BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2025

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.P.(MD).No.1992 of 2025

A.Selvarani ... Petitioner

Vs.

1.The Director,
Directorate of Vigilance and Anti-Corruption (DVAC),
No.293, M.K.N.Road,
Aladur, Chennai 600 016

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Race Course Road, Kajamalai,
Trichy 620 020

3.Rajendran

4.Malini ... Respondents

PRAYER:- Writ Petition has been filed under Article 226 of the Constitution of India, praying this Court to issue a writ of mandamus, or any other appropriate writ or direction, directing the respondent Nos.1 and 2 herein to conduct proper enquiry upon petitioner's complaint dated 27.12.2024 and take appropriate action against the respondent Nos.3 and 4 within a stipulated period in accordance with law.

For Petitioner : Mr.C.Senthil Murugan

For Respondent : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor
for R1 and R2

ORDER

This writ petition has been filed to direct the respondent Nos.1 and 2 herein to conduct proper enquiry upon petitioner's complaint dated 27.12.2024 and take appropriate action against the respondent Nos.3 and 4 within a stipulated period in accordance with law.

2. The grievance of the petitioner is that the petitioner made allegation against the respondent Nos.3 and 4 relating to the demand and illegal gratification to register her document. He sent a complaint to the respondent Nos.1 and 2 with electronic evidence and the same was received by the vigilance department. Since no action was taken, the present writ petition has been filed.

3.The learned Additional Public Prosecutor appearing for the vigilance department on instructions, submitted that after the receipt of the electronic evidence, to make enquiry into complaint as per Section 17-A of the

Prevention of Corruption Act, 2018 they need to obtain permission from the competent authority. To obtain permission, the vigilance department has sent a request to the Inspector General of Registration, Office of the Inspector General of Registration, No.100, Santhome High Road, Foreshore Estate, Chennai-600 028, (Near Amma Unavagam, Pattinampakkam), by letter dated 25.01.2025 and the report is awaited. Hence, he seeks to dismiss this writ petition.

4. This Court considered the rival submissions made by the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the Vigilance Department and also perused the materials available on record.

5. This Court has noticed that the vigilance department has taken different views in different situations relating as to the compliance of Section 17-A of the Prevention of Corruption Act, 2018. In some cases, they have stated that compliance of Section 17-A of Prevention of Corruption Act, 2018 is not necessary. In selective cases, they have stated that the compliance of Section 17-A of the Prevention of Corruption Act, 2018 is required. In many

number of cases, they have entertained the complaint and made enquiry. Apart from that, when the request is made from the vigilance Department, it is the duty of the concerned officer to give permission to conduct enquiry, otherwise, the said officer also is liable to be prosecuted as abettor to the crime. That apart, a pari materia procedure of Section 17-A of Prevention Corruption Act, 2018 existed earlier in the vigilance department and the same was challenged before this Court in W.P.NO.10624 of 2015 and the Hon'ble Thiru. Chief Justice Sanjay Kishan Kaul and Hon'ble Justice Thiru R.Mahadevan struck down the said notification and held that for conducting the enquiry, it is not necessary to obtain permission from the department.

5.1. The Hon'ble Thiru Chief Justice Sanjay Kishan Kaul and Hon'ble Justice Thiru. R.Mahadevan has held that in the case of P.Pugalenthi Vs. State of Tamilnadu reported in 2017 1 L.W (Crl) 623 in paragraph Nos.23 and 24 as follows:

> *23. The fact is that the procedure prescribes a mandate on the Directorate of Vigilance and Anti-Corruption of first forward the complaints of the Vigilance Commission, which, in turn, to first obtain remarks of the Government and thereafter,*

apply their mind and forward the result to the directorate of vigilance and anti corruption before the Directorate of Vigilance and Anti-Corruption can exercise its jurisdiction of the police station. In our view, this is not permissible.

24. We would have thought that the controversy could have been put to rest if an answer to out query as to whether para 4 of the G.O. While reference to " before ordering an appropriate enquiry" would imply that even preliminary enquiry cannot start without those remarks have to be necessarily obtained (though not binding) in the course of preliminary enquiry, a positive approach would have been adopted by the State Government with an assurance that there is no impediment at least to the preliminary enquiry being conducted. The contrary answers seems to convey an apparent lack of faith in the Directorate of Vigilance and Anti-Corruption to look into the matter even as a preliminary enquiry. This is our view, cannot be countenanced.

5.2. The Hon'ble Three Judges Bench of the Supreme Court, in the case of CBI v. Thommandru Hannah Vijayalakshmi, reported in (2021) 18 SCC 135

26. Hence, all these decisions to not mandate that a preliminary enquiry must be conducted before the registration of n FIR in corruption cases. An FIR will not stand vitiated because a preliminary enquiry has not been conducted. The *decision in Managipet (State of Telengana 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.*

39. The precedents of this Court and the provisions of the CBI Manual make it abundantly clear that a preliminary enquiry is not mandatory in all cases which involve allegations of corruption. The decision of the Constitution Bench in Lalita Kumari (Lalita Kumari V. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524) holds that if the information received discloses the commission of a cognizable offence at the outset, no preliminary enquiry would be required. It also clarified that the scope of a preliminary enquiry is not to check the veracity of the information received, but only to scrutinise whether it discloses the commission of a cognizable offence. Similarly, Para 9.1 of the CBI Manual notes that a preliminary enquiry is required only if the information (whether verified or unverified) does not disclose the commission of a cognizable offence. Even when a preliminary enquiry is initiated, it has to stop as soon as the officer ascertains that enough material has been collected which discloses the commission of a cognizable *offence. A similar conclusion has been reached by a two judge bench in Managipet (State of Telangana V. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702) as well. Hence the proposition that a preliminary enquiry is mandatory is plainly contrary to law, for it is not only contrary to the decision of the Constitution Bench in Lalita Kumari (Lalita Kumari V. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524) but would also tear apart the framework created by the CBI Manual.*

42. In view of the above discussion, we hold that since the institution of a preliminary enquiry in cases of corruption is not made mandatory before the registration of an FIR under CrPC, the PC Act or even the CBI Manual, for this court to issue a direction to that effect will be tantamount to stepping into the legislative domain. Hence, we hold that in case the information received by CBI, through a complaint or a "source information" under Chapter 8, discloses the commission of a cognizable offence, it can directly register a regular case instead of conducting a preliminary enquiry, where the officer is satisfied that the information discloses the commission of a cognizable offence.

5.3. In view of the above law laid down by the Hon'ble Supreme Court, the FIR cannot be quashed on the ground of non-compliance of Section 17(A) of the Act and therefore, this court unable to accept the argument of the learned Additional Public Prosecutor on the basis of the Judgment of this Court in Crl.O.P.No. 16673 of 2024.

6. In view of the above situation, this court inclines to issue the following direction to all the officers, who are competent to give permission under section 17-A of the Prevention of Corruption Act, 2018:

6.1. All the officers, empowered are hereby directed to consider the request made by the vigilance department within specified period mentioned under section 17-A of Prevention of Corruption Act, 2018 from the date of receipt of the said communication, otherwise, it is open to Vigilance Department, to add the concerned officer as abettor to the said crime.

6.2 The learned Additional Public Prosecutor is hereby directed to instruct the concerned officers, in all the cases to strictly follow the procedure of section 17-A of the Prevention of Corruption Act, 2018 and direct them to take a uniform stand and common approach.

6.3 In this case, the request made by the Director is pending before the Inspector General of Registration, Officer of the Inspector General of Registration, No. 100, Santhome High Road, Foreshore Estate, Chennai –

600 028 (Near Amma Unavagam, Pattinampakkam). Therefore, this Court suo moto impleaded the Inspector General of Registration, No. 100, Santhome High Road, Foreshore Estate, Chennai – 600 028 (Near Amma Unavagam, Pattinampakkam), as party/fifth respondent to the proceedings.

6.4. The impleaded fifth respondent namely, the Inspector General of Registration, is hereby directed to consider the request made by the Vigilance Department within a period of fifteen days from the date of receipt of a copy of this order.

6.5 Thereafter, the vigilance department is directed to conclude the enquiry on the basis of the petitioner's complaint.

7. With the above directions, this writ petition is disposed of. There shall be no order as to costs.

28.01.2025

NCC : Yes/No
Index : Yes/No
Internet:Yes/No
sbn

To

1.The Director,
Directorate of Vigilance and Anti-Corruption (DVAC),
No.293, M.K.N.Road,
Aladur, Chennai 600 016

2.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Race Course Road, Kajamalai,
Trichy 620 020

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

K.K.RAMAKRISHNAN,J.

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