IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.6.2024	***Delivered on : 07.8.2024***

Coram :

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Suo Motu Criminal Revision Case No.1481 of 2023

1. State rep.by
   The Inspector of Police, Vigilance &
   Anti-Corruption Police Station,
   Virudhunagar District.

2. Mr.T.Thennarasu (a) Thangam Thennarasu,
   Minister for Finance, Planning Human
   Resources Management

3. Mrs.T.Manimegalai ...Respondents

SUO MOTU REVISION under Sections 397 & 401 of the Criminal Procedure Code initiated to call for the records on the file of the Principal Sessions Court (Designated Special Court for MPs and MLAs Cases), Virudhunagar District at Srivilliputtur passed in Spl.S.C.No.20 of 2019 dated 12.12.2022 and set aside the same.

For R1 : Mr.P.S.Raman, AG assisted by
Mr.K.M.D.Muhilan, GA (Crl.Side)
For R2 : Mr.A.Ramesh, SC for
Mr.R.Ashwin
For R3 : Mr.G.Mariappan

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ORDER

This suo motu criminal revision, under Section 397/401 of the Code of Criminal Procedure, 1973 (hereinafter the 'Cr.P.C'), is directed against a judgment and order dated 12.12.2022 passed by the Principal Sessions Court, Virudhunagar District at Srivilluputhur (Designated Special Court for MP/MLA Cases (hereinafter the 'Special Court') discharging respondents 2 and 3 herein from the case in Spl.S.C 20 of 2019.

I. Facts leading up to the Suo Motu Proceedings

2. The facts leading up to the revision have been set out in the order dated 23.08.2023. All the same, a brief summation is as follows:

i. Mr.ThangamThennarasu @ T.Thennarasu was elected to the Tamil Nadu State Legislative Assembly from Arupukottai constituency in May 2006. Between 13th May 2006 and 14th May 2011, he was a member of the State Cabinet of the DMK holding the portfolio as the Minister for School Education. He was re-elected on a DMK ticket from the Tiruchuli constituency in 2011, 2016 and 2021 respectively.

ii. The case of the prosecution is that during the check period (15.05.2006 and 31.03.2010), Mr.Thennarasu, the then Education Minister and his wife Mrs.Manimegalai had amassed assets, which were far in excess of their known sources of income.

iii. On 14.02.2012, an FIR in Crime No 3 of 2012 was registered by the Directorate of Vigilance and Anti-Corruption (hereinafter the 'DVAC'), Virudhunagar alleging the commission of offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, the PC Act) against Mr.Thennarasu and the offences under Section 13(2) read with Section 13(1)(e) of the PC Act read with Section 109 IPC against Mrs.Manimegalai (A2).

iv. In the course of investigation, the Investigation Officer (IO) - Mr.S. Swaminathan examined 93 witnesses and collected 101 documents and filed an exhaustive final report before the Special Court for Prevention of Corruption Act Cases, Madurai on 15.11.2012. In the meantime, sanction for prosecution had been accorded by the Speaker of the Tamil Nadu Legislative Assembly vide his proceedings dated 25.10.2012 in Rc.No.14643/2012-1/B-III. The Special Court, Madurai, vide order dated 18.01.2013, took cognizance of the offences in the final report in Special C.C.No.4 of 2013 and issued summons to the accused for their appearance on 21.02.2013. Thereafter, the case was transferred to the file of the Chief Judicial Magistrate-cum-Special Judge, Srivilliputhur, Virudhunagar District for administrative reasons and was renumbered as Special C.C.No.25 of 2014.

v. In the meantime, the Government of Tamil Nadu issued G.O.Ms.No.698 Public (SC) Department, dated 11.07.2013 appointing one Mr.Jeyapalan, Retired Deputy Legal Advisor as the Special Public Prosecutor to conduct the case in Special Case No.4 of 2013 before the Special Court. Mr.Thangam Thennarasu

(A1) challenged this Government order before the Madurai Bench of this Court in W.P [MD].No.17371 of 2013.

vi. In 2016, the State of Tamil Nadu was headed for elections to the State Assembly. In a perfectly timed move, A2 - Mrs.Manimegalai filed a discharge petition in Crl.M.P.750 of 2016 before the Special Court on 15.03.2016 ie., just a couple of months before the State elections. A1 - Mr.ThangamThennarasu followed suit and filed Crl.M.P.1528 of 2016 for discharge on 29.03.2016. The prosecution filed an elaborate counter affidavit through its Inspector of Police, V&C, Virudhunagar on 12.04.2016 contending that the petitions for discharge were frivolous and baseless and that the onus of establishing the sources of income as contemplated under Section 13(1)(e) could not be done in a petition for discharge under Section 239 Cr.P.C

vii. When the discharge petitions were pending before the Special Court, the Government of Tamil Nadu issued G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016, appointing the then Public Prosecutor Mr.R.Rajarathinam to conduct the case before the Special Court. A1 once again challenged this order before the Madurai Bench of this Court in W.P.(MD).No.9466 of 2017

viii. WP [MD].No.17371 of 2013 was taken up on 02.02.2018 and the learned counsel for Mr.Thangam Thennarasu made an endorsement withdrawing the petition. While dismissing the petition, this Court directed the Special Court to complete the trial within a period of six months from the date of receipt of a copy of the order. W.P (MD).No.9466 of 2017, which was filed challenging the appointment of Mr.R.Rajarathinam was dismissed as infructuous on 27.02.2018 on account of the resignation of Mr.Rajarathinam as Public Prosecutor.

ix. In the meantime, Mrs.Manimegalai (A2) filed Crl.R.C.(MD).No.157 of 2016 challenging the order passed by the Special Court in Crl.M.P.No.4037 of 2015 seeking certain documents for consideration in the discharge petition. This revision petition was dismissed by this Court by an order dated 05.03.2018. It was brought to the notice of this Court that in its earlier order dated 02.02.2018, it had directed the Special Court to complete the trial within six months. It was contended that such a direction would influence the mind of the Special Court. This Court clarified that the discharge petitions were to be

considered on their own merits and the accused were also directed to cooperate by not taking unnecessary adjournments.

x. The discharge petitions were thereafter adjourned for 17 hearings between 04.05.2018 and 28.09.2018, 12 of which were at the request of the accused on the ground that counsel/senior counsel were coming from Chennai to argue the matter. At this juncture, the Government of Tamil Nadu issued GO.MS.No.212 dated 26.04.2019, designating the Principal Sessions Court in every Sessions Division in the State of Tamil Nadu to try cases under the Special Acts, Central and State Acts involving elected Members of Parliament and Members of the Legislative Assembly of Tamil Nadu. Pursuant to this Notification, Special C.C.No.25 of 2014 was transferred to the file of the Special Court for MP/MLA's cases (Principal District Court, Virudhunagar District at Srivilliputhur) and renumbered as Spl.S.C.No.20 of 2019. By this time, another 3 years had gone by.

xi. It is seen from the records that the Special Court took up the discharge applications for hearing on 20.08.2019. Despite the observations made by this Court in W.P (MD).No.9466 of 2017

that no Special Public Prosecutor need be appointed for the case, the order of the Special Court dated 12.09.2019 recorded that the Special Public Prosecutor had filed a memo stating that the DVAC had forwarded a letter to the Principal Secretary to the Government requesting the appointment of a Special Public Prosecutor exclusively for this case. This was most curious since the memo itself was filed only by the Special Public Prosecutor and it was not known why a Special Public Prosecutor was sought to be appointed when there was already one before the Court.

xii. The objective of filing this mischievous memo comes to light from the records where it is seen that the matter was adjourned for appointment of Special Public Prosecutor for six hearings from 01.10.2019 to 21.02.2020. On 21.02.2020 and the Special Public Prosecutor did a volte-face and suddenly decided to not press the memo filed by him on 12.09.2019. In this process, another 5 months had gone by. The accused perhaps knew that elections were now only a year away. To their reprieve, COVID-19 intervened.

xiii. It is seen from the records that marathon piecemeal hearings took place for over one year in the discharge petitions from 27.03.2020 till 09.04.2021. The Special Court appears to have liberally heard the discharge petitions in instalments for over a year. Through the aforesaid collaborative effort of all concerned, the matter was successfully dragged on till the assembly elections in May 2021. In May 2021, there was a change in guard in the State and Mr.Thangam Thennarasu (A1) was back in the saddle as the incumbent Minister for Electricity.

xiv. The matter was, thereafter, posted on 04.06.2021 and 01.07.2021. Hearings were deferred on account of the COVID-19 pandemic. On 29.07.2021, the case was deferred once again to 15.09.2021 for arguments on the side of the accused in the discharge petitions. On 15.09.2021, the Inspector of Police, Vigilance and Anti-corruption - Mr.R.Boominathan submitted an intimation for further investigation under Section 173(8) Cr.P.C, the contents of which deserve to be reproduced in full and are as follows :

> *"It is submitted that in the course of enquiry by this Honorable Court in respect of discharge petition filed by the Accused, it was*

submitted by the Accused by way of written argument that some of the income was not properly considered by the Investigation Officer prior to the filing of Final Report. In support of said contention, the Accused introduced some new facts and documents, which appear to be not subjected for investigation during the previous occasion by the Investigation Officer. In view of the above-said circumstances, it is necessary to conduct further investigation in the interest of justice and to place the entire facts before this Honorable Court. The further investigation will not cause any prejudice to the Accused. It is further submitted that the prosecution is entitled to conduct further investigation regarding the new materials brought to the knowledge of the Investigation Officer and also for those materials which were omitted to be taken care of during earlier investigation. It is settled proportion of law laid down in Ram Lal Narang v State of Delhi (1979-2 SCC -322) that it is ordinarily be desirable that the Police should inform the court and seek formal permission to make further investigation when fresh facts came to light. The further investigation

can be under taken at any stage. The duty of fair investigation on the part of the Investigation Officer is to collect material not restricted to prosecution side but also it extends to even the stand of defense. The argument on the discharge petition can also be effectively done after completing the further investigation." The basis of further investigation, according to the IO, is that the written argument of the accused in the discharge petitions had "introduced some new facts and documents"."

In other words, according to the subsequent IO, fair investigation was necessary to unearth material to test the stand of the defense in the discharge petitions.

xv. Most curiously, this very same IO - Mr.R.Boominathan has signed the counter affidavit dated 12.04.2016 to the discharge petition in Crl.MP.No.1528 of 2016 stoutly refuting the grounds of discharge and elaborately defending the investigation already done. He has also copiously garnished his counter affidavit with extracts from the decisions of the Supreme Court to show that the discharge petitions were totally baseless.

xvi. The aforesaid intimation memo filed by the IO - Mr.R.Boominathan under Section 173(8) Cr.P.C was placed before the Special Court on 23.10.2021 and the following order came to be passed:

> *"A1, A2 called absent. A1, A2 under section 317 Crpc Petition filed and allowed. CrMp Discharge Petition pending status report file by the investigation. Today State Public Prosecutor appear to matter, Hasen Mohammad Jinnah Appeals relevant Citation submitted 173(8) Crpc further investigation to collect material evidence truth of facts. 2019 17scc Vinubhai, Halibahi Maliviya Honourable High Court Crl Op 15030/ 2021 Ravi@ Anubu Ravi, Rama Chavdoury 2009 6 scc 346, Quash 2004 5 scc 347 Rama lalnarang 1979 2 scc 322 and such behalf investigation comes to lightway during to trial. It may be curred further investigation. Discharge Petitioner Bank Account transfer to account. As Preventive Corruption Act 18 Bank Pass Book in 17 investigation agency DSP authorise person conduct to investigation. In the view of position of law. If there is necessary for further investigation. Criminal ethics this court arriving at the truth as do real and substantial justice as well as effective*

justice to further investigation and supplement final report 10 weeks. Call on 05.1.2022."

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

xviii. According to the IO - Mr.R.Boominathan, he had undertaken a "meticulous scrutiny" to "verify the claim made by the accused persons in the written arguments for the discharge petitions". In his discharge petition before the Special Court, A1 has raised 12 grounds, four of which are grounds relating to sanction. A1 has claimed that the earlier IO did not factor in the loans taken by A1 from his mother, which were reflected in the IT returns and that he had also not taken into consideration the fact that the accused had agricultural income to facilitate the purchase of properties. There is a vague assertion that the methodology adopted by the DVAC is fictitious and was not in accordance

with the DVAC Manual. Similarly, A2 has taken 12 grounds, two of which relate to sanction and another two relate to defects in the appointment of the earlier IO. Grounds (vi) to (xii) are mere assertions that the income of A2 have been accounted for and that the earlier IO had not properly considered the sources of income.

xix. In the document titled "final closure report", the IO - Mr.Boominathan has investigated the grounds that have not even been raised in the discharge petitions, but were raised for the first time in the written arguments to the discharge petitions. He has concluded in paragraph 25 of his affidavit as under:

> *"I submit that in this case, the loans and gifts received from close relations were duly intimated in the income tax returns filed by the accused officers and corroborated by other evidences and it cannot be construed as afterthought as the same was filed well before the registration of this case."*

Unsurprisingly, his closure report stated that the assets acquired for a sum of Rs.1,62,40,074/- were within the likely savings of the accused amounting to Rs.1,63,95,027/- leaving the

accused with an excess savings of Rs.1,54,953/-. This supplementary closure report was placed before the Special Court on 28.10.2022.

xx. The scene now shifted to the Special Court, which was faced with a very strange situation. The Special Court now had before it a final report dated 15.11.2012 filed by the earlier IO - Mr.S.Swaminathan alleging the commission of offences under the PC Act by A1 and A2. The Special Court had also taken cognizance of these offences on the said final report by an order dated 18.01.2013. The Special Court also had before it a "final closure report" filed by the subsequent IO - Mr.R.Boominathan after allegedly conducting a "further investigation" under Section 173(8) pointing to a diametrically opposite conclusion.

xxi. On its part, the Special Court appears to have labored on by minutely scrutinizing the two reports and the calculations made therein and has thereafter arrived at the conclusion that the second report of the IO - Mr.R.Boominathan deserves to be accepted. The Special Court has, on this basis, "accepted the final closure report" and discharged the accused purportedly in

exercise of powers under Section 239 Cr.P.C by the order dated 12.12.2022.

II. Initiation of Suo Motu Proceedings

3. The aforesaid order dated 12.12.2022 of the Special Court for MP/MLA Cases (Principal Sessions Judge), Virudhunagar District at Srivilliputhur and a companion order dated 20.07.2023 passed by the very same Court discharging the incumbent Minister for Revenue and Disaster Management - Mr.K.K.S.S.R.Ramachandran, his wife Mrs.Adhilakshmi and another were brought to my notice as the Judge holding the portfolio for MP/MLA Cases.

4. After scrutinizing the two orders, this Court came to a prima facie conclusion that the two cases revealed a well-orchestrated pattern where criminal prosecutions for corruption charges were launched and investigated when the accused persons were in the opposition. Discharge petitions were filed and dragged on till such time the accused, who were in the opposition, were back in the political saddle after a change of Government in the State. All of a sudden, the very same investigation agency, which had hotly contested the discharge petitions tooth and nail, came forward to voluntarily

file petitions for further investigation on the basis of certain contentions raised in the written arguments filed by the accused in the discharge petitions. After obtaining permission from the Special Court, further investigation was done and a document titled "final closure report" was filed whitewashing the earlier findings claiming that none of the offences was made out against the accused persons.

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

6. Vide order dated 23.08.2023, notices were issued to the accused, who are arrayed as respondents 2 and 3 respectively in this criminal revision. The learned Additional Public Prosecutor took notice on behalf of the State. All

the relevant materials, were, thereafter, compiled by the Registry of this Court and furnished to the learned counsel appearing for the respective parties.

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

7. The order dated 23.08.2023 was assailed by Mr.Thangam Thennarasu [A1] and his wife Mrs.Manimegalai [A2] before the Supreme Court in SLP (Crl) Nos.1833 and 1835 of 2024. These matters were tagged with SLP (Crl) Diary No 3245 of 2024 filed by Mr.K.K.S.S.R Ramachandran. From the order produced before this Court, it is seen that the contention raised before the Supreme Court was that prior permission of the Hon'ble Chief Justice was necessary before initiating suo motu proceedings. Though obvious, it is deemed appropriate to observe that at the time of initiating suo motu proceedings, this Court was holding the roster assigned by the Hon'ble Chief Justice for all cases against MP/MLA's, which includes the exercise of revisional powers under Section 397/401 Cr.P.C.

8. By an order dated 05.02.2024, the SLPs were disposed requesting the Hon'ble Chief Justice to take a fresh call on whether the suo motu matters should be heard by this Court or by some other bench. By an

administrative order dated 07.02.2024, the Hon'ble Chief Justice directed that this case be posted before this Court as a specially ordered matter.

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

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

V. Rival Contentions

10. Heard Mr.P.S.Raman, learned Advocate General, assisted by Mr.K.M.D.Muhilan, learned Government Advocate (Crl.Side) appearing for the first respondent, Mr.A.Ramesh, learned Senior Counsel appearing on behalf of Mr.R.Ashwin, learned counsel on record for the second respondent (A1) and Mr.G.Mariappan, learned counsel appearing for the third respondent (A2).

11. The respective learned counsel appearing on behalf of the accused persons submitted that an unfair investigation was initially done in a biased manner without trying to find out the truth just because the second respondent (A1) happened to be a former minister belonging to the opposition party, that a final opportunity notice was issued calling upon the accused persons to explain the disproportionate assets that were found to be in the possession of the accused persons, to which, a reply was also given on 01.8.2012, which was not properly verified and scrutinized by the previous IO, that the final report was filed in a hasty manner by ignoring the explanation that was given to the final opportunity notice and that an offence under Section 13(1)(e) of the PC Act is made out only if the accused persons are not able to satisfactorily account for the assets in their possession.

12. They also contended that the valuable right available to an accused person to give an explanation is akin to an opportunity that is given to the de-facto complainant to file a protest petition when a referred charge sheet is filed before the court, that even in a protest petition, the de-facto complainant points out to the materials that are available, which were not considered by the previous IO, that after the final report was filed and when it was taken cognizance, the discharge petitions were filed by the accused persons by once again pointing out to the materials available to substantiate their stand that they did not possess disproportionate assets and that their stand was further explained in the written arguments that were filed before the Special Court.

13. They further contended that the subsequent IO took note of the grounds that were raised by the accused persons and the materials that were relied upon and thought it fit to undertake a further investigation under Section 173(8) of the Cr.P.C., and that ultimately, the subsequent IO was able to ascertain that the income was received by the accused persons from a lawful source and that receipt of such income was also intimated in accordance with the provisions of law while filing the returns under the Income Tax Act for the relevant assessment years.

14. They contended that in fact, the scope of further investigation confined itself to the transactions, which were done well in advance before the registration of the first information report, that ultimately, a final closure report was filed, which was a misnomer for a supplementary report and that the Special Court considered both the initial report filed under Section 173(2) Cr.P.C. as well as the supplementary report filed under Section 173(8) Cr.P.C. and came to the conclusion that there were no materials to proceed further against the accused persons and decided to discharge them from the case. They also contended that the supplementary report merely supplements the earlier report filed and it does not supplant or efface the earlier report and that the requirement under Sub-Sections (2) to (6) of Section 173 Cr.P.C. will equally apply for a further report/supplementary report also.

15. To substantiate the above submissions and to explain the scope of further investigation and the manner, in which, a supplementary report must be acted upon by the Court, the following judgments of the Apex Court were relied upon :

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

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

(c) in the case of ***Pooja Pal Vs. Union of India [reported in 2016 (3) SCC 135]****;*

(d) in the case of ***Vinubhai Haribhai Malaviya Vs. State of Gujarat [reported in 2019 (17) SCC 1]****; and*

(e) in the case of ***Dharmatma Singh Vs. Harminder Singh [reported in 2011 (6) SCC 102]****.*

16. It was further contended that the judgments of the Apex Court that were taken note of by this Court

(a) in the case of ***K.Chandrasekhar Vs. State of Kerala [reported in 1998 (5) SCC 223]****; and*

(b) in the case of ***State of Tamil Nadu Vs. R.Soundirarasu [reported in 2023 (6) SCC 768].***

will not apply to the factual scenario in the present case. It was also contended that since the Special Court properly applied its mind both on the initial report as well as on the supplementary report and exercised its jurisdiction in accordance with law, there is no scope to interfere with the order of discharge in exercise of revisional jurisdiction even if this Court

could come to a different conclusion on the same set of materials considered by the Special Court.

17. The learned Advocate General appearing on behalf of the Investigating Agency submitted that the accused persons had introduced some facts and documents in the discharge petitions and in the written arguments filed in the discharge petitions, that the same were not taken into consideration by the previous IO before laying the charge sheet, that the subsequent IO wanted to arrive at the truth and proceeded to further investigate the case and that during the course of further investigation, the subsequent IO examined 38 new witnesses along with 92 witnesses already examined and collected 35 additional documents along with 101 documents already collected.

18. He further submitted that on completion of the further investigation, the subsequent IO came to the conclusion that (a) there is an excess savings of Rs.1,54,953/- during the check period; and (b) there was no ground to believe that respondents 2 and 3 (A1 and A2 respectively) had accumulated assets disproportionate to their known sources of income and ultimately, the final closure report was filed after conducting further

investigation. According to him, it was a mistake that while filing the supplementary report, the nomenclature was given as the final closure report and however, the nomenclature, by itself, will not vitiate the supplementary report filed by the subsequent IO.

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

20. He also submitted that on conclusion of the further investigation, the subsequent IO may either reach the same conclusion in line with the earlier final report or reach a wholly different conclusion and in so doing, the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. The rival submissions fall for consideration.

V. DISCUSSIONS

24. At the outset, it was contended by the learned counsel for the respondents that there was nothing wrong in the subsequent IO conducting further investigation on the basis of new material, which had surfaced during the pendency of the inquiry in the discharge petitions. According to them, the material was backed by the Income Tax Returns and other witness statements, which would completely demolish the earlier final report of the IO. The attention of the Court was invited to the decisions of the Supreme Court in

(a) ***Vinay Tyagi v. Irshad Ali*****, (2013) 5 SCC 762,**

(b) ***Hasanbhai Valibhai Qureshi v. State of Gujarat*****, (2004) 5 SCC 347, and**

(c) *Kishan Lal v. Dharmendra Bafna*, (2009) 7 SCC 685.

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

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

26. In ***Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347,*** which followed the celebrated decision in ***Ram Lal Narang* v. *State (Delhi Admn.), (1979) 2 SCC 322***, it was made clear that the power of further investigation was always available with the IO even though the Court may have taken cognizance of the offences in the original final report.

27. While one can have no quarrel with the aforesaid propositions of law, it is necessary to reiterate that legal principles cannot be viewed or applied to cases divorced from the facts of the cases, in which, these decisions were rendered. In none of those cases, the subsequent IO had used the written arguments of the accused in a discharge petition as the basis of further investigation.

28. There is a fundamental distinction between the existence of a power and the use of such power for oblique purposes. Where a statutory authority is vested with certain statutory powers, such power is granted on the condition that it would be used honestly and for purposes that subserve the basis, for which, such power is conferred. Where the power is used for collateral or oblique purposes, such an exercise would be clearly beyond the

ambit of the law. There is a plethora of case law on this point starting with the celebrated decision in ***Padfield v Minister for Agriculture, Fisheries & Food, LR (1968) AC 997,*** which has been followed by the Supreme Court in ***Tata Cellular v Union of India, (1994) 6 SCC 551*** and other cases. On facts and upon closely examining the material on record, this Court is convinced that the further investigation was deliberately engineered after A1 had come back to power as a Minister in 2021 solely for the purposes of short circuiting the case pending before the Special Court. The following glaring aspects available on record clearly justify this conclusion.

29. In the counter affidavit dated 05.03.2016 filed by the IO - Mr.R. Boominathan to the discharge petition filed by A2 (when A1 was out of office as Minister), a specific modus operandi was noticed whereby unaccounted funds were deposited by A1 with the connivance of his watchman and domestic help into the accounts of his mother Mrs.Rajamanipappathi and were used by Mrs.Rajamanipappathi to issue cheques to A2. This was pointed out by the prosecution in the counter affidavit dated 05.03.2016 in the following words:

> ***"It is submitted that the scrutiny of documents pertaining to the bank***

transactions, found in the name of Rajamanipappathi (W 64) mother-in-law of this petitioner, K. Nagar (W 66) and Kamalavel Thiyagarajan (W.67) would reveal that K. Nagar (W 66) had deposited Rs 10,00,000 on 21.03.2007 and Kamalavel Thiyagarajan (W 67) had deposited Rs 5,00,000 on 16.11.2007 into the account of Rajamanipappathi (W 64) as if to show that the deposited was of their own amount. When ascertaining the position and status of those witnesses, it came to light that K. Nagar (W 66) is a watchman and Kamalavel Thiyagarajan (W 67) is a domestic servant. But A1 had utilized the services of those witnesses as if to show that the amount deposited by them is their own. Those amount deposited by A1 with the help of the above said two witnesses have been given to A2 by way of cheques issued by Rajamanipappathi on 27.03.2007 and 20.11.2007. Such being the facts, A1 knowingly and intentionally deposited his own amount obtained not from lawful sources, into the account of Rajamanipappathi (W 64) with the help of W 66 and W 67. Subsequently, the said amount of

Rs 15,00,000 (10,00,000 + 5,00,000) have been credited to the account of A2/petitioner in the guise of loan. Therefore, the amount of Rs 15,00,000 though mentioned in IT returns, the Investigation Officer has not considered this transaction."

30. The following narration in the counter affidavit of the DVAC dated 05.03.2016 also brings out the role of A1 in setting up his servants as conduits to deposit money into the accounts of his mother (Mrs.Rajamanipappathi) and then use that money to be paid out to his wife through cheques:

"The prosecution has duly considered the explanation offered by A.1 which was adopted by this Petitioner/A2 and in the light of the materials collected during investigation, it was found that the said explanation is not accepted one. The agent and circumstantial evidences particularly the act of A1 in depositing the amount of Rs 10,00,000 which he got from illegal sources into the account of Rajamanipaappathi (W64) mother of A1 with the help of K. Nagar (W 66) who was then servant under A1, as if to show

that the deposited sum was his own. The said K. Nagar when examined has stated that he has no means to have in his possession of such huge amount. Further the said amount was given to this petitioner though by the said Rajamanipappathi. Likewise the same drama which is a cock and bull story, in the case of Rs 5,00,000 which was also deposited by A1 with the help of Kamaladevi Thiyagarajan. The said amount was deposited on 16.11.2007 into the account of W64 and the same amount was given to this petitioner through cheque. Therefore, the said transactions are hidden transaction which was not shown in IT returns filed by A2 and this the petitioner has intentionally aided A1 to commit the offences of the provisions of U/s 13(1)(e) of Prevention of Corruption Act. Therefore the theory of loan as put forth by the petitioner is false and baseless."

31. After having found that Rs.15,00,000/- was deposited by A1 through his menials as conduits into the account of his mother LW 64 for being paid out through cheques to his wife A2, very strangely and most curiously, the very same IO - Mr.R.Boominathan, who conducted the so-

called further investigation and who had sworn to the earlier affidavit dated 05.03.2016, has filed another affidavit dated 28.10.2022 in support of the "*final closure report*" justifying the above receipt of Rs 15,00,000/- by A2. Paragraph 19 of the affidavit dated 28.10.2022, reads as follows:

> ***"I further submit that in the written arguments, A-2 Tmt.Manimegalai claimed that she had received interest free loan of Rs.15,00,000/- from W-64 Tmt.Rajamani-pappathiyammal during the check period. Further investigation revealed that A-2 Manimegalai received interest free loan of Rs.15,00,000/- ie., Rs.10,00,000/- on 27.03.2007 vide Cheque No.809479 and Rs.5,00,000/- on 20.11.2007 vide Cheque No.19781 of SBI, Aruppukottai from her mother-in-law. Tmt.Rajamanipappathiyammal through bank transactions and the same was declared in the IT returns of Tmt.Rajamani-pappathiyammal for the year 2006-07 and 2007-08 (D-109, D-1100 and also reflected in the IT returns of Tmt.Manimegalai (D-53). As W-64 Tmt.Rajamanipappathiyammal had sufficient sources of income and the transactions were through bank instruments/ cheques an amount of Rs 15,00,000 has been***

given credit to A2 Manimegalai as her income during the cheque period."

32. The aforesaid explanation leaves many unexplained mysteries. The prosecution version of the domestic servant and the watchman of A1, who were instrumental in depositing the sum of Rs.15,00,000/- at the instance of A1 into the account of his mother Mrs.Rajamanipappathiyammal, suddenly vanishes into thin air. There is not even a reference in the so- called "final closure report" about these two emissaries of A1 ie., the domestic servant and the watchman, whose statements were recorded and adverted to in the earlier counter affidavit dated 05.03.2016 and who were allegedly instrumental in facilitating the transfer of monies to Mrs.Rajamanipappathiyammal through her son - A1. In a desperate attempt to cover up the tracks of the accused, the subsequent IO conveniently forgot that he had already exposed the trail of this transaction in his earlier counter affidavit filed before the Special Court opposing the discharge petitions tooth and nail.

33. Thus, the version of an interest free loan given by Mrs.Rajamani -pappathiyammal to her daughter in law - A2, which was termed as a "cock

and bull story" in the counter affidavit dated 05.03.2016 suddenly became a readily acceptable story to the very same IO - Mr.R. Boominathan in his affidavit filed on 28.10.2022 after A1 had become the Minister in 2021. The Court is, therefore, left to wonder whether the IO - Mr.R.Boominathan was actually engaging in "further investigation" or was resorting to"further investigation" ie., investigation furthering and facilitating the ends of the accused.

34. Equally interesting is another transaction of Rs.14,50,000/-, which A1 contended as was borrowed from his mother - LW 64 - Mrs.Rajamani -pappathiammal. In the counter affidavit dated 15.03.2016, the IO - Mr.R.Boominathan has stated that the aforesaid borrowal was not found in the bank statements of A1 either in the Indian Bank Account or in the PACB account at Mallanginar. He has gone on to observe as follows:

> *"The income, if he claims, he must account for such receipt of income. Mere mention in the Income Tax Returns would not give such effect as 'Accounted'. Due to the absence of any evidence/material relating to this transaction the Investigation Officer has not considered this income."*

35. Strangely and very curiously, in the affidavit filed in support of the so- called "final closure report", the very same IO has accepted this transaction for Rs.14,50,000/-. Interestingly, in the discharge petition, A1 had contended that this sum was realized by his mother from the sale of a cinema theatre. In their counter affidavit dated 15.03.2016, this transaction was attacked by the DVAC as a sham. In fact, in the same affidavit, the IO - Mr.R.Boominathan termed the receipts of sale proceeds from the sale of the movie theatre as "a new theory". However, in paragraph 18 of the counter affidavit dated 28.10.2022 in support of the "*final closure report*", this sum of Rs.15,00,000/- is readily accepted on the following basis:

> ***"Tmt.Rajamanipappathiammal was a retired teacher, received pension, received her husband's MLA pension and also she had income from her agricultural land to an extend of Rs 2.33 acres in Survey No 62A, 7A and 8A in which she cultivated coconut. Considering the Banking transactions, agricultural, pension and other income of W-64 Tmt. Rajamanipapathiammal, she had sufficient resources to give the loan and the same was reflected in her Income Tax Returns and also in the IT returns of Tr.Thangam***

Thennarasu, which was filed even before the registration of FIR…..”

36. Unfortunately, the IO - Mr.R.Boominathan overlooked the fact that it was not even the case of A1 that the sum of Rs.15 lakhs were raised by his mother by selling coconuts from her farm or from her income through the pension of her husband. The specific case of A1 in the discharge petition was that the aforesaid sum was obtained through the sale proceeds from the sale of a movie theatre. Instead of examining this, the IO appears to have found new grounds, which were not even put forward by the accused as the basis of the transaction. Equally mysterious is the IO - Mr.R.Boominathan’s volte face when he readily accepts the transaction on the basis of the IT Returns, which he had earlier rejected and justified in his counter affidavit dated 15.03.2016 stating that mere mention in the IT returns would not amount to these sums being accounted for.

37. Thus, it is all too apparent that further investigation was merely a ruse to gather material in order to facilitate a discharge of the accused persons. As stated earlier, this form of investigative chicanery was resorted to each time accused persons/politicians came to power. An identical modus

operandi is seen in the case of Mr.KKSSR Ramachandran and his family members, which has been decided vide a separate order passed today.

38. It cannot but be observed that the eagerness of the DVAC to resort to further investigation to find material to support the discharge petitions of the accused raises a serious doubt in the mind of this Court as to whether the entire investigation had been compromised and derailed with the intent of getting the accused off the hook. It is common knowledge that when discharge petitions are filed by ordinary mortals, the scope of such petitions are confined to the material secured by the investigation to see whether a strong suspicion exists to frame a charge against the accused. In this case, the DVAC contested tooth and nail till there was a change of power in the State in 2021. Once A1 was back in the political saddle, the written arguments have been filed by the accused in the discharge petitions on 27.08.2021 and within two weeks ie., on 15.09.2021, the DVAC eagerly and voluntarily came forward to oblige the accused by examining the various defences raised by them in their written arguments to the discharge petitions. There is no doubt in the mind of the Court that the “final closure report” is a clear abuse of the power of further investigation to get the accused off the hook.

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

40. To the best of this Court's knowledge, this modus operandi to detonate criminal prosecutions against politicians misusing the power of further investigation under Section 173(8) Cr.P.C is homegrown in the State of Tamil Nadu and does not find a parallel anywhere in this country. This Court must, therefore, deal with this situation with an iron hand, lest this becomes an inspiration for politicians in other States, who are facing criminal prosecutions. The Courts, trying these cases, must be vigilant to ensure that the streams of justice are not hijacked and polluted by the accused and the prosecution working in tandem. As William O' Douglas once remarked:

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

41. It must be observed that the DVAC becoming puppets in the hands of politicians would have been avoided had the States adhered to the directives of the Supreme Court in ***Prakash Singh v Union of India, (2006) 8 SCC 1*** by taking away at least the crime investigation wing from the control of executive government.

42. Reverting to the case on hand, this Court is also constrained to demonstrate that A1 and A2 were setting up a completely new case in their written arguments filed in support of the discharge petitions. It is shocking that the Special Court did not notice that the so-called written arguments contained averments that were not even found in the discharge petitions.

43. The following grounds have been raised by A1 in his petition for discharge:

i. Sanction for prosecution granted is illegal and an abuse of process of law.

ii. Sanctioning authority had not applied its mind before granting sanction.

iii. Sanctioning authority was a member of the AIADMK before he was appointed as Speaker, and was, therefore, politically motivated against A1.

iv. Sanctioning authority was not supplied with the relevant materials by the Investigation Agency. Hence, the sanction is defective.

v. There were three transactions of borrowal by A1 from his mother for Rs.14,50,000/- during 2007-08 and 2008-09. His mother was examined as LW 64. The aforesaid transaction was not considered.

vi. All of the above three transactions were made through cheque payments by A1's mother from the sale of the cinema theatre, which was sold before the check period. Hence, these transactions were lawful.

vii. A1 owned agricultural lands and derived income from these lands, which were not properly accounted for by the earlier IO.

viii. A1 is a landlord deriving various incomes from agriculture, which have not been considered or reflected in the final report.

ix. Source of income of A1 was not properly investigated and the investment of the wife of A1 was treated as the investment of A1.

x. Income of A2 - the wife of A1 was erroneously treated as the income of A1.

xi. A1 and his family have been acquiring properties since 1980. Hence, it is not correct to say that he started acquiring properties only after he became a Minister.

xii. The methodology adopted by the DVAC is fictitious and is contrary to the guidelines prescribed in the Vigilance Manual.

44. In the elaborate counter affidavit filed and signed by the then Additional Public Prosecutor, DVAC and the IO - Mr.R.Boominathan on 12.04.2016, the following is the response to each of the aforesaid grounds:

i. As regards the issue of sanction ie., grounds (i) to (iv) in the discharge petition, it was submitted that all relevant material had been placed before the sanctioning authority, who had considered the same as was evident from the recitals in the order of sanction. This Court is not delving deeper into the question of sanction as it was not in issue either before the

Special Court or before this Court during the course of arguments.

ii. As regards ground (v) relating to the loan of Rs.14,50,000/-, the DVAC pointed out that the earlier IO had recorded the statement of A1's mother Mrs.Rajamanipappathi (LW 64). However, he found that this transaction did not find a place in the bank statements of A1 and that a mere mention in the IT returns would be of no avail as the transaction was not supported by any evidence.

iii. As regards ground (vi), the DVAC pointed out that the proceeds of Rs.14,50,000/- being derived from the sale of the cinema theatre was a new theory introduced for the first time in the discharge petition. A1 had not offered any such explanation during investigation. As regards the allegation that a sum of Rs.53,00,000/- was given by A2, this was once again a new theory, which did not find a place even in the reply given by the accused to the Final Opportunity Notice (FON). There was no documentary evidence to show that A2 had given Rs.53,00,000/-.

iv. As regards grounds (vii) and (viii), the DVAC pointed out that it had factored in a sum of Rs.5,37,600/- as net income on the basis

of the report of LW 27 - the Assistant Director of Agriculture. A1 claimed this income to be Rs.6,37,000/-, which was not supported by any documents. As regards the crop loan and waiver, this had been duly factored in Statement III.

v. As regards ground (ix), it was strenuously contended that the earlier IO had done a thorough job and that A1 and A2 were unable to satisfactorily account for the possession of wealth in their hands.

vi. As regards ground (x), the DVAC contended that A2 was roped in through Section 109, as it was found that the assets in her hand did not correspond to her lawful source of income. Therefore, it can be reasonably inferred that A2, the wife of A1, was assisting A1 in holding on to ill-gotten wealth.

vii. As regards ground (xi), the acquisition of wealth prior to the check period is irrelevant and the fact that A1 and his family have been acquiring properties since 1980 is not relevant.

viii. As regards ground (xii), the IO has followed the DVAC Manual scrupulously and LW 38 has been examined for the same. His credibility can be impeached only during trial.

ix. As regards ground (xiii), there is ample material to presume that A1 and A2 has committed the offences and prima facie material exists to frame a charge against the accused.

45. As pointed out above, the aforesaid counter affidavit of the DVAC was filed when A1 was in the opposition. On 15.09.2021, the DVAC filed an "intimation under Section 173(8) Cr.P.C" after A1 had become the Finance Minister pursuant to the Assembly Elections of 2021.

46. From the records, it is seen that A1 and A2 had filed written submissions in their discharge petitions on 27.08.2021. The DVAC appears to have acted with remarkable swiftness in filing the petition for further investigation in two weeks ie., on 15.09.2021 contending that the duty of the prosecution is extended to collecting material in favor of the accused also.

47. In the affidavit filed in support of the "final closure report", the IO - Mr.R.Boominathan has stated as follows:

i. In his written arguments to the discharge petition, A1 claimed additional agricultural income of Rs.6,54,800/-. The then IO computed this head of income as Rs.5,37,600/- overlooking income

for a particular property for the year 2006-07 and 2007-08. Hence, the income was redetermined as Rs.6,54,800/-.

ii. A sum of Rs.14,129/- was included as pension arrears since it was established through the bank statements and the IT Returns.

iii. As regards the interest free loan of Rs.14,50,000/- it was contended by A1 in his written arguments that this sum was given by his mother as a loan and was reflected in the IT Returns of A1 and his mother. According to the subsequent IO, the mother of A1 was a teacher and received pension and also had agricultural lands and this transaction "seems genuine" and was therefore included in the income of A1 during the check period. What the subsequent IO appears to have overlooked is the fact that in his discharge petition, A1 had claimed that this sum was realized by the mother of A1 from the sale of a cinema theatre, for which, there was absolutely no evidence as was pointed out by the DVAC in their earlier counter affidavit. In his newfound fervor, the subsequent IO appears to have located sources of income for A1's mother, which even A1 had not disclosed/contended.

iv. Turning to A2, the IO observed that A2, in her written arguments, had contended that she had obtained a sum of Rs.35,00,000/- from

her father as gift. As there was no evidence, this was not considered as income. A2 further contended that she had obtained an income of Rs.35,31,000/- through her lending of a JCB machine. The previous IO had computed only Rs.25,74,563/- based on the bank statements and documentary evidence. According to the subsequent IO, he had examined LW 56, 57 and 60, who claimed that they had paid Rs.10 lakhs in cash and it was supported by the IT returns. Hence, an amount of Rs.35,31,500/- was taken as income of A2.

v. In her written arguments, A2 had contended that she had received a sum of Rs.15 lakhs as interest free loan from her mother in law. The same was declared in her IT returns. Hence, this sum was included as income of A2. In her written arguments, A2 had also contended that she had received a sum of Rs.12,50,000/- as income from her 'minor daughters'. Since this is reflected in the IT returns, this was also included as income of A2.

vi. On the basis of an averment in the written arguments, a sum of Rs.23,00,000/- was given credit as income in favor of A2. Once again, this was a ground raised for the first time in the written arguments. The subsequent IO, thereafter concluded that loans

and gifts were duly intimated to the IT authorities and that the allegations against A1 and A2 were not substantiated on the basis of oral and documentary evidence.

48. The learned counsel for the accused/respondents 2 and 3 contended that there was nothing wrong in the subsequent IO filing a negative report after further investigation. Reliance was placed on the decision of the Supreme Court in ***Luckose Zachariah v Joseph Joseph, 2021 SCC Online SC 3226.*** In the said case, the Kerala High Court had taken a view that once cognizance had been taken on the earlier report, a negative report filed thereafter would have to be ignored. The Supreme Court held that the Magistrate was bound to consider the positive final report under Section 173(2) and the negative final report under Section 173(8) and take an informed decision to proceed further.

49. This decision may not be of any avail to the accused in this case for the following reasons:

- In the Kerala case, the police filed a positive final report, on which, the Magistrate took cognizance. The accused approached the senior police officers complaining that false case has been

foisted on them. The DSP conducted further investigation and filed a negative supplementary report under Section 173(8) Cr.P.C. On these facts, the Supreme Court held that both the positive report and the negative report should be considered by the Magistrate and a decision should be taken whether the proceedings should go further or be dropped.

- In this case, the facts are totally different. The DVAC had filed a positive final report under Section 173(2) Cr.P.C based on which, cognizance was taken, process issued, the accused appeared and filed discharge petitions. The DVAC stoutly resisted the discharge petitions by filing a very strong counter affidavit. After the change of Government in 2021, A1 became a Minister in the current State cabinet. The accused persons filed written arguments raising points that were not a part of the original discharge petitions. Based on the points raised in the written arguments, the DVAC filed a "final closure report" unwittingly contradicting their earlier stand.
- On facts, this Court has found that the "final closure report" is a sham document, which was manufactured by the DVAC with the sole intent of torpedoing the prosecution.

- For the aforesaid reasons, the decision of the Supreme Court in ***Luckose Zachariah v Joseph Joseph, 2021 SCC Online SC 3226*** cannot apply to the facts of this case. It is a time honoured principle that a judgment is an authority for what it decides and not what it has not decided.

50. The scene now shifts to the Special Court. Presented with this "final closure report", the impugned order discloses that the Special Court examined the various items in the said report and had then proceeded to make the following observations:

> *"All the documents were dated before the filing of FIR in this case. The FIR has been filed on 14.02.2012. The Income tax returns and other documents now relied were prior to the said date. On perusal of the Income Tax returns the same were filed much before the filing of the first information report. So, there cannot be any doubt over these documents. The Investigation Officer has stated in the affidavit about his collection of evidences in the further investigation and validity and admissibility of these documents. So, as per the material collected, he has arrived correct amount of particulars in Statement II, III and IV. Hence, this*

Court is inclined to accept the final report filed by the present Investigation Officer."

(emphasis supplied)

51. It is most unfortunate that the Special Court also fell prey to the plot set up by the accused and the DVAC to secure a discharge by filing the so- called "final closure report" ignoring the fact that the validity and admissibility of those documents could not be examined by the IO and was a matter to be examined by the Court in the course of trial. In any event, the Special Court appears to have travelled way beyond the ambit of its jurisdiction while deciding the discharge petitions under Section 227 Cr.P.C. It is seen from the the impugned order that it heavily justifies its conclusions on the basis of the IT Returns filed by A1 and A2 and the mother of A1 - Mrs.Rajamanipappathiammal (LW 64).

52. The question as to whether an accused facing charges of corruption in a case under the PC Act could be discharged by relying upon the Income Tax Returns filed by them is no longer res integra. In ***State of T.N. v. N. Suresh Rajan*, *(2014) 11 SCC 709*,** the Supreme Court observed as under:

***"32.3.** While passing the order of discharge, the fact that the accused other than the two*

Ministers have been assessed to income tax and paid income tax cannot be relied upon to discharge the accused persons particularly in view of the allegation made by the prosecution that there was no separate income to amass such huge properties. ***The property in the name of an income tax assessee itself cannot be a ground to hold that it actually belongs to such an assessee. In case this proposition is accepted, in our opinion, it will lead to disastrous consequences. It will give opportunity to the corrupt public servants to amass property in the name of known persons, pay income tax on their behalf and then be out from the mischief of law****."*

53. As pointed out by the DVAC in their original counter affidavit dated 25.03.2016 to the discharge petitions, mere filing of the IT Returns cannot, per se, validate the transaction. It would be entirely naïve to assume that the DVAC was motivated by a sense of supreme duty and justice to sing a different tune after A1 had once again become a Minister in 2021 by filing a final closure report accepting all the IT returns as being entirely true and correct.

54. In ***State of T.N. v. R. Soundirarasu*, *(2023) 6 SCC 768***, it was pointed out by the Supreme Court that the onus of discharging the burden under Section 13(1)(e) of the PC Act cannot be discharged by the accused at the stage of Section 239 Cr.P.C. It was observed as follows :

> ***"83.*** *Section 13(1)(e) of the 1988 Act makes a departure from the principle of criminal jurisprudence that the burden will always lie on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him. The legal effect of Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of properties disproportionate to his known sources of income but the term "known sources of income" would mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. It is for the accused to account satisfactorily for the money/assets in his hands. The onus in this regard is on the accused to give satisfactory explanation. The accused cannot make an attempt to discharge this onus upon him at the stage of Section 239 CrPC. At the stage of Section 239 CrPC, the court has to only look into the prima facie case and decide*

whether the case put up by the prosecution is groundless."

55. In ***State of Karnataka v. J.Jayalalitha***, ***(2017) 6 SCC 263,*** it has been held that documents such as income tax returns cannot be relied upon as conclusive proof to show that the income is from a lawful source under the PC Act. It was observed as follows :

> *'191. Though considerable exchanges had been made in course of the arguments, centering around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein are relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot*

object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated along with the other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(e) of the Act."

56. The aforesaid observations, though made in the context of a criminal appeal, were cited with approval in ***CBI* v. *Thommandru Hannah Vijayalakshmi***, (***2021) 18 SCC 135,*** which arose out of a quash petition under Section 482 Cr.P.C, and in ***State of T.N. v. R. Soundirarasu*, *(2023) 6 SCC 768*,** which arose out of a petition for discharge.

57. More recently, in ***Puneet Sabharwal v CBI***, ***(2024 SCC Online SC 324)***, in the context of a discharge petition, the Supreme Court held as follows:

> *"This Court, in cases involving either discharge [State of Tamil Nadu v. N. Suresh Rajan (2014) 11 SCC 709 Paragraph 32.3] or quash [CBI v. Thommandru Hannah Vijayalakshmi (2021) 18 SCC 135 Paragraph 63-64] has noted that Income Tax Returns are not conclusive proof which can be relied upon either to quash the criminal proceeding or to discharge the accused persons.*
>
> *32. Therefore, in the present case, the probative value of the Orders of the Income Tax Authorities, including the Order of the Income Tax Appellate Tribunal and the subsequent Assessment Orders, are not conclusive proof which can be relied upon for discharge of the*

accused persons. These orders, their findings, and their probative value, are a matter for a full-fledged trial. In view of the same, the High Court, in the present case, has rightly not discharged the appellants based on the Orders of the Income Tax Authorities."

58. The decision in ***Kedari Lal v. State of M.P., (2015) 14 SCC 505,*** relied upon by the Advocate General, arose out of an appeal against conviction and the observations made therein were on the basis of materials including IT Returns, which had been tested in the course of trial. That stage has, however, not reached in this case. Consequently, the reliance placed on the Income Tax Returns to discharge the accused is patently erroneous and suffers from grave procedural impropriety warranting interference under Section 397/401 of the Cr.P.C.

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

"The revisional jurisdiction of a High Court under Section 397 read with Section 401 of the

CrPC, is a discretionary jurisdiction that can be exercised by the revisional court suo motu so as to examine the correctness, legality or propriety of an order recorded or passed by the trial court or the inferior court. As the power of revision can be exercised by the High Court even suo moto, there can be no bar on a third party invoking the revisional jurisdiction and inviting the attention of the High Court that an occasion to exercise the power has arisen."

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

"The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has

simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order."

61. Tested on the touchstone of the aforesaid principles, the conclusion is that the impugned order of the Special Court deserves to be set aside on the short ground that it had committed a manifest jurisdictional error in discharging the accused by mechanically accepting the ipse dixits of the prosecution founded substantially, if not entirely on the income tax returns filed by A1, his mother - Mrs.Rajamanipappathi and his wife - A2.

62. Before concluding, one of the most striking aspects of this case as well as the other companion case in Suo Motu Crl.R.C.No.1480 of 2023 concerning Mr.K.K.S.S.R.Ramachandran is the meticulous manner, in which, the DVAC officials have also colluded with each other to ensure that criminal trials against two sitting ministers are quietly and indecently buried within

the precincts of the Special Court. The following sequence of dates clearly point to this conclusion:

	Mr.KKSSR Ramachandran & others in Suo Motu Crl.R.C.No.1480 of 2023	Mr.T.Thennarasu & another in Suo Motu Crl.R.C.No.1481 of 2023
Date of filing final report	05.09.2012	14.11.2012
Date of filing discharge petition	A3 – 24.02.2016 A1 – 29.03.2016 A2 - 22.05.2018	A2 – 24.02.2016 A1 – 29.03.2016
Date of A1 becoming Minister in the State Cabiner	May 2021	May 2021
Date of accused filing written submission in discharge petitions	27.08.2021	27.08.2021
Date of DVAC seeking permission to conduct further investigation on the basis of the written submissions	15.09.2021	15.09.2021
Date of filing "final closure report" before the Special Court	28.10.2022	28.10.2022
Order of the Special Court discharging the accused	27.06.2023	12.12.2022

63. What is evident from the above is a clearly orchestrated plan. Once the two Ministers were back to power, the DVAC officials decided or were told by their higher ups to find ways and means to ensure that the prosecutions were torpedoed. The perfect plan was thus drawn up. When the two accused persons filed an ostensible written argument, the DVAC, with all sincerity, received them with open arms and then hunted for material to back up the defence of the accused, culminating with the "final closure report". What is striking is that the so called written argument, the intimation for further investigation and the final closure report were filed on the same day in both cases as is evident from the above. Unfortunately, the very same Special Court did not notice this and fell into or was willing to fall into an error in discharging the accused.

64. After these illegalities have come to the notice of this Court, this Court considers it a sacrosanct Constitutional duty of the High Court to intervene on what this Court considers is a matter of principle to prevent the grossest abuse of the judicial process, which has resulted in the miscarriage of justice. If the rule of law is to mean anything, it must mean that politicians and the common man of this State will be equal before the Courts

and that the butcher, the baker and the candlelight maker will be treated just the same as a Revenue, Housing or Finance Minister of this State.

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

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

VI. Conclusions/Directions

66. In the result,

a. The order dated 12.12.2022 passed by the Principal Sessions Court (Designated Special Court for MP/MLA Cases) Virudhunagar District at Srivilluputhur, in Spl.S.C.No.20 of 2019 is set aside;

b. Consequently, Special S.C.No.20 of 2019 is restored to the file of the Principal Sessions Court (Designated Special Court for MP/MLA Cases) Virudhunagar District at Srivilluputhur;

c. The "final closure report" dated 28.10.2022 filed by the DVAC shall now be treated as a supplementary report under Section 173(8) Cr.P.C;

d. As prima facie materials are available to frame charges, the Special Court shall proceed to frame charges and thereafter proceed in accordance with law; Consequently, the discharge petitions filed by the accused persons shall stand closed.

e. The accused are directed to appear before the Special Court on 11.09.2024;

f. On such appearance, the Special Court shall obtain a bond under Section 88 Cr.P.C with or without sureties as the Special Court may deem fit and necessary;

g. As the case is of the year 2012, the proceedings of the Special Court shall be conducted on a day to day basis keeping in mind the directives of the Supreme Court in ***Vinod Kumar vs. State of Punjab***, ***[2015 (1) MLJ (Crl.) 288]*** and dispose the case as expeditiously as possible;

h. Though obvious, it is made clear that this Court has not examined or commented upon the merits of the case, which shall

be decided by the Special Court on merits, without being influenced by any of the observations made hereinabove.

67. Suo Motu Cr.R.C 1481 of 2023 is allowed on the aforesaid terms.

07.8.2024

Index : Yes
Neutral Citation : Yes

To
1.The Principal Sessions Court, (Designated
Special Court for MPs and MLAs Cases),
Virudhunagar District at Srivilliputtur

2.The Inspector of Police, Vigilance &
Anti-Corruption Police Station,
Virudhunagar District.

3.The Public Prosecutor,
High Court, Madras.

RS

N.ANAND VENKATESH,J

RS

Suo Motu Crl.R.C.No.1481
of 2023

07.8.2024