2024:MHC:3666

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.6.2024	***Delivered on : 29.10.2024***

Coram :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Suo Motu Criminal Revision Case No.1524 of 2023

1.The Deputy Superintendent of
Police, Vigilance &Anti Corruption
Wing, Madurai.

2.Mr.O.Panneerselvam

3.Mrs.P.Vijayalakshmi (died)

4.Mr.P.Ravindranathkumar

5.Mr.O.Raja @ Ramasamy

6.Mrs.R.Sasikalavathy

7.Mr.O.Balamurugan @ (died)
Palamurugan

8.Mrs.B.Latha Maheswari @
Latha Balamurugan ...Respondents

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SUO MOTU REVISION under Sections 397 & 401 of the Criminal Procedure Code initiated to call for the records on the file of the Chief Judicial Magistrate/Special Judge, Sivagangai passed in Spl.C.C.No.7 of 2012 dated 03.12.2012 and to set aside the same.

For R1 : Mr.P.S.Raman, AG assisted by
Mr.K.M.D.Muhilan, GA (Crl.Side)

For R2 : Mr.Aabad Ponda, SC for
Mrs.P.Rajalakshmi

For R4 : Mr.S.Elambharathi

For R5 & R6 : Mr.R.Srinivas, SC for
Mr.M.R.Sivakumar

For R8 : Mr.M.K.Ajith Kumar

R3 & R7 : died

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ORDER

This suo motu criminal revision under Sections 397 & 401 of the Code of Criminal Procedure, 1973 (for short, the Cr.P.C.) is directed against an order dated 03.12.2012 passed by the Chief Judicial Magistrate (CJM), Sivagangai (for short, the Special Court) allowing Cr.M.P.No.1372 of 2012 under Section 321 of the Cr.P.C., and permitting the withdrawal of prosecution of Special C.C.No.7 of 2012.

I - FACTUAL BACKDROP TO THE SUO MOTU PROCEEDING

2. The circumstances, under which, the suo motu proceedings were initiated, are as under:

(i) Mr.O.Panneerselvam (A1) was elected to the Tamil Nadu Legislative Assembly from Periakulam constituency on an AIADMK ticket in May 2001. Between 19.5.2001 and 21.9.2001 and 02.3.2002 to 12.5.2006, he was the Revenue Minister of the State. Between 22.9.2001 to 01.3.2002, he was the Chief Minister of the State. In May 2006, the AIADMK was voted out of power in the State.

(ii) On credible information that Mr.O.Panneerselvam, while holding the posts of Revenue Minister and Chief Minister of the State, had accumulated properties and pecuniary resources that were disproportionate to his known sources

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of income, a preliminary enquiry was conducted by the Directorate of Vigilance and Anti Corruption (DVAC). Finding that there existed material to proceed further, a case in Crime No.14 of 2006 was registered by the Vigilance and Anti-Corruption Department, Madurai on 07.9.2006 against Mr.O.Panneerselvam under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for brevity, the POCA). The investigation was taken up by the then Investigation Officer - one Mr.N.Kulothunga Pandian, Deputy Superintendent of Police, Vigilance and Anti-Corruption, Madurai.

(iii) During the course of investigation, which took nearly 3 years, the Investigation Officer (IO) examined 272 witnesses and collected 235 documents. In the meantime, the Speaker of the Tamil Nadu Assembly - Mr.R.Avudiappan granted sanction for prosecution under Section 19(1) of the POCA vide proceedings dated 09.6.2009.

(iv) Upon completion of the investigation, the IO - Mr.Kulothunga Pandian filed a final report under Section 173(2) Cr.P.C., before the CJM, Theni on 30.7.2009 alleging the commission of offences under Section 13(2) read with Section 13(1)(e) of the POCA and Section 109 of the Indian Penal Code (IPC) read with Section 13(2) read with Section 13(1)(e) of the POCA against Mr.O.Paneerselvam (A1), his wife Tmt.P.Vijayalakshmi (A2), his son -

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P.Ravindranathkumar (A3), Mr.O.Raja (A4), Tmt.Sasikalavathy (A5) - wife of A4, Mr.O.Balamurugan (A6) and Mrs.B.Latha Maheswari @ Latha Balamurugan (A7) - wife of A6.

(v) It must be mentioned here that A4 and A6 are the brothers of A1. The allegation in the final report was that the accused persons had accumulated wealth, which was **374% times** disproportionate to their known sources of income, for which, no satisfactory explanation was forthcoming. On the aforesaid final report, the Special Court took cognizance of the offences therein by an order dated 30.7.2009 in C.C.No.3 of 2009 and issued summons to the accused for their appearance on 25.8.2009.

(vi) On 03.5.2011, G.O.Ms.No.254 Home (Courts II) Department was issued constituting a Special Court at Madurai for Trial of Cases under the POCA. On 02.8.2011, a petition under Section 173(8) of the Cr.P.C. was submitted before the CJM, Theni by all the accused themselves. The records would further reveal that this petition was taken up by the CJM, Theni on 27.9.2011 and an order was passed on 04.10.2011 allowing the petition of all the accused seeking further investigation under Section 173(8) of the Cr.P.C. Having passed an order for further investigation on 04.10.2011 on the petition filed by all the accused, the CJM, Theni appeared to have quietly transferred the case to the Special Court

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Madurai vide an order dated 14.10.2011. On the same day, the prosecution filed a petition before the CJM, Theni for the return of documents to carry out further investigation. In view of the earlier order, the CJM, Theni returned the petition for presentation to the Special Court, Madurai.

(vii) When the matter was taken up before the Special Court at Madurai after transfer, the learned Special Judge at Madurai realized that something was seriously amiss when the prosecution represented the petition for return of documents before it. The Special Court, Madurai found that the CJM, Theni had acted illegally by passing an order for further investigation on 14.10.2011 when it had lost jurisdiction by virtue of the constitution of the Special Court at Madurai on 03.5.2011. Accordingly, the Special Judge, Madurai dismissed the petition for the return of documents holding that since the order passed under Section 173(8) of the Cr.P.C. was invalid, as it was passed by a Court having no jurisdiction, the question of returning documents to facilitate further investigation did not arise.

(viii) Finding that the learned Special Judge, Madurai had seen through their game and had foiled their plans, the accused rushed to the Madurai Bench of this Court in Crl.O.P (MD).No.15425 of 2011 and sought for transfer of the case from the Special Court at Madurai alleging that the learned Special Judge at Madurai was biased and that they would not get “fair justice” in his Court. A

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learned Single Judge of this Court, by order dated 20.1.2012, found that the Special Court at Madurai had rejected a copy application of A4 observing that the petition was not maintainable and had in fact insisted on the presence of the accused notwithstanding the fact that petitions under Section 317 of the Cr.P.C. had been filed. In these circumstances, the learned Single Judge observed that if the request of the accused was not allowed, it would cause much embarrassment to the learned Special Judge at Madurai. The learned Single Judge of this Court went on to observe that the levelling of allegations would cause embarrassment to the learned Special Judge at Madurai and that transfer ought to be made without going into the merits or demerits of the petition for transfer.

(ix) Pursuant to the order of this Court dated 20.1.2012, the files were transferred by the Special Court, Madurai to the CJM, Sivagangai (Special Court) and renumbered as Special C.C.No.7 of 2012. In the meantime, the prosecution implemented the order of the CJM, Theni by completing the further investigation. The prosecution once again approached the CJM, Theni and filed a petition under Section 164(5) of the Cr.P.C praying that the CJM, Theni should record the statement of 34 witnesses. It appeared that the CJM, Theni had entertained this petition and recorded the statements of the witnesses. These were later placed on

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record before the CJM, Sivagangai by way of a petition under Rule 344(7) of the Criminal Rules of Practice on 21.8.2012.

(x) In the meantime, the State Government, of which A1 was an integral part, had swung into action and was working at breakneck speed to ensure that the case was short-circuited at the earliest. A report was quickly made up by the new IO - Mr.K.Esakki Ananthan, giving a clean chit to A1 and his family. The further investigation report was first sent to the Government on 05.10.2012. To make the plot fool-proof, the Government quickly sought and obtained a legal opinion from the then Public Prosecutor, Madras High Court on16.10.2012 as well as the opinion from the then Advocate General on 19.10.2012 on the report of the DVAC dated 05.10.2012. These documents were then placed before the Speaker of the Tamil Nadu Legislative Assembly, who, by an order dated 27.10.2012, passed an order revoking the sanction of prosecution that had been granted earlier by his predecessor in the opposition.

(xi) This order dated 27.10.2012 of the Speaker was communicated to the DVAC on 28.10.2012 directing the DVAC to file the final report into court and to report compliance. On 02.11.2012, the IO - Mr.K.Esakki Ananthan filed the "**final report on further investigation",** purportedly under Section 173(8) of the Cr.P.C. before the CJM, Sivagangai. At the foot of page 5 of this report, the IO

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observed that since further "*investigation was ordered in this case under Section 173(8) Cr.P.C., the earlier final report filed by the former I.O has become infructuous.'* Having thus wiped out the earlier report by a deliberate design, the IO - Mr.K.Esakki Ananthan handed over a clean chit to the accused and had, in fact, said as under:

> *'The Government accepted the further investigation report of the Directorate of Vigilance and Anti-Corruption, Chennai and dropped further action.'*

(xii) It is seen from the records that on 02.11.2012, the Public Prosecutor before the Special Court filed a petition under Section 321 of the Cr.P.C. As seen above, the IO - Mr.K.Esakki Ananthan claimed that his further investigation had wiped out the earlier final report. The Public Prosecutor, in his petition under Section 321 of the Cr.P.C, stated as follows:

> "*'It is further submitted that the cognizance taken in the above case on the previous investigation report submitted by the then investigation officer has become infructuous and that decision has to be taken whether materials on records are sufficient to take cognizance on fresh final report submitted on further investigation by the present Investigation Officer.'*

(xiii) On the basis of the so-called "**final report on further investigation",** an undated "notice" was sent from the CJM, Sivagangai not to the

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accused, but to their counsel asking him to be present before the Court on 29.11.2012. It is seen from the records that on 29.11.2012, the arguments of the Additional Public Prosecutor were heard on the petition for withdrawal of prosecution under Section 321 of the Cr.P.C. and on 03.12.2012, the CJM, Sivagangai allowed the petition and discharged all the accused.

II - INITIATION OF SUO MOTU PROCEEDINGS

3. On 31.8.2023, this Court initiated this suo motu revision under Section 397 of the Cr.P.C observing, inter alia, as under:

> *"22. Thus the modus operandi is now all too obvious. At the centre of the plot is the DVAC. When a political party comes to power in the State of Tamil Nadu the DVAC swoops down on the opposition and clamps cases of corruption. However, no prosecution for corruption ends in five years which is the life span of an elected Government in the State. Invariably, the opposition is voted back to power and the DVAC, like the puppets in the Muppets show, will have to perforce sing a different tune in tandem with its political masters. The strategy is to get the DVAC to do a further investigation the sole objective of which is to further the cause of the accused. In this way, self-serving investigation reports giving clean chits to the accused are presented as a fiat accompli under the garb of further investigation. The Special Courts, for reasons best*

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known, fall in line and in their keenness to ape lady justice accept the bait of the DVAC without any serious probe. In this way, the accused is discharged, and the solemnity of a judicial proceeding before the Court is reduced to a cruel joke. These tactics are usually resorted to immediately upon the party coming to power so as to ensure that no appeal is filed during the rest of the tenure, and by the time the Government changes any challenge would be hit by limitation. This is a pattern that I have seen in this case as well as the other cases in Cr.R.C.Nos.1480 and 1481 of 2023. Whatever be their radical political differences, the accused political personages across party lines appear to be united in their endeavour to thwart and subvert the criminal justice system in this State.

.....

25. The aforementioned narrative once again reveals a calculated attempt by those at the helm of political power to distort and subvert the course of criminal justice. To recapitulate, there are several disturbing features in this case. First, it is not known how a petition for further investigation under Section 173(8) Cr.P.C was entertained by the Special Court at the behest of the accused: Secondly, the CJM, Theni committed a manifest illegality in passing orders allowing the petition on 04.10.2011 knowing fully well that she had no jurisdiction to hear the case in view of GO.Ms.No.254 dated 03.05.2011 constituting the Special Court at Madurai. Thirdly, the DVAC, for obvious reasons, did not challenge the order directing further investigation since by 2011 A1 had spun back

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to power in the State: Fourthly, the DVAC quickly acted on the illegal order of further investigation and prepared a report tailored to suit the political masters and also obtained an opinion from the Public Prosecutor and the Advocate General and then presented it to the Speaker. Fifthly, the Speaker acting purportedly under Section 19 of the PC Act passed an order disclosing no reason whatsoever claiming that no offence had been disclosed against A1 and his family. The Speaker, in other words, decided to bury the doctrine of separation of powers in the precincts of St Marys Church by playing the role of the Special Court sitting in the legislative chamber at Fort St George. Sixthly, the Government "directs" the DVAC to file the report before the Special Court which states that the earlier final report had been wiped out: Seventhly, the APP files a petition under Section 321 Cr.P.C and goes a step further to state that the cognizance taken on the original charge sheet had become infructuous. And finally, the CJM, Sivagangai accepts the petition for withdrawal and allows the accused to go scot-free. On account of the collective collaboration of all the aforesaid political and judicial personages the one and only final report under Section 173(2) Cr.P.C against A1 and his family, which took nearly 3 years to complete, with 272 witnesses statements 235 documents, was consigned to the dustbin of judicial history.

26. Given these admitted facts, which are borne out of the Court records, the question that now confronts the Court is whether a prima facie case has been made out to issue notice to the accused to suo motu revise and set aside the order of the

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Chief Judicial Magistrate, Sivaganga, dated 03.12.2012. The Court is not oblivious of the fact that 10 years have rolled by since the order of the CJM, Sivagangai. The facts catalogued in paragraph 25 are shocking and disturbing. They disclose a grave illegality at every stage which shows a well-orchestrated plan. This is a case where a political personage has manoeuvred the DVAC, the State Government and the Court to ensure that the trial against him was derailed."

4. After noticing that mere delay simplicitor is no ground to throw away a criminal proceeding particularly where glaring illegalities are noticed, it was further observed as under:

"*From the aforesaid, it is clear that where the High Court fails to exercise its suo motu powers despite noticing glaring illegalities, it would be causing miscarriage of justice by perpetuating the illegalities. In the context of offences like the Prevention of Corruption Act, the duty of the High Court to ensure that there is no subversion of the criminal law is paramount.*"

III - PROCEEDINGS BEFORE THE SUPREME COURT & ASSIGNMENT OF CASES BEFORE THIS BENCH

5. Upon issuance of notice, respondents 2, 4, 5, 6 and 8 appeared through their respective counsel. On 08.1.2024, this Court recorded that service of notice

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was complete and that the paper books prepared by the Registry had been served on all the learned counsel representing the accused. ***It was also brought to the notice of this Court that respondents 3 & 7 (A2 & A6) had expired in the interregnum. Consequently, the proceedings against them stood abated.*** When the matter was taken up on 05.2.2024, it was brought to the notice of this Court that the order dated 31.8.2023 initiating suo motu proceedings was assailed before the Supreme Court. Thus, the matter was adjourned to await the outcome of the proceedings before the Supreme Court.

6. In the meantime, the Hon'ble Chief Justice, vide an administrative order dated 07.2.2024, directed this suo motu revision and the other connected suo motu proceedings to be placed before this Bench as specially ordered matters. It should be mentioned that the aforesaid administrative order of the Hon'ble Chief Justice was passed pursuant to the order of the Supreme Court dated 05.2.2024 in the special leave petitions filed by Mr.KKSSR Ramachandran and Mr.Thangam Thennarasu challenging the suo motu proceedings initiated against them.

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7. The special leave petition filed by Mr.O.Paneerselvam (A1) in S.L.P. (Criminal) No.3156 of 2024, was eventually dismissed vide an order dated 01.3.2024, with the following observations:

> *"Delay condoned. Heard Mr. Jaideep Gupta, learned senior counsel appearing for the petitioners. The Special Leave Petition stands dismissed. However, the observations made by the learned Judge in the impugned order dated 31.08.2023 are to be considered only for the purpose of the notice order (dated 31.08.2023) in the Suo Moto Criminal R.C.No.1524 of 2023 and those observations should have no bearing in finally deciding the criminal revision. All contentions are left open. It is ordered accordingly. Pending application(s), if any, shall stand closed."*

III - SUBMISSIONS

8. Heard Mr.P.S.Raman, Advocate General assisted by Mr.K.M.D. Muhilan, learned Government Advocate (Crl.Side) appearing for the first respondent, Mr.Aabad Ponda, learned Senior Counsel appearing on behalf of Mrs.P.Rajalakshmi, learned counsel on record for the second respondent, Mr.S.Elambharathi, learned counsel appearing for the fourth respondent, Mr.R.Srinivas, learned Senior Counsel appearing on behalf of Mr.M.R.Sivakumar,

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learned counsel on record for respondents 5 and 6 and Mr.M.K.Ajith Kumar, learned counsel appearing for the eighth respondent.

9. Mr.Aabad Ponda, learned Senior Counsel appearing on behalf of the second respondent (A1) submitted as follows :

(i) This Court, in exercise of its jurisdiction under Section 397/401 of the Cr.P.C., can only go into the legality, propriety and correctness of any finding, sentence or order and the regularity of any proceeding. The word 'regularity' as found in Section 397(1) of the Cr.P.C.is relatable to Section 461 of the Cr.P.C. and unless the action, which is sought to be questioned, is completely irregular so as to fall within any of the Clauses under Section 461 of the Cr.P.C., it will not fall within the domain of the term 'regularity' used under Section 397(1) of the Cr.P.C. If this test is applied, the action of filing a final report on further investigation will not fall within the category of both the legality of an order, sentence or finding as well as the regularity, since it does not fall under any of the categories mentioned under Section 461 of the Cr.P.C.

(ii) In the instant case, the accused persons were not discharged under Section 239 of the Cr.P.C. based on the final report on further investigation. However, such an order was passed under Section 321 of the Cr.P.C., based on a

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petition moved to that effect. This order can be challenged or tested only on the principles enunciated in the following judgments of the Apex Court in the casess of

(a) ***Jagganath Choudhary Vs. Ramayan Singh [reported in 2002 (5) SCC 659]***; and

(b) ***Japani Sahoo Vs. Chandra Sekhar Mohanty [reported in 2007 (7) SCC 394]***.

(iii) The action of the DVAC in not challenging the order of further investigation passed by the CJM, Theni, the withdrawal of sanction by the Speaker of the Assembly after revisiting the earlier sanction, the direction of the Government to file a report before the Special Court to withdraw the case and the various findings rendered by the Coordinate Bench of this Court while passing the order dated 20.1.2012 cannot be challenged nor tested in a revisional jurisdiction since they do not relate to the proceedings of a lower court.

(iv) The power of further investigation under Section 173(8) of the Cr.P.C. is a wide power that is available to the Investigation Officer and at the stage when the matter came up before a Coordinate Bench of this Court way back in the year 2012, the Coordinate Bench of this Court had knowledge about the further investigation that was ordered and in spite of the same, it was not interfered and therefore, no action is permissible at this stage.

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(v) The CJM, Theni was continuing to hear the matter under the POCA even post 04.5.2011 since the Special Court at Madurai constituted to deal with the criminal cases pending against MPs and MLAs did not commence its operation and only in October 2011, the files were transferred to the Special Court at Madurai after an administrative order was passed. According to the learned Senior Counsel, there is nothing wrong in filing a further report by reaching a different or a diametrically opposite conclusion than what was arrived at in the final report filed under Section 173(2) of the Cr.P.C.

(vi) Thereafter, the case was transferred to the CJM Court, Sivagangai by the Coordinate Bench of this Court through an order dated 20.1.2012 in Crl.O.P.(MD) No.15425 if 2011 and even at that point of time, the order dated 04.10.2011 passed by the CJM, Theni for further investigation was not disturbed. The order of transfer to the CJM, Sivagangai also attained finality and therefore, another Coordinate Bench of this Court cannot revisit the issue by virtue of this suo motu proceedings.

(vii) The final report on further investigation was filed on 02.11.2012 and on the very same day, a petition was filed by the Special Public Prosecutor, Vigilance and Anti Corruption, Theni under Section 321 of the Cr.P.C. The closure of the criminal case is not relatable to a case of discharge by supersession of the

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earlier report under Section 173(2) of the Cr.P.C. by a further investigation report under Section 173(8) of the Cr.P.C. The closure in this case arises out of a motion made by the learned Special Public Prosecutor under Section 321 of the Cr.P.C. Since the petition filed by the Special Public Prosecutor was entertained prior to recording of the evidence, it falls within the category of a discharge relatable to Section 321(a) of the Cr.P.C.

(viii) Nowhere in the Cr.P.C., there is any requirement for the Court to record its reasons for allowing withdrawal of a prosecution. Such reasons are required only in the case of discharge that takes place under Sections 227, 239, 245, etc. of the Cr.P.C. There was an unanimous opinion of the Investigating Agency, the then Public Prosecutor, the Office of the then Public Prosecutor of the High Court and the then Advocate General of the State that no case was made out to prosecute the accused persons based on further investigation and therefore, a petition was filed under Section 321 of the Cr.P.C.

(ix) The CJM, Sivagangai did not blindly accept the petition filed by the Special Public Prosecutor under Section 321 of the Cr.P.C.. Rather, he independently applied his mind by considering the earlier report as well as the subsequent report and came to a conclusion that the final report on further investigation did not disclose commission of any offence and that conducting a trial

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in this case would only end in acquittal. Therefore, the withdrawal of prosecution was consented by the CJM, Sivagangai. There is absolutely no illegality or impropriety warranting the interference of this Court in exercise of its jurisdiction under Section 397/401 of the Cr.P.C.

(x) The principle of finality of a litigation is based on the principle of public policy. In the instant case, the criminal proceedings came to an end in the year 2012 itself and it will not be desirable to reopen this case at this length of time since it will prejudicially affect the vested rights of the parties. In order to substantiate his submissions, he relied upon several precedents.

10. Mr.R.Srinivas, learned Senior Counsel appearing on behalf of respondents 5 and 6 (A4 & A5 respectively), apart from reiterating and adopting the submissions of Mr.Aabad Ponda, learned Senior Counsel appearing on behalf of the second respondent (A1), submitted as follows :

(i) Every accused person has a right to fair investigation and fair trial guaranteed under Article 21 of The Constitution of India. Such a fair investigation includes within its fold a further investigation done under Section 173(8) of the Cr.P.C. The Magistrate has been given the power to order for such further investigation till the trial commences.

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(ii) There was a non-consideration of certain vital documents like the partition deed, the income tax returns, etc., at the time of initial investigation. Therefore, the accused persons, in order to ensure that they get fair justice, sought for further investigation and the CJM, Theni granted permission for further investigation under Section 173(8) of the Cr.P.C., which cannot be faulted with.

(iii) By virtue of G.O.Ms.No.254 Home (Courts II) Department dated 03.5.2011, vide Notification IV, the Special Court was constituted at Madurai. However, the functioning of the Special Court at Madurai did not commence till 04.10.2011. In view of the same, the CJM, Theni continued to hear and dispose of cases under the POCA even after 03.5.2011 till October 2011. The accused persons filed a petition under Section 173(8) of the Cr.P.C. before the CJM, Theni on 02.8.2011, to which, the prosecution filed its counter on 20.9.2011. The arguments were heard on 27.9.2011 and the petition was allowed on 04.10.2011.

(iv) The Special Court at Madurai was inaugurated on 04.10.2011 and had started its effective functioning only on 14.10.2011. In the light of these facts, the CJM, Theni could not be held to be a coram non-judice or lacking inherent jurisdiction. Rather, the CJM, Theni was competent under the statute till the order dated 04.10.2011 was passed in Crl.M.P.No.727 of 2011, which was filed seeking for further investigation.

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(v) The Special Court at Madurai, after its inauguration, commenced its functioning and the entire records were transferred to the Special Court at Madurai. The subsequent Investigation Officer tried to get certain records for further investigation. However, in view of the stand taken by the Special Court at Madurai, there was an apprehension that the accused persons would not get fair justice before the Special Court. This resulted in filing Crl.O.P.(MD) No.15425 of 2011 seeking for transfer of the case and the Coordinate Bench of this Court was fully apprised and aware of the entire proceedings including the order dated 04.10.2011 passed by the CJM, Theni for further investigation. Further, the Coordinate Bench of this Court did not interfere with the order for further investigation dated 04.10.2011 and ultimately decided to transfer the case to the file of the CJM, Sivagangai by order dated 20.1.2012. The CJM, Sivagangai thereafter granted extension of time for completing the investigation and to file further report.

(vi) In the meantime, as a part of further investigation, the subsequent Investigation Officer produced witnesses before the CJM, Theni, whose statements were recorded under Section 164 of the Cr.P.C. This was permissible in view of Sub-Sections (1) and (6) of Section 164 of the Cr.P.C. The statements recorded under Section 164 of the Cr.P.C. were thereafter sent to the CJM, Sivagangai. Those statements, which were recorded, were also forming part of the further

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investigation conducted by the subsequent Investigation Officer. The subsequent Investigation Officer, on completion of further investigation, applied to the Sanctioning Authority (Speaker of the Assembly) with all the materials collected during further investigation and the Speaker passed an order revoking the earlier sanction.

(vii) Thereafter, the entire material was placed before the State Government after obtaining the respective opinion of the then State Public Prosecutor and the then Advocate General of Tamil Nadu and thereafter, the further report along with a petition under Section 321 of the Cr.P.C. was filed before the CJM, Sivagangai, who independently applied his mind to the petition filed under Section 321 of the Cr.P.C. and also the entire material that was available, which included the final report filed under Section 173(2) of the Cr.P.C. as well as the supplementary report and came to the conclusion that there was no requirement for conducting a trial in this case, since it would only lead to an acquittal. In so far as the scope of jurisdiction exercised while dealing with the petition under Section 321 of the Cr.P.C. is concerned, he relied upon the following judgments of the Supreme Court :

(i) ***Sheonandan Paswan Vs. State of Bihar [reported in 1987 (1) SCC 288]***;

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(ii) ***State of Kerala Vs. K.Ajith [reported in 2021 (17) SCC 318]***;

(iii) ***Rajender Kumar Jain Vs. State [reported in 1980 (3) SCC 435]***; and

(iv) ***Rahul Agarwal Vs. Rakesh Jain [reported in 2005 (1) CTC 380]***.

(viii) The Speaker of the Assembly, who is the Sanctioning Authority, can always review or reconsider the sanction whenever fresh materials are placed before the Speaker. To substantiate this submission, he relied upon the followig judgments of the Supreme Court :

(i) ***State of Punjab Vs. Mohammed Iqbal Bhatti [reported in 2009 (17) SCC 92];***

(ii) ***State of Himachal Pradesh Vs. Nishant Sareen [reported in 2010 (14) SCC 527];*** and

(iii) ***Kazilhendup Dorji Vs. CBI [reported in 1994 Suppl. (2) SCC 116]***.

(ix) The CJM, Sivagangai discharged the accused persons under Section 321 of the Cr.P.C. and not under Section 239 of the Cr.P.C. Therefore, there was no need for the Court to record separate reasons as is done while discharging the accused persons under Sections 227, 239, 245, etc., of the Cr.P.C. In spite of that,

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the CJM, Sivagangai applied his mind while accepting the petition filed under Section 321 of the Cr.P.C. and discharged the accused persons.

(x) The criminal proceedings have culminated more than a decade ago. Unless and otherwise the proceedings are vitiated by any fraud, this Court should not exercise its revisional jurisdiction and this is more so since more than 13 years have passed and two of the accused persons namely A2 and A6 (respondents 3 and 7 herein) have already expired and at least, seven prosecution witnesses have already died.

11. The respective learned counsel appearing for the other accused persons namely respondents 4 and 8 (A3 & A7 respectively) adopted the above arguments.

12. The learned Advocate General appearing on behalf of the first respondent namely the Investigating Agency submitted as follows:

(i) The further investigation was initiated only based on the order dated 04.10.2011 passed by the CJM, Theni allowing the petition filed by the accused persons under Section 173(8) of the Cr.P.C. Hence, the further investigation conducted by the subsequent Investigation Officer was not illegal since it was done pursuant to the order passed by the Competent Court and such power is also available under Section 173(8) of the Cr.P.C.

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(ii) After the judgment of the Apex Court in the case of ***Vinubhai Haribhai Malaviya Vs. State of Gujarat [reported in 2019 (17) SCC 1],*** even after the cognizance is taken by the Magistrate, such further investigation can be ordered till the commencement of trial. The subsequent Investigation Officer can file even a negative report after the completion of the further investigation based on further oral and documentary evidence collected during further investigation. In the instant case, after the further investigation report was made ready, the respective opinion was obtained from both the then State Public Prosecutor and the then Advocate General of Tamil Nadu and all these materials were also placed before the Speaker of the Assembly, who revoked the earlier sanction granted for prosecution.

(iii) He specifically brought to the notice of this Court that the query raised by this Court in paragraph 18 of the order dated 31.8.2023 can be explained. According to him, in Ref.No.3 of the proceedings of the Speaker of the Assembly, there is merely a reference to the further investigation report of the DVAC and not the final report of the Investigation Officer. This report is purely in terms of the DVAC Manual sent to the Government through the Vigilance Commissioner based on the analysis of the draft final report drawn by the Investigation Officer. Such further investigation report of the DVAC was sent along with the copy of the draft final report of the Investigation Officer and other supporting documents thereby the

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Sanctioning Authority would have the benefit of perusing the further investigation report of the DVAC and also the draft final report of the Investigation Officer. In view of the same, upon perusal of the further investigation report of the DVAC and the draft final report of the Investigation Officer, the Sanctioning Authority issued proceedings dated 27.10.2012 revoking the earlier sanction and thereafter, the final report was placed before the CJM, Sivagangai on 02.11.2012 along with a petition under Section 321 of the Cr.P.C.

(iv) The draft final report placed before the Speaker along with the further investigation report of the DVAC dated 05.10.2012 and the final report filed before the CJM, Sivagangai on 02.11.2012 are one and the same. The learned Special Public Prosecutor, who was in charge of the case, had applied his mind based on the materials that were collected, which included the respective opinion of the then State Public Prosecutor and the then Advocate General of Tamil Nadu and proceeded to file the petition under Section 321 of the Cr.P.C. and the CJM, Sivagangai applied his mind on all the relevant materials and discharged the accused persons since he felt that no useful purpose would be served in proceeding further with the trial.

(v) In so far as the scope of Section 321 of the Cr.P.C., he relied upon the following judgments of the Apex Court :

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(a) ***Sheonandan Paswan (cited supra);*** and

(b) ***Bairam Muralidhar Vs. State of A.P.*** ***[reported in 2014 (10) SCC 380].***

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V - DISCUSSIONS

13. Having heard the learned Senior Counsel and learned counsel for the respective parties and upon a perusal of the records, the question that arises for consideration is as to whether the order of the Special Court under Section 321 of the Cr.P.C. permitting the State to withdraw from the prosecution suffers from manifest perversity, grave illegality or procedural impropriety so as to warrant interference under Section 397/401 of the Cr.P.C.

14. Before embarking on a discussion of the legal issues in this case, it is first necessary to clear the ground on the jurisdiction of this Court to entertain a suo motu proceeding. This is particularly so since the common ground of attack in this and the other connected suo motu revisions was that this Court could not initiate suo motu proceedings as that could be done only by the Chief Justice and that in any event, such suo motu jurisdiction can only be heard by a Division Bench and not by a Single Judge.

A. JURISDICTION TO INITIATE SUO MOTU PROCEEDINGS

15. It is not in dispute that the power of suo motu revision is available to the High Court under Section 397/401 of the Cr.P.C. The position is put beyond doubt

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by the decision of the Supreme Court in the case of ***Municipal Corporation of Delhi v. Girdharilal Sapru [reported in (1981) 2 SCC 758]*** wherein it was held as under:

> *"'Without going into the nicety of this too technical contention, we may notice that Section 397 of the Code of Criminal Procedure enables the High Court to exercise power of revision suo motu and when the attention of the High Court was drawn to a clear illegality the High Court could not have rejected the petition as time barred thereby perpetuating the illegality and miscarriage of justice. The question whether a discharge order is interlocutory or otherwise need not detain us because it is settled by a decision of this Court that the discharge order terminates the proceeding and, therefore it is revisable under Section 397(1), CrPC and Section 397(1) in terms confers power of suo motu revision on the High Court, and if the High Court exercises suo motu revision power the same cannot be denied on the ground that there is some limitation prescribed for the exercise of the power because none such is prescribed. If in such a situation the suo motu power is not exercised what a glaring illegality goes unnoticed can be demonstrably established by this case itself."*

16. The next question is whether the power to initiate suo motu proceedings under Section 397/401 of the Cr.P.C. must be exercised by a Single Judge or by a

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Division Bench. The Statutory Rules on the subject of allocation of roster is found in Order I Rule 1 of the Appellate Side Rules, 1994. Order I Rule 1 deals with matters that are to be dealt with by a Single Judge and Order II Rule 2 deals with matters that are to be dealt with by a Division Bench. Order I Rule 1(8) expressly deals with the subject of criminal revisions and states as follows:

> *"Every criminal revision petition for the exercise by the High Court of its power to revise the proceedings of a criminal court except those specified in Rule 2(12)."*

17. Thus, it would be apparent that "*every*" criminal revision petition for the exercise of power under Section 397 of the Cr.P.C. must be heard by a Single Judge except those cases covered by Order II Rule 2(12), which are to be heard by a Division Bench. Order II Rule 2(12) deals with the following classes of cases:

> *"Every criminal revision petition for enhancement of any sentence passed on an accused to death or imprisonment for life."*

18. It is not the case of the accused that their case falls within Order II Rule 2(12) of the Appellate Side Rules. Consequently, even as per the Appellate Side

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Rules, these matters must be heard only by a Single Judge and not by a Division Bench.

19. It was, however, sought to be contended that since this is a suo motu proceeding, the matter ought to have been placed before the Chief Justice for prior approval.

20. This contention has absolutely no force. The convention of obtaining the permission of the Hon'ble Chief Justice before initiating suo motu proceeding is applicable to a public interest writ petition initiated suo motu by the High Court. This convention is developed pursuant to the directions of a Division Bench of this Court in Suo Motu W.P.No.8022 of 2011 wherein it was observed as under:

> *"2. Before going into the merits of the case, we would like to express our view with regard to the power of the Hon'ble Judges in initiating writ proceeding suo motu**. There is no dispute that initiation of writ proceeding suo motu, in public interest, is within the competence of every Hon'ble Judge of this Court**, which is the integral part of the constitutional scheme. But, such power is required to be exercised and regulated in accordance with the rules made by the High Court and the norms set keeping in view the administrative instructions issued and roster of sitting prepared by the Chief*

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Justice. While exercising suo motu power of exercising public interest litigation, selfrestraint and judicious exercise is expected to be borne in mind. ***It would be appreciated that as and when any matter of public importance is sought to be brought to the notice of the Court, a reference may be made to the Chief Justice for initiation of action. After such reference is made by any Honble Judge to the Chief Justice for initiation of action, the Chief Justice will examine the matter according to the guidelines formulated by the Supreme Court and after the matter is examined, the same can be placed before the appropriate Bench in accordance with the directive issued in that regard by the Chief Justice for further necessary action****. While exercising power of initiating suo motu writ proceeding in public interest, great care and caution should be taken by the Honble Judge, keeping in mind the directions and observations made by the Supreme Court in a catena of decisions. It would not be proper that as and when any news item is published in the newspaper, the Court will take notice of such news item and treat the same as writ petition suo motu in public interest without referring the matter to the Chief Justice."*

21. It would be apparent from the aforesaid observations that the requirement of obtaining prior permission from the Hon'ble Chief Justice is a convention that was developed in public interest writ petitions under Article 226 of The Constitution of India. There is a good reason for this since it has been the

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practice of this Court, which continues till date, that the roster for all kinds of public interest litigation under Article 226 of The Constitution of India is with the First Bench presided over by the Hon'ble Chief Justice. Consequently, the aforesaid convention was developed to ensure that the Hon'ble Chief Justice was apprised of the intended proceeding sought to be initiated suo motu under Article 226 and directions are sought as to whether the matter ought to be heard by his Bench or by some other Bench.

22. The aforesaid convention has absolutely no application to suo motu proceedings initiated on the Civil or Criminal Side of this Court, which are governed by the Appellate Side Rules. There have been numerous instances of exercise of such power. For example, in the case of ***C.R Rajasekaran Vs. Judicial Magistrate [reported in 2003 (2) CTC 683]***, a letter was written to the High Court by a friend of an accused, who was convicted under Section 228 of the IPC. The letter was entertained as a suo motu revision under Section 397 of the Cr.P.C and the conviction and sentence was set aside as illegal by A.Packiaraj,J.

23. On the Civil Side, we have the decision of M.Srinivasan,J (as he then was) in the case of ***Annapoorni Vs. Janaki [reported in 1994 (1) LW 141]***

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wherein the learned Judge exercised suo motu powers under Section 115 of the Civil Procedure Code and set aside a decree on the ground that it suffered from palpable illegalities. This is in consonance with the Appellate Side Rules, which direct that the exercise of revisional jurisdiction in a criminal or civil matter is to be heard by a Single Judge unless the matter falls within the exceptions indicated therein.

24. It was, however, contended that since the matter involves the prosecution of an MP/MLA ,the matter must be heard by a Division Bench and not by a Single Judge. The attention of this Court was invited to Rule (xiv), which is stated to run as under:

> *"(xiv). If any quash application or revision against discharge is admitted by a Single Judge of the High Court, whether on the petition filed by the MP/MLA or by a co-accused in that case, the Principal District Judge should inform the same to the Administrative Committee, which in turn shall bring the matter to the knowledge of the Hon'ble Chief Justice. The Hon'ble Chief Justice being the Master of the Roster, may thereafter assign the case to his own board or to any other Division Bench for disposal."*

25. This Court has tried in vain to find the source of this alleged Rule, as it does not exist in any of the known rules ie., the Appellate Side Rules, the Original

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Side Rules, the Writ Rules or any other Rules of this Court. It now appears that this alleged Rule (xiv) is not a Rule at all, but is paragraph (xiv) of a summary of recommendations made by the Criminal Rules Committee of this Court dated 13.10.2020 in its Report to the Supreme Court in the case of ***Ashwini Kumar Upadhyay Vs. Union of India [W.P. (Civil) No.699 of 2016]***. This report of the Criminal Rules Committee remains unimplemented till date.

26. Despite this, it appears that the accused in this case and in the other suo motu criminal revisions have been repeatedly attempting to pass off the aforesaid paragraph in the summary of recommendations as an alleged statutory rule both before this Court as well as the Supreme Court. In the order dated 29.1.2024 of the Bench presided over by their Lordships the Hon'ble Mr.Justice Hrishikesh Roy and the Hon'ble Mr.Justice Prashant Kumar Mishra in S.L.P. Criminal (Diary) No. 3245 of 2024 passed in one of the connected Suo Motu Revisions concerning Mr.KKSSR Ramachandran, it has been observed as follows:

> *"3. The senior counsel* ***would refer to the Report of the Criminal Rules Committee on Special Courts For Trial of Criminal Cases involving MP/MLAs and more particularly the Rule xiv thereof****. It is thus contended that without assignment of the case by Hon'ble Chief Justice of the High*

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Court, the learned Judge could not have exercised sou motu jurisdiction in respect of the discharge order passed by the learned Special Judge on 20.07.2023 favouring the accused.

4. The relevant Rule xiv is extracted as hereunder:-

'xiv. If any quash application or revision against discharge is admitted by a Single Judge of the High Court, whether on the petition filed by the MP/MLA or by a co-accused in that case, the Principal District Judge should inform the same to the Administrative Committee, which in turn shall bring the matter to the knowledge of the Hon'ble Chief Justice. The Hon'ble Chief Justice being the Master of the Roster, may thereafter assign the case to his own board or to any other Division Bench for disposal'."

27. This Court is constrained to call the bluff of the accused and observe that the aforesaid submissions before the Supreme Court, which were sought to be reiterated before this Court, are completely false and misleading and can be exposed by doing nothing more than extracting the following passages from the Report of the Criminal Rules Committee which is available in the public domain:

"Pursuant to the Order dated 16.9.2020 passed by the Hon'ble Supreme Court in W.P.(C)No.699 of 2016 (Ashwini Kumar Upadhyay vs. Union of India and others), the Hon'ble Chief Justice referred the matter to the Criminal Rules Committee for studying the functioning of the Special Courts for trial of Criminal Cases involving MPs and MLAs, and to

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suggest ways and means to ensure expeditious disposal of the criminal cases pending against them. We were also requested to look into the suggestions made by Sri.VijayHansaria, learned amicus curiae, which have been set out in the order of the Supreme Court dated 16.09.2020. ***In paragraph 19 of the order dated 16.09.2020, the Hon'ble Chief Justice was required to send his comments and suggestions, preferably within a week and therefore, we submitted an interim report to the Hon'ble Chief Justice on 25.09.2020 with a request to forward the same to the Secretary General, Supreme Court of India and to the learned amicus curiae. Accordingly, our interim report was communicated by the Registry on 26.09.2020."***

28. It will be apparent that the directions of the Supreme Court in its order dated 16.9.2020 were to call for a report from the High Court to suggest ways and means to expedite the cases against MP/MLA's. Pursuant to the aforesaid order, the Hon'ble Chief Justice requested the Criminal Rules Committee of this Court to examine the matter and prepare a report to be forwarded to the Supreme Court for further action. The Criminal Rules Committee examined the matter and made the following suggestions:

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*"**OUR SUGGESTIONS***

i) *The Government Orders constituting the Special Court No.II, Chennai and Assistant Sessions Court for MP/MLAs cases should be recalled, since these Courts are simply dealing with the defamation cases which can be dealt with only by the jurisdictional courts of sessions.*

ii) .....

iii) .....

iv) .....

v) ……

vi) ……

vii) ……

viii) ……

ix) ……

x) …….

xi) …….

xii) …….

xiii) ……

xiv) *If any quash application or revision against discharge is admitted by a Single Judge of the High Court, whether on the petition filed by the MP/MLA or by a co-accused in that case, the Principal District Judge should inform the same to the Administrative Committee, which in turn shall bring the matter to the knowledge of the Hon'ble Chief Justice. The Hon'ble Chief*

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Justice being the Master of the Roster, may thereafter assign the case to his own board or to any other Division Bench for disposal

xv) ……

xvi) ……

xvii) ……

xviii) ……

xix) ……

xx) ……

In our opinion, if the above measures are implemented in letter and spirit, we will be able to achieve the Hon'ble Supreme Court's object of decriminalisation of Legislatures.

S/d
P.N PRAKASH, J
G. JAYACHANDRAN, J
N. SATHISH KUMAR, J"

The Report of the Hon'ble Criminal Rules Committee on Special Courts for Trial of Criminal cases involving MP/MLAs was approved by ***The Hon'ble The Chief Justice, High Court, Madras,*** *on 08.10.2020 with the following endorsement:- RG - Circulate amongst the Hon'ble Administrative Committee Members for discussion in the next meeting of the Administrative Committee. A copy be sent to the learned Amicus Curiae appointed by the Hon'ble Apex Court for his suggestions and further deliberations on the subject matter. This report may be placed before the Hon'ble Apex Court for perusal.*

Sd/- A.P.SAHI, CJ /08.10.2020."

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29. Pursuant to the aforesaid order of the Hon'ble Chief Justice, the Report was forwarded to the learned Amicus Curiae for his comments and "*further deliberations on the subject matter"* meaning thereby that the suggestions were approved by the Chief Justice for being forwarded to the Supreme Court. Thus, the suggestion of the Rules Committee remained a suggestion. The Amicus Curiae, vide his report dated 02.11.2020, indicated that he did not agree with certain aspects of the Report of this Court, which are indicated therein. The Report of this Court was placed before the Supreme Court and the matter remains pending as on date.

30. This Court is at loss to understand as to how Suggestion No.14 in the Report of the Criminal Rules Committee is being nonchalantly passed off as Rule (xiv) before this Court as well as the Supreme Court. This Court has no hesitation in concluding that Suggestion No.14 passed off as Rule (xiv) is clearly misconceived and ought to be rejected and is accordingly, rejected.

31. Lastly, this case has been assigned to this Bench by the Hon'ble Chief Justice vide an order dated 07.2.2024 as the Master of the Roster. In accordance

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with the judgment of the Constitution Bench of the Supreme Court in the case of ***State of Rajasthan Vs. Prakash Chand [reported in 1998 (1) SCC 1]*****,** that has to be the last word on the question of jurisdiction. This Court was required to dwell on these aspects at length lest an impression is given that the Court was usurping jurisdiction, which it did not possess.

B. BACKDROP TO THE APPLICATION FOR WITHDRAWAL

32. This case is unusual in several aspects. It reveals a well-orchestrated plot by several high functionaries, including those holding Constitutional positions to subvert the criminal justice system. A recapitulation is necessary to appreciate the circumstances, under which, the statutory power under Section 321 of the Cr.P.C was exercised in favor of the accused persons.

33. Mr.O.Paneerselvam (A1) was inducted into the Tamil Nadu Cabinet as the Minister for Revenue on 19.5.2001 after being elected as an MLA from the Periakulam constituency on an AIADMK ticket in the May 2001 Assembly Elections. He was, for a brief time, the Chief Minister of Tamil Nadu between 22.9.2001 and 01.3.2002. He was thereafter made the Minister for Public Works on 02.3.2002 and demitted that portfolio on 12.5.2006 when the AIADMK was

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voted out of power in the State of Tamil Nadu. Between 2006 and 2011, he was a Member of the Tamil Nadu Legislative Assembly in the opposition.

34. The case of the prosecution is that between 19.5.2001 and 12.5.2006, while holding the posts of Chief Minister as well as Minister, Mr.O.Paneerselvam (A1) had accumulated properties and pecuniary resources way beyond his known sources of income. After conducting a discrete inquiry and upon finding a prima facie case, the DVAC registered a case in Crime No.14 of 2006 on 07.9.2006 under Section 13(2) read with 13(1)(e) of the POCA. One Mr.Kulothunga Pandian - the then Deputy Superintendent of Police was assigned the investigation vide proceedings dated 07.9.2006. The IO conducted a detailed investigation and filed a final report concluding that A1 had accumulated wealth and other pecuniary resources in his name as well in the name of his wife, son, his brothers and their wives, which were disproportionate to his known sources of income to the extent of Rs 1,72,03,116/- ie., **374 % times** higher than the known sources of income. The final report was, thereafter, sent to the Speaker of the Tamil Nadu Legislative Assembly, who, by proceedings dated 09.6.2009, granted sanction for prosecution under Section 19(1)(b) of the POCA.

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35. The final report together with the order of sanction granted by the Speaker was filed before the CJM, Theni. The case was taken on file as Special S.C.No.3 of 2009 and by an order dated 30.7.2009, summons was issued to the accused for their appearance on 25.8.2009. The matter appeared to have lingered on for their appearance till May 2011, when fortune smiled on A1 by returning the AIADMK back to power in the State in the May 2011 Assembly Elections. Shortly prior to that on 03.5.2011, GO.Ms.No.254 Home (Courts II) Department was issued constituting a Special Court at Madurai for Trial of Cases under the POCA.

36. A1, who was back on the political saddle as the Finance Minister, lost no time in setting the entire Investigation Machinery as well high Constitutional functionaries like the then Advocate General and the then Public Prosecutor into finding out ways and means to diffuse and self-destruct the prosecution against him. It will be recalled that the investigation had been completed and the CJM, Theni had taken cognizance in 2009 itself. However, now that the police force was directly under the control of the Executive, of which, A1 was now an integral part, a plan was devised whereby the DVAC would be used to fish out the defence material and thereafter file a supplementary report giving a clean chit to A1 and his family.

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37. The aforesaid modus operandi was immediately put into operation on 02.8.2011 by filing a petition, which was rather modestly titled as "humble petition" of the accused for further investigation under Section 173(8) of the Cr.P.C. In this petition, it was alleged that the earlier IO had not considered their explanations properly and that the law laid down by this Court in the case of ***State Vs. Ponmudy [reported in 2007 (1) MLJ (Cri) 100]*** was to the effect that the income tax returns would clinch the issue and the properties acquired by others would not be the properties of the accused. The prosecution filed a counter affidavit opposing the petition contending that the opportunity to explain the sources of income could be given only during trial. However, the CJM, Theni allowed Cr.M.P.No.727 of 2011 by order dated 04.10.2011 and directed further investigation. The reasons recorded by the CJM, Theni are as under:

> *'In this stage this court of the considered opinion that the respondent has not followed the principle not giving opportunity to all the accused before filing final report or before framing charge and failing to consider that all the accused had partitioned in 1994 and their income and purchase of properties were accepted by the tax authorities.'*

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38. As has been pointed out in the order dated 31.8.2023 while initiating suo motu proceedings, this order of the CJM, Theni defied several rudimentary principles that even a novice in criminal law would not overlook. For instance, the CJM, Theni stated that an accused was entitled to be heard before filing a final report forgetting for a moment that the case before him was not a disciplinary enquiry, but a criminal investigation. The second reason was that the accused were not given a right of hearing before framing charges. This reason is a ruse and is clearly incredulous since the framing of charges is the job of the Court and not the IO. That apart, this conclusion, on the face of it, is completely unsustainable since the CJM, Theni was obviously aware that no charges had been framed in the case.

39. Having passed an order for further investigation on 04.10.2011 on the petition filed by the accused, the CJM, Theni transferred the case to the Special Court, Madurai vide order dated 14.10.2011. On the same day, the prosecution filed a petition before the CJM, Theni for the return of documents to carry out further investigation. In view of the earlier order, the CJM, Theni returned the petition for its presentation to the Special Court, Madurai, which was, by then, the jurisdictional Special Court. When the records reached the Special Court at Madurai, it obviously smelt a rat and realised that something was seriously amiss

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when the prosecution represented the petition for return of documents before it. The Special Court, Madurai found that the CJM, Theni had acted illegally by passing an order for further investigation when it had lost jurisdiction by virtue of the constitution of the Special Court at Madurai. Accordingly, the Special Court, Madurai dismissed the petition for the return of documents holding that since the order passed under Section 173(8) of the Cr.P.C was invalid as it was passed by a Court having no jurisdiction, the question of returning documents to facilitate further investigation did not raise.

40. Finding that the Special Court, Madurai had seen through their game, the accused rushed to the Madurai Bench of this Court in Crl.O.P (MD).No.15425 of 2011 and sought for transfer of the case from the Special Court, Madurai alleging that the learned Special Judge was biased and that they would not get fair justice in his Court. A learned Single Judge of this Court, by order dated 20.1.2012, found that the Special Court at Madurai had rejected a copy application of A4 observing that the petition was not maintainable and had, in fact, insisted on the presence of the accused notwithstanding the fact that the petitions under Section 317 of the Cr.P.C had been filed. In these circumstances, the learned Single Judge of this Court observed that if the request of the accused was not allowed, it would

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create much embarrassment. This Court went on to observe that the levelling of allegations would cause embarrassment to the learned Special Judge at Madurai and that transfer ought to be made without going into the merits or demerits of the petition for transfer.

41. In other words, the learned Single Judge of this Court thought it fit to transfer the case from the Special Court, Madurai to the CJM, Sivaganga on a request made by the accused even without examining as to whether the grounds for transfer were bonafide. As this Court observed earlier, there are several eyebrow-raising features in this order, which could be culled out but for the requirement of observing judicial decorum and equipoise.

42. Mr.Aabad Ponda, learned Senior Counsel appearing on behalf of the second respondent (A1) would contend that the order of this Court dated 20.1.2012 in Crl.O.P (MD).No.15425 of 2011 did not touch the further investigation done pursuant to the order of the CJM, Theni and that consequently, the said issue cannot be gone into in the present proceedings.

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43. This Court is unable to countenance this submission. It should be pointed out that the proceedings in Crl.O.P(MD).No.15425 of 2011 were initiated by the accused seeking for transfer of proceedings complaining that they would not get fair justice in the Special Court at Madurai. Obviously, the order of further investigation could not and was not the subject matter of challenge since the petition for further investigation was moved by the accused themselves. Consequently, it is hard to fathom as to how the accused, who moved this Court in Crl.O.P(MD).No.15425 of 2011 would be aggrieved by the direction for further investigation, which was sought at their behest. Resultantly, this Court could not and did not have the occasion to go into the validity of the order for further investigation in those proceedings and the said order cannot be an impediment in these proceedings.

44. Pursuant to the order of this Court dated 20.1.2012 in Crl.O.P.(MD) No.15425 of 2011, the case files were transferred by the Special Court, Madurai to the CJM (Special Court), Sivagangai and renumbered as Special C.C.No.7 of 2012. In the meantime, the prosecution eagerly implemented the order of the CJM, Theni by completing the further investigation. The prosecution once again approached the said Court and filed a petition under Section 164(5) of the Cr.P.C praying that the CJM, Theni should record the statement of 34 witnesses. It

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appeared that the CJM, Theni recorded the statements of the witnesses when the case was actually pending before the jurisdictional Court at Sivagangai. These were later placed on record before the CJM, Sivagangai by way of a petition under Rule 344(7) of the Criminal Rules of Practice on 21.8.2012.

C. THE ROLE OF THE SPEAKER AND THE STATE GOVERNMENT

45. Having stage-managed a transfer from the Special Court, Madurai to the CJM, Sivagangai, the stage was now set for the State Government, of which A1 was now an integral part, to swing into action and self-destruct the prosecution. A new IO - Mr.K.Esakki Ananthan was appointed. The present IO lost no time in setting about achieving the goal of the political masters to give a clean chit to A1 and his family and get them out of the clutches of the law.

46. The carefully curated "*further investigation report*" of the IO - Mr.K. Esakki Ananthan was sent by the DVAC to the Government of Tamil Nadu on 05.10.2012. From the proceedings of the Speaker dated 27.10.2012, it is seen that this further investigation report was sent to the then Public Prosecutor, High Court, Chennai and the then Advocate General of Tamil Nadu. It is hardly surprising that

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these functionaries readily agreed with the IO - Mr.K.Essaki Ananthan. After obtaining the opinion of these high functionaries on 16.10.2012 and 19.10.2012 respectively, the files were placed before the Speaker of the Tamil Nadu Legislative Assembly who, incidentally, belonged to the same party as A1.

47. The aforesaid developments bear testimony to the vested interests of the Executive in seeing to it that the proceedings before the Special Court were short circuited at the earliest available opportunity. It is extremely strange and puzzling that the report upon further investigation was not first placed before the Court namely the CJM, Theni, which ordered such investigation, but was, instead, placed before the Sanctioning Authority ie., the Speaker.

48. In the decision in the case of ***Vinay Tyagi v. Irshad Ali [reported in 2013 (5) SCC 762],*** the Supreme Court ventured to point out as under:

> *"42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the court shall*

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discharge an accused in compliance with the provisions of Section 227 of the Code."

49. This was reiterated in a later decision in the case of ***Luckose Zachariah Vs. Joseph Joseph [reported in 2022 SCC Online SC 241]*** wherein it was held as under:

> *"16. In view of the clear position of law which has been enunciated in the judgments of this Court, both in Vinay Tyagi (supra) and VinubhaiHaribhaiMalaviya (supra), it is necessary for the Magistrate, to have due regard to both the reports, the initial report which was submitted under Section 173(2) as well as the supplementary report which was submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence."*

50. This being the legal position, it is extremely strange that the report upon further investigation was first placed before the Government followed by the then Public Prosecutor, the then Advocate General and finally the Speaker even before it was filed before the Special Court.

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51. The whole of the proceedings of the Speaker dated 27.10.2012 runs into just 6 unnumbered paragraphs, of which, the sixth paragraph alone contains the reasons. The reasons or the lack of it are as under:

> *'Whereas, I, P. Dhanabal, Speaker, Tamil Nadu Legislative Assembly after personally and carefully examined the entire records the materials ie., evidence collected during investigation and all relevant materials collected during further investigation and the previous sanction accorded and, am satisfied and come to the conclusion that the material placed before me* ***does not show the commission of any offence in the above case and*** *therefore the sanction already accorded in the reference first cited is hereby revoked."*

52. The aforesaid observations are striking and surprising. The Speaker was obviously aware that a Court of competent jurisdiction had already applied its mind and taken cognizance of the final report finding a prima facie case to proceed against the accused. This Court has no hesitation in concluding that the Speaker committed a grave act of constitutional impropriety observing that there was no material to show the commission of any offence, which was an indirect way of sitting on appeal over a judicial order taking cognizance of the offence after finding that the final report did disclose the commission of an offence. The order taking cognizance is a judicial order and constitutional propriety demanded that the

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Speaker took his hands off when a Court of competent jurisdiction was seized of the lis.

53. When the matter was pending before the Special Court, the proper course was to place the report on further investigation before that Court so as to enable it to apply its mind as to whether a charge ought to be framed or not. Instead, the eagerness and desperation, with which, the DVAC was working to oversee the diktat of the Government, led it to place the material before the Speaker and obtain an observation that no offence had been committed. As this Court had observed in its order dated 31.8.2023, the conclusions in the order of the Speaker leads this Court to ponder as to whether A1 - Mr.O.Panneerselvam was under the impression that the Special Court at Sivagangai was temporarily functioning out of the Speaker's Chamber at Fort St George.

54. The Speaker observed that he has examined the ***evidence collected during investigation*** *and all relevant materials collected during further investigation and the previous sanction accorded*. It will be recalled that the earlier final report of the IO - Mr.N.Kulothunga Pandian, the then Deputy Superintendent of Police, Vigilance and Anti-Corruption, Madurai had clearly

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indicated the commission of offences by the accused. Whether this final report was right or wrong was a matter to be decided by the Special Court and not by the Speaker. Having examined the records, this Court finds that it is impossible for any reasonable person, who has read the final report of the IO - Mr.N.Kulothunga Pandian, to conclude that there was no case for prosecution against the accused.

55. Mr.R.Srinivas, learned Senior Counsel appearing on behalf of respondents 5 and 6 contended that there is nothing wrong in the Speaker reviewing his earlier order granting sanction under Section 19 of the POCA. To substantiate this contention, the following decisions were cited :

(i) ***Mohammed Iqbal Bhatti (cited supra);***
(ii) ***Nishant Sareen (cited supra); and***
(iii) ***Kazilhendup Dorji (cited supra).***

56. The decision in ***Mohammed Iqbal Bhatti*** was a case concerning Section 197 of the Cr.P.C., where the Competent Authority ie., the Minister of Rural Development had refused sanction earlier, had later reviewed his decision and granted sanction. When the order granting sanction was put to challenge, the question before the Court was as to whether such refusal could be reviewed later

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for the purposes of according sanction. This was, therefore, not a case where a Court had taken cognizance post the grant of sanction and an order revoking sanction was passed when the Court was seized of the lis.

57. The second decision relied upon by Mr.R.Srinivas, learned Senior Counsel is ***Nishant Sareen,*** which was also a case where a proceeding refusing sanction was reviewed and an order was passed according sanction. This decision does not deal with a situation as in the case on hand where the Speaker sought to pull the plug on the Special Court midway through proceedings. At the risk of repetition, the decisions in ***Mohammed Iqbal Bhatti*** and ***Nishant Sareen*** were cases where the matters were not before the Court and were still at the stage of investigation. Where investigation is completed and a Court of competent jurisdiction is seized of the lis, it would be a clear case of interference with the judicial process if the Speaker or any other authority is permitted to tinker around with the order of sanction so as to short circuit the proceedings before the Court.

58. The third decision cited by Mr.R.Srinivas, learned Senior Counsel in ***Kazilhendup Dorji*** has no direct application since it dealt with the withdrawal of consent under Section 6 of the Delhi Special Police Establishment Act, 1946. Close

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to home is the decision in the case of ***D.L.Rangotha Vs. State of M.P [reported in 2015 (12) SCC 733]***, which was a case under the POCA wherein it was held that the withdrawal of sanction was per-se without jurisdiction since the sanction once granted cannot be withdrawn/revoked.

D. THE PETITION FOR WITHDRAWAL

59. Armed with the order of the Speaker dated 27.10.2012 purporting to revoke the sanction granted under Section 19(1) of the POCA, the State Government addressed a letter to the Director of the DVAC on the very next day ie., 28.10.2012. The State Government appeared to have been terribly desperate to bury the case against its Finance Minister (A1), which is obvious from the following observations made in the said letter :

> *"I am also to request you to send a report to Government after filing the final report before the Court of Chief Judicial Magistrate/Special Judge, Sivagangai before 04.11.2012 as mentioned in the final report"*

60. Thus, it is obvious that the DVAC and the State Government had already orchestrated their move to destruct the prosecution and the diktat to the

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subsequent IO to file the further investigation report was merely a tool to facilitate this object.

61. On 02.11.2012, the IO - Mr.K.Esakki Ananthan obediently filed the **final report on further investigation,** purportedly under Section 173(8) of the Cr.P.C. before the CJM, Sivagangai. At the foot of page 5 of this report, the IO observed as follows :

> *"Since further investigation was ordered in this case under Section 173(8) Cr.P.C the earlier Final Report filed by the former I.O has become infructuous.'*

62. As stated earlier, this conclusion, on the face of it, is grossly illegal and smacks of grave impropriety on the part of the IO - Mr.K.Esakki Ananthan. It is settled law that a supplementary report arising out of further investigation under Section 173(8) of the Cr.P.C is in addition to the final report already filed under Section 173(2) of the Cr.P.C. and does not wipe out the earlier report.

63. In the decision in the case of ***Vinay Tyagi*****,** the Hon'ble Supreme Court observed as under:

> *'However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the*

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> *threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is filed to wipe out the report and its effects in law.'*

64. Having thus wiped out the earlier report by a deliberate design, the IO - Mr.K.Esakki Ananthan handed over a clean chit to the accused and in fact, said:

> *'The Government accepted the further investigation report of the Directorate of Vigilance and Anti-Corruption, Chennai and dropped further action.'*

65. Investigation of an offence is a statutory duty of the police and nobody, including the Courts, can dictate as to how an investigation should be conducted. In this case, the IO - Mr.K.Esakki Ananthan very candidly observed that the *Government has accepted the further investigation report* implying thereby that he was acting under the diktat of the Government, of which, A1 was very much an integral part and he was extremely interested in securing a clean chit on behalf of A1. It is unfortunate that the Government chose the DVAC to do the dirty work of mopping up the prosecution against the accused.

66. It is seen from the records that on 02.11.2012, the Public Prosecutor

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before the Special Court filed a petition under Section 321 of the Cr.P.C. in Cr.M.P 1372 of 2012. The averments in this petition make interesting reading. The Special Public Prosecutor candidly stated that the Government, vide letter dated 28.10.2012, "*ordered to file the above final closure report*" and report to the Government immediately. It is, therefore, obvious that the final closure report was a diktat from the Government to get A1 out of the clutches of the law and that the DVAC was merely a tool to facilitate this object.

67. As seen above, the IO - Mr.K.Esakki Ananthan claimed that his further investigation had wiped out the earlier final report. It appears that the Public Prosecutor had gone a step further. In his petition under Section 321 of the Cr.P.C., he stated as follows:

> *"It is further submitted that, the cognizance taken in the above case on the previous investigation report submitted by the then investigation officer has become infructuous and that decision has to be taken whether materials on records are sufficient to take cognizance on fresh final report submitted on further investigation by the present Investigation Officer."*

68. This conclusion is, to say the least, bizarre and startling. To say that the cognizance taken by the Court on a final report had become infructuous on account

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of a supplementary charge sheet filed under Section 173(8) of the Cr.P.C is quite simply shocking. As this Court had observed earlier, that the CJM, Sivagangai has actually accepted this incredible legal proposition, which is a reflection of the abysmal depths, to which, our Special Courts have sunk.

E.THE ORDER OF THE SPECIAL COURT

69. We now come to the Special Court ie., the CJM, Sivagangai. The Special Court was clear a respecter of persons for it sent an undated "notice" not to the accused, but to the counsel for the accused asking him to be present before the Court on 29.11.2012. It is seen from the records that on 29.11.2012, the arguments of the Additional Public Prosecutor were heard on the petition for withdrawal of prosecution under Section 321 of the Cr.P.C and on 03.12.2012 the CJM, Sivagangai allowed the petition and discharged the accused.

70. In a cryptic order, the CJM, Sivaganga referred to the order of the Speaker and the further investigation report of the IO – Mr.K.Esakki Ananthan and then poured encomiums on the Additional Public Prosecutor and thanked him for his "sincere efforts". The most shocking aspect is that the Special Court also saw to it that the final report of the IO – Mr.N.Kulothunga Pandian under Section 173(2)

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of the Cr.P.C., which was earlier taken cognizance of, was clandestinely swept under the carpet by giving it a quiet and indecent burial. In other words, the CJM accepted the bizarre stand of the Prosecutor that the supplementary final report had rendered the earlier report infructuous. This singular blunder on the part of the Special Court is sufficient to render its order patently perverse and illegal.

71. The principles governing the withdrawal of prosecution under Section 321 of the Cr.P.C are well settled. In ***Sheonandan Paswan,*** the Supreme Court held that the power conferred on the Prosecutor to withdraw from the prosecution must be a controlled or a guided power or else it will fall foul of Article 14 of The Constitution of India. It was held that such power can be exercised only with the consent of the Court, so that the Court can ensure that the power is not abused or misused or exercised in an arbitrary or fanciful manner. Once the charge sheet is filed and the prosecution is initiated, it is not left to the sweet will of the State or the Public Prosecutor to withdraw from the prosecution as has been done in this case. Bhagwati,C.J., who spoke for the Court, observed that the paramount consideration must always be in the interest of administration of justice, which is the touchstone, on which, the question as to whether an application for withdrawal from the prosecution can be sustained, should be determined. That apart, the ultimate test to

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be applied is as to whether the requirement of public justice outweighs the legal justice of that case, justifying the grant of permission to withdraw from the prosecution in the larger interest of public justice.

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72. In ***K.Ajith,*** the Supreme Court culled out the principles governing the satisfaction requisite before the exercise of discretion under Section 321 of the Cr.P.C. as under:

> *(a) "The function of the public prosecutor has not been improperly exercised or that it is not an attempt to interfere with the normal course of justice for illegitimate reasons or purposes;*
>
> *(b) The application has been made in good faith, in the interest of public policy and justice, and not to thwart or stifle the process of law;*
>
> *(c) The application does not suffer from such improprieties or illegalities as would cause manifest injustice if consent were to be given;*
>
> *(d) The grant of consent sub-serves the administration of justice; and*
>
> *(e) The permission has not been sought with an ulterior purpose unconnected with the vindication of the law which the public prosecutor is duty bound to maintain;*
>
> *While determining whether the withdrawal of the prosecution subserves the administration of justice, the court would be justified in scrutinizing the nature and gravity of the offence and its impact upon public life especially where matters involving public funds and the discharge of a public trust are implicated;"*

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73. A reading of the order of the Special Court discloses that it has paid lip service to the aforesaid principles. The Special Court first set out the decision of the Supreme Court in the case of ***D.S.P., Chennai Vs. K.Inbasagarran [reported in 2006 (2) LW (Cri) 523]*** and observed that the accused must be given an opportunity before being held guilty under the POCA. This decision could have been pressed into service only if the Special Court had let the matter go to trial, which is something neither the Special Court nor the prosecution nor quite obviously the accused was willing to do.

74. The Special Court then made a reference to the decision of the Punjab & Haryana High Court in the case of ***Gian Prakash Sharma Vs. CBI [reported in 2004 Cri LJ 3817]*** and observed that "*the Court has to accept the closer report submitted by the investigation agency*". But, on a closer reading of this decision, the learned Single Judge of the Punjab and Haryana does not appear to have laid down any such startling proposition as observed by the Special Court. That was a case where the CBI had filed a closure report because the trap witness and the eye witness had not supported the prosecution version and the statement of the Trap Laying Officer also differed from the statement of other witnesses regarding the

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mode of transport used by the members of the Trap Laying Party. In these circumstances, the direction of the Trial Court refusing closure and directing re-investigation was found to be unsustainable.

75. Having set out the aforesaid decisions, the Special Court surprisingly observed as under:

> *"As already stated, the Hon'ble Chief Judicial Magistrate/Special Judge, Theni took cognizance of the first final report and a case was taken on file. Subsequently, the above case was transferred to this Court. This Court cannot make any order on the basis of the additional further report at present. The report can be considered only at the time of framing charges or to discharge the accused."*

76. Having made the aforesaid observations, this Court is at a loss to understand as to how the Special Court could have blindly accepted the view of the Speaker and the then Public Prosecutor without testing the veracity of the material collected during further investigation. The aforesaid paragraph, extracted supra, is a candid observation that the Special Court had not even applied its mind and instead, it cast an eye on the report filed on further investigation, which is why, it

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had earlier observed that the said report "*could be considered only at the time of framing charges*".

77. A further reading of the order of the Special Court disclosed the reasons that are extremely strange and puzzling. The Special Court gave encomiums to the Public Prosecutor for having *"sincerely gone into the entire factors for the perusal of this Court."* It then observed as follows:

> *"To prove that he has gone to the entire investigation material collected by the investigation officer he has signed in the final report."*

78. The Special Court appears to have been in a dream world of its own for it stated that since the Public Prosecutor signed the final report, it must be taken that he had gone through the entire material. One is tempted to ponder as to how contemporary administrative law principles would have fared if this bizzare logic is extended to those areas.

79. The Special Court then made the following observations:

> *"In this case further investigation done by the Deputy Superintendent of Police is more scientific and Mathematical in*

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nature and he examined number of witness using 164(3) that is through Chief Judicial Magistrate, the statement of witnesses were recorded by him."

80. This Court is at loss to understand as to how the Special Court could arrive at this conclusion since it had, in the earlier part of its order extracted supra, observed as under:

"*This Court cannot make any order on the basis of the additional further report at present. The report can be considered only at the time of framing charges or to discharge the accused."*

81. Did the Special Court possess supernatural powers to see through the "*scientific and mathematical*" niceties in the report, when it had admittedly not even considered the said supplemental final closure report and the accompanying materials, but had deferred them for consideration at the stage of framing charges? In venturing to make these observations, the mysterious forces, which took over this case since May 2011, appear to have overawed even the common sense possessed by the Special Court.

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82. The Special Court then ventured to observe that the Speaker of the Assembly had accorded sanction for withdrawal and that he has "*made corrections in the order in his own handwriting*." Unfortunately, the Special Court appears to have been engaging in needless graphology instead of satisfying itself on the parameters of Section 321 of the Cr.P.C. The order of the Special Court is an apology of an order devoid of even a speck of intelligible reasoning. The Special Court appears to have also mortgaged its satisfaction to the Speaker, the then Public Prosecutor and the subsequent IO, which is plainly illegal. Having observed as above, the Special Court placed the icing on the cake by proceeding to discharge all the accused in their absence.

83. The Special Court, by chance or by deliberate design, failed to see through the game plan of the accused. It also failed to see that the petition under Section 321 of the Cr.P.C. was backed solely by an ulterior purpose to short circuit the prosecution to get A1 and his family off the hook. That apart, there is no finding at all as to how the withdrawal of prosecution would subserve the ends of justice. If the sole purpose was to subserve the interests of the Government of the day as well as its Minister - A1 and his family, there is no finding as to how letting A1 and his family off the hook from facing prosecution for corruption would subserve public

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interest. This Court has no hesitation in concluding that there is no public interest at all in short circuiting corruption cases against politicians. Such orders, which are meant to facilitate politicians to violate the rule of law, would constitute a clear abuse of judicial power by the Court

84. As was pointed out by the Constitution Bench of the Supreme Court in the case of ***Manoj Narula v. Union of India [reported in 2014 (9) SCC 1]*** as under **:**

> ***"****A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalisation of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law",*

if politicians in this State start pocketing Investigation Officers and Judges of the Special Courts after they come to power, no case of corruption can go on against them.

85. The result of the aforesaid discussion is that this Court has no hesitation in observing that the exercise of power by the Special Judge - Mr.S.Karuppiah to

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withdraw the prosecution against A1 and his family smacks of gross impropriety and abuse of judicial power. The order of the Special Court dated 03.12.2012 does not subserve, but is rather subversive of the rule of law.

86. For all the above reasons, the order dated 03.12.2012 deserves and is to be set aside as it is a patently illegal and grossly improper exercise of judicial discretion by the Special Court.

87. It is well settled that where a Criminal Court has passed an order, which smacks of brazen illegality and its order is vitiated by manifest perversity leading to gross miscarriage of justice, the High Court cannot and must not remain a mute spectator. The power of superintendence envisaged under The Constitution of India and under the Cr.P.C. is to ensure that the Trial Courts act in accordance with law. The conferment of suo motu revisional power under Section 397 of the Cr.P.C. is envisaged to serve this wider salutary purpose. It is to ensure that the administration of justice is not reduced to a farce particularly in cases where the prosecution and the accused join hands to achieve that result as was pointed out in the case of ***Krishnan Vs. Krishnaveni [reported in (1997) 4 SCC 241]*** as under **:**

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> **"***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."*

88. It was, however, sought to be contended on behalf of the accused that since the prosecution was terminated in 2012, it would be unfair to set the clock back and direct trial to proceed against them.

89. This contention is clearly without substance. It must be remembered that A1 continued to remain as a Minister and was, for some time, a Deputy Chief

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Minister of this State till the elections in May 2021. It would be foolhardy to assume that the Government, which took such keen interest in seeing to it that criminal prosecution was derailed, would have come forward in the high name of justice to file appeals against the orders discharging A1 and his family. The High Court, unlike the Special Court, cannot afford to remain in Utopia. A1 and his family were direct beneficiaries of the string of illegalities that have been adverted to supra. It must, therefore, follow that it does not lie in the mouth of these persons to plead delay as a reason to seek umbrage and maintain the plainly illegal order of the Special Court.

VI - CONCLUSION AND DIRECTIONS

90. The edifice of our system of administration of justice is rooted in public confidence in our Courts. Where the law has been deliberately ambushed and the streams of justice is polluted to subvert the course of justice, this Court considers it a constitutional duty to interfere. This Court does so accordingly. This case echoes the sentiments of the following lines :

"In shadows deep, the mighty play,

While justice bends, they slip away.

With whispered lies and gilded charms,

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They weave their webs, escape from harms.

But truth will rise, a steady flame,

To pierce the dark and call their name.

For power's grip may seem so tight,

Yet justice waits to claim the light."

91. In the result,

(a) The order dated 03.12.2012 passed by the Chief Judicial Magistrate/ Special Judge, Sivagangai in Cr.M.P.No.1372 of 2012 permitting the prosecution to withdraw from the case and discharging the accused in Special C.C.No.7 of 2012 is set aside;

(b) Consequently, Special C.C.No.7 of 2012 is restored to the file of the Chief Judicial Magistrate/ Special Court, Sivagangai;

(c) Since respondents 3 & 7 (A2 and A6) died in the interregnum, the proceedings against them shall stand abated;

(d) Pursuant to the constitution of the Special Court for MP/MLA cases, the jurisdictional Court is now the Court of Principal District and Sessions Judge (Special Court for Trial of MP/MLA Cases) at

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Madurai. The Chief Judicial Magistrate/Special Judge, Sivagangai is now required to transmit the entire records to the Court of the Principal District and Sessions Judge (Special Court for Trial of MP/MLA Cases) at Madurai within four weeks from today ie., on or before 27.11.2024;

(e) Upon receipt of the records, the Court of the Principal District and Sessions Judge (Special Court for Trial of MP/MLA Cases) at Madurai , shall issue summons to the respondents 2, 4, 5, 6 & 8 (A1, A3, A4, A5 & A7) and thereafter proceed further in accordance with law;

(f) On the appearance of the said accused, the Special Court at Madurai shall obtain a bond under Section 88 of the Cr.P.C with or without sureties as the Special Court may deem fit and necessary;

(g) If any of the said accused adopt any dilatory tactics, it is open to the Special Court at Madurai to cancel the bail and remand the accused to custody as laid down by the Supreme Court in the case of ***State of U.P. Vs. Shambhu Nath Singh [reported in JT 2001 (4) SC 319]***;

(h) The "final report on further investigation" dated 02.11.2012 filed by the DVAC shall now be treated as a supplementary report under Section 173(8)

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of the Cr.P.C;

(i) As the case is of the year 2006, the Special Court at Madurai shall ensure that the matter is accorded priority and proceedings be conducted on a day to day basis keeping in mind the directives of the Supreme Court in the case of ***Vinod Kumar vs. State of Punjab [reported in 2015 (1) MLJ (Crl.) 288]*** and dispose the case as expeditiously as possible and in any event on or before 31.6.2025;

(j) A compliance report shall be filed by the Principal District and Sessions Judge (Special Court for Trial of MP/MLA Cases) at Madurai before the Registrar General of this Court; and

(k) Though obvious, it is made clear that this Court has not examined nor commented upon the merits of the case, which shall be decided by the Special Court at Madurai on merits without being influenced by any of the observations made hereinabove.

92. Suo Motu Crl.R.C.No.1524 of 2023 is allowed on the aforesaid terms.

29.10.2024

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Neutral Citation : Yes

To
1.The Chief Judicial Magistrate/Special Judge, Sivagangai

2.The Principal District and Sessions Judge (Special Court for Trial of MP/MLA Cases) at Madurai

3. The Deputy Superintendent of Police, Vigilance &Anti Corruption Wing, Madurai.

4.The Public Prosecutor, High Court, Madras.

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N.ANAND VENKATESH,J

RS

Suo Motu Crl.R.C.No.1524
of 2023

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