IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.02.2024

PRONOUNCED ON : 28.03.2024

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR
AND
THE HONOURABLE MR. JUSTICE K.KUMARESH BABU

Writ Appeal Nos.847 & 850 of 2019
& CMP. No.17216 & 17220 of 2023

1.The State of Tamil Nadu,
Rep., by its Chief Secretary to Govt.,
Secretariat, Fort St., George,
Chennai – 9.

2.The Principal Secretary of Govt.,
Public (SC) Department,
Secretariat, Fort St., George,
Chennai – 600 009.

3.The Director of Vigilance and
Anti Corruption,
Tamil Nadu,
293, MKN Road, Alandur,
Chennai – 600 016. ... Appellants in both W.As

Vs

1.M.K.Stalin ... Respondent in W.A.No.847/2019

1.Durai Murugan ... Respondent in W.A.No.850/2019

COMMON PRAYERS: Writ Appeals have been filed under Clause 15 of Letter Patent against the order dated 13.12.2018 made in W.P.Nos.26924 & 27376 of 2018.

Writ Appeals:-

For Appellants : Mr.P.S.Raman AG Assisted by
Ms.S.Anitha Spl., G.P., and
Mr.R.Muniyapparaj Addl., P.P.,
for 1st and 2nd appellants

Mr.Hasan Mohammed Jinnah PP
for 3rd appellant in both Appeals

For Respondents : Mr.P.Wilson Senior counsel for
M/s.Wilson Associates for both W.As.

CMPs:-

For Petitioner : Mr.V.Raghavachari Sr., Counsel for
Mr.A.P.Balaji in CMP.No.17216/2023

Mr.P.Valliappan Sr., Counsel for
Mr.E.Balamurugan in CMP.No.17220/2023

For Respondents : Mr.P.S.Raman AG Assisted by
Mr.S.Anitha Spl., G.P., and
Mr.R.Muniyapparaj Addl., P.P., for RR1 &2

Mr.P.Wilson Sr., Counsel for
M/s.Wilson Associates for R4 in both CMPs

COMMON JUDGMENT

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

The brief facts leading to these appeals are as follows:-

During the years 2006-2011, the government of Tamil Nadu took a policy decision to construct new legislative assembly buildings. At that relevant point of time, the political party to which the first respondents in the respective appeals belonged to was in power. In the assembly elections held in the year 2011, the rival political party had gained power. Thereafter on various allegations which were made against the manner in which the construction of the new assembly building was carried out, an enquiry commission under the chairmanship of retired Judge of this court was formed. Since the Chairman demitted his office by resignation, another retired judge of this court was appointed in his place. After the new incumbent had assumed office, and pursuant to the documents collected by the authorised officer, summons were issued to the respective individuals.

Challenging the said summons a Writ Petition was filed before this court by the former Chief Minister, who had headed the Government during the said period. This court by way of an interim order dated 03.08.2018, passed the following order:-

> *126. In view of the importance involved in the issues raised in these petitions, this Court has considered the issues at length and following orders are passed in the vacate stay petitions and in the stay petitions, as under:-*
>
> *(i) The third respondent/State is directed to issue orders within one week from today, suspending the Hon'ble Thiru Justice R.Regupathi Commission of Inquiry and stop all further allotment of funds including the perquisites and Government facilities, till the final disposal of the writ Petitions.*
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> *(ii) The third respondent/State is directed to review the functionings of all the existing commission of inquiries and take a decision in respect of its further continuance, dissolving the same or fixing the time limit for the submission of report based on the legal principles settled by the Hon'ble Supreme Court of India and the obsevations made in this order, within a period of four weeks.*
>
> *(iii) The respondents 1 and 2 are directed to hand over all the records, reports of the Investigating Agencies, statements and the evidences collected, to the third respondent/State, within a period of two weeks from the date of receipt of a copy of this order. On receipt of those documents, the third respondent/State is directed to scrutinise the said reports of the Investigating Agencies, statements and evidences of Government Officials and files and if prima facie*

case is found, then institute criminal prosecutions against all the public servants, Government Officials and the persons concerned, under the Penal provisions of law.

(iv) The third respondent/State is directed to issue orders, vacating the respective Government Residential Bungalows allotted to all the Commissions of Inquiry, within a period of one month from the date of receipt of a copy of this order. If at all, accommodation is required, the same shall be provided in the Government Office buildings suitably.

2.The said writ petition was closed, recording the death of the petitioner therein. It is also pertinent to note that the first respondent in these Intra Court Appeals had also challenged the summons issued to them. Pursuant to the order dated 03-08-2018 made by the learned Single Judge, the chairman of the commission demitted his office. The resignation was also accepted by the government and thereafter, the Government Orders in GO (Ms), 721 dated 24-9-2018 was issued by the Government directing the Secretary of the Enquiry Commission to handover all the records, reports of the investigating agencies, statements and evidences collected by the Enquiry Commission to the office of the third appellant herein. The same was followed up with the letter by the second appellant to the third appel-

lant according permission to conduct a detailed enquiry in this regard and send a report to the Government, on the receipt of the relevant materials as directed under the Government Order as stated supra. The first respondent in the respective appeals, had sought permission of this court to withdraw the petitions filed by them challenging the appointment of the Enquiry Commission and all its further proceedings including the summons issued to them. The learned, Single Judge permitted them to withdraw their petition, but had *inter alia* made certain observations. Challenging the said observations, they had filed Intra Court Appeals which are pending on the file of this court. The first respondent in the respective appeals had also filed writ petitions, challenging the Government Orders stated supra and the consequential proceedings for a detailed enquiry. The learned Single Judge by the order impugned in these Intra-Court appeals had set aside the Government Order as stated supra as also the consequential direction issued by the second appellant.

3.In this backdrop, these Intra-Court Appeals had been listed on our Board. The appellant in these Writ Appeals, being the State seeks to with-

draw the appeals. However, the petitioner in the impleading applications would strongly object to the State's request to withdraw these appeals. Both, the learned Advocate General and the learned counsel for the first respondents in the respective appeals would question the *locus* of the impleading petitioner. In such an event, we are constrained to consider the pleas raised by the respective counsels both on the right of the impleading petitioner to get himself impleaded in these Intra-Court appeals and the right of the appellant to withdraw the appeals.

4.Heard the learned Senior counsels appearing on either side and perused the materials available on record before this Court.

5.During the course of arguments, the learned counsels appearing on either side had incidentally touched upon the merits and demerits of the *lis* involved in these Intra-Court Appeals. We, having decided to only deal with the contentions, as regards to the impleading application and the request of withdrawal, we do not propose to either record the arguments of the

learned counsels on the merits and demerits of the appeals and would only deal with the said issue relevant hereinafter.

6.The learned Advocate General, at the outset would submit that the appellants being a *dominus litis* has the prerogative to either proceed with the Appeals or decide not to press the Appeals and withdraw the same. He would submit that when such a request is made that too without reserving any liberty whatsoever, even the party respondents or any other party to the proceedings cannot seek to object the decision to withdraw the proceedings initiated by it. He would further submit that in the present case a third party who is neither a proper nor necessary party to the *lis* cannot seek to object the withdrawal of the proceedings initiated by the appellant. In support of his contention, the learned Advocate General had relied upon various judgments.

7. Citing the judgement of the Hon'ble Apex Court in the case of ***Anurag Mittal vs. Shaily Mishra Mittal*** reported in ***(2018) 9 SCC 691***, he would submit that the appellant has an absolute right to withdraw or aban-

don even a part of the claim on such an application to grant it. He would further submit that as and when such a request is made, it is deemed to have been withdrawn on and from such date. He would submit that in the facts of the present case, the appellants had addressed the Registry of this court by a letter dated 13-7-2023 seeking to withdraw the Appeals. When that be the fact, an subsequent application filed by the impleading petitioner cannot at all be maintainable in the light of the said judgment.

8.Further, placing reliance upon a judgment of the learned Single Judge in the case of ***M.Sivasumramaniam vs. Government of Tamil Nadu by its Secretary, Government of Cooperative Food and Consumer Dept., & Ors.,*** reported in ***2020 SCC online mad 5313,*** for persuading us to accept that, even in case when the appellant decides to withdraw or abandon its claim, the parties to the proceedings cannot seek to transpose them self in the place of the appellant if they do not have any substantial right which could be affected in view of such an abandonment.

9.Relying upon a judgment of the learned Single Judge of the Kerala High Court in the case of ***C.Gomathy Amma & Ors vs., Narayanaruru & Ors.,*** reported in ***2012 SCC online Ker 30447,*** he had persuaded us to consider that a person who had deliberately kept himself out of the court cannot neither seek to implead himself in the proceedings nor he can also object to the withdrawal of the appeals filed by the appellants. He would further submit that the petitioner as a matter of right cannot claim to be impleaded. Therefore, he would request this court to reject the applications for impleading and permit the appellants to withdraw the Intra Court Appeals.

10.Mr.P.Wilson, learned Senior Counsel appearing on behalf of the first respondent in both the Appeals would, at the outset contend that the impleading petitioner is a meddlesome interloper, who cannot be said to be an aggrieved person for him to be heard by this court. He would submit that the impleading petitioner is a Former member of the Parliament and a member of the opposition party and therefore, he is trying to exploit the situation to gain popularity which he is lacking. He would further submit that all along the impleading petitioner had not taken any steps for himself to be

impleaded as a party. He would submit that if his grievances raised in his affidavit are genuine, then he should have approached this court, when the learned Single Judge had quashed the Government Order and the consequential communication. Having failed to do so, he cannot claim to be impleaded at this stage. He would further submit that he could at most be only ranked as a fence sitter who would have no rights to participate in a proceedings at a later stage. He would supplement the arguments of the learned Advocate General by relying upon various judgments

11.By citing the judgement in the case of ***Sarguja Transport Service vs. State Transport Appellate Tribunal M.P.Gwalior and Ors.,*** reported in ***1987 1 SCC 5*** he would submit that the provisions of Rule 1 of Order XXIII CPC would apply to the writ proceedings as well. When that being so, he would submit that at any time of pending proceedings, the appellants would have a right to abandon even a part of his claim.

12.Relying upon a further judgement in the case of ***Ramesh Chandra Sankla & Ors., vs. Vikram Cement & Ors.,*** reported in ***(2008) 14 SCC 58***,

he would contend that a party to the proceedings is always entitled to withdraw the proceedings initiated by him, and that the court normally should not prevent him from withdrawing the proceedings.

13.Further, relying upon the decisions in the cases of ***Anil Kumar Singh vs. Vijay Pal Singh and Ors.,*** reported in ***(2018) 12 SCC 584***, and ***Hulas Rai Baij Nath vs. Firm K.B.Bass and Co.,*** reported in ***1967 SCC online SC 61 & 2009 2 Gauhati Law Reports 649***, the right to withdrawal from a proceeding is an unqualified right, and at the most, the parties who were drawn into the litigation by such proceedings would be entitled to costs. He would submit that the court cannot refuse to grant such permissions.

14.He contended that the court may entertain a claim from a person who is personally aggrieved. For him to be personally aggrieved a person should have suffered legal wrong, or otherwise at least he should have an enforceable right. He would submit that the impleading petitioner is a meddlesome interloper, trying to gain cheap popularity at the behest of the court. In that context, he would rely upon the judgment of the Hon'ble Apex

Court in the case of ***Jasbai Motibhai Desai vs. Roshan Kumar, Haji Bashir Ahmed & Ors.,*** reported in ***(1976) 1 SCC 671*** and would submit that the Hon'ble Apex Court, to apply the principles of *locus standi* Court would have to analyse whether the person who approaches this court is really a person aggrieved, stranger or a busybody/meddlesome interloper. He would submit that on the facts of the case the impleading Petitioner had not raised any little finger even when the learned Single Judge of this Court had quashed the Government Order and the consequential direction for a detailed enquiry, which order is impugned before the court. Only now he seeks to implead himself that too when the appellants decided to withdraw the appeals. He would vehemently contend that the conduct of the impleading petitioner is nothing but an abuse of process of court since he is trying to impede with the justice delivery system. Therefore, he would seek dismissal of the impleading applications *in limine* and permit the appellants to withdraw the appeals

15. On the other hand, Mr.V.Raghavachari learned Senior counsel appearing on behalf of the impleading petitioner in one of the Writ

Appeal would contend that the petitioner had been serving the people of Tamil Nadu and he is a doctor by profession. He was also a member of the Parliament and member in the present opposition party. Rampant corruption in the construction of the legislative assembly/secretary complex in the city of Chennai had taken place during the regime, when the Government was headed by the very same Political Party as now. He would submit that the then Government which came to be headed by the Party to which the petitioner belonged to noting the various allegations of corruption that had surfaced had appointed an one main enquiry commission headed by retired judge of this Court. Thereafter a new retired judge was appointed due to the demission of office. He would submit that an investigating team was appointed by the one-man Commission to be headed by a Superintendent of Police, who had also submitted a detailed Investigation Report. Based on the said Report, the one-man Commission had also issued summons to the alleged suspected individuals. In fact, the former Chief Minister and the first respondent herein had challenged the Government Order appointing the one-man Commission, inter-alia challenging the summons issued to them. Pursuant to an interim order passed by this Court, directing dissolution of

the enquiry commissions and directions to the first appellant herein to take an independent decision based on the materials collected by the one-man Commission for taking up further action, the Government had also issued a Government Order which had been quashed by the learned Single Judge, which are the impugned in these Intra-Court Appeals. Since, the Government had been persuading the legal battle, the petitioner did not step in, as it would only lead to multiplicity of proceedings. Only when the petitioner came to know that the Government which is now headed by the first respondent was not wanting to proceed with the matter by seeking to withdraw these Intra Court Appeals, to bury the allegations against the present Chief Minister, as also against another sitting Minister, which is evident from their request to withdraw, had necessitated the petitioner to approach this Court by the present application. He would therefore submit that he cannot be termed as a fence sitter or a meddlesome interloper.

16.He would also vehemently oppose the submissions made in respect of terming him a meddlesome interloper. In that context, he would submit that after the interim order passed by this court, he had independent-

ly filed a compliant with the third appellant herein, which has also not been disputed. Till today he has no knowledge of what had happened to the complaint given by him and he would submit that he had been kept in dark, contrary to the well laid principles of the Code of Criminal Procedure. The Report as directed by the co-ordinate Bench which had been filed before this court has also not been served upon them. In support of his contentions regarding this *locus standi* and also the issue of withdrawal of the Intra-Court Appeals the learned Senior Counsel had relied upon various judgments.

17.At the outset, he had relied upon the manual of the Directorate of Vigilance and Anti-Corruption, particularly Clause 94 and contend that a withdrawal would have to be made only on the advice of the State Vigilance Commission. Therefore, he would submit in the present case, having referred for a vigilance enquiry, the appellants cannot withdraw the case without the concurrence of the State Vigilance Commission.

18.He would further submit that the action of the state is always required to be guided on the touchstone of non-arbitrariness, reasonableness

and rationality apart from being equally guided by the public interest. He would submit that the State cannot be permitted to change its decision at their whims and fancies when it is adversarial to public interest and public good. He would submit that the issue involved in the present case relates to the corruption in the construction of an assembly complex. The public at large are interested in the issue. Since a large amount of the State exchequer‘s money had been invested in the construction. To substantiate his argument, he had relied upon the judgment of the Hon'ble Apex Court in the case of ***Andhra Pradesh Southern Power Distribution Power Company Ltd., & Anr., vs. Hinduja National Power Corporation Ltd., & Anr.,*** reported ***2022 (5) SCC 484.***

19.By relying upon a judgment of the Hon'ble Apex Court in the case of ***Sheela Barse vs. Union of India & Ors.,*** reported in ***(1988) 4 SCC 226,*** the learned Senior Counsel would submit that only a private litigant can abandon his right. In that context, he would submit that the litigation had been instituted by the State, and therefore the State does not have right to request this court for withdrawal.

20.He would rely upon Division Bench judgment of this Court in a public interest Writ Petition wherein, permission was refused for withdrawal of the petition as public interest is involved. He would submit the same principle would also be applicable to the facts of the case as public money had been spent on the construction in which allegations of corruption have been made and therefore this proceeding should be seen to reach its logical conclusion and cannot be permitted to be abandoned by the State.

21.Further, placing reliance upon the judgment in the case of ***State of Chhattisgarh & Anr., vs. Aman Kumar Singh & Ors.,*** reported in ***2023 (6), SCC 559***, he would contend that in a case involving allegations of corruption, it would only be proper to permit the investigation to be taken to its logical conclusion. He would submit that the conduct of the State in seeking to withdraw the case before this court would fore close the issue and therefore he would submit the request of the State should not be entertained. Driving home the said contention the learned Senior counsel also relied upon the judgments of the Hon'ble Apex Court in the case of ***Y.Balaji***

vs. Karthik Desari & Anr., reported in (***2023) SCC online SC 645 & Nileshbhai Shantibhai Patel vs. Westin Resin and Polymers Pvt., Ltd., & Anr., (2023) SCC online SC 1186***.

22.Lastly, on the issue of the State's decision to withdraw the learned Senior counsel would rely upon a judgment of the learned Single Judge in an effort to persuade us to conclude that the State should not without change in circumstances, except for the change in Government should change stand. He would submit that the Government now in power is headed by the first respondent herein and that is the only change why the withdrawal is sought for and therefore, the same should not be entertained.

23.Relying upon the judgement of the Hon'ble Apex Court in the case of ***A.R.Antulay vs. Ramdas Srinivas Nayak & Anr.,*** reported in ***(1984) 2 SCC 500,*** he would contend that *locus standi* is a concept alien to criminal jurisprudence. Further, on fact, he would submit that the petitioner had also initiated a criminal complaint on this issue of corruption in

constructing the assembly complex, as a complainant the petitioner has a *locus standi*.

24.He had also relied upon the judgement in the case of ***K.Anbazhagan vs. Superintendent of Police & Ors.,*** reported in ***(2004) 3 SCC 767*** and ***K.Sivakumar vs. Union of India & Ors.,*** reported in (***2018) 7 SCC 365,*** to contend that any person who is interested in Public administration and morality would be entitled to maintain a complaint. Just because the person is a political opponent, it would not preclude him to agitate a cause of corruption. He would submit that if there is an existence of materials, necessary for investigation, then the element of political rivalry or credibility of the person should not weigh the mind of the court in judicial dispensation. He had also relied upon the judgment ***Kazi Lhendup Dorji vs. Central Bureau of Investigation & Ors.,*** reported in (***1994) Supp 2 SCC 116,*** for the said proposition.

25.Relying upon the judgement in the case of ***Municipal Council Hansi District, Hissar, Haryana vs. Mani Raj & Ors.*** reported in ***(2001) 4***

***SCC 173*,** he would submit that the power of the court to implead a party should not be hindered by the issue of delay and latches. He would submit that in the present case the petitioner did not participate in the lis, since the government was prosecuting. Only when the government decided to abandon its claim, the petitioner had approached this court seeking to get himself impleaded, so that be issue of corruption could meet its logical conclusion and not withered.

26.Mr. P. Valliappan learned Senior counsel supplementing the arguments of Mr.V.Raghavachari would rely upon judgment reported in ***2014 AIR SCW 4533*** and contend that when withdrawal is sought for the Court should analyse whether such withdrawal would advance the cause of justice. The discretion should be exercised very carefully since certain crimes are against the State and the society as collective demands Justice to be done. He would submit that by applying the aforesaid principle if the state is allowed to withdraw its appeal, then Justice will not be done to the society, as the allegation is corruption involving people at high level. He would submit that one of the person is now the sitting Chief Minister.

27.Relying upon judgment reported in ***2013 AIR SCW 5767,*** he would contend that there is a change in stand of the Government, which had prompted them to withdraw the appeals. Such change in stand is not supported by any materials. He would submit without assigning any reasons whatsoever, the appeals are sought to be withdrawn. He would further contend that it is a prerogative of person to abandon its claim, but however, in the present facts of the case where public interest is involved, it is duty on the appellant to disclose the reasons for which the appeal is sought to be withdrawn. The decision of the Government to withdraw the appeal would shut down the entire issue. He would further submit that the learned Single Judge who have dealt with the issue have specifically held that there is a paramount public interest involved in the lis. When that being so, he would submit that the State cannot seek to withdraw the appeals which would abruptly put an end to the entire issue, which would directly affect the public interest and hence is legally unsustainable.

28.Replying to the submissions made by the learned Senior counsel appearing for the impleading petitioners, the learned Advocate General would submit that in every appeal that had been filed by the State public interest would be at large. It is for the State being the *dominus litis* to decide as to whether proceed with the appeal or not?

29.He would further submit that it will be a fallacy to conclude the State's appeal could only be withdrawn at the advice of the State Vigilance Commission. He would submit that the stage had not reached for the State Vigilance Commission to opine on the subject. As regards to the reliance to the Director of Vigilance and Anti Corruption manual, he would submit that the said stage would only come after the filing of the case before the appropriate forum. He would rely upon the Division Bench judgment of the Karnataka High Court to contend that the State has a right to withdraw its proceedings at any stage and it would always be open to the aggrieved person to challenge the same in the manner known to law.

30.We have considered the rival submissions made by the respective learned Senior counsels appearing on either side and perused the materials placed on record before this Court.

31.The issue that is to be decided in the present case, is as to whether the impleading petitioner is entitled to be impleaded as a party respondent in these appeals? and whether the State being the appellant is entitled to withdraw the appeal filed by it? From the arguments made before us for consideration of these issues, we have culled out the relevant facts which are tabulated hereunder:-

Sl.	Date/Year	
1	2010	New Secretaraite building was inaugurated
2	062211	A Commission of enquiry was appointed by the State
3	120211	Upon the resignation of Member of the Commission of enquiry, a fresh appointment had been made
5	2014	Challenging the appointment of the Commission of enquiry and also the consequential summons and proceedings, W.P.No.25445, 26621 & 26622 of 2014 were filed.
6	2015	Further Writ Petitions in W.P.Nos.7049, 7211, 7493 of 2015 were filed by the

		respective parties challenging the questionaire issued by the Commission of enquiry.
7	080318	The learned Single Judge passed interim orders in W.P.No.7049 of 2015 & 25445 of 2014. The learned Single Judge had dismandled the Commission of enquiry with a direction to the Commission to hand over the records to the Chief Secretary of Tamil Nadu for him to look into the matter and if he is of the opinion that there is some lapses, refer the same to the V & AC
8	092018	W.P.No.7049 & 25445 of 2015 were closed as the petitioner had died.
9	092418	By G.O.Ms.No.721, Public (Building) Dept., dated 24.09.2018 was directed Secretary Commission of enquiry to hand over all the records including the report of the investigation agency, the statement of evidences to the Director of Vigilance and Anti Corruption.
10	092618	The impleading petitioner had filed the complaint before the Director of Vigilance & Anti Corruption
11	092818	The Government accorded permission to the Director of Vigilance & Anti Corruption to conduct a detailed enquiry on the subject.
12	100118	W.P.Nos.26621 & 26622 of 2014 and 7211 & 7493 of 2015 were withdrawn by the respective petitioners. The learned Single Judge, while permitting the respective petitioners to withdraw their petitions, had made certain observations which have been

		challenged by the respective petitioners in W.A.No.2366 , 2868, 2447 & 2448 of 2018
13	2018	W.P.No.26924 & 27376 of 2018 were filed challenging G.O.Ms.No.721 and a letter dated 28.09.2018 issued by the Government.
14	121318	The learned Single Judge had allowed the W.P.Nos.26294 & 27376 of 2018
15	2018	Challenging the same, the present Writ Appeal had been preferred.
16	071323	Letter circulated by the Govt Pleader seeking withdrawal of the Intra Court Appeal.
17	July 2023	Impleading Application filed

32.The main bone of contention both by the learned Advocate General as well as the learned Senior counsel appearing for the first respondent in both appeals opposing the impleading application is that when these proceedings had been pending before this Court for a long time, the application to implead had been filed only now. The impleading petitioner belonged to a rival political party, had not taken any action whatsoever.

33.Further submission was that the present political party had come to power in the year 2021. Even thereafter, the impleading petitioner had not come before this Court. He would further submit that the Writ Petitions were allowed by the learned Single Judge. Even then the impleading petitioner had not taken any steps to file any appeal against the same. In that aspect, they had submitted that the impleading petitioner is a fence sitter and should not be allowed to participate in this proceedings. The learned Senior counsel appearing for the 1st respondent had termed him as a meddlesome interloper who had no *locus standi,* and belonging to a rival political party is trying to cast aspersion on the first respondent.

34.On the other hand, the learned Senior counsel appearing for the impleading petitioner had stated that since the State had been prosecuting the *lis* hitherto, he had kept himself away so that to avoid multiplicity of proceedings and only when the appellants had given a letter seeking for withdrawal of the Intra-Court Appeals it necessitated him to seek impleadment of himself.

35.From the facts that had been tabulated above, it can be seen that the State had been prosecuting by defending itself in the challenges made by the respective parties. A learned Single Judge dismantled the Commission of enquiry. On the resignation of the Member of the Commission of enquiry, the impleading petitioner had filed a complaint before the DVAC, who is the third appellant herein. According to the learned Senior counsel appearing for the impleading petitioner, the impleading petitioner was not informed as to what had happened to the criminal complaint given by him. When the appeals were listed before another Co-ordinate Bench, the Co-ordinate Bench of this Court by order, dated 26.09.2023, had directed the third appellant to file a report as to the status of the complaint. Pursuant to the said direction, the third appellant through its Deputy Superintendent of Police had filed a status report. The relevant portion in respect of the impleading petitioner/the complaint in the report is extracted underunder:-

> *11.It is respectfully submitted that, based on the petition of Dr.J.Jeyavardhan, dated 26.09.2018 and the directions of the Government in their letter No.Ac/017-1/2019 Public (SC) Department, dated 22.01.2019, the DVAC registered DE3/2019/SECTT/HQ on 25.01.2019. It is submitted that the petition dated 26.09.2018 of the petitioner Dr.J.Jeyavardhan therein*

contains the same set of allegations already mentioned in the DE 34/2018/SECTT/HQ.

12.It is respectfully submitted that, the petitioner Dr.J.Jayavardhan has not come with new facts or materials in his petition filed before this Hon'ble Court. The facts alleged by him are already enquired by the Hon'ble Justice Mr.Ragupathy Commission and the functions of the Commission was ordered to be ceased by this Hon'ble Court. Further, the Government Order and Government letter issued by the Tamil Nadu Government to conduct enquiry in this regard were also quashed by this Hon'ble Court. The Government also preferred appeals before this Hon'ble Bench against the quash order passed by this Court. As the petitioner has not proposed any new facts/materials in his petition impleading him as additional respondent would not adduce any significance to the above facts already mentioned in the appeal.

13. It is respectively submitted that, after discussions, as opined by the legal officers, it was decided to drop action in DE3/2019/SECTT/HQ as both 34/2018/SECTT/HQ and DE 3/2019/SECTT/HQ are completely distinct DE's. As such separate DE No.3/2019/SECTT/HQ is not required for the same set of allegation as already a DE 34/2018/SECTT/HQ has been registered for the said allegations. Hence, it is decided not to proceed further in DE 3/2019/SECTT/HQ as averments in both Des are one and the same.

14.It is respectively submitted that the allegation stated in the DE 34/2018/SECTT/HQ and DE 3/2019/SECTT/HQ are identical and composed of similar facts. The Government Order and Government Letter that initiated the enquiry in DE

34/2018/SECTT/HQ are quashed by the common order dated 13.12.2018 by the Hon'ble High Court of Madras.

15.Hence, it is decided not to proceed further in DE 3/2019/SECTT/HQ as avrments in both Detailed Enquires are one and the same and a letter from DVAC was sent to the Vigilance Commissioner, Chennai on 15.09.2023 requesting that necessary orders may be issued to close the DE 3/2019/SECTT/HQ.

16.It is respectfully submitted that the petition of Dr.J.Jayavardhan dated 26.09.2018 given to DVAC which resulted in DE 3/2019/SECTT/HQ is a mere 2 page statement without any facts/material to support his allegations in which he talks about only the Court observation and request to take cognizance on his bald 6 point allegations, which was already covered under commission enquiry, subsequently taken up as DE 34/2018/SECTT/HQ based on Government Order G.O(Ms) No.721, dated 24.09.2018, and Government letter No.AC/506-1/2018, dated 28.09.2018, both have been set aside in High Court order dated 13.12.2018 in W.P.Nos.26924 and 27376 of 2018 and WMP Nos.31290, 31293 of 2018. It is respectively submitted that all the averments made by the petitioner Dr.J.Jayavardhan are based solely on surmises and conjectures.

36.From a reading of the report, it could be seen that the impleading petitioner had infact given a complaint to the DVAC authorities. The same seems to have been closed in view of the communication issued by the

Government, wherein a detailed enquiry had been directed to be initiated. Even the same had been closed in view of the order of the learned Single Judge, which had been impugned before us. The said report had not spelt out the dates on which such closures were made nor did the report indicate that the closure of the complaint of the impleading petitioner had been intimated to him. Such intimation is mandated under the provisions of the Cr.P.C. As the impleading petitioner himself has been a complainant, as admitted by the third appellant herein, he cannot be branded as a meddlesome interloper, as has been sought to be made by the learned Senior counsel appearing for the first respondent.

37.It is the claim of the impleading petitioner that only after the Government Pleader had circulated a letter, dated 13.07.2023, to withdraw the Intra Court Appeals, the application had been filed by him on 24.07.2023. These facts can be easily spelt out from the records.

38.It has been repeatedly held by the Hon'ble Apex Court that just because a person is a political opponent, it would not preclude him to

agitate the cause of corruption and that the same should not weigh the minds of the Court in judicial dispensation. In that context, it would be useful to refer to the following Judgments:-

a) The Hon'ble Supreme Court in the case of ***K.Anbhazan vs. Superintendent of Police & Ors.,*** reported in (***2004) 3 SCC 767***, has held as follows:-

> *13. It has also been urged that the petitioner being a political opponent of Respondent 2, these petitions have been launched against Respondent 2 on ground of political vendetta. This submission also has no force. In a democracy, the political opponents play an important role both inside and outside the House. They are the watchdogs of the Government in power. It will be their effective weapon to counter the misdeeds and mischiefs of the Government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. In that view of the matter, being a political opponent, the petitioner is a vitally interested party in the running of the Government or in the administration of criminal justice in the State. The petition lodged by such persons cannot be brushed aside on the allegation of a political vendetta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of criminal justice system. This question has been set at rest by this Court in Sheonandan Paswan v. State of Bihar [(1987) 1 SCC 288 : 1987 SCC (Cri) 82] (SCC p. 318, para 16), where it is said:*

"It is a well-established proposition of law that a criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political vendetta of the first informant or the complainant."

b) Further, the Hon'ble Apex Court in the case of ***E.Sivakumar vs. Union of India & Ors.,*** reported in ***(2018) 7 SCC 365*** has held as follows:-

15. Reverting to the last contention that the High Court should have been loath to entertain a public interest litigation at the instance of Respondent 14, who happens to be a Member of the Legislative Assembly in the State of Tamil Nadu or that he had proactively participated in raising the issue in the Assembly, has also been answered in the impugned judgment. The Court, while entertaining the public interest litigation at the instance of Respondent 14, has relied upon the dictum in K. Anbazhagan v. Supt. of Police [K. Anbazhagan v. Supt. of Police, (2004) 3 SCC 767 : 2004 SCC (Cri) 882] , wherein it is observed that the political opponents play an important role both inside and outside the House and are the watchdogs of the Government in power. They are the mouthpiece to ventilate the grievances of the public at large, if genuinely and unbiasedly projected. Referring to this decision, the Court noted in para 70 of the impugned judgment that a petition filed by such persons (such as Respondent 14) cannot be brushed aside on the allegation of political vendetta, if otherwise, it is genuine and raises a reasonable apprehension of likelihood of bias in the dispensation of

criminal justice system. Accordingly, the ground of challenge under consideration, in our opinion, is devoid of merits.

c) In the case of ***Kazi Lhendup Dorji vs. Central Bureau of Investigation & Ors.,*** reported in ***1994 Supp (2) SCC 116,*** the Hon'ble Apex Court has held as follows:-

> *15. As regards delay in filing of writ petition we find that after the issuance of the impugned notification in 1987, efforts were made by the Central Government during the period from 1988 to 1992 to persuade the Government of Sikkim to accord the necessary consent and when the said attempts failed, the petitioner moved this Court in 1993. Having regard to the seriousness of the allegations of corruption that have been made against a person holding the high public office of Chief Minister in the State which have cast a cloud on his integrity, it is of utmost importance that the truth of these allegations is judicially determined. Such a course would subserve public interest and public morality because the Chief Minister of a State should not function under a cloud. It would also be in the interest of Respondent 4 to have his honour vindicated by establishing that the allegations are not true. The cause of justice would, therefore, be better served by permitting the petitioner to agitate the issues raised by him in the writ petition than by non-suiting him on the ground of laches.*

39.The learned Senior counsel for the first respondent had also relied upon the judgment of the Hon'ble Apex Court where an application by a impleading petitioner was rejected by the Hon'ble Apex Court on the question of delay and latches. It is a well known jurisprudence that the judgment of a Court would have to be read as a whole so as to arrive at a conclusion as to on what basis such ratio has been declared. In respect of the other judgments relied upon by the learned Advocate General as well as Mr.P.Wilson, learned Senior counsel for the respondents, we are of the view that the said judgments had been made in the facts and circumstances of that cases, the same could not be sought to be applied in the present facts of the case.

40.Applying the principles of the judgments referred above to the facts of the present case, we are of the considered view that the reason attributed by the impleading petitioner that the State had been prosecuting their cause hitherto and only when the State decided to withdraw itself, then such impleadment had become necessciated, we are of the view that this

impleading application cannot be thrown out on the ground of delay and latches.

41.Coming to the right of the appellant State to withdraw these Intra Court Appeals, the contention of the impleading petitioner opposing the said request based upon the various decisions in our view, cannot be sustained. The judgments relied upon by them, are the judgments which arise from cases relating to a criminal trial.

42.In the present case, as rightly pointed out by the learned Advocate General, the same had not reached that stage. What the learned Single Judge by way of an interim order had made was that he had left it open to the State to take a decision after analysing the materials available before it. Even though a decision was taken earlier to direct the third appellant to conduct a detailed enquiry, the same was set aside in the impugned judgments. Against which the State had preferred these Intra Court Appeals, they now seek to withdraw the same. When a person, had instituted or initiated a proceedings before the Court, it is always open to

him to withdraw or abandon his claim as has been held in the case of ***Anurag Mittal vs. Shaily Mishra Mittal*** reported in ***(2018) 9 SCC 691.***

43.In such an event, the Court cannot insist upon a party to conduct the case, particularly, when a party wishes to abandon his claim without reserving any right.

44.We are also conscious of the fact that the Government Order and the direction issued by the Government to conduct a detailed enquiry which they now seek to wriggle out, cannot take away the right of the impleading petitioner from seeking appropriate remedy in the manner known to law, if he is so advised, since his complaint has also been closed by the third appellant as evidenced from the report, that had been extracted supra.

45.For the aforesaid reasons, the request of the appellants are taken on record and the Writ Appeals are dismissed as withdrawn.

46.Even though we have found that the impleading petitioner has a locus standi to be represented in these Intra Court Appeals in view of the withdrawal of these Intra Court Appeals, it would be a futile exercise to order the impleading petitions, hence the Application for impleading are closed as unnecessary. However, there shall be no order as to costs.

(R.S.K.,J.) **(K.B., J.)**
28.03.2024

Index: Yes
Speaking Order
Neutral Citation:Yes
pbn

R.SURESH KUMAR., J.
and
K.KUMARESH BABU.,J.

pbn

Writ Appeal Nos.847 & 850 of 2019
& CMP. No.17216 & 17220 of 2023

28.03.2024