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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

SUO MOTU Crl.R.C.No.1481 of 2023

1.State rep.by
The Inspector of Police
The Vigilance and Anti-Corruption PS
Virudhunagar District.
(Crime No.3 of 2012)

2.Mr.T.Thennarasu @ Thangam Thennarasu (A1)
S/o.Thangapandian (late)

3.Tmt.T.Manimegalai (A2)
W/o. Mr.T.Thennarasu @ Thangam Thennarasu ... Respondents

(A1 and A2 residing at No.48, Sannathi Street
Mallanginaru, Virudhunagar District).

Criminal Revision case filed under Section 397 of Cr.P.C. to call for the records on the file of the Principal Sessions Judge, Virudhunagar District at Srivilluputtur (Designated Special Court for MPs and MLAs) passed in Spl.Case.No.20 of 2019, dt.12.12.2022 and set aside the same.

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N.ANAND VENKATESH., J.

As the judge holding the portfolio for MP/MLA cases in the State, two orders of the Special Court for MP/MLA Cases (Principal Sessions Judge), Virudhunagar District at Srivilliputhur discharging the accused, who were political personages of the ruling party in the State, were placed before me for scrutiny. Special Case No 19 of 2019 was a case involving the incumbent Minister for Revenue and Disaster Management Mr.K.K.S.S.R. Ramachandran, his wife Adhilakshmi and another. The second was Special Case No.20 of 2019 involving the incumbent Electricity Minister Mr.Thangam Thennarasu and his wife T. Manimegalai. In the former case, the accused were discharged by an order dated 20.07.2023 and in the latter case the accused were discharged by an order dated 12.12.2022.

2. It was a *deja vu* moment for this Court as both orders revealed a well-orchestrated pattern: the Special Court had taken cognizance of the final reports in 2013/14. Discharge applications were filed, and the cases were adjourned for months and years on end till 2021. In 2021, the political fortunes in the State smiled at the main accused who regained their positions as Ministers in the State Cabinet. A few months thereafter the State prosecution very magnanimously came forward and offered to conduct "*further investigation*". The product of this "further investigation" was a "*closure report*" tailored to support the grounds for discharge. The Special Court was then presented with a perfect fiat accompli as the prosecution suddenly

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whitewashed its earlier final report and presented a picture of complete innocence. On its part, the Special Court accepted the closure report and proceeded to discharge the accused.

3. This Court smelt a rat and called for the entire records of these two cases. "*Something is rotten in the State of Denmark*", said Shakespeare in Hamlet. On examining the records, this Courtis of the considered opinion that something is very rotten in the Special Court for MP/MLA Cases at Srivilluputhur.

4.This order deals with the case of Mr.Thangam Thennarasu and his wife Manimegalai who were arrayed as A1 and A2 in Special Case No.20 of 2019 before the Special Court for MP/MLA Cases (Principal Sessions Judge), Virudhunagar District at Srivilliputhur.

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

6.The case of the prosecution is that during the check period (15.05.2006 and 31.03.2010) Mr.Thennarasu, the then Education Minister, and his wife Manimegalai had

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amassed assets which were far in excess of their known sources of income. On 14.02.2012, a case in Crime No 3 of 2012 was registered by the DVAC, Virudhunagar alleging the commission of the following offences.

Rank of the accused	**Alleged offences**
T. Thennarasu (A1)	Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988.
Manimegalai (A2)	Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 read with Section 109 IPC.

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

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7. In the meantime, the Government of Tamil Nadu issued G.O.Ms.No.698 Public (SC) Department, dated 11.07.2013 appointing one Jeyapalan, Retired Deputy Legal Advisor as the Special Public Prosecutor to conduct the case in Special Case No 4 of 2013 before the Special Court. ThangamThennarasu (A1) challenged this Government order before the Madurai Bench of this Court in W.P [MD].No.17371 of 2013.

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

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

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10. When matters stood thus, WP [MD].No.17371 of 2013 was taken up on 02.02.2018 and the following order was passed by a learned single judge of this Court:

> *"The learned counsel for the petitioner sought permission of this Court to withdraw this Writ Petition and she has also made an endorsement to that effect.*
>
> *2. In view of the endorsement made by the learned counsel for the petitioner, this Writ Petition is dismissed as withdrawn. No costs. Consequently, the connected miscellaneous petitions are closed.*
>
> *3. However, the Trial Court is directed to complete the trial in Special C.C.No.4 of 2013, within a period of six months from the date of receipt of a copy of this order, provided the accused co-operate with the Trial Court by cross-examining the prosecution witnesses on the day they are examined in chief, as held by the Hon'ble Supreme Court in Vinod Kumar vs. State of Punjab reported in 2015 (1) Scale 542, without adopting dilatory tactics. If any of the accused absconds, a fresh First Information Report can be registered against him/her under Section 229-A of the Indian Penal Code. If the accused adopt any dilatory tactics, it is open to the Trial Court to remand the accused to custody, in the light of the law laid down by the Supreme Court in State of U.P. vs. Shambhu Nath Singh reported in 2001(4) SCC 667".*

Similarly, W.P(MD).No.9466 of 2017 came up on 12.02.2018, and the following order came to be passed:

> *"3. In the opinion of this Court, the prosecution against the accused can be carried forward by the Departmental Public Prosecutors, who are themselves very competent and it may not be necessary for the Government to appoint Special Public Prosecutor, giving room for the accused to challenge the appointment order and*

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stall the trial.

4. The learned Additional Advocate General submitted that senior advocates are appearing for the accused and, therefore, the State also needs to have a Senior Advocate to defend the case in the Trial Court.

5. What is required for prosecuting a criminal case is long experience in trial work and integrity. The presence of a battery of lawyers for the accused should not overawe the State, since the State should have faith in the efficiency of its cadre Public Prosecutors and the Courts. Therefore, to put to rest this litigation, the State is advised to rescind the orders appointing Mr.ShanmugaVelayutham and Mr.R.Rajarathinam as Special Public Prosecutors in the case and leave the prosecution to be dealt with by a competent Cadre Legal Adviser or Additional Public Prosecutor as the State deems fit.

6. With the above observation, the matter stands adjourned to 27.02.2018 "for orders".

W.P(MD).No. 9466 of 2017 was eventually disposed of on 27.02.2018 with the following directions:

"2. Today, Mr.R.Rajarathinam, former Public Prosecutor for the State is incidentally present before this Court in connection with some other case. On the question posed by this Court, he stated that he resigned from the post of Public Prosecutor, High Court of Madras on 04.10.2017 and his resignation was also accepted on 21.10.2017 and, therefore, he is also not acting as the Special Public Prosecutor in terms of G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016.

3. In such view of the matter, this Writ Petition has become infructuous.

4. However, the learned counsel for the petitioner submitted

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that the petitioner has raised certain seminal issues in the Writ Petition, inasmuch as he has questioned the very authority of the Government to appoint more than one Public Prosecutor in the instant case.

5 Since G.O.Ms.No.789, Public (SC) Department, dated 26.09.2016 itself has become infructuous, it may not be necessary for this Court to address those issues. As and when the Government appoints a Special Public Prosecutor other than the usual Cadre Prosecutors of the Directorate of Prosecution, it is open to the petitioner to file a fresh Writ Petition challenging such appointment.

6 With the above observation, the Writ Petition is closed. No costs. The Trial Court shall proceed with the discharge applications expeditiously. Consequently, the connected miscellaneous petitions are also closed."

This ended the 5-year saga of the challenge to the appointment of Special Public Prosecutors.

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

"*Hence, this Court directs the trial Court to deal with the*

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discharge applications without in any way influenced by the aforesaid direction. If the trial Court is not able to complete the trial within six months, the trial Court can administratively make a request for extension of time. The petitioner is directed to cooperate with the trial Court in arguing the discharge application without taking unnecessary adjournments."

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

13.It is seen from the records that the Special Court took up the discharge applications for hearing on 20.08.2019. Despite the observations made by this Court in W.P (MD).No. 9466 of 2017, that no Special Public Prosecutor need be appointed for the case the order of the Special Court dated 12.09.2019 records that the Special Public

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Prosecutor had filed a memo stating that the DVAC had forwarded a letter to the Principal Secretary to the Government requesting the appointment of a Special Public Prosecutor exclusively for this case. This was most curious since the memo itself was filed only by the Special Public Prosecutor and it was not known why a Special Public Prosecutor was sought to be appointed when there was already one before the Court. The objective of filing this mischievous memo comes to light from the records where it is seen that the matter was adjourned for appointment of Special Public Prosecutor for six hearings from 01.10.2019 to 21.02.2020. On 21.02.2020, the Special Public Prosecutor did a volte-face and suddenly decided to not press the memo filed by him on 12.09.2019. In this process, another 5 months had gone by. The accused perhaps knew that elections were now only a year away. To their reprieve, COVID-19 intervened.

14.It is also seen from the records that the learned counsel for the accused commenced marathon piecemeal hearings for over one year in the discharge petitions from 27.03.2020 till 09.04.2021. The Special Court appears to have liberally heard thedischarge petition in instalments for over a year. Through the aforesaid collaborative effort of all concerned, the matter was successfully dragged on till the assembly elections in May 2021. In May 2021, there was a change in guard in the State and A1 was back in the saddle as the incumbent Minister for Electricity. The stage was now set for the prosecution to self-destruct.

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

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

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investigation can be under taken at any stage. The duty of fair investigation on the part of the Investigation Officer is to collect material not restricted to prosecution side but also it extends to even the stand of defense. The argument on the discharge petition can also be effectively done after completing the further investigation."

The basis of further investigation, according to the IO, is that the written argument of the accused in the discharge petitions had "*introduced some new facts and documents".* According to IO the concept of fair investigation "*extends to even the stand of defense."* In other words, according to the IO, the fair investigation was necessary to unearth material to test the stand of the defense in the discharge petition.

16.It is also seen from the records that this very same IOBoominathan has signed the counter affidavit dated 12.04.2016 to the discharge petition in Crl.MP.No.1528 of 2016 stoutly refuting the grounds of discharge and elaborately defending the investigation already done. He has also copiously garnished his counter affidavit with extracts from the decisions of the Supreme Court to show that the discharge petitions were totally baseless. It is strange and surprising that all of a sudden in September 2021, after A1 had once again become a Minister, the IO Boominathan who had suddenly attained enlightenment was moved to resort to further investigation to hunt for materials to support the stand of the defense. The investigation officer appears to have been labouring under the misconception that since A1 was now a Minister it was his bounden duty to obtain materials to vindicate the stand of the political masters of the day. When investigation officers in corruption cases

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start dancing to the lullabies of the politicians in power the concept of fair and impartial investigation would be reduced to a mere charade. This is precisely what has happened in this case.

17. It appears that this intimation memo filed by IO Boominathan under Section 173(8) Cr.P.C was placed before the Special Court on 23.10.2021, and the following order came to be passed:

> *"A1, A2 called absent. A1, A2 under section 317 Crpc Petition filed and allowed. CrMp Discharge Petition pending status report file by the investigation. Today State Public Prosecutor appear to matter, Hasen Mohammad Jinnah Appeals relevant Citation submitted 173(8) Crpc further investigation to collect material evidence truth of facts. 2019 17scc Vinubhai, Halibahimaliviya Honourable High Court Crl Op 15030/2021 Ravi@Anubu Ravi, Rama Chavdoury 2009 6 scc 346, Quash 2004 5 scc 347 Rama lalnarang 1979 2 scc 322 and such behalf investigation comes to lightway during to trial. It may be curred further investigation. Discharge Petitioner Bank Account transfer to account. As Preventive Corruption Act 18 Bank Pass Book in 17 investigation agency DSP authorise person conduct to investigation. In the view of position of law. If there is necessary for further investigation. Criminal ethics this court arriving at the truth as do real and substantial justice as well as effective justice to further investigation and supplement final report 10 weeks. Call on 05.1.2022."*

In writing the aforesaid order, the Special Court has resorted to a curious judicial technique. Incomprehensible judicial orders are usually of two types: the first is where

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the order contains no reasons. This does not pose much of a problem as the order will have to be set aside on that ground. The second type is where the judge writes something which nobody, including the judge writing it, can comprehend. It appears that the Special Court adopted the second course since the order dated 23.10.2021 is, on the face of it, utterly incomprehensible. According to the Special Court "***criminal ethics*** *this court arriving at the truth as do real and substantial justice as well as effective justice to further investigation and supplement final report.*" The Special Court ought to have known that criminals and ethics are strange bedfellows, andthat tactlessly mixing them up would produce a deadly cocktail as has been done in this case.

18. The matter was, thereafter, adjourned from time to time to await the report under Section 173 (8) Cr.P.C. On 28.10.2022, the IO R. Boominathan filed a document titled "*Final Closure Report after conducted further investigation u/s 173(8) Cr.P.C in Cr No 03/2012 Vigilance and Anti-Corruption, Virudhunagar*", together with a petition to accept the "Final Closure Report" under Section 173(8) Cr.P.C. According to the IO, R. Boominathan he had undertaken a "*meticulous scrutiny*" to "*verify the claim made by the accused in the written arguments for the discharge petitions*". In his discharge petition before the Special Court, A1 has raised 12 grounds four of which are grounds relating to sanction. A1 has claimed that the IO did not factor in the loans taken by A1 from his mother which were reflected in the IT returns, and that the IO had also not taken into consideration the fact that the accused had agricultural income to facilitate

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the purchase of properties. There is a vague assertion that the methodology adopted by the DVAC is fictitious and was not in accordance with the DVAC Manual. Similarly, A2 has taken 12 grounds two of which relate to sanction and another two relate to defects in the appointment of IO. Grounds vi to xii are mere assertions that the incomes of A2 have been accounted for and that the IO had not properly accounted for the sources of income.

19. What is, however, shocking is that in the document titled "final *closure report*" the IO Boominathan has investigated grounds that have not even been raised in the discharge petition but were raised for the first time in the written arguments to the discharge petition. The IO has concluded in paragraph 25 of his affidavit as under:

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

Unsurprisingly, the IO's closure report states that the assets acquired for a sum of Rs. 1,62,40,074/- were within the likely savings of the accused amounting to Rs. 1,63,95,027/- leaving the accused with an excess savings of Rs.1,54,953/-. This supplementary closure report was placed before Special Court on 28.10.2022.

20.The scene now shifts to the Special Court which was faced with a very

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strange situation. Whether this strange situation was brought about by accident or by deliberate design is of course another matter. The Special Court now had before it a final report dated 15.11.2012 filed by the IO S. Swaminathan alleging the commission of offences under the PC Act by A1 and A2. The Special Court had also taken cognizance of these offences on the said final report by an order dated 18.01.2013. The Special Court also had before it a "*closure report*" filed by IO Boominathan after allegedly conducting a "*further investigation*" under Section 173(8) pointing to a diametrically opposite conclusion. The first thing the Special Court ought to have done, which it did not do, was to have ascertained the legality of the "closure report" of Boominathan. It will be recalled that the IO claimed that he was only exercising his statutory power under Section 173(8) to undertake further investigation, and by doing so Boominathan effectively wiped out the earlier findings of IO Swaminathan.

21.On its part, the Special Court appears to have labored on by minutely scrutinizing the two reports and the calculations made therein and has thereafter arrived at the conclusion that the second report of IO Boominathan deserves to be accepted. The Special Court has on this basis, "*accepted the final closure report*" and discharged the accused purportedly in exercise of powers under Section 239 Cr.P.C by the order dated 12.12.2022.

22.The aforesaid narrative reveals a sorry picture. The three stakeholders viz., the accused, the prosecution and the Special Court have acted in tandem to reduce the

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administration of the criminal justice system to a complete farce. There are several things in this case that are seriously amiss. First is the legality of the so-called "*further investigation*" by IO Boominathan. As pointed out earlier, in the so-called "*further investigation*" under Section 173(8) Boominathan has handed down a clean chit to the accused thereby wiping out the findings and conclusions arrived by IO Swaminathan in his 2012 final report indicting the very same accused. It is, therefore, first necessary to examine whether such an exercise was permissible within the parameters under Section 173(8) Cr.P.C.

23.There can no dispute that under the scheme of the Code the investigation agency has the right to conduct further investigation and file a supplementary final report in terms of Section 173(8) Cr.P.C. The concept of "*further investigation*" under the said provision was explained by the Supreme Court in ***K. Chandrasekhar v. State of Kerala*, (1998) 5 SCC 223** in the following manner:

> "*The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports — and not fresh report or reports — regarding the*

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"further" evidence obtained during such investigation."

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In ***Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762,** the scope of further investigation under Section 173(8) was once again explained as under:

> *"Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation."*

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Thus, further investigation under Section 173(8) is, in essence, meant to supplement the earlier investigation. What has happened in this case is precisely the opposite. Under the guise of further investigation, IO Boominathan instead of ***supplementing*** has ***supplanted*** the earlier report of IO Swaminathan not by consolidating but by nullifying the express findings therein. The net effect of the closure report of IO Boominathan was that the earlier findings in the final report stood neutralized and wiped out as the accused were given a clean chit. This could not possibly be done in the exercise of power under Section 173(8) Cr.P.C. The exercise undertaken to prepare this"*final closure report*" in effect, was a re-investigation or a de-novo investigation which had the effect of wiping out the earlier final report of IO Swaminathan. This neither the IO Boominathan nor the Special Court had the power to do since the power to order re-investigation or de-novo investigation rests with the superior courts alone. There was nothing "*further*" about the "*further investigation*" of Boominathan except the fact that it was designed to "*further*" the objectives of the accused.

24.We now turn to the role of the Special Court. The Special Court was aware that it had taken cognizance of the earlier final report. Under the system of criminal procedure presently in vogue an investigation under Chapter XII of the Code may culminate with a closure report under Section 169 Cr.P.C or a final report (or charge sheet) under Section 173 (2) Cr.P.C. In a case where a closure report is filed, the Magistrate is required to issue notice to the complainant and hear him before passing an order either accepting or rejecting the closure report. The protest petition filed by

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the complainant may be treated as a complaint and the Court may proceed to inquire into the case under Sections 200 and 202 of the CrPC.

25. On the other hand, where the prosecution has filed a charge sheet under Section 173(2) alleging the commission of certain offences by a certain person or persons the court may accept the report and take cognizance of the offence and issue process or may disagree with the report and drop the proceeding or may direct further investigation under Section 156(3) and require police to make a report as per Section 173(8) of the CrPC. Under Section 173(8) the investigation is entitled to file "*further report or reports*" and not a closure report. This "*further report or reports*" in Section 173(8) is commonly known as a "*supplementary report.*" Thus, there can only be one final report under Section 173(2) Cr.P.C and such other "further report or reports" under Section 173(8) which are called supplementary reports.

26. As with many other things in this case, the IO Boominathan filed a petition under Section 173(8) on 28.10.2022 praying that the Special Court ought to accept the "*final closure report*". As is seen above, the report contemplated under Section 173(8) is neither a final report (as contemplated under Section 173(2) nor is it a closure report under Section 169 Cr.P.C). IO Boominathan, on his part has cooked up a cocktail hitherto unknown to criminal law by filing a "*final closure report"* purportedly under Section 173(8) Cr.P.C. This was clearly mischievous since there was only one final

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report under Section 173(2) Cr.P.C in this case which is the report of IO Swaminathan in 2012 on the basis of which cognizance was taken. It is, therefore, most curious that the Special Court entertained a hitherto unknown document called a "*final closure report*" and that too under Section 173(8) Cr.PC almost 10 years later in 2022 which set up a completely new case that no offence had been committed. The strange and bizarre procedure adopted by the investigation agency and acquiesced to by the Special Court is unknown to criminal law.

27. The Special Court has also overlooked the fact that the 2012 final report of IO Swaminathan under Section 173(2) Cr.P.C was very much on record. Whether the final report was right or wrong could have been assessed only after trial. The unique feature of this case is that the charge sheet of IO Swaminathan has been discredited not by the accused but by another IO Boominathan. While discharging the accused, the Special Court has proceeded on the basis as if the 2022 closure report of Boominathan had superseded the 2012 final report of Swaminathan. By doing so the Special Court ensured that the original final report under Section 173(2) Cr.P.C indicting the accused was completely brushed under the carpet by giving it a quiet and indecent burial by blindly accepting the so-called "*final closure report*" of IO Boominathan. The approach of the Special Court appears to be ex-facie illegal and cannot stand scrutiny since the Special Court had no power whatsoever at the stage of discharge under Section 239 Cr.P.C to discard, without assigning any reason, the findings and material which culminated in the 2012 final report of IO Swaminathan under Section 173(2) Cr.P.C.

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The law in this regard is too well settled and one need not go any further than the decision of the Supreme Court in ***Vinay Tyagi v. Irshad Ali,*** **(2013) 5 SCC 762,** wherein it has been observed as under:

> *"However, in the case of a "fresh investigation", "reinvestigation" or "de novo investigation" there has to be a definite order of the court.* ***The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct "fresh investigation".*** *This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of "fresh"/"de novo" investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation*

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and directing a "fresh investigation"."

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28. Equally surprising is the fact that the Special Court, while discharging the accused of the offenses under Section 13(1)(e), has virtually played the role of an arithmetician and has meticulously weighed the evidence and has handed down an order holding that there was no ground to proceed against the accused persons. The approach of the Special Court can find few parallels and if such jugglery is to be emulated elsewhere, the Special Courts trying MP/MLA's cases in this State would be writing a collective obituary to the cases under Prevention of Corruption Act.

29. Prima facie, the order of the Special Court discharging the accused is also untenable in the light of the recent decision of the Supreme Court in ***State of T.N. v. R. Soundirarasu,*** **(2023) 6 SCC 768** which was an appeal from this Court. A single judge of this Court discharged the accused under Section 13(1)(e) by adopting a similar procedure akin to that of the Special Court in this case. The single judge enquired into the materials produced by the accused persons, compared with the information compiled by the investigating agency and pronounced a verdict saying that the explanation offered by the accused persons deserves to be accepted applying the doctrine of preponderance of probability. Terming the decision of the High Court as "*utterly incomprehensible*" the Supreme Court observed:

> "***81.****The High Court has acted completely beyond the settled parameters, as discussed above, which govern the power to discharge the accused from the prosecution. The High Court could be*

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said to have donned the role of a chartered accountant. This is exactly what this Court observed in Thommandru Hannah Vijayalakshmi [CBI v. Thommandru Hannah Vijayalakshmi, (2021) 18 SCC 135 : 2021 SCC OnLine SC 923] . The High Court has completely ignored that it was not at the stage of trial or considering an appeal against a verdict in a trial. The High Court has enquired into the materials produced by the accused persons, compared with the information compiled by the investigating agency and pronounced a verdict saying that the explanation offered by the accused persons deserves to be accepted applying the doctrine of preponderance of probability. This entire exercise has been justified on account of the investigating officer not taking into consideration the explanation offered by the public servant and also not taking into consideration the lawful acquired assets of the wife of the public servant i.e. Respondent 2 herein.

The parameters governing the exercise of jurisdiction under Section 239 Cr.P.C have also been explained as follows:

> ***75.*** *The ambit and scope of exercise of power under Sections 239 and 240CrPC, are therefore fairly well-settled. The obligation to discharge the accused under Section 239 arises when the Magistrate considers the charge against the accused to be "groundless". The section mandates that the Magistrate shall discharge the accused recording reasons, if after : (i) considering the police report and the documents sent with it under Section 173, (ii) examining the accused, if necessary, and (iii) giving the prosecution and the accused an opportunity of being heard, he considers the charge against the accused to be groundless i.e. either there is no legal evidence or that the facts are such that no offence is made out at all. No detailed*

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evaluation of the materials or meticulous consideration of the possible defences need be undertaken at this stage nor any exercise of weighing materials in golden scales is to be undertaken at this stage — the only consideration at the stage of Sections 239/240 is as to whether the allegation/charge is groundless.

30. The Supreme Court in ***State of T.N. v. R. Soundirarasu*, (2023) 6 SCC 768** has also held that the onus of satisfactorily accounting for the assets is on the accused and that this onus cannot be discharged at the stage of Section 239 Cr.P.C. Pardiwala, J has observed as under:

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

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Tested in the light of the aforesaid principles, this Court is of the prima facie view that the order dated 12.12.2022 passed by the Special Court for MP's and MLA's case (Principal Sessions Judge, Virudhunagar District at Srivilluputhur suffers from grave illegality which has resulted in gross miscarriage of justice. It is all too apparent that upon a change of power in the State in 2021, the identities of the accused and the prosecution were obliterated as all the players in the game suddenly found themselves belonging to the same team. Realizing this, the umpire ie., the Special Court appears to have decided that the wisest course open to it was to get itself out hit wicket. This, therefore, is yet another instance of a criminal trial being derailed by the active design of those at the helm of political power. If this trend goes unchecked, our Special Courts meant for MP/MLA trials would become a playground for all sorts of condemnable practices which are handcrafted and orchestrated to subvert and derail the criminal justice system.

One can only reiterate the lament of the Supreme Court delivered last week in ***Harendra Rai v State of Bihar***, Criminal Appeal 1726 of 2015 wherein it was observed as under:

> *"We have noticed that the three main stake holders in a criminal trial, namely the Investigating Officer that is the part of the police of the State of Bihar, the Public Prosecutor, and the Judiciary, have all utterly failed to keep up their respective duties and responsibilities cast upon them. This Court time and again has commented upon the failure of the major stakeholders in the criminal delivery system."*

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31. The aforesaid illegalities having come to my notice, I have no hesitation in holding that this is a case where I must exercise my revisionalpowers suo motu under Article 227 of the Constitution & Sections 397/401 Cr. P.C. In cases of this nature, it is the duty of the High Court to interfere and prevent miscarriage of justice. The principles governing the exercise of jurisdiction were explained in *Nadir Khan* v. *State (Delhi Admn.)*, (1975) 2 SCC 406, as under:

> "***4.*** *It is well known and has been ever recognised that the High Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court, as an effective instrument for administration of criminal justice, keeps a constant vigil and wherever it finds that justice has suffered, it takes upon itself as its bounden duty to suo motu act where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community, even though the State may be slow or silent in preferring an appeal provided for under the new Code. The High Court in a given case of public importance e.g. in now too familiar cases of food adulteration, reacts to public concern over the problem and may act suo motu on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders.*

In *Krishnan* v. *Krishnaveni*, (1997) 4 SCC 241, a three-judge bench of the Supreme Court has observed that it is the salutary duty of the High Court to interfere in a criminal proceeding where failure of justice has been occasioned. It was observed as follows:

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

32.In the light of the foregoing discussion, the following directions are issued:

a. The Additional Public Prosecutor shall take notice on behalf of the State.

b. The Registry is directed to issue notice to the accused in Spl Case No. 20 of 2019, Special Court for MP/MLA Cases (Principal Sessions Judge), Virudhunagar District at Srivilliputhur, who are the 2nd and 3rd respondents in this criminal revision, for the hearing on 20.09.2023.

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

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

To

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

2.Principal Sessions Judge, Virudhunagar District
Srivilluputtur
(Designated Special Court for MPs and MLAs)

3.Public Prosecutor
High Court, Madras.

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N.ANAND VENKATESH., J.

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23.08.2023

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