



Crl.O.P.No.15240 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2024
PRONOUNCED ON : 28.03.2025

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.O.P.No.15240 of 2020 and
Crl.M.P.No.5807 of 2020

1. Mr.Ma.Subramanian
2. Mrs.Kanchana ... Petitioners

Vs.

1. The State represented by
The Deputy Superintendent of Police,
Organized Crime Uni-II,
Crime Branch CID, Egmore,
Chennai – 600 008.
2. Sathiyamoorthy
Investigation Officer,
Deputy Superintendent of Police
OCU-II, CBCID, Chennai.

3. S.Parthiban ..Respondents

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records pertaining to the Final Report dated 02.11.2019 filed in C.C.No.39 of 2020 in Crime No.478 of 2019 pending before the Additional Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamilnadu and quash the same.



WEB COPY



Crl.O.P.No.15240 of 2020

For Petitioners : Dr.S.Muralidhar, Senior Advocate
Assisted by Mr.Richardson Wilson
for the first petitioner

Mr.P.Wilson, Senior Advocate for
M/s.P.Wilson Associates
for the second petitioner

For Respondent : Mr.J.Ravindran, AAG, Assisted by
Mr.S.Vinoth Kumar,
Govt. Advocate (Crl.Side) for R1 & R2
Mr.D.Selvam for R3

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.39 of 2020 in Crime No.478 of 2019, pending before the Additional Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamilnadu.

2 Based on the complaint given by the third respondent/defacto complainant, a case in Cr.No.478 of 2019 has been registered against the petitioners herein for the offence under Sections 420, 464, 465, 466, 468 r/w 120-B of IPC and subsequently the complaint was transferred to CB CID for completion of investigation and the same was registered in Cr.No.1 of 2019. It is the case of the prosecution that the first petitioner was serving as Ward Councilor from 1996-2011, as ward



WEB COPY

and zonal councilor from 2001 to 2006 and from 2006 to 2011 as Mayor of Chennai Corporation. In the year 1995 first petitioner purchased Labour Tenement No.4 in the name of his wife/A2, the second petitioner herein from the original allottee one S.K.Kannan, which was allotted by TANSIDCO, for a valuable sale consideration of Rs.2.30 lakhs knowing fully well that the property belongs to TANSIDCO. In the year 1997, when the Government issued an order for transfer of ownerships and when TANSIDCO started processing applications for issue of sale deeds, A1 and A2 conspired together and produced an application on 30.05.1997 to the Project Officer/Branch Manager TANSIDCO signed by S.K.Kannan original allottee, wherein A2 the second petitioner was shown as daughter of S.K.Kannan. The application was given enclosing a copy of family card of the first accused issued for the year 1993-1998, in which S.K.Kannan was shown as father-in-law of A1 and subsequently the same was processed by TANSIDCO and a demand notice dated 27.02.1998 was issued in the name of A2 for collection of rental dues, water charges, cost of tenement and maintenance charges all amount to Rs.28,827/-and in the year 1998 in order to legalize the occupancy. To grab the property of TANSIDCO, A1 obtained an affidavit from S.K.Kannan and produced the said document for transfer of Labour

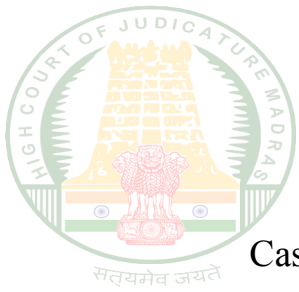


CrI.O.P.No.15240 of 2020

WEB COPY

Tenement No.4 in the name of A2 and thereby committed an offence under Section 420 r/w 120B IPC. In continuation of the said offence, A1 and A2 entered into conspiracy, due to which, S.K.Kannan made a request to TANSIDCO to transfer the allotment of Labour Tenement No.4 in favour of A2 and thereby committed an offence punishable under Section 468 IPC. Further, in continuation of the demand notice issued by TANSIDCO, A1 and A2 have obtained various services from Government Department and committed offence punishable under Section 420 IPC. During the year 2006-2011, when A1 was Mayor of Chennai Corporation, he abused his official position and got the property tax for Labour tenement No.4 assessed in the name of A2 and paid property tax to the tune of Rs.11,725/- on 20.04.2007 and obtained four EB connections in the name of A2 between 2006-2009 and regularized his unauthorized occupation in Labour Tenement and thereby committed the offence punishable under Section 13(1)(d)(i)(ii) r/w 13(2) of Prevention of Corruption Act.

3 After completing investigation, the respondent police filed a charge sheet before the learned Additional Special Judge for Trial of



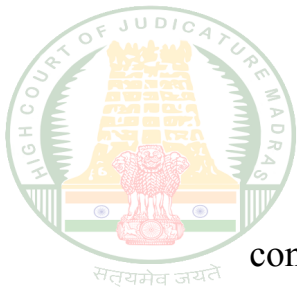
WEB COPY

Cases related to Members of Parliament and Members of Legislative Assembly of Tamilnadu, which was taken on file in C.C.No.39 of 2020.

The said case is pending at the stage of 'framing of charges'. Now the petitioners are before this Court seeking to quash the above case.

4 Learned Senior Counsel for the petitioners would submit that the third respondent, backed by political opponent belonging to AIADMK party, who has lost the 2016 Assembly elections against the first petitioner has been knocking on the doors of this Court by way of various frivolous petitions and it is very clear that the entire criminal case is a foisted one with the blessing of the then ruling party at the time of complaint, misusing and abusing the legal process. Hence, the complaint is absolutely politically motivated. The complainant was set up by the defeated candidate of the then ruling party to tarnish the image of the first petitioner and hence with malafide intention, the complaint has been given and even if it is read as a whole, no criminal offence is made out.

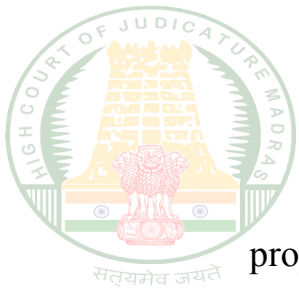
4.1 Admittedly the tenement No.4 belongs to the TANSIDCO, was allotted to one S.K.Kannan, who had alienated his tenancy rights over the said property in favour of the second petitioner for valuable sale



WEB COPY

consideration. TANSIDCO finding that the tenements having changed hands from the original allottees, decided to sell the tenements itself in favour of the occupants and therefore the TANSIDCO, by its letter R.C.No.15437/R5/02 dated 13.02.2008 addressed to the Secretary to Government, proposing to sell the tenements to the occupants. In the annexure enclosed along with the letter requesting execution of sale deed in favour of unauthorized occupants in Labour Tenements, 2nd petitioner's name alone is reflected as 'unauthorized occupant' and hence there is no criminality and the first petitioner is no way connected to the above transaction.

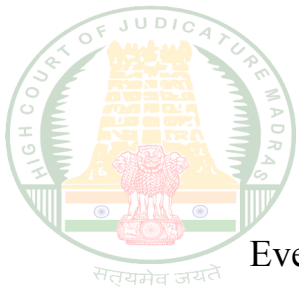
4.2 There is no law governing allotment of tenements relating to TANSIDCO and hence purchase of rights of Tenement No.4 by the second petitioner from the original allottee is not in violation of any provisions of law. Under the Transfer of Property Act, such rights are alienable and are transferable for valuable sale consideration. It is for the owner of the property either to regularize it or not. Therefore ingredients of Section 420 IPC are not made out and there is no cheating at all. TANSIDCO has not made any complaint that it has been cheated. In the final report filed by the respondent police, no where it is stated that what



WEB COPY

property has been delivered by TANSIDCO as it is the consistent stand of TANSIDCO that they never acted upon on the application given by S.K.Kannan and no change of allotment was made and hence there is no wrongful gain or wrongful loss within the meaning of Section 420 IPC, which is proved in the counter affidavit filed by TANSIDCO in the W.P.No.10939 of 2018, which was filed by the third respondent herein seeking directions to the official respondents therein to remove the alleged encroachment by the petitioners herein. The said counter affidavit filed by the TANSIDCO would clearly establish that only S.K.Kannan, the person who sold his rights to the second petitioner had approached TANSIDCO and furnished all the documents and not by the first petitioner and even the application of S.K.Kannan was also not processed and hence Sections 420, 464, 465, 466 and 468 r/w 120B are not attracted.

4.3 Despite knowing the fact that the complaint is inherently improbable, reeling under the terrible pressure from the then ruling party, the Investigating Officer has not only implicated the petitioners under repealed provisions of Section 13(i)(d)(i) and (ii) of Prevention of Corruption Act, but also filed the final report, which is an abuse of process of law and intent to wreck vengeance against the first petitioner.



CrI.O.P.No.15240 of 2020

WEB COPY

Even otherwise, the first petitioner has no role at all and he is unnecessarily dragged by the third respondent herein.

4.4 It is admitted by the TANSIDCO through their counter affidavit filed in W.P.No.10939 of 2018 that S.K.Kannan has produced only copy of the ration card for the year 1993-1998 and no originals are available either with TANSIDCO or prosecution to prove the alleged interpretation and inclusion of the name of S.K.Kannan in the ration card. However, since there is no transfer of allotment in the name of the petitioners and the documents allegedly produced by S.K.Kannan were only a xerox copy, the offence under Section 468 IPC is not made out.

4.5 It is alleged by the prosecution that the first petitioner being a public servant, holding the office of the Mayor of Chennai Corporation, abused his position to regularize and legalize the illegal occupation of Labour Tenement No.4 in the name of the second petitioner and got the assessment of property tax on 20.04.2007 and obtained four electricity connections. The assessment of property tax in favour of the second petitioner cannot be at any stretch of imagination be a valuable thing or pecuniary advantage. The word assessment is a liability, which is revenue



WEB COPY

to the Corporation of Chennai. Likewise obtaining electricity service connection by the second petitioner for her own use cannot be offence attracting Prevention of Corruption Act. The first petitioner, while he was a Mayor, had no dominion nor control over assessment, which has to be done by the Commissioner in exercise of his statutory powers under Section 9 of the Chennai City Municipal Corporation Act, 1919 and also he has no dominion or control over TANGEDCO to abuse the power to provide electricity service connection to the residence of the second petitioner by TANGEDCO in exercise of powers under the Board's Terms and Conditions framed pursuant to powers under the Indian Electricity Act. Assessment by a revenue officer also cannot be said to be a valuable thing or a pecuniary advantage as directed under Section 13(1)(d)(i)(ii) of the Prevention of Corruption Act. Per contra, it is a liability and in case of non-payment, prosecution is contemplated. Neither in FIR nor in the Final Report, no official is named for having assessed due to the abuse of power of the first petitioner. Only in case, where tax is payable by the Commissioner, the original assessment shall be made by the Mayor. The first petitioner, who was a Mayor during 2006 to 2011, by no stretch of imagination could have had access to records maintained by the Corporation Commissioner.



WEB COPY

4.6 As far as obtaining of four electricity service connections from TANGEDCO, the same are governed by Tamilnadu Electricity Supply Code, which is framed pursuant to powers conferred under Section 50 r/w Section 181 of Indian Electricity Act, 2003. The final report does not spell out whether any officials in TNEB were influenced by the first petitioner. The first petitioner, who was only Mayor had no dominion or official control over TANGEDCO. Electricity connections are provided even to huts on Government properties. Even the encroacher is entitled to electricity service connection. Thus, mere possession of an immovable property is sufficient for effecting electricity service connection, which cannot be imagined to be a valuable or pecuniary advantage.

4.7 Section 13(1)(d)(i)(ii) of Prevention of Corruption Act, 1988, has been substituted by Act 16/2018 on 26.07.2018. The FIR was registered on 31.05.2019 and on the date of registering FIR, Section 13(1)(d)(i)(ii) of Prevention of Corruption Act, 1988, already stands substituted. Hence after substitution with new provisions, the question of registration of FIR on a non-existing penal provision does not arise at all.



WEB COPY

4.8 It is the stand of TANSIDCO that even unauthorized occupants are entitled for Sale Deed and hence the question of grabbing property or cheating does not arise. What does not amount to land grabbing is defined by Hon'ble First Bench of this Court reported in *2015(1) LW 673 in the case of Thamarai Selvan vs. Government of Tamilnadu*, wherein, it was held that mere transfer of actionable rights does not come under the land grabbing unless there is penal provisions.

4.9 Further it is alleged by the prosecution that at the time of commission of offence, the petitioner was Mayor of Corporation of Chennai, but no sanction under Section 17A of Prevention of Corruption Act was obtained before investigation from the Government, rather sanction was obtained from the Speaker of the Legislative Assembly. Hence the case suffers from want of proper sanction and the entire prosecution is liable to be set aside since it is a fatal defect on the side of the prosecution. Further cognizance of complaint under Section 197 Cr.P.C. by any Court is barred, unless proper sanction is obtained from the proper authority. Further the respondent failed to conduct preliminary enquiry, which is clear violation of the decision of the Hon'ble Supreme Court in the case of *Lalitha Kumari* reported in *(2014) 2 SCC 1*, which is



also fatal to the case of the prosecution.

WEB COPY

4.10 The malafide prosecution by the second respondent is evident in all the correspondences filed as documents along with final report such as Doc.Nos.20, 21 and 31 as there are 94 unauthorized occupants in the Chennai tenements of TANSIDCO. In Tamilnadu 1099 tenements are there and no criminal complaint has been registered against them and TANSIDCO has not preferred any criminal complaint, as there are thousands of occupants, who are similarly situated like that of the second petitioner throughout Tamil Nadu and hence the complaint by political opponent is for malafide reason and the same cannot be entertained.

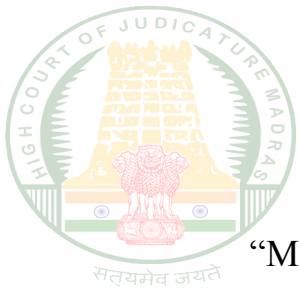
4.11 The issue of 'unauthorized occupation' is a matter of civil nature and a cloak of criminality cannot be given. The final report is vindictive and malafide as the second respondent was acting at the behest of the ruling AIADMK party. The final report together with the documents filed by the prosecution does not attract any offences set out in the impugned final report and no case is admittedly made out warranting a full-fledged trial and therefore it is waste of judicial time if the petitioners are allowed to face the trial.



WEB COPY

5 Learned Additional Advocate General assisted by the learned Government Advocate (Crl.Side) for the respondents 1 and 2 would submit that Tenement No.4 belongs to the TANSIDCO and when the land belongs to the Government, allottee S.K.Kannan cannot alienate the Government property to the accused or any individual for sale consideration and hence it is amounting to illegal transfer of Government property through forgery and creation of false documents. Allottee or lessees have no right to alienate the Government land for valuable sale consideration and thereby the sale consideration by itself is null and void. The documents whatsoever with the accused pertaining to Tenement No.4 are all false and forged one.

5.1 Document No.11 annexed with the final report is a membership form (dated 09.06.1997) of Thiru.Vi.Ka.Employee Residential Association, No.57 Guindy, Chennai – 600 032, which shows that the first petitioner is resident of Tenement No.4. Hence it is clear that the first petitioner is knowingly residing in the Government property in collusion with the second petitioner/A2, who is none other than his wife. Further Doc.No.7 is tenancy details, which clearly shows that

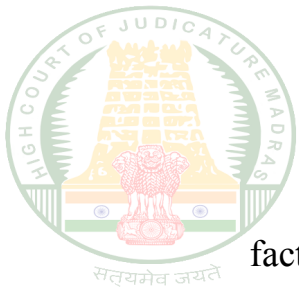


WEB COPY

“Ma.Subramani” is the occupant and his signature also found on the same, however, the same have been scored out and his wife name viz. the second accused namely Tmt.Kanchana and her signature has been added. Therefore, it is clear that the first petitioner/A1, in order to grab the Government property, has created false and fabricated documents as if the Tenement No.4 is in the name of his wife, who has been shown as daughter of S.K.Kannan, the original allottee.

5.2 Section 463 IPC defines forgery, as per which, it is clear that Tenement No.4 belonging to the Government and allotted to S.K.Kannan, has been taken over by the first petitioner A1, through an illegal sale deed. Further the first petitioner/A1 with an intention to take over this property, created false and forged documents to claim ownership of the property, abusing his position as the Mayor of Chennai Corporation and hence it is clear that the petitioners are residing in the Government property on the strength of forged and fabricated documents.

5.3 With regard to offence under Section 420 IPC, which deals with cheating, the petitioners/A1 and A2 dishonestly induced the original allottee S.K.Kannan to deliver Labour Tenement No.4 and subsequently altered all the Government records initially in the name of the first petitioner and later in the name of the second petitioner. It is an admitted



WEB COPY

fact that the original allottee S.K.Kannan, approached TANSIDCO in the year 1998 for allotment of Labour Tenement No.4 in favour of his only daughter Tmt.Kanchana, who is A2 and who is not a daughter of S.K.Kannan. Document No.17 is Passport application form submitted by A2 Tmt.Kanchana, in which it is clearly stated that her father name is "Sarangabani". Document No.18 Legal Heir Certificate, dated 17.06.2016 of allottee S.K.Kannan shows that he had 5 daughters and one son, wherein Tmt.Kanchana/A2 name has not been found as legal heir. Therefore the petitioners/A1 and A2 are under the illegal possession of TANSIDCO tenement belonging to the Government from the year 1995. The entire conspiracy has been done with the knowledge of the first petitioner/A1, who at that time, was holding an important post, as Mayor of Chennai Corporation. Hence Section 420 IPC is clearly made out.

5.4 The petitioners/A1 and A2 entered into criminal conspiracy to illegally grab the TANSIDCO Tenement No.4, although they are not entitled for the same as per the Government rules. Hence, they entered into a sale agreement with S.K.Kannan, the original allottee of the Labour Tenement No.4 and thereafter took possession of the property. Since, there is provision for the allottee to pass on the property to his legal heir, the first petitioner/A1 submitted forged documents claiming his wife A2



CrI.O.P.No.15240 of 2020

as daughter of S.K.Kannan to whom the tenement was initially allotted.

WEB COPY

But, in reality, A2 is wife of A1 Thiru. Ma. Subramanian and she is not the daughter of the S.K.Kannan. It is also clear, that the first petitioner/A1 has also submitted fake ration card, in which S.K.Kannan has been shown as his father-in-law. Further the first petitioner/A1 got the property tax assessed in the name of A2 from the year 1998 onward till 2007 for TANSIDCO Labour Tenement No.4 and he had paid it. Thereby A1 by abusing his official position, influenced the property tax department to get the work done, from the concerned officer and using this property tax receipt, he got four electricity service connections in the name of his wife A2 by misusing his position as Mayor of Chennai Corporation.

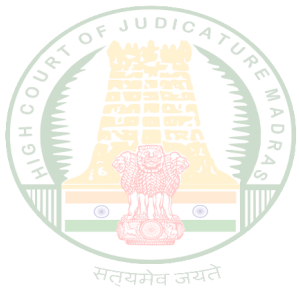
5.5 The property tax has not been assessed directly by the first petitioner and it was assessed by the Chennai Corporation in the name of A2 Tmt. Kanchana wife of the first petitioner/A1 Thiru.Ma.Subramanian. When TANSIDCO Labour Tenement No.4 belongs to the Government and A2 is not owner of the property, assessing the property tax in her name is incorrect and illegal and the same has been done with the influence and pressure from A1, who was the Mayor of Chennai Corporation at that time. Property tax receipt and sewerage & water tax



CrI.O.P.No.15240 of 2020

WEB COPY

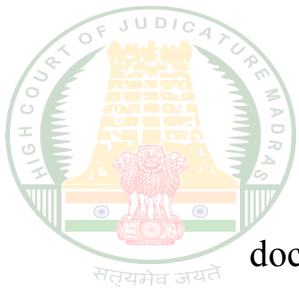
receipts are the basic important documents required to get electricity service connection. Hence, the contention of the learned Senior Counsel that A1 has no role in the assessment of tax cannot be accepted. Further, the first petitioner/A1 cannot claim to be unaware or ignorant of the submission of such false and fabricated documents, to obtain ownership of tenement since, he was holding a very high and responsible post of Mayor of Chennai Corporation at that time. Hence, section 13(1)(d) (i)(ii) r/w 13(2) of the Prevention of Corruption Act, 1988, rightly invoked against A1, which is proper. The first petitioner holding the high office of Mayor of Corporation of Chennai, is very well aware that property tax, sewerage tax receipt and electricity service connection etc., cannot be obtained in the name of his wife for a Government property that has been allotted to S.K.Kannan, which has not been allotted to him, and on which he has no ownership. The first petitioner has used his influence, as Mayor of Corporation of Chennai to pressurise and obtain all these from the concerned department circumventing the Government rules and regulations.



WEB COPY

5.6 The contention of the petitioners that the effect of substitution in the Prevention of Corruption Act on 26.07.2018 bars registration of fresh FIR by invoking offences under previous Act is totally incorrect and unsustainable, as the offence was committed prior to the amendment to the Prevention of Corruption Act and hence the penal provisions which were in existence at the time of the offence can only be invoked as per settled position of law. Therefore, the question of sanction under section 17A contemplated in the Amendment does not arise as the offence invoked is only under section 13(1)(d)(i)(ii), which was in existence during the period in which offence was committed and however proper sanction was obtained under Section 19 of Prevention of Corruption Act.

5.7 Unauthorised occupants by way of forged documents cannot be entitled for Sale Deeds and so far, no Sale Deed issued to any unauthorised occupants. Further, TANSIDCO Tenement No.4 which belongs to Government cannot be alienated by way of sale consideration by any person. Obtaining forged documents like property tax, water & sewerage tax, electricity service connections on obtaining forged sale consideration cannot be treated as actionable rights. All the forged

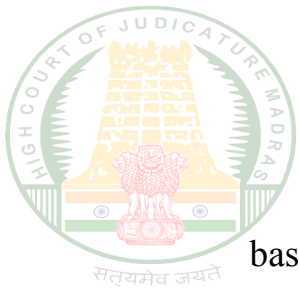


Crl.O.P.No.15240 of 2020

WEB COPY

documents have been submitted to TANSIDCO, as if the same are original for obtaining sale deed. Admittedly the first petitioner/A1 was the Mayor of Chennai Corporation at the time of committing the offences and subsequently ceased to be a Mayor and now elected as a Member of the State Assembly, during the Assembly Election held in the year 2016. It is the settled position of law that sanction to prosecute the public servant as per section 19 of Prevention of Corruption Act is not required, when the said public servant ceased to be public servant at the time of filing the charge sheet. However, since the offence is continuing offence in nature and the first petitioner/A1 continues to abuse his position and office even while he was a Member of Legislative Assembly, the previous sanction was scrupulously obtained from the Hon'ble Speaker of the Legislative Assembly under section 197 Cr. P.C. and Section 19 of the Prevention of Corruption Act. Hence, the case does not suffer from want of proper sanction.

5.8 It is not a *suo-motu* action by the police and cognizance taken



Crl.O.P.No.15240 of 2020

WEB COPY

based on the complaint given by the third respondent and hence, police action is in order. "Unauthorized occupation" with forged documents is criminal in nature. TANSIDCO Tenement No.4 has been grabbed by way of forged documents by abuse of power originally in the name of the first petitioner/A1 and further forged documents in favour of A2. Hence, it is not civil nature as contended by the learned Senior Counsel for the petitioners.

5.9 There is sufficient evidence in the form of documents and statements of witnesses to substantiate the charges against the petitioners/A1 and A2 and they have to face trial to meet the ends of justice. The scrutiny of documents in connection with this case and the deposition of witnesses reveal the part played by the petitioners.

5.10 The Hon'ble Supreme Court, in the case of *Sajjan Kumar Vs CBI reported in AIR 2011 SC (Cri) 1537* has held that if there is a strong suspicion, which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. In this case there are sufficient evidences to prove the guilt of



CrI.O.P.No.15240 of 2020

WEB COPY

the accused and for framing of charges. Further the case is at pre-trial stage and charges have to be framed by the trial court against the accused and in the event of any *prima facie* materials available on record the Court will proceed further or else the petitioners will be discharged.

5.11 While exercising powers under Section 482 Cr.P.C. this Court cannot sit as a court of appeal or revision. The jurisdiction vested in this court is inherent. Though it is wide, it has to be exercised sparingly, carefully and with caution, that too, when such exercise is justified by the tests specifically laid down in the section itself. In the case of "*State of Karnataka Vs. Devendrappa*" reported in AIR 2002 SC 671, that courts exist for advancement of justice and that section 482 Cr.P.C. is not an instrument handed over to the accused to cut short prosecution and bring about its sudden death in the form of quashing proceedings. Inherent power should not be exercised, according to the Hon'ble Apex Court, to stifle a legitimate prosecution. Therefore the case in C.C.No.39 of 2020 against the petitioners/A1 and A2 cannot be quashed and they have to necessarily face trial.

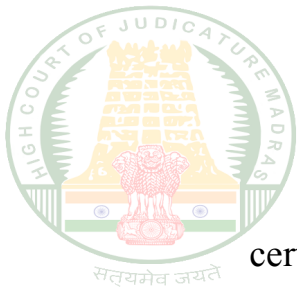
6 The learned counsel for the third respondent would submit



CrI.O.P.No.15240 of 2020

WEB COPY

that the third respondent had contested the Tamil Nadu Assembly Elections - 2016 in Saidapet Assembly Constituency as an independent candidate. The official candidate set up by DMK party, namely Ma.Subramanian has also filed the nomination giving various false information in the nomination form. In Form No.26 in Column No.B(iv), he has stated that the property situate at Adayar Village, old Door No4, present Door No.7-1/4, Labour Colony, Guindy, Chennai-32, was owned by TANSIDCO and the said property stands in the name of his wife the second petitioner by way of lease-cum-sale agreement with TANSIDCO. But the said property was originally allotted to S.K.Kannan, son of Sundaramurthy by the Industries and Commerce Department on 14.02.1959. The records available in the TANSIDCO in respect of Labour Tenement No.4 have all been entered and maintained in the name of S.K.Kannan. The said S.K.Kannan died on 15.10.2015 by leaving behind his daughters, namely (1) K.Saiyeelakshmi, (ii) Sabitha, (iii) Shanthi, (iv) Sasikala and (v) Sankari and his only son (6) K.Srinivasan. The Village Administrative Officer-cum-Registrar of Birth and Death had issued a Death Certificate on 17.06.2016 and the Tahsildar, Mambalam Taluk, had also issued legal heirship certificate through his proceedings Ni.Mu.E.1/5417/16, dated 17.06.2016. In the said legal heirship

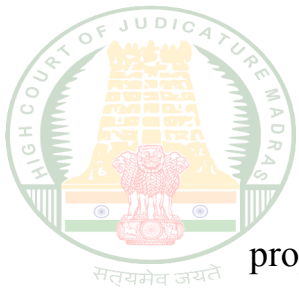


certificate, the name of the second petitioner/A2 Kanchana, is not found.

WEB COPY

Since the said Ma.Subramanian has submitted false information in his nomination papers in the Tamil Nadu Assembly Election-2016 in Saidapet Assembly Constituency, the third respondent had filed Election Petition before this Court in ELP.No.10 of 2016 and the same was rejected by this Court by order dated 06.04.2018 and the third respondent is taking action to file appeal before the competent Court.

6.1 The first petitioner is a Lawyer and he also became Mayor for Corporation of Chennai and by using the said power and political influence, he has created so many documents to grab the above said Government property and the same was produced before TANSIDCO and other authorities with an intention to grab the above said property. The third respondent came to understand that the said Ma.Subramanian, submitted an Affidavit before TANSIDCO by stating that the said S.K.Kannan has requested TANSIDCO to allot his Labour Tenement to his daughter, namely Kanchana through Notary Affidavit, but it is to be noted that in the said Legal Heirship certificate of S.K.Kannan, Kanchana's name was not found. From the said illegal act, it is clear that the first petitioner has committed forgery to grab the Government



CrI.O.P.No.15240 of 2020

WEB COPY

property. The first petitioner had demolished the said building and constructed house in the said land for ground floor, first floor and second floor, without getting proper approval and planning permission from the Corporation of Chennai. When the said Kanchana is not the owner of the property, how Corporation of Chennai can make property tax assessment and how can the Corporation of Chennai can collect the property tax for Government property in the name of the said Kanchana. The first petitioner has submitted false affidavit before the TNEB. as if the said Kanchana is the owner of the property and obtained the electricity connection for the said premises illegally. S.K.Kannan's name was deleted during the year 2005-2009 in the Family Card of the first petitioner. It is pertinent to note that originally, in the nomination form, Ma.Subramanian has stated that TANSIDCO has allotted the said property under the lease-cum-sale agreement in favour of his wife Kanchana/A2. Thereafter, he claims that S.K.Kannan, who was original allottee, has given a letter to TANSIDCO to transfer allotment in his wife's name, which is not permitted under law. TANSIDCO can allot the Labour Tenement only for labourers and not to any others as per the Government Order and therefore it is very clear that the petitioners have created the documents to grab the said Government property.



WEB COPY

6.2 The first petitioner has also grabbed the Labour Tenement No.3 of TANSIDCO property and demolished the original structure and constructed house without obtaining proper approval and permission from the competent authorities. The property of TANSIDCO had been grabbed by creating forged documents and the officials of the TANSIDCO have also colluded with the the first petitioner. As on today, the the petitioners are in possession of the said property. The third respondent made representation and also reminders to the second respondent seeking action to recover the property in Labour Tenement No.4, Labour Colony, Guindy, Chennai-32, from the petitioners by removing the said encroachment, but till date, TANSIDCO authorities have not taken any action on the third respondent's representation. Whenever the third respondent approaches, TANSIDCO authorities themselves stated that since the first petitioner is sitting MLA for Saidapet Constituency, they are unable to recover the said property from the petitioners.

6.3 Therefore, the third respondent had filed a Writ Petition in W.P.No.10939 of 2018 seeking to remove the encroachments made by the petitioners herein and after the hot contest between the parties to the said



Crl.O.P.No.15240 of 2020

WEB COPY

writ petition, this Court, by order dated 21.02.2019 in W.P.No.10939 of 2018, disposed of the above said writ petition by directing the respondent therein to consider the representation, dated 12.04.2018 and pass orders in accordance with law by providing opportunity of hearing to all concerned.

6.4 There are manipulation of documents, forgery and fraudulent documents in grabbing the above said TANSIDCO properties and hence the third respondent had made detailed complaint on 11.04.2018 before the Commissioner of Police, which was forwarded to Deputy Commissioner, Adayar, Chennai, for necessary action and thereafter since no action was taken on the said complaint, the third respondent had filed Crl.O.P.No.9706 of 2019 seeking direction to register the complaint, dated 11.04.2018 and the said petition was disposed of by this Court with direction to register the complaint. Only thereafter, a case was registered in Crime No.478 of 2019 on 31.05.2019 for the offences under Sections 420, 464, 465, 466, 468 and 120-B of IPC. Subsequently, the said complaint was transferred to the first respondent and the same was registered in FIR No.1 of 2019 for the offences under Sections 420, 464, 465, 466, 468 and 120-B IPC. Thereafter since no action was taken after registering the case, the third respondent filed Crl.O.P.No.25336 of 2019



Crl.O.P.No.15240 of 2020

WEB COPY

seeking direction to the first respondent therein to file final report in Crime No.1 of 2019 within the time stipulated by this Court. This Court, by an order dated 20.09.2019 in Crl.OP.No.25336 of 2019, directed the first respondent therein to complete the investigation in Crime No.1 of 2019 and file a final report as expeditiously as possible. Thereafter, the first respondent has filed final report before XI Metropolitan Magistrate, Saidapet, Chennai and the same was taken on file in C.C.No.4280 of 2019 by the said learned Magistrate and since the first petitioner is the sitting MLA for Tamil Nadu Legislative Assembly, the third respondent herein filed Crl.O.P.No.2213 of 2020 seeking direction to transfer the case in C.C.No.4280 of 2019 from the file of the XI Metropolitan Magistrate, Saidapet, Chennai to the Special Court, Chennai, constituted for MP and MLA Court, or the Special Court, Chennai, constituted under the Prevention of Corruption Act. Pending the above said case, the case was transferred to the Additional Special Court for MP and MLA case and re-numbered as C.C.No.39 of 2020.

6.5 The petitioners have claimed that this Court dismissed the various cases filed by the third respondent, but, it is to be noted that the third respondent had filed Election Petition No.10 of 2016 as against the



CrI.O.P.No.15240 of 2020

WEB COPY

first petitioner and the said petition was rejected, against which, an appeal was filed before the Supreme Court of India and the same is pending consideration. The dismissal of the said Election Petition is no way connected to the offence committed by the petitioners herein and the Election Petition is only for purely election dispute and the said dispute will not have any advantage to suppress all the illegal activities in grabbing the Government property. Except the said Election Petition, none of the third respondent's cases dismissed by this Court as alleged and claimed by the petitioners. Therefore, it is clear fact that the petitioners are mis-leading this Court in all aspects and the same cannot be permitted in any event. The counter filed by TANSIDCO in W.P.No.10939 of 2018 is clearly exposing the fraudulent criminal acts of the petitioners, but in the present quash-petition, the petitioners have totally misled everything. Further, the order passed in the Anticipatory Bail in CrI.O.P.No.14802 of 2019, would not give any right for the petitioners to file the present quash petition and even in the said order, it is categorically held that they are in possession of the subject matter of the property which itself proves that the petitioners have committed all the offences as claimed by the prosecution for the reason that the labour tenements are only provided for the labourers and not for any other persons like petitioners.



WEB COPY

6.6 The third respondent does not belong to any of the political party, including AIADMK. The third respondent's election nomination papers which were submitted to the Election Officer for Saidapet Constituency during the Tamil Nadu State Assembly Election, 2016, would prove the same, since the third respondent had contested the said election as an independent candidate. The third respondent has no personal vengeance or mala-fide intention to defame the petitioners and their own documents would show that they have committed the offences. The reply of TANSIDCO, which is given under the Right to Information Act, would clearly prove that the Labour Tenement Nos.3 and 4 have not at all allotted to the petitioners, but in the sworn affidavit of the first petitioner filed along with the Nomination, it has been claimed that the superstructure is vested with the second petitioner and the land belongs to TANSIDCO. When the land has not been allotted to the second petitioner, how the first petitioner can declare that the said tenement has been allotted to the second petitioner. From the above said facts, the mens-rea of the petitioners in committing the offences, are proved.

6.7 It is to be noted that in the anticipatory bail petition filed by



CrI.O.P.No.15240 of 2020

WEB COPY

the petitioners, it is clearly admitted by the petitioner that they have got assignment on 16.06.1996 from the said S.K.Kannan, but the said document has not been produced till date before the Court in any of the proceedings. The Letter Rc.No.15437/R5/02, dated 13.02.2008 will not have bearing on the claim of the petitioners that they become the unauthorised occupants, since the entire forgery, fraudulent act, manipulation of documents and etc., have been committed by the petitioners as early as during 1995-1996 itself and the said letter is only recommendation and the same cannot supersede G.O.No.128, dated 24.03.1997, since there is specific condition that the allotment cannot be transferred to any other persons, except the legal heirs of original allottee.

6.8 It is to be noted that S.K.Kannan himself is not the owner of the above said property as per G.O.No.128, dated 24.03.1997. Further, the labour tenements have been allotted to the poor labourers for their upliftment and admittedly, neither the first petitioner nor the second petitioner is labour. Therefore, the entire acts of the petitioners in grabbing the properties from the poor labourers are against the Government rules, which are offence under IPC. The second petitioner was impersonating herself as daughter of S.K.Kannan, but the fact



WEB COPY

remains that the second petitioner is the daughter of Sarangapani, which is very clear from Doc.No.17 the Passport application form of the second petitioner and therefore, the second petitioner is to be punished under Section 419 of IPC., and the same penal provision has been added in the final report in C.C.No.39 of 2020.

6.9 The petitioners have forged several documents and now they claimed that S.K.Kannan only has given those documents and the said claim itself shows that there is clear *prima-facie* triable issues are involved in the final report. The list of documents relied on by the prosecution and the statement of witnesses have clearly proved the offence committed by the petitioners herein. The explanation of the petitioners can be decided only through the full-fledged trial and definitely not through the present quash-petition. The offences under Section 13(i)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988, is clearly made out, since the first petitioner has mutated the property tax documents during his tenure of Mayor of Chennai Corporation. It is to be noted that the old structures which were available in Labour Tenement Nos.3 and 4 have been demolished without proper permission from the Corporation and the houses have been

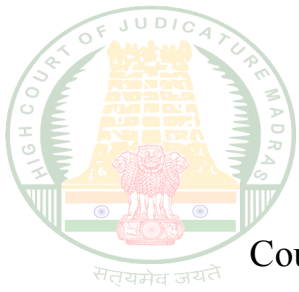


CrI.O.P.No.15240 of 2020

WEB COPY

constructed without proper approval and sanction from the competent authorities. In pursuance of several forgery and fraudulent documents, the petitioners have taken possession of the property, and hence, all the offences under Sections 420, 464, 465, 466, 468 and r/w Section 120-B of IPC and Section 13(i)(d)(i)(ii) read with Section 13(2) of the Prevention of Corruption Act, 1988 are made out. Admittedly, TANSIDCO has not even accepted the un-authorised occupation of the petitioners and hence, the petitioners have committed all the above said offences and they are liable to be punished under the above said Sections.

6.10 The petitioners are making claim that they have no connections in regard to the document which stands in their names and in such event, there must be full-fledged trial to be conducted and hence, the present quash-petition cannot be maintained. The property of TANSIDCO has been grabbed and whether the petitioners are involved or not to be decided only through the process of trial by letting the oral and documentary evidences. It is well settled law that the validity of sanctioning authority shall be challenged only before the Constitutional Court and hence if the petitioners have any grievances against the order of sanction passed by the Speaker, they may approach the Constitutional

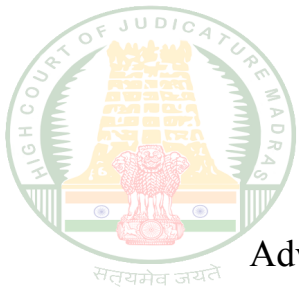


WEB COPY

Court under Article 226 of the Constitution of India and not before this Court. The intention of the Legislature is that no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice, and no Court, shall stay the proceedings under this Act on any other ground and no Court shall exercise the powers of revision in relation to any interlocutory order passed in any inquiry, trial, appeal or other proceedings.

6.11 Time and again, the Honourable Supreme Court in many number of judgments has passed verdicts stating that, the duty of the Court is that any anti-corruption law, has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption, and the High Court should exercise its power under Section 482 Cr.P.C., very very sparingly in corruption cases. Therefore the petitioners/A1 and A2 have to face trial and the case against them need not be quashed.

7 Heard the learned Senior Counsel for the petitioners and the learned Additional Advocate General assisted by the learned Government



Crl.O.P.No.15240 of 2020

WEB COPY

Advocate (Crl.Side) for the respondents 1 and 2 and the learned counsel for the third respondent and perused the materials available on record.

8 The prosecution has made a specific allegation that the first petitioner, being a public servant holding the office of the Mayor of Chennai Corporation, abused his position in order to grab the government property viz. Tenement No.4 belongs to TANSIDCO, which was originally allotted to eligible allottee S.K.Kannan. The prosecution alleges that the first petitioner knowingly residing in the property by creating false and fabricated documents to make it appear as though the property stood in the name of his wife (A2), the second petitioner. Furthermore, he allegedly regularized and legalized Labour Tenement No.4 in the name of the second petitioner, by obtaining property tax assessment on 20.04.2007 and secured four electricity service connections. The original allottee S.K.Kannan has no right to alienate the Government land for valuable sale consideration and thereby the sale consideration itself is null and void and the documents whatsoever with the petitioners/accused pertaining Labour Tenement No.4 are all false and forged one.

9 To defend the allegations of the prosecution and to quash the



WEB COPY

present case against the petitioners, the learned Senior Counsel for the petitioners contended that the case is politically motivated with malafide intention and in fact the original allottee S.K.Kannan, alienated his tenancy rights over Labour Tenement No.4 in favour of the second petitioner for valuable sale consideration and hence there is no violation of any provisions of law. The sanction obtained by the prosecution is invalid and not in consonance with Section 17A of Prevention of Corruption Act. Further the owner of the land viz. TANSIDCO did not prefer any complaint against the petitioners, rather, it stated the petitioners as 'unauthorised occupants' and the counter filed by TANSIDCO, in the writ petition in W.P.No.10939 of 2018 filed by the defacto complainant seeking to remove the occupation of the petitioners, would demolish the entire case of the prosecution. The learned Senior Counsel for the petitioners also placed reliance on the following various decisions of the Hon'ble Supreme Court and other High Courts to support his contentions.

1. (2014) 7 SCC 215 (Rishipal Singh vs. State of UP)
2. (2014) 2 SCC 1 (Lalita Kumari vs. Government of UP)
3. (2020) 2 SCC 338 (Yashwant Sinha and Ors vs. CBI)
4. AIR 1965 SC 444 (Rattan Lal Alias Ram Rattan vs. State of

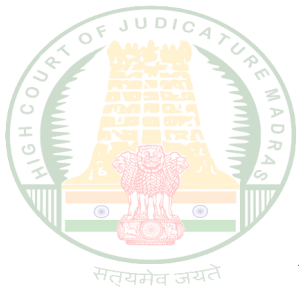


Crl.O.P.No.15240 of 2020

Punjab)

WEB COPY

5. (2014) 13 SCC 55 (B.Jayaraj vs. State of Andhra Pradesh)
6. (2009) 6 SCC 587 (A.Subair vs. State of Kerala)
7. (1983) 1 SCC 177 (T.Barani vs. Henry Ah Hoe & Anr)
8. (2003) 7 SCC 713 (New India Assurance Co. Ltde.,vs. C.Padma
9. (2018) 17 SCC 448 (Nemi Chand vs. State of Rajasthan)
- 10.(2007) 12 SCC 1 (Inder Mohan Goswami vs. State of Uttaranchal
- 11.(1977) 2 SCC 699 (State of Karnataka vs. LO.Muniswamy
- 12.(1992) Supp (1) SCC 335 (State of Haryana vs. Bhajan Lal)
- 13.(2015) 1 LW 673 (R.Thamaraiselvan vs. Government of Tamil Nadu)
- 14.(2000) 2 SCC 636 (G.Sagar Suri vs. State of UP)
- 15.2013 (6) CTC 849 (T.M.Prakash vs. The District Collector
- 16.(2019) 17 SCC 590 (Gottumukkala Venkata Krishnamraj vs. Union of India)
- 17.(2000) 2 SCC 536 (Kohlapur Canesugar Works Ltd., and Anr vs. Union of India)
- 18.W.P.No.31640 of 2012 (G. Murugan vs. The Chairman)
- 19.(2024) 10 SCC 1 (Mineral Area Development Authority vs. SAIL)
20. 2024 SCC OnLine SC 58 (Mariam Fasihuddin vs. State)



CrI.O.P.No.15240 of 2020

WEB COPY

21.2024 SCC OnLine SC 339 (A.M.Mohan vs. State)

22.2021 SCC OnLine SC 1184 (Parveen vs. State of Haryana)

23. (2018 7 SCC 581 (Sheila Sebastian vs. R. Jawaharaj)

24.(2017) 8 SCC 791 (Rajiv Kumar vs. State of UP)

25.2015 SCC OnLine Mad 2089 (R.Thamaraiselvan vs. State of T.N.)

26.2014 SCC OnLine Mad 777 (G.Murugan vs. Tamil Nadu
Electricity Board)

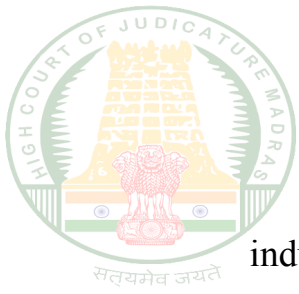
27. 2013 SCC OnLine Mad 3001 (T.M.Prakash vs. District Collector)

28.(2007) 12 SCC 1 (Inder Mohan Goswami vs. State of Uttaranchal)

29.(2003) 3 SCC 641 (Ram Narayan Popli vs. CBI

30.1992 Supp (1) SCC 335 (State of Haryana vs. Bhajan Lal

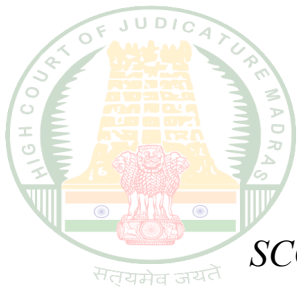
10 It is an admitted fact that the petitioners are in occupation of the disputed property LT No.4, which belongs to TANSIDCO. The Housing and Urban Development Department issued G.O.Ms.No.128 dated 24.03.1997 to issue house sites to the eligible poor labours at a low prize, on conditions. As per condition No.7 of the said Government Order, the petitioners, who are described as unauthorised occupants by TANSIDCO, are not eligible to get the benefits under the said Government Order, since neither the petitioners nor their parents are



WEB COPY

industrial labours. Even as per the admission made by the petitioners, they took right over the disputed property from the original allottee S.K.Kannan for valuable sale consideration, which is not permissible as per the Government Order. Even the original allottee S.K.Kannan has no right to alienate the property and hence the occupation of the petitioners in the property is not legal. Even though it is contended by the learned Senior Counsel for the petitioners that the case is politically motivated, it is to be noted that the first petitioner is a Law Graduate and was holding very responsible post of Mayor of Chennai Corporation, he knows the procedures contemplated under Law. Therefore the contention of the learned Senior Counsel could not be accepted.

11 The learned Senior Counsel contended that preliminary enquiry was not conducted which is in violation of the decision of the Hon'ble Supreme Court in the case of *Lalaitha Kumari* stated (*supra*). As far as preliminary enquiry is concerned, subsequently the Hon'ble Supreme Court in the case of *CBI vs. Thommandru Hannah Vijayalakshmi Alias T.H.Vijayalakshmi and another* reported in (2021) 18



WEB COPY

SCC 135 has clarified regarding conduct of preliminary enquiry and scope and object of conducting preliminary enquiry and the relevant portion is extracted hereunder:

“21. The judgment provides the following conclusions : (Lalita Kumari case [Lalita Kumari v. State of U.P.,

“120. In view of the aforesaid discussion, we hold:

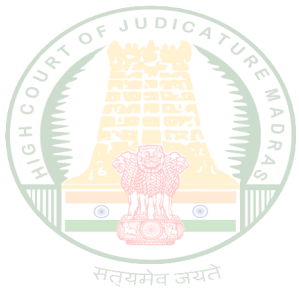
120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

(d) Corruption cases

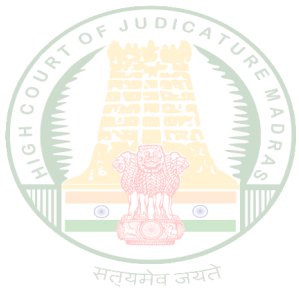


WEB COPY

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.”

22. *The Constitution Bench in Lalita Kumari case [Lalita Kumari v. State of U.P., (2014) 2 SCC 1, paras 31-35, 37-39, 83-86, 89-92, 93-96, 101-105, 106-107, 111-112, 114-119 and 120 : (2014) 1 SCC (Cri) 524] thus held that a preliminary enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a preliminary enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a preliminary enquiry will depend on the facts and circumstances of each case. As an illustration, “corruption cases” fall in that category of cases where a preliminary enquiry “may be made”. The use of the expression “may be made” goes to emphasise that holding a preliminary enquiry is not mandatory. Dwelling on the CBI Manual, the Constitution Bench held that : (i) it is not a statute enacted by the legislature; and (ii) it is a compendium of administrative orders for the internal guidance of CBI.*

23. *The judgment in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] was analysed by a three-Judge Bench of this Court in Yashwant Sinha [Yashwant Sinha v. CBI, (2020) 2 SCC 338] where the Court refused to grant the relief of registration of an FIR based on information submitted*



WEB COPY

by the appellant-informant. In his concurring opinion, K.M. Joseph, J. described that a barrier to granting the relief of registration of an FIR against a public figure would be the observations of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] noting that a preliminary enquiry may be desirable before doing so. Joseph, J. observed : (Yashwant Sinha case [Yashwant Sinha v. CBI, (2020) 2 SCC 338, paras 114-115 and 117] , SCC pp. 385 & 387-89, paras 108, 110, 112 & 114)

“108. Para 120.6 [of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524]] deals with the type of cases in which preliminary inquiry may be made. Corruption cases are one of the categories of cases where a preliminary inquiry may be conducted. ...

110. In para 117 of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court referred to the decision in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and took the view that in the context of offences related to corruption in the said decision, the Court has expressed a need for a preliminary inquiry before proceeding against public servants.

112. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , one of the contentions which was pressed before the Court was that in certain situations,



WEB COPY

preliminary inquiry is necessary. In this regard, attention of the Court was drawn to CBI Crime Manual. ...

114. The Constitution Bench in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , had before it, the CBI Crime Manual. It also considered the decision of this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] which declared the necessity for preliminary inquiry in offences relating to corruption. Therefore, the petitioners may not be justified in approaching this Court seeking the relief of registration of an FIR and investigation on the same as such. This is for the reason that one of the exceptions where immediate registration of FIR may not be resorted to, would be a case pointing fingers at a public figure and raising the allegation of corruption. This Court also has permitted preliminary inquiry when there is delay, laches in initiating criminal prosecution, for example, over three months. A preliminary inquiry, it is to be noticed in para 120.7 of Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , is to be completed within seven days.”(emphasis supplied

24. The decision of a two-Judge Bench in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] thereafter has noted that while the decision in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] held that a preliminary enquiry was desirable in



WEB COPY



Crl.O.P.No.15240 of 2020

cases of alleged corruption, that does not vest a right in the accused to demand a preliminary enquiry. Whether a preliminary enquiry is required or not will depend on the facts and circumstances of each case, and it cannot be said to be mandatory requirement without which a case cannot be registered against the accused in corruption cases. Hemant Gupta, J. held thus : (Managipet case [State of Telangana v. Managipet, (2019) 19 SCC 87, paras 33-34 : (2020) 3 SCC (Cri) 702] , SCC pp. 103-105, paras 28-30 & 32-34)

“28. In Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused. Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that prima facie, the allegations levelled against the accused in the complaint are credible. ...

29. The Court concluded that the registration of an FIR is mandatory under Section 154 of the Code if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. ...

30. It must be pointed out that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry



WEB COPY



Crl.O.P.No.15240 of 2020

may be conducted pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. The judgment of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.

32. ... The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

33. In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason



WEB COPY



Crl.O.P.No.15240 of 2020

that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR 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 and also where a criminal proceeding is manifestly attended with mala fides 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.

34. Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient.”

(emphasis supplied)

25. In Charansingh [Charansingh v. State of Maharashtra, (2021) 5 SCC 469 : (2021) 2 SCC (Cri) 617 : (2021) 2 SCC (L&S) 52] ,



WEB COPY

the two-Judge Bench was confronted with a challenge to a decision to hold a preliminary enquiry. The Court adverted to the ACB Manual in Maharashtra and held that a statement provided by an individual in an “open inquiry” in the nature of a preliminary enquiry would not be confessional in nature and hence, the individual cannot refuse to appear in such an inquiry on that basis. M.R. Shah, J. writing for the two-Judge Bench consisting also of one of us (D.Y. Chandrachud, J.) held : (SCC pp. 479-82, paras 11, 14 & 15)

“11. However, whether in a case of a complaint against a public servant regarding accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, an enquiry at pre-FIR stage is permissible or not and/or it is desirable or not, if any decision is required, the same is governed by the decision of this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] .

11.1. While considering the larger question, whether police is duty-bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general



WEB COPY



CrI.O.P.No.15240 of 2020

rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case.

14. In the context of offences relating to corruption, in para 117 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court also took note of the decision of this Court in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] in which case this Court expressed the need for a preliminary enquiry before proceeding against public servants.



WEB COPY



CrI.O.P.No.15240 of 2020

15.1. Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

15.2. Even as held by this Court in CBI v. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175 : 2003 SCC (Cri) 1305] , a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is



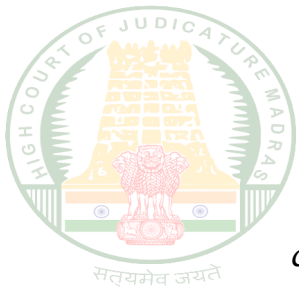
WEB COPY



CrI.O.P.No.15240 of 2020

conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the observations made by this Court in P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and considering the observations by this Court in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-Corruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage.”(emphasis supplied

26. Hence, all these decisions do not mandate that a preliminary enquiry must be conducted before the registration of an FIR in



WEB COPY

corruption cases. An FIR will not stand vitiated because a preliminary enquiry has not been conducted. The decision in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] dealt specifically with a case of disproportionate assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a preliminary enquiry.

27. This conclusion is also supported by the judgment of another Constitution Bench in K. Veeraswami [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] . The judgment was in context of Section 5(1)(e) of the old Prevention of Corruption Act, 1947, which is similar to Section 13(1)(e) of the PC Act. It was argued that : (i) a public servant must be afforded an opportunity to explain the alleged disproportionate assets before an investigating officer; (ii) this must then be included and explained by the investigating officer while filing the charge-sheet; and (iii) the failure to do so would render the charge-sheet invalid. Rejecting this submission, the Constitution Bench held that doing so would elevate the investigating officer to the role of an enquiry officer or a Judge and that their role was limited only to collect material in order to ascertain whether the alleged offence has been committed by the public servant.”

12 In view of the above settled position, this Court is of the view



CrI.O.P.No.15240 of 2020

WEB COPY

that no preliminary enquiry is required, as the matter pertains to corruption. Particularly, in the case on hand, the allegation is that the property viz. Labour Tenement No.4, which is meant for labourers, was fraudulently obtained. Furthermore, the first petitioner, while holding the post of Mayor, by abusing his official position, obtained property tax assessment, and using the same, he secured four electricity service connections in the name of his wife A2, by misusing the official position as Mayor.

13 As far as the contention regarding the validity of sanction is concerned, mere defect in sanction would not affect the case of the prosecution and in this regard it is useful to refer the decision of the *Hon'ble Supreme Court* reported in (2009) 15 SCC 537 in the case of *V.Padmanabham vs. Government of Andhra Pradesh and Ors* and the relevant portion is extracted hereunder:

“8. So far as the defect in sanction aspect is concerned, the circular on which the High Court has placed reliance needs to be noted. The Circular in question is dated 9-2-1988 the relevant portion reads as follows:



WEB COPY



CrI.O.P.No.15240 of 2020

The Government also decided that before giving approval of prosecutions, the Principal Secretary, Law and Legal Department will obtain the advice of department concerned.” A bare perusal of the paragraph shows that before giving approval for prosecution, advice of the department concerned was necessary. The question arises whether the absence of advice renders the sanction inoperative. Undisputedly the sanction has been given by the Department of Law and Legislative Affairs. The State Government had granted approval of the prosecution. As noted above, the sanction was granted in the name of the Governor of the State by the Additional Secretary, Department of Law and Legislative Affairs. The advice at the most is an interdepartmental matter.

9. Further, the High Court has failed to consider the effect of Section 19(3) of the Act. The said provision makes it clear that no finding, sentence or order passed by a Special Judge shall be reversed or altered by a court of appeal on the ground of absence of/or any error, omission or irregularity in sanction required under sub-section (1) of Section 19 unless in the opinion of the court a failure of justice has in fact been occasioned thereby.

10. In the instant case there was not even a whisper or pleading about any failure of justice. The stage when this failure is to be established is yet to be reached since the case



WEB COPY



CrI.O.P.No.15240 of 2020

is at the stage of framing of charge whether or not failure has in fact been occasioned was to be determined once the trial commenced and evidence was led. In this connection the decisions of this Court in State v. T. Venkatesh Murthy [(2004) 7 SCC 763 : 2004 SCC (Cri) 2140] and in Parkash Singh Badal v. State of Punjab [(2007) 1 SCC 1 : (2007) 1 SCC (Cri) 193] need to be noted. That being so the High Court's view quashing the proceedings cannot be sustained and the State's appeal deserves to be allowed which we direct.

11. Coming to the appeal filed by the accused one of the questions is whether the investigating officer was authorised to conduct the investigation. The investigation was carried on by the duly authorised officer, namely, the Deputy Superintendent of Police under Section 17(c) of the Act. The broader issues raised need not be looked into. The function of investigation was merely to collect evidence and any irregularity and illegality in the course of collection of evidence can hardly be considered by itself to affect the legality of trial by a competent court of the offence so investigated.”

14 The Hon'ble Supreme Court, in the decision reported in (2004) 7 SCC 763 in the case of State by Police Inspector vs. T.Venkatesh



Murthy, further held as follows:

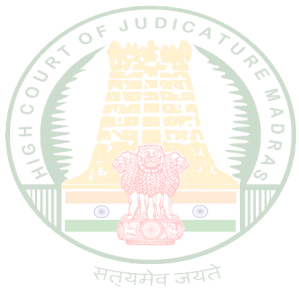
WEB COPY

7. A combined reading of sub-sections (3) and (4) makes the position clear that notwithstanding anything contained in the Code no finding, sentence and order passed by a Special Judge shall be reversed or altered by a court in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court a failure of justice has in fact been occasioned thereby.

8. Clause (b) of sub-section (3) is also relevant. It shows that no court shall stay the proceedings under the Act on the ground of any error, omission or irregularity in the sanction granted by the authority, unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

9. Sub-section (4) postulates that in determining under sub-section (3) whether the absence of, or any error, omission or irregularity in the sanction has occasioned or resulted in a failure of justice, the court shall have regard to the fact whether the objection could and should have been raised at any earlier stage in the proceedings.

10. Explanation appended to the section is also of significance. It provides, that for the purpose of Section 19, error includes competency of the authority to grant sanction.



WEB COPY

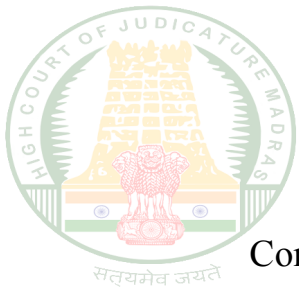
15 Yet another decision reported in (2023) 1 SCC 329 in the

case of *Vijay Rajmohan vs CBI (Anti Corruption Branch)* held as follows:

22. Statutory provisions requiring sanction before prosecution either under Section 197CrPC or under Section 97 of the PC Act also intend to serve the very same purpose of protecting a public servant. These protections are not available to other citizens because of the inherent vulnerabilities of a public servant and the need to protect them. However, the said protection is neither a shield against dereliction of duty nor an absolute immunity against corrupt practices. The limited immunity or bar is only subject to a sanction by the appointing authority.

16 The Hon'ble Apex Court, in the recent judgment in the case of *State vs. Easwaran* (2025 INSC 397) held that the High Court committed an error in quashing the prosecution on the grounds that the sanction to prosecute was illegal and invalid. The Hon'ble Apex Court has reiterated that the validity of a sanction is an issue that must be examined during the course of trial.

17 Admittedly in the case on hand, the order of sanction was passed by the Speaker and if the petitioners are aggrieved over the same, they should have approached the Court by invoking Article 226 of the



WEB COPY

Constitution of India. Furthermore, the criminal case has now reached the stage of framing charges and the petitioners can very well raise their defence before the trial Court and hence such a challenge cannot be entertained at the threshold, especially on a mere technicality, the criminal case cannot be set aside and their defence also remains open before the trial Court. Therefore the contention of the learned Senior Counsel with regard to defect in sanction is not acceptable and the decisions relied on by the learned Senior Counsel in this aspect are not applicable to the case on hand.

18 It is the main contention of the learned Senior Counsel for the petitioners that TANSIDCO, who is the owner of the land has not filed any complaint against the petitioners and the counter filed by TANSIDCO in the Writ Petition filed by the defacto complainant to remove the petitioners from the property, would demolish the case of the prosecution. A bare perusal of the said counter filed by TANSIDCO would show that the petitioners are not eligible to get sale deed in their favour and they are considered as 'unauthorised occupants'. The proposal to regularize the unauthorised occupation has been sent to Government and the Government by its letter dated 14.12.2017 directed TANSIDCO to verify

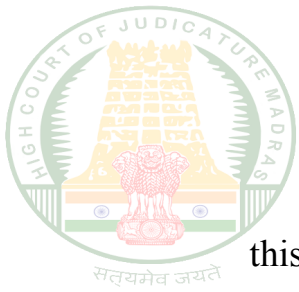


WEB COPY

and establish each of the unauthorised occupant as labour with specific proof such as EPF and ESI, but none of unauthorised occupants including the petitioners have submitted any proof as required by the Government. Further in the counter TANSIDCO has clearly stated that without NOC from TANSIDCO and requisite approval for putting up the construction, the petitioners, who occupied Tenement No.3 demolished the original building and reconstructed with adjoining Tenement No.4, which was originally allotted to S.K.Kannan.

19 Further it is an admitted fact that the said S.K.Kannan requested TANSIDCO for allotment of Tenement No.4 in favour of the second petitioner/A2 Tmt.S.Kanchana stating that she is his only legal heir. But, in document No.17 passport application form of the second petitioner, she clearly mentioned her father's name as 'Sarangabani'. Therefore the contentions of the learned Senior Counsel that the petitioners' occupation is not illegal and the allegations of the prosecution is motivated one, are not acceptable.

20 The learned Senior Counsel contended that this complaint by political opponent is for malafide reason, which cannot be entertained. In



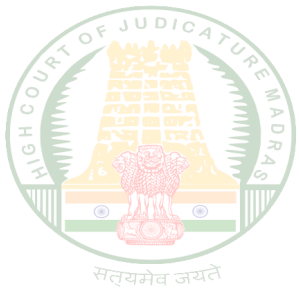
WEB COPY

this regard it is useful to refer the decisions of the *Hon'ble Supreme Court*

reported in (2004) 1 SCC 691 in the case of *State of M.P. Vs Awadh*

Kishore Gupta and Ors. and the relevant portion reads as follows:

“8. Exercise of power under Section 482 of the Code in a case of this nature is an exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of administration of justice on the principle quando lex

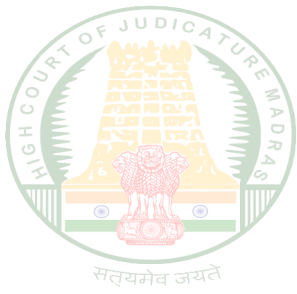


WEB COPY



CrI.O.P.No.15240 of 2020

aliquid alicui concedit, concedere videtur id sine quo res ipsa esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.



WEB COPY

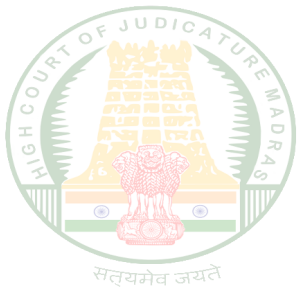


CrI.O.P.No.15240 of 2020

9. *In R.P. Kapur v. State of Punjab [AIR 1960 SC 866 : 1960 Cri LJ 1239] this Court summarized some categories of cases where inherent power can and should be exercised to quash the proceedings:*

- (i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
- (ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;*
- (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.*

10. *In dealing with the last case, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt, should not be an instrument of oppression or needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and*



WEB COPY



Crl.O.P.No.15240 of 2020

circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . A note of caution was, however, added that the power should be exercised sparingly and that too in the rarest of the rare cases. The illustrative categories indicated by this Court are as follows : (SCC pp. 378-79, para 102)

“(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



WEB COPY



CrI.O.P.No.15240 of 2020

an order of a Magistrate within the purview of Section 155(2) of the Code.

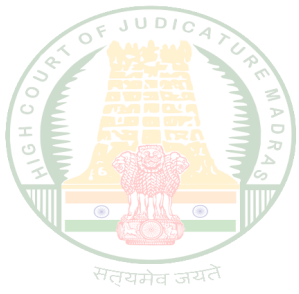
(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(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 Act concerned (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 Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on



WEB COPY



CrI.O.P.No.15240 of 2020

the accused and with a view to spite him due to private and personal grudge.”

11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36 : AIR 1993 SC 892] and Raghubir Saran (Dr) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the

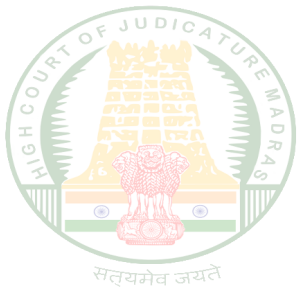


WEB COPY



CrI.O.P.No.15240 of 2020

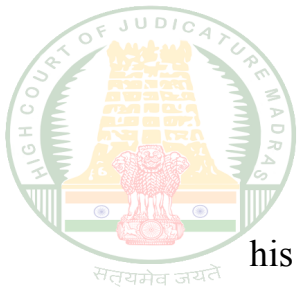
material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.



WEB COPY

21 Therefore while exercising powers under Section 482 Cr.P.C. the Court cannot function as a Court of appeal or revision, and the inherent jurisdiction, even though wide, it has to be exercised sparingly, carefully and with caution. Further, the Hon'ble Supreme Court held that the High Court, while dealing with the petition seeking quash, cannot appreciate the evidence, but can evaluate material and documents on records to the extent of its *prima facie* satisfaction about the existence of sufficient ground for proceeding against the accused. The Section should not be an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The Court has to see whether there exist *prima facie* allegations and sufficient grounds to proceed against the accused.

22 This Court carefully has gone through the allegations, charge sheet and the documents, which reveal that there is *prima facie* materials to proceed further. Admittedly, the prosecution alleges that the petitioners conspired to unlawfully acquire property meant for labourers viz., Labour Tenement No.4. As part of this conspiracy, S.K.Kannan submitted a request to TANSIDCO for the transfer of the allotment of Labour Tenement No.4 in favour of A2. The first petitioner, by abusing



WEB COPY

his official position, ensured that the property tax for the labour tenement was assessed in the name of A2 and subsequently paid the property tax and obtained four electricity service connections. While engaging in these activities, they involved S.K.Kannan, who was claimed to be the father-in-law of the first petitioner. However, the prosecution's stance is that, according to the legal heir certificate (Document No.18, dated 17.06.2016), the said S.K.Kannan had five daughters and one son, wherein Kanchana, the second petitioner, has not been mentioned as a legal heir. As such, the prosecution alleges that the entire conspiracy was carried out with the knowledge of the first petitioner, who, at that time, was holding the post of Mayor. It is also apposite to mention that the validity and veracity of the documents can only be tested during trial. Further, the Hon'ble Supreme Court in catena of decisions observed that invoking Section 482 Cr.P.C. is not automatic and it should be exercised very very sparingly especially when the offence is under the Prevention of Corruption Act. Once the complaint discloses *prima facie* allegations, the malafide intention of the complainant is of no consequence. There is no quarrel with the law laid down by the Hon'ble Supreme Court, which are relied on by the learned Senior Counsel, but, however, considering the facts and circumstances of this case and decisions cited supra, the



Crl.O.P.No.15240 of 2020

WEB COPY

cases relied on by the learned Senior Counsel for the petitioners are not applicable to the facts of the present case on hand.

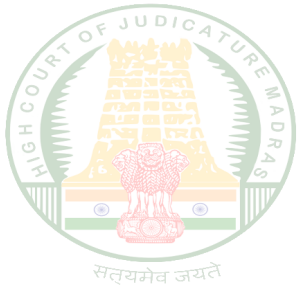
23 Furthermore, the grounds raised by the learned Senior Counsel for the petitioners are all matter for trial and the case cannot be quashed on that grounds and this is not the fit case to quash.

24 In view of the foregoing observations and reasons, this Criminal Original Petition stands dismissed. However, the petitioners can take all their defence during trial. The trial Court is directed to frame charges against the accused, if not done so far, and proceed with the matter in accordance with law. Consequently, connected miscellaneous petition is closed.

28.03.2025

Speaking Order/Non Speaking Order

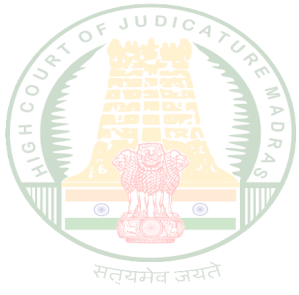
cgi



CrI.O.P.No.15240 of 2020

WEB COPY To

1. The Additional Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamilnadu.
2. The Deputy Superintendent of Police, Organized Crime Uni-II, Crime Branch CID, Egmore, Chennai – 600 008.
3. The Public Prosecutor, Madras High Court.



WEB COPY



Crl.O.P.No.15240 of 2020

P.VELMURUGAN, J.,

cgi

**Pre-Delivery Orders in
Crl.O.P.No.15240 of 2020**

28.03.2025