

## IN THE HIGH COURT OF JUDICATURE AT MADRAS

<b>ORDER RESERVED ON 09.10.2018</b>	<b>ORDER PRONOUNCED ON 12.10.2018</b>
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CORAM:

**THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA**CrI.O.P.No.20711 of 2018

R.S.Bharathi ... Petitioner

/Vs/

The Director,  
Vigilance and Anti Corruption  
293, MKN Road, Collectors Nagar,  
Alandur, Chennai-600 016. ... Respondent

**PRAYER:** Criminal Original Petition filed under section 482 Cr.P.C., to direct the 1<sup>st</sup> respondent to register the case and investigate the complaint dated 13.06.2018.

For Petitioner : Mr.N.R.Elango, Senior Counsel  
for Mr.R.Girirajan

For Respondent : Mr.Vijaya Narayanan,  
Advocate General, Assisted by  
Mr.K.Prabakar, Additional Public Prosecutor

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**ORDER**

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The petitioner is a Member of Parliament and the Organising Secretary of the DMK Party seeking directions to the first respondent to register the case and investigate the complaint dated 13.06.2018.

2. The averments in the petition is that Thiru.Edappadi K.Palanisamy is presently the Chief Minister of Tamil Nadu and that he holds the portfolios of Public, Indian Administrative Service, Indian Police Service, Indian Forest Service, General Administration, District Revenue Officers, Police and Home, Public Works, Irrigation including Minor Irrigation, Programme Works and Highways and Minor Ports. The further averment is that the State Highways Department, is implementing four lane road in Oddanchatram-Dharapuram-Avinashipalayam of State Highway-37 from 37-400 to 108-400 and that the project is implemented under Design, Build, Finance, Operate, Maintain and Transfer (DBFOMT) method and that the total stretch of the project is 70.20 Kms and that the original estimated project cost was Rs.713.34 Crores. Whereas subsequently, the cost of the project has been increased to Rs.1515 Crores (including cash grant of Rs.315 Crores). It is averred that the project was implemented with the financial assistance of World Bank and the annuity payment for the contractor is fixed at Rs.75 Crores for every six months for 8 years and this amount is apart from the cash grant of Rs.315 Crores. The further averment is that the actual cost for laying one kilometer of road, according to market norms comes around Rs.2.2 Crores per kilometer, including the contractor's profit and that if this rate is taken into calculation the cost of the project would not exceed Rs.200 Crores, including cost increase/inflation, whereas, a sum of Rs.1515 Crores is sanctioned towards this project. The further allegation is that this project

had been allotted to M/s.Ramalingam and Company, Erode and that one Mr.Chandrakanth Ramalingam, son of Mr.Ramalingam is one of the directors in this firm apart from his father and sisters. Further averment is that, one Mr.Mithun Kumar S/o the Hon'ble Chief Minister is married to one Divya and that she has a sister by name Saranya who is the wife of Mr.Chandrakanth Ramalingam, which is in other words that Mr.Edappadi K.Palanisamy, being the Hon'ble Chief Minister and Minister for Highways had awarded a contract worth Rs.1515 Crores to a firm owned by his son Mithun's brother in law. The next averment is in respect of the second project of four laning of Tirunelveli-Sengottai-Kollam-SH 39 from 5.000 km to 50.600 km which is a World Bank assisted project and the total stretch of the project is 45.64 km. The original estimated cost of the project was 407.6 Crores, in addition to cash grant of Rs.179.94 Crores. The further allegation is that the project cost was subsequently revised and order was issued to implement this project at Rs.720 Crores. The annuity payment for the contractor is fixed at Rs.45 Crores for every six months for 8 years and this apart a cash grant of Rs.180 Crores was granted. It is further averred that the actual cost for laying one kilometre of road, according to market norms comes around Rs.2.2 Crores per kilometre, which includes contractor's profit. This rate would make the project implementable at an expense of not more than Rs.130 Crores, including contractor's profit, whereas, the project is implemented at the rate of Rs.900 Crores (including 8 years bi-annual payment of Rs.45

Crores and cash grant of Rs.180 Crores) and this contract had been awarded to a firm named M/s.Venkatachalapathy Constructions and notably this firm was the single bidder for this project and that this firm is owned by one P.Subramaniam and that the son of Thiru.Edappadi K.Palanisamy named Mr.Mithun Kumar had married the daughter of the said P.Subramaniam. Further, apart from P.Subramaniam, the other partner in this firm is one S.Nagarajan, who owns SPK and Company Expressway Private Limited having office at Arupukottai, Ramanathapuram District. The further averment is that, the said S.Nagarajan is stated to be the benami of Thiru.Edappadi K.Palanisamy.

3. The further averment is that, in respect of the third project which pertains to four laning of Madurai Ring Road from Km-0/0 to 27/2 under the Build-Operate-Transfer (BOT) basis and that total cost of this project is Rs.200 Crores and the contract has been awarded to M/s.Sri.Balaji Toll Ways Private Limited having office at Chennai. The further allegation is that P.Subramaniam, (Father in law of Thiru.Edappadi K.Palanisamy' son), S.Nagarajan (Benami of Thiru.Edappadi K.Palanisamy) and J.Sekar @ Sekar Reddy are the directors of this firm. The further allegation is that after award of this tender to the above firm an additional amount of Rs.8.57 Crores was sanctioned for the project through G.O.Ms.No.82, Highways and Minor Ports (HS.1) Department, dated 16.05.2018. The further allegation is that the fourth project which is a World Bank assisted

project was in respect of four laning of Vandalur-Walajabad from 47.000 to 63.800 Kms and that the project had been awarded to M/s.SPK and Company Expressway Private Limited having office at Arupukottai Ramanathapuram District, owned by one S.Nagarajan who is stated as above the project cost works out to Rs.200 Crores. The further allegation is that the fifth project is in respect of maintenance of all state Highway Road in Ramanathapuram, Thiruvallur, Krishnagiri and Virudhunagar Districts and that the total cost of this project is Rs.200 Crores and again this contract had been awarded to M/s.SPK and Company Expressway Private Limited. The Further averment is that the project is subsequently Sub-contracted to M/s.Venkatachalapathy and Company owned by P.Subramaniam.

4. The details of the projects have been tabulated hereunder:-

<b>S. No</b>	<b>Project Details</b>	<b>Contractors Information</b>	<b>Original Project Value</b>	<b>Increased Project Value</b>
1	SH-37 Stretch of highway from Oddanchatram -Dharaparam-Avinashipalaya m Total kms:-37-400 to 108-400 stretch 70.20 kms	M/s.Ramalingam and Company owned by one Chandrakanth Ramalingam who is related to Thiru.Edappadi K.Palanisamy throgh his son Mr.Mithun Kumar	Rs.713.34 Crores	Rs.1515 Crores
	SH-39 stretch of highway	Venkatachalapathy Constructions owned by	Rs.407.6 Crores with	Rs.720 Crores

S. No	Project Details	Contractors Information	Original Project Value	Increased Project Value
2	from Thirunelveli-Sengottai-Kollam Total kms:- 5.000 kms to 50.600 kms stretch is 45.64 kms	P.Subramaniam who is the direct in law of Thiru.Edappadi Thiru.Edappadi K.Palanisamy Apart from Subramaniam the other partner in this firm is one S.Nagarajan who own SPK and Company Expressway Private Ltd.	additional cash grant of Rs.179.94 Crores	with additional cash grant of Rs.180 Crores
3	Four laning of Madurai ring road	Shri.Balaji Toll Ways Private Limited P.Subramaniam (in law of Thiru.Edappadi K.Palanisamy) S.Nagarajan (Benami of Thiru.Edappadi K.Palanisamy) J.Sekar @Sekar Reddy are the directors of this firm	Rs.200 Crores	Additional Rs.18.57 Crores by a G.O. Dated 16.05.2018
4	Six laning of Vandalur-Walajabad from 47.000 to 63.8000 kms	SPK and Company Expressway Private Ltd. Owned by S.Nagarajan (Benami of Thiru.Edappadi K.Palanisamy)	Rs.200 Crores	
5	Maintenance of all State Highways roads in Ramanathapuram, Thiruvallur, Krishnagir and Virudhunagar Districts	SPK and Company Expressway Private Limited owned S.Nagarajan (Benami of Thiru.Edappadi K.Palanisamy) the project was subsequently sub-contracted to Venkatachalapathy and company owned by P.Subramaniam who is the direct in law of Thiru.Edappadi K.Palanisamy	Rs.2000 Crores	



5. The Further allegation is that Thiru.Edappadi K.Palanisamy, being a public servant, entered into a criminal conspiracy with Chandrakanth Ramalingam, P.Subramaniam, P.Nagarajan, J.Sekar @ Sekar Reddy and the firms, M/s.Ramalingam and Company, SPK and Company Expressway Private Limited and Balaji Toll Ways (Madurai) Private Limited and thereby, abused his official position as Hon'ble Chief Minister and Minister for Highways and Minor Ports and thereby, committed criminal misconduct and thereby, obtained undue pecuniary advantage for himself and thus committed offences punishable under Sections 120-B of IPC and under Section 13(1) (d) r/w 13 (2) of the Prevention of Corruption Act, 1988. The further allegation is that Thiru.Edappadi K.Palanisamy was the Highways Minister during the period from 2011 to 2016 when late Ms.J.Jayalalitha was the Hon'ble Chief Minister. It is further alleged that as Minister of Highways he had control over the award of Government contracts for laying of roads under the Highways Department.

6. The Further allegation is that the above contracts have been awarded to these two firms owned by his relatives at an inflated rates thereby, causing undue pecuniary advantage to them only because the two firms are controlled by persons who are closely related to Thiru.Edappadi K.Palanisamy's son Mithun Kumar. The Further allegation is that the modus operandi, it appears is to eliminate and dissuade all

eligible contractors from participating in the bid by adopting intimidating tactics and thereby, the provisions of the Transparency of Tenders Act, 1998 and its rules have been violated with impunity. The allegation is that Mr.R.Ramalingam and Mr.P.Sutharma who are close relatives of the Hon'ble Chief Minister have been awarded several contracts amounting to several Crores of Rupees for the past seven years and in most of the bids there were only two bidders and that this is not mere coincidence and thereby, needing a thorough investigation. The further allegation is that the *prima facie* case for criminal misconduct under the provisions of Prevention of Corruption Act, 1988 had been made out against the present Chief Minister of Tamil Nadu and that he had amassed wealth by using his office as Highways Minister and he had committed offences as well which needs further probe in the interest of justice. The further allegation is that the complaint was lodged to the first respondent on 13.06.2018 and that neither a case was registered nor an enquiry was initiated to the allegations in the complaint. The further allegation is that after the complaint on 13.06.2018 the Income Tax Department on 16.07.2018 had conducted raids on the properties belonging to Nagarajan Seyyadurai, the Managing Director of M/s.SPK and Company Expressway Private Limited who was previously alleged in the complaint as the benami of Hon'ble Chief Minister Thiru.Edappadi K.Palanisamy.



7. The further allegation is that the Income Tax Department after conducting their raids in the place belonging to the said Nagarajan Seyyadurai had concluded that the main assessee had accumulated unaccounted cash of Rs.163 Crores and gold bullion of over 100 kgs which were recovered and seized from ten places where he had parked them for safe custody. Further, apart from unaccounted assets, several incriminating documents in the form of loose sheets, diaries, registers and hard disks were also seized. The further allegation is that the said Nagarajan Seyyadurai had kept cash of Rs.24 lakhs in his house and parked the remaining cash and gold in different places of his employees and associates including in two BMW cars. The further allegation is that the above incidents which had taken place after this complaint goes to show that large scale corruption has happened in the above mentioned road contracts with the aid of the present Hon'ble Chief Minister Thiru.Edappadi K.Palanisamy. It had been further averred that this is only a tip of the ice berg and a probe into this matter would unravel huge corruption involved in these road contracts and how public money has been swindled. The complaint had been lodged on 13.06.2018 and the income tax raids were conducted after a month's time i.e., on 16.07.2018. The factum of lodging complaint was widely published in the newspapers and that due to the lackadaisical approach of the respondent they have not registered a case and that quantum of evidence were erased during this interim period from the date of the complaint and to

date on which the income tax raids were not conducted is not known. The further allegation is that the person accused of these offences is the present Hon'ble Chief Minister of Tamil Nadu and he is also holding the Home Portfolio which controls the respondent herein. It is further averred that in such circumstances a proper legal and justifiable investigation could not be expected at the hands of the respondent and that the very fact that the respondent had not initiated a preliminary enquiry so far and informed about such preliminary enquiry if any, shows the dis-inclination and apparent disobedience of mandate of law on part of the respondent.

8. Originally, the petition was filed to register the case and investigate the complaint dated 13.06.2018. This matter came up admission on 24.08.2018 and the learned Advocate General took time for filing counter and the matter was posted on 04.09.2018. On 04.09.2018 a counter was filed by the Additional Superintendent of Police, Special Investigation Cell, Vigilance and Anti-Corruption. In the counter affidavit it had been stated by the respondent that he is the present officer in-charge to conduct enquiry into the relevant matter and that he is well acquainted with the facts and circumstances of the case and that based on the records he had sworn the counter affidavit. It had been submitted in the counter that based on the petition the respondent had directed to register and conduct a preliminary enquiry vide memorandum in PE.186/2018/PUB/HQ dated 22.06.2018 and based on the memorandum

the case had been taken up for enquiry and it had also been intimated to the petitioner through speed post on 13.06.2018. It had been stated in the counter affidavit that the allegation in the complaint pertains to tenders floated by Highways Department Tamil Nadu Road Sector Project-II (2 Tenders), Tamil Nadu Road Infrastructure Development Corporation (2 Tenders) and one by Highways (Construction and Maintenance) in respect of four Districts of State of Tamil Nadu and the subject matter of the complaint are 8 contracts in respect of the above 5 projects and 8 Tenders have been floated out of which 2 projects are funded by World Bank.

9. It had further submitted that the preliminary enquiry was undertaken on day-to-day basis and that owing to the fact that the allegations in the complaint were pertaining to tenders awarded and involving voluminous documents, it had consumed time for completion of the same. It has also been submitted that the progress in respect of the conduct of the enquiry have been noted in the General Diary and that there was no lethargic attitude in the conduct of the investigation and that the materials have been collected and reports have been prepared. Further, it was stated that the counter affidavit had been filed only pertaining to the progress and the status of the case and that the respondent was not traversing parawise on the allegation made in the affidavit filed in support of the above petition. Since it was stated that the

allegation in the affidavit pertain to the allegations leveled which are the subject matter of the enquiry, the respondent had reserved his right to file a detailed counter if called upon by this Court, to file a detailed affidavit traversing parawise the allegation made. It was further contended in the counter affidavit that the petitioner had willfully suppressed about the intimation of the preliminary enquiry before this Court. It was also further averred that the preliminary enquiry was completed and draft final report was sent to the Director, Vigilance and Anti-Corruption on 28.08.2018 and the same had been sent to the Vigilance Commission for further order and thereby, it was stated that the petition has to be dismissed.

10. From 04.09.2018 this matter was posted to 07.09.2018. On 07.09.2018, the learned counsel for the petitioner sought time to file a rejoinder to the counter affidavit filed by the respondent and thereby, the matter was directed to be posted on 12.09.2018 and the learned counsel for the petitioner was directed to serve the copy of the rejoinder on the learned Additional Public Prosecutor on or before 11.09.2018. On 12.09.2018 the respondent was directed to file a detail report with regard to day-to-day progress done in the case and the matter was directed to be posted on 17.09.2018. On the same day rejoinder was filed.

11. In the rejoinder affidavit of the petitioner it had stated that the complaint had been given against the Hon'ble Chief Minister in respect of commission of corruption of alarming magnitude in the Highways Department which was also held by the Hon'ble Chief Minister and it was submitted that the petitioner had reasonably apprehended and that neither any registration of the First Information Report nor proper investigation can be expected at the hands of the respondent and that it was stated that the respondent had filed a vague counter inferring that it was apparent and that the respondent was trying to suggest that he has already carried out some alleged detailed enquiry before submitting the report and it was stated that as per the case of **Lalitha Kumari Vs. State of Uttar Pradesh** reported in **(2014) 2 SCC 1**, the scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence. It was further stated that the action of the respondent was motivated to achieve a particular result i.e., to see that the main accused in the complaint, who is also the Hon'ble Chief Minister and head of this particular Ministry, gets away with all his corrupt and illegal activities. Further, it was averred that though it had been stated that day-to-day enquiry for two months have been conducted the respondent had not even bothered to enquire and ascertain from the petitioner the basic facts and his willingness to make a statement regarding the allegations despite there being a legal mandate under Rule

18 of the Manual of the Directorate of Vigilance and Anti Corruption of Tamil Nadu.

12. Further, it was averred that, the attitude of the respondent and swearing into an affidavit, "reserving his right and only if necessary and called upon by the Court to file a detailed counter traversing parawise the allegations made," is clearly an attempt to overreach this Court and deliberately for the benefit of the accused persons and that this amounts to contempt of this Court. Further, it was stated that only because serious allegations of corruption against the Hon'ble Chief Minister are raised in the petitioner's affidavit, the respondent are concealing/shying away from placing all the facts before this Court. It was further averred that, the statement of the respondent that the report has been sent to the Vigilance Commissioner and further course of action will be decided as per his direction is contrary to the law laid down by the Hon'ble Supreme Court. It was further stated that, the provisions in the Vigilance manual cannot have precedence over the code of Criminal Procedure. It was further stated that it was very agonising to note that corruption and nepotism has become the order of day in the State of Tamil Nadu and that the entire administration from the Vigilance Commissioner to the Director and the Joint Director of the Directorate of the Vigilance and Anti-Corruption, had been hand-picked by the people who are in power, to protect themselves and it was further stated that though several other



complaints had been given against the Hon'ble Chief Minister, Hon'ble Deputy Chief Minister and other Cabinet Ministers no action had been taken on those complaints. It was further stated that though the post of the Vigilance Commissioner is expected to be an "Independent Institution" unfortunately, it was not so in Tamil Nadu and that the petitioner had also filed a writ petition before this Court in W.P.No.20981 of 2018 which is pending and that the Vigilance Commissioner had also been impleaded as a party in the writ petition. It is further stated that the present Joint Director of the Directorate of the Vigilance and Anti-Corruption, under whom the enquiring officer is serving, is himself facing an enquiry under the Tamil Nadu Prohibition of Women Harassment Act and that despite the fact that the Government has constituted a committee to enquire under those allegations, the said Joint Director had not been transferred by the Government from that post till date which is only as quid pro quo to save the Ministers in the Cabinet from the corruption cases against them. Further, it was stated that apart from the above factual malafides, the non-registration of the First Information Report, even though the complaint discloses a cognizable offence, is actuated by legal malafides and that the enquiry officer in his counter affidavit has asserted that he is awaiting orders from the Vigilance Commissioner and that as per the Code of Criminal Procedure, the investigating officer shall not consult anybody in the process of the investigation and that though the manual of the Directorate of the Vigilance and Anti-Corruption contains such provisions,

the Code of Criminal Procedure will prevail over the same. It was further stated that the Hon'ble Chief Minister against whom the allegations are made is not only the Minister holding the portfolio which is controlling the Ministry of the respondent department, he is also the Hon'ble Chief Minister of the State and thereby, it is a fit case to hand over the investigation to the Special Investigation Team and this Court has to monitor the same, so that it is a fair, transparent and free investigation from interference from the accused, so that justice will be done and thereby, a prayer was made to direct an impartial investigation by any other Competent Police Officer or team of police officers.

**Written submissions were filed by both parties. Summary of the written submissions filed by the petitioner:-**

- *The petitioner had filed the petition on 22.08.2018 seeking direction from this Court to register a case and investigate the complaint dated 13.06.2018 which makes out a prima facie case of serious corruption and misappropriation offences. In the complaint the petitioner had raised the following allegations:-*
- *The Hon'ble Chief Minister also holding charge of the Highways department abused his power as a public servant and obtained undue pecuniary advantage for himself and committed criminal misconduct by awarding contracts to his relatives and associates at inflated rates. The above companies have been*

awarded several contracts in the past seven years work several 1000 Crores of Rupees by intimidating other eligible contractors from participating and violating with impunity the provisions of the Tamil Nadu Transparency in Tenders Act. Subsequent to the lodging of the complaint income Tax Department conducted raids on 16.07.2018 on the properties of Thiru. S.Nagarajan who is stated to be a benami of the Hon'ble Chief Minister. Rs.163 Crores of unaccounted cash and bullion over 100 kgs were recovered from 10 different locations connected with the employees an associates several incriminating documents in the form of loose sheets diaries registers and hard disks were also seized. The ADSP, Special Investigation Cell registered on 28.06.2018 and conducted preliminary enquiry and after the completion of same the draft final report was sent to the Vigilance Commissioner on 28.08.2018 for further orders. The oral and written arguments on behalf of the respondent certainly disclosed that the respondent has decided not to proceed with the complaint on the basis of a hurried, pre determined and illegal preliminary enquiry.

- The conduct of the respondent in this case alone suffices for the Hon'ble Court to exercise his power under Section 482 of Cr.P.C However, the petitioner directly deals with the president governing the scope of section in the wake of decisions relied on by the respondent. The petitioner agreeing with the decisions in Sunil Gangadhar Karve Vs. State of Maharashtra (2014) 14 SCC submitted that the Hon'ble Apex Court declined the prayer for direct

registration of FIR holding that it was for the High Courts to adjudicate such matters and that the allegations related to matters falling under the Bombay Trust Act and the complaint had made multiple complaints to the authorities relating to the same allegations including two on the successive days. Then with reference to the decision of this Madurai Bench of this Hon'ble Court in G.Prabakaran Vs. Superintendent of Police, Tanjavur (CrI.O.P.No.13681 of 2018 ) relied on by the respondent calls for exhaustion of section 154 (3) and 156 (3) Cr.P.C before filing a petition under Section 482 Cr.P.C.

- By sending the complaint to the respondent himself the petitioner had satisfied the requirement under 154 (3) Cr.P.C. Further, by virtue of the hierarchy and procedure for handling complaints set out in the Vigilance manual, Section 154 (3) has no application in the present situation. The position of the accused, the scale of corruption and the contact of the respondent detailed below all makes this is an "exceptional and rarest of rare case were this Court must intervene to ensure accountability even for occupying the highest positions of power and to maintain probity in public life which is essential for the sustenance of power, democracy. In this context it is to be noted that the respondent completed the preliminary enquiry on the complaint received on 13.06.2018 only after the petitioner moved this Court.

- Reliance was placed on RameshKumari Vs. State

*(NCT of Delhi) (2006) 2 SCC 677 wherein, Hon'ble Supreme Court Ruled that police officers must mandatorily register FIRs in cases of cognizable offences and upon their failure to do so it is within inherent power of the High Court to grant relief if cognizable offence is disclosed in the complaint and reference was made to paragraphs 3, 4 and finally to paragraph 33 wherein the views expressed by this Court as quoted above leaves no manner of doubt that the provisions of 154 of the code is mandatory and the officer concerned is duty bound to register the case on the basis of such information disclosing cognizable offence.*

- *Further it had been submitted that no proper and fair investigation be expected at the hands of the respondent and that the petitioner had made specific and substantial allegations impugning the impartial of the investigation conducted by the respondent and that the respondent through pleadings or otherwise had chosen not to address this plea raised in the petition and that the attitude of the respondent cannot make the allegations vanish. It was only after the oral arguments made on behalf of the respondent during the hearing of this petition, the petitioner is fortified in his belief that the respondent could not be relied to conduct the impartial investigation of the Hon'ble Chief Minister and hence, sought for impartial investigation by any other competent police officer or team of the police officers and monitoring the same by this Court. It is contended that the inherent powers of this Court while granting relief under 482 Cr.P.C is not constrained by the pleadings of the*



*parties. Reference was made decision reported in AIR 1965 SC 1578 Sri-la-Sri Subramania Desika Gnanasambana Pandarasannadhi Vs. State of Madras wherein it had been held that the Hon'ble High Court could consider a new plea that goes to the root of the matter even if it is raised only in the rejoinder affidavit for the first time.*

- *By not denying any of the specific allegations of bias in the affidavit or the rejoinder affidavit, the respondent must be deemed to have accepted the allegations. If that is the position, then this Hon'ble Court cannot secure the ends of justice by allowing the respondent to conduct the investigation. It is fully within the power of this Court to order a court monitored investigation to secure the ends of justice even without a specific prayer by the petitioner. This Hon'ble Court, apart from these submissions and pleadings of the petitioner, may also notice the fact that the respondent, after conducting a farce investigation and concluding that no offence had taken place and that the accused were all innocent persons, cannot now conduct and importantly, be seen as conducting, an independent, complete and fair investigation.*

#### **Disclosure of cognizable offence**

- *The allegations in paragraphs 2 and 3 of the complaint disclose cognizable offences and are grounds for registering an FIR. The respondent had adverted to two contracts specifically and had argued that the allegations pertaining to them do not disclose cognizable offence and petitioner makes the followings submissions in support of*



*his complaint.*

- *The Government of India and the International Bank for Reconstruction and Development ("World Bank") entered into a loan agreement (Loan Number – 8499 IN) on 28<sup>th</sup> May 2015. The loan agreement was for financing of the Second Tamil Nadu Road Sector Project (Project Number-P143751), which is described in detail in Schedule 1. Section I, Sub-Section B and Section III of Schedule 2 make applicable to the project, the World Bank's Anti-Corruption and Procurement Guidelines respectively. The Government of Tamil Nadu and the World Bank entered into a project agreement pursuant to the above agreement on 28<sup>th</sup> May 2015. Section I, Sub-Section B and Section III of the Schedule similarly make applicable to the project, the World Bank's Anti-Corruption and Procurement Guidelines respectively.*
- *Paragraphs 7 of the Anti-Corruption Guidelines includes within the definition of "fraud and corruption, corrupt, fraudulent and collusive practices. Procurement Guidelines and also, the procurement Regulations for Investment Project Financing (IPF) Borrowers, in paragraph 1.6 and 3.14 respectively, bar award of a contract to any firm with a conflict of interest. Paragraph 1.7 and 3.15 respectively define conflict of interest to include any close business or family relationship with any party acting on behalf of the borrower who would be involved in the execution or the supervision of the contract.*
- *The contract for the four-laning of SH-37 (Oddanchatram-Dharapuram-Avinashipalayam-TNRSP II*

PPP 02 SH-37) was awarded by the World Bank to a joint venture (JV) comprising Ramalingam Construction Company Private Ltd., whose directors include Thiru.N.Ramalingam and his sons, Thiru.N.R.Suriyakanth and Thiru.N.R.Chandrakanth. Thiru.N.R.Chandrakanth is the brother-in-law of Thiru.Mithun Kumar. The contract for the four-laning of SH-39 (Tirunelveli-Sengottai-Kollam-TNRSP II PPP 03 SH-39) was awarded by the World Bank to a JV comprising SPK and Co. whose directors include Thiru.P.Subramaniam. Thiru.Mithun Kumar is married to the daughter of P.Subramaniam.

- Section I, Sub-Sections A-1 and A-3 (a) (i) of the Schedule to the Project Agreement vests the implementation of the relevant part of the Project with the Highways Department and in particular, an Empowered Committee headed by the Minister of Highways which shall provide project guidance to the Department. It is an admitted fact that an Empowered Committee headed by the present Minister for Highways, was constituted on 14.08.2013 itself (Thiru.Edappadi K.Palaniswami was sworn in as the Chief Minister on 16.02.2017) and he continued to be a member of that Committee and headed it on the date of awarding of the two contracts on 21.02.2018. These contracts were awarded to the relatives of Thiru.Edappadi K.Palaniswami, while he was Minister for Highways, despite the existence of a conflict of interest, which prevented the Hon'ble Minister from participating in this matter in any capacity in the first place.
- In awarding the contract to ineligible contractors, the Minister of Highways, the Principal Secretary to the

*Highways Department, the contract awardees and other public servants have committed breach of the Anti-Corruption and procurement Guidelines and thereby, the loan agreement and the project agreement signed with the World Bank. The respondent, during the course of oral arguments, attempted to derive the meaning of the phrase "close business or family relationship" mentioned in the World Bank Guidelines by not considering the words "business or family" and instead tried to read the the Guidelines as only applying to a "close relationship". The phrase 'close business or family relationship' must be read, in accordance with the usual rules of grammar and usage, as "close business relationship" or "family relationship".*

- *The respondent has taken the stand since the Guidelines do not furnish any definition of 'relationship', aid must be taken from the Tamil Nadu Government Servants' Conduct Rules, 1973. In the first place, by the plain text of the phrase "family relationship", without qualification, it is clear that it includes all ties of blood and marriage. It is only due to this broad definition, that the World Bank Guidelines provide for a process to "resol[ve] in a manner acceptable to the Bank throughout the procurement process and execution of the contract" in cases of conflict of interest.*
- *This attempt to shield the Hon'ble Chief Minister would be more convincing if the Rules, framed by the Tamil Nadu Government, intended to be used as an aid to interpret the commercial guidelines of an international inter-governmental organisation like the World Bank actually applied to the Hon'ble Chief Minister, which it does not.*

*Rule 1 (1) quite clearly states that the Rules only apply to a "person appointed to civil services and posts in connection with the affairs of the State of Tamil Nadu (other than members of the All-India Services who are subject to the All India Services (Conduct) Rules, 1968 and Subordinate Police Officers who are subject to the Tamil Nadu Subordinate Police Officers' Conduct Rules, 1964). whether on duty, leave or on foreign service".*

- *The respondent, during the course of arguments, appreciated the ability of the contractors in the two contracts. Leaving aside the pending legal proceedings against them, the fact is that the contract for the Tirunelveli-Sengottai-Kollam road was annulled because the contractor could not even furnish security guarantee before beginning work, which shows the level of scrutiny undertaken by the Hon'ble Chief Minister, as Minister for Highways, and his subordinates before awarding this contract.*

- *Rule 23 of the Tamil Nadu Government Business Rules and Secretariat Instructions specifically prohibits the Minister in charge of a Department from acting on any matter in which he has a conflict of interest:*

*23. Except as otherwise provided herein cases shall be submitted by the Secretary in the department to which the case belongs to the Minister in-charge:*

*Provided that where the case relates to a matter in which the Minister concerned has a personal interest, it shall be submitted to the Chief Minister who may direct that the cases shall be circulated to anyone or more of the Ministers.*

- *It is clear that by participating in this matter, including*

heading the Empowered Committee, the Hon'ble Chief Minister has acted in contravention of Rules 23. Therefore, the Hon'ble Chief Minister has misappropriated the loans disbursed by the World Bank not only in violation of the World bank Guidelines and Regulations but also, the Tamil Nadu Government Business Rules and Secretariat Instructions which specifically controls the disposal of all government business and thereby, there is a prima facie case of an offence under Section 409 of IPC.

- As regards the question of inflated quotes for the contracts, it cannot be gone into at this stage. That requires detailed enquiry and investigation after registration of FIR. Even so, it is submitted, that the respondent contradicts himself by first saying there is can be no evaluation of costs for no two contracts as costs for each contract depends upon a variety of factors and at the same time, providing a chart of NHAI contracts (and not even contracts by the World Bank or Tamil Nadu agencies) to "prove" that the cost was not excessive.
- Regulation 5.58 and 5.59 of the World Bank Procurement Regulations mandate the rejection of bid in cases where only a single tenderer participates in the process:
- 5.58 Rejection of all Bids/Proposals is justified (for contracts subject to prior review, with the Bank's no-objection), when:
  - a. effective competition is lacking;
  - b. all Bids or proposals are not substantially responsive to the requirements of the procurement documents;
  - c. the bids'/proposals' prices are substantially higher than



*the updated cost estimate or available budget; or*

*d. none of the technical proposals meets the minimum technical qualifying score.*

- *5.59 lack of competition shall not be determined solely on the basis of the number of bidders/proposers. Even when only one bid/proposal is submitted, the process may be considered valid, if:*

*a. the procurement was satisfactorily advertised;*

*b. the qualification criteria were not unduly restrictive;*

*and*

*c. prices are reasonable in comparison to market values.*

- *Therefore, the World Bank does not allow, contrary to the stand of the respondent, for the single tenderers to be awarded contracts. Indeed, the prohibition contained in the regulation is even broader, also covering cases where "effective competition is lacking". The award of contract may be exempted under Regulation 5.59 but again, whether the conditions were satisfied in this case and whether, after the conditions were found to be satisfied bonafide, the contract was awarded legally require detailed enquiry and investigation.*

- *There is prima facie evidence that the procurement was not satisfactorily advertised, which is one of the conditions mentioned in Regulation 5.59. The bid notifications have not been advertised in accordance with Rule 11 (5) of the Tamil Nadu Transparency in Tender (Public Private Partnership Procurement) Rules, 2012 and Rule 9 and 11 of the Tamil Nadu Transparency in Tender Rules, 2000, thereby artificially reducing the number of prospective bidders.*



- *The respondent, by not contacting potential bidders who did not participate in the tender process, has deliberately chosen not to collect any evidence regarding the restrictiveness of the qualification criteria and the reasonableness of the prices submitted by the bidders. The enquiry into criminality in the award of the contracts necessarily requires examination of witnesses and documents on this aspect.*
- *By his submission that the contract was not awarded at an inflated rate and that the contract was not awarded in violation of the World Bank Guidelines and Regulations, the respondent concedes that there would be commission of cognizable offences if the above allegations are true. This admission of the respondent is sufficient to satisfy the requirement for registration of an FIR. For the "officer in charge of a police station" to begin an investigation, he must only have "reason to suspect commission of a (cognizable) offence". The petitioner's complaint provides ample grounds to form such suspicion.*
- *Indeed, it is the responsibility of the respondent to register an FIR, take statements of witnesses, search and seize relevant documents and collect all available evidence to substantiate the allegations. During the course of the arguments, the respondent has sought to shift the burden on the petitioner, to present a watertight case against the accused at this state, to just register an FIR. This is a complete shirking of the responsibility cast upon the police officers, under Section 154 Cr.P.C, to immediately register an FIR and investigate the commission of cognizable offences.*

**Conduct of the Preliminary Enquiry**

- Reference was made to *Lalitha Kumari Vs. State of Uttar Pradesh* (2014) 2 SCC 1 stating that under Section 154 Cr.P.C it is mandatory that an FIR be registered on receipt of information disclosing a cognizable offence and that the Hon'ble Supreme Court had held the possibility that a preliminary enquiry "may be made close in corruption cases but only if the information does not disclosed a cognizable offence." Upon the completion of enquiry (within 15 days unless "in exceptional cases by giving adequate reasons" it may be extended to six weeks)", an FIR must be registered or in cases where complaint is closed a copy of the closure report should be furnished to the informant within a week's time. In this case the respondent had not communicated to the petitioner as to why a preliminary enquiry was instead of straight away registering in an FIR. The respondent registered a preliminary enquiry on 22.06.2018 with a delay of 10 days the enquiry is alleged to have been completed on 28.08.2018 with a delay of 78 days after the receipt of the complaint and 6 days after the petitioner filed this petition. Despite the completion of the enquiry the respondent had not communicated the result of the same to the petitioner and thus the respondent has completely and without any regard to the law violated in every step of the enquiry set out by the Hon'ble Supreme Court.
- Further the judgment Hon'ble Supreme Court in *Common Causes Vs. Union of India* (2017) 11 SCC 731 due to the facts in that case has no relevance to the present proceedings. It has been submitted that the Hon'ble Apex Court had rejected the prayer for seeking direction since

*the petitioner had sought for direction from a Court on the basis of documents which are irrelevant and perse not cognizable in law as piece of evidence and inadmissible in evidence and thus a roving inquiry cannot be ordered on such legally unsustainable material. It is not the case of the respondent nor it had been argued during the course of the hearings, that non registration of FIR is due to lack of legally cognizable material against the accused. It is pertinent to note that the investigating officer has not bothered to enquire from the petitioner, as an informant his willingness to make a statement under Rule 18 of Vigilance Manual. The Investigating Officer has also not enquired any officials of the world Bank when one of the main allegations revolves around misappropriation of loans disbursed by the World Bank to benefit the benamies and relatives of the Hon'ble Chief Minister. It has not been ascertained by the Investigating officer, whether the Highways Department has disclosed the family relationship between the Hon'ble Highways Minister and the Directors of the sole bidder for the contract for four laning of SH-37, M/s.Ramalingam Construction Company Ltd., to the World Bank before obtaining its consent for the award of contracts. It is also not known whether the investigating officer took into custody or even perused or departmental records and private records related to the five specifically mentioned contracts and also records related to contracts given to the above companies in the past 7 years. The written submissions speak about only two of the five contracts and all this raises considerable uncertainty about the scope of the preliminary enquiry.*

*respondent following based questions were raised.*

*(i) What aspects of the complaint were enquired into?*

*(ii) Which witnesses were contacted to ascertain their willingness to make statements?*

*(iii) What documents were perused and what documents were taken into custody?*

*(iv) Whether it was enquired from the Highways Department and the World bank about the disclosure to the World Bank of the family relationship of the contract awardees to the Hon'ble Chief Minister?*

*(v) Were any documents, held by the above mentioned companies, were taken into custody or at least, perused?*

*(vi) Were the Income Tax authorities and other central agencies contacted regarding the raid on Thiru.S.Nagarajan?*

*(vii) Was the CBI contacted considering that Thiru.N.R.Chandrakanth is facing trial in Bangalore for committing offences under the Prevention of Corruption Act, for holding unaccounted currency notes and entering into conspiracy with bank officials to commit fraud and forgery? Did the enquiry seek to discover any information from this angle?*

*(viii) When the commission of scheduled offences has been reported, whether the same was forwarded to the Enforcement Directorate and their assistance sought, in accordance with the provisions of the Prevention of Money Laundering Act?*

*(ix) Were the only witnesses contacted by the*

*investigating officer, the subordinates of the accused himself, the Hon'ble chief Minister? Were any independent witnesses contacted?*

*(x) Considering the allegations involve technical subjects like finance, construction, tendering and also, money laundering, were any experts contacted to independently evaluate the evidence and give their opinions?*

- *To this day, it is not known under which sections of the law, the preliminary enquiry was registered and conducted. Whether the enquiry was registered under the Indian Pena Code or the Prevention of Corruption Act or both? Whether special legislations like Prevention of Money Laundering Act were also invoked?*
- *No details regarding the preliminary enquiry were informed to the petitioner. The respondent had not communicated to the petitioner or even in the written arguments revealed, if a preliminary enquiry was register under the provisions in the first place and whether documents relevant to the allegations were perused from the Highways Department, Government of India, The World Bank. In paragraph 27 of the written arguments filed on behalf of the respondent it had been submitted that statement of witnesses were taken. By taking statement of witnesses and engaging in the investigation of the allegations without registering an FIR, the enquiry run a foul of the directions of the Hon'ble Supreme Court and Vigilance Manual itself. It is relevant to note that the respondent in its written arguments had not mentioned if the contractors who participate in the pre-bid and who did not participate in the bidding process were contacted*



*to ascertain from them directly, the real reasons for not participating the tender process instead of relying here say and prejudice evidence from the officials of the accused, Hon'ble Chief Minister's Department.*

- *Reliance was placed on K.Veerasami Vs. Union of India (1991) 3 SCC 65 wherein the Hon'ble Apex Court had deprecated this method of investigation by weighing an accused's explanation to arrive at a conclusion as to his culpability and it was submitted that by giving an opportunity to the respondent to enquire the accused and decide further would be elevating the investigating officer to the position of an enquiry officer or a judge and the ratio applies to this case also.*
- *The Investigating Officer as represented in this Court has recorded statements of only submissive witnesses who are abutters and co conspirators to the crime which itself taints the enquiry as the only goal of the investigating officer appears to be, the complete exoneration, indeed a positive showing of innocence of the accused instead of concluding whether the complaint discloses any cognizable offence and thereby the respondent had turned the enquiry into a determination of the guilt of the accused and gone to conclude that the Hon'ble Chief Minister and his co conspirators are without blemish.*
- *Reference was made to N.Rishbud Vs. State of Delhi AIR 1995 SCC 196, while considering the scope of the investigation.*
- *It has been averred by the respondent that the outcome of the preliminary enquiry is subject to "further orders"*

*that respondent and Vigilance Commissioner may issue to the investigating officer. In result, the report of the investigating officer is subject to modifications by the respondent and the Vigilance Commissioner, which is contrary to the judgment of the Hon'ble Supreme Court mentioned above. The closing of the complaint without contacting any of the material witnesses to gather information and peruse documents in their custody is fatal to the respondent's enquiry. The entire preliminary enquiry is liable to be set aside for the reason that the investigating officer has already ascertained the veracity of the allegations at this stage without registering an FIR. To take but one example, written submissions indicate that the investigating officer has enquired into and concluded that the prices quoted by the above mentioned contractors were not inflated.*

- *The respondent, if he were to actually engage in a "thorough and effective investigation", should have registered an FIR and then, fully and impartially investigated the allegations. Conducting a truncated and premeditated "preliminary enquiry" into allegations, involving money laundering, conspiracy and bid-rigging by multiple contractors and public servants over a long period of time, only to blindly absolve the accused of any criminal liability cannot meet any definition of "fair, just and reasonable" procedure under the law.*

**Summary of the Written submissions filed on behalf of the respondent:-**

- *The main case of the petitioner is that by virtue of the judgment of the Hon'ble Supreme Court in the case of Lalitha Kumari Vs. Government of Uttar Pradesh and others reported in 2014 2 SCC 1 that in FIR should be necessarily registered and investigation commenced on receipt of complaint. In the instant case the complaint dated 13.06.2018 was received by the respondent on the same and immediately thereafter, the director, DV and AC vide Memorandum No.PE 186/2018/PUB/HQ dated 22.06.2018 directed the ADSP, Special Investigation Cell, Alandur, Chennai to register and conduct a preliminary enquiry on 22.06.2018 on the same day preliminary enquiry was registered and enquiry commenced and it was communicated to the petitioner on 22.06.2018 itself. But the petitioner has not chosen to mention these facts in his petition. The enquiry officer has filed before this Hon'ble Court in a sealed cover, the various steps taken by him as regards the enquiry conducted by him and for the sake of brevity the same is not being repeated in the written submissions. Suffice to state a thorough and effective investigation was done and on the basis of the said investigation, a draft final report was sent to the Director, Directorate of Vigilance and Anti-Corruption on 28.08.2018 and the same was also forwarded to the Vigilance Commissioner for further orders and therefore, the prayer in the petition has now worked itself out and nothing further survives for consideration in the present Criminal Original petition. The question as to whether a preliminary enquiry can be conducted in such a case is discussed in the Lalithakumari judgment itself and reliance was made to paragraphs 115, 119 and 120.6 and 120.7. It was further submitted that preliminary enquiry also affords protection to highly placed officers and*

*constitutional functionaries who discharged onerous duties and who have to take high level decisions on daily basis and that the necessity for preliminary enquiry in such cases has been recognized by the Hon'ble Supreme Court in judgment reported in Common Causes and other Vs. Union of India reported in 2017 (11) SCC 731 and reference was made to paragraphs 283 and 287. Though initially the judgment in Lalithakumari had a time limit of seven days for completing the preliminary enquiry the time limit stipulated has been modified extending the time and that the fact of such delay and the causes of it must be reflected in the General Diary entry. Further reliance was made to the judgments in Ramdev Food Products Private Limited Vs. State of Gujarat -2015 (6) SCC 439 and reference was made paragraphs 19 and 20 and it was stated that perusal of the above judgment would show that in the above case, the enquiry did not disclose the commission of any cognizable offence and therefore a prayer was made to direct an investigation to be conducted by the Central Bureau of Investigation. The Hon'ble Supreme Court rejected the prayer by stating that if police officers come to the conclusion that no cognisable offence is made out, the ordinary procedure under Cr.P.C is available to the complainant. The Hon'ble Supreme Court also held that apart from the rights of the complainant, the rights of the accused also has to be safeguarded and the accused has a right to appeal against any such determination if the complainant chooses to approach the Magistrate concerned. The right to appeal is held to be an important right of the accused as held in A.R.Antulay Vs.R.S.Nayak, (1988) 2 SCC 602.*

- *In fact, in Antulay's case, the Hon'ble Supreme Court*

*held that even the Hon'ble Supreme Court exercising its power under Article 142 of the Constitution cannot take away the rights of accused conferred under various statutory provisions since that would amount to a violation of Article 21 of the Constitution of India, one of the most sacrosanct rights conferred by the Constitution.*

- *Reference may also be made to the judgment in Aleque Padamsee Vs. Union of India in 2007 (6) SCC 171.*
- *Reference was also made to the judgment of the Division Bench of the Madurai Bench of this Hon'ble Court in a batch of cases, Crl.O.P.Nos.13681 of 2017 and dated 20.09.2018, as regards to the maintainability of a petition filed seeking for direction to the register a cognizable offence and had given directions and reliance was made to the following paragraph regarding the reference made on finding two contradictory views of two learned Judges qua a petition filed seeking a direction to the police to register a cognizable offence, wherein, a learned single Judge of this Court in Sugeshan Transport Private Limited Vs. Assistant Commissioner of Police, Chennai and another, reported in 2016 (2) LW Criminal 499, has held that such a petition is not maintainable. However, this view has not been accepted by another learned single Judge of this Court, in K.Ragupathy Vs. Commissioner of Police, Chennai and another, reported in 2017 (3) MLJ Crl.309.*

*As on date, two contradictory views have been expressed by two learned single judges on this issue. It is therefore important for this Court to settle the law on this issue, in order to remove the ambiguity that prevails as on date.*

- *A petition to direct the police to register the complaint is being filed on a regular basis before this Court and*



therefore, it becomes very important to settle the law and have a clarity as to the maintainability of such petitions.

- *I, therefore, deem it fit that this issue may be directed to be placed before a Division Bench in order to resolve the conflict and to attain a clarity regarding the maintainability of a petition for registration of a complaint by police.*
- *Registry is directed to place this matter before the Hon'ble Administrative Judge with a request to constitute a Division Bench in this regard."*
- *Resultantly, all such petitions filed immediately after lodging an information, which was not registered are posted before us. On perusal, we find that in almost all the cases there is no compliance of Section 156 (3) Cr.P.C prima facie it also appears that most of the complaints involve not very serious offences.*
- *34. In fact, after deeply analysing the decisions set to be in conflict with each other we find that they are not totally contrary to each other. While in Ragupathi's case it was held that power is available in all circumstances, it was accordingly held that Sughesan Transport's case that it is only maintainable on certain contingencies. An exception was carved out by treating the decision of the Hon'ble Apex Court as law. Tis we do not find to be wrong. We may also note that circulars referred above clearly mandate the Station House Officers to comply the directions which they are duty bound in law to do so. Thus, when there is a non compliance even thereafter, the aggrieved person can certainly invoke Section 482 Cr.P.C.*
- *35. Accordingly, we answer the references in the following manner, while giving certain directions:*

(i) Section 482 Cr.P.C cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(30) Cr.P.C but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15 days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer is not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the complaint or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police

*under Section 154(3) Cr.P.C. and its receipt. The Receipt shall not number any petition without due compliance.*

*(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in Lalitha Kumari's case.*

*(x) The Judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in Lalitha Kumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.*

*(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one.*

*The references stands ordered accordingly.*

- *We have perused most of the petitions by spending substantial time. We find that there is no compliance of the time table as delineated above nor the procedure under Section 154(3) Cr.P.C. Therefore, all these petitions stands closed, giving liberty to file fresh petitions if otherwise come within the purview of our decision and subject to compliance of the directions issued. Since the Criminal Original Petitions themselves are closed, no order is necessary in the Miscellaneous*

*Petitions to implead the petitioners in Miscellaneous Petitions as parties and hence, all the Miscellaneous Petitions stands closed. CrI.M.P.(MD) No.10566 of 2016 in CrI.O.P (MD) No.4854 of 2016 is also closed since there is no valid reason to recall the order of this Court in CrI.O.P.(MD) No.4854 of 2016 dated 12.04.2016.*

- *Further it was contended in the light of the various judgments referred above the prayer in the petition can no longer be gone into and the petition is liable to be dismissed on the ground alone. Further it was contended that change of prayer cannot be allowed based on a rejoinder affidavit and that attempt to change the prayer by rejoinder is impermissible in law and that unless the petitioner is able to establish by due process of law that the investigating conducted by respondent was faulty or that it was improper or that the findings are not borne out evidence on record such a prayer would be totally untenable. There is absolutely no material on record placed by the petitioner to impugn the investigation and no malafides or motives have been attributed to the enquiry officer and in the absence of any such material the request of an investigation the totally unwarranted especially when the complaint itself is made by a rival political party and that such a prayer is not maintainable and the petitioner would have workout is remedies under the Cr.P.C if the occasions arises for him to feel aggrieved with the results of the investigation. In view of the above it is not necessary for the respondent to delve in detail on the various facets of the complaint made by him. However since the counsel for the petitioner have gone into great details into the allegations as well as by placing reliance upon certain guidelines of the World*

*Bank it has become necessary for the respondent to answer those submissions.*

- *Further in respect of the allegation in the complaint that while the present chief Minister of the Minister of Highways and Minor Ports three contracts were given to the close relatives and later as a chief Minister, he retained the portfolio of Highways and Minor Ports and awarded two contracts both financed by the World Bank to close relatives, it was submitted that the term "Close Relatives" and "Member of Family" have been defined in the Government Servants Conduct Rules as follows:*
- *"Members of the Family", in relation to a Government servant includes:-*
  - (1) *the wife or husband as the case may be of the Government servant whether residing with the Government servant or not but does not include a wife or husband, as the case may be, separated from the Government servant by a decree or order of a competent court;*
  - (ii) *son or daughter or step-son or step daughter of the Government servant and wholly dependent on him, but does not include a child or step child who is no longer in any way dependent on the Government servant or of whose custody the Government servant has been deprived by or under any law;*
  - (iii) *any other person related, whether by blood or marriage, to the Government servant or to the Government servant's wife or husband and wholly dependent on the Government servant.*



- "Close Relation" in relating to Government servant include:-

*"father, step-father, mother, step mother, husband, wife, son, adopted son, daughter, adopted daughter, brother, step brother, sister, step-sister, wife's father, wife's mother, husband's father, husband's mother, brother's wife, sister's husband, daughter's husband and son's wife."*

- *In the absence of any definition either in the World Bank guidelines or under the contract itself, the definition of Close Relatives in the Government servants Conduct Rules which can be considered as a rule in pari materia for the purpose of regulating the conduct of Government Servants (in the case of Ministers and Chief Minister, a Public Servant). By virtue of this definition, it will be clear that no illegality was committed by awarding the contracts mentioned in the instant complaint. If this basic fact is taken into account, it is submitted that none of the allegations made in the complaint need to be gone into.*
- *Since the petitioner has argued extensively on the two World Bank contracts, it would be necessary to explain certain features of these two contracts. The two contracts in question are "Annuity Contracts."*

- **ANNUITY CONTRACTS**

- *The brief features of "Annuity Model" is given below:*

**1.** *The scope of the work includes the construction of road and maintenance for further 8 years, including*

*complete relaying of the road in the 5<sup>th</sup> year of maintenance. The payment is given as Annuity, a semiannual payment in the maintenance period.*

**2.** *The concessionaire has to build the road in first 2 years at his own cost with a Government grant of 50% on the construction cost. Apart from the balance cost of construction, the entire cost of maintenance of the road for further 8 years, including complete relaying of the road in the 5<sup>th</sup> year has to borne by the Concessionaire. The entire risk of cost and time overrun is transferred to the concessionaire.*

**3.** *The payment for this construction and maintenance will be paid as Annuity (Semi-annual payment) in the maintenance period of 8 years, i.e in 16 installments over a period of 8 years after the construction.*

**4.** *That is, the cost of construction (apart from Grant) including other costs viz., additional cost due to GST, interest for the loan amount, administrative expenses, Insurance cost, road maintenance cost, relaying the entire road on the 5<sup>th</sup> year of maintenance, electricity cost for street lighting, patrolling expenses, cost of operation of accident recovery vehicle post, cost of operation of medical aid post including salary for medical staff and ambulance expense, tree plantation cost and other maintenance cost, cost escalation etc., has to be borne by the concessionaire.*

**5.** *All these cost has to be covered in the Annuity quote of the concessionaire.*

**6.** *In PPP 02:SH 37 Oddanchatram–Dharapuram-*

*Avinashipalayam work, the pre-GST Estimated Project Cost(EPC) of the bid document was Rs.714.35 Cr. This EPC includes Construction Cost, Cost Escalation, Pre Operative Expenses/ IE Fees, Interest During Construction for the concessionaire's investment, Financing Cost for the loan.*

**7.** *Similarly, the Estimated Project Cost of PPP 03:SH 39 Tirunelveli-Sengottai\_Kollam road was Rs.412.89 Cr.*

**8.** *Based on the World Bank's suggestion, the upper Annuity limit was arrived at Rs.90 Cr for PPP 02 Package and at Rs.50 Cr for PPP 03 package.*

**9.** *For PPP 02 package, the Annuity quote of M/s RCCL-KMC (JV) was Rs.75.33 Cr.*

**10.** *For PPP 03 package, the Annuity quote of M/s SPKANDCO-KMC (JV) was Rs.43.35 Cr.*

- *As far as the two Annuity Contracts under question are concerned, one of the contracts PPP03:SH 39-Tirunelveli-Sengottai-Kollam road has been cancelled due to failure on the part of the concessionaire to furnish the performance security on time.*

- *From the description of the features of Annuity Contracts, referred to above, it appears that from the statement of witnesses, that in a Annuity Contract, there are very few participants since the bidder has to finance the entire contract and wait for a slow return.*

- *The six monthly Annuity sanctioned by the World Bank*

was Rs.90 crore in the case of PPP02:SH 37 Oddanchatram-Dharapuram-Avinashipalayam Road, Rs.50 Crores in respect of PPP03:SH 39 Tirunelveli-Sengottai-Kollam road, but the bidder actually bid only for Rs.75.33 Cr for SH 37 Oddanchatram-Dharapuram-Avinashipalayam Road and Rs.43.35 Cr for SH 39 Tirunelveli-Sengottai-Kollam road.

- Six monthly Annuity also ensured that the contractors will do a proper maintenance during the 8 year period after construction and in the 7<sup>th</sup> year of maintenance, he is contractually bound to rely the entire road.
- The concessionaire/contractor is allowed to construct the road in 2 years and has to maintain the road for 10 years. 50% of Estimate Cost will be provided as grant to the concessionaire and remaining amount has to be mobilized. The concessionaire has to mobilize fund, construct the road, maintain for 10 years and has to realise the amount once in a 6 months after the construction period of 2 years. In Oddanchatram Project the Estimate Cost of Construction is Rs.629.70 Crores which includes improvement of junctions, storm water drainage, Bus Shelters, Bus bays, Grade separator, Major/Minor Bridges, Culverts, Geometry designing as per Indian Road Congress Rules, Pedestrian Sub Way, Street lighting in addition to laying of road. In both projects tender was invited for Annuity. World Bank recommended Rs.90 Crores as Annuity. The contract was awarded to M/s.Ramalingam Construction Company and M/s.KMC on joint Venture for Annuity of Rs.75.33 Crores and agreement entered on 23.03.2018. On 10<sup>th</sup> year, i.e., on 16<sup>th</sup> installment the total amount to be paid would be

*Rs.1520.13 Crores which includes construction cost of the road, relaying of road on 7<sup>th</sup> year, interest for the loan amount invested by the contractor, maintenance of road for 10 years, Avenue plantation, etc. In Tirunelveli Project the cost of construction is Rs.364.36 Crores which includes the facilities stated in Oddanchatram project and World Bank fixed Annuity of Rs.50 crores but was awarded to M/s SPK AND CO and M/s Sri Venkatachalapathy Constructions on joint venture for Annuity Rs.43.35 crores and agreement was entered on 28.03.2018. There is no increase of estimate cost and on 10<sup>th</sup> year i.e., at 16<sup>th</sup> installment the amount to be paid would be Rs.875.78 Crores which includes construction cost of the road, relaying of road in the 7<sup>th</sup> year, interest for the loan amount invested by the contractor, maintenance of road for 10 years, Avenue Plantation, etc. In Oddanchatram project the cost of construction to the stretch of 70.20 Km is Rs.10.16 crores per km and in Tirunelveli project the cost of construction is Rs.9.05 Crores per km.*

- *The concessionaire/contractor is allowed to construct the road in 2 years and has to maintain the road for 10 years. 50% of Estimate Cost will be provided as grant to the concessionaire and remaining amount has to be mobilized.*
- *The concessionaire has to mobilize fund, construct the road, maintain for 10 years and has to realize the amount once in a 6 months after the construction period of 2 years. In Oddanchatram project the Estimate Cost of Construction is Rs.629.70 Crores which includes improvement of junctions, storm water drainage, Bus*



*Shelters, Bus bays, Grade separator, Major/Minor Bridges, Culverts, Geometry designing as per Indian Road Congress Rules, Pedestrian Sub way, Street lighting in addition to laying of road. In both projects tender was invited for Annuity. World Bank recommended Rs.90 crores as Annuity. The contract was awarded to M/s.Ramalingam Construction Company and M/s.KMC on Joint Venture for Annuity of Rs.75.33 Crores and agreement entered on 23.03.2018.*

- *On 10th year, i.e., on 16th installment the total amount to be paid would be Rs.1520.13 Crores which includes construction cost of the road, relaying of road on 7th year, interest for the loan amount invested by the contractor, maintenance of road for 10 years, Avenue plantation, etc.*
- *In Tirunelveli Project the cost of construction is Rs.364.36 Crores which includes the facilities stated in Oddanchatram project and World Bank fixed Annuity of Rs.50 Crores but was awarded to M/s.SPK AND CO and M/s.Sri Venkatachalapathy Constructions on joint venture for Annuity Rs.43.35 Crores and agreement was entered on 28.03.2018.*
- *There is no increase of estimate cost and on 10th year i.e., at 16th installment the amount to be paid would be Rs.875.78 Crores which includes construction cost of the road, relaying of road in the 7th year, interest for the loan amount invested by the contractor, maintenance of road for 10 years, Avenue plantation, etc.*
- *In Oddanchatram project the cost of construction to the*

stretch of 70.20 Km is Rs.10.16 Crores per km and in Tirunelveli project the cost of construction is Rs.9.05 Crores per km.

- *In these PPP Projects, the bid amount that was asked to be quoted was for annuity and not the total project cost. The amount of 1520 Crores for PPP 02 project has been arrived by the petitioner by just simply adding the construction grant and the 16 installments of semi annuity over a period 10 years. Simple addition will not give the cost in Net Present Value (NPV) terms. Calculating the cost in NPV terms would show the tentative amount that needs to be spent on this project as on date. Mere addition of annuities and construction grant is a wrong way of arriving at the cost. No inflation or increase in the project cost has happened while awarding the contract. In fact, it has been awarded contract at a lower annuity quote when compared to the World Bank's annuity quote of 90 Crores. Without knowing the nuances of PPP contracting, the petitioner is making false, baseless, frivolous and misconceived allegations.*

सत्यमेव जयते

- **COMMITTEES**
- *It was further argued by the Counsel for the petitioner that as per World Bank's guidelines, three level of Committees/ units are to be set up as below:-*
  - A) Empowered Committees*
  - B) Steering Committee and a*
  - C) Project Implementation Unit*
- *It was therefore sought to be argued that since the Empowered Committee is headed by the Minister for*

*Highways, the Minister is very much involved in the project on a day to day basis and hence, is a part of the implementation and consequently the contract cannot be awarded to the Close Relatives. These submissions are fallacious for the following reasons:-*

A) *The Contractor does not satisfy the definition of a Close Relative.*

B) *As per World Bank's guidelines, the Empowered Committee is only meant to give overall policy guidance and does not go into the actual implementation of the project.*

C) *The Empowered Committee has absolutely no connection with the tender process which includes the finalization of invitation to bid, the evaluation of tenders or the final award of contract. It is only the Steering Committee which takes these decisions. This Hon'ble Court had directed this Respondent to explain the position as regards the three Committees referred to above and in this context, the following facts relating to the Committees and their constitutions are given below:-*

● **COMMITTEES in TNRSP II**

**1.** *The TNRSP II was constituted to undertake the projects under the World Bank loan.*

**2.** *In the Project Agreement of the World Bank, in Schedule, Execution of the Project, Section I. Implementation Arrangements under A. Institutional Arrangements it has been agreed that, the project Implementing Entity shall have the 3 Committees*

referred to above.

### **I. EMPOWERED COMMITTEE:**

**a) Constitution reference:**

GO MS No.127 Highways and Minor Ports (HN2)  
Department Dated 14.08.2013

**b) Members:**

1. Hon'ble Minister for Highways Department
2. Chief Secretary to Government
3. Secretary to Government, Finance Department
4. Secretary to Government, Highways and Minor Ports  
Department
5. Project Director, TNRSP II

**c) Duties and Functions:**

Financial Strategy such as tolling of high density traffic corridors, levy of cess on motor fuel and/or motor vehicle tax and ring fencing into state road fund, gradual shifting of CAPTEX from state exchequer for the development of Phases(s) of Core Road Network of the state. The Land Acquisition, removal of service utilities, fixing of toll rates(PPP works)

### **II. STEERING COMMITTEE**

**a) Constitution reference:**

1. GO MS No.185 Highways and Minor Ports (HN2)  
Department Dated 16.10.2002
2. GO (2D) No.11 Highways and Minor Ports (HN2)  
Department Dated 29.12.2014 (Amendment)

**b) Members**

1. Principal Secretary to Government, Highways and

*Minor Ports Department*

2. *Principal Secretary to Government, Finance Department*

3. *Project Director, TNRSP II*

4. *Chief Engineer (H) Construction and Maintenance*

*c) Duties and Functions:*

1. *The committee shall take decisions on tenders for civil works/consultancy services/procurement of goods for National Competitive Bid (NCB) and International Competitive Bid (ICB) contracts.*

2. *The Committee shall take decision on all variations and disputes in respect of consultancy services, civil works and other contracts costing more than 10 Cr.*

3. *The Committee shall give approval for tenders and such decision of the committee is final.*

**III EVALUATION COMMITTEE**

*a) Constitution reference:*

1. *GO 2D No.23 Highways and Minor Ports (HN2) Department Dated 21.07.1999*

2. *GO (2D) No.11 Highways and Minor Ports (HN2) Department Dated 29.12.2014 (Amendment)*

*b) Members:*

1. *Project Director, TNRSP II*

2. *Chief Engineer (H) Construction and Maintenance*

3. *Chief Engineer (H) TNRSP II*

4. *Deputy Secretary (EAP) Finance Department*

*c) Duties and Functions:*



*Evaluation of all proposals involving TNRSP inclusive of supervision consultancy services.*

### **SINGLE TENDERS**

- *The Counsel for the petitioner has been arguing that both the World Bank projects were given through single tenders. It is respectfully submitted, as stated earlier, that in Annuity contracts, most contractors are reluctant to participate. Further, both the contracts were on e-tender basis. Even the bid security amount was to be submitted by RTGS. None of the bidders could know who the other bidders were till the date of actual opening. Wide publicity was given and there was no impediment for any person to apply. A pre-bid meeting was conducted in which there were 11 participants. Further, the entire process was monitored by World Bank and no decision was taken without the concurrence of World Bank. Since it was a lending agency, World Bank has a fairly large office in India and is in a position to physically monitor the project. It maintains the highest standards of ethics and no motives can be attributed to the final result arrived at by the Government with approval from the World Bank.*
- *Since the petitioner has been repeatedly harping on the Single Tender aspect, it is pertinent to point out that across various department and across various Governments, Single Tenders have been accepted and the details are given in a separate annexure.*
- *Moreover in the year 2009, in TNRSP Phase I, in Maintenance Contracts MC 18 and MC 21, Single Tenders*

were awarded. The World Bank Guidelines for procurement of goods works and non consulting services is Clause 2.61 "Rejection of All Bids" does not prohibit single bid. Even when only one bid is received the bidding process may be considered valid, if the bid was satisfactorily advertised, the qualification criteria was not unduly restrictive and prices are reasonable in comparison to market values.

**COST PER KM.**

- The Counsel for the petitioner has been repeatedly been harping on the cost of construction being Rs.2.2 Cr per Km. In fact, no two roads can be compared and costing depends upon various factors. The cost of the road project depends on the nature of the existing soil, height of the embankment to be raised, pavement design, Scope of the Project, Bridges/Culverts, length of Service road, Toll Plaza, lead cost of road materials, mode of execution and it was contended that the cost per kilometre calculated in respect of the roads are not inflated.

13. Mr.N.R.Elango, learned Senior Counsel appearing for the petitioner would submit that the person against whom the allegations of nepotism, favoritism and crony capitalism are made is the Hon'ble Chief Minister of Tamil Nadu who is also holding the portfolios of Public, Indian Administrative Service, Indian Police Service, Indian Forest Service, General Administration, District Revenue Officers, Police and Home, Public Works, Irrigation including Minor Irrigation, Programme Works and Highways and Minor Ports and as such the Hon'ble Chief Minister is also

the person having administrative control over the department which has awarded the contracts and he is also the person who is having the administrative control over the department which is conducting the inquiry in respect of the allegations. He would also submit that two of the contracts mentioned in the complaint are World Bank projects and would further submit that as per the agreement between the World Bank and the Government of Tamil Nadu the affairs of the project is guided by the World Bank guidelines and as per the World Bank guidelines a loan agreement is initially entered between the Government of India and the World Bank and thereafter, a project agreement is entered between the Government of Tamil Nadu and the World Bank. He would also submit that as per the World Bank guidelines under the heading Conflict of Interest it has been stated that the policy requires that a firm participating in a procurement process under the Bank finance projects shall not have a Conflict of Interest in the projects and he would refer to the guidelines issued by the World Bank in respect of procurement of goods, works and non-consulting of services.

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14. For the sake of convenience the relevant Guidelines of the World Bank regarding Conflict of Interest is extracted hereunder:

**Conflict of Interest**

*1.6 Bank policy requires that a firm participating in a procurement process under Bank financed projects shall*

*not have a conflict of interest. Any firm found to have a conflict of interest shall be ineligible for award of a contract.*

*1.7 A firm shall be considered to have a conflict of interest in a procurement process if:*

*(a) such firm is providing goods, works, or non-consulting services resulting from or directly related to consulting services for the preparation or implementation of a project that it provided or were provided by any affiliate that directly or indirectly controls, is controlled by, or is under common control with that firm. This provision does not apply to the various firms (consultants, contractors, or suppliers) which together are performing the Contractor's obligations under a turnkey or design and built contract: or*

*(b) such firm submits more than one bid, either individually or as a joint venture partner in another bid, except for permitted alternative bids. This will result in the disqualification of all bids in which the Bidder is involved. However, this does not limit the inclusion of a firm as a sub-contractor in more than one bid. Only for certain types of procurement, the participation of a Bidder as a sub-contractor in another bid may be permitted subject to the Banks' no objection and as allowed by the Banks' Standard Bidding Documents applicable to such types of procurement: or*

*(c) such firm (including its personnel) has a close business or family relationship with a professional staff of the Borrower (or of the project implementing agency, or of a recipient of a part of the loan) who: (i) are directly or*

*indirectly involved in the preparation of the bidding documents or specifications of the contract and /or the bid evaluation process of such contract; or (ii) would be involved in the implementation or supervision of such contract unless the conflict stemming from such relationship has been resolved in a manner acceptable to the Bank throughout the procurement process and execution of the contract; or*

*(d) such firm does not comply with any other conflict of interest situation as specified in the Bank's Standard Bidding Documents relevant to the specific procurement process.*

15. He would further submit that the persons to whom the contracts have been awarded are closely related to the Hon'ble Chief Minister and he would submit that the World Bank guidelines requires that the borrower in this case being the State of Tamil Nadu represented by the Hon'ble Chief Minister should not have conflict of interest in the projects. He would also submit that a project agreement has been entered into between the World Bank and the State of Tamil Nadu on 28.05.2015 and as per the project agreement, in respect of schedule regarding execution of project, implementation arrangements have been drawn wherein, in order to implement a project, the project implementing entity shall throughout the project of implementation maintain an Empowered Committee, a Steering Committee and a Project Implementation Committee. He would further submit that the Hon'ble Chief Minister as the



Minister of Highways is the Chairman of the Empowered Committee and that all other members are officials under him. He would also submit that as stated earlier the Hon'ble Chief Minister being the Head of the State and also the head of the Empowered Committee had colluded with his relatives and the projects have been taken by his relatives as a single bidder and that the other contractors have been for various reasons and by various methods dissuaded from taking the contracts. He would further submit that though the petitioner being the informant was ready and willing to participate in the investigation by furnishing the details whereas, strangely he had not been called for enquiry even once. He would also submit that the persons who have taken contracts are closely related to the Hon'ble Chief Minister and thereby, it is a clear case of nepotisms leading to Conflict of Interest as per the World Bank guidelines. He would also submit that the persons who will be able to speak about the subject of Conflict of Interest are the representatives of the World Bank and strangely none of the officials from the World Bank have been enquired till date. He would further submit that as per the administrative structure of the Directorate of Vigilance and Anti Corruption, the investigating officer has to get details and technical inputs from the engineers belonging to the Public Works Department and the Highways Department and in this case both the departments are under the control of the Hon'ble Chief Minister against whom serious allegations are made. When the department investigating and the department who are supposed to furnish the

information are under the control of the Hon'ble Chief Minister there is absolutely no possibility of truth coming to light and there is a possibility of the complaint being closed as no case made out and he would submit that this is a case with peculiar facts and circumstances wherein the respondent had in complete defiance of statutory duty and law had formed an opinion at the behest of persons in power and thereafter conveniently closed the case. He would submit that this Court as a Constitutional Court has got powers to interfere and transfer the investigation to the specialized unit or pass any appropriate orders so as to instill confidence that a fair investigation is done.

16. The learned Advocate General to sum up his arguments would submit that though the contractors are related to the Hon'ble Chief Minister they would not fall within the definition of "Close Relatives" as per the definition under the Government Servants Conduct Rules. He would further submit that the contractors against whom the allegations are made are in the business of undertaking Government contracts even from the year 1991 and that the marriage between the son of the Hon'ble Chief Minister with a family member of the contractors took place few years back and that thereby, "No Conflicts of Interest" resulting in nepotism can be attributed to the award of contracts to persons / contractors who are alleged to be relatives of the Hon'ble Chief Minister. Further, he would while admitting that the Hon'ble Chief Minister is holding the portfolios of

Public, Indian Administrative Service, Indian Police Service, Indian Forest Service, General Administration, District Revenue Officers, Police and Home, Public Works, Irrigation including Minor Irrigation, Programme Works and Highways and Minor Ports and that he is administrative control of the concerned Minister would submit that at no point of time there was interference from the Hon'ble Chief Minister. Further he would also submit that the preliminary enquiry has been conducted in a fair and proper manner without any interference from any quarters and since nothing illegal had been found in the allegations and since the nature of the allegations did not make out any offences under the Prevention of Corruption Act, a case has not been registered. He would further referring to judgment of the Division Bench of this Court in a batch of cases in CrI.O.P.13681of 2017 and others dated 20.09.2018 and would submit that, if at all the petitioner is aggrieved by the act of the respondent he can invoke the due process of law by approaching the learned Magistrate Court for ventilating his grievances and he cannot approach this court. He would also submit that the preliminary enquiry had been concluded and the report has been handed over to the Vigilance Commissioner due to pendency of the petition before this Court the respondent is unable to take further action and proceed further.

17. The learned Advocate General would further submit that the aim of preliminary enquiry is to check false prosecution against public servants

by misusing process of law for personal interest. He would further submit that immediately based on the complaint a preliminary enquiry had been initiated and a report had been made ready and is pending before the Vigilance Commissioner and would submit that the process of law should be that the petitioner can proceed only against any order being passed by the Vigilance Commissioner. Penultimately he would submit that the respondent has filed a Negative Report since the complainant does not disclose any cognizable offence. The Learned Advocate General having stated so, that the respondent had submitted a "Negative Report/ Closure Report" not taking cognisance, there is no necessity for this court to open the sealed cover filed before this court. Now based on the allegations of the petitioner and the submissions of the respondent, what is to be decided is whether a fair investigation has been done by the respondent or not?

18. When this Court enquired the learned Advocate General whether the complainant was called upon and inquired regarding the materials available with him and whether any officials from the World Bank were inquired with regard to the scope of "Conflict of Interest" and whether any inquiry had been conducted regarding the relationship between the Hon'ble Chief Minister and the Contractors and whether the relationship is disclosed to the World Bank, the learned Advocate General would submit that neither the petitioner/complainant was examined nor any officials

from the World Bank has been examined by the respondent. He would on instructions submit that the World Bank officials monitor the day-to-day progress of the project based on a software STEP and that there are correspondences between the Government of Tamil Nadu and the World Bank regarding the progress of the contracts on day-to-day basis and the respondent had relied of the same and thereby, there was no need to inquire any official from the World Bank and there was no need to inform the World Bank officials also.

19. In short, right from the beginning the learned Advocate General and the respondent have been defending that there was no conflict of interest and that there was no illegality or irregularity in the award of contracts and there was nothing wrong in the part of the Government in increasing the project value after the award of tender which was only towards utility shifting fund and that the preliminary enquiry had been conducted in a fair manner and that the report of the preliminary enquiry (closure report) concluding no offence made out had been handed over to the Vigilance Commissioner and that due to the pendency of the case before this Court, the Vigilance Commissioner is unable to proceed further.

20. Initially, the prayer had been made for registration of the case and during the course of the petition a new relief had been sought for by



way of rejoinder seeking a direction for an impartial investigation by any another competent police officer or team of police officers and to monitor the investigation and it was objected by the respondents. Serious allegations of "Conflict of Interest" and "nepotism" are made by the petitioner who has preferred the complainant and sworn an affidavit before this Court. Considering the nature and seriousness of the allegations made, this Court at the outset is concerned with the manner and the way in which the inquiry has been initiated and done. The allegations are made in respect of contracts awarded by tender by the State Highways Department to persons stated to be "closely related" to the Hon'ble Chief Minister and the inquiry is being done by the Directorate of Vigilance and Anti-Corruption. The respondents though admit that the contractors are related to the Hon'ble Chief Minister would submit that the contractors do not come within the definition of "Close Relatives". It is admitted that the portfolios of Highways and Home are being held by the Hon'ble Chief Minister. The negative report of the Preliminary enquiry has been handed over to the Vigilance Commissioner, who is appointed by the Hon'ble Chief Minister.

21. Once again at the cost of repetition, this Court is able to see that right from the beginning that the learned Advocate General had been defending that there is no illegality in the award of the contracts and defending the action of the respondents and the Hon'ble Chief Minister

stating that there had been no Conflict of Interest in the award of the contractors. He would submit that though the contractors are related to the Hon'ble Chief Minister, they would not fit in the definition of "Close Relatives" mentioned in the World Bank guidelines. This apart he would submit that the Hon'ble Chief Minister is holding the portfolios of Highways and Public Works Department for the past 7 years. Whereas, the contractors who are stated to be relatives of the Chief Minister have been engaged in the business of taking Government contracts from the year 1991 itself and would contend that since because the contractors became related to the Hon'ble Chief Minister through marriage ties, the allegations of nepotism cannot be made against him. Further, he would submit that only after Thiru.Edappadi K.Palanisamy became the Hon'ble the Chief Minister during the year 2017 he is holding the portfolios of Public, Indian Administrative Service, Indian Police Service, Indian Forest Service, General Administration, District Revenue Officers, Police and Home, Public Works, Irrigation including Minor Irrigation, Programme Works and Highways and Minor Ports. He would further submit that there had been no interference by the Hon'ble Chief Minister and that the respondent is an independent agency which had conducted the enquiry in a fair manner and would submit that based on the complaint a preliminary enquiry had been initiated and the respondent have filed a report to the Vigilance Commissioner who is again independent authority and would submit that due enquiry had been conducted and nothing adverse or

illegal had been found in the award of contracts to the firms stated to be related to the Hon'ble Chief Minister. However, he would admit that neither the petitioner/complainant nor any of the officials from the World Bank had been enquired or examined in respect to the allegations of Conflict of Interest in the award of contracts. Further, he would admit that the departments which have awarded the Tenders and the department which is conducting the investigation is under the Administrative Control of the Hon'ble Chief Minister the department of Highways which has awarded the contracts is also under the administrative control of the Hon'ble Chief Minister.

22. In short the contracts have been awarded by the Department under the control of the Hon'ble Chief Minister and the allegations of Conflict of Interest, nepotism and crony capitalism are made by the complainant/informant against the Hon'ble Chief Minister and firms related to the Hon'ble Chief Minister and the enquiry is being done by the agency which is under the administrative control of the Hon'ble Chief Minister and the closure report even without enquiring the complainant/informant has been handed over to the Vigilance Commissioner who has been appointed by the Hon'ble Chief Minister. What else could be stated about this enquiry other than terming it as "Perfunctory!"

23. This Court as a Constitutional Court is aware of its limitations and is also aware that it is not the province of this Court at this stage to embark and sift the evidence to come to the conclusion whether or not an offence has been committed. However taking into consideration the facts of this case this court at the outset is able to visualise that the preliminary enquiry had not been done in a fair and just manner. What else could be stated about an enquiry conducted without even examining the complainant who has raised serious allegations? It does not need the wisdom of Solomon to infer that right from the receipt of the complaint and the registration of the preliminary enquiry, the conduct of the respondent had been aimed with a sole objective of closing the case by filing a negative report as no case made out. The manner in which the inquiry had been conducted even without calling the complainant speaks for itself that the investigation had not been done in a fair and proper manner. The allegations are made against the Hon'ble Chief Minister and the relatives of the Hon'ble Chief Minister who are the contractors. The Department which has awarded the contract is under the administrative control of the Hon'ble Chief Minister and the agency which is inquiring into the complaint though stated to be an independent agency is in a way also under the administrative control of the Hon'ble Chief Minister. This is a case of complaint of serious allegations against persons holding high power. The respondent had quoted various decisions of the Apex court and the recent decision of the Division Bench of this Court dated 20-09-

2018 in ***Crl.O.P. Nos 13681 of 2017*** and others, is bent upon stating that the preliminary enquiry had been initiated and thereby, petitioner cannot approach this court by way of a petition u/s 482 Cr.P.C and that the avenue available to the petitioner would be only to file appropriate petition before the trial court after a closure report is filed.

24. Now referring to the decision of the Division Bench of this Court dated 20-09-2018 in ***Crl.O.P. Nos 13681 of 2017***, this court in clause (xi) of para 35 has stated that "Eschewing Section 156(3) Cr.P.C is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience and existence of hostile environment are few of the factors to be borne in mind to bring the case under the rarest of rare one.

25. This court is reminded of the hallowed phrase "Justice should not only be done but be seen to be done" being the essence of fairness. equally applicable to administrative authorities and people in power.

Fairness is thus a prime test for proper and good administration. It has no set form or procedure. It depends upon the facts of each case. This case will certainly fall within the category of "Exceptional and rarest case". As a Constitutional Court there is a need to answer judicial conscience and an imperative duty is cast on this Court to retain public confidence in the impartial working of the Government agencies.



26. At this juncture this court deems it fit to refer to Chapter 2 of the reports of ***The Law Commission of India-Report No.161 dated 13.08.1998, Central Vigilance Commission and Allied Bodies***, wherein the seven principles of public life have been quoted:-

**CHAPTER - 2**

*Maintenance of standards in Public Life and Adverse Impact of Lack of Probity.*

2.1. *Maintenance of Standards in Public Life:- The hallmark of maintenance of standards in public life has stressed even in other countries for survival of the rule of law and democracy.*

*The Supreme Court quoted in Vineet Narain case, (1998) 1 SCC 226: 1998 SCC (CrI) 307: (1997) 7 Scale 656 the general recommendations of the Committee headed by Lord Nolan on "Standards in Public Life" as follows:-*

*"57. It is a similar perception in England which has led to the constitution of a Lord Nolan's Report (1995), the general recommendations made are:-*

**General recommendations:**

4. *Some of our conclusions have general application across the entire service:*

**Principles of public life:**

5. *The general principles of conduct which underpin public life need to be restated. We have done this. The seven principles of selflessness, integrity, objectivity, accountability,*

*openness, honesty and leadership are out in full on P.14.*

**Codes of conduct:**

*6. All public bodies should draw up codes of conduct incorporating these principles.*

**Independent Scrutiny:**

*7. Internal systems for maintaining standards should be supported by independent scrutiny.*

**Education:**

*8. More needs to be done to promote and reinforce standards of conduct in public bodies, in particular through guidance and training, including induction training.*

*58. The seven principles of public life are stated in the report by Lord Nolan, thus:-*

**"Selflessness:**

*Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.*

**Integrity:**

*Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.*

**Objectivity:**

*In carrying out public business, including making public appointments awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.*

**Accountability:**

*Holders of public office are accountable for their decisions and actions to the public and must submit*

themselves to whatever scrutiny is appropriate to their office.

**Openness:**

Holders of public office should be as open possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

**Honesty:**

Holders of public office have a duty to declare any private interest relating to their public and to take steps to resolve any conflicts arising in a way that protects the public interest.

**Leadership:**

Holders of public office should promote and support these principles by leadership and example."

The Supreme Court has also relied upon these principles of public life (evolved by the Nolan Committee) in the aforesaid Vineet Narain case, (1998) 1 SCC 226: 1998 SCC (Cri) 307: (1997) 7 Scale 656:

"59. These principles of public life are of general application in every democracy and one is expected to bear them in mind while scrutinizing the conduct of every holder of a public office. It is trite that the holders of public offices are entrusted with certain powers to be exercised in public alone and therefore, the office is held by them in trust for the people. Any deviation from the path of rectitude by any of them amounts to a breach of trust and must be severely dealt with instead of being pushed under the carpet. If the conduct amounts to an offence, it must be promptly investigated and the offender against whom a prima facie case is made out should be prosecuted expeditiously so that the majesty of law is upheld and the rule of law vindicated. It is the duty of the

*judiciary to enforce the rule of law and therefore, to guard against erosion of the rule of law".*

**2.2. Adverse impact of lack of probity in public life:-** *It is quite essential to maintain these standards in public life failure of which breeds all pervasive corruption undermining the rule of law, violation of right to equality, lack of faith in courts and threats to democracy. Besides such failure pose a serious threat to the integrity, security and economy of the nation. [Vineet Narain case, (1998) 1 SCC 226: 1998 SCC (CrI) 307: (1997) 7 Scale 656 (para 10)]. Adverse impact of lack of probity in public life as pointed out by the Supreme Court in [Vineet Narain case, (1998) 1 SCC 226: 1998 SCC (CrI) 307: (1997) 7 Scale 656 reads:-*

*"60. The adverse impact of lack of probity in public life leading to a high degree of corruption is manifold. It also has adverse effect on foreign investment and funding from the International Monetary Fund and the World bank who have warned that future aid to underdeveloped countries may be subject to the requisite steps being taken to eradicate corruption, which prevents international aid from reaching those for whom it is meant. Increasing corruption had led to investigative journalism which is of value to a free society. The need to highlight corruption in public life through the medium of public interest litigation invoking judicial review may be frequent and commonwealth affairs, (1995) 1 WLR 386: (1995) 1 ALL ER 611.*

*61 Of course, the necessity of desirable procedure evolved by court rules to ensure that such a litigation is properly conducted and confined only to matters of public interest is obvious. This is the effort made in these proceedings for the enforcement of fundamental rights*

*guaranteed in the constitution in exercise of powers conferred on this Court for doing complete justice in a cause. It cannot be doubted that there is a serious human rights aspect involved in such a proceeding because the prevailing corruption in public life, if permitted to continue unchecked, has ultimately the deleterious effect of eroding the Indian Polity."*

27. This Court is also guided by the following decisions of the Hon'ble Apex Court and this Hon'ble Court.

In the case of **Orissa Olympic Association Vs. State of Orissa** in **2017 14 SCC 22**, the Hon'ble Apex Court has held as follows:-

*"62.....Any action that would show conflict of interest is a transgression of the fundamental principle of fair administration and governance. It can be stated with certitude that the principle of rule of law does not countenance such conflict of interest. It is clear as day that the relationship between the two individuals and their different obligations expose conflict of interest. It is an interest where one may abuse the public office to gain personal benefit either directly or indirectly. In the instant case, the son of the Secretary of the association is a partner in the firm that had been given the contract. The son might have been inducted as a partner at a later stage but the fact remains that the father was the Secretary of the association. In such a situation, it does not require Solomon's wisdom or, for that matter, the wisdom of an adjudicator as described in "Tripitak" to understand that there is conflict of interest".*



In **Manohar Joshi Vs. State of Maharashtra and others.** reported in **2012 (3) SCC 619**, the Hon'ble Apex Court has held as follows:-

*"There can be no direct evidence of officers being pressurized, nor will they say that they were so pressurized. Ultimately, one has to draw the inference from the course of event, manner and which the officers have acted and change their stands....."*

*"Ultimately, one has to draw the inference on the basis of probabilities. The test is not one of the preponderance of the probabilities...."*

In the case of **Subramanian Swamy Vs. Manmohan Singh** reported in **2012 (3) SCC 64**, the Hon'ble Apex Court has held as follows:-

*"68. Today, corruption in our country not only poses a grave danger to the concept of constitutional governance, it also threatens the very foundation of Indian democracy and the Rule of Law. The magnitude of corruption in our public life is incompatible with the concept of a socialist, secular democratic republic. It cannot be disputed that where corruption begins all rights end. Corruption devalues human rights, chokes development and undermines justice, liberty, equality, fraternity which are the core values in our preambular vision. Therefore, the duty of the Court is that any anti-corruption law has to be interpreted and worked out in such a fashion as to strengthen the fight against corruption. That is to say in a situation where two constructions are eminently reasonable, the Court has to*

*accept the one that seeks to eradicate corruption to the one which seeks to perpetuate it."*

In the case of **Manoj Narula Vs. Union of India** reported in **2014**

**(9) SCC 1** the Hon'ble Apex Court has held as follows:-

*"149. Good governance is only in the hands of good men. No doubt, what is good or bad is not for the court to decide: but the court can always indicate the constitutional ethos on goodness, good governance and purity in administration and remind the constitutional functionaries to preserve, protect and promote the same."*

In the case of **R.Sai Bharathi Vs. J.Jayalalitha and others** reported in **2004 (2) SCC 9** the Hon'ble Apex Court has held as follows:-

*"59. Report leading to IPC makes it clear that criminal law merely prescribes the minimum standards of behaviour, while in public life, those who hold high offices should not take shelter under the umbrella of criminal law but stand by high probity. Further, criminal law is meant to deal with criminals ordinarily, while Code of Conduct is observed as gentlemen's agreement. Persons in public life, who are gentlemen, follow such Code instead of taking escape routes by resorting to technical pleas as arise in criminal cases. Persons in public life are expected to maintain very high standards of probity and, particularly, when there is likely to be even least bit of conflict of interest between the office one holds and the acts to be done by such person, ought to desist himself from indulging in the same. Such standards of behaviour were*

*scrupulously observed in the earlier days after independence, but those values how now dwindled and instances of persons holding high elective offices indulging in self- aggrandisement by utilising Government property or in distribution of the largesse of the Government to their own favourties or for certain quid pro quo are on the increase. We have to strongly condemn such actions. Good ethical behaviour on the part of those who are in power is the hallmark of a good administration and people in public life must perform their duties in a spirit of public service rather than by assuming power to indulge in callous cupidity regardless of self imposed discipline.....”*

In the case of ***Pooja Pal Vs. Union of India*** reported in **2016 (3) SCC 135** the Hon'ble Apex Court has held as follows:-

*"86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the*

*justice. No inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.*

87. Any criminal offence is one against the society at large casting an onerous responsibility on the state, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law-abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, the plenitude and content thereof can neither be enervated nor moderated by any legislation.

88. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in *Vinay Tyagi vs Irshad Ali @ Deepak and others* (2013)5SCC 762 to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction."

In the case of ***Dharam Pal Vs.State of Haryana*** reported in **2016**

**(4) SCC 160** the Hon'ble Apex Court has held as follows:-

"17. In the context, we may profitably refer to a two-Judge Bench decision in *Narmada Bai Vs.State of Gujarat*. The Court, in the factual matrix of the case, has emphasized that:

(SCC P.99, para 59)

*"59.....If the majesty of the rule of law is to be upheld and if it is to be ensured that the guilty are punished in accordance with law notwithstanding their status and authority which they might have enjoyed, it is desirable to entrust the investigation to CBI".*

18. A three Judge Bench in *K.V.Rajendran Vs. Superintendent of Police* reiterating the said principle stated that: (SC P.485, para 13)

*"13.....the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having 'a fair, honest and complete investigation', and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies".*

19. The Court, after referring to earlier decisions, has laid down as follows: (*K.V.Rajendran Case, SCC P.487, para 17*)

*"17. In view of the above, the law can be summarised to the effect that the Court could exercise its constitutional powers for transferring an investigation from the State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases. Such as where high officials of State authorities are involved, or the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, and further that it is so necessary to do justice and to instil confidence in the investigation or where the investigation is prima facie found to be tainted/biased."*



In the case of **J.Anbazhagan, MLA Vs.The Union of India & others** reported in **2018 (2) L.W.673** this court has held as follows:-

.....127. *In Committee for Protection of Democratic Rights, supra, the Constitution Bench laid great emphasis on instilling of faith of the public at large in the investigating agency investigating into a complaint. In this case, the serious allegations of corruption against high police officials in relation to illegal business in gutkha and other forms of chewable tobacco, supported by communications from government officials erode the faith of the people in investigation by the police.*

.....129. *In Dinubhai Boghabhai Solanki V.State of Gujarat and others, reported in (2014) 4 SCC 626, the Supreme Court held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Fair, impartial and independent investigation by the law enforcement agency was imperative.*

.....133. *In Dwarka Nath V.ITO, reported in AIR 1966 SC 81, the Supreme Court held that Article 226 is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. This article enables the High Courts to mould the reliefs to meet the peculiar and extraordinary circumstances of the case.*

134. *In Nilabati Behera V. State of Orrisa, reported in (1193) 2 SCC 746, Dr.A.S.Anand, J.held:-*

"35. *This Court and the High Courts, being the*

*protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the state to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law-through appropriate proceeding....."*

.....139. It is true that the power of the High Court under Article 226 of the Constitution of India to direct investigation by the CBI is to be exercised sparingly, cautiously and in exceptional situations, and an order directing CBI investigation is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police, as argued by the learned Advocate General. The proposition finds support from the judgments of the Supreme Court in *T.C.Thangaraj Vs.Engammal and others*, reported in 2012-1 L.W.(Cri.) 120 = (2011) 12 SCC 328 (Para 10); *K.VRajendran Vs. Superintendent of Police, CBCID*, reported in (2013) 12 SCC 480 (Paras 13 and 17). *Mithilesh Kumar Singh Vs.State of Rajasthan*, reported in (2015) 9 SCC 795 (Paras 12 and 22); *State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal and others*, reported in (2010) 3 SCC 571 (Para 70); *State of Punjab Vs.Davinder Pal Singh Bhullar and others*, reported in (2011) 14 SCC 770 (Para 75); and *Secretary, Minor Irrigation & Rural Engineering Services, U.P. and others Vs.Sahngoo Ram Arya and another*, reported in (2002) 5 SCC 521 (Para 6).

140. There can, however, be no cast iron formula for directing transfer of investigation to the CBI.....”

28. Recently, in the case of ***E.Sivakumar Vs. Union of India and others*** reported in **2018 (7) SCC 365** the Hon'ble Apex Court while referring to the case of ***Dharam Pal Vs.State of Haryana*** again has held as follows:-

"13. In the case of *Dharam Pal Vs. State of Haryana*, this Court has underscored the imperativeness of ensuring a fair and impartial investigation against any person accused of commission of cognizable offence as the primary emphasis is on instilling faith in public at large and the investigating agency. The dictum in paragraph 24 and 25 of this reported decision is quite instructive which read thus: SCC PP.70-71)

"24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and

*examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality (2016) 4 SCC 160 of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata.*

*He should not harbour the feeling that he is an "orphan under law".*

*12. Suffice it to observe that we do not intend to deviate from the conclusion reached by the High Court that in the peculiar facts and circumstances of the case, it is but appropriate that investigation of the crime in question must be entrusted to CBI."*

In the case of **Shahid Balwa Vs. Union of India and others** reported in **2014 (2) SCC 687** the Hon'ble Apex Court has held as follows:-

*"26.....When the persons involved in the crime wield political power and influence, the possibility of putting pressure on the investigating agency, which is no more independent in our country, is much more. Common people will be left with the feeling that they can get away with any crime which tarnish the image not only of the investigating agency but judicial system as well. Once investigation fails, Court will face with a fait accompli. Proper and uninfluenced investigation is necessary to bring about the truth. Truth will be a casualty if investigation is derailed due to external pressure and guilty gets away from the clutches of law."*

29. This Court as a constitutional Court is aware of its limitations regarding ordering for transfer of the investigation, although no inflexible guidelines can be laid down to decide whether or not such, power should be exercised, but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary



power must be exercised sparingly, cautiously and in exceptional situations wherein, it become necessary to provide credibility and to instill confidence in the public minds to ensure fairness and honesty to complete the investigation and such a measure however can by no means be a matter of course or routine but has to be essentially adopted in order to live up and effectuate the salutary objective of guaranteeing an independent and upright mechanism of justice dispensation without fear or favour, by treating all alike and instill confidence in investigations or where such an order may be necessary for doing complete justice and enforcing fundamental rights. In the matters where allegations are made against the persons in high power, this Court as a constitutional Court can taking into consideration the facts and circumstances transfer the investigation to instill confidence in the mind of the public.

30. Probity in public life a concern of all citizens. The interest of polity is to see that its public servants are above board. Probing into the probity of persons in high power is not an anathema. The allegations or an accusations against the persons in power can be purged only through an independent investigation process which is fair, just, reasonable and transparent which a public servant should find as a stage to vindicate his stand. When allegations of such serious nature has been made an honest endeavor should have been taken by the persons in power to voluntarily transfer the case to an independent agency to clear the cloud, so that, it

would instill confidence in the minds of citizens. At the risk of repetition, it is not the province of this Court at this stage to embark upon and sift the evidence to come to the conclusion whether or not an offence has been made out. Whereas there is a duty to oversee whether the investigation is done in a fair reasonable manner. However, without expressing any opinion regarding the claim of the petitioner, this Court is of the firm opinion that the Enquiry/Investigation had not been done in a fair manner and is nothing but a perfunctory exercise thereby, the case has to be necessarily transferred to any other independent agency not under the control of the persons in power.

31. In view of the above observations, this Court directs the respondent to handover the entire case papers and files relating to the complaint filed by the petitioner (along with the materials collected so far) to the Joint Director, Central Bureau of Investigation (South Zone) College Road, Nungambakkam, Chennai within a week and the Joint Director, Central Bureau of Investigation shall depute an officer under him in the rank of a Superintendent of Police who shall independently conduct a Preliminary Enquiry afresh examining the petitioner/informant, officials of the World Bank and other persons connected with the projects mentioned in the complaint and conclude the Preliminary Enquiry preferably within a period of three months from the date of receipt of a copy of this order. If the Preliminary Enquiry discloses offences of cognisable nature, he shall

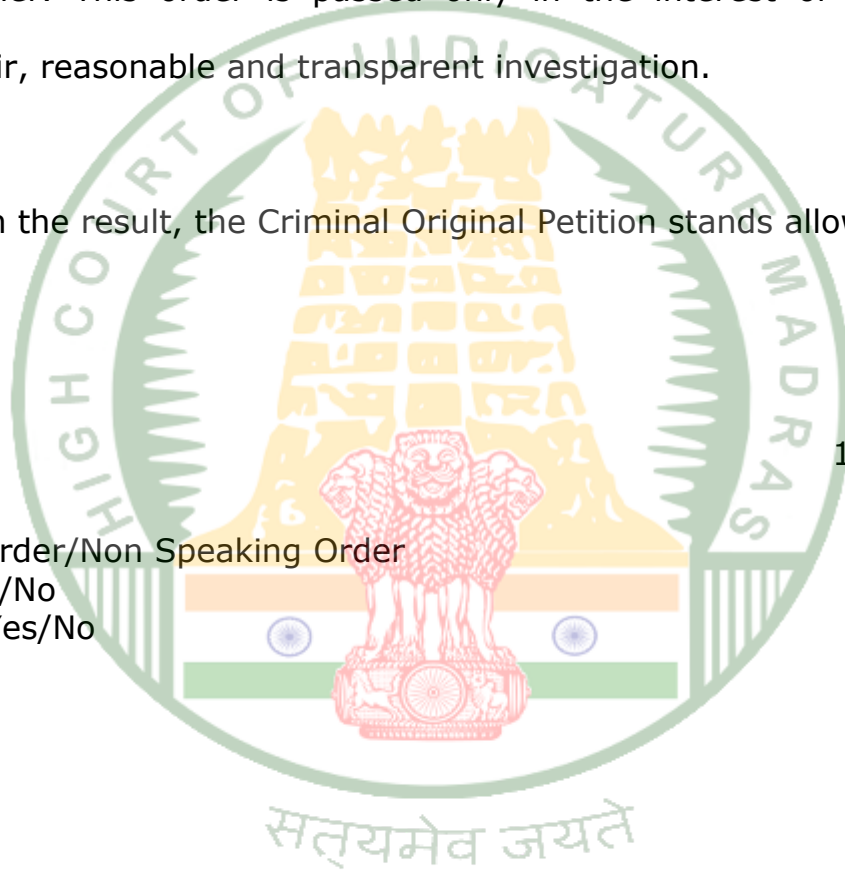
register a case and proceed in accordance with law.

32. This Court once again makes it clear that this order does not express any opinion in relation to the allegations made in the complaint of the petitioner. This order is passed only in the interest of justice for ensuring fair, reasonable and transparent investigation.

33. In the result, the Criminal Original Petition stands allowed.

12.10.2018

kv  
Speaking Order/Non Speaking Order  
Index : Yes/No  
Internet : Yes/No



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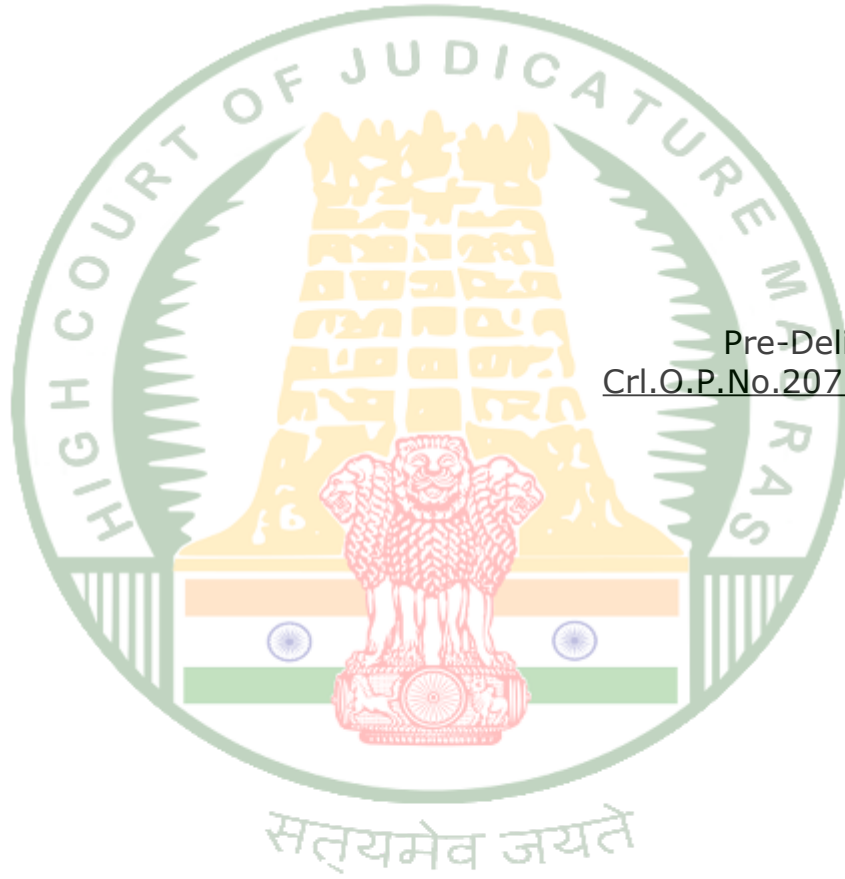
1. The Director,  
Vigilance and Anti Corruption  
293, MKN Road, Collectors Nagar,  
Alandur, Chennai-600 016.
2. The Joint Director,  
Central Bureau of Investigation  
(South Zone) College Road,  
Nungambakkam, Chennai.
3. The Public Prosecutor,  
High Court of Madras.



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**A.D.JAGADISH CHANDIRA.,J.**

kv



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