

**Duraimurugan Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/965426](http://sooperkanoon.com/965426)

**Court :** Chennai

**Decided On :** Jan-03-2013

**Judge :** C.Nagappan

**Appellant :** Duraimurugan

**Respondent :** State

**Judgement :**

In the High Court of Judicature at Madras Dated :

03. 01.2013 Coram : The Honourable Mr.Justice C.NAGAPPAN and The Honourable Mr.Justice M.SATHYANARAYANAN Writ Appeal No.1238 of 2012 and M.P.No.1 of 2012 Duraimurugan .. Appellant -vs- State, rep. by Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore. .. Respondent Appeal against the order dated 26.06.2012 passed in W.P.No.13788 of 2012 on the file of this Court. For Appellant : Mr.R.Shanmugasundaram, S.C. for Mr.M.Dhandapani For Respondent : Mr.A.Navaneethakrishnan, Advocate General Assisted by Mr.M.K.Subramanian, Spl. Public Prosecutor. \* \* \* \* \*

C.NAGAPPAN, J.

**and M.SATHYANARAYANAN, J.**

The appellant is the writ petitioner and he made a challenge to the Final Opportunity Notice dated 25.04.2012 issued by the respondent calling upon the

petitioner to offer his explanation as to the possession of assets and pecuniary resources, which has been held as disproportionate to his known sources of income. The writ petition, after contest, was dismissed on 26.06.2012 and aggrieved by the same, the present writ appeal is filed by the writ petitioner.

2.Facts leading to the filing of this writ appeal, as culled out from the affidavit filed in support of the main writ petition as well as the counter-affidavit filed by the respondent, are as follows:- a)In the affidavit filed in support of the writ petition, it has been averred that the writ petitioner/appellant is the Deputy General Secretary of the DMK Party and a sitting Member of Legislative Assembly elected from the Katpadi Assembly Constituency and he was the Minister for Public Works Department and Law Department during the period 2006-2011. The writ petitioner/appellant further averred that ever since the present ruling party came into power, the party leaders and important functionaries belonged to his party were targeted by filing false and frivolous cases, namely, land grabbing case and disproportionate assets case, etc. Likewise, a case has been registered by the respondent against the writ petitioner/ appellant in Crime No.17 of 2011 for the commission of offences under Sections 13(2) r/w 13 (1)(e) of the Prevention of Corruption Act, 1988 (in short 'PC Act') for possessing assets disproportionate to his known sources of income during the period from 2006-2011. b)Pursuant to the registration of the above said case, searches were conducted at his residence and at the business premises of his son and the search failed to yield any documents or materials suggesting that the writ petitioner/appellant had amassed assets disproportionate to his known sources of income. c)The respondent sent a notice dated 11.03.2012 along with a list of questionnaire calling upon the writ petitioner/appellant to divulge certain information and the said questionnaire consisted of 66 questions. d)The writ petitioner/appellant challenged the said notice by filing W.P.No.8391 of 2012 and the same was opposed by the respondent by filing counter. The said writ petition was taken up for final disposal and the learned Judge (Hon'ble Mr.Justice Vinod K.Sharma), vide order dated 10.04.2012, after taking into consideration the submissions made by the learned Public Prosecutor that the impugned questionnaire is voluntary and it is for the petitioner either to answer or not to answer it, has observed that in the event of the petitioner not answering the questionnaire, no adverse action will be taken and it

will be for the investigating agency to proceed with the investigation strictly as per the provisions of the Code of Criminal Procedure. The writ petition was disposed of recording the said submission of the learned Public Prosecutor. e)After the disposal of the said writ petition, the respondent issued the impugned Final Opportunity Notice dated 25.04.2012 enclosing statements I to VI and stated that on the basis of the above statements, the quantum of disproportionate assets/pecuniary resources with the writ petitioner/appellant and his wife, namely, Tmt.Santhakumari, on his behalf, being the dependent, as on 31.03.2009 were worked out at Rs.1,40,74,174/-. Therefore, the respondent called upon the writ petitioner/appellant to furnish his explanation to the above said statements on or before 10.05.2012 failing which it will be construed that he has no valid explanation to offer and the case will be finalised on the basis of the information available with the Directorate of Vigilance and Anti-Corruption (in short 'DVAC'). f)The writ petitioner/appellant, in response to the said notice, sent an interim reply dated 09.05.2012 stating that his wife is a separate legal entity in the eye of law, being assessed to separate income tax assessments of her income in the business and therefore, a joint statement regarding the properties and the income is ex facie bad in law and totally unwarranted and solely contrived by the department to bolster up a false and frivolous charge against him under the PC Act. The petitioner also requested the respondent to split up the income and expenditure so as to enable him to offer satisfactory explanation of the assets and sources. The petitioner has also stated that the agricultural income declared and assessed by the income tax department for the year 2007-2008 is Rs.8,07,649/- and the agricultural income for the assessment year 2008-2009 is Rs.7,50,147/- and the same had been accepted by the department and whereas, the respondent had wantonly and deliberately reduced the agricultural income to Rs.2,45,342/- and Rs.2,99,671/- for the above said two years. g)The petitioner has further stated in the said interim reply that the description of properties set out in items 1 to 24 in Statement No.1 pertains to him is factually correct, but he has nothing to do with the other items and he has never transgressed or flouted any provision of the PC Act/Rules and that he is having an unblemished record and repute in all public life. Hence, the writ petitioner/ appellant requested the respondent to accept the explanation and drop further action. h)The respondent, after the receipt of the

interim reply dated 09.05.2012, sent a letter dated 11.05.2012 stating among other things that investigation clearly revealed that though his wife Tmt.Santhakumari had a separate business and having her own sources of income, the assets possessed by her and the writ petitioner/appellant while he was holding the office in the capacity as a public servant were disproportionate to the known sources of income and hence, the consolidated statements were prepared and served on the writ petitioner/appellant as well as on his wife calling upon them to offer explanation and therefore, the request made by the writ petitioner/appellant to furnish split statements cannot be accepted. i)The respondent also granted fifteen days time till 26.05.2012 so as to enable the writ petitioner/appellant to offer his explanation. j)The writ petitioner/appellant challenging the vires of the said Final Opportunity Notice dated 25.04.2012, has filed the present writ petition praying for issuance of writ of certiorarified mandamus to quash the said notice and direct the respondent to re-issue Final Opportunity Notice along with statement of accounts separately for himself and his wife specifying the list of properties found to have been acquired disproportionate to the known sources of income of the writ petitioner/appellant. k)According to the writ petitioner/appellant, the said notice is in gross violation of constitutional guarantee enshrined under Article 20(3) of the Constitution of India, as the respondent is compelling the writ petitioner/appellant to be a witness against himself. The writ petitioner/appellant would further state that sending of questionnaire seeking information about the relevant facts of the investigation, has a tendency to incriminate him and the investigating officer has no legal right to seek such information from him. The writ petitioner/appellant also took a stand that the First Information Report registered by the respondent and the continuance of the investigation without following the mandatory procedures is in violation of the dictum laid down by the Hon'ble Supreme Court of India in the decision reported in A.I.R. 1971 SC 520.P.Sirajudeen vs. State of Madras. The stand of the writ petitioner/appellant is that as per the above cited decision, whenever cases were registered under the PC Act against public servants, a preliminary enquiry shall be conducted to come to a prima facie satisfaction that the delinquent public servant would have committed the offence, as any criminal case, more particularly a case under the PC Act, casts a stigma on the public servant and in respect of the case registered against him, no such preliminary

enquiry was conducted and the notice sent by the investigating officer would disclose that without conducting any preliminary enquiry, the F.I.R. came to be registered against him. l)It is the further case of the writ petitioner/appellant that his wife has income through independent sources and is an income tax assessee for the past 33 years and has meticulously accounted for all the assets possessed by her and that she has enormous independent earnings through her export company. The earnings have been properly audited and periodical returns were filed to the income tax authorities and they were also accepted by them. The writ petitioner/appellant would further state that the clubbing of all the properties in one list and issuing a common statement of account is the mala fide action of the respondent aimed only to tarnish his image and to show boosted figure. The writ petitioner/appellant also took a stand that his right to offer explanation has also been recognised in the manual of the DVAC, which regulates the procedure of investigation carried out by the DVAC and was also approved by the Government in G.O. (3D) No.2, Personnel and Administrative Reforms (Personnel-N) Department dated 06.01.1993 and the Government has also further approved the same vide Circular Memo dated 26.08.1988 and as such, the failure on the part of the respondent to observe the prescribed procedure contemplated under DVAC Manual, will tantamount to the violation of the Government Order. m)Therefore, for the above said grounds, the writ petitioner/appellant came forward to file the above said writ petition. n)The respondent filed a counter-affidavit denying the averments made in the affidavit in support of the writ petition and would state that only after conducting a preliminary enquiry and having been satisfied that there was prima facie material against the writ petitioner/appellant, a case in Crime No.17 of 2011 was registered for the commission of offence under Section 13(2) r/w 13(1)(e) of the PC Act. The gist of the F.I.R. is that during the check period, the writ petitioner/appellant was found in possession of assets in his name and/or on his behalf, in the name of other individuals, disproportionate to his known sources of income, for which he was not able to satisfactorily account for. o)The respondent would further state in their counter-affidavit that after the registration of the F.I.R., searches were conducted at the residence of the writ petitioner/appellant and also in his business premises and incriminating materials were seized during the course of search suggesting that he had acquired assets disproportionate to his

known sources of income. Insofar as the stand taken by the writ petitioner/appellant that the registration of the case and non-conducting of preliminary enquiry is violative of Article 20(3) of the Constitution of India is concerned, the respondent would aver that a preliminary enquiry was conducted and after arriving at a satisfaction that there was prima facie material against the writ petitioner/ appellant, the above said case was registered and that the service of the notice calling upon him to disclose certain information relating to the case is not in violation of the constitutional guarantee enshrined under Article 20 (3) of the Constitution of India. p)The further stand of the respondent is that after the service of the questionnaire dated 11.03.2012, the writ petitioner/appellant had requested for four weeks time to send his reply after consulting his auditor and in the above said notice, the writ petitioner/appellant was given the following choices:- a. to reply to the questionnaire in writing; b. to appear in person and clarify the issue; or c. not to respond to the questionnaire; and thereby implying that the writ petitioner/appellant is not under any compulsion to answer the questionnaire but was given options either to appear in person or to submit a written statement or to keep silence. q)The respondent also took a legal plea that the investigating officer is having a right to examine the accused during the course of investigation in terms of the provisions of the Code of Criminal Procedure and the Police Standing Orders and that merely asking for details of the assets or calling for an explanation of the assets do not make out an offence and the endeavour of the investigation is to arrive at the truth and that the investigation is to be done in an unbiased manner as done in the present case. r)As regards the DVAC Manual, the respondent took a stand that the administrative guidelines issued by the Vigilance Manual is only directory and not mandatory and moreover in various decisions rendered by the Hon'ble Supreme Court of India, it has been held that the investigating officer is not an enquiry officer or a Judge to hear the explanation given by the accused. The respondent further contended that the department had strictly followed the procedures, the manual, the statutes as propounded by the Hon'ble Supreme Court of India and the orders of the Government and hence, prayed for the dismissal of the writ petition. s)The writ petition was taken up for final disposal and the learned Judge (Hon'ble Mr.Justice K.Chandru), after taking into consideration the averments made in the affidavit filed in support of the writ petition and the

counter-affidavit and the decisions relied on by the respective learned counsel for the parties, held that the exact nature of the wealth possessed by an accused and whether the wealth is independently owned by his near relative is an issue which will have to be tried essentially in a trial and in such a case, the burden is upon the public servant to satisfy the court that the excess wealth possessed by him is attributable to the known sources. The learned Judge, on the facts of the case, found that the enquiry itself is not complete and the writ petitioner was given an opportunity in the earlier writ petition filed by him in W.P.No.8391 of 2012, which was disposed of on 10.04.2012 and therefore, considering the said fact, the stand taken by the petitioner that he should have been given one more opportunity to forestall the investigation cannot be countenanced. The learned Judge also taken into consideration the decision of the Hon'ble Supreme Court of India in Shashikant vs. Central Bureau of Investigation and others reported in (2007) 1 SCC 630.State of Bihar and another vs. J.A.C. Saldanha and Others reported in AIR 198.SC 32.: (1980) 1 SCC 55.and held that a writ Court ordinarily would not interfere with the functioning of the investigating agency and only in exceptional cases, it may do so and that it is the duty of the investigating agency to collect evidence for the purpose of proving the offence and once the said process is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence, his duty comes to an end. The learned Judge, in the light of the factual matrix and the legal precedents, found that it is not a fit case where any interference is called for and accordingly, dismissed the writ petition vide order dated 26.06.2012 and aggrieved by the same, the writ petitioner has preferred this writ appeal. 3.Mr.R.Shanmugasundaram, learned senior counsel appearing for Mr.M.Dhandapani - learned counsel appearing for the writ petitioner/appellant, has made the following submissions:- a) The offence under Section 13 (2) r/w 13(1)(e) of the PC Act, 1988, is not mere possession of assets, but the failure to satisfactorily account for the same and the said aspect has been completely overlooked by the learned Judge; b) The writ petitioner/appellant has not purchased even a single property during the check period when he was a Minister and his wife was assessed to income tax for the past 33 years and she is having independent sources of income and the returns submitted by her were also accepted by the department and therefore, it cannot be said that the income or the

assets possessed by his wife is only on his behalf; c) The act on the part of the respondent in clubbing the assets of his wife along with the assets of the writ petitioner/appellant and furnishing a single statement asking him to explain, caused great prejudice and in this regard, the respondent has deliberately omitted to follow paragraph 76 of the DVAC Manual and the various decisions of the Hon'ble Supreme Court of India; d) In response to the Final Opportunity Notice, the writ petitioner/appellant sent an interim reply dated 09.05.2012 clearly explaining his stand with regard to the clubbing of assets of his wife along with his assets and the respondent instead of considering the said interim reply, merely reiterated his earlier stand vide his reply dated 11.05.2012 and the same would expose the mala fide act on the part of the respondent and it has been done purely with vendetta. e) The entire prosecution is tainted with mala fide intention as he belongs to the opposition party; Therefore, the learned senior counsel submitted that since the grounds raised in the writ appeal are tenable and legally sustainable, the impugned notice which was the subject matter of challenge, is to be set aside and the respondent is to be directed to issue a fresh opportunity notice giving split statements to him as well as to his wife so as to enable them to explain their stand with regard to the assets and sources possessed by him. 4. The learned senior counsel appearing for the writ petitioner/appellant, in support of his submissions, placed reliance upon the following decisions:-

1) D.Vedagiri, In re, 1985 L.W. (Crl.) 243

2) M.S.Kuppusami and etc., vs. The State, 1992 Crl.L.J.

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3) P.Nallammal v. State, 1999 (6) SCC 559

4) Jagan M. Seshadri v. State of T.N., 2002 (9) SCC 639

5) 2011 (4) SCC 402

6) State of M.P. v. Awadh Kishore Gupta, 2004 (1) SCC 691

7) DSP, Chennai v. K.Inbasakaran, 2006(1) SCC 420

8) State of Maharashtra v. Wasudeo Ramchandra Kaidalwar, 1981 (3) SCC 199

9) M.Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad, 1993 Crl.L.J.

308 10)K.Veeraswami v. Union of India and Others, 1991 (3) SCC 65.11)M.C.Abraham v. State of Maharashtra, 2003(2) SCC 64.12)Unreported judgment in State of T.N. v. K.Sivaraman and another, C.A.No.528 of 2010, dated 22.03.2012. 5.Per Contra, Mr.A.Navaneethakrishnan, learned Advocate General, representing Mr.M.K.Subramanian, learned Special Public Prosecutor, appearing for the respondent, would submit that after the registration of the F.I.R., searches were conducted at the residence of the writ petitioner/appellant and also in his business premises, which yielded incriminating materials and suggested that the writ petitioner/appellant had acquired assets disproportionate to the known sources of income. It is his further submission that the Final Opportunity Notice issued to the petitioner is in accordance with Proforma 28 of the DVAC Manual and the Statements I to VI were prepared by the respondent on the basis of the statements of the witnesses and scrutiny of documents collected during the course of investigation and the writ petitioner/appellant was given a reasonable opportunity to furnish his explanation to the said statements and however, the writ petitioner/appellant has failed to avail the said opportunity. On the merits of the case, the learned Advocate General would contend that it is not correct to state that the wife of the writ petitioner/appellant is having independent sources of income and whereas, the writ petitioner/appellant had acquired assets in his name as well in the name of his wife, through his unexplained sources of income during the check period and though the wife of the writ petitioner/appellant had no proportionate income to acquire the properties set out in the statements, she had abetted the writ petitioner/appellant to acquire the properties in her name. Therefore, split statements as required by the writ petitioner/appellant were not provided, but consolidated statements were furnished along with Final Opportunity Notice. 6.Since, as to how and in what manner the income and the properties were acquired is within the knowledge of the writ petitioner/appellant, the burden lies heavily on him to explain the same and hence, opportunity was given to the writ petitioner/ appellant to explain his stand, but he has not availed the said

opportunity so far. 7. Insofar as the plea taken by the learned senior counsel for the writ petitioner/appellant that the guidelines issued by the Vigilance Manual have not been followed, the learned Advocate General would submit that the guidelines in the Vigilance Manual are administrative in nature and are only directory and not mandatory and that the investigating officer, after strictly following the procedures contemplated under the Vigilance Manual and the provisions of law, had rightly arrived at a conclusion that the writ petitioner/appellant has prima facie possessed assets disproportionate to his known sources of income. 8. Lastly, it is contended by the learned Advocate General that the points urged by the learned senior counsel for the writ petitioner/appellant can be thrashed out only during the course of trial and not at this stage and that this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, is having a limited power to interfere with the on-going investigation and hence, prays for the dismissal of this writ appeal. 9. The learned Advocate General, in support of his submissions, placed reliance upon the following decisions:-

- 1) State of Haryana vs. Bhajanlal, 1992 Supp (1) SCC 335
  - 2) State of Maharashtra vs. Ishwar Piraji Kalpatri, AIR 199.SC 722
  - 3) P.Nallammal vs. State, rep. by Inspector of Police, AIR 199.SC 2556
  - 4) Hardeo Singh vs. State of Bihar, AIR 200.SC 2245
  - 5) State by CBI vs. S.Bangarappan, 2001 CrI.L.J.
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- 6) K.Veerasingami vs. Union of India, (1991) 3 SCC 655
  - 7) Union of India vs. W.N.Chadha, 1993 Supp. (4) SCC 260
  - 8) Union of India vs. B.R.Bajaj, (1994) 2 SCC 277
  - 9) J.Prem vs. State, 2000 CrI.L.J.

619 10)K.Karunakaran vs. State of Kerala, (2000) 3 SCC 76.11)State of M.P. vs. Awadh Kishore Gupta, (2004) 1 SCC 69.12)Shashikant vs. CBI, (2007) 1 SCC 63.10.This Court bestowed its best attention to the submissions made by the learned senior counsel appearing for the writ petitioner/appellant and the learned Advocate General appearing for the respondent. 11.The respondent has registered an F.I.R. in Crime No.17 of 2011 against the writ petitioner/appellant for the commission of offence under Section 13(2) r/w 13(1)(e) of the PC Act, 1988 and it is relevant to extract the said provision, which reads as follows:- "13.Criminal misconduct by a public servant. - (1) A public servant is said to commit the offence of criminal misconduct, - (a)if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or (b)if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or (c)if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person to do so; or (d)if he,- (i)by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (ii)by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or (iii)while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or (e)if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income. Explanation. - For the purpose of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or

orders for the time being applicable to a public servant. (2)Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine." 12.The scope of Section 5(1)(e) of the Prevention of Corruption Act, 1947, came up for consideration in the decision in D.Vedagiri, In re, 1985 L.W. CrI.243, before a Single Bench of this Court. The facts of the said case would disclose that the petitioner therein was working as a Divisional Engineer in the Tamil Nadu Electricity Board, Dharmapuri Division and since the DVAC received information that he was indulging in corrupt practice and thereby, amassed wealth illegally, conducted a preliminary investigation and ultimately found that the total income of the petitioner therein during the check period, i.e., 01.05.1968 to 30.06.1977, was disproportionate to his known sources of income. After investigation, charge-sheet was filed and thereafter, the petitioner filed a petition for discharge taking a stand that only in case he cannot satisfactorily account for his possession of his assets, he should have been called upon to explain for the possession of pecuniary resources of properties found to be disproportionate and till then, no valid report incriminating him could be filed by the police before the Court. However, the trial Court had dismissed the petition filed for discharge and challenging the same, the revision was preferred on the file of this Court. The learned Judge, after taking into consideration the provision, i.e., Section 5(1)(e) of the Prevention of Corruption Act, 1947, held that the failure of accounting for the possession of the property by the person concerned is a distinct element of the offence and in fact, it is not merely the possession of the property disproportionate to the known sources of income that constitutes an offence, but it is the failure to satisfactorily account for such possession that makes the possession objectionable and offending the law. 13.The learned Judge, on the facts of the case, found that though the investigating officer on two occasions, had the opportunity of examining the petitioner and put questions on the specific items of income, expenditure and assets, either disclosed by the petitioner or discovered by him, at no point of time he informed the petitioner that as per his investigation, he found excess income. Holding so, the impugned order rejecting the petition for discharge was set aside and the investigating officer was directed to complete the investigation in the light of the observations made in the judgment. 14.The above

cited decision was considered in a subsequent decision rendered by a single Bench of this Court in *M.S.Kuppuswami vs. The State*, 1992 CrL.L.J.

56. The proceedings in the said case also arose out of Section 5(2) r/w 5(1)(e) of the Prevention of Corruption Act, 1947 and the petition for discharge filed by the accused was dismissed and the challenge was made to the said order by filing a revision. One of the points urged on behalf of the revision petitioner therein was that correspondence between the petitioner/accused and certain officials of the Collector of Customs have not been brought in evidence and the Court, in exercise of its inherent powers under Section 482 of Cr.P.C. can look into those documents. However, the learned Judge, rejected the said submission by taking note of the judgment reported in *Angusami v. Kaleeswaran Ambalam*, 1989 Mad. L.W. (Cri.) 108, wherein it has been held as follows:- "This stage of Section 239 of the Code prior to the framing of the charge under Section 240 of the Code, is not expected to be a dress rehearsal of a trial. The Magistrate, at that stage is required to consider the police report and the documents sent along with it under Section 173 which are furnished to the accused in compliance with Section 207 of the Code and the explanation given by the accused during his examination and the submission, of any, made by the prosecution and the accused for finding out whether the charge, which means the accusation, levelled against the accused is groundless. At that stage, as rightly pointed out by the learned single Judge of the Delhi High Court in *Surinderkumar Yadav's case* (1986) 3 Crimes 645, it is not open to the Magistrate to consider any other document, which is not covered by the provisions of Section 207 of the Code, and the examination of the accused, if any, under that provision must necessarily be with regard to the material placed by the prosecution against him and the documents referred to under Section 207, Cr.P.C., but the documents produced by the accused are not to be taken into consideration by the Magistrate while applying his mind whether the accusation levelled against the accused is groundless or not." The learned Judge also considered *D.Vedagiri's case*, (1985 Mad.L.W. (Cri.) 243), cited *supra* and held that at this stage, it will not be possible to go into the merits of the argument since it is apparent that during investigation, the petitioner was called upon to explain the disproportion found by the investigating officer and thereafter the wife, daughter and the brothers of the petitioner, have been examined. Moreover, the petitioner

will have a right to challenge the statement during trial, but, prima facie, the statement cannot be excluded at present and the weight to be attached to the evidence of the witnesses will again relate to the stage of trial. 15. Similar view was taken in the judgment rendered in State by CBI vs. S. Bangarappa, 2001 Cri.L.J.

111, wherein the respondent was the former Chief Minister of Karnataka and he was prosecuted by the Central Bureau of Investigation (CBI) for the commission of offence under the PC Act, 1988 and he filed a petition before the High Court of Karnataka for quashing the said proceedings and it was allowed and hence, the CBI preferred an appeal before the Hon'ble Supreme Court of India. In paragraph 21 of the said judgment, the Hon'ble Supreme Court of India, by relying upon its earlier decision in State of M.P. vs. Dr. Krishna Chandra Saksena, (1996) 11 SCC 439, held as follows:- "21. Time and again this Court has pointed out that at the stage of framing charge the Court should not enter upon a process of evaluating the evidence by deciding its worth or credibility. The limited exercise during that stage is to find out whether materials offered by the prosecution to be adduced as evidence are sufficient for the Court to proceed further." 16. In Onkar Nath Mishra and Others vs. State (NCT of Delhi) and Another, (2008) 1 SCC (Cri.) 507, it has been held as follows:- "At the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, the court is not expected to go deep into the probative value of the material on record. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. The materials brought on record by the prosecution has to be accepted as true at that stage. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence." 17. In yet another decision in Hem Chand vs. State of Jharkhand, (2008) 5 SCC 113, it has been held as follows:- "...At the stage of framing of charge, the court will not weigh the evidence. The stage for

appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidence is brought on record at the trial. ..The court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be concern of the court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any. ..It is one thing to say that on the basis of the admitted documents, the appellant was in a position to show that the charges could not have been framed against him, but it is another thing to say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely. ..Hence, the trial court rightly refused to look into any of the documents filed by the appellant along with his application for discharge." 18. In the light of the above settled legal position enunciated in the various decisions of the Hon'ble Supreme Court of India, this Court is not inclined to go into the merits of the submissions made by the learned senior counsel appearing for the writ petitioner/appellant that the writ petitioner/appellant did not acquire any single property during his tenure as a Minister during the check period and his wife, through independent sources, had acquired assets. 19. The decision relied on by the learned senior counsel appearing for the writ petitioner/appellant in P.Nallammal's case, (1999) 6 SCC 559, is not applicable to the facts of this case for the reason that along with the public servant, his wife is also sought to be prosecuted for abetment of the offence and the Hon'ble Supreme Court of India, in the said decision, held that the PC Act does contemplate abetment of any of the offences specified in Section 13 (1)(e) of the PC Act. 20. Similarly, the decision relied on by the learned senior counsel appearing for the writ petitioner/appellant in Jagan M.Seshadri's case, (2002) 9 SCC 639, is also not applicable to the facts of this case, for the reason that the accused therein challenged his conviction under Section 13(1)(e) and (2) of the PC Act, 1988, by filing an appeal before this Court and it was dismissed and he preferred an appeal before the Hon'ble Supreme Court of India and the Hon'ble Supreme Court of India, on the basis of

the materials available on record in the form of oral and documentary evidence, found that the order of the High Court in reversing the order of acquittal passed by the trial Court cannot be sustained and accordingly allowed the appeal. But, in respect of the case on hand, the final report/charge sheet is yet to be filed and therefore, this Court, cannot venture into the merits or demerits of the materials collected by the investigating agency. 21. The decision relied on by the learned senior counsel appearing for the writ petitioner/appellant in *State of M.P. vs. Awadh Kishore Gupta*, (2004) 1 SCC 691, in fact, supports the case of the respondent. The facts of the said case would disclose that the respondent/accused was prosecuted for the commission of offence under the PC Act, 1988, and he filed a petition to quash the proceedings, before the Madhya Pradesh High Court at Gwalior Bench and it was allowed and challenging the legality of the same, the State of Madhya Pradesh preferred the appeal. The Hon'ble Supreme Court of India, in the said decision, in depth analysed the scope of Section 482 Cr.P.C. and held as follows:- "11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (See *Janata Dal v. H.S. Chowdhary and Raghubir Saran (Dr) v. State of Bihar*.) It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the inherent powers to quash the

proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decide the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings. [See *Dhanalakshmi v. R. Prasanna Kumar*, *State of Bihar v. P.P. Sharma*, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, *State of Kerala v. O.C. Kuttan*, *State of U.P. v. O.P. Sharma*, *Rashmi Kumar v. Mahesh Kumar Bhada*, *Satvinder Kaur v. State (Govt. of NCT of Delhi)* and *Rajesh Bajaj v. State NCT of Delhi*.]" 22. In the present case, the writ petitioner/appellant has invoked Article 226 of the Constitution of India for quashing the Final Opportunity Notice and also raised the same grounds with regard to the merits of the investigation. In the light of the ratio laid down in the above said decision, it is impermissible for this Court to look into the materials, as the same are within the domain of the trial Court. 23. The unreported judgment of this Court in C.A.No.528 of 2012 dated 22.03.2012 (*State of T.N. vs. K.Sivaraman*), is also not applicable to the facts of this case for the reason that after the full-fledged trial, the accused was acquitted and challenging the order of acquittal, the State of Tamil Nadu, rep. by the Inspector of Police, DVAC, Chennai, preferred the appeal and the learned Judge, after re-appreciating the entire materials available on record, has dismissed the appeal and thereby, confirmed the order of acquittal. 24. The learned senior counsel appearing for the writ

petitioner/ appellant placed reliance heavily upon the judgment of the Hon'ble Supreme Court of India rendered in DSP, Chennai, vs. K.Inbasakaran, (2006) 1 SCC 420. The facts of the case was that the respondent therein was an I.A.S. Officer and he was prosecuted for the commission of offence under Section 13(2) r/w 13(1)(e) of the PC Act and the case, after a full-fledged trial, ended in conviction. The respondent/accused therein preferred an appeal on the file of this Court and the appeal was allowed and consequently, the accused was acquitted. Aggrieved by the same, the State preferred appeal before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, has taken into consideration its earlier decision including the decisions rendered in K.Veerasami vs. UOI, (1991) 3 SCC 655. P.Nallammal vs. State, (1999) 6 SCC 55. and on the facts of the case, held that in case of a joint possession, it is very difficult when one of the persons accepts the entire responsibility and the wife of the accused has not been prosecuted and it is only the husband, who has been charged being a public servant and since the accused had offered proper explanation as to the assets possessed by him, the Hon'ble Supreme Court of India accepted the findings rendered by this Court and confirmed the order of acquittal. In the present case, the writ petitioner/appellant as well as his wife are prosecuted and moreover, the order of acquittal came to be passed against the accused namely, K.Inbasakaran, after a full-fledged trial. However, in the case on hand, the final report/charge sheet is yet to be filed. 25. In the judgment rendered in State of Maharashtra vs. Wasudeo Ramchandra Kaidalwar, (1981) 3 SCC 199. the respondent/accused was prosecuted for the commission of offence under Section 5(1)(e) and (2) of the Prevention of Corruption Act, 1947 and the State of Maharashtra has preferred the appeal challenging the order of acquittal passed by the High Court of Bombay in reversing the conviction and sentence passed by the trial Court. The Hon'ble Supreme Court of India has considered the legislative intent in making Section 5(1)(e) of the PC Act, 1947 and held that the extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under Section 5(1)(e) cannot be higher than the test laid by the court in V.D.Jhingan vs. State of U.P. (1966) 3 SCR 736. to establish his case by a preponderance of probability. It is also to be pointed out that the said case has also been decided on the basis of oral and documentary evidence produced by the

prosecution during the course of trial. 26. The facts of the case relied on by the learned senior counsel appearing for the writ petitioner/appellant in *M.C. Abraham vs. State of Maharashtra*, (2003) 2 SCC 649, would disclose that with regard to the complaint lodged by the Provident Fund Commissioner against the Directors of Maharashtra Antibiotics and Pharmaceuticals Ltd., the High Court of Bombay at Nagpur Bench, in a public interest litigation, had directed the respondent State to cause arrest and prosecute the Directors and the said order was put to challenge in appeals preferred by the concerned accused before the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India, considering the decision of the Privy Council in *King Emperor vs. Khwaja Nazir Ahmad*, (1944) 71 Indian Appeals 203 :: AIR 194.PC 18, held as follows:- "13. This Court held in the case of *J.A.C. Saldanha*, 1980(1) SCC 554, that there is a clear-cut and well-demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved by the executive through the police department, the superintendence over which vests in the State Government. It is the bounden duty of the executive to investigate, if an offence is alleged, and bring the offender to book. Once it investigates and finds an offence having been committed, it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the court requesting the court to take cognizance of the offence under Section 190 of the Code of Criminal Procedure, its duty comes to an end. On cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173(8), then commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime. In the circumstances, the judgment and order of the High Court was set aside by this Court.

14. Tested in the light of the principles aforesaid, the impugned orders dated 10-1-2002 and 11-1-2002 must be held to be orders passed by overstepping the parameters of judicial interference in such matters. In the first place, arrest of an accused is a part of the investigation and is within the discretion of the investigating officer. Section 41 of the Code of Criminal Procedure provides for arrest by a police officer without an order from a Magistrate and without a warrant.

The section gives discretion to the police officer who may, without an order from a Magistrate and even without a warrant, arrest any person in the situations enumerated in that section. It is open to him, in the course of investigation, to arrest any person who has been concerned with any cognizable offence or against whom reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Obviously, he is not expected to act in a mechanical manner and in all cases to arrest the accused as soon as the report is lodged. In appropriate cases, after some investigation, the investigating officer may make up his mind as to whether it is necessary to arrest the accused person. At that stage the court has no role to play. Since the power is discretionary, a police officer is not always bound to arrest an accused even if the allegation against him is of having committed a cognizable offence. Since an arrest is in the nature of an encroachment on the liberty of the subject and does affect the reputation and status of the citizen, the power has to be cautiously exercised. It depends inter alia upon the nature of the offence alleged and the type of persons who are accused of having committed the cognizable offence. Obviously, the power has to be exercised with caution and circumspection." The Hon'ble Supreme Court of India, ultimately set aside the impugned order insofar as it directed the arrest of the accused and also set aside the observations of the High Court directing the State to expeditiously conclude the investigation and file charge sheet. 27. The above decisions relied on by the learned senior counsel appearing for the writ petitioner/appellant, for the reasons stated above, are not applicable to the facts of the case on hand. Admittedly, the writ petitioner/appellant is yet to respond the Final Opportunity Notice and the contentions put forth by the learned senior counsel with regard to the merits of the case registered by the respondent cannot be gone into at this stage. 28. The power of this Court to interfere with the investigation done by the prosecuting agency is very limited. The Hon'ble Supreme Court of India, in the decision rendered in *State of Haryana vs. Bhajanlal*, 1992 Supp. (1) SCC 335, has considered the judicial review of the investigation done by the police and held as follows:- "As the entire matter stands only at the stage of the registration of the case and the investigation has not at all proceeded with on account of the order of stay granted by the High Court, it is not necessary for the Court at this stage to embark upon an enquiry

whether the allegations in the first information report are reliable or not and thereupon to render a finding whether any of the allegations are proved. These are matters which can be examined only by the concerned court after the entire materials are placed before it on a thorough investigation. Court is not called upon to examine the truth or otherwise of each of the instances of the alleged corruption indicted in complaint in snippet form and thereafter string them together and express any opinion, either way, since in our view any such opinion may affect the case of either party or cripple the course of investigation." In the same decision, the Hon'ble Supreme Court of India has also considered the scope of preliminary enquiry as well as mala fide nature of criminal investigation and held as follows:- "In this case the entire matter is only at a premature stage and the investigation is not yet proceeded with except some preliminary effort taken on the date of the registration of the case. The evidence has to be gathered after a thorough investigation and placed before the court on the basis of which alone the court can come to a conclusion one way or the other on the plea of mala fides. If the allegations are bereft of truth and made maliciously, we are sure, the investigation will say so. At this stage, when there are only allegations and recriminations but no evidence, this court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials at present available. Therefore, there is no force in the contention that the complaint should be thrown overboard on the mere unsubstantiated plea of mala fides." 29. In yet another decision in *State of Maharashtra vs. Ishwar Piraji Kalpatri*, AIR 199.SC 722, the Hon'ble Supreme Court of India held that before registration of the case under Section 5(1)(e) of the PC Act, 1947, it is obligatory to give opportunity of being heard to a person against whom the report is lodged and also considered the quashing of the prosecution on the ground of mala fide and in paragraph 22, held as follows:- "22. In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused.

Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not. Allegations of mala fides were also made in P.P. Sharma case against the informer. It was held by this Court that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings." 30. The learned senior counsel appearing for the writ petitioner/ appellant as well as the learned Advocate General relied upon the decision of the Hon'ble Supreme Court of India in K. Veerasami vs. UOI, (1991) 3 SCC 655. In the said case, the following questions arose for consideration, viz., i) Whether a Judge of the Supreme Court or a Judge of a High Court is a public servant within the meaning of Section 2 of Prevention of Corruption Act, 1947; ii) Whether a Judge of the Supreme Court or a Judge of High Court, including the Chief Justice of the High Court, can be prosecuted for having committed the offence of criminal misconduct as referred to in Section 5(1)(e) of the PC Act, 1947. By a majority view, the Hon'ble Supreme Court of India held that a Judge of a High Court or a Supreme Court comes within the definition of public servant and consequently, they can be prosecuted for the commission of offence under the provisions of the Prevention of Corruption Act, 1947. Argument was also advanced before the Hon'ble Supreme Court of India as to the entitlement of a public servant to an opportunity before an investigating officer to explain the alleged disproportionality between the assets and the known sources of income and in paragraph 75 and 76, it has been held as follows:- "75. In the view that we have taken as to the nature of the offence created under clause (e), it may not be

necessary to examine the contention relating to ingredient of the offence. But since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression for which he cannot satisfactorily account used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet.

76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the Cr PC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (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 he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi v. State of Bihar* that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

31.As already held in the earlier paragraphs that the investigation is in the mid-way and it is premature on the part of this Court to go into the truth and legality of the allegations levelled or materials collected by the prosecution at this stage and this Court is having a very limited role to play in that regard and various decisions of the Hon'ble Supreme Court of India, referred to above, also laid down the said proposition. Therefore, this Court is not inclined to go into the merits of the first information report or the statements furnished by the prosecution to the writ petitioner/appellant in the impugned notice dated 25.04.2012. 32.It is also contended by the learned senior counsel appearing for the writ petitioner/appellant that the launching of the prosecution and investigation is tainted for the reason that the petitioner belongs to the present opposition party. In the above cited decision, namely, *State of Maharashtra vs. Ishwar Piraji Kalpatri*, AIR 199.SC 722.the Hon'ble Supreme Court of India held that at the stage of investigation, when there are only allegations and incriminations, but no offence, the Court cannot anticipate the result of the investigation and render a finding on the question of mala fides on the materials, at present, available. 33.In *K.Karunakaran vs. State of Kerala*,

(2000) 3 SCC 761. against the appellant, who was the former Chief Minister of Kerala, a case was registered under Section 13(1)(d) of the PC Act, and Section 120-B of IPC and challenging the legality of the proceedings, the accused filed Crl.M.C. No.1353 of 1997 under Section 482 of Cr.P.C. in Crime No.1 of 1997. The High Court of Kerala dismissed the said petition vide order dated 01.07.1997 and challenge was made to the said order by filing appeal before the Hon'ble Supreme Court of India. The stand taken by the accused before the High Court as well as the Supreme Court was that the prosecution was actuated by extraneous consideration and intended to harass a political opponent of a ruling party without any substance. The Hon'ble Supreme Court of India, after taking into consideration the rival submissions and the materials placed before it, in paragraph 8, held as follows:- "8. After going through the pleadings of the parties and keeping in view the rival submissions made before us, we are of the opinion that the registration of the FIR against the appellant and others cannot be held to be the result of mala fides or actuated by extraneous considerations. The menace of corruption cannot be permitted to be hidden under the carpet of legal technicalities. In such matters probes conducted are required to be determined on facts and in accordance with law. The allegations of mala fides were, admittedly, not the basis for challenging the registration of the FIR in the High Court. If during the conduct of a preliminary inquiry the commission of an offence comes to light on the basis of new materials, the respondent officials were obliged to register a case and present it in a competent court of jurisdiction for holding of trial and adjudication. The government order (Annexure R-1) is not shown to have been used against the appellant in any way. The aforesaid order in fact protects the interests of the officials saving them from unnecessary harassment. Mere apprehension of the order being used against some persons is no ground to hold it illegal or unconstitutional particularly when its legality or constitutionality has not been challenged. Prima facie it does not hamper or interfere with the statutory functions of an investigating officer who has, otherwise, statutory rights to hold and complete the investigation in accordance with the provisions of the Code of Criminal Procedure. Our observations with respect to the legality of the government order are not conclusive regarding its constitutionality but are restricted so far as its applicability to the registration of the FIR against the appellant is concerned. We

are, therefore, of the opinion that the aforesaid government order has not been shown to be in any way illegal or unconstitutional so far as the rights of the appellant are concerned." 34.A perusal of the affidavit filed in support of the present writ petition would disclose that the writ petitioner/appellant took a similar stand and in the light of the above decision, this Court is not inclined to go into the same at this stage. 35.The learned senior counsel appearing for the writ petitioner/appellant made a forceful submission with regard to the non-following of Rule 76 of the Manual of DVAC approved by the Government of Tamil Nadu in G.O. (3D) 2, Personnel and Administrative Reforms (Personnel-N) Department, dated 06.01.1993. It is relevant to extract clause 76 of the above said manual, which reads thus:- 76. Final opportunity to be given to Accused Officers (DVAC Circular Memo No. 23321/VAC-4/88, dated 26th August, 1988) (1) There are observations by Courts of Law that the Accused Officers should be afforded necessary opportunity to account for the assets/pecuniary resources found to be disproportionate Such opportunity should be in addition to the examination of the Accused Officers during the course of the enquiry/investigation and will arise after the Basic Statements I to VI are finalised and the quantum of disproportionate assets/pecuniary resources has been determined. There are also contra observations that this opportunity is not very essential. However, for a correct assessment of the matter, it is desirable to give a final opportunity to the Accused Officers. (DVAC Circular Memo No. 33672/VAC-4/90, dated 23rd November, 1990) (2) In cases where actionable material is found, after approval of the Final Report at the Headquarters, the Accused Officer should be given the final opportunity by the investigating officer, communicating to the Accused Officer in writing and under acknowledgement, the details of total income and total expenditure during the Check Period and the likely savings at the end of the Check Period, details of the properties and pecuniary resources found possessed as also the quantum of disproportion at the end of the Check Period, as worked out in Basic Statements I to V, asking him to explain, within a reasonable time, the disproportion in assets as determined against the Accused Officer. The format of the letter to be addressed to the Accused Officer in this regard will be Proforma 28. (3) On receipt of the reply from the Accused Officer, the Investigating Officer should send it to Headquarters Office with a draft paragraph to this effect to be

incorporated in the Final Report. If the Accused Officer comes forward with any new plea or explanation, the same should be verified by the Investigating Officer and a definite finding regarding such plea or explanation should be given for incorporation in the Final Report. " 36. The scope of the Manual of DVAC came up for consideration in a decision rendered in K.Selvaraj vs. State, 2004 Cri.L.J.

3754. In the said case, the appellant and others were convicted for the offences under Sections 7, 13(1)(d) r/w 13 (2) of the PC Act and aggrieved by the conviction and sentence passed by the trial Court, they preferred an appeal before this Court. One of the points urged before the learned Judge was that Clause No.41 of the Manual of DVAC, as per which a public servant whose rank is preferably higher than that of the officer to be trapped, was not followed, which has resulted in serious prejudice to the first accused. The respondent/prosecution, in response to the said submission, submitted that the rules are framed for the guidance of vigilance officials and they are only directory and the non-observance of the same would not in any way affect the trap nor vitiates the prosecution. A single Bench of this Court has considered the said submissions and relying upon the earlier decision of this Court in G.A. Ethiraj vs. State, 2002 (1) Mad. L.W. (Cri.) 136 ::

2001. Cri.L.J.

4139, wherein it has been held that Rules under Vigilance Manual are only administrative and on non-observance of the same, there is no mandatory violation, which would affect the validity of the prosecution, the learned Judge held that the said rule came into operation on 18.09.1990 and whereas, the charge sheet was filed even in 1989 and hence, Rule 53 is not applicable to the case. 37. In the decision in Shashikant vs. CBI, (2007) 1 SCC 630. the appellant, namely, Shashikant claims himself to be a vigilant employee, made an anonymous complaint to the Central Bureau of Investigation (CBI), alleging corrupt practice and financial irregularities on the part of the officers of the department. A preliminary enquiry was conducted and thereafter, the investigating officer has opined that it was not necessary to register an F.I.R., but it would suffice to initiate departmental proceedings against the officers concerned. The higher officers had

also accepted the said recommendation and the opinion of the Central Vigilance Commission was also obtained. The appellant was in the services of Railways Department and he was transferred and challenging the legality of the transfer on the ground of mala fide, he moved the Central Administrative Tribunal and the same was dismissed and challenging the said order, he filed a writ petition before the High Court of Bombay at Nagpur Bench and the High Court dismissed the writ petition. The Hon'ble Supreme Court of India has considered the submissions of learned Additional Solicitor General appearing on behalf of the CBI with regard to the procedure for conducting investigation including the preliminary enquiry contemplated under the CBI manual and framed a question as to whether it was obligatory on the part of the first respondent/CBI to lodge an F.I.R. and carry out a full-fledged investigation about the truthfulness or otherwise of the allegation made in the anonymous complaint. The Hon'ble Supreme Court of India, after considering the said submission, held that when an anonymous complaint is received, no investigating officer would initiate investigative process immediately thereupon and it may, for good reasons, carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein. Reliance was also placed upon the decision of the Hon'ble Supreme Court of India in Vineet Narain vs. Union of India, (1998) 1 SCC 22.::

1998. SCC (Cri.) 307, wherein it has been held as follows:- "58.I.12. The CBI Manual based on statutory provisions of the Cr PC provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned." (Emphasis supplied) 38.A careful reading of the above cited decision would disclose that the accused cannot make any complaint with regard to the non-following of the procedures contemplated under the Vigilance Manual and as per the decision rendered in Vineet Narain's case, cited supra, any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned. 39.Assuming for the sake of argument that the respondent has failed to follow Rule 76 of the DVAC Manual in letter and spirit, it is for the concerned department to take action against the concerned official and

it is not open to the writ petitioner/appellant to take advantage of the same. Moreover, the respondent in the counter-affidavit in the earlier writ petition in W.P.No.8931 of 2012 as well as the present writ petition in W.P.No.13788 of 2012 took a specific stand that they had followed the Vigilance Manual and accordingly, issued the Final Opportunity Notice as per Proforma 28 of the said Manual. In the light of the stand taken by the respondent in the counter-affidavit in the above said writ petitions, it cannot be said that the respondent/investigating officer has not followed the provisions of the DVAC Manual. 40. It is very pertinent to point out at this juncture that the appellant herein earlier filed W.P.No.8931 of 2012 challenging the impugned questionnaire dated 11.03.2012 contending that the criminal prosecution is actuated by mala fides and that calling upon him to answer the questionnaire would amount to compel him to be a witness against himself and no preliminary enquiry was conducted as mandated by the Supreme Court and that the investigating officer has registered a case without conducting any preliminary enquiry. The respondent in their counter-affidavit in the said writ petition, took a specific stand in paragraph No.5 that it was only after conducting preliminary enquiry and having been satisfied that there was a prima facie material against the petitioner, a case in Crime No.17 of 2011 was registered for the offence under Sections 13(2) r/w 13(1)(e) of the PC Act, 1988. In paragraph No.11 of the said counter-affidavit, the respondent contended that the communication dated 11.03.2012, which was impugned in the writ petition, clearly gives the petitioner the choices, viz., a) reply to the questionnaire in writing; b) to appear in person and clarify the issue; or c) not to respond to the questionnaire. The respondent would further aver that the writ petitioner/appellant was not compelled to answer the questionnaire, but was given options to appear in person or to submit a written statement or to keep silence. 41. During the course of arguments in the said writ petition, the learned Public Prosecutor submitted that the impugned questionnaire is voluntary and it is for the petitioner either to answer or not to answer it. A single Bench of this Court (Hon'ble Mr. Justice Vinod K. Sharma), has taken into consideration the said submission and observed that in the event of the petitioner not answering the questionnaire, no adverse action will be taken and it will be for the investigating agency to proceed with the investigation strictly as per the provisions of the Code of Criminal Procedure and further observed that the

petitioner cannot have any grievance to the impugned questionnaire as the petitioner has the option to ignore it, if he is so advised. Thereafter, the respondent issued the Final Opportunity Notice dated 25.04.2012, which is impugned in the present writ petition, viz., W.P.No.13788 of 2012 and in response to the same, the petitioner sent an interim reply dated 09.05.2012 and in paragraph No.15 of the said reply, he made a request to the respondent to accept his explanation and drop further action in the matter. Since the petitioner has indicated in his reply dated 09.05.2012 that it was an interim reply, the respondent has issued a final notice dated 11.05.2012 extending time to furnish his reply on or before 26.05.2012. 42.In the light of the observations made in the order dated 10.04.2012 in W.P.No.8391 of 2012 filed by the appellant herein on an earlier occasion, it is for the appellant either to furnish his answer to the impugned notice dated 25.04.2012 or to ignore it, if he is so advised. It is to be pointed out at this juncture that neither the writ petitioner/appellant nor the respondent made a challenge to the order dated 10.04.2012 passed in W.P.No.8391 of 2012. 43.As already stated earlier, the learned Judge, in paragraph No.15 of the impugned order dismissing the writ petition in W.P.No.13788 of 2012, has held that the exact nature of the wealth possessed by an accused and whether the wealth is independently owned by his near relative is an issue which will have to be tried essentially in a trial and the burden lies on the public servant to satisfy the court that the excess wealth possessed by him is attributable to known sources. 44.This Court, on an independent application of mind to the entire materials placed before it and the decisions relied on by the learned senior counsel appearing for the writ petitioner/appellant and the learned Advocate General, is of the view that there is no error apparent or illegality in the impugned order dismissing the writ petition. 45.The points urged by the learned senior counsel appearing for the writ petitioner/appellant on the merits of the investigation, cannot be considered by this Court at this stage, as the power of judicial review is very narrow and limited. 46.Hence, for the foregoing reasons, the writ appeal is dismissed confirming the order dated 26.06.2012 passed in W.P.No.13788 of 2012. No costs. Consequently, connected M.P. is also dismissed. sra To The Deputy Superintendent of Police, Vigilance and Anti-Corruption, Vellore

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After we delivered the judgment, Mr.R.Shanmugasundaram, learned Senior Counsel appearing for the appellant, seeks Oral Leave, under Article 134-A (b) of the Constitution of India, to appeal before the Honourable Supreme Court. 2.We are of the view that the case does not involve a substantial question of law as to the interpretation of the Constitution. Hence, the Oral Leave sought for is declined.  
pb

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