8.4.2017 which was basis for the 2nd respondent to rescind the elections to the NO.11, Dr.Radhakrishnan, Nagar Constituency vide order dated 9.4.2017 and consequently hold the 2nd Respondent accountable for the damages suffered by petitioner and to reimburse the same".

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.P.WILSON SENIOR COUNSEL FOR M/S.R.NEELAKANDAN, Advocate for the petitioner and of MR.NIRANJAN RAJAGOPAL, AG FOR 2,3 AND 6 Respondents and of MR.VIJAY NARAYAN, ADVOCATE GENERAL ASST. BY MR.JAYAPRAKASH NARAYAN, GOVERNMENT PLEADER for 4th Respondent and of MR.A.P.SRINIVAS, FOR 5th Respondent the court made the following order:-

ORDER

M.SATHYANARAYANAN,J.,

(1)The writ petitioner is the petitioner in this miscellaneous petition.

(2)The petitioner, in the affidavit filed in support of this petition would aver among other things that the 2nd respondent, viz., the Election Commission of India [ECI], announced by-elections No.11, Dr.Radhakrishnan Nagar Assembly Constituency, Chennai and the polling was scheduled on 12.04.2017 and he was one of the candidates fielded by Dravida Munnetra Kazhagam [DMK] Political Party.

(3)Three days prior to the polling, i.e., on 09.04.2017, the 2nd respondent - ECI, rescinded the said by-election referring to a Report dated 11.04.2017 sent by the Income Tax Department, whereby action was required to be taken relating to search and seizures conducted under Section 132 of the Income Tax Act, 1961, [in short ''the IT Act''] at 21 places in Chennai and 11 places outside Chennai City belonging to Dr.C.Vijaya Baskar, Hon'ble Minister for Public Health, Government of Tamil Nadu and his associates. In the said raids, the Income Tax Department has seized Rs.5 Crores of cash from the confidantes of Dr.C.Vijaya Baskar and that apart, from his native place, recovered incriminating documents indicating that he has involved in bribing the voters in Dr.Radhakrishnan Nagar Assembly Constituency. The incriminating documents are in the form of overall money distribution chart involving several AIADMK Ministers including Mr.Edappadi Palanisamy [The Hon'ble Chief Minister of Tamil Nadu], Mr.SEngottaiyan, Hon'ble Minister for Education and many others, totalling to a sum of Rs.89 Crores and the said documents have been found in the premises of Dr.C.Vijaya Baskar and there are other distribution charts - Ward-wise and voter-wise, entrusted to each of those politicians, totalling to Rs.89 Crores were also seized.

(4)The petitioner would further aver that the then working President of DMK Party and the leader of the Opposition, viz., Thiru.M.K.Stalin, submitted a Report to the Hon'ble Governor of Tamil Nadu on 12.04.2017 seeking a Central Bureau of Investigation [CBI] Enquiry into grave irregularities committed during election and along with the Report, also enclosed the Report of the Income Tax Department endorsed by the 2nd respondent.

(5)The 2nd respondent, vide communication dated 18.04.2017, directed the 3rd respondent, viz., the Chief Electoral Officer of Tamil Nadu, to register a FIR through the 6th respondent, viz.,the Returning Officer, Dr.Radhakrishnan Nagar Assembly Constituency and directed that appropriate action be taken by the police with a further direction, directing the police to apprise the Election Commission, the progress at the earliest. A copy of the said communication was also marked to the 4th respondent, viz., the Chief Secretary to the Government of Tamil Nadu. The 2nd respondent, in the communication dated 18.04.2017, also enclosed the Report of the Income Tax Department containing 34 pages.

(6)The 8th respondent, viz., the Inspector of Police, E-4, Abhiramapuram Police Station, Chennai, on the basis of the letter of the 2nd respondent dated 18.04.2017, registered a FIR on 27.04.2017 in Crime No.583 of 2017 based on the 6th respondent's complaint forwarded through the respondents 10 and 11 jointly for the commission of the offence unde Section 171[b] of IPC.

(7)The petitioner would state that despite the fact that the documents enclosed along with the letter of the 2nd respondent dated 18.04.2017 contains the names of several persons, including Ministers, Dr.C.Vijaya Baskar and his family members, in the relevant column of the FIR, no accused were named.

(8)Therefore, the writ petitioner pleaded that despite availability of enough materials on record to hold that the 2nd respondent is accountable for its actions and inactions, they have failed to perform the Constitutional mandate and therefore, sought for damages from the 2nd respondent for failing to perform its Constitutional duties and also sought for appropriate direction, directing the 1st respondent to frame appropriate guidelines to hold that the 2nd respondent is accountable for its actions and inactions. The petitioner would submit that being a candidate, he has spent Rs,5 Lakhs and for no fault of his, the election was rescinded and as such, he is entitled for reimbursement of the said amount and also for compensation.

(9)The petitioner has also narrated the events that took place after the entertainment of the writ petition and would state that when this writ petition as well as the connected writ petitions in WP.Nos.9711, 9712 and 15353 of 2017 along with the miscellaneous petitions were taken up for hearing before a Division Bench of this Court, to everyone's shock and surprise, it was represented by the learned Government Advocate [Crl.Side] who represented respondents 7 and 8 that the FIR in Crime No.583 of 2017 registered by the 8th respondent, came to be quashed by a learned Single Judge of this Court vide order dated 13.03.2018 in Crl.OP.No.26903 of 2017.

(10)This Court, upon hearing the said submission, called for the entire bundle of the Criminal Original Petition in Crl.OP.No.26903 of 2017 and also directed the learned State Public Prosecutor to explain about the same as already there was a direction in the connected writ petition to the Joint Commissioner of Police [East] to monitor the investigation and file a Status Report.

(11)The petitioner would further aver that the matter was taken in the afternoon on 31.12.2018 and this Court, on going through the order dated 13.03.2018 passed in Crl.OP.No.26903 of 2017 asked the learned State Public Prosecutor as to whether any appeal was filed against the said order of quashment and it was replied in negative and that apart, ECI - 2nd respondent herein, was also ignorant as to the quashment of the said FIR despite the fact that at their instance only, the FIR came to be registered. The petitioner would also aver that the complaint given by the 6th respondent to the Commissioner of Police dated 21.04.2017, though not as per the direction of ECI dated 18.04.2017, found to be tampered and a truncated version has been registered by the 8th respondent in Crime No.583 of 2017.

(12)The petitioner pointed out that the purity of the election process in the light of the above said acts, has been given a total go-by and it was also brought to the knowledge of the learned Single Judge while the learned Judge was hearing Crl.OP.No.26903 of 2017 as to the monitoring done by a Division Bench and the progress made during the course of investigation and thus, there is a total violation on the part of ECI in following up its own complaint and a fraud has also been practiced upon.

(13)It is also pointed out by the petitioner that even up to the date of filing of the miscellaneous petition seeking amendment, ECI is yet to take a call to file a Special Leave Petition before the Hon'ble Supreme Court of India challenging the order dated 13.03.2018 in Crl.OP.No.26903 of 2017.

(14)In sum and substance, it is the case of the petitioner that the persons named in the incriminating documents including the Hon'ble Chief Minister of Tamil Nadu, Senior Cabinet Ministers, M.L.As.in hierarchy, politicians belonging to the Ruling Party and the 8th respondent has done a shoddy investigation and it led to mockery of justice and hence, is constrained to file the present miscellaneous petition, praying for amendment of prayer.

(15)Mr.P.Wilson, learned Senior counsel assisted by Mr.R.Neelakandan, learned counsel for the petitioner has invited the attention of this Court to the orders dated 03.12.2018 and 17.12.2018 made in WP.No.15353, 27876 [filed by the petitioner herein], 9711 and 9712 of 2017, had recorded certain events and points out that admittedly, the defacto complainant had not been arrayed as a respondent and despite that, the Registry has numbered Crl.OP.No.26903 of 2017 and during the course of arguments, no objection as to the maintainability of the Criminal Original Petition for want of defacto complainant as a party, has not at all been raised by the learned Additional Public Prosecutor. It is the further submission of the learned Senior counsel for the petitioner that though it is the stand of the 8th respondent that during the course of investigation, he had examined as many as 882 witnesses and their statements were recorded under Section 161[3] of Cr.P,C., and however, the accused were not identified till the quashing of the FIR in the above cited order.

(16)The learned Senior counsel further invited the attention of this Court to paragraph No.19 of the order dated 03.12.2018 made in WP.Nos.15353, 27876, 9711 & 9712 of 2017 and submitted that the Court has also recorded the fact that though the name of one Minister [Dr.C.Vijaya Baskar, Hon'ble Minister for Public Health] and two of his relatives [viz., the wife and father of the Hon'ble Minister] had been stated in the said communication and though very many persons have been examined as witnesses, even now, the accused names have not been stated in the FIR in Crime No.583 of 2017 and granted an opportunity to the Investigating Agency to explain the same and despite that, they failed to come out with any explanation despite the fact that there was a direction to monitor the investigation by the Joint Commissioner of Police and the officials in-charge of the said post at the relevant point of time, were Tvl.S.Manoharan, I.P.S., and T.S.Anbu, I.P.S.

(17)It is further contended by the learned Senior counsel that the contents of the orders dated 03.12.2018 and 17.12.2018 in the above writ petitions which form part of the record, are self explanatory and the course of events which took place during the pendency of the writ petitions would disclose that an important Constitutional authority, viz., ECI, had abdicated its responsibilities and took a defence as to the result of the culmination of the proceedings initiated by the Income Tax Department in pursuant to the search and seizure of the premises of the Hon'ble Minister for Public Health, viz., Dr.C.Vijaya Baskar and his close relatives in various places and the option open to them is to prefer a Special Leave Petition against the order dated 13.03.2018 passed in Crl.OP.No.26903 of 2017 or lodge a fresh complaint and it shall be transferred to CBI for investigation and it shall also be monitored by this Court in the light of the above said orders. Therefore, the learned Senior counsel appearing for the petitioner prays for appropriate orders in this miscellaneous petition.

(18)Mr.P.Wilson, the learned Senior counsel, in support of his contentions, placed reliance upon the following decisions:-
2004 [3] SCC 767 [K.Anbazhagan Vs.The Superintendent of Police and Others] ;
2011 [13] SCC 337 [Disha Vs. The State of Gujarat and Others] '
2018 Manu TN 2109 [DB] [J.Anbazhagan Vs. The Union of India and Others] ;

2019 [7] SCC 365 [E.Sivakumar Vs. The Union of India and Others] ;

(19)Mr.Niranjan Rajagopal, learned Standing counsel appearing for respondents 2, 3 and 6 / ECI has drawn the attention of this Court to the Counter Affidavit of the 3rd respondent dated 07.02.2019 and would submit that the 2nd respondent, based on the Report of the Director General of Income Tax dated 08.04.2017 informing about the search and seizure under Section 132 of the Income tax Act, was conducted in the case of Mr.C.Vijaya Baskar - Hon'ble Minister for Health, Tmt.Ramya, wife of the Hon'ble Minister and Thiru.R.Chinnathambi, father of the Hon'ble Minister, in Chennai and other places on 07.04.2017 and sent a communication dated 18.04.2017 to lodge a complaint and it was forward to the Returning Officer, viz., 6th respondent herein, who by complaint dated 21.04.2017, had requested to file a FIR for the commission of the offence under Section 171[e] of IPC. The 6th respondent has again modified the complaint dated 25.04.2017 on the basis that provision of law has been mentioned incorrectly and the Commissioner of Police, on receipt of the complaint had endorsed and forwarded the same to the 8th respondent and after getting permission of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai, as the offence is a non-cognizable one and thereafter, registered the FIR in Crime No.583 of 2017 on 27.04.2017.

(20)Counter affidavit of the 2nd respondent also reads that the 8th respondent during the course of investigation had examined 882 witnesses and as far as the quashment of FIR is concerned, neither the Office of the 2nd respondent nor ECI were aware of such a case being filed or the Returning Officer, viz., 6th respondent, not being made as a party in Crl.OP.No.26903 of 2017. In paragraph No.19 of the counter affidavit, it is stated by the 3rd respondent that vide Letter dated 16.01.2019, a direction was given to the District Election Officer and the Returning Officer,, viz., the 6th respondent, to take appropriate action to file an appeal challenging the order of quashment in Crl.OP.No.26903 of 2017 or file a recall petition to recall the order and apprise the Commission of the compliance and the 3rd respondent was also directed to closely monitor the progress of the case until it comes to a logical conclusion and keep apprising the Commission. The said counter affidavit also deals with the role of ECI under Article 324 of the Constitution of India and in paragraph No.22 of the counter affidavit, it took a stand that it is the role of ECI to get registered a necessary complaint, the prosecution of the same is the duty of the State and ECI cannot get into the role of a prosecutor, as it is a matter under the Code of Criminal Procedure which has a separate machinery and that under 324 of the Constitution of India cannot be employed in this regard.

(21)During the course of hearing, it is submitted by the learned Standing counsel appearing for ECI, by drawing the attention of this Court to the communication of the 2nd respondent dated 16.12.2019 in No.509/135/ECI/LET/FUNC/JUD/RCC/2017, wherein in paragraph [iv], it is stated that ''subsequently, the Commission vide its letter dated 20.11.2019 and reminder dated 15.12.2019 [copies enclosed], has sought certain clarification from Central Board of Direct Taxes [CBDT] as well as for intimating the current status of the assessment with regard to the bribing of voters and other unaccounted expesenes which is awaited'' and made a request to the learned Standing counsel appearing for ECI to apprise the said factual position before this Court during the next date of hearing on 18.12.2019.

(22)Mr.A.P.Srinivas, learned Standing counsel appearing for the 5th respondent invited the attention of this Court to the common counter affidavit filed by respondents 5 and 13 in WP.No.27876 of 2017 / 8th respondent in WP.Nos.9711 & 9712 of 2017 and would submit that the search and seizure action under Section 132 of the Income Tax Act, 1961, was conducted in the case of Dr.C.Vijaya Baskar and others on 07.04.2017 and during the course of search, evidences were found and seized relating to the distribution of money to the voters in the bye-election conducted for Dr.R.K.Nagar Assembly Constituency and it also resulted in seizure of cash of Rs.4.71 Crores from the following persons, viz.,

1.Dr.C.Vijaya Baskar [Hon'ble Minister for Health]	-	Rs.3 Lakhs
2.Thiru.J.Srinivasan	-	Rs.3 Lakhs
3.Thiru Kalpesh S Shah	-	Rs.110 Lakhs
4.Thiru J.Sadique Batcha	-	Rs.6 Lakhs
5.Thiru V.Karthikeyan	-	Rs.8 Lakhs
6.Thiru R.Sarath Kumar [Actor and Politician]	-	Rs.11 Lakhs
7.Thiru R.Chinnathambi [father of the Hon'ble Minister for Health]	-	Rs.20 Lakhs
8.Dr.R.Senthil Kumar	-	Rs.15 Lakhs and
9.Thiru.Nainar Mohammed	-	Rs.295 Lakhs

(23)The Director General of Income Tax [Inestigation] who has sworn to the said counter affidavit, took a stand that the nature of search and seizure information is highly confidential and the Income Tax Department of Tamil Nadu has never divulged such facts in the public domain or various medias as alleged by the petitioner. As regards the progress made in the assessment proceedings in paragraph No.30, they would aver that the Assessment Officer, viz., the Assistant Commissioner of Income Tax, had issued notice under Section 153A of the Income Tax Act, for the Previous Years from 2011-12 to 2016-17 for the relevant Assessment Years 2012-13 to 2017-18 to Dr.C.Vijaya Baskar, his wife, viz., Mrs.Ramya and his father, viz., Mr.R.Chinnathambi in the cases of whom the searches were conducted and thus, initiating the assessment proceedings for the above mentioned Block period and as per the provisions of the Income Tax Act, 1961, the time limit for completion of search assessments in such cases is available till 31.12.2019 and the assessment proceedings are in progress.

(24)The learned Standing counsel appearing for the Income Tax Department , as to the present position made a submission that some of the assessees had approached the Settlement Commission by making claim and the same were rejected and therefore, the Income Tax Department is having another year to complete the assessment proceedings.

(25)The 8th respondent, viz., the Inspector of Police, E4, Abhiramapuram Police Station, Chennai, has filed a common counter affidavit dated NIL October 2019 in WMP.Nos.39017 & 39025 of 2018 in WP.No.27876 of 2017 [present writ petition] and took the following stand.

(26)After the registration of the FIR in Crime No.583 of 2017, for the commission of the offence under Section 171[b] of IPC, about 882 witnesses were examined and in the mean time, one Mr.P.M.Narasimman, son of Muruga Reddy, had filed a petition in Crl.OP.No.26903 of 2017 on the file of this Court praying for quashment of the FIR and vide order dated 13.03.2018, this Court had quashed the FIR. It is the further stand of the 8th respondent that in the light of the fact that FIR itself was quashed by this Court vide order dated 13.03.2018 made in Crl.OP.No.26903 of 2017, transfer of investigation to CBI does not arise at all for consideration for the reason that no FIR/complaint is pending on their file and also reserved his right at a later point of time to file a detailed affidavit to traverse into the allegations made in the affidavit filed in support of the miscellaneous petitions.

(27)Mr.Vijay Narayan, learned Advocate General assisted by Mr.V.Jayaprakash Narayan, learned Government Pleader appearing for the 4th respondent, viz., the Chief Secretary to Government, Government of Tamil Nadu, would submit that the writ petition itself is filed with an oblique motive with a view to tarnish the image and reputation of the Hon'ble Ministers and other important political functionaries of AIADMK Party and admittedly, the petitioner is a member of the major Opposition Party, viz., DMK, and as such, the writ petition itself is liable to be dismissed with exemplary cost.

(28)It is the further submission of the learned Advocate General that under the supervision of the Joint Commissioner of Police [East], the 8th respondent has done a proper and qualitative investigation and despite examining 882 number of witnesses, was not in a position to identify the real accused and in the interregnum, FIR itself came to be quashed by this Court on 13.03.2018 in Crl.OP.No.26903 of 2017 and would further add that since no complaint or FIR is pending on the file of the 8th respondent, the prayer for transfer of investigation has become infructuous.

(29)As regards amendment of prayer sought for by the petitioner in this miscellaneous petition, it is the submission of the learned Advocate General that since ECI is also an important Constitutional functionary and knows its duties and responsibilities, there cannot be a positive direction to them as prayed for by the petitioner in the amended prayer and recovery of damages sought for the petitioner cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of the

Constitution of India for the reason that it involves disputed questions of fact and law and prays for dismissal of this miscellaneous petition.

(30)This Court paid its best attention to the rival submissions and also perused the materials placed before it.

(31)It is relevant and necessary to narrate the following facts:-
The 6th respondent sent a Report dated 21.04.2017 in RDC [N] C.No.R3/1981/2017 to the Commissioner of Police, Greater Chennai Police, Vepery, Chennai, by drawing the attention to two letters of the District Election Officer and the Chief Election Officer dated 20.04.2017 and 19.04.2017 as well as the letter from ECI dated 18.04.2017 and made a request to file the FIR under Section 171E of the IPC, based on the documentary evidence attached. The Additional Commissioner of Police [South] made an endorsement dated 21.04.2017 on the said Report of the 8th respondent stating ''to initiate appropriate legal action and report on priority''.
The 6th respondent once again sent a communication dated 25.04.2017 by referring three letters, which form part of his earlier Report dated 21.04.2017 as well as the Letter dated 21.04.2017 and stated that in modification of the reference fourth cited above, made a request to the said official to refer to ECI letter dated 18.04.2017, wherein it has been stated about the Report received from the Income Tax Department regarding search and seizure under Section 132 of the Income Tax Act which resulted in seizure of certain documents which indicated large scale distribution of money to induce/bribe the voters to vote in the bye-election in Dr.R.K.Nagar Assembly Constituency which is an offence under Section 171B of IPC.

(32)It is to be noted at this juncture that the letters/communications of the 6th respondent dated 21.04.2017 and 25.04.2017 are to be read in conjunction and in the light of the fact that in the earlier communication dated 21.04.2017, the offence has been stated as 171E of IPC in stead of 171B of IPC and in the subsequent communication dated 25.04.2017, he had clarified the said legal position.

(33)The 8th respondent has made an endorsement on the letter of the 6th respondent dated 25.04.2017 stating that at about 11.00 hours on 25.04.2017, registered a case in Crime No.583 of 2017 for the offence under Section 171B of IPC and took up the investigation and the original complaint and FIR was sent to 23rd Metropolitan Magistrate Court, Saidapet, Chennai, and copies were sent to concerned superior officers.

(34)The 8th respondent, in the light of the fact that the offence under Section 171B of IPC is a non-cognizable one, took permission of the jurisdictional Magistrate vide orders dated 25.04.2017 and registered the FIR on 27.04.2017.

(35)The learned Public Prosecutor appearing for the respondents 7 and 8 had filed a typed set of documents dated 17.12.2018 and from page Nos.13 to 71, the persons in-charge of the elections in respect of Dr.R.K.Nagar Bye-Election 2017, have been given and the said list contains four columns and the last column contains a total figure of Rs.89,65,80,000/- and that apart, a break-up distribution of cash among voters and the details of the distribution have also been given, which include the names of the Hon'ble Chief Minister, other Hon'ble Ministers, Party Members / Functionaries of the said Party.

(36)It is pertinent to point out at this juncture that though the names of at least three persons mentioned in the search and seizure operations done by the Income Tax Department, still the relevant column in the FIR - Column No.7, which speaks about the details of known / suspected / unknown accused with full particulars, remained as blank. It is the stand of the 8th respondent to the counter affidavit in the miscellaneous petition that though, during the course of investigation, he had examined as many as 882 witnesses, he was not able to identify the accused.

(37)The 6th respondent in the communication dated 21.04.2017 in RDC [N] C.No.R3/1981/2017 addressed to the Commissioner of Police, has extracted the letter of ECI dated 18.04.2017 and it is very relevant to extract the same:-

''I am herewith enclosing a copy of the letters received from the District Election Officer and Commissioner, Greater Chennai Corporation, the Chief Electoral Officer, Tamil Nadu and Election Commission of India. I draw your attention to the letter of the Election Commission of India [Reference 3] and in particular, to para 2 of the same letter which states that

''Considering the facts and circumstances of the case, the Commission has directed that an FIR may be filed by the Returning Officer in the instant case.''

One of the enclosures received is a letter from the Director General of Income Ta [Investigation] to the Director General [Expenditure], Election Commission of India regarding a search & seizure action u/s.132 of the Income Tax Act in the case of Shri.Vijayabaskar, Smt.Ramya & Shri.R.Chinnathambi by the Income Tax Department resulting in seizure of certain documents allegedly indicating large scale distribution of money to induce/bribe voters to influence the bye-election in 11, Dr.Radha Krishnan Nagar Assembly Constituency which is an offence punishable under Section 171E of the Indian Penal Code.

Based on the documentary evidence attached herewith, I request you to file an FIR under Section 171E of the Indian Penal Code. Also, the Action Taken in this regard may be informed at the earliest.''

(38)As already pointed out, the modification sought for by the 6th respondent, vide communication dated 25.04.2017 addressed to the Commissioner of Police, pertains only to Section 171B of IPC in stead of Section 171E of IPC and the earlier representation dated

21.04.2017 also forms part of the subsequent representation / communication dated 25.04.2017 for the reason that it is referred as Document No.4 and despite that, the 8th respondent, for the reasons best known to him, did not array anybody as accused in Column No.7 of the FIR in Crime No.583 of 2017, In the typed set of documents dated 17.12.2018 filed by the learned Public Prosecutor, WP.No.15353 of 2017 was filed by one Mr.M.P.Vairakkannu, Advocate, as a Public Interest Litigation with a prayer to register the FIR and directing the 4th respondent to investigate the matter and other consequential reliefs. Summons dated 20.10.2017 under Section 160 of Cr.P.C., was issued calling upon him to appear for the enquiry on 31.10.2017. The said person is a Member of Legislative Assembly and a resident of Tiruttani Post, Tiruvallur Taluk and former Chief Whip of the Government of Tamil Nadu.

(39)It was Mr.P.M.Narasimman who filed Crl.OP.No.26903 of 2017 under Section 482 of Cr.P.C. to quash the records pertaining to FIR in Crime No.583 of 2017 on the file of the 8th respondent herein, viz., the Inspector of Police, E4, Abhiramapuram Police Station, Chennai and to quash the same.

(40)This Court, in paragraph No.22 of the order dated 03.12.2018 made in WP.Nos.15353, 27876, 9711 & 9712 of 2017, observed that on a perusal of the Case Diary, the name of the petitioner in Crl.OP.No.26903 of 2017 nowhere appears and noted that it was surprise as to how he has filed the said Criminal Original Petition for quashment of FIR in Crime No.583 of 2017 without even stating in the cause title as to the array or rank of the accused and further noted in paragraph 14 of the order that despite examination of very many witnesses, the accused are yet to be identified till the quashing of the FIR by the learned Single Judge of this Court in Crl.OP.No.26903 of 2017.

(41)This Court, in paragraph No.8 of the order dated 17.12.2018, had noted certain events and in sub-paragraph [g] of paragraph No.8, had dealt with the serving of Summons upon Mr.P.M.Narasimman and his position as a MLA of Tiruttani Constituency and an Advocate by profession and former Government Chief Whip during the period 2001-06 and in the year 2012, he was appointed as Special Representative of State of Tamil Nadu at New Delhi and also extracted paragraph No.4 of the order dated 13.03.2018 made in Crl.OP.No.26903 of 2017 and noted that the learned Additional Public Prosecutor has failed to bring it to the knowledge of the learned Single Judge as to the non-arraying of the defacto complainant as a party in the petition for quashment, despite it is mandatory and further noted passing of the said Criminal Original Petition by the concerned Appeal Examiner of this Court, stating that the papers are in order. It is also noted by this Court in paragraph No.8[i] that the prayer for quashment of FIR was not restricted to the petitioner, viz., Mr.P.M.Narasimman alone and a general prayer has been made to quash the FIR and vide above cited order dated 13.03.2018, it came to be quashed.

(42)It is the stand of ECI that they are awaiting of the completion of the assessment proceedings by the Income Tax Department. The learned Standing counsel appearing for the Income Tax Department made a submission which was already noted by this Court in the earlier paragraphs that since some of the assessees had approached the Settlement Commission and it rejected their plea, as such, they are having another one year time to complete the assessment.

(43)It was the stand of the 3rd respondent in paragraph No.19 of the counter affidavit dated 07.02.2019 that vide communication/letter dated 16.01.2019, it directed the District Election Officer and the Returning Officer / 6th respondent herein, to take appropriate action to file an appeal or to file a petition to recall the order of quashing FIR and apprise the Election Commission of India, of the compliance. But, the present stand of respondents 2 and 3 appears to that they are awaiting for the culmination of the assessment proceedings which may take another year, in the light of the stand taken by the learned Standing counsel appearing for the Income Tax Department.

(44)This Court has also considered the decisions relied on by the learned Senior Counsel appearing for the petitioner.

(45)In 2018 Manu TN 2019 : 2018 [3] CTC 449 : 2018 [1] LW [Crl.] 665 [J.Anbazhagan Vs. Union of India and Others], a Division Bench of this Court has considered the issue relating to transfer of investigation in a Public Interest Litigation filed by a Member of Legislative Assembly, against illegal manufacturing and sale of chewable form of tobacco [Gudka]. A Division Bench of this Court consisting of the Hon'ble Ms. Justice INDIRA BANERJEE [The Hon'ble Chief Justice as she then was] and the Hon'ble Mr. Justice ABDUL QUDDHOSE, after extracting the relevant provisions of the Food Safety and Standards [Prohibition and Restriction on Sales] Regulations, 2011 and various decisions of the Hon'ble Supreme Court of India as to the power of this Court to transfer the investigation to CBI, had especially taken note of the judgment of the Hon'ble Supreme Court of India reported in 2004 [3] SCC 767 [K.Anbazhagan Vs. The Superintendent of Police and Others], had transferred the investigation to CBI. One of the persons aggrieved, had filed SLP [C] Diary No.17180 of 2018 and vide judgment dated 18.05.2018 reported in 2018 [7] SCC 365 [E.Sivakumar V. Union of India and Others], the Hon'ble Apex Court has dismissed the said Special Leave Petition and affirmed the above cited order. The Hon'ble Supreme Court of India, in the above cited decision, had taken into consideration, its earlier decisions, as well as a decision of this Court in J.Anbazhagan's case [cited supra] and in paragraph No.11, had observed that ''a person who is named as an accused in the FIR, who otherwise has no right to be heard at the stage of investigation or to have an opportunity of hearing as a matter of course, cannot be heard to say that the direction issued to transfer the investigation to CBI is a nullity.'' The Hon'ble Apex Court, had also relied on its decision reported in 2016 [4] SCC 160 [Dharam Pal Vs. State of Haryana] wherein it had underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in the public at large and the investigating agency.

(46)It is the submission of the learned Advocate General that the petitioner herein is admittedly, a candidate who stood in the bye-election in Dr.Radhakrishnan Nagar Assembly Constituency and a member of the major Opposition Party, viz., DMK and as such, he has got an axe to grind against the present Government and his intentions are tainted with oblique and mala fide motive. In the judgment in K.Anbazhagan Vs. The Superintendent of Police and Others reported in 2004 [3] SCC 767 [cited supra], the petition seeking transfer of investigation was filed by a leader belonging to DMK Political Party and one of the points urged was that the Public Interest Litigation was filed at the instance of the 14th respondent, viz., Mr.K.Anbazhagan, who happens to be a Member of the Legislative Assembly and it was observed in paragraph No.13 as follows:-
''13. It has also been urged that the petitioner being a political opponent of Respondent 2, these petitions have been launched against Respondent 2 on ground of political vendatta. This submission also has no force.. In a democracy, the political opponents play an important role both inside and outside the House. They are the watchdogs of the Government in power. It will be their effective weapon to counter the misdeeds and mischiefs of the Government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. In that view of the matter, being a political opponent, the petitioner is a vitally interested party in the running of the Government or in the administration of criminal justice in the State. The petition lodged by such persons cannot be brushed aside on the allegation of a political vendatta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of criminal justice system......''.

(47)It was also the argument of the learned Advocate General on instructions that the 8th respondent did not intend to prefer any Special Leave Petition against the ordre of quashment dated 13.03.2018 made in Crl.OP.No.26903 of 2017 and as already noted and observed by this Court that ECI is also awaiting for the conclusion of the assessment proceedings by the Income Tax Department, which may take another year.

(48)The materials placed before this Court would prima facie indicate that the 6th respondent, despite the availability of some names given in their communication in the form of Annexures which has been referred as Reference No.3 in the communication dated 21.04.2017, addressed to the Commissioner of Police, who in turn has forwarded the same to the 8th respondent and examination of as many as 882 witnesses, has failed to cite anybody as accused till the quashment of the FIR. It is also pointed out by this Court that without impleading the defacto complainant at whose instance the FIR came to be registered, has not been made as a party respondent and the person who has issued summons under Section 160 of Cr.P.C., has approached this Court without indicating his position in the cause title, made an omnibus prayer to quash the entire FIR without restricting the prayer to himself and it also came to be quashed. Therefore, the amendment of the prayer sought for by the petitioner, is to be allowed.

(49)As regards the second part of the prayer to hold the 2nd respondent accountable for damages suffered by him on account of rescinding of the election and reimbursement of the election expenses, cannot be adjudicated by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India as it involves adjudication of disputed questions of facts and law which require pleadings and evidence.

(50)In the result, the miscellaneous petition in WMP.No.39025 of 2018 in WP.No.27876 of 2017 is PARTLY ALLOWED and the amendment of prayer is ordered as follows:-

''''WRIT OF MANDAMUS directing the 1st respondent to frame appropriate guidelines to ensure the accountability of the 2nd respondent for its actions and in actions while exercising its powers under Article 324 of the Constitution of India, order CBI investigation by registering the complaint of the 6th respondent dated 21.04.2017 and with regard to the involvement of the public servants, non-public servants and persons named in the 5th respondent's report dated 08.04.2017 containing 34 pages involved in distribution of money during the rescinded by election to No.11, Dr.Radhakrishnan Nagar Assembly Constituency in Tamil Nadu and to take penal action against them in accordance with law and also with regard to failure in processing the complaint dated 18.04.2017 under Ref.No.100/TN-LA/1/17 given by the 2nd respondent and to take penal action against the persons responsible for such failure, within a reasonable time to be fixed by this Hon'ble Court and pass such further or other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case and thus render justice.''

-sd/-
29/01/2020

/ TRUE COPY /

Sub Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE CABINET SECRETARY TO GOVERNMENT
UNION OF INDIA OF INDIA, CABINET SECRETARIAT,
RASHTRAPATHI BHAVAN, NEW DELHI 110 004

2 THE THE CHIEF ELECTION
COMMISSIONER,
THE ELECTION COMMISSION OF INDIA,
NIRVACHAN SADAN, NEW DELHI

3 THE CHIEF ELECTORAL OFFICER
OF, TAMILNADU, PUBLIC (ELECTIONS) DEPARTMENT,
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CHENNAI 600 009

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CHENNAI 600 009

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TAX DEPARTMENT, AAYAKAR BHAWAN MAIN BUILDING,
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11, DR.RADHAKRISHNAN NAGAR ASSEMBLY
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ADI DRAVIDAR WELFARE DEPARTMENT

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8 THE INSPECTOR OF POLICE
E-4, ABHIRAMAPURAM POLICE STATION,
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9 THIRU.RAJESH LAKHONI, I.A.S.
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NUNGAMBAKKAM HIGH ROAD, CHENNAI. (R13 SUO
MOTU IMPLEADED VIDE COURT OR

14 THE DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
NEW DELHI

C.C. to M/S.P.WILSON ASSOCIATES Advocate SR.NO. 1140
C.C. to M/S.G.R.ASSOCIATES, Advocate SR.NO. 1074
C.C. to MR.A.P.SRINIVAS, Advocate SR.NO. 1146
The Government Pleader, High Court, Madras SR.NO. 1110

Order
in
WMP.39025/2018
in
WP.27876/2017

Date :29/01/2020

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