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W.P. No.34845



CrI.O.P. Nos.23428 of 2018, 21564 and 21565

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	08.11.2022
DELIVERED ON	30.11.2022

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

and

THE HON'BLE MR. JUSTICE RMT. TEEKAA RAMAN

W.P. No.34845 of 2018

and

CrI.O.P. Nos.23428 of 2018 and 21564 and 21565 of 2022
and connected Miscellaneous Petitions

W.P. No.34845 of 2018

Arappor Iyakkam

represented by its Managing Trustee

Jayaram Venkatesan

140-A, Rukmini Lakshmipathy Salai

Egmore, Chennai 600 008

Petitioner

v

- 1 The Director
Directorate of Vigilance & Anti Corruption
No.293, MKN Road
Alandur, Chennai 600 016

- 2 The State of Tamil Nadu
represented by its Chief Secretary
Fort St. George, Chennai 600 009

- 3 The Superintendent of Police
Anti-Corruption Bureau

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Central Bureau of Investigation III Floor
Shastri Bhavan, No.26, Haddows Road
Nungambakkam, Chennai 600 006

- 4 S.P. Velumani
Hon'ble Minister for Municipal Administration,
Rural Development and Implementation of
Special Programme
“Senthamarai”
NB5, P.S. Kumarasamy Raja Salai
Chennai 600 028
- 5 The Municipal Administration &
Water Supply Department
represented by its Secretary
Government of Tamil Nadu
Secretariat, Chennai 600 009
- 6 Greater Corporation of Chennai
represented by its Commissioner
Ripon Buildings
Park Town, Chennai 600 003
- 7 Coimbatore City Municipal Corporation
represented by its Commissioner
II Floor, Big Bazaar Street
Town Hall
Coimbatore 641 001

Respondents

(RR 5 to 7 impleaded *suo motu vide* order dated
04.01.2019 in W.P. No.34845 of 2018)



Crl.O.P. No.23428 of 2018

R.S. Bharathi

Petitioner

V

The Director
Vigilance & Anti Corruption
293 MKN Road
Collectors Nagar
Alandur, Chennai 600 016

Respondent

Crl.O.P. No.21564 of 2022

S.P. Velumani

Petitioner

V

1 State represented by the Inspector of Police
Directorate of Vigilance & Anti Corruption
Coimbatore

2 Aroppor Iyakkam
represented by its Managing Trustee Jayaram Venkatesan
No.7, Sathya Plaza II Floor
Dr. Thirumoorthy Nagar Main Road
Chennai 600 034

Respondents

(R2 impleaded *vide* order dated 07.09.2022 in Crl.M.P.
No.14013 of 2022 in Crl.O.P. No.21564 of 2022)

Crl.O.P. No.21565 of 2022

S.P. Velumani

Petitioner

V

1 State represented by the Superintendent of Police
Special Investigation Cell



Directorate of Vigilance and Anti-Corruption
No.293, MKN Road
Alandur, Chennai 600 016

- 2 Arappor Iyakkam represented by its Managing Trustee
Jayaram Venkatesan
No.7, Sathya Plaza II Floor
Dr. Thirumoorthy Nagar Main Road
Chennai 600 034

Respondents

(R2 impleaded *vide* order dated 07.09.2022 in Crl.M.P.
No.14012 of 2022 in Crl.O.P. No.21565 of 2022)

Prayer in W.P. No.34845 of 2018

Writ Petition filed under Article 226 Constitution of India seeking a writ of mandamus directing the first respondent to register an FIR on the basis of the petitioner's complaint dated 12.09.2018 after seeking “previous approval” under Section 17-A(1)(b) of the Prevention of Corruption Act, 1988, from the Governor of Tamil Nadu and to constitute a Special Investigation Team by this Court and consequently, direct that Special Investigation Team to conduct a time-bound, independent, High Court-monitored fair investigation under the Prevention of Corruption Act, 1988, Indian Penal Code and other connected Acts.

Prayer in Crl.O.P. No.23428 of 2018

Criminal Original Petition filed under Section 482 Cr.P.C. seeking a direction that a Special Investigation Team be constituted to investigate the complaint dated 10.09.2018.

**Prayer in Crl.O.P. No.21564 of 2022**

WEB COPY Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in connection with Coimbatore V. & A.C. Cr.No.5 of 2022 dated 14.03.2022 for the alleged offences punishable under Sections 120-B IPC and Section 13(2) r/w Section 13(1)(e), 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988, r/w Section 109 IPC, 13(2) r/w 13(1)(b), 12 r/w 13(2) r/w 13(1)(b) of the Prevention of Corruption Act, 1988, on the file of the Inspector of Police, DVAC, Coimbatore District and quash the same.

Prayer in Crl.O.P. No.21565 of 2022

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in connection with the FIR in DVAC HQ Cr.No.16 of 2021 dated 09.08.2021 for the alleged offences punishable under Sections 120-B r/w 420 and 409 IPC and Sections 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988, r/w Section 109 IPC, on the file of the Superintendent of Police, DVAC, Chennai, Chennai District and quash the same.



For petitioner in W.P. No.34845 of 2018 & R2 in Crl.O.P. Nos.21564 & 21565 of 2022	:	Dr. V. Suresh
For RR 1 to 3 and 5 in W.P.No.34845/2018, for R1 in Crl.O.P. Nos.21564 & 21565 & sole respondent in Crl.O.P.No.23428/2018	:	Mr. R. Shunmugasundaram Advocate General and Mr. Hasan Mohamed Jinnah Public Prosecutor assisted by: Mr. R. Muniyapparaj Addl. Public Prosecutor Mr. S. Vinoth Kumar Govt. Advocate (Crl. Side) Ms. J.R. Archana
For R6 in W.P. No.34845 of 2018	:	Mrs. P.T. Ramadevi
For petitioner in Crl.O.P. No.21564 of 2022 & For R4 in W.P. No.34845 of 2018	:	Mr. Siddhartha Dave, Sr. Counsel for Mr. V. Elangovan
For petitioner in Crl.O.P. No.21565 of 2022	:	Mr. S.V. Raju, Sr. Counsel for Mr. J. Karuppiah
For petitioner in Crl.O.P. No.23428 of 2018	:	Mr. N.R. Elango, Sr. Counsel for Mr. Manuraj

COMMON ORDER

P.N. PRAKASH, J.

In view of the commonality of the facts, the decision in the four cases at hand, viz., W.P. No.34845 of 2018 and Crl.O.P. Nos.23428 of 2018 and 21564 and 21565 of 2022, will be governed by this common order.

2 The *dramatis persona* in this case is Mr. S.P. Velumani (for short “SPV”) who is stated to have risen from a very humble beginning, being the son of a



mill worker in Coimbatore. SPV entered politics by joining the AIADMK, rose to become an MLA from Coimbatore region and later, became a Minister in the State Cabinet. Concededly, he was the Minister for Municipal Administration, Rural Development and Implementation of Special Programme Department in the cabinet of Mr. Edapadi Palanisamy, from 23.05.2016 to 06.05.2021.

3 One Mr. R.S. Bharathi, (for short “RSB”), M.P. and Organising Secretary of the D.M.K. gave a written complaint dated 10.09.2018 to the Director, Vigilance and Anti-Corruption (for short “the DVAC”) alleging *inter alia* that seven entities, viz., KCP Engineers Pvt. Ltd., P. Senthil & Co., Vardhan Infrastructure, Constronics India, Aalayam Foundation Pvt. Ltd., Constromall Goods Pvt. Ltd. and Invicta Meditek Ltd. were awarded various contracts by the Chennai and Coimbatore Corporations and that these entities are run by K. Chandra Prakash, Rajan Chandrasekar and Anbarasan who are, in reality, the benamis of SPV. In particular, it is alleged that Rajan Chandrasekar who owns KCP Engineers Pvt. Ltd. is an AIADMK functionary and P. Anbarasan who runs Senthil and Company is the brother of SPV. The complaint is general in nature and does not disclose any specific item of contract allegedly awarded to any of the aforesaid seven entities. For clarity, we extract the relevant portions from the said complaint dated 10.09.2018:



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“8. P.Senthil & Co., is a contractor in Coimbatore. Its Managing Director is Thiru.P.Anbarasan, brother of Thiru.S.P.Velumani. This company has obtained projects worth Rs.15,00,00,000 from Coimbatore Corporation from 2011-15. The Corporation has not disclosed the value of projects undertaken by this company thereafter.

23. The following aspects of the contracts deserve to be investigated:

(i) contracts were awarded to these companies despite no past expertise in the area (KCP Engineers Pvt. Ltd. and Vardhan Infrastructure), (ii) companies undertaking contracts involving activities not authorised by their Memorandum of Association (KCP Engineers Pvt. Ltd.), (iii) contracts with unduly favourable terms causing loss to the public exchequer (KCP Engineers Pvt. Ltd., in a contract with the Coimbatore Corporation involving Rs.38,50,000/- for felling hyacinth trees, they managed to negotiate a clause levying only Rs.50 as daily penalty), (iv) contracts where closing dates were arbitrarily extended only to enable the participation of the companies of benamis of Thiru.S.P.Velumani (contract for multi-level parking by Chennai Corporation), (v) contracts (at least five by Chennai Corporation in 2017-18) where other bidders were all solely rejected on the technical ground of not submitting proper documents with examining the bid price and (vi) contracts (at least five by Chennai Corporation in 2016-18) where only companies of benamis of Thiru.S.P.Velumani participated and more than one of them was accepted at different quotes without negotiating a standard price for all contractors.

25. In Smart City tenders Thiru.S.P.Velumani is exercising undue influence to award contracts to his benami consortium companies. In Rs.100 crores value Smart City tenders to implement and maintain common cloud system governing the citizen mobile application and e-governance in ten smart cities, Thiru.S.P.Velumani misusing his office to award these contracts to Acetech Machinery Components India Private Ltd. by manipulating tender process and transferring the Chairman and Managing Director of Tamil Nadu Urban Finance and Infrastructure Development Corporation. Incidentally this Acetech is the company which is primarily manufacturing metal sheets and has no smart city experience. The Minister also misused his office and gave the same Smart City



contract worth Rs.149 crores of Chennai Corporation to the Consortium Metal Sheet company namely Acetech Machinery Components India Private Ltd. by indulging in all irregularities. The Smart City which is one of the flagship programme of the Hon'ble Prime Minister is embroiled with corruption and illegalities under the Ministry of Thiru.S.P.Velumani.”

4 One Jayaraman Venkatesan, Convenor of Arappor Iyakkam, which, in its own words, “*is a people's movement working towards transparency and accountability in governance*”, gave a complaint dated 12.09.2018 to the DVAC alleging, *inter alia*, that huge contracts were awarded to 20 entities and persons by Chennai Corporation and Coimbatore Corporation in violation of rules allegedly on the influence of SPV. This complaint also refers to the involvement of Rajan Chandrasekar, Chandra Prakash and Anbarasan, brother of SPV, in bagging the contracts awarded by the Chennai and Coimbatore Corporations.

5 It is seen that, Arappor Iyakkam also sent a complaint of even date, containing the same allegations verbatim, to the Superintendent of Police, Central Bureau of Investigation, Chennai. The relevant passages from the complaint read thus:

"10. I submit that a firm called S.P.Builders allegedly benami of Minister S.P.Velumani has been instrumental in aiding the above companies to get tenders by forming a cartel.

11. I submit that we have collected evidences of some of the frauds that have taken place in Chennai and Coimbatore Corporation to tweak the tenders in favour of these close relatives and aides of Mr.S.P.Velumani. A



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thorough probe into the tenders will unearth the quantum and scale of the scam.

12. I submit that there is a very clear pattern of fixing of tenders beforehand. Patterns of only 2 bidders participating in most tenders of Corporation of Chennai and Coimbatore while there are tens and hundreds of contractors available, firms which are related parties competing against each other which is a clear violation of Tender Act and rules and tweaking of tender conditions to favour the ones close to the Minister can be seen across many tenders. This clearly prima facie establishes the criminality of the fraud that has taken place.

Details of corruption in Coimbatore Corporation

13. A lot of these tenders have been won at percentages more than the scheduled rates creating a huge loss to the exchequer. This could not have happened without the collusion of the Minister incharge, tender inviting authorities, Superintendent Engineers and the Chief Engineers of the Corporation."

6 Though the general allegations in RSB's complaint and the complaint of Arappor Iyakkam are on the same lines that the benamis of SPV had bagged hundreds of contracts from Chennai Corporation and Coimbatore Corporation, the complaint of Arappor Iyakkam is based on materials gathered by them under the Right to Information Act with reference to specific contracts.

7 Upon receipt of the complaint dated 10.09.2018 from RSB, the DVAC addressed a communication dated 12.09.2018 seeking permission of the Government to conduct a preliminary enquiry under Section 17-A of the Prevention of Corruption Act, 1988 (for short "the PC Act").



8 On 01.10.2018, RSB filed a petition in Crl.O.P. No.23428 of 2018 under Section 482 Cr.P.C. seeking a direction to the DVAC to constitute a Special Investigating Team to investigate his complaint dated 10.09.2018.

9 Arappor Iyakkam, for its part, filed a public interest litigation in W.P.No.34845 of 2018 arraying (1) the DVAC, (2) the State of Tamil Nadu, (3) the Superintendent of Police, Anti-Corruption Bureau, C.B.I. and (4) SPV as respondents 1 to 4. Subsequently, on 04.01.2019, the Municipal Administration & Water Supply Department, Greater Chennai Corporation and Coimbatore City Municipal Corporation were *suo motu* impleaded as respondents 5 to 7. The prayer in the writ petition is for a mandamus directing the DVAC to register an FIR on the basis of Arappor Iyakkam's complaint dated 12.09.2018 after seeking "previous approval" under Section 17-A(1)(b) of the PC Act, from the Governor of Tamil Nadu, for constituting a Special Investigation Team by this Court and consequently, direct that Special Investigation Team to conduct a time-bound, independent and High Court-monitored fair investigation under the PC Act, Indian Penal Code and other connected Acts.

10 In the said writ petition, notice was ordered by a Division Bench of this Court on 04.01.2019.



11 The Government, by order dated 08.01.2019, accorded permission to the DVAC, to conduct a preliminary enquiry. Accordingly, the DVAC opened a file in PE1/2019/PUB/HQ dated 21.01.2019 to conduct a preliminary enquiry on the complaint given by RSB and Arappor Iyakkam.

12 The task of conducting the preliminary enquiry was entrusted to one Mr. Shankar, D.S.P., DVAC. Arappor Iyakkam appears to have submitted various documents to Mr. Shankar, D.S.P., DVAC, in support of its allegations.

13 On 18.10.2019, when W.P. No.34845 of 2018 filed by Arappor Iyakkam came up for hearing, it was submitted on their behalf that though Arappor Iyakkam had placed clinching materials to show that only two bidders for some contracts had submitted their bids through the same I.P. address and hence, the bid was a collusive one, those allegations were not being enquired into by Mr.Shankar, D.S.P. This appears to have prompted the Division Bench to make the following observations in paragraph 7 of the order dated 18.10.2019:

“7. When this Court put a specific query as to the investigation with regard to the websites from which the bids were uploaded, no positive answer has come and it implies, even the verification of IP addresses have not been done.

13. In the light of the apprehension expressed by the learned counsel for the petitioner that the 4th respondent is one of the senior Ministers in the Cabinet and the investigation is being carried by an officer who is in the rank of the Deputy Superintendent of Police, this Court is of the considered view that the preliminary enquiry hereinafter shall be carried



on by Ms.Ponni, IPS, Superintendent of Police, Directorate of Vigilance and Anti-Corruption and the progress being made in the preliminary enquiry, shall be monitored by the Director of Vigilance and Anti-Corruption.

14. The Director of Vigilance and Anti-Corruption shall file the Status Report as to the progress being made in the preliminary enquiry with supporting documents in a sealed cover for perusal of this Court.”

14 In the said order dated 18.10.2019, the Division Bench replaced Mr.Shankar with one Ms.R.Ponni, I.P.S. (for short “Ms.Ponni”), Superintendent of Police, DVAC, to take over and proceed with the preliminary enquiry.

15 In the meanwhile, Crl.O.P. No.23428 of 2018 which was filed by RSB was also tagged along with W.P. No.34845 of 2018.

16 Ms.Ponni proceeded with the preliminary enquiry, completed the same and submitted the preliminary enquiry report to the DVAC on 18.12.2019.

17 On 07.01.2020, when these cases were listed and heard, the DVAC filed a status report stating that Ms. Ponni had completed the preliminary enquiry and submitted the enquiry report.

18 After perusing the status report, this Court, by order dated 07.01.2020, directed the DVAC to produce the said enquiry report along with the files in a sealed cover on 23.01.2020. As directed by this Court on 07.01.2020, it appears



that the report of Ms.Ponni was produced before this Court during the hearing on 23.01.2020.

19 Thereafter, the State of Tamil Nadu filed a miscellaneous petition in W.M.P. No.4747 of 2020 in W.P. No.34845 of 2018 seeking to close the writ petition as having become infructuous on the ground that the preliminary enquiry report of Ms.Ponni was approved by the DVAC and was forwarded to the Vigilance Commissioner of the Government of Tamil Nadu on 13.01.2020 and that it was further forwarded to the Government for necessary action on 18.01.2020. It was also submitted that the Government of Tamil Nadu had, by order dated 22.01.2020, decided to accept Ms. Ponni's report and drop further action against SPV.

20 When the matter came up for hearing on 02.12.2020, the learned counsel for Arappor Iyakkam, by drawing the attention of the Division Bench to the earlier order dated 24.09.2020, submitted that arguments must be advanced on the merits of the preliminary enquiry report as well as the supporting documents. Acceding to this request, the case was adjourned to 09.12.2020.

21 In response to the allegations made by Arappor Ayakkam and RSB, that the Chennai and Coimbatore Corporations had awarded contracts to SPV's benamis, the Commissioner of the Corporation of Chennai filed an elaborate 51 page counter affidavit in W.P. No. 34845 of 2018 on 01.11.2019 refuting all the



allegations made by RSB and Arappor Ayakkam and contending, *inter alia*, that the entire tender process was done online in consonance with the Tamil Nadu Transparency in Tenders Act and the Rules made thereunder; none of the other tenderers had raised any dispute at any point of time.

22 The mode and manner in which tenders were awarded to KCP Engineers Pvt. Ltd. and others has been explained by the Commissioner, Corporation of Chennai in the following words:

“To keep these roads worthy for motorable conditions always and also to fix the contractors from escaping liability clause, it was unanimously accepted by the Council, Greater Chennai Corporation which had one Mayor, Deputy Mayor and 198 Councilors unanimously after getting approval through Commissioner, Standing Committees of Works, Accounts and Revenue and Finance Committee. It was also accepted by Council the recommendation of Principal Secretary/Commissioner that the restoration of road cut works shall be given to the same contractors who have laid these roads so that the restoration process could be faster and also the liability of the contractors will be valid. This was applicable to all 20 contractors who have done these 194 road works including the KCP Engineers Pvt. Ltd. Whereas in the same resolution, a proposal was placed that those roads which are not covered under this 194 roads, tenders shall be invited for each one for one region for attending all the bus route roads then and there when the road cuts are taken up by the service departments. Administrative sanction of Rs.5.00 cr. each for each region has been obtained from Council and tenders have been invited following due procedures as stipulated in the TN Tender Transparency Act. As per this, the tenders have been invited online and M/s. S.P. Builders has quoted the lowest for North Region, A. Jayaraj has quoted lowest for Central Region, M/s. KCP Engineers Pvt. Ltd. has quoted lowest for the South Region and hence, they have been awarded the work of road cut restoration of all the bus route road except 194 to attend the restoration then and there whenever the road cut is undertaken by service department.”



23 Similarly, the Commissioner, Coimbatore Corporation also, filed a detailed counter affidavit dated 31.10.2016 running to 15 pages in W.P.No.34845 of 2018 stating, *inter alia*, as under:

“18 The averments made in para 20 of the affidavit filed by the petitioner are fallacious and totally misleading. The allegation that M/s. S.P. Builders has been used as the only second tender participant in many tenders and that it was done to create a semblance of competition so that in the end firms such as (1) KCP Engineers Pvt. Ltd., (2) Vardhan Infrastructure, (3) Constronics India, (4) Robert Raja and (5) Senthil & Co. could be awarded the tenders is totally denied as false. As stated by the petitioner himself that M/s. S.P. Builders have lost 130 tenders out of 131 tenders in which they had participated clearly shows the transparency maintained by this respondent Corporation in letter and spirit in accordance with the “Tamil Nadu Transparency in Tenders Act, 1998” and “the Tamil Nadu Transparency in Tenders Rules, 2000”, as amended subsequently. This respondent Corporation’s role in this regard is limited to only for calling for tenders in principle, in measure and in conduct. It is the individual bidder’s/contractor’s full liberty and willingness to participate in the tender call or not so to say nobody was prevented by this respondent corporation from participation in the tenders floated by this respondent corporation.”

24 However, the matter was listed on 20.01.2021 before another Division Bench of this Court presided by the then Hon’ble Chief Justice. From a reading of the order dated 20.01.2021, we can infer that Arappor Iyakkam was asking for a copy of the preliminary enquiry report and the State was claiming privilege. Taking note of the aforesaid stand, a short order was passed, and the case was adjourned to 17.02.2021.



25 On 17.02.2021, the learned counsel for Arappor Iyakkam and RSB appeared to have contended that the preliminary enquiry was “*orchestrated for the purpose of giving the Minister concerned a clean chit.*” However, since the State elections was around the corner, the Division Bench did not want to take up the matter, as could be seen from paragraph 3 of the order dated 17.02.2021 which reads as follows:

“3. No view is expressed at this stage, particularly since this Bench has not dealt with the matter previously. Since the State election is round the corner, it may not be appropriate to take up this matter before the summer vacation. It is also made clear that the mere pendency of this matter should not be regarded as any adverse inference being drawn against the concerned Minister just as the writ petitioner suggests that mere obtaining of the inquiry report does not absolve the concerned person.

4. The matter will appear at least three weeks after the summer vacation.

List on 21.06.2021.”

26 Elections to the Tamil Nadu State Assembly was announced and the date of elections was fixed as 06.04.2021. The results were declared on 02.05.2021. In the elections, the DMK alliance captured power with 132 seats and the AIADMK alliance bagged 66 seats.

27 It is seen that in western Tamil Nadu, which is normally referred to as Kongu belt from where SPV hails, Coimbatore alone contributed 9 seats out of 10



seats to the AIADMK kitty. The DMK took over the reins of the State on 07.05.2021.

28 While so, the report of the Comptroller and Auditor General of India (for short “the CAG”) on General and Social Sector for the year ended March 2019 (Government of Tamil Nadu Report No. 4 of 2020) came to be published. In that report, under the Greater Chennai Corporation, 6 out of 21 road work packages were examined by the CAG and it was found that the works were not satisfactorily carried out by the contractors, because, they had quoted absurdly low rates for bagging the contracts, which the Chennai Corporation authorities had failed to notice before awarding them the contracts.

29 To appreciate the precise complaint against the contractors, it is necessary to extract the relevant passages from the report of the CAG, which run thus:

“The contractors of all sampled packages had followed a similar pattern of quoting absurdly low/high rates and GCC allowed short execution and/or excess execution of items of works, in excess of the allowable 25 per cent of the estimated quantity. This had resulted in allowing an undue advantage of Rs.1.41 crore to the contractors.

The Commissioner, GCC stated (November 2019) that short execution or excess execution of certain items of work were due to site conditions. The reply indicated that the estimates were prepared without taking into account the site conditions, which facilitated the contractors to



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quote abnormally low rates for items which were included in the estimates, but not required to be executed.

The foregoing observations clearly pointed to serious deficiencies in the process of making the estimates and award of contracts, making the whole process irrelevant and redundant. It resulted in undue benefit to the contractors of Rs.1.41 crore in respect of 6 out of the 21 road work packages test-checked by Audit. Audit opined that fixing responsibility for these lapses would prevent recurrence of such deficiencies.

Audit recommends that the provisions of the Engineering Manual for Urban Local Bodies on the issue of 'absurdly low/high tendered rates' should be applied by GCC.”

30 On a careful examination of the report of the CAG, we notice that the CAG has found that the contractors had quoted absurdly low rates for the purpose of bagging the contracts, which the Corporation had failed to reckon and had injudiciously awarded the contracts to them, on account of which, certain deficiencies in execution of the works were noticed.

31 When these cases came up before the Division Bench presided by the then Chief Justice for hearing on 19.07.2021, it was represented on behalf of the new Government that the CAG has also made adverse comments, adverted to *supra*, and hence, the State will investigate into the matter to ensure that those involved are taken to task. This representation of the State was recorded, and the Division Bench made the following observation.



“4. Let the matter appear in the second week of October 2021. The State should spare no effort in getting to the bottom of the matter and proceed against those found to be responsible for the irregularities.

5. Counter-affidavit may be filed by the respondents in the meantime.

6. List the petition and the connected criminal matter on 20.10.2021.”

32 After the DMK party came to power, there was a complete reshuffle of the officers in the DVAC. Dr. P. Kandaswamy took charge as the Director, DVAC on 11.05.2021. Ms Ponni, I.P.S. was transferred on 07.06.2021 to the Idol Wing. In her place, Mr.B.Gangadhar, I.P.S., (for short “Mr.Gangadhar”), Superintendent of Police, assumed charge on 14.06.2021. Mr.Gangadhar appears to have conducted a fresh preliminary enquiry in the same file number being PE/1/2019/PUB/HQ and submitted a report on 06.08.2021 to the DVAC indicting SPV in the award of some contracts, which was forwarded by the DVAC to the State Vigilance Commission, which, in turn, forwarded the same on 07.08.2021 to the State Government. On the very next day, *i.e.*, on 08.08.2021, the State Government accepted the preliminary enquiry report and accorded permission by letter no.AC/480-8/2018 dated 08.08.2021 to the DVAC to register a regular FIR against SPV.

33 Based on the above, a *suo motu* FIR was registered in DVAC HQ Cr.No.16 of 2021 on 09.08.2021 under Sections 120-B r/w 420 and 409 IPC and



Section 13(2) r/w Section 13(1)(c) and 13(1)(d) r/w Section 109 IPC against SPV and 16 others.

34 It is pertinent to state here that the FIR in DVAC HQ Cr.No.16 of 2021 has not been registered on the complaint of RSB or on the complaint of Arappor Iyakkam, but, based on the preliminary enquiry report conducted by Gangadhar, of course, triggered by the complaint of RSB, Arappor Iyakkam and the report of the CAG as we find that in the preamble portion of the FIR, there is a reference to this.

35 SPV filed a Miscellaneous Petition in W.M.P. No.24569 of 2021 in W.P.No.34845 of 2018 seeking a copy of the preliminary enquiry report submitted by Ms. Ponni.

36 When all the cases came up for hearing before the Division Bench on 08.11.2021, the request of SPV for a copy of the preliminary enquiry report of Ms. Ponni was rejected and a direction was issued to the DVAC to complete the investigation within ten weeks and file a charge sheet or final report before the appropriate Court. The Division Bench further observed that if the prosecution relies upon the preliminary enquiry report of Ms. Ponni, the same should have to be furnished to SPV in terms of Section 207 Cr.P.C. Observing so, all the petitions were closed.



37 Aggrieved by the said order, SPV approached the Supreme Court in S.L.P.(Crl.) No.9161 of 2021, in which, the Supreme Court, on 07.03.2022, ordered issuance of notice returnable by two weeks. On 04.04.2022, when the matter came up for hearing, the Supreme Court directed the Registry of this Court to submit the preliminary enquiry report of Ms. Ponni in a sealed cover, which direction was complied with.

38 In the meanwhile, on 14.03.2022, the Vigilance & Anti-Corruption, Coimbatore, registered a fresh FIR in Cr.No.5 of 2022 against SPV and 12 others under Sections 120-B IPC, 13(2) r/w 13(1)(e), 13(2) r/w 13(1)(e) r/w 109 IPC, 13(2) r/w 13(1)(b) and 12 r/w 13(2) r/w 13(1)(b) of the PC Act. This FIR appears to be a composite FIR, in that, it includes the allegations in DVAC HQ Cr.No.16 of 2021 as also the allegations against SPV of amassing assets disproportionate to his known sources of income.

39 On 02.05.2022, the Supreme Court heard the matter and reserved orders. On 20.05.2022, the Supreme Court disposed of Crl. A. No.867 of 2022 (arising out of S.L.P. (Crl.) No.9161 of 2021) setting aside the order dated 08.11.2021 passed by the Division Bench of this Court and directed that a copy of the preliminary enquiry report of Ms.Ponni, be furnished to SPV. This Court was also requested to rehear all the matters. From the said order, we are able to notice

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that the Supreme Court has also granted liberty to SPV to move this Court for appropriate relief against the FIRs registered against him.

40 Pursuant to the aforesaid, SPV filed W.M.P.SR.Nos.64459 and 64460 of 2022 in W.P. No.34845 of 2018. Arappor Iyakkam raised an issue of maintainability of the said W.M.Ps. As a consequence, SPV filed two Criminal Original Petitions being Crl.O.P. Nos.21564 and 21565 of 2022 for quashing the FIRs in Coimbatore V & AC Cr. No. 5 of 2022 and DVAC HQ Cr.No.16 of 2021, respectively.

41 On 11.08.2022, the Division Bench presided by the then Hon'ble Chief Justice, passed the following interim order:

“5. In the meanwhile, the respondent concerned may proceed with the investigation, but would not file the final report.”

Thereafter, several things happened which may not be germane for the disposal of the instant petitions. We must, however, place on record that copies of the preliminary enquiry report of Ms.Ponni, along with enclosures, were furnished not only to SPV, but also to RSB and Arappor Iyakkam. By an order dated 20.09.2022, Crl.O.P. Nos.21564 and 21565 of 2022 were also directed to be tagged and listed before this Bench along with W.P. No.34845 of 2018 and Crl.O.P. No. 23428 of 2018.



42 Heard Mr. S.V.Raju and Mr. Siddhartha Dave, learned Senior Counsel

representing the counsel on record for SPV, Mr. N.R Elango, learned Senior Counsel for the counsel on record for RSB, Mr. R. Shunmugasundaram, learned Advocate General and Mr. Hasan Mohamed Jinnah, learned Public Prosecutor appearing for the State and Dr. V. Suresh, learned counsel for Arappor Iyakkam.

43 At the outset, we may only observe that though we were inundated with several judicial pronouncements for and against the quashment of an FIR, it is not necessary to make this order prolix with all of them, given the fact that the time-honoured principles laid down by the Supreme Court in **State of Haryana v Bhajan Lal**¹ for exercise of power to quash an FIR is the *locus classicus* case on the subject. In **Bhajan Lal**, *supra*, Ratnavel Pandian, J. has laid down the following illustrative guidelines which must guide the Court in exercising its power to quash an FIR:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an

¹ 1992 Supp (1) SCC 335



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exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(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.”



44 Bearing these principles in mind, we now propose to examine the FIR in DVAC HQ Cr.No.16 of 2021, which is assailed in Crl.O.P. No.21565 of 2022.

45 As adverted to supra, this FIR is the offshoot of the report of the preliminary enquiry that was conducted by Mr.Gangadhar, which was triggered by the complaint of RSB and Arappor Iyakkam and the report of the CAG. Concededly, after RSB and Arappor Iyakkam gave their complaints, the then AIADMK Government in which SPV was a Minister, directed conduct of a preliminary enquiry, pursuant to which, Mr. Shankar, D.S.P. commenced the enquiry. Since it was brought to the notice of this Court by Arappor Iyakkam that Mr. Shankar did not collect any material about the I.P. address using which the successful and unsuccessful bidders had applied for, this Court, in the interests of a free and fair investigation, replaced Mr.Shankar with Ms.Ponni and directed her to conduct the preliminary enquiry. Ms. Ponni conducted the preliminary enquiry and gave an exhaustive report exonerating SPV. The then Government accepted the report and dropped the proceedings by order dated 22.01.2021.

46 When the DMK Government came to power in the State on 07.05.2021, it did not rescind the earlier order of the Government accepting Ms.Ponni's preliminary enquiry report and dropping proceedings against SPV. Of course, the Government is well within its powers to rescind orders made



administratively (See Section 21 of the General Clauses Act, 1897). However, the DMK Government, did not adopt this course.

47 Mr. S.V. Raju, learned Senior Counsel, placed heavy reliance on the judgment of the Supreme Court in **Lalita Kumari v Government of Uttar Pradesh and others**² and submitted that preliminary enquiry is essential before the registration of an FIR in a case of this nature, which contention was refuted by Mr. Shunmugasundaram, learned Advocate General. We agree with the learned Advocate General, for the reason that the judgment in **Lalita Kumari**, *supra*, is for the proposition that if a complaint discloses the commission of a cognizable offence, the police cannot shirk their responsibility of registering an FIR. Carving out an exception, the Supreme Court, in **Lalita Kumari**, *supra*, has held that in certain cases involving allegations such as the case at hand, a preliminary enquiry may be conducted. **Lalita Kumari**, *supra*, is not an authority for the proposition that failure to conduct a preliminary enquiry would vitiate the FIR. We are not aware of any decision of the Supreme Court that has subscribed to the aforesaid contention.

48 In this case, as adverted to by us above in paragraph 31, *supra*, after the DMK came to power, there was a shake up in the DVAC in which some of the officers who were functioning under the earlier regime were transferred and new set

² (2014) 2 SCC 1
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of officers assumed charge. A complete reading of the complaints of RSB and Arappor Iyakkam shows that irregularities have indeed taken place in the award of contracts in the Greater Chennai Corporation and Coimbatore Corporation. In fact, Arappor Iyakkam has meticulously documented the irregularities and have submitted them to the DVAC for conducting an enquiry. It is not the case of RSB and Arappor Iyakkam that SPV, as the Minister, was the authority who scrutinised the tenders and awarded the contracts. Even in their own complaints, they have very clearly stated that contracts were awarded by the Superintending Engineers and Chief Engineers of the Corporations. The linchpin of their allegation is that these awardees are benamis of SPV and in fact, one of the awardees is the brother of SPV.

49 We posed a question to ourselves. Would that, by itself, without anything more, be a good reason to include SPV as the first accused in the FIR? There is a general perception that politicians are corrupt. To say that since there is a perception that all politicians are corrupt, SPV must also be presumed to be corrupt is a far-fetched thesis that simply does not appeal. We are afraid that an FIR against a politician, or for that matter against any citizen, cannot be registered on the basis of perceptions. We have our own good reasons to say so. Politicians and political parties are *sine qua non* for a democracy. Howsoever we may have reservations



about them, it was this clan which was responsible for protecting the democracy in this country. They play to the rules of the game by leaving the seat of power when they lose in the elections and allowing the winner to assume office. They do not throw tantrums or indulge in violence after their defeat. It was this clan which stood against the Emergency during 1975-1977. The whole world is witnessing the happenings in the neighbouring Burma, where, without political parties, there is totalitarianism. Sui Ki, a politician, is unable to earn her freedom, despite being a Noble Prize winner.

50 We cannot afford to lose democracy in India by allowing political parties in power to witch hunt their political opponents with the use of State power. The fact that the police have danced to the tunes of the party in power is evident even in this case, where Ms.Ponni gave a report exonerating SPV and Mr.Gangadhar has given a report implicating SPV.

51 We are not for a moment saying that SPV is an angel. We are not here to give conduct certificate to anyone. If Mr.Gangadhar had registered the FIR straightaway, things would have been different. On the contrary, he conducted a preliminary enquiry, submitted a report presumably implicating SPV to the DVAC in the same file number being PE1/2019/PUB/HQ. This report was forwarded by the DVAC on 06.08.2021 to the Tamil Nadu Vigilance Commission, which accepted



the report on 07.08.2021 and forwarded it to the Government on 08.08.2021 and on the same day, the Government accepted the report and directed the registration of FIR against SPV. Why this extraordinary haste?

52 Coming to the core of the allegations in the complaints of RSB and Arappor Iyakkam, the allegation is to the effect that bureaucrats, viz., Superintending Engineers and Executive Engineers, awarded contracts at the instance of SPV and that is why, in their complaints, the relevant paragraphs which we have extracted above, they have asked for a thorough investigation on the allegations made by them in respect of award of contracts. Had Mr.Gangadhar conducted a proper preliminary enquiry to find out the link between the contractors and SPV, then, there could be some justification in the registration of the FIR against SPV.

53 On the contrary, a reading of the *suo motu* FIR registered by Mr.Gangadhar in DVAC HQ Cr. No.16 of 2021 clearly shows that it has drawn inspiration from the order dated 19.07.2021 passed by the Division Bench of this Court, in particular, the following observation “*The State should spare no effort in getting to the bottom of the matter and proceed against those found to be responsible for the irregularities.*”, which, for good measure, has also been highlighted by Mr.Gangadhar. We notice that at paragraph 10 of the order dated



20.05.2022 passed in Criminal Appeal No.867 of 2022, the Supreme Court has extracted the order of the Division Bench dated 19.07.2021, and has prefaced it with the following observation:

“10. As the matter stood thus, there was a change in the political dispensation of the State Government. Interestingly, the State, while relying upon a CAG report, subsequently recanted from its earlier stand. The High Court, without applying its mind, passed the following order on 19.07.2021.....”
(emphasis supplied)

Reverting to the impugned FIR, references are then made to the report of the CAG and after naming 17 persons, including SPV, as accused, the FIR alleges that SPV had caused injudicious award of tenders in connivance with “*unknown officials of the Greater Chennai Corporation*”.

54 At the risk of repetition, this FIR which has been registered after a preliminary enquiry by Mr.Gangadhar indicts the name of only SPV and private contractors and not officials of the Chennai and Coimbatore Corporations who had scrutinised the tenders and awarded them. This means that even in the preliminary enquiry, Mr.Gangadhar was unable to find out the officials who were involved in awarding the contracts. The FIR does not allege that SPV scrutinised the contracts and awarded them. In any event, admittedly, SPV had no role in inviting, scrutinizing, and accepting tenders which were concluded at the level of the Commissioner. In fact, the elaborate counter affidavits filed by the Commissioners



of the Chennai and Coimbatore Corporations, which have been adverted to, *supra*, do not merely deny the allegations levelled by Arapoor Ayakkam and RSB. They have explained the process by which tenders were floated and contracts were awarded in consonance with the Tamil Nadu Transparency in Tenders Act and the Rules made thereunder. They have also explained that the firms referred to by Arapoor Ayakkam and RSB were the lowest and successful bidders in a transparent tender process, and therefore, the contracts were awarded to them. At the risk of repetition, it is not the case of Arappor Ayakkam and RSB that the tender notifications were kept in wraps by the two Corporations and were shared only to the alleged benamis of SPV at the cost of excluding other contractors. Resultantly, the impugned FIR has not, in any way, improved the allegations based on perception made in the complaint of Arappor Iyakkam and RSB that as SPV was a Minister, there were irregularities in the award of contracts, those who were awarded contracts are his benamis and therefore, SPV should be shown as an accused.

55 We are not, for a moment, saying that the allegations in the FIR do not make out a *prima facie* case for investigation. According to us, the allegations in the FIR do not make out a *prima facie* case to array SPV as an accused based on perceptions. What must also weigh in the balance is the sudden volte-face by the police on account of a change of Government. This fact was noticed by the Supreme



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Court in the order dated 20.05.2022 in Crl.A. No.867 of 2022 while directing the State to furnish a copy of the preliminary enquiry report of Ms.Ponni to SPV. The Supreme Court has observed:

“19. However, it appears that due to various reasons, the matter could not be listed until 19.07.21. In the meanwhile, the State Government had changed. In a turn of events, the State Government went back on their earlier stand to close the criminal case. Instead, the State Government submitted before the High Court that they intended to conduct further investigation in the aforesaid matter.

26. We may note that the contention of the State may be appropriate under normal circumstances wherein the accused is entitled to all the documents relied upon by the prosecution after the Magistrate takes cognizance in terms of Section 207 of CrPC. However, this case is easily distinguishable on its facts. Initiation of the FIR in the present case stems from the writ proceedings before the High Court, wherein the State has opted to re-examine the issue in contradiction of their own affidavit and the preliminary report submitted earlier before the High Court stating that commission of cognizable offence had not been made out. It is in this background we hold that the mandate of Section 207 of CrPC cannot be read as a provision etched in stone to cause serious violation of the rights of the appellant-accused as well as to the principles of natural justice.”

56 The learned Advocate General submitted that during the course of investigation, the Vigilance had gathered materials against some officials of Chennai Corporation also and therefore, they should be taken into consideration by this Court before quashing the FIR. We are afraid, such a course should not be adopted in the present case where the circumstances obtaining are indeed very peculiar, as pointed out by the Supreme Court, above. If such a course is to be adopted, it will



be very easy for the ruling party to have an FIR registered against a prominent leader of the opposition party based on perceptions and thereafter, gather materials to vindicate it. The criminal law cannot be used to fuel a witch hunt. Be it a politician or any other citizen, the Court cannot remain a mute spectator when the police power of the State is sought to be used for oblique purposes.

57 As regards the report of the CAG, we have already extracted the relevant portions which merely say that the Corporation authorities had accepted the bids of the contractors who had quoted absurdly low rates and that is why, the report uses the expression “injudicious award of contracts”. The CAG has rejected the explanation that was given by the Corporation Commissioner that short execution or excess execution of certain items of work was due to site conditions.

58 Therefore, the CAG report, at the best, finds fault with the officials of the Corporation for injudiciously accepting absurdly low rates and nothing more. If the Investigating Officer, Mr.Gangadhar, had taken the trouble to unearth material to find out from his preliminary enquiry that it was not an error of judgment on the part of the officials of Chennai and Coimbatore Corporations, but was on account of the influence of SPV, then, we would have had no hesitation in sustaining the FIR *qua* SPV also.



59 To salvage the situation, the learned Advocate General and Mr.N.R.Elango, learned Senior Counsel, took us through Section 17-A of the PC Act and submitted that no previous approval of the Government is required for conducting an investigation in a case of this nature and hence, Ms. Ponni's report is inconsequential. A reading of Section 17-A, *ibid.*, clearly shows that previous approval of the Government is required where the alleged offence is relatable to any recommendation made or decision taken by a public servant in discharge of his official functions or duties. Admittedly, it is not the case of RSB or Arappor Iyakkam that SPV had taken the decision to award the contracts to his alleged minions. It is common ground that the decision-making authority for the award of the tender is the Corporation. Therefore, Section 17-A, *ibid.*, may not be applicable *qua* SPV. Looked at from this angle, Ms. Ponni's report exonerating SPV may be inconsequential. But, then, why did the present Government have a preliminary enquiry conducted by Mr. Gangadharan? They could have gone ahead and registered an FIR straightaway.

60 The order dated 08.08.2021 shows that the State Government granted previous approval under Section 17-A(1), *ibid.*, based on the preliminary enquiry report dated 06.08.2021 of Mr. Gangadhar for registering a regular FIR against SPV. Now, it is contended before us by the State that such an approval is not



necessary. The State cannot blow hot and cold, in that, it cannot, at one stage, say that Section 17-A, *ibid.*, is required and contend to the contrary before us. We are clear in our mind that for the allegations set out in the complaints of RSB and Arappor Iyakkam, no previous approval is required under Section 17-A, *ibid.* Nevertheless, such an approval would be required for beginning an investigation against those public servants, *viz.*, Chief Engineers and Superintending Engineers who had taken the decision to award the contracts to the alleged minions of SPV in discharge of their official duties/functions. In fact, the Tender Scrutiny Committee of Chennai and Coimbatore Corporations would have recommended the award of contracts and the appropriate authorities would have taken the decision to award the contracts. Therefore, before beginning an investigation against them, the DVAC should have obtained previous approval to conduct enquiry against them from the Government under Section 17-A, *ibid.* After obtaining the approval and conducting the enquiry, if it is found that the officials had awarded the contracts not on account of error of judgment, but, for extraneous considerations, say, at the instance of SPV, the Minister, then, the registration of FIR against SPV, officials and private contractors would have been legally justifiable. This was not done in this case. Therefore, we find that the registration of FIR as against SPV is a colourable exercise of power by the police and hence, it deserves to be quashed.



61 Dr. V. Suresh, learned counsel, drew our attention to the representation

dated 19.03.2019 given by one Chandrabose, a contractor, to the Secretary, Municipal Administration, Government of Tamil Nadu, and the Commissioner, Corporation of Greater Chennai, wherein, he has stated that he and other contractors were called for a meeting on 07.01.2019 to the house of SPV in Chennai, and when they went there, SPV did not meet them and instead, Rajan Chandrasekhar of KCP Engineers Pvt. Ltd. met them, heard their grievance and gave oral instructions to the officials present there to issue a notification for open tender. Based on this representation, it was contended that SPV was rightly arrayed as A.1 in the FIR. We carefully read the said representation. On a demurrer, even if the contents of the letter are true, what we find is that Chandrabose has ultimately requested that action be initiated against Rajan Chandrasekhar and Murugesan, whom, we find, have been arrayed as A5 and A6 in the FIR. We are not quashing the FIR in its entirety, as we find that the FIR discloses the commission of a cognizable offence, but, it lacks the requisite material for arraying SPV as A1. It is now settled law that an FIR can be quashed in part *qua* an accused against whom there are no materials (See **Lovely Salhotra v State (NCT of Delhi)**³).

³ (2018) 12 SCC 391
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62 Mr. S.V. Raju, learned Senior Counsel, urged that the Supreme Court

had remanded the matter to this Court for considering the report of Ms. Ponni and deciding whether an FIR could be registered at all in the light of Ms. Ponni's report holding that the allegations made by Arappor Ayakkam and RSB were baseless. Having perused the order of the Supreme Court, we find that the issue before it was as follows:

“Therefore, the only issue which requires this Court's consideration is whether the appellant herein is entitled to the preliminary report in the present facts and circumstances.”

The Supreme Court then went on to find that SPV was entitled to receive a copy of Ms. Ponni's report. We are, therefore, not persuaded to accept the submissions of Mr. S.V. Raju, learned Senior Counsel, that the Supreme Court had required this Court to adjudicate on the correctness or otherwise of Ms. Ponni's report and that too, in this public interest litigation. We must hasten to add that the preliminary enquiry was commenced on the orders of the Government and not on the orders of this Court. What this Court did was to replace Mr. Shankar with Ms. Ponni so as to ensure that the enquiry was on the right lines.

63 In the light of the above discussion, we find that the FIR in DVAC HQ Cr.No.16 of 2021, insofar as it relates to SPV (A.1), is clearly an abuse of process



and must, therefore, be quashed. We make it abundantly clear that it is open to the Investigating Officer to proceed with the investigation and if he gathers any fresh materials to implicate SPV in the process of awarding contracts to A.2 to A.12, he can be arrayed as an accused in the final report.

64 Coming to the FIR in V. & A.C. Coimbatore Cr. No.5 of 2022 *qua* possession of assets disproportionate to known sources of income, which is an offence under Section 13(1)(e) of the Prevention Corruption Act, Mr. Siddhartha Dave and Mr. S.V.Raju, learned Senior Counsel, took this Court through the FIR and submitted that SPV should have been afforded an opportunity to tender an explanation against the allegations touching upon the alleged amassing of disproportionate assets. They contended that the said FIR is in continuation of the allegations in DVAC HQ Cr.No.16 of 2021 and some of the persons who have been shown as accused in DVAC HQ Cr.No.16 of 2021, have also been arrayed as accused in this FIR. We carefully perused the FIR in V. & A.C. Coimbatore P.S.Cr.No.5 of 2022. This is a *suo motu* FIR registered by Mrs. R. Ezhilarasi, Inspector of Police, DVAC, Coimbatore. In its preamble, she narrates the allegations in DVAC HQ Cr. No.16 of 2021, but, has, nonetheless, stated that those allegations are being investigated separately. The FIR goes on to set out the assets declared by SPV based on the affidavits filed by him before the Election



Commission of India in the 2016 and 2021 elections. Using this as the basis, the Investigating Officer has quantified the disproportionate assets at Rs.58,23,97,052/-, in the name of SPV, his wife, son, daughter, relatives and associates for the check period from 27.04.2016 to 15.03.2021. The FIR is accompanied by the requisite statements that are normally needed for prosecuting a public servant under Section 13(1)(e) of the PC Act. The issue whether the relatives and close associates of a public servant could be held liable under Section 13(1)(e), *ibid.*, is no more *res integra* in the light of the judgment of the Supreme Court in **P. Nallammal and another v State**⁴. That apart, even in the prosecution of the former Chief Minister Ms.J.Jayalalithaa, her close associates Sasikala, Ilavarasi and Sudhakaran were prosecuted, convicted and sentenced for abetment of the offence under Section 13(1)(e), *ibid.*

65 Mr. S.V. Raju, learned Senior Counsel, submitted that an FIR can be registered only when there is a *prima facie* case; for arriving at a *prima facie* case under Section 13(1)(e), *ibid.*, an explanation from the public servant should be called for and only after that, can the police officer come to the opinion that a cognizable offence has been committed and not before that. This submission, in our opinion, deserves to be stated only to be rejected. Section 13(1)(e), *ibid.*, as it stood

⁴ (1999) 6 SCC 559
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prior to its amendment by Act 16 of 2018 (which has actually been invoked in Cr.No.5 of 2022), envisages punishment for a public servant who is in possession of properties disproportionate to his known sources of income which he is not able to satisfactorily account for.

66 To be noted, a public servant is required to satisfactorily account for only to the Court and not to the Investigating Officer. The satisfaction of the Investigating Officer to register an FIR under Section 13(1)(e), *ibid.*, need not stem from the inability of the public servant to satisfactorily account for the disproportionate assets in his hands, but, from other materials gathered by the Investigating Officer through his sources. Without registering an FIR, an Investigating Officer cannot even summon the public servant for the purpose of investigation under Chapter XII of the Code. In fact, in **K. Veeraswami v Union of India**⁵, a Constitution Bench of the Supreme Court has observed that for the purpose of filing the final report, it is not necessary to call for an explanation from the public servant asking him to account for the disproportionate assets. The relevant passage from the opinion of Jagannatha Shetty, J. (for himself and Venkatachaliah, J.) runs thus:

“75. In the view that we have taken as to the nature of the offence created under clause (e), it may not be necessary to examine the contention

⁵ (1991) 3 SCC 655
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relating to ingredient of the offence. But since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression “for which he cannot satisfactorily account” used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet.”

When that is the legal position, this Court cannot approve of a skewed procedure requiring the Investigating Officer to take the accused into confidence by disclosing to him what are all the assets which he is required to satisfactorily account for even before registration of an FIR. In this FIR, the Inspector of Police has done some homework by discreetly gathering the details of the assets standing in the name of



SPV and his relatives, based on which, the FIR has been registered containing the minimum requirements envisaged by Section 13(1)(e) of the PC Act.

67 Mr. Siddhartha Dave, learned Senior Counsel, contended that there is an error in the FIR, in that, the Investigating Officer has not taken into account the corrected affidavits that were filed by SPV along with his nomination papers and hence, the FIR deserves to be quashed. In the opinion of this Court, a roving enquiry into the correctness of the affidavits filed before the Election Commission is not a matter in which this Court must be engaged whilst exercising its powers under Section 482 of the Cr.P.C. Suffice it to say that this discrepancy, if any, can always be brought to the notice of the Investigating Officer. In the light of the aforesaid, we do not find any valid ground to interfere with the FIR in Coimbatore V. & A.C. Cr.No.5 of 2022 dated 14.03.2022 on the file of the Inspector of Police, DVAC, Coimbatore District. Consequently, Crl.O.P.No. 21564 of 2022 is liable to be dismissed.

68 Before bringing the curtain down, we cannot but take this opportunity to observe that the scarce judicial time of Constitutional Courts are spent on public interest litigations against political functionaries alleging inaction or biased action by the police, in which process, the Courts are called upon to don the role of a Station House Officer, which we are constrained to do, in the larger public interest, for the



simple reason that no political party is willing to implement the directions of the Supreme Court in **Prakash Singh v Union of India**⁶, in letter and spirit, to insulate the police from political and executive interference as the instant case demonstrates. Though we have recorded our praise for the political parties above, in the same breath, we are constrained to record our disapprobation for their supine refusal to loosen their clutches over the Police Department for their oblique ends. We also observe that the mandate of Article 144 of the Constitution requires that all parties, (including State Governments), shall act in aid of the orders of the Supreme Court.

In the result:

- i. Crl.O.P. No.21565 of 2022 will stand allowed *qua* S.P. Velumani (A.1) alone. Consequently, the FIR in DVAC HQ Cr.No.16 of 2021 dated 09.08.2021 on the file of the Superintendent of Police, DVAC, Chennai, is quashed *qua* S.P. Velumani (A.1) alone;
- ii. As a sequitur, W.P. No.34845 of 2018 and Crl.O.P. Nos.23428 of 2018 will stand disposed of; and
- iii. Crl.O.P.No. 21564 of 2022 will stand dismissed.

Connected Miscellaneous Petitions stand closed.

(P.N.P., J.) (TKR., J.)
30.11.2022

⁶ (2006) 8 SCC 1
44/48



W.P. No.34845



CrI.O.P. Nos.23428 of 2018, 21564 and 21565



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To

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- 2 The Chief Secretary
Government of Tamil Nadu
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- 3 The Superintendent of Police
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- 5 The Hon'ble Minister for Municipal Administration,
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- 6 The Secretary
Municipal Administration & Water Supply Department
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- 7 The Commissioner
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- 8 The Commissioner
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- 9 The Inspector of Police
Directorate of Vigilance & Anti Corruption
Coimbatore
- 10 The Public Prosecutor
Madras High Court
Chennai 600 104



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W.P. No.34845



Crl.O.P. Nos.23428 of 2018, 21564 and 21565

P.N. PRAKASH, J.

and

RMT. TEEKAA RAMAN, J.

cad

Common order in

W.P. No.34845 of 2018

and

Crl.O.P. Nos.23428 of 2018

and

21564 and 21565 of 2022

30.11.2022