(2002) 01 MAD CK 0002

In the Madras High Court

Case No : Criminal O.P. No''s. 21969 and 22506 of 2001

J. Jayalalitha and T.T.V. Dhinakaran APPELLANT

Vs

State RESPONDENT

Date of Decision : 10-01-2002

Acts Referred:

Citation : (2002) 1 LW(Cri) 247

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : N. Jothi in Criminal O.P. 21969 of 2001 and B. Kumar, for Mr. A. Jinasenan in Criminal O.P. 22506 of 2001, for the Appellant; I. Subramaniam, Public Prosecutor assisted by O. Srinath, Govt. Advocate and R. Shanmugasundaram, for N.R. Elango, Amicus Curiae in Crl. O.P. 21969 and 22506 of 2001, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, J.—1. The aforesaid petitions raise an interesting but somewhat complex question for adjudication as to the procedure to

be followed after the further investigation permitted u/s 173(8) of Code of Criminal Procedure with reference to the evidence gathered and vital

materials collected, pursuant to the Letters Rogatory issued and the undertakings given u/s 166A of Code of Criminal Procedure.

1.2. In this regard, it is apt to extract Sections 166A and 173 of Code of Criminal Procedure, for better appreciation of issues raised in the above

petitions:

Section 166A Code of Criminal Procedure: Letter of request to competent authority for investigation in a country or place outside India:

(1) Notwithstanding anything contained in this Code, if, in the course of an

investigation into an offence, an application is made by the investigating

officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal

Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any

person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination

and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to

forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under Sub-section (1) shall be deemed to be the evidence collected during the course

of investigation under this Chapter.

Section 173 Code of Criminal Procedure: Report of police officer on completion of investigation:

(1) Every investigation under this chapter shall be completed without unnecessary delay.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the

offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether the accused has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody u/s 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if

any; by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed u/s 158, the report shall, in any case in which the State Government by general or

special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the

police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make

such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which Section 170 applies, the police officer shall forward to the Magistrate along with the report

a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during

investigation;

b) the statements recorded u/s 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject matter of the proceedings or that its disclosure

to the accused is not essential in the interest of justice and is inexpedient in the public interest, he shall indicate the part of the statement and append

a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents

referred to in Sub-section (5).

(8) Notwithstanding anything in this section it shall be deemed to preclude further investigation in respect of an offence after a report under Sub-

section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further

evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and

the provisions of Sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

(Emphasis supplied)

2.1. The Petitioners in Crl. O.P. Nos 21969 and 22506 of 2001 are the accused A1 and A2 respectively in C.C. No. 2 of 2001 on the file of the

learned Principal Sessions Judge, Chennai, wherein, pursuant to a F.I.R. No. 2-AC 2000, dated 2.9.2000, filed by the Superintendent of Police,

Vigilance and Anti-Corruption, Special Investigation, Chennai (hereinafter referred to as the Respondent prosecution), the Petitioner in Crl.O.P.

No. 21969 of 2001, with due sanction accorded by the Governor of Tamil Nadu, in G.O. Ms. No. 330, Public (SC) Department, dated

22.3.2001, and by a charge sheet dated 23.3.2001, was charged for the alleged offence punishable under Sections 120B IPC Read with Section

13(2) Read with 13(1)(e) of Prevention of Corruption Act, 1988 and punishable u/s 13(2) Read with 13(1)(e)of the Prevention of Corruption Act,

1988 and the Petitioner in Crl.O.P.22506 of 2001 was charged for the alleged offence punishable under Sections 120B IPC Read with Section

13(2) Read with 13(1)(c) of Prevention of Corruption Act, 1988 and punishable u/s 109 Indian Penal Code Read with 13(1)(e) of the Prevention

of Corruption Act, 1988, alleging that the Petitioner in Crl.O.P. No. 21960 of 2001, during her tenure as Chief Minister of Tamil Nadu from

1.7.1991 to 30.4.1996, had entered into criminal conspiracy with her close associate, viz., the Petitioner in Crl.O.P. No. 22506 of 2001, and in

pursuance of the said conspiracy, Petitioner in Crl.O.P. No. 22506 of 2001 had funneled out of India the funds of Petitioner in Crl.O.P. No.

21969 of 2001, to the countries such as Singapore, Malaysia, United Kingdom and Canary Islands, in contravention of the provisions of the

Foreign Exchange Regulation Act (FERA) and Prevention of Corruption Act, 1988, and held pecuniary resources and properties outside the

country on behalf of the Petitioner in Crl.O.P. No. 21969 of 2001 and was investing huge amounts outside India on behalf the Petitioner in

Crl.O.P. No. 21969 of 2001.

2.2. Aggrieved by the summons issued u/s 61 of Code of Criminal Procedure, requiring the attendance of the Petitioners herein on 5.11.2001, to

answer the said charges in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, both the Petitioners seek to quash the orders of summon.

3. Mr. K. Asokan, learned senior counsel appearing for the Petitioner in Crl.O.P. No. 21969 of 2001, highlighted the following materials in

support of his contentions:

(i) The Petitioner in Crl.O.P. No. 21969 of 2001 is already charged for the alleged offence punishable under Sections 120B and 109 Indian Penal

Code and Section 13(2) Read with 13(1)(e) of Prevention of Corruption Act, 1988, in Crime No. 13/AC/96, Head Quarters, registered on

18.9.96, on the file of the Respondent prosecution, pursuant to which, a charge sheet was also filed by the Respondent prosecution, alleging that

she is in possession of pecuniary resources and properties in her name and in the names of Ms. N. Sassikala, Mr. Vn. Sudhagaran, and Ms.

Ilavrasi, who are arrayed as A2, A3 and A4 respectively in the said Crime No. 13/AC/96, Head Quarters, on the file of the Respondent

prosecution, disproportionate to known source of income of the Petitioner in Crl.O.P. No. 21969 of 2001, during her tenure as Chief Minister

from 1.7.1991 to 30.4.1996 (hereinafter referred to as the Check Period), and accordingly, the Petitioner in Crl.O.P. No. 21969 of 2001 is facing

trial in the Spl.C.C. No. 7 of 1997 on the file of the learned Special Judge No. 1/XI Additional Sessions Judge, Chennai (hereinafter referred to as

the Designated Court), for the said charges, along with Ms. N. Sasikala, Mr. Vn. Sudhagaran, and Ms. Ilavarasi, A2, A3 and A4 respectively, in

Spl.C.C. No. 7 of 1997 on the file of the Designated Court;

(ii) Referring to the F.I.R. dated 2.9.2000 in F.I.R. No. 2/AC/2000/HQ, as well as the consequential charge sheet dated 23.3.2001, filed in C.C.

No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, Mr. K. Asokan, contends that the same are based on the evidence

gathered and the vital materials collected during further investigation u/s 173(8) of Code of Criminal Procedure and pursuant to the orders made

u/s 166A of the Code of Criminal Procedure for Letters Rogatory made in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, wherein

undertakings were given to the effect that the results of the investigation so conducted pursuant to the further investigation and the Letters

Rogatory, shall be specifically used only in the proceedings arising out of the said criminal case, namely Spl.C.C. No. 7 of 1997, and therefore, the said materials should not have been used to prosecute the Petitioner in Crl.O.P. No. 21969 of 2001 in the present case, namely C.C. No. 2 of

2001 on the file of the learned Principal Sessions Judge, Chennai;

(iii) Placing reliance on the decision in Arjuna Kumar v. State of Orissa reported in 1989 Crl.L.J. 449, Mr. K. Asokan, contends that the first

Respondent prosecution, having sought permission for further investigation in Spl.C.C. No. 7 of 1997 from the Designated Court, ought to have

filed the materials gathered during the further investigation only as a further report in Spl.C.C. No. 7 of 1997 before the Designated Court, but not

as an independent and fresh F.I.R. dated 2.9.2000. bearing F.I.R. No. 2/AC/2000/HQ, which has culminated into the charge sheet dated

23.3.2001 in C.C. No. 2 of 2001 on the file of the Principal Sessions Judge, Chennai;

(iv) The Petitioner in Crl.O.P. No. 21969 of 2001 is already charged in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, for the

offence punishable u/s 13(1)(e) of the Prevention of Corruption Act, relating to the alleged possession of wealth, viz., pecuniary resources as well

as properties, held by herself as well as by others on her behalf, disproportionate to her known source of income, during her tenure as Chief

Minister from 1.7.1991 to 30.4.1996; and when the said Spl.C.C. No. 7 of 1997 is still pending before the Designated Court, any further

evidence gathered and materials collected by the investigating agency during further investigation, relating to the alleged wealth disproportionate to

her known source of income during the same check period, should have been filed only as a further report in Spl.C.C. No. 7 of 1997 before the

Designated Court. In this regard, Mr. K. Asokan, learned senior counsel, places reliance on the decision in Surendra Nath v. State of Uttar

Pradesh reported in 2000 Crl.L.J. 1745;

(v) If the further investigation u/s 173(8) of Code of Criminal Procedure disclose that any other person, in the instant case the Petitioner in Crl.O.P.

No. 22506 of 2001, not being an accused in the criminal case already pending, viz., Spl.C.C. No. 7 of 1997 before the Designated Court, has

also committed any offence for which he could be tried together with the accused, viz. the Petitioner in Crl.O.P. No. 21969 of 2001, in the

criminal case already pending, viz., Spl.C.C. No. 7 of 1997 before the Designated

Court, he may be proceeded with by the Designated Court for

the offence which appears to have been committed by him, as per Section 319 of Code of Criminal Procedure, based on such further report;

(vi) As and when a further report is filed pursuant to the further investigation u/s 173(8) of the Code of Criminal Procedure in the criminal case

already pending in Spl.C.C. No. 7 of 1997, it is for the Designated Court to take appropriate decision on such further report and proceed in

accordance with law; and in which event, the applicability of Sub-Section 2 to 6 to Section 173 of Code of Criminal Procedure would make it

clear that each of the subsequent reports made further would also become report for the purpose of Section 173(2) of Code of Criminal

Procedure, as held in J. Alexander v. State of Karnataka reported in 1996 Crl.L.J. 592;

(vii) Relying on the decision of the Apex Court in T.T. Antony Vs. State of Kerala and Others, Mr. K. Asokan, contends that there cannot be a

second or successive F.I.R filed in connection with the same cognisable offence alleged to have been committed in the course of the same

transaction, in respect of which either investigation is under way or a final report had already been forwarded u/s 173(2) of Code of Criminal

Procedure, pursuant to the first F.I.R. and the trial is being proceeded with; and since the Petitioner in Crl.O.P. No. 21969 of 2001 is already

facing charges relating to the alleged offence punishable u/s 13(1)(e) of the Prevention of Corruption Act, relating to the alleged possession of

pecuniary resources and properties by herself or by others on her behalf, disproportionate to known source of her income during her tenure as

Chief Minister from 1.7.1991 to 30.4.1996, in Spl.C.C. No. 7 of 1997 before the Designated Court, the registration of second F.I.R. No. 2-AC

2000, dated 2.9.2000 and filing of the final report dated 23.3.2001 and the consequential summons issued in C.C. No. 2 of 2001 on the file of the

learned Principal Sessions Judge, Chennai, is illegal and the same amounts to double jeopardy violating Article 20(2) and infringes the personal

liberty guaranteed under Article 21 of the Constitution of India;

(viii) As the basic materials relied upon by the investigating agency in the subsequent F.I.R. No. 2-AC 2000, dated 2.9.2000, which culminated

into the final report dated 23.3.2001 in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, were collected pursuant

to the orders obtained in Spl.C.C. No. 7 of 1997 from the Designated Court u/s 166A of the Code of Criminal Procedure, the initiation of the

separate proceedings in C.C. No. 2 of 2001 before the learned Principal Sessions Judge, Chennai, and the consequential issuance of the impugned

summons in C.C. No. 2 of 2001 is contrary to the spirit and substance of the said Letters Rogatory;

(ix) The learned Principal Sessions Judge, Chennai, has failed to exercise his judicial discretion while taking cognisance of the offence based on the

evidence and materials placed before him in C.C. No. 2 of 2001, as the same cannot be relied upon in the eye of law, in view of the undertakings

given in the Letters Rogatory issued u/s 166A of Code of Criminal Procedure; nor the learned Principal Sessions Judge, Chennai, considered that

the summoning of the Petitioners in C.C. No. 2 of 2001, under the facts and circumstances explained above, is not a matter of course, but, as held

in M/s. pepsi Foods Ltd. and Anr. v. Special Judicial Magistrate and Ors. reported in 1998 (1) LW (Crl.) 72, it has got serious repercussions

causing agony of criminal trial; and therefore, the impugned summons are liable to be quashed; and

(x) Altematively, under the facts and circumstances of the case, Mr. Asokan, seeks a direction to the investigating agency to withdraw the final

report dated 23.3.2001 filed in C.C. No. 2 of 2001, from the file of the learned Principal Sessions Judge, Chennai, and to file the same as a further

report in Spl.C.C. No. 7 of 1997 before the Designated Court; or otherwise to direct the learned Principal Sessions Judge, Chennai, to transfer

the records relating to the final report dated 23.3.2001 filed in C.C. No. 2 of 2001 and the proceedings thereon to the Designated Court, and to

try the same with Spl.C.C. No. 7 of 1997 together.

4.1. Mr. B. Kumar, learned senior counsel appearing for the Petitioner in Crl.O.P. No. 22506 of 2001, even though adopts the arguments of Mr.

K. Asokan, learned senior counsel appearing for the Petitioner in Crl.O.P. No. 21969 of 2001, challenging the right of the investigating agency to

register a fresh F.I.R. bearing No. 2-AC-2000, dated 2.9.2000, and to file a separate charge sheet dated 23.3.2001 in C.C. No. 2 of 2001

before the learned Principal Sessions Judge, Chennai, which culminated into the issuance of the impugned summons in C.C. No. 2 of 2001,

contends that the same are contrary to the procedure prescribed under Sections 166A and 173 of Code of Criminal Procedure and the spirit and

substance of the Letters Rogatory and the undertakings given thereunder.

4.2. Once initiation of such proceedings in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, itself vitiates for

illegality and want of jurisdiction, Mr. B. Kumar, contends that there is no legal sanctity for the summons issued in C.C. No. 2 of 2001 by the

learned Principal Sessions Judge, Chennai, requiring the attendance of the Petitioners herein to answer the charges framed there under; and

therefore, there is no necessity either for the Respondent prosecution to withdraw the final report dated 23.3.2001 in C.C. No. 2 of 2001 on the

file of the learned Principal Sessions Judge, Chennai and to file the same as a further report in Spl.C.C. No. 7 of 1997 before the Designated

Court; or to direct the learned Principal Sessions Judge, Chennai, to transfer the said records relating to the final report dated 23.3.2001 and the

proceedings in C.C. No. 2 of 2001 to the Designated Court, as it is only for the investigating agency to take appropriate decision in the matter,

under the Code of Criminal Procedure.

5. On behalf of the Respondent prosecution, Mr. N.R. Chandran, learned Advocate General, and Mr. I. Subramaniam, learned Public Prosecutor,

invited my attention to the following aspects:

(i) Making available the entire records relating to the Letters Rogatory and the consequential undertakings made u/s 166A of Code of Criminal

Procedure, during further investigation u/s 173(8) of Code of Criminal Procedure in Spl.C.C. No. 7 of 1997, as well as the entire records relating

to C.C. No. 2 of 2001 pending before the learned Principal Sessions Judge, Chennai, Mr. N.R. Chandran, learned Advocate General, submits

that the same are binding on the Respondent prosecution, or otherwise it would be a violation to the due process of law; and the evidence

collected pursuant to Letters Rogatory issued u/s 166A of Code of Criminal Procedure should have been used against the Petitioners, legitimately,

only in Spl.C.C. No. 7 of 1997 before the Designated Court. But nevertheless, the learned Advocate General left the matter to the decision of this

Court to proceed further;

(ii) The only option for the Respondent prosecution is to place the evidence gathered and materials collected during further investigation in

Spl.C.C. No. 7 of 1997, as a further report in Spl.C.C. No. 7 of 1997 before the Designated Court, but not to proceed independently in C.C.

No. 2 of 2001 before the learned Principal Sessions Judge, Chennai, inasmuch as the charging offence made against the Petitioner in Crl.O.P. No.

21969 of 2001, in both the criminal cases are one and the same, viz., the offence punishable u/s 13(1)(e) of the Prevention of Corruption Act;

(iii) The allegation against the Petitioner in Crl.O.P. No. 21969 of 2001 neither fall u/s 220(1) of Code of Criminal Procedure constituting more

offences said to have been committed by the Petitioners herein nor it is doubtful for the prosecution as to what offence is said to have been

committed by the Petitioners, as per Section 221(1) Code of Criminal Procedure;

(iv) Whether the property is found in India or outside India, is not relevant to attract Section 13(1)(e) of the Prevention of Corruption Act,

inasmuch as the pecuniary resources and property found in possession, disproportionate to known source of income of the Petitioner in Crl.O.P.

No. 21969 of 2001. during her tenure as Chief Minister from 1.7.1991 to 30.4.1996 alone is required to be satisfactorily accounted u/s 13(1)(e)

of the Prevention of Corruption Act, except for imposing fine u/s 16 of the Prevention of Corruption Act;

(v) The alleged accumulation of disproportionate pecuniary resources and properties by the Petitioner in Crl.O.P. No. 21969 of 2001 or by others

on her behalf, during her tenure as Chief Minister, cannot be said to be a distinct offence with reference to each of the properties, empowering the

Respondent prosecution to file a separate First Information Report/final report for each of the properties. In this regard, he relies upon the decision

in T.T. Antony Vs. State of Kerala and Others, ;

(vi) To constitute an offence under Sections 13(1)(e) of the Prevention of Corruption Act, what is relevant is pecuniary resources or properties

disproportionate to known source of income, which could not be satisfactorily accounted by the public servant; and the resources should be with

reference to a definite check period; and

(vii) The sum total of all the pecuniary resources and the properties as well as the sum total of all known sources of income during the check period are basic criteria to constitute the offence punishable u/s 13(1)(e) of Prevention of Corruption Act. If so, neither the assets nor the known source

of income can be split up into two individual components to constitute the said offence.

6. The learned Counsel for Respondents 2 to 4, who are impleaded in Crl.O.P. No. 21969 of 2001. by orders of this Court dated 11.12.2001.

11.12.2001 and 12.12.2001 in Crl.M.P. Nos. 8930, 8931, 9026 of 2001, respectively, are A4, A2 and A3 in Spl.C.C. No. 7 of 1997 on the file

of the Designated Court, made an endorsement that they will not be prejudiced to try all or any number of charges framed against them together

under Sections 218(1) and 223 of Code of Criminal Procedure.

7.1. It is true, the Public Prosecutor, being an officer of the Court, is to deal with a different field in the administration of justice and he is not

involved in investigation, as the investigation and prosecution are different aspects of the administration of criminal justice, as held in R. Sarala v.

T.S. Velu reported in 2000 SCC (Cri) 823; and it is the duty of the Public Prosecutor to act fairly and not merely to obtain conviction by any

means fair or foul, and if the accused is entitled to any legitimate benefit, the Public Prosecutor should make it available to him and inform the Court

even if the defence counsel overlook it, as held in Shiv Kumar Vs. Hukam Chand and Another,

7.2. However, considering the public importance, sensitive nature of the allegations made against the Petitioners in the above O.P.s and the

desirability that duty to act judicially demands justice should not only be done, but should manifestly and undoubtedly be seen to be done in order

to repudiate judicial fallacy, failing which the judicial fairness and rule of law would be at stake, shaking the confidence of the public in the very

judiciary, which vacuum cannot be filled up at any point of time in a democratic system, I deem it proper to hear Mr. R. Shanmugasundaram,

learned Senior Counsel and former Public Prosecutor, and Mr. N.R. Elango, former Government Advocate (Criminal Side), assisting this Court in

these petitions as Amicus Curiae.

8. The gist of the contentions of Mr. R. Shanmugasundaram, learned Senior Counsel appearing as Amicus Curiae, are narrated as follows:

i. The learned Principal Sessions Judge, Chennai is a competent Special Judge appointed u/s 3 of the Prevention of Corruption Act, by the

Government to try the offence punishable under Prevention of Corruption Act and the Petitioners are prosecuted before the learned Principal

Sessions Judge. Chennai, in C.C. No. 2 of 2001 with due sanction of the Government made in G.O. Ms. No. 330, Public (S.C.) Department,

dated 22.3.2001, and therefore, the proceedings in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge. Chennai, do not suffer

any lack of jurisdiction;

ii. Whether the Petitioners are tried by the learned Principal Sessions Judge, Chennai, viz., the Special Judge for the area, or by the Designated

Court, appointed u/s 3(1) of the Prevention of Corruption Act, they are not prejudiced in any manner, as they would be tried by a Judge of the

same class and by the same procedure;

iii. The charge in Spl.C.C. No. 7 of 1997 on the file of the Designated Court is related to the alleged pecuniary resources and properties

accumulated in India, whereas, the charge in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, is related to the

alleged accumulation of pecuniary resources and properties identified outside India; and therefore, the alleged offences in the said cases were not

committed during the course of same transaction; but they are distinct offence, and hence, they should be tried separately, in view of Section 16 of

Prevention of Corruption Act, which empowers the court in fixing the amount of fine, taking into consideration the amount or value of each

pecuniary resource or property that is questioned separately in the said criminal cases. In this regard he places reliance on decision in Ram Lal

Narang v. State (Delhi Administration) reported in 1979 SCC (Cri) 479 and M. Krishna v. State of Karnataka reported in 1999 SCC (Cri) 39;

iv. Even though the prosecution was permitted for further investigation u/s 173(8) of the Code of Criminal Procedure, if a different offence is made

out on the basis of the evidence gathered and materials collected during the further investigation, the ultimate report of the further investigation need

not necessarily be tried along with the charge already pending before the Court, which permitted such further investigation, and therefore, two F.I.

Rs. can be filed against the same accused when there are rival versions in respect of the same episode, as held in M. Krishna v. State of Karnataka reported in 1999 SCC (Cri) 397 and Kari Choudhary v. Sita Devi and Ors. reported in 2001 SCCL. COM 898;

v. Assuming the prosecution has wrongly filed the ultimate report of the further investigation dated 23.3.2001, before the learned Principal Sessions

Judge, Chennai, instead of filing the same before the Designated Court, the same shall not vitiate the enquiry, trial or other proceedings before the

learned Principal Sessions Judge, Chennai. unless it appears that such error has in fact occasioned a failure of justice, as per Section 462 Code of

Criminal Procedure; and any such irregularity is curable u/s 460(e) of Code of Criminal Procedure. In this regard, reliance is placed on the decision

in Trisuns Chemical Industry v. Rajesh Agarwal reported in 2000 SCC (Cri) 47, wherein the Apex Court has held that the Magistrate taking

cognisance of offence need not have territorial jurisdiction to try the case as well, because the mere want of territorial jurisdiction is not a

peremptory character; and the only exception to the above rule is that unless the Court has no jurisdiction to try a particular kind of offence, which

goes to the root of the matter, any transgression of it makes the entire trial void, as held in Smt. Raj Kumari Vijh Vs. Dev Raj Vijh,

vi. Each set of facts relating to an act or omission made punishable by any law for the time being in force shall constitute a distinct offence, as per

Section 3(38) of General Clauses Act and Section 2(n) of Code of Criminal Procedure Read with Section 33 of Indian Penal Code; but the mere

satisfaction of the ingredients of different sets of fact relating to similar act or omission made punishable by any law for the time being in force, shall

not by itself render such different set of facts as a single offence, as held in Bhagwan Swarup v. State of Maharashtra reported in AIR 1965 SC

682, Kharkan and Others Vs. The State of Uttar Pradesh, and Amritlal Radial v. State of Gujarat reported in AIR 1981 SC 301;

vii. It is not the mere acquisition of the property which constitutes an offence punishable u/s 13(1)(e) of Prevention of Corruption Act, but the

failure to satisfactorily account the sources for the same, in proportion to known sources of income of the public servant constitute the offence, as,

what is punishable is possession coupled with failure to account for, and therefore, the failure to satisfactorily explain the sources for possession of

each property constitutes a separate and distinct offence, as held in M. Krishnareddy v. State of A.P. reported in 1992 SCC (Cri) 801 and State of Maharashtra Vs. Wasudeo Ramchandra Kaidalwar, ; and the public servant is required to satisfactorily account the pecuniary resources and

property held in his/her possession or on his/her behalf that are alleged to be disproportionate to his/her known source of income, as held in (a)

C.S.D. Swamy Vs. The State, (b) Sajjan Singh Vs. The State of Punjab, and (c) State of Maharashtra Vs. Kaliar Koil Subramaniam

Ramaswamy,

viii. Since the charges in the said two criminal cases, viz., Spl.C.C. No. 7 of 1997 and C.C. No. 2 of 2001 are relating to two distinct offences,

based on two different sets of facts, viz.,. one related to accumulation of disproportionate wealth in India and the other relating to accumulation of

disproportionate wealth outside India, the same were not committed in the course of same transaction, and therefore, neither Section 218 nor

Section 223 of Code of Criminal Procedure is attracted in the instant case;

ix. The procedure contemplated u/s 166A of Code of Criminal Procedure does not prohibit the filing of a separate charge sheet if the evidence

gathered and materials collected during further investigation discloses a distinct offence;

x. The procedure prescribed u/s 166A Code of Criminal Procedure is only a rule of evidence for proving the offence and any alleged violation of

such rule of evidence cannot be a ground to quash the proceedings at the stage of issuing the summons;

xi. Since the F.I.R. No. 2-AC-2000, dated 2.9.2000 as well as the charge sheet dated 23.3.2001, prima facie satisfy the ingredients of the

offence punishable u/s 13(1)(e) of the Prevention of Corruption Act. it is not permissible to quash the process of issuing the impugned summons,

unless the contrary is proved in the trial; as the defect or illegality in investigation has no direct bearing on the competence or the procedure relating

to cognisance or trial; nor vitiate the same, as held in H.N. Rishbud and Inder Singh Vs. The State of Delhi, and In re, M. Daveed reported in AIR

1959 AP 137; and

xii. In any event, from the fact that the Government had accorded sanction to prosecute the Petitioner in Crl.O.P. No. 21969 of 2001 in C.C. No.

2 of 2001 before the learned Principal Sessions Judge, Chennai, vide G.O. Ms. No. 330, Public (SC) Department, dated 22.3.2001, it is

presumed that the Government was aware of the terms of the Letters Rogatory issued by the Designated Court in Spl.C.C. No. 7 of 1997 and the

undertakings given thereunder, and therefore, there is no illegality in the process of impugned summoning.

9. I have bestowed my careful consideration to the facts and circumstances of the case as well as the contentions made thereon.

10. The undisputed facts of the case are that:

(i) the Petitioner in Crl.O.P. No. 21969 of 2001, who was the Chief Minister of Tamil Nadu from 1.7.1991 to 30.4.1996, and the Respondents 2

to 4 in Crl.O.P. No. 21969 of 2001, are charged for the offence punishable u/s 13(1)(e) of Prevention of Corruption Act as well as for the

criminal conspiracy to commit the said offence in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, alleging that they are in possession of

pecuniary resources and properties in India, disproportionate to the known source of income of the Petitioner in Crl.O.P. No. 21969 of 2001;

(ii) the Respondent prosecution were permitted for further investigation u/s 173(8) of the Code of Criminal Procedure and also obtained Letters

Rogatory dated 13.4.1998, 25.9.1998, 6.3.2000 and 30.8.2000 and supplementary Letters Rogatory on 20.9.2000, 21.11.2000 and

12.12.2000 u/s 166A of Code of Criminal Procedure from the Designated Court in Spl.C.C. No. 7 of 1997, to gather evidence and collect

materials relating to the alleged accumulation of disproportionate wealth;

(iii) the Government of India, Ministry of External Affairs, by their letter dated 10.8.1998, referring to the information of the United Kingdom

Central Authority as well as the request of the High Commission of India at London, wanted in writing an assurance from the concerned authority

that the material furnished by United Kingdom authorities to the Government of India would be used for the purpose specifically intended, and

accordingly all the Letters Rogatory dated 13.4.1998. 25.9.1998, 6.3.2000 and 30.8.2000 contained specific undertakings as required by the

United Kingdom Central Authority.

(iv) The undertakings given in Letters Rogatory dated 13.4.1998, 25.9.1998, 6.3.2000 and 30.8.2000, read as follows:

a. in Letters Rogatory dated 13.4.1998 it was undertaken that:

the result of the investigation so conducted in United Kingdom shall be specifically used only in the proceedings arising out of this criminal case in

which this Letter of Rogatory is being issued and shall not be utilised to prosecute any offence of political nature or offences under the Military laws

b. in Letters Rogatory dated 25.9.1998, the following undertaking was given

(i) None of the evidence which might be sent by the United Kingdom Authorities to me in this matter will ever be used without their consent, by the

authorities in India for any purpose other than that stated in the letter of request; and

(ii) Any statement which might be made by a person in response to a requirement imposed by virtue of use of the investigation powers of the

Director. Serious Fraud Office of the U.K. Home Office will not be used without the consent of the United Kingdom Home Office by any

Authority in India in evidence against that person.

c. In Letters Rogatory dated 6.3.2000, it was undertaken that:

(i) None of the evidence which might be sent by the United Kingdom Authorities to me in this matter will ever be used without their consent, by

any authorities in India for any purpose other than the one stated in the Letter of Request; and

(ii) Any statement which might be made by a person in response to a requirement imposed by virtue of use of the investigation powers of the

Director, Serious Fraud Office of the U.K. Home Office will not be used without the consent of the United Kingdom Home Office by any

Authority in India in evidence against that person.

(iii) The result of the investigation so conducted in United Kingdom shall be specifically used only in the proceedings arising out of this criminal case

in which tius Letter Rogatory is being issued and shall not be utilised to prosecute any offence of political nature or offences under the Military

Laws.

d. In Letters Rogatory dated 30.8.2000, it was undertaken as follows:

(i) None of the evidence which might be sent by the United Kingdom Authorities to me in this matter will ever be used without their consent, by

any authorities in India for any purpose other than the one stated in the Letter of Request;

(ii) Any statement which might be made by a person in response to a requirement imposed by virtue of use of the investigation powers of the

Director, Serious Fraud Office cf the U.K. Home Office will not be used without the consent of the United Kingdom Home Office by any

Authority in India in evidence against that person; and

(iii) The result of the investigation so conducted in United Kingdom shall be specifically used only in the proceedings arising out of this criminal case

in which this Letter Rogatory is being issued and shall not be utilised to prosecute any offence of political nature or offences under the Military

Laws.

(Emphasis supplied)

(iv) Accordingly, the Respondent prosecution gathered further evidence and collected materials to the effect that the Petitioners herein are said to

have accumulated wealth outside India, viz. Sri Lanka, Dubai, Malaysia, Singapore, Hong Kong, British Virgin Islands and the United Kingdom,

which are disproportionate to known source of income of the Petitioner in Crl.O.P. No. 21969 of 2001, during her tenure as Chief Minister from

1.7.1991 to 30.4.1996.

(v) Based on the evidence gathered and materials collected during further investigation permitted by the Designated Court u/s 173(8) Code of

Criminal Procedure, pursuant to the Letters Rogatory in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, the Respondent prosecution

filed separate F.I.R. No. 2-AC-2000, dated 2.9.2000, which culminated into a charge sheet dated 23.3.2001 in C.C. No. 2 of 2001 before the

learned Principal Sessions Judge, Chennai; and

(vi) thus, the Petitioner in Crl.O.P. No. 21969 of 2001, who was the Chief Minister of Tamil Nadu from 1.7.1991 to 30.4.1996, and the

Petitioner in Crl.O.P. No. 22506 of 2001, are charged for the offence punishable u/s 13(1)(e) of Prevention of Corruption Act as well as for the

criminal conspiracy to commit the said offence in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, separately,

alleging that they are in possession of pecuniary resources and properties outside India, disproportionate to the known source of income of the

Petitioner in Crl.O.P. No. 21969 of 2001.

11. The issues that arise for my consideration in these petitions, under the facts

and circumstances of the case and the rival contentions made

thereon, are:

(i) Whether the impugned summons issued in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, can be quashed by

this Court, exercising the powers conferred u/s 482 Code of Criminal Procedure?

(ii) Whether the set of facts alleged in the F.I.R. No. 2-AC-2000 registered on 2.9.2000 and charge sheet dated 23.3.2001 filed in C.C. No. 2 of

2001 before the learned Principal Sessions Judge, Chennai, based on the evidence gathered and materials collected during further investigation in

Spl.C.C. No. 7 of 1997 on the file of the Designated Court, arise in the course of same transaction alleged in the Crime No. 13/AC/96 registered

on 18.9.96 and charge sheet filed in Spl.C.C. No. 7 of 1997 on the file of the Designated Court?

(iii) Whether any violation to the undertakings given in the Letters Rogatory issued u/s 166A Code of Criminal Procedure during further

investigation u/s 173(8) of Code of Criminal Procedure in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, vitiate the registration of a

separate First Information Report dated 2.9.2000 and filing of the charge sheet dated 23.3.2001 in C.C. No. 2 of 2001 before the learned

Principal Sessions Judge, Chennai?

(iv) What directions/orders are required, under the facts and circumstances of the case, to meet the ends of justice?

12.1. Issue: 1 - Whether the impugned summons issued in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, can be

quashed by this Court, exercising the powers conferred u/s 482 Code of Criminal Procedure?

12.2. Even though the burden of proving the guilt of an accused in criminal proceedings lies on the prosecution, there is a deliberate departure from

the said ordinary principles of criminal jurisprudence in the case of offence punishable under the Prevention of Corruption Act, wherein the burden

on the prosecution to prove the guilt of the accused must be held to be discharged, if certain facts as mentioned therein are proved, and then, the

burden shifts to the accused, who has to prove that in spite of the assets being disproportionate to his/her known sources of income, he/she is not

guilty of the offence, as the legislature requires the public servant to satisfactorily account the pecuniary resources and property that are alleged to

have been accumulated by the public servant or others on his/her behalf, disproportionate to his/her known sources of income, as held in Sajjan

Singh Vs. The State of Punjab,

12.3. As held in State of Maharashtra v. Wasudeo Ramchandra Kaidalwar reported in 1981 SCC (Cri) 690, State of Maharashtra Vs. Pollonji

Darabshaw Daruwalla, and State of Haryana v. Bhajan Lal reported in 1992 SCC (Cri) 426, while the prosecution must prove the following facts,

viz.: (i) that the accused is a public servant, (ii) the nature and extent of the pecuniary resources or property which were found in his/her

possession, (iii) what were his/her known sources of income, i.e. known to the prosecution; and (iv) that such resources or property found in

possession of the accused were disproportionate to his/her known sources of income, the burden is then shifted to the accused to satisfactorily

explain and account for his/her possession of the disproportionate wealth.

12.4. It is also well settled in law that the legislature has deliberately cast a burden on the accused who is facing charges for the offence punishable

under the Prevention of Corruption Act, not only to offer a plausible explanation as to how the public servant came by such disproportionate

wealth as alleged, but also to satisfy the Court that the explanation offered by the public servant is worthy of acceptance, vide C.S.D. Swamy Vs.

The State,

12.5. As rightly pointed out by Mr. R. Shanmugasundaram, learned senior counsel arguing as Amicus Curiae, it is suffice for the prosecution to

refer the apparent income of the public servant as his/her known source of income while registering the First Information Report and framing the

charge sheet, as it is always open to the accused/public servant to prove those source of income which should have been taken into account or

brought into the evidence by the prosecution and the same is permissible only during the trial, as held in State of Maharashtra Vs. Kaliar Koil

Subramaniam Ramaswamy, and CD.S. Swamy v. The State (referred supra).

12.6. In the instant case, as the evidence are yet to be adduced, allegations are to be proved and explanations are to be satisfactorily established,

appreciation of the same, much less the satisfactory account for the alleged disproportionate wealth is impermissible in law at a pretrial stage in a quash proceeding u/s 482 of the Code of Criminal Procedure, and therefore, applying the said ratio laid down in State of Maharashtra v. K.K.S.

Ramaswamy (referred supra), that the accused/public servant are always at liberty to prove the contrary to the charges during the trial and get

themselves discharged from the charges, I am of the considered opinion that it is not permissible to quash the impugned summons, at this pretrial

stage, as quashing of the process of summoning the accused to answer the charges relating to the corruption in public offices, would render the

very trial pre-emptive.

12.7. Issue: 1 is answered in negative.

13.1. Issue: 2 - Whether the set of facts alleged in the F.I.R. No. 2-AC-2000 registered on 2.9.2000 and charge sheet dated 23.3.2001 filed in

C.C. No. 2 of 2001 before the learned Principal Sessions Judge, Chennai, based on the evidence gathered and materials collected during further

investigation in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, arise in the course of same transaction alleged in the Crime No.

13/AC/96 registered on 18.9.96 and charge sheet filed in Spl.C.C. No. 7 of 1997 on

13.2. Elaborate arguments are made on this issue.

13.3. While Mr. K. Asokan and Mr. B. Kumar, learned senior counsel, appearing for the Petitioners herein contend that the alleged accumulation

of disproportionate wealth by the Petitioners constituting an offence punishable u/s 13(1)(e) of Prevention of Corruption Act and the criminal

conspiracy to commit the said offence, had taken place during the course of same transaction with reference to the same check period for which

the Petitioner and Respondents 2 to 4 in Crl.O.P. No. 21969 of 2001 were charged in Spl.C.C. No. 7 of 1997 on the file of the Designated

Court, Mr. R. Shanmugasundaram, learned senior counsel contends otherwise, as the properties said to have been accumulated by the accused in

C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge. Chennai, are identified outside India, while, such accumulation of

properties by the accused in Spl.C.C. No. 7 of 1997 on the file of the Designated Court are identified in India and therefore, both the offences in

the respective case are distinct as held in Ram Lal Narang v. State (Delhi Administration) reported in 1979 SCC (Cri) 479.

13.4. Once the offences are distinct.

Mr. R. Shanmugasundaram, contends that a second or successive F.I.R. No. 2-AC-2000, dated 2.9.2000 could be registered and a separate

charge sheet dated 23.3.2001 could be filed in a separate criminal case, as held in Ram Lal Narang v. State (Delhi Administration) reported in

1979 SCC (Cri) 479, and M. Krishna v. State of Kamataka reported in 1999 SCC (Cri) 397.

13.5. Instead of pondering over the rival contentions made on either side as to whether the set of facts alleged in the Crime No. 13/AC/96, Head

Quarters, registered on 18.9.96 and charge sheet filed in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, that the Petitioner and

Respondents 2 to 4 in Crl.O.P. No. 21969 of 2001 pursuant to a criminal conspiracy possessed pecuniary resources and properties in India,

disproportionate to known source of income of the Petitioner in Crl.O.P. No. 21969 of 2001 and those alleged in the First Information Report

dated 2.9.2000 and charge sheet dated 23.3.2001 filed in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai,

alleging that the Petitioners herein have accumulated disproportionate wealth outside India, constitute the same or distinct offence punishable u/s

13(1)(e) of Prevention of Corruption Act, I am of the considered opinion that it would be unsafe for this Court to come to a conclusion whether

the two cases viz. Spl.C.C. No. 7 of 1997 on the file of the Designated Court and C.C. No. 2 of 2001 on the file of the learned Principal Sessions

Judge, Chennai, relate to a same transaction or otherwise; because, it will be a serious error in putting an end to the prosecution at its inception, by

going into the merits in a pre-trial on consideration of the averments made in the petition alone, unless they are proved to be true and reliable in the

regular trial, as held in State of Bihar v. P.P. Sharma reported in 1992 SCC (Cri.) 192. It may not be. therefore, possible for this Court, while

exercising the powers conferred u/s 482 of Code of Criminal Procedure to hold whether or not the offence alleged against the Petitioners herein in

the charge sheet dated 23.3.2001 filed in C.C. No. 2 of 2001 before the learned Principal Sessions Judge, Chennai, have been committed by

them during the course of same transaction, for which the Petitioner and Respondents 2 to 4 in Crl.O.P. No. 21969 of 2001, are charged in

Spl.C.C. No. 7 of 1997 on the file of the Designated Court. The accumulation of pecuniary resources and properties, disproportionate to the

known source of income of the Petitioner in Crl.O.P. No. 21969 of 2001, during the same check period, which is a relevant criteria in both the

criminal cases, viz. Spl.C.C. No. 7 of 1997 before the Designated Court and C.C. No. 2 of 2001 on the file of the learned Principal Sessions

Judge, Chennai, and whether the same are satisfactorily accounted or not, equally cannot be gone into in quash proceedings u/s 482 of Code of

Criminal Procedure, as, they are to be gone through only during the course of trial.

13.6. As it is already held in Issue No. 1 that it is improper for this Court to quash the process of impugned summons in C.C. No. 2 of 2001 on

the file of the learned Principal Sessions Judge, Chennai, by exercising the inherent jurisdiction conferred u/s 482 of Code of Criminal Procedure, it

is equally impermissible in law to appreciate the averments stated in the petition and the related documents therein, treating them as evidence and

delve into the disputed questions of fact, by exercising such power, converting this Court into a Court of trial. Therefore, at this pre-trial stage, it

would not be well within the judicial discipline to go into the controversy whether or not both set of facts relating to the allegation in Spl.C.C. No. 7

of 1997 on the file of the Designated Court and C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, arise under the

course of same transaction, and any such attempt to the contrary, u/s 482 of Code of Criminal Procedure, would annihilate the stillborn

prosecution.

13.7. Issue No. 2 is answered accordingly.

14.1. Issue: 3 - Whether any violation to the undertakings given in the Letters Rogatory issued u/s 166A Code of Criminal Procedure during

further investigation u/s 173(8) of Code of Criminal Procedure in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, vitiate the

registration of a separate First Information Report dated 2.9.2000 and filing of the charge sheet dated 23.3.2001 and th consequential proceedings

in C.C. No. 2 of 2001 before the learned Principal Sessions Judge, Chennai?

14.2. The Code of Criminal Procedure prescribes the following steps for investigation:

(i) Proceeding to the spot;

(ii) Ascertainment of the facts and circumstances of the case;

(iii) Discovery and arrest of the suspected offender.

(iv) Collection of evidence relating to the commission of offence which may consist of

a. the examination of various persons (including the accused) and reduction of their statements into writing, if the officer thinks fit,

b. the search of the places or seizure of things considered necessary for the investigation and to produce at the trial; and

(v) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so,

taking the necessary steps for the same by the filing of a charge sheet u/s 173 of Code of Criminal Procedure.

14.3. Section 173(8) of Code of Criminal Procedure empowers the prosecution to further investigate into the matter in respect of any offence,

even after filing a report u/s 173(2) of Code of Criminal Procedure and to file a further report or reports regarding such evidence; and in which

event the procedure provided u/s 173(2) to (6) shall apply again. Of course, it is also well settled in law that a defect or illegality said to have been

committed during the course of investigation, does not affect the competency or the procedure relating to cognisance of trial, vide AIR 1944 73

(Privy Council) H.N. Rishbud and Inder Singh Vs. The State of Delhi, . But, the Petitioners herein do not complain any illegality during the course

of investigation. However, they are aggrieved by the breach of undertaking given in the Letters Rogatory issued u/s 166A of Code of Criminal

Procedure, during further investigation made u/s 173(8) of Code of Criminal Procedure m Spl.C.C. No. 7 of 1997 on the file of the Designated

Court.

14.4. Section 166A of the Code of Criminal Procedure empowers a Court in India to issue letter of request (Letters Rogatory) to competent

authority for investigation in a country or place outside India, which, already extracted, reads as follows:

Section 166A Code of Criminal Procedure: Letter of request to competent authority for investigation in a country or place outside India:

(1) Notwithstanding anything contained in this Code, if, in the course of an

investigation into an offence, an application is made by the investigating

officer or any officer superior in rank to the investigating officer that evidence may be available in a country or place outside India, any Criminal

Court may issue a letter of request to a Court or an authority in that country or place competent to deal with such request to examine orally any

person supposed to be acquainted with the facts and circumstances of the case and to record his statement made in the course of such examination

and also to require such person or any other person to produce any document or thing which may be in his possession pertaining to the case and to

forward all the evidence so taken or collected or the authenticated copies thereof or the thing so collected to the Court issuing such letter.

(2) The letter of request shall be transmitted in such manner as Central Government may specify in this behalf.

(3) Every statement recorded or document or thing received under Sub-section (1) shall be deemed to be the evidence collected during the course

of investigation under this Chapter.

(Emphasis supplied)

14.5. A Letter Rogatory is a formal request from a court in one country to ""the appropriate judicial authorities"" in another country requesting

compulsion of testimony or documentary or other evidence or effect serv-ice of process. Although statutory authority generally refers to the

instrument as a ""letter rogatory"", the terms ""letter rogatory"" and ""letter of request"" have come to be virtually synonymous in actual practice. When a

witness is not willing to testify or produce documents or other evidence voluntarily, the assistance of foreign authorities generally must be sought,

14.6. The Letters Rogatory dated 13.4.1998, 25.9.1998, 6.3.2000 and 30.8.2000, admittedly, carry undertaking that the results of the

investigation so conducted in United Kingdom shall be specifically used only in the proceedings arising out of this criminal case, viz., Spl.C.C. No.

7 of 1997 on the file of the Designated Court, in which the above Letters Rogatory were issued, and therefore, such undertakings cannot be lightly

disregarded. Even though the Petitioner in Crl.O.P. No. 21969 of 2001 has no right to be heard at the time of permitting further investigation or

issuing Letters Rogatory, she is entitled to bring any breach of the undertaking given in the Letters Rogatory u/s 166A of the Code of Criminal

Procedure, at the earliest point of time, because every terms of Letters Rogatory should be given due importance, as they were issued under the

seal of the Court issuing such Letters Rogatory.

14.7. Since, admittedly, the evidence and materials which form the basis for registering the F.I.R. No. 2-AC-2000, dated 2.9.2000, and filing the

charge sheet dated 23.3.2001 111 C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai, were gathered and collected

pursuant to the leave granted by the Designated Court, for further investigation by exercise of powers conferred u/s 173(8) of the Code of

Criminal Procedure and the Letters Rogatory issued u/s 166A of the Code of Criminal Procedure in Spl.C.C. No. 7 of 1997 before the

Designated Court, any violation to such terms of Letters Rogatory is incomprehensible.

14.8. Section 166A of Code of Criminal Procedure expressly provides that the evidence so taken or gathered pursuant to the Letters Rogatory

issued thereunder should be forwarded to the Court issuing such letter. If that be so, the intention of the legislature expressly provided u/s 166A of

Code of Criminal Procedure cannot be supplemented by any other procedure. It is also well settled in law that there can be no justification in

14.9. Conducting a fair trial is both for the benefit of the society as well as the accused and cannot be abandoned. A conviction resulting from an

unfair trial is contrary to our concept of justice. Even though the end result of the case is important, the means to achieve it also must remain above

board. The legitimacy of the judicial process should not be compromised, at any cost, condoning any violation to the due process of law, as held in

State of Punjab Vs. Baldev Singh,

14.10. While considering the aspect of fair trial, the nature of evidence obtained and the nature of the safeguard violated are both relevant factors.

Court cannot allow admission of evidence against an accused where the Court is satisfied that the evidence has been obtained by a conduct of

which the prosecution ought not to have taken advantage, particularly by committing a breach of undertaking given to the foreign authority in the

Letters Rogatory issued u/s 166A of Code of Criminal Procedure. Therefore, use of evidence collected in violation to the Letter Rogatory and

undertaking given by the prosecution as well as the Central Government, u/s

166A of Code of Criminal Procedure, would, in strict sense, render

the trial unfair and evidence inadmissible. If the Court is seen to condone acts of lawlessness conducted by the investigating agency, the legitimacy

of judicial process will fall under a cloud, undermine respect for the law and have the effect of unconscionably comprising the administration of

justice.

14.11. There is, indeed, a need to protect society from criminals, and the societal intent in safety will suffer if persons who commit crimes are let

off, because the evidence against them is to be treated as if it does not exist. The answer, therefore, is that the investigating agency must follow the

procedure as envisaged by the statute scrupulously and the failure to do so must be viewed by the higher authorities seriously, inviting action against

the official concerned, so that the laxity on the part of the Investigating authority is curbed, as held by the Apex Court in State of Punjab Vs.

Baldev Singh, .

14.12. It is true the concern is genuine and the problem is real and to deal with such a situation, a balanced approach is needed to meet the ends of

justice. The action of the State, however, must be right, just and fair. Reasonableness, fairness and just procedure are prime objects of our criminal

jurisprudence and therefore, the same would not be rendered illusory, otiose and meaningless by any procedural lapse on the part of the

prosecution.

14.13. The procedure based on systematic and unconscionable violation of law, much less, any violation of any undertaking given in the course of

such procedure, by the officials responsible for the enforcement of such procedural law, cannot be considered to be a fair, just and reasonable

procedure. In fine, as conducting of fair trial for those who are accused of a criminal offence is the corner stone of our democratic society, the use

of any such evidence in violation to the spirit and substance of Letters Rogatory issued u/s 166A of Code of Criminal Procedure and much less any

undertaking given thereunder by the Respondent prosecution, in my considered opinion, would only render the trial unfair, and therefore, the

prosecution cannot be permitted to take advantage of its wrong, in filing a report dated 23.3.2001 in C.C. No. 2 of 2001 before the learned

Principal Sessions Judge, Chennai, instead of filing the same before the

Designated Court in Spl.C.C. No. 7 of 1997, inasmuch as the Respondent

prosecution cannot claim any immunity even if they are wrong in committing such breach of their own undertaking.

14.14. On an general conspectus and upon consideration of the facts and circumstances of the case referred to above, I am obliged to hold that

the violation committed by the Respondent prosecution to the undertaking

14.15. Issue: 3 is answered accordingly.

15.1. Issue: 4 What directions/orders are required, under the facts and circumstances of the case, to meet the ends of justice?

15.2. Interpreting Section 173(8) of Code of Criminal Procedure, G.B. Patnaik, J., as he then was, in Arjuna Kumar v. State of Orissa reported in

1989 Crl.L.J. 449, held that Section 173(8) of Code of Criminal Procedure should be construed harmoniously without doing any violation to the

language of Sections 173(1) to (7) of Code of Criminal Procedure, the paramount consideration of the same would be the interest of justice,

without causing any prejudice to the accused. Therefore, the ultimate discretion remains with the Court, which is in seisin of the case to decide as

to what further action can be taken depending upon the nature of the materials received on the further investigation. Hence, in the instant case, the

subsequent report dated 23.3.2001 can be filed only before the Designated Court, even though the case is already tried before the Designated

Court, which in the event of receiving such further report, will consider the nature of evidence which the further report discloses and decide in

accordance with law and in the interest of justice.

15.3. Again S. Rajendra Babu, J. as he then was, in J. Alexander v. state of Kamataka reported in 1996 Crl.L.J. 592, interpreting Section 173(8)

of Code of Criminal Procedure held as follows:

It opens with a non-obstante clause that nothing stated in the section would preclude further investigation after a report under Sub-section (2) had

been forwarded to the Magistrate. A report submitted to the Court may either result in taking cognisance as a result of a report as contemplated

u/s 170 of the Code or discharge of bond on a report made u/s 169 of the Code. Where upon the office in charge of the police station obtains

further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed under the provisions. The applicability of Sub-sections (2) to (6) of Section 173 of the Code would make it clear that each of the subsequent

reports made further would also become report for the purpose of Section 173(2), Code of Criminal Procedure.

Thus the object of Section 173(8) is clear and it is not confined only to cases where cognisance is taken.

When a report is made u/s 169 read with Section 173 of the Code what is necessary for the Court is to find out whether the material is insufficient

to send up the accused person for trial.

However, it would not only mean that the acceptance is a matter of course. What the Court does then is consider the materials collected in the

course of investigation either accepting the report or adopt any of the other courses indicated in Kamlapati Trivedi Vs. State of West Bengal, .

Even if further fresh materials is discovered which calls for further investigation and if such investigation is not allowed then such course would be

stultification of law and logic resulting in miscarriage of justice. In a country where there is cancerous growth of corruption with close links between

the bureaucracy and politicians and such acts being done under shrouded mystery it is difficult to assume that all facts could be revealed in one

stroke. In such cases great effort is needed to discover material, and after securing further material, the Police seek to investigate the matter, the

provisions of law cannot be interpreted to stifle such course of action.

Therefore, the acceptance of the further report should be read in such a manner that it advantageous the cause of justice and the public interest.

15.4. In Surendra Nath Singh v. State of Uttar Pradesh reported in 2001 Criminal.L.J.1745, Allahabad High Court has held that a further report

made u/s 173(8) of Code of Criminal Procedure, cannot be treated as a fresh investigation or a fresh report since two proceedings at two different

Courts between the same party is not permissible in law and they have to be tried at one place. It shall be open for the Court to look into the

further report and if anything new is there, it can frame charges in accordance with it treating it as a supplementary report. If some new accused are

also introduced in the further report, the Court can take cognisance against them as well and it shall be called supplementary charge sheet and will

be received and proceeded in accordance with law.

15.5. That apart, the source of income of a public servant during the particular check period, as well as the alleged pecuniary resources or

properties disproportionate to his/her known source of income for the same period could not be assessed by two different courts, which would,

otherwise, give way for different valuation by different Courts, and the same be opposed to criminal jurisprudence, as, the piecemeal or instalment

prosecution would only amount to abuse of process of law, giving way for inconsistent valuation in two different trials by two different Courts,

resulting in miscarriage of justice, as held in Connelly v. Director of Public Prosecutions reported in (1964) 2 AJ1 England Reporter 401.

15.6. When a breach of undertaking of the Respondent prosecution given under the Letters Rogatory issued u/s 166A of Code of Criminal

Procedure during further investigation u/s 173(8) of Code of Criminal Procedure in Spl.C.C. No. 7 of 1997 before the Designated Court is

brought to the notice of this Court at an early stage of trial in C.C. No. 2 of 2001 on the file of the learned Principal Sessions Judge, Chennai,

invoking Section 482 of the Code of Criminal Procedure, this Court being a superior Court, satisfied that the investigating agency are empowered

to make further investigation and submit a supplement report in the interest of both prosecution and defence, any breach of undertaking given under

the Letters Rogatory issued u/s 166A of Code of Criminal Procedure would bring a miscarriage of justice, is bound to consider such improper

exercise of powers by the Respondent prosecution and therefore, obliged to direct the Principal Sessions Judge, Chennai, to transfer the entire

records relating to the F.I.R. No. 2-AC-2000, dated 2.9.2000, and the evidence gathered and materials collected pursuant to the further

investigation u/s 173(8) of Code of Criminal Procedure, and charge sheet dated 23.3.2001 filed in C.C. No. 2 of 2001 on the file of the learned

Principal Sessions Judge, Chennai, to the file of the Designated Court, where Spl.C.C. No. 7 of 1997 is pending viz., XI Additional Sessions and

Special Judge. Chennai, who shall take appropriate decision on the further course of action under the provisions of the Code of Criminal

Procedure and proceed in accordance with law, as to

(i) whether to issue process of summons to persons, as to the fresh evidence and materials discovered, to deal with them in accordance with law.

treating the charge sheet dated 23.3.2001 as a further report in Spl.C.C. No. 7 of 1997 on the file of the Designated Court, after impleading the

Petitioner in Crl.O.P. No. 22506 of 2001, who is a newly involved accused, and taking fresh cognisance of the offence disclosed against the

Petitioner in Crl.O.P. No. 21969 of 2001 and the Petitioner in Crl.O.P. No. 22506 of 2001, and to proceed in accordance with law ; or

(ii) if the case in which the Designated Court had previously taken cognisance, viz. Spl.C.C. No. 7 of 1997, has already been proceeded with to

some extent, the Designated Court may take fresh cognisance of the offence disclosed against the Petitioners herein and proceed with the case, as

a separate one, based on the evidence gathered and materials collected, which culminated into charge sheet dated 23.3.2001 in C.C. No. 2 of

2001 on the file of the learned Principal Sessions Judge, Chennai, and transferred hereunder and proceed with the case in accordance with law.

15.7. In the interest of independence of the magistracy and the judiciary, in the interest of purity of the administration of criminal justice and in the

interest of the comity of various agencies and institutions entrusted with different stages of such administration, in deference to the observations of

the Apex Court made in Ram Lal Narang v. State (Delhi Administration) reported in 1979 SCC (Cri) 479, and the ratio laid down in J. Alexander

v. State of Kamataka reported in 1996 Crl.L.J. 592 and Arjuna Kumar v. State of Orissa reported in 1989 Crl.L.J. 449, whatever the decision,

the Designated Court is to take, the same shall be in accordance with the Code of Criminal Procedure and in consequence of the above direction.

15.8. In any event, the Designated Court shall take appropriate decision in the matter expeditiously, try the same on day-to-day basis and

conclude the same within a period of six months from today, as held by the Apex Court in Satya Narayan Sharma Vs. State of Rajasthan, . If the

Petitioners or prosecution have any bonafide reason to comply with the above directions, they arc at liberty to bring the same to the Designated

Court, which shall be considered by the Designated Court on merits, in the light of the observations made in Satya Narayan Sharma v. State of

Rajasthan (referred supra).

15.9. Issue: 4 is answered accordingly.

16. I am greatly obliged to record my appreciations to Mr. R.

Shanmugasundaram, learned Senior Counsel and former Public Prosecutor, and Mr.

N.R. Elango, former Government Advocate (Criminal Side), for their valuable assistance rendered as Amicus Curiae, in the above petitions.

In the result, these petitions are dismissed with directions ordered above. Consequently, Crl.M.P. Nos. 7560 of 2001 and 7686 of 2001 are also

dismissed.

