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Suo Motu Crl.R.C.No.1480 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.6.2024	Delivered on : 07.8.2024
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Suo Motu Criminal Revision Case No.1480 of 2023

1.The Additional Superintendent of
Police, Vigilance &Anti Corruption,
City Special Unit-1, Chennai O.D.
at Virudhunagar District.

2.Mr.K.K.S.S.R.Ramachandran,
Minister for Revenue & Disaster
Management, Government of
Tamil Nadu (A1)

3.Mrs.Aadhilakshmi P.Visalatchi (A2)

4.Mr.K.S.P.Shanmugamoorthy (A3)

...Respondents

SUO MOTU REVISION under Sections 397 & 401 of the Criminal Procedure Code initiated to call for the records on the file of the Principal Sessions Court (Designated Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu), Virudhunagar District at Srivilliputtur passed in Spl.S.C.No. 19 of 2019 dated 20.7.2023 and to set aside the same.



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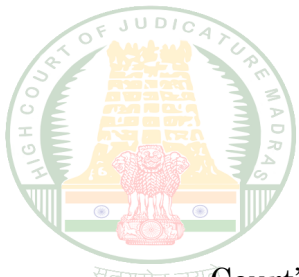
- For Respondent-1 : Mr.P.S.Raman, AG assisted by
Mr.K.M.D.Muhilan, GA (CrI.Side)
- For Respondent-2 : Dr.S.Muralidhar, SC for
Mr.S.Agilesh Kumar
- For Respondent-3 : Mr.N.R.Elango, SC for
Mr.A.S.Aswin Prasanna
- For Respondent-4 : Mr.G.Mariappan

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ORDER

This suo motu criminal revision, under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter the 'Cr.P.C'), is directed against a judgment and order dated 20.07.2023 passed by the Principal Sessions Court (Designated Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu), Virudhunagar District at Srivilliputtur (hereinafter the 'Special



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Court) discharging respondents 2 to 4 herein (A1 to A3) from the case in Spl.S.C.19 of 2019.

I. Facts leading up to the Sua Motu Proceedings

2. The facts leading up to the revision have been set out in the order dated 23.08.2023. They run a near perfect parallel with Sua Motu Crl.R.C. No.1481 of 2023, which has been disposed vide a separate order today. A brief summation is as follows:

- i. Mr.K.K.S.S.R.Ramachandran was elected to the Tamil Nadu State Legislative Assembly from Sattur constituency in May 2006. Between May 2006 and May 2011, he was a member of the State Cabinet holding the portfolio as the Minister for Health (13.05.2006 to 22.10.2007) and later as Minister for Backward Classes (23.10.2007 to 13.05.2011).
- ii. The case of the prosecution is that during the check period (01.04.2006 and 31.03.2010), Mr.K.K.S.S.R.Ramachandran, the then Minister and his wife - Mrs.R.Aadhilakshmi had amassed assets, which were far in excess of their known sources of income. The specific role attributed to A3 is that he had facilitated A1 and A2 in circulating the ill-gotten



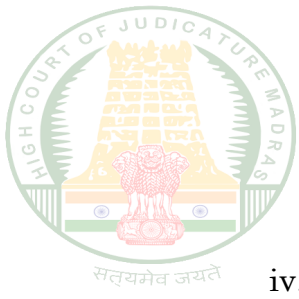
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money of A1 in the acquisition of assets disproportionate to the known sources of income of A1 and A2.

- iii. On 20.12.2011, a case in Crime No.10 of 2011 was registered against A1 to A3 by the Vigilance and Anti-Corruption, Virudhunagar alleging the commission of offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (hereinafter the PC Act) and Section 109 IPC. In the course of the investigation, the Investigation Officer (IO) - Ms.V.Shyamala Devi examined 117 witnesses and collected 116 documents and filed an exhaustive final report before the Special Court for Prevention of Corruption Act Cases, Madurai on 05.09.2012. The Special Court, Madurai, vide order dated 10.01.2013, took cognizance of the offences in the final report in Special C.C.No.2 of 2013 and issued summons to the accused for their appearance on 14.02.2013. Thereafter, the case was transferred to the file of the Chief Judicial Magistrate-cum-Special Judge, Srivilliputhur, Virudhunagar for administrative reasons and was renumbered as Special C.C.No.24 of 2014.



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- iv. In the meantime, the Government of Tamil Nadu issued G.O.Ms.No.698 Public (SC) Department, dated 11.07.2013 appointing Mr.Shanmugalavelayutham as the Public Prosecutor to conduct the case before the Special Court. Mr.KKSSR Ramachandran (A1) challenged this Government order before the Madurai Bench of this Court in W.P.[MD]. No.17147 of 2013.
- v. In 2016, the State of Tamil Nadu was headed for elections to the State Assembly. Mr.Shanmugamoorthy (A3) filed Crl.M.P.No.751 of 2016 on 24.02.2016 seeking discharge. The prosecution swiftly opposed this petition by filing counter on 15.03.2016. A1, Mr.KKSSR Ramachandran, followed suit and filed a discharge petition in Crl.M.P.No. 1529 of 2016 before the Special Court on 29.03.2016 ie., just a couple of months before the State elections. The prosecution filed its counter affidavit through its Deputy Superintendent of Police, V&C, Virudhunagar on 12.04.2016 contending that the petition for discharge was frivolous and baseless and that the onus of establishing the sources of



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income as contemplated under Section 13(1)(e) could not be done in a petition for discharge under Section 239 Cr.P.C.

- vi. When the discharge petitions were pending before the Special Court, the Government of Tamil Nadu issued G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016, appointing the then Public Prosecutor Mr.R.Rajarithinam to conduct the case before the Special Court. A1 challenged this order before the Madurai Bench of this Court in W.P.(MD).No.9465 of 2017.
- vii. When matters stood thus, W.P.[MD].No.17147 of 2013 was taken up on 02.02.2018 and was dismissed as withdrawn. Similarly, W.P.(MD) No.9465 of 2017 was also closed shortly thereafter. This ended the 5-year saga of the challenge to the appointment of Special Public Prosecutors.
- viii. Mr.Shanmugamoorthy (A3) had also filed Crl.R.C.(MD).No. 266 of 2016 challenging the order passed by the Special Court in Crl.M.P.No.4036 of 2015. This revision petition was dismissed by this Court by an order dated 05.03.2018.
- ix. It is seen from the records that despite the clear and categorical directions of this Court, another discharge



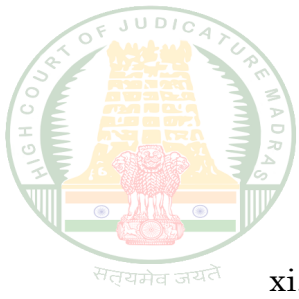
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petition was filed on behalf of A2 - Mrs.Aadhilakshmi on 22.05.2018. The prosecution filed its counter affidavit on 08.06.2018 opposing discharge. The matter was, thereafter, adjourned for 17 hearings between 04.05.2018 and 28.09.2018 for arguments in the discharge petitions, 12 of which were at the request of the accused on the ground that counsel/Senior Counsel were coming from Chennai to argue the matter.

- x. At this juncture, the Government of Tamil Nadu issued G.O.MS.No.212 dated 26.04.2019, designating the Principal Sessions Court in every Sessions Division in the State of Tamil Nadu to try cases under the Special Acts, Central and State Acts involving elected Members of Parliament and Members of the Legislative Assembly of Tamil Nadu. Pursuant to this notification, Special C.C.No.24 of 2014 was transferred to the file of the Principal District Court (Designated Special Court for MP/MLA's cases), Virudhunagar District at Srivilliputhur and renumbered as Spl.S.C.No.19 of 2019.



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- xi. It is seen from the records that the Special Court took up the discharge petitions for hearing on 20.08.2019. Despite the observations made by this Court in W.P(MD).No.9465 of 2017 that no Special Public Prosecutor need be appointed for the case, the order of the Special Court dated 17.09.2019 recorded that the Special Public Prosecutor had filed a memo stating that the DVAC had forwarded a letter to the Principal Secretary to the Government requesting the appointment of a Special Public Prosecutor exclusively for this case. This was most curious since the memo itself was filed only by the Special Public Prosecutor and it was not known why a Special Public Prosecutor was sought to be appointed when there was already one before the Court.
- xii. The objective of filing this mischievous memo comes to light from the records where it is seen that the matter was adjourned for appointment of Special Public Prosecutor for six (6) hearings from 01.10.2019 to 21.02.2020. On 21.02.2020, the Special Public Prosecutor did a volte-face and suddenly decided to not press the memo filed by him on 12.09.2019. In this process, another 5 months had gone by.



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The accused perhaps knew that elections were now only a year away.

- xiii. It is also seen from the records that the learned counsel for the accused commenced marathon piecemeal hearings for over one year in the discharge petitions from 20.03.2020 till 09.04.2021. The Special Court appears to have liberally heard the discharge petitions in instalments for over a year. Through the aforesaid collaborative effort of all concerned, the matter was successfully dragged on till the assembly elections in May 2021. In May 2021, there was a change in guard in the State and A1 was back in the saddle as the incumbent Minister for Disaster and Revenue Management.
- xiv. Records further reveal that the matter was posted on 04.06.2021 and 01.07.2021. Hearings were deferred on account of the COVID-19 pandemic. On 29.07.2021, the case was deferred once again to 15.09.2021 for arguments on the side of the accused in the discharge petitions. On 15.09.2021, the Deputy Superintendent of Police Vigilance and Anti-corruption - Mr.K.Ramachandran submitted an intimation for further investigation under Section 173(8)



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Cr.P.C, the contents of which deserve to be reproduced in full:

“It is submitted that in the course of enquiry by this Honorable Court in respect of discharge petition filed by the Accused, it was submitted by the accused by way of written argument that some of the income was not properly considered by the Investigation Officer prior to the filing of Final Report. In support of said contention, the accused introduced some new facts and documents, which appear to be not subjected for investigation during the previous occasion by the Investigation Officer. In view of the above-said circumstances, it is necessary to conduct further investigation in the interest of justice and to place the entire facts before this Honorable Court. The further investigation will not cause any prejudice to the accused.

It is further submitted that the prosecution is entitled to conduct further investigation regarding the new materials brought to the knowledge of the Investigation Officer and also for those materials which were omitted to be taken care of during earlier investigation. It is settled proportion of law laid down in Ram Lal Narang v State of Delhi (1979-2 SCC-322) that it is ordinarily be desirable that the Police should inform the court and seek formal permission to make further investigation when fresh facts came to light. The further investigation can be undertaken at any stage. The duty of fair investigation on the part of the Investigation Officer is to collect material not restricted to prosecution side but also it extends to even the stand



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of defense. The argument on the discharge petition can also be effectively done after completing the further investigation.”

- xv. The basis of further investigation, according to the subsequent IO, is that the written arguments of the accused in the discharge petitions had “introduced some new facts and documents”. According to him, the concept of fair investigation “extends to even the stand of defense.” In other words, according to the subsequent IO, a fair investigation was necessary to unearth material to test the stand of the defense in the discharge petitions. At this juncture, it may be pointed out that an identical memo was filed by another IO - Mr.R.Boominathan in Special S.C.No.20 of 2019, which was also pending before the very same Court against another Minister Mr.T.Thennarasu and his wife - Mrs.T.Manimegalai.
- xvi. It appears that this intimation memo filed by the subsequent IO - Mr.K.Ramachandran under Section 173(8) Cr.P.C, was placed before the Special Court on 23.10.2021 and the following order came to be passed:

'A1, A2 called absent. A1, A2 under Section 317 CrPC Petition filed and allowed. CrMP Discharge Petition pending status report file by the investigation.



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Today State Public Prosecutor appear to matter, Hasen Mohammad Jinnah Appeals relevant Citation submitted 173(8) CrPC further investigation to collect material evidence truth of facts. 2019 17 SCC Vinubhai, Halibahimaliviya Honourable High Court Crl OP 15030/2021 Ravi@ Anubu Ravi, Rama Chavdoury 2009 6 SCC 346, Quash 2004 5 SCC 347 Rama lalnarang 1979 2 SCC 322 and such behalf investigation comes to lightway during to trial. It may be curred further investigation. Discharge Petitioner Bank Account transfer to account. As Preventive Corruption Act 18 Bank Pass Book in 17 investigation agency DSP authorise person conduct to investigation. In the view of position of law. If there is necessary for further investigation. Criminal ethics this court arriving at the truth as do real and substantial justice as well as effective justice to further investigation and supplement final report 10 weeks. Call on 05.1.2022.'

An identical order was passed in respect of the case pertaining to the other Minister Mr.T.Thennarasu and another, which was the subject matter of Special S.C.No.20 of 2019.

- xvii. The matter was, thereafter, adjourned from time to time to await the report under Section 173(8) Cr.P.C. On 28.10.2022, the IO - Mr.K.Ramachandran filed a document titled “Final Closure Report after conducting further investigation u/s 173(8) Cr.P.C in Cr.No.03/2012, Vigilance and Anti-Corruption, Virudhunagar”, together with a petition to accept the “Final



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Closure Report” under Section 173(8) Cr.P.C. According to the IO - Mr.K.Ramachandran, he had undertaken a “meticulous scrutiny” to “verify the claim made by the accused in the written arguments for the discharge petitions”. On the very same day, an identically worded “Final Closure Report after conducting further investigation u/s 173(8) Cr.P.C” together with a petition to accept the “Final Closure Report” under Section 173(8) Cr.P.C, was filed by the IO - Mr.R.Boominathan in Special S.C.No.20 of 2019, which was pending before the same Special Court against another Minister Mr.T.Thennarasu and his wife - Mrs.T.Manimegalai.

xviii. Unsurprisingly, the subsequent IO’s closure report stated that no offence had been made out, as, after his further investigation, the accused were found to have been left with excess savings of Rs.1,49,106/-. This closure report was placed before the Special Court on 28.10.2022.

xix. The scene now shifts to the Special Court, which was faced with a very strange situation. The Special Court now had before it a original final report dated 05.09.2012 filed by the earlier IO - Ms.V.Shyamala Devi alleging the commission of offences under



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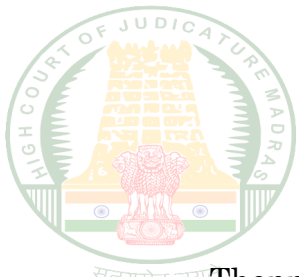
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the PC Act by A1 to A3. The Special Court had also taken cognizance of these offences based on the original final report by an order dated 10.01.2013. The Special Court also had before it a “closure report” filed by subsequent IO - Mr.K.Ramachandran after allegedly conducting a “further investigation” under Section 173(8) pointing to a diametrically opposite conclusion.

- xx. On its part, the Special Court appears to have labored on by minutely scrutinizing the two reports and the calculations made therein and has thereafter arrived at the conclusion that the second report of the IO - Mr.K.Ramachandran deserves to be accepted. The Special Court has, on this basis, “accepted the final closure report” and discharged the accused purportedly in exercise of powers under Section 239 Cr.P.C, by the order dated 20.07.2023.

II. Initiation of Sua Motu Proceedings

3. The aforesaid order dated 20.07.2023 passed by the Principal Sessions Court (Designated Special Court for MP/MLA Cases), Virudhunagar District at Srivilliputhur and a companion order dated 12.12.2022 passed by the very same Court discharging the incumbent Minister for Finance Mr.T.



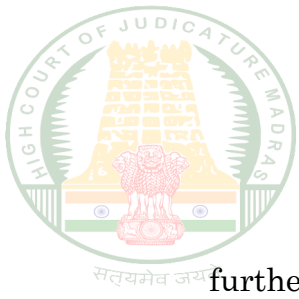
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Thennarasu and his wife - Mrs.T.Manimegalai, were brought to my notice as the Judge holding the portfolio for MP/MLA Cases.

4. After scrutinizing the two orders, this Court came to a prima facie conclusion that the two cases revealed a well-orchestrated pattern where criminal prosecutions for corruption charges were launched and investigated when the accused persons are in the opposition. Discharge petitions were filed and dragged on till such time the accused, who were in the opposition, were back in the political saddle after a change of Government in the State. All of a sudden, the very same investigation agency, which had hotly contested the discharge petitions tooth and nail, came forward to voluntarily file petitions for further investigation on the basis of certain contentions raised in the written arguments filed by the accused in the discharge petitions. After obtaining permission from the Special Court, further investigation was done and a document titled “final closure report” was filed whitewashing the earlier findings claiming that none of the offences was made out against the accused persons.

5. From the records, this Court prima facie found something seriously amiss in the manner, in which, the DVAC was manoeuvred to embark on a



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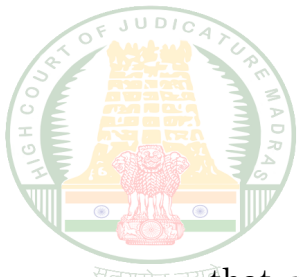
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further investigation to hunt for materials in favour of the accused and its consequent ready acceptance by the Special Court . It was also noticed that *prima facie*, the approach of the Special Court in accepting the final closure report and discharging the accused in exercise of its jurisdiction under Section 227 Cr.P.C also appeared to suffer from certain patent illegalities. These have been alluded to in the order dated 23.08.2023 issuing notice in this criminal revision, which is self-explanatory.

6. Vide order dated 23.08.2023, notices were issued to the accused, who are arrayed as respondents 2 to 4 respectively in this criminal revision. The learned Additional Public Prosecutor took notice on behalf of the State. All the relevant material were, thereafter, compiled by the Registry of this Court and furnished to the learned counsel appearing for the respective parties.

III. Proceedings before the Supreme Court & Assignment of Cases to this Bench

7. The order dated 23.08.2023 was assailed by Mr.Shanmugamoorthy (A3) in S.L.P.(CrI) No.1854 of 2024. Mr.K.K.S.S.R.Ramachandran [A1] also filed S.L.P.(CrI) Diary No.3245 of 2024. From the order produced before this Court, it is seen that the contention raised before the Supreme Court was



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that prior permission of the Hon'ble Chief Justice was necessary before initiating suo motu proceedings. Though obvious, it is deemed appropriate to observe that at the time of initiating suo motu proceedings, this Court was holding the roster assigned by the Hon'ble Chief Justice for all cases against MP/MLA's, which includes the exercise of revisional powers under Section 397/401 Cr.P.C.

8. By an order dated 05.02.2024, the special leave petitions were disposed requesting the Hon'ble Chief Justice to take a fresh call on whether the suo motu matters should be heard by this Court or by some other bench. By an administrative order dated 07.02.2024, the Hon'ble Chief Justice directed that this case be posted before this Court as a specially ordered matter.

9. In the meantime, on 08.01.2024, this Court had passed certain directions in this case as well as in the connected in the suo motu revision petitions initiated against the discharge of Mr.T.Thennarasu and his wife - Mrs.T.Manimegalai. After hearing learned counsel, the scope of this revision was captured in paragraph 7 of the order dated 08.01.2024, which reads as follows:

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“7. As observed, supra, this Court is not testing the correctness of the order of discharge on merits. The scope of these revisions are confined to (a) the legality of filing “final closure reports” under Section 173(8) Cr.P.C (b) the legality of the Special Court accepting a “final closure report” and acting upon the same as though these “final closure reports” superseded the final report filed under Section 173(2) Cr.P.C and (c) whether the Special Court had consequently committed a jurisdictional error in exercising its powers under Section 239 Cr.P.C to discharge the accused. In addition, (d) if any of the respondent(s)/accused desire to assail the jurisdiction of this Court under Sections 397/401 Cr.P.C to initiate suo motu revisions, they will be at liberty to do so at the stage of final arguments.”

IV. Rival Contentions

10. Heard Mr.P.S.Raman, learned Advocate General, assisted by Mr.K.M.D.Muhilan, learned Government Advocate (Crl.Side) appearing for the first respondent, Dr.S.Muralidhar, learned Senior Counsel appearing on behalf of Mr.S.Agilesh Kumar, learned counsel on record for the second respondent (A1), Mr.N.R.Elango, learned Senior Counsel appearing on behalf of Mr.A.S.Aswin Prasanna, learned counsel on record for the third respondent (A2) and Mr.G.Mariappan, learned counsel appearing for the fourth respondent (A3).



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11. The contention of the learned Senior Counsel appearing on behalf of the accused persons is that the power of the IO to undertake further investigation under Section 173(8) of the Cr.P.C. is untrammelled. To explain the scope of a further investigation, the following judgments of the Apex Court were mainly relied upon :

"(a) Vinay Tyagi Vs. Irshad Ali [reported in 2013 (5) SCC 762];

(b) Vinubhai Haribhai Malaviya Vs. State of Gujarat [reported in 2019 (17) SCC 1];

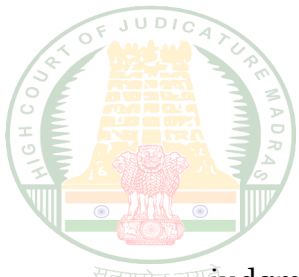
(c) State of Andhra Pradesh Vs. A.S. Peter [reported in 2008 (2) SCC 383];

(d) State through CBI Vs. Hemendhra Reddy [2023 SCC Online SC 515];

(e) State rep.by Deputy Superintendent of Police Vs. K.N.Nehru [reported in 2018 (12) SCC 69]; and

(f) Kishan Lal Vs. Dharmendra Bafna [reported in 2009 (7) SCC 685]."

12. In so far as the scope of considering the original final report and the subsequent report/supplementary report by a Magistrate before coming to a conclusion as to whether the accused persons must be discharged or they must be made to face the trial, is concerned, reliance was placed on the



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judgment of the Apex Court in the case of ***Luckose Zachariah (a) Zak Nedumchira Luke Vs. Joseph Joseph [2022 SCC Online SC 241]***.

13. In order to explain the scope of exercising revisional jurisdiction, the following judgments of the Supreme Court were relied upon :

'(a) Amit Kapoor Vs. Ramesh Chander [reported in 2012 (9) SCC 460]; and

(b) A.R.Antulay Vs. R.S.Nayak [reported in 1988 (2) SCC 602]'

14. It was further submitted that in a case where there was no material to make the accused persons undergo trial, the Special Court is vested with sufficient powers to discharge the accused persons, that in the instant case, the Special Court, on considering both the original final report filed under Section 173(2) of the Cr.P.C., as well as the supplementary report filed under Section 173(8) of the Cr.P.C., came to the conclusion that the charge against the accused persons was groundless and had discharged the accused persons by following a proper procedure and that the same is not liable to be interfered by this Court. To substantiate this submission, the following judgments of the Apex Court were relied upon:



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'(a) Depot Manager, A.P. State Road Transport Corporation Vs. Mohd. Yousuf Miya [reported in 1997 (2) SCC 699];

(b) Minakshi Bala Vs. Sudhir Kumar & [reported in 1994 (4) SCC 142]; and

(c) Vishnu Kumar Shukla Vs. State of Uttar Pradesh [reported in 2023 SCC OnLine SC 1582]'

15. It was also submitted on behalf of the accused persons that the supplementary report that was filed after further investigation was given a wrong nomenclature as the final closure report, that such a report must only be construed as a supplementary report and that a wrong nomenclature, by itself, will not vitiate the supplementary report filed after the completion of further investigation. It was also submitted that the show cause notice/final opportunity notice dated 27.6.2012 was issued by the previous IO to respondents 2 and 3 (A1 and A2 respectively) informing them that the quantum of disproportionate assets/pecuniary resources as on 31.3.2010 has been worked out to Rs.51,56,986/- and that the accused persons were called upon to give their explanation for the possession of assets/pecuniary resources held as disproportionate to their known sources of income.

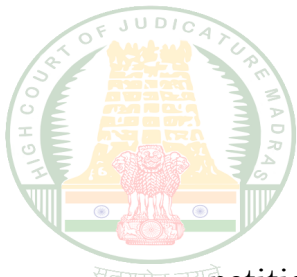


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16. It was further submitted on behalf of the accused persons that this procedure was adopted by the previous IO as per the Directorate of Vigilance and Anti-Corruption, Tamil Nadu 1992 Manual wherein under Clause 76, final opportunity was given to the accused persons to explain regarding the assets/pecuniary resources that were found to be disproportionate, that on receipt of the show cause notice/final opportunity notice, the second respondent (A1) gave a reply and explained the sources of income for himself and on behalf of the third respondent (A2) and that even though this reply and the supporting documents formed part of the original final report, they were not taken into consideration by the previous IO and the original final report was filed in a hasty fashion. To substantiate this submission, document Nos.8, 22, 41 to 43, 64 to 73, 85, 86, 89, 94, 101, 103 and 104, which formed part of the original final report, were relied upon.

17. It was further submitted on behalf of the accused persons that the discharge petitions were filed by specifically taking the very same grounds that were taken in the reply given to the show cause notice/final opportunity notice, that the stand taken in the discharge petitions was reiterated in the written arguments that were filed by the accused persons before the Special Court and that these grounds were taken note of by the subsequent IO and a



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petition was filed before the Special Court seeking for formal permission to make further investigation in the light of the grounds raised in the discharge petitions and in the written arguments filed before the Special Court.

18. It was also submitted on behalf of the accused persons that the Special Court applied its mind on such petition filed by the subsequent IO and permitted further investigation to be conducted and directed the supplementary report to be filed within 10 weeks and that the subsequent IO, in the course of further investigation, accepted only four explanations that were given by the accused persons and came to the conclusion that at the beginning of the check period ie. 01.4.2006, Rs.1,01,53,547/- worth movable and immovable properties were available; at the end of the check period ie. on 31.3.2010; Rs.1,89,47,231/- worth assets were available; the income of respondents 2 and 3 (A1 and A2 respectively) during the check period was Rs.2,07,83,133/-; and the expenditure was Rs.1,18,40,343/- and therefore, during the check period, there was an amount of Rs.1,49,106/- in excess in the savings of the second respondent (A1) and ultimately, it was concluded that there was no offence of accumulation of disproportionate assets by the accused persons.



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19. It was further submitted on behalf of the accused persons that the supplementary report (wrongly named as the final closure report) was considered by the Special Court along with the original charge sheet filed earlier, that the Special Court, after applying its mind, decided to accept the supplementary report and discharged the accused persons, that the Special Court properly exercised its jurisdiction under Section 239 of the Code and that there is no ground to come to a conclusion that the discharge of the accused persons suffers from any manifest illegality or procedural impropriety.

20. It was also submitted on behalf of the accused persons that the jurisdiction of this Court under Section 397/401 of the Code to initiate suo motu revision is an absolute power, which is not questioned by the accused persons, that however, there is no illegality in filing a supplementary report (with a wrong nomenclature as the final closure report) by not accepting the conclusion arrived at in the original final report filed earlier and that similarly, the order of discharge passed by the Special Court also does not suffer from any manifest illegality or procedural impropriety since the Special Court applied its mind both on the original final report as well as on



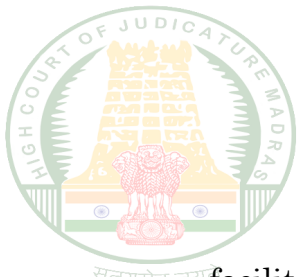
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the supplementary report and it does not warrant the interference of this Court.

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21. The learned Advocate General appearing on behalf of the Investigating Agency submitted that the accused persons had introduced some facts and documents in the discharge petitions and in the written arguments filed in the discharge petitions, that the same were not taken into consideration by the previous IO before laying the charge sheet, that the subsequent IO wanted to arrive at the truth and proceeded to further investigate the case and that during the course of further investigation, the subsequent IO examined 16 more witnesses along with 116 witnesses already examined and collected 63 additional documents along with 116 documents already collected.

22. He further submitted that on completion of the further investigation, the subsequent IO came to the conclusion that (a) there is an excess savings of Rs.1,49,106/- during the check period; (b) there was no ground to believe that respondents 2 and 3 (A1 and A2 respectively) had accumulated assets disproportionate to their known sources of income; and (c) there was no ground to infer that the fourth respondent (A3) had



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facilitated respondents 2 and 3 (A1 and A2 respectively) to accumulate the assets and ultimately, the final closure report was filed after conducting further investigation. According to him, it was a mistake that while filing the supplementary report, the nomenclature was given as the final closure report and however, the nomenclature, by itself, will not vitiate the supplementary report filed by the subsequent IO.

23. He further submitted that in the Cr.P.C., the initial investigation and the further investigation are entirely within the realm of the Investigating Agency, that what is not permitted is only a fresh, de novo or a re-investigation, which can be done only by orders of the Constitutional Courts, that further investigation is merely a continuation of the earlier investigation, that it only supplements the original final report and does not supplant the same, that further investigation can be done even to cure a defective investigation done before and that even if a supplementary report is filed with a nomenclature as the final closure report, the final word is vested with the Magistrate, who has to consider both the original final report and the supplementary report and come to a conclusion.



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24. He also submitted that on conclusion of the further investigation, the subsequent IO may either reach the same conclusion in line with the earlier final report or reach a wholly different conclusion and in so doing, the subsequent IO can either act on the same material or on other material, which comes to his notice. He further submitted that the ambit of further investigation may even include matters, which had not been earlier considered at the time of filing the original final report or where it is found necessary that investigation needs to be carried out from a different angle.

25. In addition, he submitted that the trigger for initiating further investigation can be arrived on receipt of further information or on fresh facts coming to light or upon a defective investigation coming to light or when certain aspects of the matter have not been considered by the previous IO during the initial investigation or where the subsequent investigation has to be necessarily carried out from a different angle or where the initial investigation is found to be tainted and/or otherwise unfair or is otherwise necessary to meet the ends of justice.

26. To substantiate his submissions, the learned Advocate General relied upon the following judgments :



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(a) of the Supreme Court in the case of *Hasanbhai Valibhai Qureshi Vs. State of Gujarat [reported in 2004 (5) SCC 347]*;

(b) of the Supreme Court in the case of *Ram Lal Narang Vs. State (Delhi Administration) [reported in 1979 (2) SCC 322]*;

(c) of the Supreme Court in the case of *Mariam Fasihuddin Vs. State by Adugodi Police Station [reported in 2024 SCC Online SC 58]*;

(d) of the Supreme Court in the case of *Vinay Tyagi Vs. Irshad Ali [reported in 2013 (5) SCC 762]*;

(e) of the Supreme Court in the case of *State through CBI Vs. Hemendhra Reddy [2023 SCC Online SC 515]*;

(f) of a learned Single Judge of the Allahabad High Court in the case of *Suresh Vs. State of U.P. [reported in 2006 Crl.L.J. 4814]*;

(g) of the Supreme Court in the case of *VinubhaiHaribhaiMalaviya Vs. State of Gujarat [reported in 2019 (17) SCC 1]*;

(h) of the Supreme Court in the case of *Kedari Lal Vs. State of Madhya Pradesh [reported in 2015 (14) SCC 505]*;



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(i) of the Supreme Court in the case of *Hemant Dhasmana Vs. CBI [reported in 2001 (7) SCC 536]*;

(j) of the Supreme Court in the case of *State of Orissa Vs. Mahima (a) Mahimananda Mishra [reported in 2007 (15) SCC 580]*; and

(k) of the Supreme Court in the case of *Kishan Lal Vs. Dharmendra Bafna [reported in 2009 (7) SCC 685]*.'

V. DISCUSSION

27. The arguments in this case were heard together with *Suo Motu CrI.R.C.No.1481 of 2023*, as it involved the common questions of law. That apart, the procedure adopted by the DVAC in filing the petitions for further investigation and thereafter filing the final closure reports exonerating the accused was identical to the case of *Mr.T.Thennarasu and another in Suo Motu CrI.R.C. No.1481 of 2023*.

28. *Dr.S.Muralidhar*, learned Senior Counsel appearing on behalf of the second respondent (A1) contended that there was nothing wrong in the subsequent IO conducting further investigation on the basis of new material, which had surfaced during the pendency of the inquiry in the discharge



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petitions. It was pointed out that the material was backed by several documents and other witness statements, which would completely demolish the original final report of the previous IO. The attention of the Court was invited to the decisions of the Supreme Court in

- (i) *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762,
(ii) *Hasanbhai Valibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347, and
(iii) *Kishan Lal v. Dharmendra Bafna*, (2009) 7 SCC 685.

29. In the last mentioned decision in the case of *Kishan Lal*, the respective learned counsel appearing for respondents drew my attention to the following observations contained therein:

“16. The investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to his notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to his notice. Apart from the aforementioned grounds, the learned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. The question,



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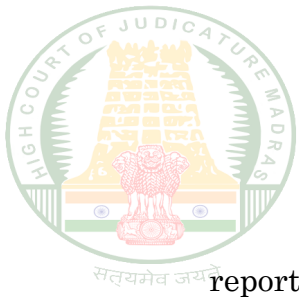
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however, is as to whether in a case of this nature a direction for further investigation would be necessary.”

30. In *Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347*, which followed the celebrated decision in *Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322*, it was made clear that the power of further investigation was always available with the IO even though the Court may have taken cognizance of the offences in the original final report. To the same effect is the decision in *Kishan Lal v Dharmendra Bafna, (2009) 7 SCC 685*. The decision in *State v A.S Peter, (2008) 2 SCC 383*, deals with the proposition that further investigation can be undertaken without prior permission of the Magistrate.

31. While one can have no quarrel with the aforesaid propositions of law, it is necessary to reiterate that legal principles cannot be viewed or applied to cases divorced from the facts of the cases, in which, these decisions were rendered. In none of those cases, the IO had used the written argument of the accused in a discharge petition as the basis of further investigation. In *State v K.N.Nehru, (2018) 12 SCC 69*, which was relied upon by the learned counsel for respondents 2 to 4, the accused had filed discharge petitions and the Trial Court, after hearing arguments, returned the final

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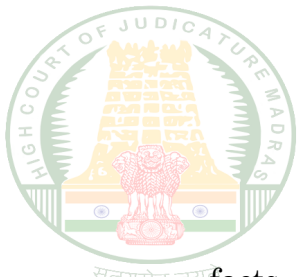


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report. This Court set aside the order returning the final report and directed further investigation as against the assets of A3 and at the same time, discharged A1 and A2. On appeal, while upholding the order for further investigation, the discharge of A1 and A2 was set aside. Thus, the facts in ***K.N.Nehru's case*** were completely different as, in that case, The Trial Court itself had directed further investigation after going through the materials before it. It was not a case where further investigation was sought at the behest of the prosecution acting upon the written arguments of the accused in the petitions for discharge.

32. There is a fundamental distinction between the existence of a power and the use of such power for oblique purposes. Where a statutory authority is vested with certain statutory powers, such power is granted on the condition that it would be used honestly and for purposes that subserve the basis, for which, such power is conferred. Where the power is used for collateral or oblique purposes, such an exercise would be clearly beyond the ambit of the law. There is a plethora of case law on this point starting with the celebrated decision in ***Padfield v Minister for Agriculture, Fisheries & Food, LR (1968) AC 997***, which has been followed by the Supreme Court in ***Tata Cellular v Union of India, (1994) 6 SCC 551*** and other cases. On



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facts and upon closely examining the material on record, this Court is convinced that the further investigation was deliberately engineered after A1 had come back to power as a Minister in 2021 solely for the purposes of short circuiting the case pending before the Special Court.

33. The following glaring aspects available on record clearly justify this conclusion. In the discharge petition filed by A3, it was contended that A2 had borrowed a loan of Rs.23,00,000/- from A3 in December 2006, which was duly repaid in March 2009. A2 had used the said money for purchasing shares in M/s.Pandian Spinning Mills Limited. This was purely a loan transaction and the said M/s.Pandian Spinning Mills had also repaid the sum to A2 since the requisite shares were not allotted to her. The said amount was thereafter repaid to Narayana Reddiar firm, as partner, which borrowed the loan from A3. This is also reflected in the books of accounts.

34. The DVAC filed a counter affidavit dated 15.03.2016 (when the party, to which A1 belongs, was out of power) pointing out as under:

“It is further submitted that on perusal of the Ledger Account of Sree Pandian Spinning Mills (P) Ltd)Doc No 18 and the documents relating to the S.B Account of MrsAdhilakshmi (A2) it is clear that an amount of Rs 10,00,000 through Cheque No 27926 on 15.12.2006; an



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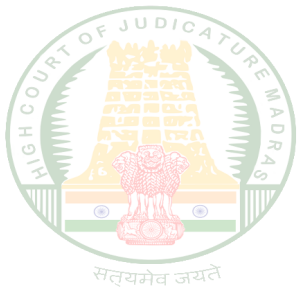


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amount of Rs 3,00,000 on 16.12.2006 through Cheque No 279627 and Rs 10,00,000 on 20.12.2006 through Cheque No 279629 have been deposited towards share application money. The total amount of Rs 23,00,000 flown from the hands of A1 as shown as Item 22 of Statement No IV. But in order to make it as loan transaction, A1 and A2 sought the help of A3 to make it as loan theory. He acted accordingly and utilized the services of witnesses. The petitioner had deposited the amount in to the accounts of Ashokan (W.68), Chamundeeswari (W.69), Nageswaran (W.45) and Porkodi (W.46) and on the day itself he had withdrawn the amount as if to show that he had given the amount to A2 as loan”

The counter affidavit dated 15.03.2016 goes on to say:

“The statement of witnesses Ashokan (W 68), Chamundeeswari (W 69), Nageswaran (W45) and Porkodi (W 46) would prove that A3/Petitioner gave them cash of Rs 23,00,000 that he caused them to deposit the said cash in their respective accounts through pay-in-slips with the services of Thangamuniraja (W-49) and also that he obtained cheques from them for the said amount. A3 had deposited the cheques into his account. He then gave such huge amounts to a firm Naryana Reddiar on the guise of loan. The said firm had transferred the said amount of Rs 23,00,000 into the account of A2, wife of A1. Thus, A3/Petitioner had not given the said amount as loan. The above circumstances would show that A3 had abetted A1 to acquire the said amount and to deposit the same in the name of A2, wife of A1.”



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35. The counter affidavit has also extracted the relevant portions of the statements of Mr.R.Asokan (W.68) corroborated by Ms.AChamundeeswari (W.69) recorded under Section 161(3) Cr.P.C. A free English translation of these statements, as extracted in the counter affidavit of the DVAC dated 15.03.2016, reads as follows:



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Mr.R.Asokan (W 68)

"It is P.Thangamuniraja (W 49) working in a financial company run by Mr.T.K.S.P.A. Shanmugamoorthy (Petitioner) who has deposited Rs 5,02,000 and Rs 5,00,000 and Rs 5,00,000 on 12.12.2006, 13.12.2006 and 19.12.2006 into the account of my wife and myself. I do not know why T.K.S.P.A.Shanmugamoorthy paid the money in my name and in the savings account of my wife, and why he got the said money back from me through a cheque."

Mr.K.Nageswaran (W 45)

"Mr.Shanmugamoorthy deposited Rs 2 lakhs in cash in my savings account on 15.12.2006. As requested by him I gave a check on 920593 in the name of Thiru Shanmugamoorthy on 14.12.2006 ie., before paying the money in the bank"

36. On the basis of the aforesaid material, the DVAC stoutly opposed the discharge of A3 contending that a sum of Rs.23,00,000/- was the ill-gotten wealth, which was whitewashed by A1 with the help of A3 and then routed it through A2 to make it appear as though it was a loan. The DVAC contended that if the sum of Rs.23,00,000/- was actually a loan, there was no necessity for A3 to have given these sums to Mr.Asokan, Mr.Nageswaran and others and have them deposited into their accounts and thereafter, withdrew those sums in his name as though the cheques were issued by those persons.



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37. In the counter affidavit dated 12.04.2016 filed in the discharge petition of A1 (filed before A1 became a Minister), the DVAC repeatedly attacked the aforesaid transaction of Rs.23,00,000/- as a “**shady transaction**”. It was pointed out as under:

“A3 had deposited on 12.12.2006 in the name of Asokan Rs 5,02,000 and another Rs 5,02,000 in the name of Chamundeeswari through Thangamuniraja. Again, deposit of Rs 5,00,000 in each account of Asokan and Chamundeeswari was made on 13.12.2006 by A3 through Thangamuniraja. The total amount of Rs 20,00,000 have been transferred to the account of A3 by the said Asokan and Chamundeeswari through Thangamuniraja on 13.12.2006 by way of cheques. The same strategy was followed through the accounts of Nageswaran and his wife Porkodi. A3 deposited 2,00,000 in to the account of K.N Nageswaran on 15.12.2006 and another Rs 1,00,000 was deposited in to the account of Porkodi on the same day through Thangamuniraja (W 49) and withdrawn and transferred to the account of A3 on the day itself by way of cheques obtained from them. The above said act enacted by A3 would show that the amount tendered by this petitioner to 3 have been deposited into the account of the above said witnesses and got transferred into the account of A3 himself as if to show that A3 had borrowed the said sum of Rs 23,00,000 from A3. The cogent and clinching circumstances would show that the act of a 3 in depositing the amount, with the help of Thangamuniraja (Wit 49) in to the account of the above said witnesses and causing the said amount to reach A2. Therefore, the said transaction is not a commercial but it is a hidden transaction.”

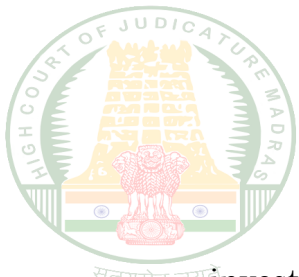


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38. The aforesaid statements in the counter-affidavits of the DVAC filed in 2016 when A1 was not a Minister, but was in the opposition, indicate that A3 facilitated the movement of Rs.23,00,000/-, which was the alleged ill-gotten wealth and had used Mr.Asokan, his wife - Ms.Chamundeeswari, Mr.Nageswaran and his wife - Ms.Porkodi as conduits to re-route the entire sum into his (A3) account and the amount was, thereafter, transferred to the account of A2 - the wife of A1. The DVAC has repeatedly pointed out that the very fact that the deposit and withdrawal had occurred simultaneously would point to the fact that this transaction was “shady” and not a genuine one. Even in the counter affidavit dated 08.06.2018, filed in the discharge petition of A2, the DVAC attacked the transaction as shady and bogus.

39. Though the aforesaid counter affidavits were filed in 2016 and 2018, the accused filed a written argument in their discharge petitions on 27.08.2021. This date is crucial since, by this time, A1 had come back to power as the Minister for Revenue and Disaster Management in May 2021. This date is crucial for another reason since “*written arguments*” were also filed in Special S.C.No.20 of 2019, which concerned Mr.T.Thennarasu and his wife on the very same day. The DVAC swiftly, but surely, began to sing a different tune and on 15.09.2021, it filed its intimation to conduct further



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investigation in (i) Special S.C.No.20 of 2019 concerning Mr.T.Thennarasu and his wife and (ii) Special S.C.No.19 of 2019 concerning Mr.KKSSR Ramachandran and others. According to the DVAC, the basis of further investigation was that the accused had raised certain new grounds in the written arguments filed in their discharge petitions

40. As noticed above, in their counter affidavits filed in 2016 and 2018, the DVAC had found that the sum of Rs.23 lakhs was allegedly routed by A1 through A3, who, in turn, used Mr.Asokan, his wife - Ms.Chamundeeswari, Mr.Nageswaran and his wife - Ms.Porkodi as conduits to re-route the entire sum into his (A3) account and thereafter, the amount was transferred to the account of A2 - the wife of A1. Surprisingly and most curiously, this transaction, which was repeatedly termed by the DVAC as “shady”, suddenly blossomed into a completely legitimate one in the eyes of the subsequent IO, who conducted the so-called further investigation. In his affidavit dated 24.02.2023, the subsequent IO, who conducted the so-called further investigation has stated, at paragraph 15, as follows:

“I further submit that in the written arguments, the accused A2 Tmt.Adhilakshmi claimed an income of Rs 23,00,000 received from Tr K.K.S.S.Narayana Reddiar finance. Further investigation revealed that the chain of transaction in this regard was A-3 Tr T.K.S.P.A.Shanmuga



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Moorthy had transferred an amount of Rs 23,00,000 to Tr. K.K.S.S.Narayana Reddiar finance and from there it was transferred to A-2 Tmt.Adhilakshmi and subsequently, A-2 had transferred the amount to Pandiyan Spinning Mills through 3 cheques during the financial year 2006-07. Later, during the year 2009, she had received Rs 23,70,000 from the Pandiyan Spinning Mills and transferred it to Tr.K.K.S.S.Narayana Reddiyar finance and from there, the amount had been transferred to A-3 Tr.T.K.S.P.A.Shanmuga Moorthy.

16. I further submit that further investigation did not reveal any nexus between the accused A-2 Tmt.Adhilakshmi and A-3 Tr.T.K.S.P.A.Shanmuga Moorthy and if Tr.T.K.S.P.A.Shanmuga Moorthy abetted the accused in laundering the money, there is no need to repay him in 2009 i.e., after three years and it cannot be taken as an after thought as the transaction was done 3 years before the registration of thus case....”

41. From the aforesaid, it is evident that the IO, who conducted the further investigation, has tried to play clever by the half. The case of the DVAC till 2021 was that A1 had laundered funds through A3, who had taken the assistance of his conduits Mr.Asokan, his wife - Ms.Chamundeeswari, Mr.Nageswaran and his wife - Ms.Porkodi to get the monies deposited into his (A3) account for being given as loan to A2. Strangely and most curiously, the IO - Mr.K.Ramachandran, who conducted the so-called further investigation, has completely swept the statements of Mr.Asokan,



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Ms.Chamundeeswari, Mr.Nageswaran and Ms.Porkodi under the carpet and has given a certificate of legitimacy to the entire transaction. There is no reference in the further investigation as to how and why A3 had used these persons to deposit monies and received them back through cheques for the purposes of passing it on to A2.

42. This narrative, which was repeatedly harped upon in the counter affidavit of the DVAC in 2016, has been cleverly and deliberately suppressed by the subsequent IO - Mr.K.Ramachandran and through this clever chicanery, a transaction, which the DVAC repeatedly attacked as “shady”, became pristinely legitimate in the eyes of the subsequent IO after the change of power in the State in 2021.

43. Yet another aspect is that in its counter affidavit filed in 2016, the DVAC had rejected the claim of A1 that he had received a sum of Rs.26,16,510/- through the sale of six plots. The stand of the DVAC in 2016 (before A1 was a Minister) was as follows:

“The Petitioner has contended that the Petitioner, was a co-owner of “Sulochana Cinema Theatre” which was demolished and a layour was formed and out of which six plots were sold and a sale consideration for a sum of Rs 26,16,510 was received. According to him, it is a known source



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of income and that has to be included in Statement No III of the Final Report.

It is submitted that it is relevant to look into the statement of R. Narayanan (Wit 78) recorded u/s 161 Cr.P.C. According to him, besides the Petitioner, Tmt Kalyani, Tmt Rajalakshmi, R Ramesh (Wit 77) and himself are all co-owners and executed a power of attorney in favor of him. He stated that he don't have any document for the receipt of sale consideration and for the remittance into the bank. Tr. T. Ayyamperumal (Wit 80) Assistant Commissioner of income Tax, Virudhunagar has stated that the documents with regard to capital gains relating to the sale of plots have not been given by any share holders and as such no Income Tax Return has been filed. In the absence of any documentary evidence relating to the obtainment of sale consideration to the extent of Rs 26,16,510 the Investigating Officer has not considered this item and not taken in to consideration.

(emphasis supplied)

44. It would be evident from the aforesaid statement, that the previous IO had rejected the claim for inclusion of Rs.26 lakhs as the income of A1 on the ground that there was absolutely no evidence to show any receipt of funds for this transaction. However, in the affidavit filed in support of the “final closure report”, the IO - Mr.K.Ramachandran, who conducted the so-called further investigation has stated, in paragraph 20, that the aforesaid Mr.Narayanan had sold the six plots and handed over a sum of Rs.37,08,014/- to A1 with the consent of other co-sharers. Though there was no new



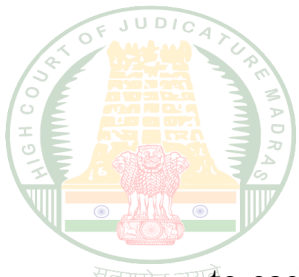
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documentary evidence to show the receipt of such a huge sum, the subsequent IO has taken a sum of Rs.14,83,205/- including one share from one Ms.N.Rajalakshmi through a Will thereby clearly contradicting the earlier stand of the previous IO. The earlier statement of Mr.Narayanan that he had no proof to show the receipt of funds and the statement of Mr.T.Ayyamperumal (Wit 80), Assistant Commissioner of income Tax, Virudhunagar that there was no evidence for this transaction with the IT Authorities have been completely brushed under the carpet.

45. The timing and the manner, in which, the subsequent IOs have conducted further investigation in this case as well as the companion case concerning Mr.T.Thennarasu and his wife - Mrs.T.Manimegalai points to a clear nexus between the DVAC and the politicians to ensure that criminal prosecutions are short-circuited against the Ministers after they come to power. This is perhaps one for the worst forms of abuse of process where the statutory power of further investigation has been used for oblique purposes.

46. Thus, it is all too apparent that further investigation was merely a ruse to gather material in order to facilitate a discharge of the accused persons. As stated earlier, this form of investigative chicanery was resorted



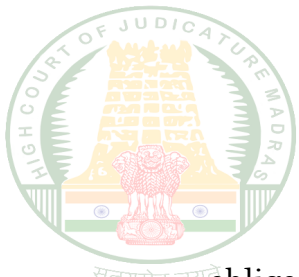
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to each time accused persons/politicians came to power. An identical modus operandi is seen in the case of Mr.T.Thennarasu and his wife, which has been decided vide a separate order passed today (Suo Motu Crl.R.C.No.1481 of 2023).

47. It cannot but be observed that the eagerness of the DVAC to resort to further investigation to find material to support the discharge petitions of the accused raises a serious doubt in the mind of this Court as to whether the entire investigation had been compromised and derailed with the intent of getting the accused off the hook. It is common knowledge that when discharge petitions are filed by ordinary mortals, the scope of such petitions are confined to the material secured by the investigation to see whether a strong suspicion exists to frame a charge against the accused. In this case, the DVAC contested tooth and nail till there was a change of power in the State in 2021. The accused were aware that till such time, they could not use the police to ferret defense material in their favor.

48. Once A1 was back in the political saddle, a written argument is filed by the accused in the discharge petition on 27.08.2021 and within two weeks ie., on 15.09.2021, the DVAC eagerly and voluntarily came forward to



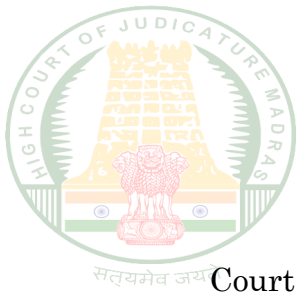
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oblige the accused by examining the various defences raised by them in their written argument to the discharge petition. There is no doubt in the mind of the Court that the “*final closure report*” is a clear abuse of the power of further investigation designed solely for the purposes of getting the accused off the hook.

49. This Court is constrained to ask whether such extraordinary privileges of investigating defence material at the stage of discharge through a further investigation is a facility extended by the DVAC only to politicians figuring as accused as such luxuries are way beyond the reach of ordinary mortals even in their wildest dreams. During the hearing of this case, the Court had ascertained from the DVAC as to whether such procedure has ever been resorted to in cases other than those involving politicians. The question drew a blank, as the DVAC was not able to point out a single case not involving a politician where such investigative techniques were deployed.

50. To the best of this Court’s knowledge, this modus operandi to detonate criminal prosecutions against politicians misusing the power of further investigation under Section 173(8) Cr.P.C is homegrown in the State of Tamil Nadu and does not find a parallel anywhere in this country. This



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Court must, therefore, deal with this situation with an iron hand, lest this becomes an inspiration for politicians in other States, who are facing criminal prosecutions. The Courts, trying these cases, must be vigilant to ensure that the streams of justice are not hijacked and polluted by the accused and the prosecution working in tandem.

51. William O' Douglas once remarked:

“As night fall does not come at once, neither does oppression. It is in such twilight that we must all be aware of the change in the air – however slight – lest we become victims of the darkness.”

52. Faced with conflicting reports, one would have expected the Special Court to apply its mind to examine whether there was a prima facie case to proceed with the trial.

53. The parameters for exercise of jurisdiction under Section 227 Cr.P.C is well settled. In ***State of T.N. v. N. Suresh Rajan, (2014) 11 SCC 709***, it has been observed as follows :

“At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is



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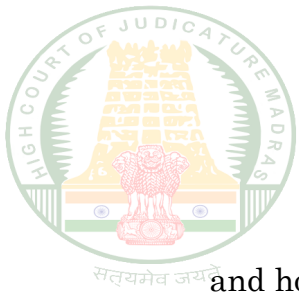
whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage.

54. In ***M.E.Shivalingamurthy v. CBI, (2020) 2 SCC 768***, the Supreme Court had held as under:

“The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J&K v. Sudershan Chakkar [State of J&K v. Sudershan Chakkar, (1995) 4 SCC 181 : 1995 SCC (Cri) 664 : AIR 1995 SC 1954]). The expression, “the record of the case”, used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa v. Debendra Nath Padhi [State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568 : 2005 SCC (Cri) 415 : AIR 2005 SC 359]).”

55. From a comparison of the two reports filed by the prosecution, it is clear that there were conflicting versions of how the alleged ill-gotten wealth of A1 amounting to Rs.23,00,000/- came into the accounts of A2 through A3

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and how the earlier IO had found no evidence for receipt of Rs.26 lakhs in the hands of A1 whereas the subsequent IO, in the “final closure report”, was prepared to add this income even without any documentary evidence. Which of these versions were true was a matter that ought to have been tested at the stage of trial and not at the stage of discharge. This Court hastens to add that there are several other glaring factual contradictions, which are apparent in the two reports, the truth of which could be ascertained only during trial. The two transactions, which have been indicated above, are only to demonstrate that even a cursory reading of the two reports should have dissuaded the Special Court from discharging the accused.

56. That apart, as pointed out by the Supreme Court in ***State of T.N. v. R. Soundirarasu, (2023) 6 SCC 768***, Section 13(1)(e) contains a reverse onus clause and the burden of satisfactorily accounting for the money/assets cannot be discharged by the accused at the stage of discharge. The relevant extract from this judgment reads thus:

“Section 13(1)(e) of the 1988 Act makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of properties



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disproportionate to his known sources of income but the term “known sources of income” would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/ assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239CrPC. At the stage of Section 239CrPC, the court has to only look into the prima facie case and decide whether the case put up by the prosecution is groundless”

57. In the opinion of this Court, the Special Court has committed a manifest error by exceeding in its jurisdiction under Section 227 Cr.P.C and discharging the accused by relying upon tested materials gathered by the subsequent IO in the “*final closure report*” and treating them as genuine.

58. Very unfortunately, the impugned order of the Special Judge - Ms.V.Thilham is a model of how a judgment should not be written. After setting out the question for consideration in paragraph 7, the learned Special Judge sets out the history of the case till paragraph 22. The findings in the further investigation are summarized from paragraphs 23 to 60. The only shred of reasoning, if at all it can be termed as one, is at paragraphs 61 and 62, which read as follows:



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“After filing of the closure report and on perusal of the report, documents, statements of witnesses at the state of taking cognizance in Court found that accused have to be discharge of the offences.

In the result, this Court is inclined to accept the Final Closure Report of Investigation Officer dated 28.10.2022, there is no offences made out against A1 A2 and A3 and all the accused are discharged from the offences under u/s 13(2), r.w 13(1)(e) of Prevention of Corruption Act r.w Section 109 IPC.”

59. As the impugned order does not disclose any independent reasoning, it must necessarily follow that it deserves to be set aside on this ground as well.

60. The power of the High Court to exercise its revisional jurisdiction under Section 397 Cr.P.C is not open to doubt. In ***Honniah v State of Karnataka, (2022 SCC Online SC 1001)***, the Supreme Court has observed as under:

“The revisional jurisdiction of a High Court under Section 397 read with Section 401 of the CrPC, is a discretionary jurisdiction that can be exercised by the revisional court suo motu so as to examine the correctness, legality or propriety of an order recorded or passed by the trial court or the inferior court. As the power of revision can be exercised by the High Court even suo moto, there can be no bar on a third party invoking the revisional jurisdiction and



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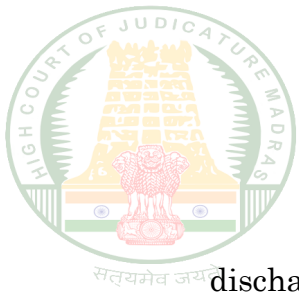
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inviting the attention of the High Court that an occasion to exercise the power has arisen.”

61. In ***Krishnan v. Krishnaveni, (1997) 4 SCC 241***, while reiterating the suo motu revisional powers of the High Court, the Supreme Court observed as under:

“The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.”

62. Tested on the touchstone of the aforesaid principles, the conclusion is that the impugned order of the Special Court deserves to be set aside on the short ground that it had committed a manifest jurisdictional error in



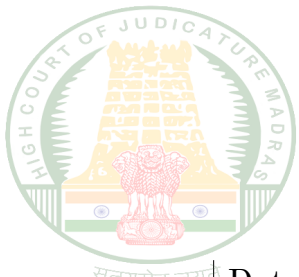
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discharging the accused in the face of relevant material, the correctness of which could not be the subject matter for inquiry at the stage of discharge. Additionally, the very fact that the Special Court has not assigned a shred of independent reasoning is another reason warranting interference in exercise of revisional powers.

63. Before concluding, one of the most striking aspects of this case as well as the other companion case in *Suo Motu Crl.R.C.No.1481 of 2023* concerning Mr.T.Thennarasu is the meticulous manner, in which, the DVAC officials have also colluded with each other to ensure that criminal trials against two sitting ministers are quietly and indecently buried within the precincts of the Special Court. The following sequence of dates clearly point to this conclusion:

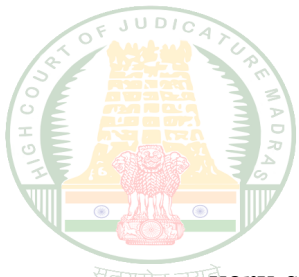
	Mr.KKSSR Ramachandran & others in <i>Suo Motu</i> Crl.R.C.No.1480 of 2023	Mr.T.Thennarasu & another in <i>Suo Motu</i> Crl.R.C.No.1481 of 2023
Date of filing final report	05.09.2012	14.11.2012
Date of filing discharge petition	A3 – 24.02.2016 A1 – 29.03.2016 A2 - 22.05.2018	A2 – 24.02.2016 A1 – 29.03.2016
Date of A1 becoming Minister in the State Cainer	May 2021	May 2021



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Date of accused filing written submission in discharge petitions	27.08.2021	27.08.2021
Date of DVAC seeking permission to conduct further investigation on the basis of the written submissions	15.09.2021	15.09.2021
Date of filing “final closure report” before the Special Court	28.10.2022	28.10.2022
Order of the Special Court discharging the accused	27.06.2023	12.12.2022

64. What is evident from the above is a clearly orchestrated plan. Once the two Ministers were back to power, the DVAC officials decided or were told by their higher ups to find ways and means to ensure that the prosecutions were torpedoed. The perfect plan was thus drawn up. When the three accused persons filed an ostensible written argument, the DVAC, with all sincerity, received them with open arms and then hunted for material to back up the defence of the accused, culminating with the “final closure report”. What is striking is that the so called written argument, the intimation for further investigation and the final closure report were filed on the same day in both cases as is evident from the above. Unfortunately, the



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very same Special Court did not notice this and fell into or was willing to fall into an error in discharging the accused.

65. After these illegalities have come to the notice of this Court, this Court considers it a sacrosanct Constitutional duty of the High Court to intervene on what this Court considers is a matter of principle to prevent the grossest abuse of the judicial process, which has resulted in the miscarriage of justice. If the rule of law is to mean anything, it must mean that politicians and the common man of this State will be equal before the Courts and that the butcher, the baker and the candlelight maker will be treated just the same as a Revenue, Housing or Finance Minister of this State.

66. Before drawing the curtains, this Court is only reminded of the following words of James Jeffrey Roche:

*"The net of law is spread so wide,
No sinner from its sweep may hide,
Its meshes are so fine and strong,
They take in every child of song,
O wondrous web of mystery!
Big fish alone escape from thee!"*



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VI. Conclusions/Directions

67. In the result,

- a. The order dated 20.07.2023 passed by the Principal Sessions Court (Special Court for MP/MLA Cases), Virudhunagar at Srivilliputhur, in Special S.C.No.19 of 2019 is set aside;
- b. Consequently, Special S.C.No.19 of 2019 is restored to the file of the Principal Sessions Court (Special Court for MP/MLA Cases), Virudhunagar at Srivilliputhur;
- c. The “final closure report” dated 28.10.2022 filed by the DVAC shall now be treated as a supplementary report under Section 173(8) Cr.P.C;
- d. As prima facie materials are available to frame charges, the Special Court shall proceed to frame charges and thereafter proceed in accordance with law; Consequently, the discharge petitions filed by the accused persons shall stand dismissed;
- e. The accused are directed to appear before the Special Court on 09.09.2024;
- f. On such appearance, the Special Court shall obtain a bond under Section 88 Cr.P.C with or without sureties as the Special Court may deem fit and necessary;



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- g. As the case is of the year 2011, the proceedings of the Special Court shall be conducted on a day to day basis keeping in mind the directives of the Supreme Court in ***Vinod Kumar vs. State of Punjab, [2015 (1) MLJ (Crl.) 288]*** and dispose the case as expeditiously as possible;
- h. Though obvious, it is made clear that this Court has not examined or commented upon the merits of the case, which shall be decided by the Special Court on merits, without being influenced by any of the observations made hereinabove.

68. Suo Motu CrI.R.C.No.1480 of 2023 is allowed on the aforesaid terms.

07.8.2024

Index : Yes

Neutral Citation : Yes

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N.ANAND VENKATESH,J

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To

- 1.The Principal Sessions Court (Designated Special Court for Trial of Criminal Cases Related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu), Virudhunagar District at Srivilliputtur.
- 2.The Additional Superintendent of Police, Vigilance &Anti Corruption, City Special Unit-1, Chennai O.D. at Virudhunagar District.
- 3.The Public Prosecutor, High Court, Madras.

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