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Crl.M.P.Nos.Nos.3563 of 2023, 3564 of 2023, 3565 of 2023, 3566 of 2023 and 4598 of 2023 in

Crl.O.P.Nos.Nos.3872 of 2023, 3869 of 2023, 3491 of 2023, 3870 of 2023 and 4324 of 2023

G.CHANDRASEKHARAN, J.,

Criminal Miscellaneous Petitions Nos.3563 of 2023, 3564 of 2023, 3565 of 2023, 3566 of 2023 and 4598 of 2023 have been filed in Criminal Original Petitions Nos.3870 of 2023, 3869 of 2023, 3872 of 2023, 3491 of 2023 and 4324 of 2023 respectively for impleading the petitioner / proposed respondent as second respondent in the respective Criminal Original Petitions.

2. Common averments made in the affidavits filed in support of the impleading petitions, in brief, are as follows:-

2.1 Petitioner is an independent, unaffiliated voluntary body of citizens working in the field of Transparency, Good Governance, Anti-corruption and satisfactory enjoyment of basic facilities like water, health, civic amenities and so on. Over the last 7 years, petitioner has worked on a range of citizen's issues including anti-corruption, improvement of public



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health care, restoration of water bodies, workshops on citizen's rights, camps for guidance on grievance redressal for the poor and so on.

2.2 Quash petitions have been filed against Crime No. 16 of 2021 on the file of the SP, DVAC. This FIR was registered on the basis of the complaint dated 12.09.2018 given by petitioner and a similar complaint dated 10.09.2018 given by one R.S. Bharathi and in the background of various orders of this court in W.P. No.34845 of 2018. Reading of the FIR would reveal the role played by petitioner in support of the complaint by sourcing voluminous documents in public websites and RTI queries. Quash Petitions are filed without deliberately impleading petitioner as a party respondent.

2.3 Complaint pertains to the allegations of corruption in the Greater Chennai Corporation and Coimbatore Corporation, wherein contracts were illegally awarded to certain contractors in connivance with public servants, resulting in heavy losses to the exchequer. Unless petitioner is impleaded as a respondent, serious prejudice would be caused. Petitioner produced various additional materials to DVAC on



03.01.2019, 25.01.2019 and 12.02.2019.

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2.4 CrI.O.P.No.21565 of 2022 was filed before the Hon'ble Division Bench of this Hon'ble Court by first accused for quashing FIR in Crime No. 16 of 2021. Division Bench allowed petitioner to be impleaded as a respondent by its order dated 09.09.2022. Though the quash petition in CrI.O.P. No.21565 of 2022, which was tied along with Writ Petition in W.P.No.34845 of 2018, was allowed by the Hon'ble Division bench for the first accused/then Minister, it was categorically held that FIR does make out a prima facie case. Observations made in paragraphs 55 and 61 show that allegations made in the FIR disclose the commission of cognizable offence. The observations made in paragraph 63 show that if any fresh material is uncovered against first accused, in awarding contract to A2 to A12, he should be arrayed as an accused in final report. It was observed in paragraph-48 of the order that petitioner has meticulously documented the irregularities and submitted them to DVAC for conducting enquiry.

2.5 Petitioner produced concrete proofs for collusive and corruptive practices of KCP Engineers Pvt. Ltd., Constronics India, Varadhan



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Infrastructure and its controlling directors and shareholders.

Mr.K.Chandraprakash and Mr.R.Chandrasekar, are the founders and major shareholders of KCP Engineers Pvt. Ltd. Majority of the companies, directly/indirectly benefited by tenders, have either K.Chandraprakash, R.Chandrasekar and/or their relatives as shareholders/partners/directors. It shows their nexus with each other. Mr.R.Chandrasekar is a functionary of then ruling party AIADMK and is also the printer and publisher of their official magazine "Namadhu Amma". Vardhan Infrastructure and Constronics India are related parties of KCP Engineers Pvt. Ltd. Vardhan Infrastructure was started in the name of K.Sundari, mother of K.Chandraprakash. Constronics India was owned by H.Karthik and Vishnu Vardhan, cousins of K.Chandraprakash. H.Karthik is also the Manager of KCP Engineers Pvt. Ltd.

2.6 Some of the allegations made by petitioner against the accused are as follows:-

A. Collusive bidding as evidenced by bidding from same IP address within short time period;



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- B. Overquoting and underquoting of tender components resulting in awarding of tenders at exorbitant rates;
- C. Non-execution of underquoted components resulting in sub-standard work and unjust enrichment of contractors;
- D. Changing of tender conditions to favour these contractors;
- E. Awarding of tenders to firms lacking pre-qualification criteria;
- F. Directors, shareholders or other functionaries of the company bidding against their own companies;
- G. Entrusting contract works without calling for tenders.

2.7 Though quash petitioners may not have taken the Government contract, there are enough materials available to show that quash petitioners have benefited from the proceeds of the illegalities in the tenders. Mr.K.Chandraprakash and Mr.R.Chandrasekar have invested huge funds in quash petitioners company leading to a strong inference that ill-gotten funds from illegal tenders were diverted to other companies, like that of quash petitioners. Unless this petitioner is permitted to be impleaded as second respondent and contest the quash petitions, this



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petitioner would be seriously prejudiced and thus, these petitions.

3. Except the first respondent in Criminal Miscellaneous Petition No.3566 of 2023 and petitioner in Criminal Original Petition No.3491 of 2023, other respondents have not filed counter.

4. Counter averments of first respondent in Criminal Miscellaneous Petition No.3566 of 2023, in brief, are as follows:-

First respondent/ninth accused filed Criminal Original Petition No.3491 of 2023 for quashing FIR in Crime No.16 of 2021. FIR has been instituted on the basis of complaint given by Mr.Gangadhar, Superintendent of Police, Special Investigation Cell, Vigilance and Anti-Corruption, Alandur, and therefore, Superintendent of Police, Special Investigation Cell, was alone shown as Respondent. Every offence is a crime against the Society and the State is Champion to protect the Society. It is the responsibility of the State to detect and punish the crime. If any person wants to assist the Court, he should be a party concerned either as a complainant or as a witness. All others would be third parties, who may



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have personal interests but not societal interests. Prosecutor of the State and Law Officers of the State are the persons to address and assist the Court in reaching the just conclusion. If third parties are permitted to enter the frame by voicing their views, especially when they are neither complainants nor witnesses, the prosecution is likely to become a persecution. The word "implead" is alien to the Code of Criminal Procedure. Petitioner is neither a complainant nor a witness. FIR was registered after conducting a preliminary enquiry on receipt of a source Information. Petitioner is not mentioned as a complainant. Therefore, the claim of petitioner that petitioner is a complainant and it is a necessary party in the quash petitions is not correct. Allowing a third party to implead will not only undermine the competency of the Prosecutor's Office, but will also cause prejudice to the first respondent. Impleading petition is filed with political motive.

5. In reply to this counter, petitioner filed rejoinder. In the rejoinder, allegations made in the counter of first respondent are refuted and details are given as to the activities of the petitioner as NGO for the



benefit of general public. Details of the complaints given by Arappor Iyakkam/petitioner against the current regime are given.

6. Reiterating the averments made in the affidavit filed in support of the impleading petitions and rejoinder filed to the counter of ninth accused, learned counsel for petitioner pressed into service the following judgments:-

(a) Subramanian swamy Vs. Manmohan Singh and another reported in (2012) 3 SCC 64.

The points that arose for consideration in this case are,

(i) Whether a complaint can be filed by a citizen for prosecuting a public servant for an offence under the prevention of Corruption Act, 1988?

(ii) Whether the authority competent to sanction prosecution of a public servant for the offences is required to take an appropriate decision within the time specified in clause (I)(15) of the directions contained in para 58 of the judgment of this Court in Vineet Narain Vs. Union of India



and the guidelines issued by the Central Government, Department of Personnel and Training and the Central Vigilance Commission?

While answering these questions, it was observed in para 30, referring to A.R.Antulay case, that,

30.While dealing with the issue relating to maintainability of a private complaint, the Constitution Bench observed:

"6.It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the



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complainant, by necessary implication the general principle gets excluded by such statutory provision.

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In other words, the principle that anyone can set or put the criminal law in motion remains intact unless contra-indicated by a statutory provision. This general principle of nearly universal application is founded on a policy that an offence i.e. an act or omission made punishable by any law for the time being in force is not merely an offence committed relation to the person who suffers harm but is also an offence against society. The society for its orderly and peaceful development is interested in the punishment of the offender. Therefore, prosecution for serious offences is undertaken in the name of the State representing the people which would exclude any element of private vendetta or vengeance. If such is the public policy underlying penal statutes, who brings an act or omission made punishable by law to the notice of the authority competent to deal with it, is immaterial and irrelevant unless the statute indicates to the contrary. Punishment of the offender in the interest of the society being one of the objects behind penal statutes enacted for larger good of the society, right to initiate



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proceedings cannot be whittled down, circumscribed or fettered by putting it into a strait-jacket formula of locus standi unknown to criminal jurisprudence, save and except specific statutory exception.

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56. In the result, the appeal is allowed. The impugned order is set aside. It is declared that the appellant had the right to file a complaint for prosecuting respondent No.2. However, keeping in view the fact that the Court of Special Judge, CBI has already taken cognizance of the offences allegedly committed by respondent No.2 under the 1988 Act, we do not consider it necessary to give any other direction in the matter. At the same time, we deem it proper to observe that in future every Competent Authority shall take appropriate action on the representation made by a citizen for sanction of the prosecution of a public servant strictly in accordance with the direction contained in [Vineet Narain v. Union of India](#) (1998) 1 SCC 226 and the guidelines framed by the CVC.

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72. The right of private citizen to file a complaint against a corrupt public servant must be equated with his right to access the Court in order to set the criminal law in motion against a corrupt public official. This right of



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access, a Constitutional right should not be burdened with unreasonable fetters. When a private citizen approaches a court of law against a corrupt public servant who is highly placed, what is at stake is not only a vindication of personal grievance of that citizen but also the question of bringing orderliness in society and maintaining equal balance in the rule of law.

This judgment upheld the right of the individual for prosecuting the public servant for the offences under the Prevention of Corruption Act, 1988.

(b) J.K.International Vs. State (Govt. of NCT of Delhi) & ors. reported in (2001) 3 SCC 462.

It is a case where the appellant approaches the Supreme Court after the High Court rejected the plea of opportunity of hearing to the appellant in a petition filed by the accused before the High Court of Delhi for quashing the criminal proceedings against him. Appellant initiated the criminal proceedings against the accused. The High Court while foreclosing the appellants right of hearing observed that “right of the complainant to be heard ceases once cognizance is taken and he cannot



thereafter continue to participate in the proceedings as if he were the aggrieved party who must have his say in proceedings. While dealing with the issue, it was observed that

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8. But the situation here is different, the accused approached the High Court for quashing the criminal proceedings initiated by the appellant. It may not be that the complainant should have been made a party by the accused himself in the petition for quashing the criminal proceedings, as the accused has no such obligation when the case was charge-sheeted by the police. It is predominantly the concern of the State to continue the prosecution. But when the complainant wishes to be heard when the criminal proceedings are sought to be quashed, it would be a negation of justice to him if he is foreclosed from being heard even after he makes a request to the court in that behalf. What is the advantage of the court in telling him that he would not be heard at all even at the risk of the criminal proceedings initiated by him being quashed. It is no solace to him to be told that if the criminal proceedings are quashed he may have the right to challenge it before the higher forums.



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9 . *The scheme envisaged in the Code of Criminal procedure (for short "the Code") indicates that a person who is aggrieved by the offence committed, is not altogether wiped out from the scenario of the trial merely because the investigation was taken over by the police and the charge sheet was laid by them. Even the fact that the court had taken cognizance of the offence is not sufficient to debar him from reaching the court for ventilating his grievance. Even in the sessions court, where the Public Prosecutor is the only authority empowered to conduct the prosecution as per Section 225 of the Code, a private person who is aggrieved by the offence involved in the case is not altogether debarred from participating in the trial. This can be discerned from Section 301(2) of the Code which reads thus:*

"301. (2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the public Prosecutor or Assistant Public prosecutor, and may, with the permission of the Court, submit written



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arguments after the evidence is closed in the case."

10. The said provision falls within the Chapter titled "General Provisions as to Inquiries and Trials." When such a role is permitted to be played by a private person, though it is a limited role, even in the sessions courts, that is enough to show that the private person, if he is aggrieved, is not wiped off from the proceedings in the criminal Court merely because the case was charge sheeted by the police. It has to be stated further, that the Court is given power to permit even such private person to submit his written arguments in the Court including the sessions court. If he submits any such written arguments the Court has a duty to consider such arguments before taking a decision.

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15 . In the above view of the matter learned single judge has done wrong to the appellant when he closed the door of the High Court before him by saying that the High Court is going to consider whether the criminal proceedings initiated at his behest should be quashed completely and that the complainant would not be heard at all even if he wants to be heard.



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16. We, therefore, allow this appeal and set aside the impugned order. The petition filed by the respondents for quashing the criminal proceedings can now be disposed of by the High Court after affording a reasonable opportunity to this appellant also to be heard in the matter.

This judgment upholds the right of the defacto complainant that he has a reasonable opportunity of hearing in the petition filed for quashing the criminal proceedings initiated at his behest.

(c) In ***Subramanian Swamy Vs. Director, Central Bureau of Investigation and another*** reported in ***(2014) 8 SCC 682*** constitutional validity of Section 6-A was an issue that was considered in this case. It was observed that

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75 . Corruption corrodes the moral fabric of the society and corruption by public servants not only leads to corrosion of the moral fabric of the society but also harmful to the national economy and national interest, as the persons occupying high posts in the Government by misusing their power due to corruption can cause considerable damage to the national economy, national



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interest and image of the country.

.....

84. Now we turn to the recent decision of this Court in Manohar Lal Sharma v. Principal Secretary and Ors. A three-Judge Bench of this Court in that case leaving the question of constitutional validity of Section 6A untouched and touching upon the question whether the approval of the Central Government is necessary under Section 6A in a matter where the inquiry/investigation into the crime under the PC Act, 1988 is being monitored by the Court, speaking through one of us (R.M. Lodha, J., as he then was) on the inquiry into allegations of corruption observed that for successful working of the democracy it was essential that public revenues are not defrauded and public servants do not indulge in bribery and corruption and if they do, the allegations of corruption are to be inquired into fairly, properly and promptly and those who are guilty are brought to book. It was observed:

“34.....Abuse of public office for private gain has grown in scope and scale and hit the nation badly. Corruption reduces revenue; it slows down economic activity and holds back economic growth. The biggest



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loss that may occur to the nation due to corruption is loss of confidence in the democracy and weakening of the rule of law.

86. Criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law.

(d) P.S.R.Sadhanantham Vs. Arunachalam and another reported in (1980) 3 SCC 141.

The issue involved in the judgment is locus standi of a private citizen such as victim's brother, who is neither a complainant nor first informant, to file petition under Article 136 for special leave against the High Court's order of acquittal.

The petitioner was acquitted of a murder charge by the High Court in the appeal. Petitioner's brother moved the Hon'ble Supreme Court



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under Article 136, got leave and had his appeal heard, which resulted in the petitioner being convicted and sentenced to life term under Section 302 IPC. Petitioner contended that leave to appeal and the subsequent proceedings were unconstitutional as violative of Article 21. In paragraph 16 it is observed that

16. We are thus satisfied that the bogey of busybodies blackmailing adversaries through frivolous invocation of Article 136 is chimerical. Access to Justice to every bona fide seeker is a democratic dimension of remedial jurisprudence even as public interest litigation, class action, pro bono proceedings, are. We cannot dwell in the home of processual obsolescence when our Constitution highlights social justice as a goal. We hold that there is no merit in the contentions of the Writ petitioner and dismiss the petition.

Further in paragraph 26 of the judgment, it is observed that

26 . Having regard to the fundamental nature of a criminal proceeding to which reference has been made, it is now appropriate to examine the considerations which the Court should keep in mind when entertaining a petition for special leave to appeal by a private party



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against an order of acquittal. From what has been said, it is plain that 'access to the jurisdiction under Article 136 cannot be permitted to a private party who seeks to employ the judicial process for the satisfaction of private revenge or personal vendetta. Nor can it be permitted as an instrument of coercion where a civil action would lie. In every case, the Court is bound to consider what is the interest which brings the petitioner to court and whether the interest of the public community will benefit by the grant of special leave. 'In a jurisprudence which elevates the right to life and liberty to a fundamental priority, it is incumbent upon the court to closely scrutinise the motives and urges of those who seek to employ its process against the life or liberty of another.' In this enquiry, the Court would perhaps prefer to be satisfied whether or not the State has good reason for not coming forward itself to petition for special leave. We think that the Court should entertain a special leave petition filed by a private party, other than the complainant, in those cases only where it is convinced that the public interest justifies an appeal against the acquittal and that the State has refrained from petitioning for special leave for reasons which do not bear on the public interest but are prompted by private



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influence want of bona fide and other extraneous considerations. We would restrict accordingly the right of a private party, other than the complainant, to petition for special leave against an order of acquittal. It is perhaps desirable to keep in mind that what follows from the grant of special leave is an appeal, and the jurisdiction must, therefore, be invoked by a petitioner possessing a locus standi recognised in law.

This judgment recognises the right of the private citizen, who is neither a complainant nor first informant, to invoke the jurisdiction of the Hon'ble Supreme Court under Article 136 of the Constitution of India in appropriate cases.

(e)Amanullah and another Vs. State of Bihar and others reported in **(2016) 6 SCC 699.**

Challenge was made to the order of the High Court of Judicature at Patna in *Mohd.Hasim V. State of Bihar dated 08.12.2010*, whereby, the High Court allowed criminal miscellaneous petition filed by the respondents 2 to 9 by setting aside the cognizance order dated 10.11.2008 passed by the learned Additional Chief Judicial Magistrate, Rosera, Bihar



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in Singhia Police Case No.37 of 2008 and quashed the Criminal prosecution. Aggrieved against the order, appellant/interested private parties filed appeal alleging false grounds. One of the point framed for consideration is, Whether this appeal is maintainable by the appellant on the ground of locus standi? Answering this point, it was observed in paragraph 19 that

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19.The term 'locus standi' is a latin term, the general meaning of which is 'place of standing'. The Concise Oxford English Dictionary, 10th Edn., at page 834, defines the term 'locus standi' as the right or capacity to bring an action or to appear in a court. The traditional view of 'locus standi' has been that the person who is aggrieved or affected has the standing before the court, i.e., to say he only has a right to move the court for seeking justice. Later, this Court, with justice-oriented approach, relaxed the strict Rule with regard to 'locus standi', allowing any person from the society not related to the cause of action to approach the court seeking justice for those who could not approach themselves. Now turning our attention towards the



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criminal trial, which is conducted, largely, by following the procedure laid down in the Code of Criminal Procedure. Since, offence is considered to be a wrong committed against the society, the prosecution against the accused person is launched by the State. It is the duty of the State to get the culprit booked for the offence committed by him. The focal point, here, is that if the State fails in this regard and the party having bonafide connection with the cause of action, who is aggrieved by the order of the court cannot be left at the mercy of the State and without any option to approach the appellate court for seeking justice.

In paragraph 24, it is observed that,

24. After considering the case law relied upon by the learned Counsel for the Appellants as well as the Respondents, in the light of the material placed on record, we are of the view that the Appellants have locus standi to maintain this appeal. From the material placed on record, it is clear that the Appellants have precise connection with the matter at hand and thus, have locus to maintain this appeal. The learned Counsel for the Appellants has rightly placed reliance upon the



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*Constitution Bench judgment of this Court, namely, **P.S.R. Sadhanantham** (supra) and other decisions of this Court in **Ramakant Rai, Esher Singh, Ramakant Verma** (supra). Further, it is pertinent here to observe that it may not be possible to strictly enumerate as to who all will have locus to maintain an appeal before this Court invoking Article 136 of the Constitution of India, it depends upon the factual matrix of each case, as each case has its unique set of facts. It is clear from the aforementioned case law that the Court should be liberal in allowing any third party, having bonafide connection with the matter, to maintain the appeal with a view to advance substantial justice. However, this power of allowing a third party to maintain an appeal should be exercised with due care and caution. Persons, unconnected with the matter under consideration or having personal grievance against the accused should be checked. A strict vigilance is required to be maintained in this regard.*

It is seen from this judgment that, it was held that the Court should be liberal in allowing any third party having bona fide connection with the matter to maintain the appeal with a view to advance substantial justice.



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However, this option should be exercised with due care and caution.

(f) *P.Dharmaraj Vs. Shanmugam and Others reported in 2022 SCC online 1186.*

One of the issue decided in this judgment is locus standi of the appellants to file appeal. It was observed in paragraph 17 and 18 as follows:

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17. Even the learned senior counsel appearing on behalf of the respondents could not contest the position that a victim is entitled to file an appeal against the impugned order of the High Court. If persons who participated in the selection process but who could not make it to the final list of selected candidates on account of the alleged corrupt practices adopted by those in power are not victims, we do not know who else could be a victim.

18. We cannot shy away from the fact that candidates, who are selected and appointed to posts in the Government/public corporations by adopting corrupt practices, are eventually called upon to render public service. It is needless to say that the quality of



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public service rendered by such persons will be inversely proportionate to the corrupt practices adopted by them. Therefore, the public, who are recipients of these services, also become victims, though indirectly, because the consequences of such appointments get reflected sooner or later in the work performed by the appointees. Hence, to say that the appellants have no locus standi, is to deny the existence of what is obvious.

7. With regard to the role of the petitioner in this case, it is observed in paragraph 48 of the order passed in ***W.P.No.34845 of 2018 and Crl.O.P.No.23428 of 2018 and 21564 and 21565 of 2022*** as follows:

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 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.

As to the registration of FIR in Crime No.16 of 2021, it is observed in paragraph 34 that,

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.

8.Underlining the need to conduct proper, fair investigation and trial in criminal cases, it is observed in paragraph 36 of the judgment ***Y.Balaji Vs.Karthik Desari and Another*** reported in ***2023 SCC Online 645*** as



follows:

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36. The investigation and trial of a criminal case cannot be converted by the complainant and the accused into a friendly match. If they are allowed to do so, it is the umpire who will lose his wicket.

9.Mr.A.Ramesh, learned Senior counsel for M/s. B.A.Sujay Prasanna, for first respondent in CRL.M.P.No.3566 of 2023 / petitioner in CRL.O.P.No.3491 of 2023, Mr. Abudukumar Rajaratham, learned Senior counsel for M/s.T.S.Lavanesh for first respondent in CRL.M.P.No.3565 of 2023 / petitioner in CRL.O.P.No.3872 of 2023, Mr.R.John Sathyan, learned Senior counsel for M/s P.Divakar for first respondent in CRL.M.P.No. 3564 of 2023 / petitioner in CRL.O.P.No.3869 of 2023, Mr.K.Sugamaran, learned counsel for M/s T.S.Lavanesh for first respondent in CRL.M.P.No.3563 of 2023 / petitioner in CRL.O.P.No.3870 of 2023, Mr.S.Duraisamy, learned counsel for M/s.M.Palanivel for first respondent in CRL.M.P.No.4598 of 2023 / petitioner in CRL.O.P.No.4324 of 2023 made their submissions on behalf of first respondent.

10.Leadng their submissions, Mr.A.Ramesh, learned Senior



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Counsel submitted that petitioner and Mr.R.S.Bharathi are not the complainants in Crime No.16 of 2021. When they are not the complainants, petitioner cannot seek to implead in the quash petitions. Once FIR is registered, private persons cannot interfere with the investigation. There is no allegation that accused in this case and the prosecution have colluded with each other, to help the accused. The order permitting petitioner to implead in CrI.O.P.No.21565 of 2022 is not a speaking order and that order cannot be taken as a precedent. Petitioner cannot say that it had alone collected the materials in support of FIR allegations. It is the duty of the police to collect materials in support of FIR allegations. The Honourable Division Bench found that there is no material against first accused and therefore, the case against first accused in Crime No.16 of 2021 was quashed. Other accused are not public servants. When the case against a public servant / first accused was quashed, how can other accused be prosecuted? Petitioner cannot insist on impleading as a respondent. In support of the submissions, learned senior counsel relied on the following judgments:-

(a) Sanjay Tiwari Vs. State of Uttar Pradesh and another reported



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in (2021) 15 SCC 660.

This judgment is relied for the proposition that third party has no locus standi to invoke the extraordinary jurisdiction of the High Court under Section 482 Cr.P.C. for quashing the FIR and other proceedings arising therefrom on the plea of preventing the abuse of the process of the Court.

It is observed in paragraph Nos.11, 13, 14 and 15 as follows:

.....

11. It is well settled that criminal trial where offences involved are under the [Prevention of Corruption Act](#) have to be conducted and concluded at the earliest since the offences under [Prevention of Corruption Act](#) are offences which affect not only the accused but the entire society and administration. It is also well settled that the High Court in appropriate cases can very well under [Section 482](#) Cr.P.C. or in any other proceeding can always direct trial court to expedite the criminal trial and issue such order as may be necessary. But the present is a case where proceeding initiated by respondent No.2 does not appear to be a bona fide proceeding. Respondent No.2 is in no way connected with initiation of criminal



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proceeding against the appellant. Respondent No.2 in his application under [Section 482](#) Cr.P.C. in paragraph 6 has described him as a social activist and an Advocate.

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13. With regard to locus of a third party to challenge the criminal proceedings or to seek relief in respect of criminal proceedings of accused had been dealt with by this Court in [Janata Dal vs. H.S. Chowdhary and others](#), (1993) 1 SCC 756. In the above case the CBI had registered FIR under the [IPC](#) as well as under the [Prevention of Corruption Act](#), 1947 against 14 accused. On an application filed by the CBI the learned trial Judge allowing the application to the extent that a request to conduct necessary investigation and to collect necessary evidence which can be collected in Switzerland passed order on 05.02.1990 which is to the following effect:

"In the result, the application of the CBI is allowed to the extent that a request to conduct the necessary investigation and to collect necessary evidence which can be collected in Switzerland and to the extent directed in this order shall be made to the Competent Judicial Authorities of the Confederation of Switzerland through



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filing of the requisite/proper undertaking required by the Swiss law and assurance for reciprocity.”

14. A criminal miscellaneous application was filed by Shri H.S. Chowdhary seeking various prayers before the Special Judge which petition was dismissed by the Special Judge. A criminal Revision under [Sections 397/482 Cr. P.C.](#) was filed by H.S. Chowdhary in the High Court to quash the order of the Special Judge, which Revision was also dismissed by the High Court. The appeals were filed in this Court by different parties challenging the said order including H.S. Chowdhary. This Court while dismissing the appeals filed by the H.S. Choudhary and others made the following observations:

“26. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

15. This Court in the above case laid down that it is for the parties in the criminal case to raise all the



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questions and challenge the proceedings initiated against them at appropriate time before the proper forum and not for third parties under the garb of Public Interest Litigants.

The view taken in the judgment is that, it is for the parties in criminal cases to raise all the questions and challenge the proceedings initiated against them and not for third parties under the garb of public interest litigants.

(b) Subramanian Swamy and Ors. Vs. Raju, through Member, Juvenile Justice Board and Ors. reported in **(2013) 10 SCC 465**. This judgment is pressed into service to show that how the law frowns upon and prohibits any abdication by the State of its role and, in fact, does not recognize the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages. It is observed in paragraph Nos.8 and 13 of the judgment as follows:

8. The administration of criminal justice in India can be divided into two broad stages at which the machinery operates. The first is the investigation of an



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*alleged offence leading to prosecution and the second is the actual prosecution of the offender in a Court of Law. The jurisprudence that has evolved over the decades has assigned the primary role and responsibility at both stages to the State though we must hasten to add that in certain exceptional situations there is a recognition of a limited right in a victim or his family members to take part in the process, particularly, at the stage of the trial. The law, however, frowns upon and prohibits any abdication by the State of its role in the matter at each of the stages and, in fact, does not recognize the right of a third party/stranger to participate or even to come to the aid of the State at any of the stages. Private funding of the investigative process has been disapproved by this Court in **Navinchanda N. Majithia v. State of Meghalaya and Ors.***

(c) Karamjeet Singh Vs. Union of India (UOI) reported in (1992) 4 SCC 666 is dealing with the locus standi of the petitioner who has no connection with the case to challenge the conviction and sentence awarded to the accused by invoking Article 32 of the Constitution of India. It is the



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case where the convicts Sukhdev Singh and Harjinder Singh were convicted and sentenced by Designated Court, Pune in connection with the assassination of General Vaidya. The judgment was confirmed by Hon'ble Supreme Court. Instead of convicts filing the petition challenging the legality and validity of their conviction and sentence, without any instruction from the convicts, petitioner Karamjeet singh claiming himself as the next friend of the convict filed a petition under Article 32 of the Constitution of India challenging the legality and validity of the conviction. It was observed in paragraph Nos.3 and 4 as follows:

.....

3.....We do not think that such a contention is tenable. The disability must be one which the law recognises. A mere obsession based on religious belief or any other personal philosophy cannot be regarded as a legal disability of the type recognised by the CrPC or any other law which would permit initiation of proceedings by a third party, be he a friend. It must be remembered that the repercussions of permitting such a third party to challenge the findings of the Court can be serious, e.g. in the instant case itself the co-accused who have been



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acquitted by the Designated Court and whose acquittal has been confirmed by this Court would run the risk of a fresh trial and a possible conviction. It is, therefore, hazardous to allow a third party to initiate proceedings under [Article 32](#) challenging the order passed by the Designated Court and confirmed by this Court on the mere ground that the convicts had acted under such an obsession. Such a submission, urged the learned Additional Solicitor General, is fraught with grave consequences and would, we agree, shake the very foundation of the rule of law on which a civilised society is based if the aggrieved person is allowed to take the law in his own hands and later plead disability on the ground that his action emanated from an acute obsession that his victim had by his action forfeited the right to live and deserved to be punished with death. Such a submission cannot be countenanced.

4.That petition was dismissed for want of 'locus standi' and we see no distinguishing feature in the present petition to take a different view.

(d) In *Simranjit Singh Mann Vs. Union of India (UOI) and Ors.* reported in (1992) 4 SCC 653 a question arose whether the accused can be represented by a private individual, who is totally a stranger to the



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prosecution and can challenge the conviction and sentence while there is no provision in the Code to permit the accused to be represented by a person other than a Lawyer. There was nothing on record to suggest that the convict authorised the petitioner to move the Court on their behalf. Ultimately, it was held that petitioner has no locus standi to invoke the court's jurisdiction under Article 32 of the Constitution of India.

(e) Prisoners Right Forum represented by its Director P.Pugalenthi Vs. State of Tamil Nadu rep.by the Secretary to Government and Others reported in **2019 SCC Online Mad 2476**, again dealing with locus standi, this Court observed in paragraph Nos.10, 11 & 16 as follows:

10.....It is trite law that any offence is considered to be a wrong committed against the society and that is why prosecution against the accused person is launched by the State. It becomes the duty of the State to prosecute an accused person for the offence committed by him. This traditional view has now been expanded and the law has brought a victim of a crime also on par with the State, while prosecuting in a criminal offence. [Section 301](#), [302](#), proviso to [Section 372](#) etc., of Criminal Procedure Code,



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clearly underlines the recognition given to a victim to participate in the criminal prosecution.

*11. Can this right which has been extended to a victim, can be further extended to a third party who is not in any way related to the case? The plain and simple answer for this question is “No”. If this practice is permitted in a casual manner, a meddlesome bystander can easily decide to attack a person who has been held to be not guilty by a Subordinate Court, by initiating a frivolous proceeding and thereby cause irretrievable injury to the life and liberty of the accused person. The Only area where *the Code* of Criminal Procedure does not insist for locus standi is when the law is set in motion.*

.....

16.....A Court cannot confer a right upon any person unless it is backed by law. In other words, the law must recognise the right of a person and only then the concerned person can prosecute a case. If the law does not provide for such a right, the Court cannot confer the same in favour of any person. The Division Bench merely said that the petitioner can prosecute his right in accordance with law. Criminal law does not permit any third party to prosecute a case unless the concerned



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person is a victim or is in any way aggrieved by the order.

In other words, the petitioner must show that its legal rights is impaired or any harm/injury has been caused to it. Unless this condition is satisfied, the petitioner will not have the locus standi to question the order passed by the learned Chief Metropolitan Magistrate, Egmore.

11. Learned senior counsel Mr.Abudhu Kumar Rajarathinam appearing for first respondent in CrI.M.P.No.3566 of 2023 / petitioner in CrI.O.P.No.3491 of 2023 supplemented that A10 is not a registered contractor and therefore, A10 was not awarded any contract. There were no financial dealings between A1 and A10 in the alleged criminal transactions. Public Prosecutor occupies a position of great importance. It is the duty and responsibility of the Public Prosecutor to conduct prosecution on behalf of the State. Even a victim can only assist the Public Prosecutor and cannot directly conduct the prosecution. When that be the case, third parties cannot be permitted to be impleaded as respondents to oppose any quash petition. If permitted, it would amount to persecution. In support of the role of Public Prosecutor, learned Senior Counsel relied



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on the judgment of the Hon'ble Supreme Court in ***Criminal Appeal No.1727 of 2019 in (Rekha Murarkavs. .The State of West Bengal and Another)***. Stressing that the role of the Public Prosecutor is pre-eminence in criminal prosecution, it is observed in paragraph 8 of the judgment as follows:

8. In our criminal justice system, the Public Prosecutor occupies a position of great importance. Given that crimes are treated as a wrong against the society as a whole, his role in the administration of justice is crucial, as he is not just a representative of the aggrieved person, but that of the State at large. Though he is appointed by the Government, he is not a servant of the Government or the investigating agency. He is an officer of the Court and his primary duty is to assist the Court in arriving at the truth by putting forth all the relevant material on behalf of the prosecution. While discharging these duties, he must act in a manner that is fair to the Court, to the investigating agencies, as well to the accused. This means that in instances where he finds material indicating that the accused legitimately deserves a benefit during the trial, he must not conceal it. The space carved out for the Public



Prosecutor is clearly that of an independent officer who secures the cause of justice and fair play in a criminal trial.

When discussing about how the victim can assist the Public

Prosecutor, it was observed in Paragraphs 12.1 to 12.5 as follows:

12.1 The use of the term “assist” in the proviso to [Section 24\(8\)](#) is crucial, and implies that the victim’s counsel is only intended to have a secondary role qua the Public Prosecutor. This is supported by the fact that the original Amendment Bill to the [CrPC](#) had used the words “coordinate with the prosecution”. However, a change was later proposed and in the finally adopted version, the words “coordinate with” were substituted by “assist”. This change is reflective of an intention to only assign a supportive role to the victim’s counsel, which would also be in consonance with the limited role envisaged for pleaders instructed by private persons under [Section 301\(2\)](#). In our considered opinion, a mandate that allows the victim’s counsel to make oral arguments and cross-examine witnesses goes beyond a mere assistive role, and constitutes a parallel prosecution proceeding by itself. Given the primacy accorded to the Public Prosecutor



in conducting a trial, as evident from [Section 225](#) and [Section 301\(2\)](#), permitting such a free hand would go against the scheme envisaged under the [CrPC](#).

12.2 In some instances, such a wide array of functions may also have adverse consequences on the fairness of a trial. For instance, there may be a case where the Public Prosecutor may make a strategic call to examine some witnesses and leave out others. If the victim's counsel insists upon examining any of the left out witnesses, it is possible that the evidence so brought forth may weaken the prosecution case. If given a free hand, in some instances, the trial may even end up becoming a vindictive battle between the victim's counsel and the accused, which may further impact the safeguards put in place for the accused in criminal trials. These lapses may be aggravated by a lack of advocacy experience on the part of the victim's counsel. In contrast, such dangers would not arise in the case of a Public Prosecutor, who is required to have considerable experience in the practice of law, and act as an independent officer of the Court. Thus, it is important to appreciate why the



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role of a victim's counsel is made subject to the instructions of the Public Prosecutor, who occupies a prime position by virtue of the increased responsibilities shouldered by him with respect to the conduct of a criminal trial.

12.3 At the same time, the realities of criminal prosecutions, as they are conducted today, cannot be ignored. There is no denying that Public Prosecutors are often overworked. In certain places, there may be a single Public Prosecutor conducting trials in over 23 courts. Thus, the possibility of them missing out on certain aspects of the case cannot be ignored or discounted. A victimcentric approach that allows for greater participation of the victim in the conduct of the trial can go a long way in plugging such gaps. To this extent, we agree with the submission made by the learned Senior Counsel for the Appellant that the introduction of the proviso to [Section 24\(8\)](#) acts as a safety valve, inasmuch as the victim's counsel can make up for any oversights or deficiencies in the prosecution case. Further, to ensure that the right of appeal accorded to a victim under the proviso to [Section 372](#) of the Cr.P.C. is not rendered



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meaningless due to the errors of the Public Prosecutor at the trial stage itself, we find that some significant role should be given to the victim's counsel while assisting the prosecution. However, while doing so, the balance inherent in the scheme of the [CrPC](#) should not be tampered with, and the prime role accorded to the Public Prosecutor should not be diluted.

12.4 In this regard, given that the modalities of each case are different, we find that the extent of assistance and the manner of giving it would depend on the facts and circumstances of each case. Though we cannot detail and discuss all possible scenarios that may arise during a criminal prosecution, we find that a victim's counsel should ordinarily not be given the right to make oral arguments or examine and cross-examine witnesses. As stated in [Section 301\(2\)](#), the private party's pleader is subject to the directions of the Public Prosecutor. In our considered opinion, the same principle should apply to the victim's counsel under the proviso to [Section 24\(8\)](#), as it adequately ensures that the interests of the victim are represented. If the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses



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or the arguments advanced by the Public Prosecutor, he may route any questions or points through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of the [CrPC](#), but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel.

12.5 However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under [Section 311](#) of the CrPC or [Section](#)



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*165 of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in **Smt. Uma Saha v. State of Tripura** (supra) that the victim's counsel has a limited right of assisting the prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.*

12. Learned Counsel for first respondent in Crl.M.P.No.3565 of 2023 / petitioner in Crl.O.P.No.3872 of 2023, Mr.K.Sugumaran added that third party cannot be impleaded in quash proceedings. The judgement relied on by the learned counsel for petitioner deals with the right of the victim or the relatives and friends of the victim to participate in criminal proceedings and those judgements do not discuss the right of third parties to participate in the criminal proceedings, especially in the quash proceedings. None of the judgements discusses the right of third parties to get themselves impleaded in quash proceedings. In support of his submissions, he relied on the following judgements:-

(a) Janata Dal Vs. H.S.Chowdhary and others reported in **(1991) 3 SCC 756** emphasises that, it is for the accused persons to challenge the



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proceedings initiated against them and not for the third parties. It is observed in paragraphs 25 and 26 as follows:

25. It is most relevant to note that none of the appellants before this Court save the Union of India and CBI is connected in any way with the present criminal proceeding initiated on the strength of the First Information Report which is now sought to be quashed by Mr. H.S. Chowdhary. Although in the F.I.R., the names of three accused are specifically mentioned none of them has been impleaded as a respondent to these proceedings by anyone of the appellants. Even Mr. Martin Ardbo, former President of M/s A.B. Bofors, who was impleaded as a proforma respondent in Criminal Appeal No. 310/91 has been given up by the Solicitor General. Therefore, under these circumstances, one should not lose sight of the significant fact that in case this Court pronounces its final opinion or conclusions on the issues other than the general issues raised by the appellants as public interest litigants, without hearing the really affected person/persons such opinion or conclusions may, in future, in case the investigation culminates in filing a final report become detrimental and prejudicial to the



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in- dicted accused persons who would be totally deprived of challenging such opinion or conclusions of this 'apex Court, even if they happen to come in possession of some valuable material to canvass the correctness of such opinion or conclusions and consequently their vested legal right to defend their case in their own way would be completely nullified by the verdict now sought to be obtained by these public interest litigants.

26. Even if there are million questions of law to be deeply gone into and examined in a criminal. case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.

(b) D.Gopalan ..vs.. B.Shanthi alias Vennira Adai reported in 1990 186 TTR 623 Mad.

With regard to impleading the third parties in criminal proceedings,



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it was observed in paragraph 10 and 13 as follows:

10. There is no provision in *the Criminal Procedure Code* to implead a third party in a prosecution case. In a prosecution initiated by the State, *Section 301, Criminal Procedure Code*, provides for any private person instructing a pleader and the pleader so instructed being bound to act under the directions of the public prosecutor or assistant public prosecutor, as the case may be, and on the permission of the court, submitting written arguments after the evidence is closed in the case. Thus there is no provision to get a third party impleaded in the criminal proceeding, though to a limited extent, a third party can be permitted to assist the public prosecutor in the matter of prosecuting the evidence as provided under *Section 301, Criminal Procedure Code*. However, it is well-known that certain Sections in *the Criminal Procedure Code* and other enactments regulate the competence of the court and bars its jurisdiction in certain cases except in compliance with it. Those provisions prohibit cognizance except upon a complaint made by the person aggrieved or at the instance of a particular authority. Such sections



impose a prohibition on the cognizance with an exception and place a limitation on the general rule that any person can set the criminal law in motion.

.....

13. Learned Counsel Mr.S.Duraisamy appearing for first respondent in CrI.M.P.No.4598 of 2023 / petitioner in CrI.O.P.No.4324 of 2023 relied on the following judgments in support of his submission that third parties cannot be permitted to be impleaded in quash petitions:-

1.Janab V.K.Abdul Khader Sahib reported in ***1993 (1) MWN (Cri) 103.***

It is observed in paragraph 3 as follows:

3. The petitioner in all the criminal miscellaneous petitions has averred various circumstances in the petition stating that he is a necessary and proper party and so that he has to be impleaded for effective adjudication of the matters in dispute. Learned counsel for the petitioners in CrI.O.Ps. Mr. Karpagavinayagam pointed out to me the judgment of this court (Janarthanam, J.) made in CrI. M.P. No. 541 of 1992 in CrI. O.P. No. 9440/91, CrI.M.P. No. 1718/92 in CrI.O.P. No. 1209/92 and



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Crl. O.P. No. 2410/92. In the abovesaid judgment, learned Judge has discussed in detail about the scope and legality of the third party, even he may be a person who has set the law in motion to get himself impleaded in a criminal proceedings in which the State is the complainant against a third party. In all the abovesaid Crl.O.Ps., the State is the complainant and the first respondent herein is the accused. The Petitioner in all the Criminal miscellaneous petitions may be having interest in the prosecution of the first respondent as a person interested in the Mosque. Learned Judge at the end after discussing the various judgments and also the judgment of this court made in R. Sekar v. Narayanan, (1991 (2) MWN (Crl.) 257 (Mad.) : 1992 M.L.J. - Crl. 76 (Pratab Singh, J.) held that no third party inclusive of the informant or the complainant can be allowed to get himself impleaded as a party or as an intervener to any stage of any criminal proceedings, before the court. Learned counsel for the petitioner Mr. Abdul Rasheed contended that the Judgment rendered by Pratab Singh, J. referred to above, is a judgment in favour of him and the judgment of Janarthanam, J., has not



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dealt with the ratio decided by Pratab Singh, J., Janarthanam, J. has considered the judgment of Pratab Singh, J. and found that the judgment rendered by Pratab Singh, J. does not decide the dispute in question and so learned Judge Janarthanam, J. has considered the judgment of Pratab Singh, J. and the Judgments of the other courts and the Apex Court of this country and gave a final verdict. I am unable to accept the contention or the learned counsel for the petitioner that he is a proper party for being impleaded in all these petitions. Following the views of Janarthanam, J., I too hold that the petitioner is not entitled to implead himself as a second respondent in all the petitions for quashing.

2.In *P.S.Saravanabhavanandam and another Vs. S.Murugaiyyan and another* reported in *1986 LW (Cri) 165*, the relevant extract is as follows:

10.Even in the observations of the Supreme Court, a few exceptions are contemplated. The fact that the Supreme Court has contemplated a few exceptions is relied upon by Miss Vaigai, learned counsel for the petitioner. In support of her argument



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that the next of kin of the deceased have got a say in the prosecution of the offence, she relies upon the decision reported in Bhagwant Singh v. Commr. of Police, , where the following observation is found :-

"In a case where the Magistrate to whom a report is forwarded under sub-section (2) of S. 173 decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. However, either from the provisions of the Cri.P.C. or from the principles of natural justice, no obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such an opportunity to be heard at the time of consideration of the report can be spelt out unless such person is the informant who has lodged the FIR. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate when the report is considered by the Magistrate for purposes of deciding what action he



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should take on the report."

.....

15. There is no provision in the Criminal P.C. which enables a third party to get himself impleaded in the proceedings before the criminal court. As already observed, we have only S. 301 Cr.P.C. which enables the private parties to assist the prosecution and also submit written arguments with the leave of the court. According to S. 301 Cr.P.C., such assistance is to be given at the inquiry, trial or appeal in a criminal case. The question that arises is whether private parties can be allowed to intervene in the anticipatory bail petition with a view to represent matters before the court, when there is no provision for intervention in the Criminal P.C. By 'intervention' it is understood that a party who is possession of facts may appear before the court as an intervener and make his submissions on the matter in issue.

16. In such cases, such a party is shown as intervener in the proceedings before the court. When a party cannot be impleaded in a criminal proceeding, as held by this court, in the decision referred to above, he cannot be permitted to come in under the guise of



an intervener. But, at the same time bearing in mind the wholesome observations of the Supreme Court extracted above, the right of a party to represent matters before the court cannot be whittled down into a strait jacket formula of locus standi, which is unknown to criminal jurisprudence. It is open to any party to make his representations in the bail proceedings pending before this court before the inquiry or trial starts.

17. In the result, the request of the petitioners to figure as intervenors is negated, but at the same time, it is open to the petitioners to make representations to this Court relating to the application for anticipatory bail to further the ends of justice. Subject to the above observations, both these petitions are dismissed.

For the same propositions, the following judgments are relied.

3. Peoples Union for Civil Liberties (Delhi) Vs. Central Bureau of Investigation reported in ***1997 Cr1 LJ 3242***.

4. Shri P.v.Narasimharao Vs. The State reported in ***1997 Cr1 LJ 3117***



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5.All India Democratic Women's Association Vs. State and Others
reported in ***1998 Cr1 LJ 2629.***

14. Learned Senior Counsel Mr.John Sathyan appearing for first respondent in CrI.M.P.No.3564 of 2023 / petitioner in CrI.O.P.No.3869 of 2023 submitted that petitioner is not the defacto complainant in Crime No.16 of 2021. The documents produced by petitioner are all government documents and it is available in public domain. Therefore, petitioner cannot claim that FIR was registered only on the basis of information and materials supplied by petitioner. The judgements produced by petitioner relate to the interest of the victim or the persons representing the victim. Petitioner is neither a complainant nor a witness/victim and if the petitioner is permitted to interfere at every stage of investigation, it would mean harassing the accused. The duty is cast on the prosecution to collect the documents in support of FIR allegations. If the documents filed by petitioner are received, it would amount to impeaching the credibility of the prosecution. Petitioner cannot supplement or supplant the prosecution. If at all petitioner is having any material against accused, petitioner can



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produce the materials to the police for the police to process it and file it before the Court. Thus, he submitted that impleadment of petitioner is not necessary.

15. Mr.Babu Muthu Meeran, learned Additional Public Prosecutor, submitted that petitioner was earlier permitted to be impleaded in CrI.O.P.No.21565 of 2022 and therefore, petitioner can assist the prosecution. In support of his submission, he produced, the judgment in ***Dharmaraj v. Shanmugam*** reported in ***2022 SCC OnLine SC 1186***.

16. In reply, learned counsel for petitioner submitted that petitioner's complaint formed the basis for preliminary enquiry and then, registration of First information Report and therefore, petitioner has a right of audience in quash petitions. DVAC had earlier closed the case during their previous regime and only after the order passed in Writ Petition, FIR was registered. Petitioner wants to contest the quash petitions in the capacity of public spirited forum and in the interest of citizenry. The approach of Courts in corruption cases is different from other cases. Even private persons can initiate proceedings against corrupt practices. He submitted a



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list of 8 cases, where FIRs had been registered by DVAC officials, though the information was given by private individuals and NGOs. When much of the data for registering the FIR against first respondent was provided by petitioner, it is just and necessary that petitioner should be given an opportunity to challenge the quash petitions.

17. Considered the rival submissions and perused the records.

18. The focal point for consideration of this Court is whether petitioner can be impleaded as second respondent in quash petitions in CrI.O.P.Nos. Nos.3872 of 2023, 3869 of 2023, 3491 of 2023, 3870 of 2023 and 4324 of 2023.

19. It is an essentially legal issue. Both sides, as narrated above pressed into service the aforesaid judgments. One in support of the proposition by the first respondents that third party cannot be impleaded in a criminal proceedings and another in support of the proposition by the petitioner that third party can be impleaded in appropriate cases, especially, in cases relating to corrupt activities. From the survey of the



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judgments, the general proposition propounded is that third parties cannot be permitted to participate in the legal proceedings, however, there are certain exceptions to this general rule. Judgment in ***P.S.R.Sadhanantham Vs. Arunachalam and another reported in (1980) 3 SCC 141*** recognises the right of a private citizen who is neither a complainant nor a first informant to invoke the jurisdiction of the Hon'ble Supreme Court under Article 136 of the Constitution of India in appropriate cases. In ***Amanullah and another Vs. State of Bihar and others reported in (2016) 6 SCC 699***, it was observed that Court should be liberal in allowing third party, having bonafide connection with the matter, to maintain the appeal with a view to advance substantial justice. Of course, this power should be exercised with due care and caution. In ***P.Dharmaraj Vs. Shanmugam and Others reported in 2022 SCC online 1186***, it is held that the victim is entitled to file appeal against the impugned order of the High Court. In corruption cases victim is the society at large and therefore, anybody interested in the welfare of the Society can seek impleadment to protect the welfare of the Society.



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20. In the case on hand, the petitioner is not the defacto complainant and the FIR was registered on the complaint given by Gangadhar, Superintendent of Police, Special Investigation Cell, Vigilance and Anti-Corruption, Alandur, Chennai – 16. It is alleged in the FIR that the Directorate of Vigilance and Anti-Corruption had received two petitions sent by R.S.Bharathi, Member of Parliament, Organisation Secretary, DMK Party, Anna Arivalayam, Teynampet, Chennai and Jayaram V, Convenor, Arappor Iyakkam, No.140-A, R.L.Salai, Egmore, Chennai – 8, dated 10.09.2018 and 12.09.2018 respectively against A1 S.P.Velumani. On the basis of the complaint, preliminary enquiry was conducted and enquiry report was forwarded to the Government and a copy in sealed cover was submitted as status report to the High Court of Madras in the pending W.P.No.34845 of 2018 and CrI.O.P.No.23428 of 2018. These allegations show that the petitioner's complaint also formed a basis for conducting a preliminary enquiry which culminated into a FIR. Petitioner claims that petitioner had gathered materials from public sources and submitted to the vigilance department in support of the complaint allegations. It is observed in W.P.No.34845 of 2018 and



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Crl.O.P.No.23428 of 2018 that Arappor Iyakkam has meticulously documented the irregularities and have submitted them to the DVAC for conducting enquiry. It is observed in paragraph 34 of the order that, FIR in DVAC HQ Cr.No.16 of 2021 has not been registered on the complaint of R.S.Bharathi or on the complaint of Arappor Iyakkam, but, based on the preliminary enquiry report conducted by Gangadhar, of course, triggered by the complaint of R.S.Bharathi, Arappor Iyakkam and the report of the CAG. It makes it clear that the complaints given by the petitioner R.S.Bharathi and report of the CAG were a trigger point for conducting preliminary enquiry and then the registration of the FIR. Therefore, we cannot say that the petitioner cannot have any say in these quash petitions filed by the first respondents. It has to be borne in mind that the petitioner was the second respondent in Crl.O.P.Nos.21564 of 2022 & 21565 of 2022. These petitions were tried and disposed with other connected matters on 30.11.2022. Petitioner was heard at the time of hearing these petitions for final disposal. When the petitioner was heard in a connected criminal original petition filed for quashing the proceedings in crime No.16 of 2021, why not the petitioner should be given the same



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opportunity of opposing the present criminal original petitions? The answer, in the considered view of this Court is, 'YES'. Petitioner should be given an opportunity of opposing these criminal original petitions for the reason that petitioner was in one way or other was responsible for the registration of the impugned first information report.

21. Though the petitioner was added as respondent and given an opportunity of hearing in W.P.No.34845 of 2018 and batch cases, the issue as to whether private party can have a say in a quash proceedings, if so, to what extent? was not considered in detail. Only now the issue has been argued at length by both parties. From the consideration of the judgments produced and the legal position obtained, this Court is of the view that the petitioner may be permitted to be impleaded as respondent in these quash petitions with a limited role to assist the Public Prosecutor and for submission of the written arguments. The incriminating documents, if any, in possession of the petitioner can only be filed before the investigating officer. Petitioner cannot produce the documents directly in this Court.



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22. In this view of the matter, the impleading petitions are allowed to facilitate the petitioner to assist the Public Prosecutor and file written arguments, if the petitioner chooses to file such a written argument.

23. In fine, these Criminal Miscellaneous Petitions are allowed as above.

mra/sli

30.06.2023



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G.CHANDRASEKHARAN, J.,

mra/sli

Pre-delivery Order in
Crl.M.P.Nos.Nos.3563 of 2023, 3564 of 2023,
3565 of 2023, 3566 of 2023 and 4598 of 2023 in
Crl.O.P.Nos.Nos.3872 of 2023, 3869 of 2023,
3491 of 2023, 3870 of 2023 and 4324 of 2023



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