IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.08.2023

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

SUO MOTU Crl.R.C.No.1524 of 2023

1) State rep.by
The Deputy Superintendent of Police
The Vigilance and Anti-Corruption Wing
Madurai.
(Crime No.14 of 2006)

2) Tr.O.Panneerselvam (A1)
D.No.145 (Old No.70)
South Agraharam, Thenkarai, Periakulam
Residence-Green Castle Greenways Road
Chennai-28.

3) Tmt.P.Vijayalakshmi (A2)
W/o.O.Panneerselvam
D.No.145 (Old No.70)
South Agraharam, Thenkarai, Periakulam
Residence-Green Castle Greenways Road
Chennai-28.

4) Tr.P.Ravindranathkumar (A3)
S/o.Tr.O.Pannerselvam
Plot No.6-D, Ramaniam Abotsbury
C.P.Ramasamy Road, Alwarpet
Chennai-18

5) Tr.O.Raja @ Ramasamy (A4)
No.7g, 80, 81, Cubum Road,
Periakulam, Theni District.

6) Tr.R.Sasikalawathy (A5)
W/o.O.Raja @ Ramasamy
No.79,80,81, Cumbum Road
Periakulam
Theni District.

7) Tr.O.Balamurugan @ Palamurugan (A6)
D.No.145 (Old No.70)
South Agraharam,
Thenkarai, Periakulam
Residence-Green Castle Greenways Road
Chennai-28.

8) Tmt.B.Latha Maheswari @ Latha Balamurugan (A7)
W/o.O.Balamurugan
No.147, North Agraharam, Thenkarai,
Periakulam,
Theni District.

... Respondents

Criminal Revision case filed under Section 397 of Cr.P.C. to call for the records on the file of the Chief Judicial Magistrate/Special Judge, Sivagangai, passed in Special Case No.7 of 2012, dated 3.12.2012 and set aside the same.

SUO MOTU Crl.R.C.No.1524 of 2023

N.ANAND VENKATESH., J.

In two earlier cases in Suo Motu Crl.RC.Nos.1480 and 1481 of 2023, this Court noticed a pattern of the Vigilance and Anti-Corruption Unit (DVAC) launching prosecutions under the Prevention of Corruption Act, 1988 against opposition MLAs which later culminated in charge sheets before the Special Court, Srivilluputhur. Upon a change of Government, the opposition MLAs found themselves in the saddle as Cabinet Ministers. Realizing that the winds had changed direction, the DVAC quickly intimated the Special Court of their intention to conduct further investigation under Section 173(8) Cr.P.C. Under the guise of further investigation, the conclusions arrived at in the earlier final report were then clinically wiped out under the guise of filing a "*final closure report*". These "*final closure reports*" were then presented to the Special Court as a fiat accompli to secure the discharge of the accused.

2. P*rima facie*, this Court found this to be a well-orchestrated modus operandi to short-circuit corruption cases once the accused had come to political power in the State. The question, however, was whether this modus operandi was of recent origin or had a precedent elsewhere which later replicated itself in several other cases. This is important since these questionable practices, like cancer, cannot be dealt with at the level of tentacles, and must be eliminated by the roots.

3. As the judge in charge of MP/ MLA cases in this State, this Court has a constitutional duty to ensure that the streams of criminal justice are kept pure and unsullied. The power of judicial superintendence vested with the High Court under Article 227 of the Constitution coupled with the statutory duty of revision under Sections 397 and 401 Cr.P.C exists for this salutary purpose. As the Hon'ble Supreme Court has observed in ***Jagannath Choudhary v. Ramayan Singh*, (2002) 5 SCC 659:**

> *"The High Court possesses a general power of superintendence over the actions of courts subordinate to it. On its administrative side, the power is known as the power of superintendence. On the judicial side, it is known as the duty of revision. The High Court can at any stage even on its own motion, if it so desires, and certainly when illegalities or irregularities resulting in injustice are brought to its notice, call for the records and examine them. This right of the High Court is as much a part of the administration of justice as its duty to hear appeals and revisions and interlocutory applications — so also its right to exercise its powers of administrative superintendence."*

4. This Court carefully examined the records of previous cases to see if there existed a modus operandi, similar to the ones in Suo Motu Crl.R.C.Nos.1480 and 1481 of 2023. Much the surprise of this Court, this malaise appears to have manifested itself in an earlier case in Special C.C.No.7 of 2012 on the file of the Chief Judicial Magistrate (Special Judge), Sivagangai concerning the former Chief Minister/Minister of the

AIADMK Mr.O.Panneerselvam and his family members. The records, *prima facie*, reveal a shocking tale of how the criminal justice system was once again subverted by the collective effort of all concerned to ensure that the accused were released from the clutches of the law.

5.Mr.O.Panneerselvam was elected to the Tamil Nadu Legislative Assembly from the Periakulam constituency on an AIADMK ticket in May 2001. Between 19.05.2001 and 21.09.2001 and 02.03.2002 to 12.05.2006 he was the Revenue Minister of the State. Between 22.09.2001 to 01.03.2002, he was the Chief Minister of the State. In May 2006, the AIADMK was voted out of power in the State. On credible information that Mr.O.Panneerselvam, while holding the post of Revenue Minister and Chief Minister of the State, had accumulated properties and pecuniary resources that were disproportionate sources of income, a preliminary enquiry was conducted by the DVAC. Finding there existed material to proceed further, a case in Crime No.14 of 2006 was registered by the Vigilance and Anti-Corruption Department (DVAC), Madurai on 07.09.2006 against Mr.O.Panneerselvam under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988. The investigation was taken up by Mr. N. Kulothunga Pandian, Deputy Superintendent of Police, Vigilance and Anti-Corruption, Madurai. During the course of the investigation, which took nearly 3 years, the 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 Prevention of Corruption Act, 1988 *vide* proceedings dated 09.06.2009.

6.Upon completion of the investigation, Mr.Kulothunga Pandian filed a final report under Section 173(2) Cr.P.C before the Chief Judicial Magistrate (Special Court), Theni on 30.07.2009 alleging the commission of offences under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 IPC read with Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 against Mr. Paneerselvam (A1), his wife Tmt.P.Vijayalakshmi (A2), his son P. Ravindranathkumar (A3), Mr.O.Raja (A4), Tmt.Sasikalavathy (A5), wife of A4, O.Balamurugan (A6), and Mrs. B. Latha Maheswari @ Latha Balamurugan (A7), wife of A6. 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 the known sources of income for which no satisfactory explanation was forthcoming.

7.On the aforesaid final report, the Special Court took cognizance of the offences therein by an order dated 30.07.2009 in C.C.No.3 of 2009, and issued summons to the accused for their appearance on 25.08.2009. On 03.05.2011 GO.Ms.No.254 Home (Courts II) Department was issued constituting a Special Court at Madurai for Cases under the Prevention of Corruption Act. The effect of this notification was that the Chief

Judicial Magistrate, Theni could no longer exercise power as Special Judges under the P.C.Act. A few days later, the AIADMK returned to power in the State and A1 was back in the helm of affairs as the Finance Minister.

8. Mysteriously and very curiously the records reveal that despite the constitution of the Special Court in Madurai by G.O.Ms.No.254 dated 03.05.2011, the Chief Judicial Magistrate continued to detain the records of the case before it. On 02.08.2011, a petition under Section 173(8) Cr.P.C was submitted before the Chief Judicial Magistrate, Theni by, of all persons, the accused themselves. Further investigation under Section 173(8) is normally the prerogative of the police. In the alternative, the Magistrate may order further investigation in an appropriate case. The practice of accused persons filing petitions under Section 173(8) Cr.P.C and seeking further investigation is clearly unknown to law.

9. Records further reveal that this petition was taken up by the CJM, Theni on 27.09.2011 and an order was passed on 04.10.2011 allowing the petition of the accused under Section 173(8) Cr.P.C. The order of the CJM, Theni makes for interesting reading. According to the learned judge:

> "*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."

The aforesaid reasons, if at all it can be taken to be one, defy several rudimentary principles that even a novice in criminal law would not overlook. For instance, the CJM, Theni says that an accused is entitled to be heard before filing a final report forgetting for a moment that the case before her was not a disciplinary enquiry but a criminal investigation.The second reason is 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 investigation officer. That apart, this conclusion is, on the face of it, completely unsustainable since the CJM, Theni was obviously aware that no charges had been framed in the case.

10. The records, however, reveal that the aforesaid conclusions were not wholly borne out by the CJM's apparent lack of knowledge in criminal law. There was clearly something seriously amiss. Having passed an order for further investigation on 04.10.2011 on the petition filed by the accused, the CJM, Theni appears to have quietly transferred the case to the Special Court 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.

11.The case now takes a very curious and interesting turn. The learned Special Court at Madurai smelt a rat and obviously realised 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 03.05.2011. Accordingly, the Special Court, Madurai dismissed the application for the return of documents holding that since the order passed under Section 173(8) 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.

12. Finding that the learned Special Court, Madurai had seen through their game and had foiled their plans, the accused rushed to the Madurai Bench of this Court in Cr.O.P (MD).No. 15425 of 2011 and sought transfer of the case from the Special Court alleging that the learned judge was biased and that they would not get "fair justice" in his Court. A learned single judge of this Court, by order dated 20.01.2012, found that the Special Court 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 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 "*be put in much embarrassment to conduct of their*

case". This Court went on to observe that the levelling of allegations would cause embarrassment to the learned Special Judge and that transfer ought to be made "*without going into the merits or demerits of the petition for transfer*". In other words, the learned 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 whether the grounds for transfer were bonafide. Judicial propriety demands that I say no more.

13. It is also seen from paragraph 24 of the order dated 20.01.2012 of this Court that the CJM, Theni had ceased to be the Special Judge on and from 03.05.2011 when GO.Ms.No. 254 was issued constituting the Special Court, Madurai. Thus, the obvious consequence of this observation is that the order dated 04.10.2011 of the CJM, Theni ordering further investigation was coram-non-judice and was resultantly a nullity in law.

14.Pursuant to the order of this Court dated 20.01.2012, the files were transferred by the Special Court, Madurai to the Chief Judicial Magistrate (Special Judge), 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. Shockingly, despite the fact that the CJM, Theni had no jurisdiction over the case, the prosecution once again approached the said Court and filed a petition under Section 164(5) Cr.P.C praying that the CJM, Theni should record the statement of

34 witnesses. It appears that the CJM, Theni had entertained this petition, recorded the statements of the witnesses. 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 21.08.2012.

15. By this time, 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 a new investigation officer, IO K.Esakki Ananthan, giving a clean chit to A1 and his family. In its eagerness to please its political masters the DVAC unwittingly did not file this report into the Court first. Instead, the letter dated 28.10.2012 sent by A.C.Mohandass, Secretary to Government, to the DVAC shows that 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 Public Prosecutor, Madras High Court on 16.10.2012 as well as an 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 sanction of prosecution that had been granted earlier by his predecessor in the opposition. The whole of the order 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."*

16. It requires nothing more than the aforesaid reasons (or the lack of it) to show that the so-called satisfaction expressed by the Speaker is a complete sham. In the aforesaid paragraphs, the Speaker observes 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 N.Kulothunga Pandian, Deputy Superintendent of Police, Vigilance and Anti-Corruption, Madurai had clearly 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 the Speaker. Having examined the records, this Court find that it is impossible for any reasonable person who has read the final report of IO N.Kulothunga Pandian, to conclude that there was no case for prosecution against the accused. In fact, the CJM, Theni had already taken cognizance of the offences in 2011 itself. The Speaker, it appears, has virtually sat in judgment of the order of cognizance by the CJM, Theni. The conclusions in the order of the Speaker leads this Court to

ponder as to whether A1 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. In any event, in view of the decision of the Hon'ble Supreme Court in **D.L.Rangotha v. State of M.P, (2015 (12) SCC 733**), the withdrawl of sanction was per-se without jurisdiction since the sanction once granted cannot be withdrawn/revoked.

17. 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 report compliance. It is, therefore, manifestly clear that the so-called further investigation report was nothing but a product of a diktat from the Government to the DVAC to terminate the prosecution. The DVAC toed the line and decided to do the Government's dirty work.

18.The trail gets murkier as records reveal that the "***final report on further investigation"*** signed by the IO K.Esakki Ananthan is dated 02.11.2012 whereas the order of the Speaker (Reference No.3) speaks of a further investigation report dated 05.10.2022. In other words, the report that was filed into the Court dated 02.11.2012 was not the report dated 05.10.2012 that was before the Speaker of the Tamil Nadu Legislative Assembly.

19. On 02.11.2012, IO K. Esakki Ananthan filed the "***final report on further investigation",*** purportedly under Section 173(8) Cr.P.Cbefore the CJM, Sivagangai. At the foot of page 5 of this report, the IO observes:

> "***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"***

This conclusion is, on the face of it, grossly illegal and smacks of grave impropriety on the part of the IO K.Esakki Ananthan. It is settled law that a supplementary report arising out of further investigation under Section 173(8) Cr.P.C is in addition to the final report and does not wipe out the earlier report. In ***Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762,** the Hon'ble Supreme Court has observed as under:

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

In other words, by claiming to have wiped out the report of the earlier IO, K.Esakki Ananthan has done something that even the Magistrate could not do under Section 173(8). It is all too obvious that K.Esakki Ananthan's so-called further investigation is clearly a ruse that was procured by the Government of the day to present a good conduct certificate to free A1 and his family from the clutches of the criminal law.

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

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

Investigation of an offence is the prerogative of the police and nobody, including the Courts, can dictate as to how an investigation should be conducted. In this case, the IO has very candidly observed that the "*Government has accepted the further investigation report*" implying thereby that the Government, of which A1 was very much an integral part, was obviously interested in securing a clean chit on his behalf. The Government chose the DVAC to do the dirty work of mopping up the prosecution against the accused. The order of the Speaker was merely the icing on the cake.

20. It is seen from the records that on 02.11.2012, the Public Prosecutor before the Special Court filed a petition under Section 321 Cr.P.C. As is seen above, IO K.Esakki Ananthan claimed that his further investigation had wiped out the earlier final report. The Public Prosecutor, it appears, has gone a step further. In his petition under Section 321 Cr.P.C he has 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"

The aforesaid submission is, to say the least, bizarre and startling. Whether the Public Prosecutor was airing his complete ignorance on criminal law or whether it was a deliberate ploy to pull the wool over the eyes of the Special Court is a moot question. To say that the cognizance taken by the Court on a final report had become infructuous on account of a supplementary charge sheetunder Section 173(8) Cr.P.C is quite simply shocking. That the CJM, Sivagangai has actually accepted this incredible legal proposition is a reflection of the abysmal depths to which our Special Courts have sunk.

21.That apart, the petition under Section 321 Cr.P.C candidly discloses that what was manufactured under the garb of a further investigation was a "*fresh final report"* and not a supplementary report as contemplated under Section 173(8). By wiping out the earlier investigation, the DVAC, under the grab of further investigation, actually carried out a de-novo investigation which resulted in the "fresh final report". This could not have been done since de-novo investigation, wiping out the earlier final report, could be ordered only by the constitutional Courts (***Vinay Tyagi v Irshad Ali***, 2013 5 SCC 762).

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 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.

23. Returning to the case on hand, on the basis of this so-called "***final report on further investigation",*** an undated "notice" was sent from the CJM, Sivagangainot to the accused but to the counsel for the accused asking him to be present before the

Court on 29.11.2022. 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 Cr.P.C and on 03.12.2012 the CJM, Sivagangai allowed the petition and discharged the accused. In a cryptic order, the CJM refers to the order of the Speaker and the further investigation report of K.Esakki Ananthan pours encomiums on the Additional Public Prosecutor and thanks him for his "sincere efforts". The most shocking aspect is that the Special Court also saw to it that the final report of IO N.Kulothunga Pandian under Section 173(2), which was earlier taken cognizance of, was clandestinely swept under the carpet by giving it a quiet and indecent burial.

24. The entire process of filing the petition under Section 321 Cr.P.C and the process of consideration by the Hon'ble Special Court is completely in contravention of the law laid down by the Hon'ble Supreme Court in ***Abdul Karim v. State of Karnataka*, (2000) 8 SCC 710,** wherein it was held as under:

> "***20.*** *It must follow that the application under Section 321 must aver that the Public Prosecutor is, in good faith, satisfied, on consideration of all relevant material, that his withdrawal from the prosecution is in the public interest and it will not stifle or thwart the process of law or cause injustice. The material that the Public Prosecutor has considered must be set out, briefly but concisely, in the application or in an affidavit annexed to the application or, in a given case, placed before the court, with its permission, in a sealed envelope. The court has to give an informed consent. It must be satisfied that this material can reasonably lead to the*

conclusion that the withdrawal of the Public Prosecutor from the prosecution will serve the public interest; but it is not for the court to weigh the material. The court must be satisfied that the Public Prosecutor has considered the material and, in good faith, reached the conclusion that his withdrawal from the prosecution will serve the public interest. The court must also consider whether the grant of consent may thwart or stifle the course of law or result in manifest injustice. If, upon such consideration, the court accords consent, it must make such order on the application as will indicate to a higher court that it has done all that the law requires it to do before granting consent."

In this case, the records reveal that the Public Prosecutor and the Special Court have merely paid lip service to the aforesaid dictum.

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 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 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.

27. It is a settled rule in criminal law that a mere delay is no ground to throw away a criminal case sans any specific bar of limitation. Explaining the maxim "*nullum tempus aut locus occuritregi*" the Hon'ble Supreme Court in ***Japani Sahoo v. Chandra Sekhar Mohanty*, (2007) 7 SCC 394,** has observed as under:

> "***14.****The general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim nullum tempus aut locus occurritregi (lapse of time is no bar to Crown in proceeding against offenders). The Limitation Act, 1963 does not apply to criminal proceedings unless there are express and specific provisions to that effect, for instance, Articles 114, 115, 131 and 132 of the Act. It is settled law that a criminal offence is considered as a wrong against the State and the society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a court of law has no power to throw away prosecution solely on the ground of delay. Mere delay in*

approaching a court of law would not by itself afford a ground for dismissing the case though it may be a relevant circumstance in reaching a final verdict."

That no rule of limitation can be put against the High Court in exercising its suo motu power of revision is also well settled. In ***Municipal Corpn. of Delhi v. GirdharilalSapru*, (1981) 2 SCC 758**, the Hon'ble Supreme Court observed:

"*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."

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.

28. That apart the exercise of the power of judicial superintendence in cases involving the purity of the legal system was emphasized in ***Perumal v. Janaki*, (2014) 5 SCC 377,** where the Hon'ble Supreme Court has observed as under:

"*The power of superintendence like any other power impliedly carries an obligation to exercise powers in an appropriate case to maintain the majesty of the judicial process and the purity of the legal system. Such an obligation becomes more profound when these allegations of commission of offences pertain to public justice."*

The same obligation has been reiterated in ***Shalini Shyam Shetty v. Rajendra Shankar Patil*, (2010) 8 SCC 329:** as under:

> *"The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court."*

The reluctance of a Court to examine an issue or order after a long lapse of time is rooted in considerations of public policy resting on the finality of decisions. It is thought to be in the public interest that matters already decided should not be reagitated. The only question is, whether public interest would be sub-served or subverted if this Court simply ignores the glaring facts which are a matter of record and are enumerated in paragraph 25, given the distance of time? We must not forget that public confidence in our Courts is a hallmark of the Rule of law. As the Hon'ble Supreme Court has observed:

> *"The court is the conscience of the statute and hence its judgments should project and promote the policy aims of punishment, lest it should shake the faith of common man in courts.*

The court has thus a duty to protect and promote public interest and build up public confidence in the efficacy of the Rule of Law."

Citizens must never get the impression that our Courts are the playfields of the rich and the powerful for as the Bible says *if the* salt *have lost his savour, wherewith shall it be salted* ?

29.In view of the above discussion, this Court finds that there are *prima facie* materials to exercise powers under Section 397 and 401 Cr.P.C and Article 227 of the Constitution of India. The following directions are accordingly issued:

(a) The Public Prosecutor takes notice on behalf of the 1st respondent.

(b) Issue notice to the accused /respondents 2-7 returnable by 27.09.2023, directing them to remain present before this Court for the hearing on 27.09.2023.

(c) The Registry is directed to place a copy of this order before the Hon'ble Chief Justice for information.

31.08.2023

Internet: Yes
Index: Yes/No
Speaking Order/Non-Speaking Order
KP

N.ANAND VENKATESH., J.

KP

To

1.The Deputy Superintendent of Police
The Vigilance and Anti-Corruption Wing
Madurai.

2. The Chief Judicial Magistrate/Special Judge,
Sivagangai.

3.Public Prosecutor
High Court, Madras.

SUO MOTU Crl.R.C.No.1524 of 2023

31.08.2023

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