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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2021

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THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No.8624 of 2021
and Crl.M.P.Nos.5664 & 8433 of 2021

K.Paunraj ...Petitioner/Accused
Vs.

1. The State rep by
The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore. ...Respondent/Complainant

Amended as per order in
Crl.O.P.No.8624 of 2021 dated
07.09.2021

2. Saravanakumar
The Regional Director of Municipal
Administration and Regional Vigilance Officer,
JG Nagar 1st Street,
Kumaranandhapuram,
Tiruppur - 2 ...Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records to quash the FIR No.14/2021 on the file of the 1st respondent pending disposal of the above Criminal Original Petition.

For Petitioner .. Mr.C.Emilias
For Mr.G.Prabhu Rajadurai

For Respondents .. Mr.E.Raj Thilak,
Additional Public Prosecutor.

ORDER

The present Criminal Original Petition has been filed seeking to quash FIR.No.14 of 2021, which at the time when the present petition was filed had been registered by the District Crime Branch, Coimbatore. The said FIR had been registered against the petitioner who was the only accused for commission



of alleged offences under Sections 408 and 420 IPC and under Sections 13(1)(c), 13(1)(d)(i), 13(1)(d)(ii), 13(1)(d)(iii) and 13(1)(e) of the Prevention of Corruption Act, 1988.

2. Taking a ground that the offences alleged under the Prevention of Corruption Act, 1988 against a public servant should be enquired into only by the Vigilance and Anti-Corruption Department and therefore seeking to quash the FIR, the present petition had been filed.

3. The present petition had been heard on various occasions and on 08.06.2021, a learned Single Judge of this Court when urged to grant stay of investigation, had declined to grant stay and in the course of the said order, had also observed that the alleged offences, were at that point of time, being investigated by the Vigilance and Anti-Corruption Department. As a matter of fact, the learned Single Judge had actually observed that the investigation in Crime No.14 of 2021 had actually been transferred to the Vigilance and Anti-Corruption Wing.

4. Aggrieved that stay had not been granted, the petitioner herein had approached the Hon'ble Supreme Court in S.L.P.Crl.No.4665 of 2021. By order dated 23.07.2021, the Hon'ble Supreme Court directed this Court to dispose of the present petition within a period of two months from the time when the petitioner files an application for expeditious disposal of the case.

5. Accordingly, the petitioner herein had filed Crl.M.P.No.8433 of 2021 on 17.08.2021 to dispose of the case as directed by the Hon'ble Supreme Court.

6. Today, heard arguments advanced by Mr.C.Emilias, learned counsel appearing on behalf of the petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the 1st respondent.

7. It must be mentioned that the 1st respondent / Investigating Agency is the Vigilance and Anti-Corruption, Coimbatore. The defacto complainant, the Regional Director of Municipal Administration and Regional Vigilance Officer, Tiruppur had been impleaded as the 2nd respondent.

8. Before going into the points advanced by the learned counsels on either side, let me enter into a small discussion on the facts of the case.

9. The petitioner herein was the Municipal Commissioner in Valparai Municipality. He was responsible for awarding contracts for various public works to be done under the aegis of the said municipality.



10. It must also be noted that the Model Code of Conduct had come into effect owing to the general elections being announced for the State Legislature Assembly in the State of Tamil Nadu on 26.02.2021. On and from 26.02.2021, it was expected and as a matter of fact, it had been directed and it was hoped that every public servant would follow the mandate of the Election Commission and also the Model Code of Conduct namely, not to indulge in any fresh contracts or not to indulge to make payments for the existing contracts. If works were under way, they can be proceeded only with specific permission of the Election Commission. The petitioner as the Municipal Commissioner, Valparai Municipality, came under the direct control of the District Collector, Coimbatore.

11. It must also be mentioned that the District Collector was also the District Election Commissioner. He was responsible to maintain the Model Code of Contact under the area in his jurisdiction.

12. The entire episode started, with a letter addressed by the District Election Officer / District Collector on 26.03.2021 in Letter No.5688/21/J4, wherein, in his official capacity as District Election Officer and also incidentally as District Collector, he had stated that he had reliably learnt that the Municipal Commissioner of Valparai Municipality / the petitioner herein was proceeding with executing contracts for civil works from the funds allotted to the local body. He inferred that payment had been made to the contractors and further stated that such payments were used as cash inducement of voters.

13. Let me pause at this juncture and examine the definition as given in the Prevention of Corruption Act, 1988 for "public duty".

14. "Public duty" has been defined under Section 2(b) of the Act as follows:

"2. Definitions.—In this Act, unless the context otherwise requires,—

a).

b). "public duty" means a duty in the discharge of which the State, the public or the community at large has an interest;

Explanation.—In this clause "State" includes a corporation established by or under a Central, Provincial or State Act, or an authority or a



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body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);
c).”

15.The legislature has mandated that a public duty is a duty in discharge of which the State, the public and the community at large has interest. Naturally, under the shield of doing public duty, if any public servant were to indulge in acts inviting allegations of any of the offences either under the IPC or under the PC Act, 1988 then such public servant had not discharged his public duty.

16.In the instant case, coming back to the letter mentioned aforesaid, the District Election Officer / the District Collector, had further stated that on preliminary enquiry, it had come to his information that the works had been carried out on the basis of a resolution of the Municipal Council Meeting on 29.01.2021. The District Election Officer / the District Collector further directed the three addresses to the said letter namely, the Regional Director, Municipal Administration, Tiruppur, the Regional Joint Director, (LF Audit), Coimbatore and the Deputy Director, Anaimalai Tiger Reserve Pollachi Division, Pollachi to jointly enquire into the complaints, scrutinize the records of the works, scrutinize the details of payment made to the contractors and send a comprehensive report. He had further stated that there must be verification of the accounts of the contractors with the bank and a report must be made from the accounts of the contractors during the recent days namely, in and around the days when there was campaigning for the elections which had been already announced.

17.These facts must be viewed from the situation which prevailed at that particular point of time namely, that there was hectic parleying for votes and the District Election Officer / the District Collector Coimbatore, stated that he had information that the payments which had been made to the contractors by the present petitioner who was working as Municipal Commissioner in Valparai Municipality were being diverted to pay cash to induce voters during the elections. On the face of it, without going any further discussion, it can be stated that there cannot be a worse betrayal of public trust imposed on a public servant.

18.Thereafter, it transpires the 2nd respondent / defacto complainant herein, had issued a letter on the very next day on 27.03.2021 to the Banks at Coimbatore seeking the details of the Contractor Journal Voucher and the Bank Payment orders from 26.02.2021, the date on which the Model Code of Conduct came



into effect. He also sought details with respect to the amounts which had been given to the contractors by way of cheques and stated that an enquiry was on going with respect to the same.

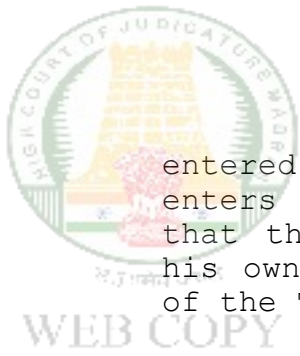
19. Documents have been filed before this Court, the veracity of which had not been disputed by either side. The documents are very revealing.

20. The learned counsel for the petitioner tried to portray a picture that the petitioner was very innocent and must be granted indulgence by this Court. But the records show otherwise. There have been direct payment of Rs.2.00 crores to just one contractor, K.Ponraj and another payment of Rs.68.00 lacs to another contractor, M.Manikumar. The learned counsel justified such payments, saying that they were for the welfare works for the benefit of the general public and he also justified the same saying that on and from 26.02.2021 practically every other Municipal Administration had disbursed monies to various contractors and therefore stated that the petitioner is also justified in similarly disbursing money to the contractors aforementioned. This is an argument which has to be rejected.

21. A wrong doer cannot justify and take shelter behind similar acts of wrong doing by others. If the petitioner had a minute sense of public duty cast on him, he would have definitely stopped making any payment or disbursing even one rupee to any one of the contractors. If a work requires necessity to be done on emergency basis, the Model Code of Conduct did provide that the contractors can get necessary permission and on obtaining such permission can continue to do the work.

22. One further shocking revelation which has come up from the documents filed is the statement made by the defacto complainant, with respect to the payments made from the bank accounts of the contractors. The bankers had refused to give details, as to where the monies went to. Thus there was an element of not only the petitioner having indulged in nefarious activities, but also an attempt to screen such nefarious activity from being enquired into by a duly appointed public authority.

23. In the report of the defacto complainant, it had been stated that various works were also executed without any agreement between the municipality and the contractors. The funds available with any municipality is public fund. If that has to be disbursed to a contractor, for a work which might have been decided to be executed on an earlier date, nomination and appointment of a contractor requires that an agreement is



entered into with the specific contractor. If a contractor enters into a work without any agreement, it would also indicate that the petitioner herein as Municipal Commissioner did chose his own contractors which is certainly against the basic tenets of the Tender Transparency Act, 2000.

24.A further perusal of the documents produced, reveal a more shocking details. It is seen that a single work had been sub-divided into 41 separate works and funds allotted were fragmented into smaller units and disbursed.

25.The learned counsel for the petitioner drew an analogy justifying that act of the petitioner. The learned counsel stated that if a compound wall is to be built around the High Court, then, since construction of the compound wall across the outer boundary of the High Court would take much time, the construction of the wall can be sub-divided into a smaller lengths and several contractors can be given work for each length.

26.The analogy is meaningless and without application to the facts of the present case. Here the Municipal Administration had decided to give one contract and the petitioner thereafter, without further concurrence had sub-divided that one word into 41 separate contracts and entrusted them and further payments had been made after the Model Code of Conduct had come into effect. The District Election Officer had very categorically put in writing committing himself stating that such payments had been made with an aim to induce voters during the elections. This conduct can never be appreciated. It has to be condemned and is a cognizable offence.

27.But, in this case, when this complaint was given by the defacto complainant, it had been given to the Inspector of Police, District Crime Branch, Coimbatore, who had registered FIR in Crime No. 14 of 2021. Taking umbrage at such an act of that particular respondent namely, the Inspector of Police, District Crime Branch, Coimbatore, who, it was alleged, had no authority to examine a complaint against a public servant and more particularly when it relates to offences under the Prevention of Corruption Act, 1988, the present petition came to be filed. During the course of the pendency of the petition and even before it travelled to the Hon'ble Supreme Court, there was a transfer of investigation through proper channel by the Government to the Vigilance and Anti-Corruption Department, Coimbatore. The investigation was transferred.

28.The learned counsel for the petitioner pointed out the FIR registered by the Vigilance and Anti-Corruption Department and pointed out that the very same provisions of law had been



incorporated in the FIR also by the Vigilance and Anti-Corruption Department. He was very categorical of that particular fact and stated that the particular offences which had been mentioned in the FIR no longer exist in law and had been substituted by new provisions after the amendment to the PC Act, 1988.

29.It is common knowledge that Section 13 of the PC Act, 1988 had undergone a sea change and Sections 13(1)(a), 13(1)(b), 13(1)(c), 13(1)(d) and 13(1)(e) and their various sub-sections have been significantly reworked and as on date, the provision are Sections 13(1)(a) and 13(1)(b) alone. Substantial portions of the offence mentioned under Sections 13(1)(d) of the PC Act, 1988 have been moved over to Section 13(1)(a) and to Section 7 of the PC Act, 1988. After amendment, what are retained are the substantive provisions under Section 13(1)(a) which relates to criminal misconduct and Section 13(1)(b) which relates to possession of assets, disproportionate to known sources of income.

30.Pointing out these facts, the learned counsel stated that invoking of the very sections was faulty and on that ground also, quite apart from the ground that the District Crime Branch, Coimbatore had originally registered the FIR, this Court should intervene and quash the FIR.

31.I reject such argument.

32.No doubt, the District Crime Branch had originally registered the FIR. Thereafter there has been a transfer of investigation in proper procedure. Records to that had been furnished not only by the respondents herein, but they are also to the knowledge of the petitioner. A letter emanated from the Government on 03.06.2021 and it must again be kept in mind, that this was prior to the petition moved before the Hon'ble Supreme Court aggrieved by stay not being granted by a learned Single Judge of this Court in the order dated 08.06.2021. In the same order, the learned Judge had observed that investigation had been transferred to the competent agency namely, the Vigilance and Anti-Corruption Department. The Hon'ble Supreme Court had not made any observation with respect to the investigating agency but had only directed that the matter should be heard by a learned Single Judge.

33.By letter dated 03.06.2021, the Chief Secretary to Government, Public (SC) Department in Letter No.AC/232-3/2021 had very specifically stated that the Government had taken a decision to entrust the case in Coimbatore District Crime Branch in Cr.No.14 of 2021 registered against the petitioner herein / K.Paunraj, a Municipal Commissioner, Valparai Municipality and



unnamed others to the Directorate of Vigilance and Anti-Corruption for enquiry and necessary action under the Prevention of Corruption Act, 1988. The letter was addressed to the Director General of Police, Head of Police Force, Tamil Nadu.

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34. Thereafter, the Director General of Police had addressed the Director General of Police / Director Vigilance and Anti-Corruption Department by letter in Rc.No.1213614/Crime.2(2)/2021 dated 08.07.2021 drawing reference to the aforesaid letter of the Government and stating that the CD file of the District Crime Branch, Coimbatore relating to Crime No.14 of 2021 had been forwarded along with the connected reference for taking further action. Subsequently, the Superintendent of Police, Western Range of Directorate of Vigilance and Anti-Corruption Department, Chennai had addressed the Inspector of Police, Vigilance and Anti-Corruption Department Coimbatore again drawing reference to both the letters aforementioned, and directed the said Inspector of Police, to register a Regular Case against the accused and submit a DFR within a period of six months. Submission of DFR within a period of six months is simply not possible owing to the steps taken by the petitioner to frustrate investigation.

35. I am informed that originally, the petitioner was placed under suspension and he thereafter filed a writ petition before the Madurai Bench of Madras High Court and an order of stay had been granted. That order of stay was again stayed by the Division Bench of the Madurai Bench of the Madras High Court in effect affirming the order of suspension. The petitioner thereafter filed the present Criminal Original Petition and has effectively stalled investigation into acts of misappropriation, acts alleging diversion of funds, acts alleging that by such diversion of funds cash inducement was offered to voters during the period of election.

36. I do agree that the petitioner has a statutory and inherent right to question any action taken against him, but the grounds taken cannot be sustained.

37. There is one further fact. As Municipal Commissioner of Valapari Municipality, the petitioner is in a position to influence his other staff members and officers working under him and there is every possibility of the records being tampered either directly or indirectly on the instigation of the petitioner.

38. It is claimed by the learned counsel for the petitioner, that the petitioner had now suffered from some physical ailment and is on leave. But whether that is a ruse or not is again a fact which can be examined only by the Investigating Officer.



39. One further fact taken and urged by the learned counsel for the petitioner is with respect to Section 17(A) of the PC Act, 1988, as amended.

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40. The PC Act, 1988 was re-visited by the Legislature and amendments had been brought in the year 2018 in Act 16 of 2018. Among amendments, section 17(A) was also introduced, whereby it was provided that no action can be taken against a public servant without prior approval of the competent authority. It had been stated that if he is a Central Government employee, then by the competent authority under the Central Government, and if he is a State Government employee, then by the competent authority under the State Government.

41. The learned counsel stated that in this case, such an approval had not been obtained and therefore contended that registration of the FIR itself unlawful.

42. Yet another point canvassed by the learned counsel for the petitioner is that prior to registration of a FIR with respect to corruption cases there was an obligation or rather a duty inbuilt on the officer who received information, to conduct preliminary enquiry and the learned counsel stated that had preliminary enquiry been conducted, the petitioner would have explained the allegations against him and the learned counsel hoped that such explanation would have actually made the officer to not even register the FIR.

43. It is the further grievance of the learned counsel for the petitioner that the FIR registered by the District Crime Branch had been registered by the Sub-Inspector of Police and the learned counsel wondered, taking into account the very high post, according to the learned counsel, which the petitioner holds, registration of FIR by a mere Sub-Inspector of Police was quite demeaning.

44. All these aspects raised by the learned counsel for the petitioner are rejected by me.

45. In the first place, I would, as correctly pointed out by the learned Additional Public Prosecutor, the first letter which emanated on 26.03.2021 from the District Election Officer / the District Collector, itself can be termed as an approval for proceeding to enquire into the nefarious activities which had been alleged against the petitioner.

46. I had examined the said letter earlier and in this context, let me examine the said letter once again.



47. The District Election Officer / the District Collector, had not directed that a FIR should be registered against the petitioner. He had only called for an enquiry to be conducted. He had stated that he had received an information that payments are made to the contractor, which payments are alleged to be used for cash inducement of voters. He also mentioned about preliminary enquiry and he stated that the works were carried out as per resolution dated 29.01.2021. This very fact means that the said officer was very fair mentioning that the works have been conducted in accordance with a resolution which was much prior to 26.02.2021, when the Model Code of Conduct came into effect. He directed the officer to whom the letter had been addressed to scrutinize the records of the work, to examine the details of payment made to the contractors and then send a comprehensive report. He also directed verification of the accounts of the contractors with the bank and report about the payments made from the accounts during the recent days.

48. Now let me examine Section 17(A) of the PC Act, 1988. This provision is still nascent, and is still under interpretation by the Courts.

Section 17 (A) of the Act, is as follows:

"[17A. Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval—

(a) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;

(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;

(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:



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Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:

Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month.]

49. One very important fact under Section 17(A) is that no police officer shall conduct any enquiry or inquiry or investigation into an offence alleged to have been committed by a public servant except with the previous approval of the Government and it can be reasonably held the District Collector who was also the District Election Officer represents the Government and more particularly the Election Commission in that particular district. He is the officer who had direct control over the petitioner herein. He had granted approval for enquiring into the offences alleged to have been committed by the petitioner herein. This was on 26.03.2021.

50. Thereafter, an enquiry was actually conducted in the office of the petitioner herein. It was stated on the date when such enquiry was conducted, the petitioner was on leave. That it is not to mean that no enquiry at all should be conducted and the enquiring officer should not do his official duty. There is no bar in conducting an enquiry when the officer is on leave. It can even be presumed that the officer went on leave to avoid enquiry being conducted. Therefore, I do not find any irregularity in the enquiry being conducted by the defacto complainant.

51. Several materials emanated during the course of such enquiry. It was only when they were forwarded, that a FIR was registered originally by the District Crime Branch. It is correct that the District Crime Branch had no authority to register a FIR relating to offence under the PC Act against public servants. But after the investigation had been transferred to the proper investigating agency, the petitioner cannot, any longer harp on that particular fact and claim that the activities of the petitioner herein should never be investigated by any investigating agency. That would be stretching the rights of the petitioner a little too far.

52. As on date, the investigating agency has every authority to investigate the affairs of the petitioner alleged against



him. There was an approval granted to conduct a preliminary enquiry. The preliminary enquiry was actually conducted. If the petitioner was on leave, the officer who conducted the enquiry cannot be blamed. The nature of the preliminary enquiry cannot be dictated by the petitioner. In this case, the enquiry was conducted in the office of the petitioner by examining the records and thereafter, furnishing a detailed report over the payments made to just two contractors for a sum of Rs.2.00 crores to one contractor and Rs.68.00 lacs to another contractor. The petitioner will necessarily have to answer these allegations. I am confident in the course of further investigation, he will be afforded such an opportunity.

53.As on date, the petitioner is screened away from facing the investigation. That screen will have to be removed. The petitioner will necessarily have to face investigation. The FIR now registered, in my opinion, has been rightly registered.

54.There is yet another aspect which had been taken by the learned counsel for the petitioner who stated that the offence which had been indicated do not any longer exist in the statute.

55.For this I will have to examine the history of the Prevention of Corruption Act, 1988.

56.The Prevention of Corruption Act, 1988 first came into being in the year 1947. That Act held the field till the year 1988, when a subsequent amendment came in and the Prevention of Corruption Act, 1988 came to be enacted. In the Prevention of Corruption Act, 1988, Section 30 specifically provided for repeals and savings. Various questions came before various courts of law, where offences had been committed prior to the introduction of the Prevention of Corruption Act, 1988 but investigations were done during the course time when the Prevention of Corruption Act, 1988 had already come into effect. The Courts had interpreted with Section 30 of the Act, and saved such registrations of FIR and saved such investigations.

57.Section 30 of the Prevention of Corruption Act, 1988, which still stands is as follows:-

"30. Repeal and saving.-

(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952) are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of section 6 of the General Clauses Act, 1897 (10 of 1897), anything done or any action taken or purported to have been done or taken under or in pursuance of the



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Acts so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provision of this Act."

58. In Central Bureau of Investigation V. Subodh Kumar Dutta and Another reported in 1997 10 SCC 567, the Hon'ble Supreme Court was concerned with the question relating to the effect of cognizance of an offence under the 1947 Act taken by the Special Judge subsequent to the repealing of PC Act, 1947 by the introduction of PC Act, 1988. The High Court had actually quashed the proceedings, holding that the cognizance of an offence taken by the Special Judge constituted in that case under the West Bengal Special Court Act was not saved under Section 26 of the 1988 Act. The Hon'ble Supreme Court very categorically held that Section 26 had no application at all and on the other hand considered Section 30 of the PC Act, 1988. The Hon'ble Supreme Court had held as follows:-

6. Mr Bhatt, the learned Additional Solicitor General, appearing for the appellant, CBI, concedes that the Special Court which had taken cognizance, had been constituted under the West Bengal Act of 1950 and not under the Criminal Law Amendment Act of 1952 but submits that both on the date of the commission of offence i.e. 30-11-1987 and on the date when the cognizance was taken by the Special Court i.e. 9-7-1988, the 1947 Act was very much in force and the Special Court had the jurisdiction to take cognizance of the offence. The 1947 Act came to be repealed by the Prevention of Corruption Act, 1988 with effect from 9-9-1988, after the cognizance had been validly taken by the Special Court under the 1947 Act. The learned Additional Solicitor General submits that under Section 30 of the Prevention of Corruption Act, 1988 anything done and any action taken under the Prevention of Corruption Act, 1947 before the repeal, has been specifically saved. Section 30 of the 1988 Act reads thus:

"30. Repeal and saving.-(1) The Prevention of Corruption Act, 1947 (2 of 1947) and the Criminal Law Amendment Act, 1952 (46 of 1952), are hereby repealed.

(2) Notwithstanding such repeal, but without prejudice to the application of Section 6 of the General Clauses Act, 1897 (10 of 1897),



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anything done or any action taken or purported to have been done or taken under or in pursuance of the Acts so repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of this Act."

7. A bare look at the provisions of sub-section (2) of Section 30 shows that anything done or any action taken or purported to have been taken under or in pursuance of the Prevention of Corruption Act, 1947 shall be deemed to have been taken under or in pursuance of the corresponding provision of the Prevention of Corruption Act, 1988. In view of this specific provision, the cognizance of the offence taken by the Special Court stood saved. It appears that the attention of the learned Single Judge of the High Court was not invited to Section 30 (supra) for had it been so invited, we have no doubt that the proceedings which were saved by the 1988 Act would not have been quashed. The learned Single Judge has only referred to Section 26 of the 1988 Act and we agree that under that section, the cognizance taken by the Special Court was not saved. Section 26 of the 1988 Act has no application to this case. The order of the High Court in view of the clear provisions of Section 30 (supra) cannot be sustained and we, therefore, accept this appeal and set aside the order of the High Court impugned before us."

59. In *M.C. Gupta V. CBI* reported in 2012 8 SCC 669, the Hon'ble Supreme Court was again confronted with a similar. They further expanded their reasoning and brought into effect Section 6(c) and (e) of the General Clauses Act, 1897 and read it along with Section 30(1) and (2) of the PC Act, 1988. It was observed by the Hon'ble Supreme Court that there was a saving of the proceedings under the repealed PC Act, 1947 and there was a deeming fiction. It had been very specifically held that the right of the authorities concerned to investigate the crime, institute proceedings and prosecute is saved and not affected by the repeal of the 1947 Act. It was also held that no different intention is disclosed in provisions of 1988 Act to hold that repeal of 1947 Act affected the right of the investigating agency to investigate offence which were covered by 1947 Act or that it prevented investigating agency from proceeding with investigation and prosecute the accused for the offence.



60. In the instant case also there is no different intention disclosed in the amendments to the 1988 Act to hold that the FIR should be quashed. The nature of the offences will have to be examined. It generally surrounds misconduct of a public servant and misappropriation of public funds and disbursement of public funds for usage for purposes other than which those public funds had been entrusted with the public servant. The petitioner as a Municipal Commissioner had a duty to see that public money allotted and sanctioned for works were used for the works and there cannot even be a slight whisper that such public funds were diverted through the contractors to induce voters during the election period. If he is to invite such an allegation, then he has to face investigation on such allegations.

61. The learned counsel for the petitioner also referred to the Judgment in 1992 SCC CrI 426, State of Haryana & others Vs. Bhajanlal & others, wherein, the Hon'ble Supreme Court had given seven propositions wherein the High Court can interfere and quash the FIR. The learned counsel stated that the petitioner herein would come under the category of clauses 6 and 7 as enunciated by the Hon'ble Supreme Court. They are reduced below:

"102.(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

62. I wonder how these two propositions would come to the rescue of the petitioner herein or to the aid of the petitioner. There is no legal bar in transfer of investigation to the Vigilance and Anti-Corruption Department. The Government has that power and the Government has exercised its power lawfully and rightfully. Now the petitioner is facing investigation by the Vigilance and Anti-Corruption Department. A preliminary enquiry was done by examining the records in the office. Even prior to that the District Election Officer / the District Collector had expressed his subjective satisfaction that to his direct knowledge, the petitioner was involved with misappropriation of public funds with ulterior motive. It is not



for the petitioner to dictate how the preliminary enquiry should be conducted against him. It for him to subject himself to the rule of law.

63.The learned counsel for the petitioner pointed out Clause 7 referred supra and stated that across the region every other Municipal Corporation spent money on and from 26.02.2021 to the contractors and the petitioner alone had been singled out.

64.I hold, the petitioner cannot draw to equate himself with others who had similarly betrayed public trust. If he had betrayed public trust and confidence and misappropriated public money, he will have to face investigation into the said charge. He cannot point out and say that everybody else did similar misappropriation and diversion of funds and that he alone is being prosecuted. What he did is an offence under the laws of this country. To that extent, the allegations against the petitioner will necessarily have to be investigated. He cannot take as a shield the fact that others who had committed similar offence have not been investigated. Probably, the petitioner wants to indicate that his case is a tip in the iceberg. If that be so, the Investigating Agency can be stated to have made a beginning.

65.I hold that these two clauses referred by the learned counsel for the petitioner in Bhajanlal (referred supra) would not come to the rescue of the petitioner herein.

66.The learned counsel also relied on paragraphs 77 and 78 of the aforesaid judgment in State of Haryana & others Vs. Bhajanlal & others referred supra. In paragraph 77 of the said judgment, the Hon'ble Supreme Court referred to P.Sirajuddin V. State of Madras reported in 1970 SCC (Cri) 240. The portion which the Hon'ble Supreme Court relied on is extracted below:-

77. In this connection, it will be appropriate to recall the views expressed by Mitter, J. in P. Sirajuddin v. State of Madras [(1970) 1 SCC 595 : 1970 SCC (Cri) 240 : (1970) 3 SCR 931] in the following words: (SCC p. 601, para 17)

"Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and a first information is lodged against him, there must be some suitable preliminary enquiry into the



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allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general The means adopted no less than the end to be achieved must be impeccable."

78. Mudholkar, J. in a separate judgment in State of Uttar Pradesh v. Bhagwant Kishore Joshi [(1964) 3 SCR 71 : AIR 1964 SC 221 : (1964) 1 Cri LJ 140 : (1964) 1 LLJ 60] at p. 86 while agreeing with the conclusion of Subba Rao, J. (as he then was) has expressed his opinion stating: (SCR pp. 86-87)

"In the absence of any prohibition in the Code, express or implied, I am of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it."

67. In P. Sirajuddin referred supra, it had been held by the Hon'ble Supreme Court that before a public servant, is properly charged with acts of dishonesty which amounts to serious misdemeanour or misconduct, there must be some suitable preliminary enquiry into the allegations by a responsible officer.

68. In the instant case, by the letter of the Collector referred above, a preliminary enquiry had been directed to be conducted. Preliminary enquiry was conducted. The records of the petitioner were examined. The petitioner for reasons best known to him had gone on leave and abstained from attending his office duty. He cannot now turn around and say that he was not put on notice. He was simply not present. He had absented himself. There is no obligation on the part of the officer while conduct preliminary enquiry to go searching for the petitioner wherever he was. The records available in the office of the petitioner were examined and a report had been given.

69. Therefore, I hold that there has been no irregularity in the registration of the FIR against the petitioner.

70. In Bhagwant Kishore Joshi referred supra again the Hon'ble Supreme Court had stated that a preliminary enquiry



should be conducted before registering the offence and making a full scale investigation.

71.To reiterate and to repeat, preliminary enquiry was actually conducted. At the appropriate stage during the course of trial, he can call upon the officer who conducted the said preliminary enquiry and test such enquiry. But such a stand cannot be put forth at this stage, where investigation is at a very very nascent stage.

72.The learned counsel for the petitioner also relied on M/s. Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others [2021 SCC Online 315]. The Hon'ble Supreme Court had actually directed that a copy of the said judgment should be circulated to all the High Courts. In paragraph 23, the Hon'ble Supreme Court had given various guidelines and various stipulations which the High Court should examine before exercising the power under Section 482 of Cr.P.C., to quash a FIR.

73.The stipulations given by the Hon'ble Supreme Court are reduced below:-

"23.i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;

ii) Courts would not thwart any investigation into the cognizable offences;

iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;



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vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the



cases of R.P. Kapur Vs. State of Punjab (AIR 1960 SC 866) and State of Haryana Vs. Bhajan Lal, (1992 Supp. (1) SCC 335), has the jurisdiction to quash the FIR/complaint;

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xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi)

xvii)

xviii)

[Emphasis Supplied]

74.The learned counsel for the petitioner was very particular about clause (xiv). He stated that the Court, if it thinks fit, having regard to the parameters of quashing, more particularly with respect to the parameters laid down in R.P.Kapur Vs. The State of Punjab reported in AIR 1960 SCC 862 or in Bhajanlal referred supra has jurisdiction to quash the FIR.

75.But in the earlier clauses, the Hon'ble Supreme Court had very categorically held that the Court should not thwart any investigation into a cognizable offence. It had also been stated that the power of quashing should be exercised very sparingly and with circumspection. It had been stated that the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint. It had been stated that the criminal proceedings should not be scuttled at the initial stage. It had also held quashing a complaint or a FIR should only be an exception rather than an ordinary rule.

76.I would take guidance from those stipulations given by the Hon'ble Supreme Court.

77.In the instant case, I have examined the particular dictum relied by the learned counsel for the petitioner as laid down in Bhajanlal referred supra effectively also in R.P.Kapur referred supra and I had already held that the petitioner's case



does not come within any of those conditions stipulated in that judgment.

78. The learned counsel for the petitioner also relied on Anil Kumar and Others V. M.K. Aiyappa & Another reported in (2013) 10 SCC 705, wherein, the Hon'ble Supreme Court had made a reference to Subramaniam Swamy V. Manmohan Singh reported in 2012 3 SCC 64. In that particular judgment, the Hon'ble Supreme Court had interfered with Section 6A of the Delhi Special Police Act, which also related to sanction and had struck that provision down as unconstitutional. This particular judgment which is now relied on the learned counsel relates to sanction under Section 19(3) of PC Act, 1988. The sanction under Section 19 of the PC Act, arises when, after investigation, the investigating authority forwards the final report and thereafter, the sanctioning authority who in effect can also be termed as the disciplinary authority or the authority who can appoint or dismiss a particular public servant will independently have to examine all the material and come to a subjective satisfaction by independent application of mind, whether, sanction for prosecution is to be granted or not.

79. Here we are not on the issue of sanction for prosecution rather on approval for registration of a case against the public servant. The word used is only 'approval' under section 17 (A) of the PC Act, 1988. Therefore the word 'approval' would only indicate examining whether a prima facie case is made out requiring registration of FIR against the public servant.

80. As pointed out in the letter dated 26.03.2021, the District Election Officer / the District Collector had expressed such a prima facie view and had granted approval for preliminary enquiry and for taking further action in accordance with law.

81. The facts in Anilkumar, referred supra relied on by the learned counsel is distinguishable from the facts in this case.

82. The learned counsel for the petitioner advanced a very very elaborate arguments and read out practically the entire Manual of the Directorate of Vigilance and Anti-Corruption, Tamil Nadu issued in the year 1992.

83. He pointed out the whole Manual and I wonder why that exercise was done. Probably, the learned counsel wanted to impress that the registration of FIR suffered from a lacuna going to the root of such registration. I hold that under necessary approval is required had been granted in one form or other and I also hold that the competent authority, the District Collector had actually granted such approval. I have also observed above that a preliminary enquiry had been conducted.

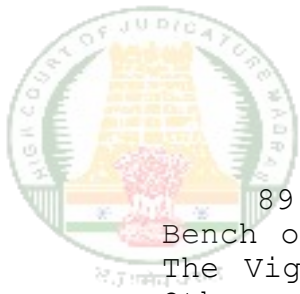


84. The petitioner should participate in the investigation. He should co-operate during the investigation. There are direct allegations of misappropriation of public funds against him. There are more specific allegation of benefiting two specific contractors. There are further specific allegations that the money flowed away from the accounts of the said contractors and that the bank officials are not giving those details. It has to be investigated whether the funds so disbursed were used for inducement of voters at the time of elections.

86. The learned Additional Public Prosecutor pointed out a judgment by a learned Single Judge of this Court (Murali Shankar, J.) in Dhandapani V. The Vigilance Commissioner, Tamil Nadu Vigilance Commission and Others in W.P. (MD) No. 5417 of 2020 pronounced on 09.03.2021. The learned Single Judge had observed after taking into account an earlier ruling of the Delhi High Court reported in 2019 (1) Crimes (HC) 726, Devender Kumar V. CBI and another ruling of the Chattisgarh High Court reported in 2020 Supreme (CHH) 149, Sathish Pandey V. Union of India and had held that Section 17 (A) of PC Act, 1988, cannot be made applicable to those acts of a public servant which amount to an offence and appears on the face of it to be lacking in good faith.

87. Here, there are allegations of misappropriation. There are allegations of diversion of money to just two contractors. The banks have not given details as to the flow of the money from the bank accounts of the two contractors.

88. The learned counsel for the petitioner also pointed out a newspaper report stating that the works done by the contractors were already completed and inaugurated by a Minister. Those facts are neither here nor there. It is a fact that the petitioner herein had disbursed a sum of Rs.2.00 crores to a contractor namely, K.Ponraj. It is a fact that the petitioner had disbursed a sum of Rs.68.00 lacs to another contractor called Manikumar. The reason why he had done so is for him to explain.



89. This judgment of the learned Single Judge of Madurai Bench of Madras High Court was taken in appeal in Dhandapani V. The Vigilance Commissioner, Tamil Nadu Vigilance Commission and Others in W.A.(MD) No.903 of 2021 and by judgment pronounced on 30.04.2021, a Division Bench (T.S.Sivagnanam & Ananthi, JJ.) had examined another judgment of the Hon'ble Supreme Court namely, Ranjib Ranjan V. R.Vijayakumar, reported in 2015 (1) SCC 513 and also observed that the Hon'ble Supreme Court had held that while discharging his official duties if a public servant enters into a criminal conspiracy or indulges in criminal misconduct such misdemeanour on his part cannot be treated as discharge of official duty. The Division Bench upheld the order of the learned Single Judge.

90. A Judgment of the Bombay High Court reported in 2021 SCC OnLine Bom 1192, Anil Vasant Rao Deshmukh V. State of Maharashtra and others, was also referred by the learned Additional Public Prosecutor. That was a writ petition filed wherein a Division Bench held that, if a FIR makes out a case of commission of offence under the PC Act, 1988, then such a FIR cannot be quashed.

91. The learned Additional Public Prosecutor also relied on the judgment of Hon'ble Supreme Court reported in 2017 16 SCC 126, R.A.H.Siguran V. Shankare Gowda Alias Shankara and Another, wherein, the very specific point raised by the learned counsel for the petitioner was answered namely, illegality in investigation. The Hon'ble Supreme Court held that even if investigation is not conducted by an authorized officer, the trial is not vitiated unless prejudice is shown.

92. Here even before investigation could be commenced by the District Crime Branch and even prior to when the matter was heard by my learned predecessor on 08.06.2021, the investigation had been transferred to the competent authority namely, the Vigilance and Anti-Corruption Department.

93. In (2021) 5 SCC 795 [Skoda Auto Volkswagen (India) Vs. State of Uttar Pradesh and Others], the Hon'ble Supreme Court had held as follows:-

" 40. It is needless to point out that ever since the decision of the Privy Council in King Emperor v. Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : AIR 1945 PC 18] , the law is well settled that the courts would not thwart any investigation. It is only in cases where no cognizable offence



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or offence of any kind is disclosed in the first information report that the court will not permit an investigation to go on.

41. As cautioned by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint.

42. In S.M. Datta v. State of Gujarat [S.M. Datta v. State of Gujarat, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201], this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M. Datta [S.M. Datta v. State of Gujarat, (2001) 7 SCC 659 : 2001 SCC (Cri) 1361 : 2001 SCC (L&S) 1201] , this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere. "

94. In 2021 SCC Online 206 [Priti Saraf and Another Vs. State of NCT of Delhi and Another] , the Hon'ble Supreme Court had held as follows:-

"28. It is thus settled that the exercise of inherent power of the High Court is an extraordinary power which has to be exercised with great care and circumspection before embarking to scrutinise the complaint/FIR/charge-sheet in deciding whether the case is the rarest of rare case, to scuttle the prosecution at its inception."



95.The dictum laid down is binding.

96.I am not examining the specific facts as alleged against the petitioner since the matter is still under investigation. If the petitioner co-operates during investigation and if the petitioner is able to provide necessary records to justify the acts alleged against him, then I am confident that the Investigating Officer would take an appropriate decision. But it all depends on the petitioner co-operating during the investigation. After all an enquiry is being conducted only with respect to the flow of public money and not his personal money. He was responsible as Municipal Commissioner for the flow of public money. Whether he had exceeded his pecuniary limits or whether he can justify that he did not exceed his pecuniary limits in disbursing amounts or whether the amounts which he disbursed were within his pecuniary limits are irrelevant aspects. He had disbursed public money and had invited allegations that such disbursement of public money was for the benefit of two single contractors against whom, and indirectly against the petitioner, the District Election Officer / District Collector had raised a suspicion that such money had been used for inducement of voters during the election. Naturally, investigation is required and he has to face the same.

97.I find no ground to quash the FIR. Hence, the Criminal Original Petition is dismissed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

smv

To
The Inspector of Police,
Vigilance and Anti-Corruption,
Coimbatore.

Cr1.O.P.No.8624 of 2021

BS[co]
NSK 28/10/2021