**ABC 2025(I) 763 (MAD)**
**ACQUITTAL & BAIL CASES**

a

# HIGH COURT OF *MADRAS*

*(N. Seshasayee, J.)*

Crl.O.P.No.16673 of 2024

Decided on : 06 January 2025

b ***K. SHIVA KUMAR*** ***- Petitioner(s).***

***Versus***

***STATE REP BY ITS INSPECTOR OF POLICE, VIGILANCE & ANTI-CORRUPTION, CHENNAI*** ***- Respondent(s).***

c ***Law Covered :- (A) Prevention of Corruption Act, 1988 – Section 17-A – Prosecution of Public Servants – Mandatory Approval Requirement – Approval under Section 17-A PCA is mandatory before initiating any inquiry, investigation, or prosecution against a public servant for decisions taken in their official capacity. Held,*** d ***failure to apply independent scrutiny in granting approval renders the FIR unsustainable. Approval process must ensure that complaints are not motivated by personal vendetta. (Paras 20-23)***

***(B) Criminal Procedure Code, 1973 – Section 154& 528 BNSS (Section 173& 482 CrPC) – Quashing of FIR – Lack of Prima Facie*** e ***Evidence – FIR quashed as no incriminating material was found to support the allegations even after prolonged inquiry. Mere procedural lapses in tendering cannot be equated to a criminal offense unless accompanied by dishonest intent or financial loss. Held, absence of mens rea nullifies criminal liability. (Paras 30-34)***

f ***(C) Indian Penal Code – Sections 406 & 409 – Criminal Breach of Trust – Absence of Mens Rea – Allegations of misuse of official position in awarding tenders must be backed by tangible evidence of dishonest intent. Held, mere deviation from tender procedures does not amount to criminal breach of trust under IPC unless there is*** g ***wrongful gain or loss proven with specificity. (Paras 31-33)***

***(D) Criminal Justice – Judicial Scrutiny in Malicious Prosecution – Protection Against Vexatious FIRs – Where an FIR is manifestly attended with mala fide intent, the High Court has the*** h ***duty to scrutinize beyond the allegations and examine external circumstances. Held, an FIR based on an ulterior motive for personal vengeance warrants judicial intervention to prevent abuse of process. (Para 28)***

***Facts :-*** *The petitioner, former Commissioner of Municipality, filed a petition under Section 528 BNSS, 2023 (previously Section 482 CrPC) to quash an FIR registered by the Directorate of Vigilance & Anti-Corruption*

*(DVAC). The FIR was registered after a preliminary inquiry, alleging corruption and financial mismanagement related to three contracts issued by the petitioner while serving as Commissioner.*

*The core allegations were:*

1. *Cleaning contract awarded to A3. Municipal school toilets were maintained without following tender procedures.*

2. *Dengue eradication contract awarded to A4. No competitive bidding was conducted. No financial loss was alleged.*

*Procurement of Fenthion pesticide from A5. Lack of proper documentation. Alleged financial loss to the Municipality.*

*The petitioner argued that the allegations were baseless and motivated by a personal grudge of the complainant, who had a history of blackmailing public officials. Approval under Section 17-A PCA for the FIR was granted mechanically without independent application of mind. No supporting material was produced.*

***Law of Relief :- (i) Failure to conduct a meaningful inquiry under Section 17-A PCA vitiates the investigation.***

***(ii) Allegations were made by a habitual blackmailer, indicating mala fide intent.***

***(iii) No independent material was produced by the prosecution despite prolonged inquiry.***

***(iv) Tender extensions during natural calamities (floods) were administrative decisions, not criminal misconduct.***

***(v) Quashing of the FIR prevents unnecessary harassment of public officials acting in their bona fide capacity.***

***Counsel :- For Appellant(s):*** *Mr. Ravi Anantha Padmanaban, Senior Counsel.*

***For Respondent(s):*** *Mr. J. Ravindran, Additional Advocate General assisted by Mr. K.M.D. Muhilan, Government Advocate (Crl Side).*

***Cases Referred :-***

1. *State of Haryana Vs Bhajan Lal: 1992 Supp (1) SCC 335 (Para 3)*
2. *State of Rajasthan v Tejmal Choudhary: 2021 SCC Online SC 3477 (Para 5.2)*
3. *Mahmood Ali Vs State of U.P.: (2023) 15 SCC 488 (Para 11)*
4. *Saltb Vs State of U.P.: 2023 SCC Online SCI 947 (Para 11)*
5. *Achin Gupta Vs State of Haryana: 2024 SCC Online SC 759 (Para 11)*
6. *Subramanian Swamy Vs Union of India: (2014) 8 SCC 682 (Para 14)*
7. *Rishbud Vs State of Delhi: AIR 1955 SC 156 (Para 14)*

8. *Shreeroopa Vs State of Karnataka: 2023 SCCOnline Kar 68 (Para 14)*
9. *Nara Chandrababu Naidu Vs State of Andhra Pradesh: 2024 SCC Online SC 47 (Para 17)*
10. *Yashwant Sinha Vs CBI: (2020) 2 SCC 338 (Para 19)*
11. *Ram Avtar Sharma Vs State of Haryana: (1985) 3 SCC 189 (Para 23.1)*
12. *Lalitakumari case: (2014) 2 SCC 1 (Para 24)*
13. *Bhikhubhai Vithlabhai Patel Vs State of Gujarat: 2008) 4 SCC 144 (Para 25)*
14. *S.N.Chandrashekar Vs State of Karnataka: 2006) 3 SCC 208 (Para 25)*
15. *Khudiram Das Vs State of W.B.: (1975) 2 SCC 81 (Para 34)*

## ***ORDER***

***N. Seshasayee, J.:-*** This is a petition under Section 528 of the BNSS, 2023 filed by the first accused seeking to quash a FIR in Crime No. 2 of 2023 on the file of the respondent DVAC.

**The Facts**

2. At the relevant time material to this case, the petitioner was serving as the Commissioner of Pallavaram Municipality. Based on a complaint by a certain Anbalagan, now deceased, dated 27.03.2017, the first respondent has held a preliminary enquiry and proceeded to obtain an approval as is mandated under Sec.17A of the PCA vide proceedings dated 21.12.2021 and chose to register the FIR against five individuals for offences under Section 120-B, 406, 409 IPC and Section 13(2) r/w 13(1)(c) of the Prevention of Corruption Act, 1988. In terms of the FIR, three-pointed allegations are made against the petitioner in combination with other accused. They are:

> a) When the petitioner (A1) was the Commissioner of Pallavaram Municipality, he had awarded a contract to M/s. Deepthi Enterprises, arrayed as A3, which is a proprietary concern, to clean the toilets of 11 municipality-run schools for the year 2015 - 2016. This contract was awarded to the proprietrix of A3 concern without following the tender procedure envisaged under the Tamil Nadu Transparency in Tenders Act, 1998. The second part of the allegation is that during summer vacation of the year 2016 (May 2016), when the schools were not functioning, when there was no need for cleaning the toilets, A3 raised bills as if she had executed the contract work for May 2016 and this document was accepted by A2, who was working as engineer of the Municipality, acting on which the present petitioner had passed the bills. The specific allegation is that based on the incorrect records, A1 paid full amount of Rs.8,55,000/- to M/s.

Deepthi Enterprises. But he was supposed to pay only a sum of Rs.1,75,000/- to M/s. Deepthi Enterprises for cleaning 47 toilets that were used during the vacation holidays of 2015, whereas, he had paid an additional sum of Rs.6,85,000/- to M/s. Deepthi Enterprises and therefore A1 Thiru. K. Shivakumar, caused financial loss to Pallavaram Municipality, to the tune of Rs.6,85,000/- and committed grave offence, based on which accusations were levelled against A1 to A3.

b) During the year 2015 - 2016, a contract was issued to A4, a private limited company, for executing the policy of the Government to prevent and eradicate dengue in Pallavaram Municipality area. This contract was issued without following the tender procedures. There is no financial loss.

c) The third allegation is that for treatment of elephantiasis, orders were placed with A5, a private limited company, which manufactures and supplies a medicine named Fenthion by A1 without following the tender procedures. Bills were paid without making any entry in the stock register or without any entry in the distribution register to show their proof of dispatch and the suspected loss to the Municipality is around Rs.4,92,487/-.

2.1 On the basis of the aforesaid allegations, the respondent sought the approval under Section 17-A of the Prevention of Corruption Act, 1988 for registering a case and to investigate the aforesaid allegations, secured it vide proceedings dated 21.12.2021, following which the FIR came to be registered, not immediately, but after some 27 months, on 13.03.2023, some 6 years after the complaint was made against the petitioner along with A2 and the agencies A3 - A5 who are all the alleged beneficiaries of the petitioner's decision. At that point of time, the petitioner was serving as the Commissioner of Erode Municipal Corporation.

3. The FIR registered by the respondent is now under challenge, and the grounds are:

a) The FIR is borne out of a personal grudge between the petitioner and the de-facto complainant, who was already being prosecuted for blackmailing the petitioner and other Municipal Commissioners, IAS, and IPS officers. Thus, the bonafides of the de-facto complainant itself was seriously questionable and the DVAC was clearly in error in not examining this aspect.

b) The allegation that the petitioner had caused monetary

loss by awarding tenders to Deepthi Enterprises is totally false. As a matter of fact, the undisputed records would show that the payments to the contractor were made only on 18.02.2019 whereas the petitioner was relieved from the post of Commissioner on 24.08.2018 FN. The contract was extended on account of the heavy rainfall which battered Chennai city in 2015, as a result of which the Municipality faced a severe shortage of staff.

c) As regards the second allegation, on account of the heavy rainfall (over 50 cm) in December 2015, the Municipality was plagued with mosquito menace and instances of dengue were being reported with alarming frequency. Vide a letter dated 28.11.2017, a written assurance was given by the Government to have a dengue control staff all through the year. However, as there was no staff in the Municipality, the work was completed through Relyan Facility Services Private Limited. These works were completed with the approval of the Council and in fact the Municipality had saved a total of Rs 7,78,320.

d) As regards the third allegation, the purchase of fenthion pesticide from Pyrethrum India Private Limited was made pursuant to a council resolution dated 29.02.2016. The supplies were also approved by the Tamil Nadu Medical Service Corporation vide proceedings dated 14.10.2015. This purchase was made after following all the procedures and obtaining approvals.

e) In view of the above, it was clear that the approval accorded under Section 17-A was without any application of mind since the material which is available with the Government itself would show that the aforesaid allegations are wholly vexatious, false and have been made out of spite and ill will. Hence, the FIR must be quashed applying the guidelines set out in **State of Haryana Vs Bhajan Lal: 1992 Supp (1) SCC 335**.

The respondent had filed its counter which disclosed:

a) Tender was invited for cleaning 184 toilets in 11 schools in Pallavaram Municipality for a 30-day period. The tender was opened on 13.11.2015 and was awarded to the lowest bidder M/s Deepthi Enterprises (A3). The bid was accepted by the Council vide resolution dated 30.12.2015, and work order dated 30.12.2015 was given to A3 for one year instead of 30 days at the instance of A1. Thus, he violated the tender conditions to favour

A3. The tenure of A3 was extended periodically till the selection of a new contractor in 2018.

b) A1 did not follow the instructions contained in GO Ms 166 dated 23.11.2016. As regards the documents related to allegation No 1, the bills paid to the contractor were received by the DVAC only on 11.07.2024 and the same is under perusal. Some of the documents are not available and the same is under the process of being searched out.

c) As regards the second allegation, the documents relating to this allegation are not available with the Municipality since it merged with the Tambaram Corporation. The allegations could be verified only after receipt of documents as and when the same are found.

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**Arguments**

5.1 Heard Mr. Ravi Anantha Padmanaban, learned Senior Advocate for the petitioner, and Mr. J. Ravindran, learned Additional Advocate General assisted by Mr. K.M.D Muhilan, learned Government Advocate (Criminal Side).

5.2 During hearing, the learned counsel for the petitioner submitted that even the approval granted for registering the case under Sec.17A of the PCA could not have been proper since the materials produced show definite non-application of mind while granting the approval. Sec.17A is not an ornamental embellishment of zero value, but has been introduced in the statute with considerable purpose as it aims to save honest public servant who makes bonafide decisions and recommendations from being victimized. If the dictum of the Supreme Court in **State of Rajasthan v Tejmal Choudhary: 2021 SCC Online SC 3477** is analyzed, the Supreme Court has impliedly proceeded on the basis that Sec.17-A is substantive in nature. As a matter of fact, Section17-A is both procedural and substantive. It is procedural because it is not penal in character; and it is substantive, since the need for a prior approval that it insists for commencing an enquiry, inquiry or investigation has a larger purpose of protecting honest and bonafide administrative decisions and recommendations made by honest public servants from coming

under the scanner. Hence, this Court considered it fit to understand how Sec.17A can operate at the ground level, and Mr. V. Karthic and Mr. John Sathyan, learned Senior Advocates were appointed to assist this Court as Amici Curiae.

6.1 Opening with a statement that the petitioner has been doubly victimized, first at the instance of Anbalagan, a blackmailer, and secondly under the Act since, notwithstanding the complaint of Anbalagan, the authority who was enjoined with the responsibility of according approval under Sec.17A of the PCA has not even attempted to verify the probable truth of the complaint with reference to relevant Government Orders or other records in the Municipality. And, despite the petitioner producing copies of all relevant records to prove the falsity of the accusation made, the respondent has not even chosen to deny the correctness of the documents so produced. And, these documents are available to the authority who granted approval under Sec.17A to verify before arriving at a decision to grant approval, argued the learned counsel. He proceeded to argue:

a) Complainant Anbalangan was a publisher of a journal 'Ullatchi Alasal', but his journal is but a medium for blackmailing public servants, and to demand money lest he would publish false stories and spoil the image of honest officers, and used to circulate his publication in the Municipality. And, A1 became his victim when he made a demand for money. On 13.04.2017, Anbalagan met A1 and blackmailed him threatening to publish false articles if he did not pay a sum of Rs 50,000. As A1 refused, he published an article with false content. Again on 24.04.2017 the second respondent met A1 and demanded Rs 1.0 lakh. As his menace became intolerable, on 26.04.2017 the petitioner lodged a complaint before the St Thomas Mount Police Station complaining what he was undergoing at the hands of the blackmailer, and this had led to the registration of a FIR in Crime No 602 of 2017 against Anbalagan, for the offences under Sections 506(i) and 384 IPC.

b) Anbalagan was a habitual blackmailer and it is believed that he had not even spared those who are occupying high positions in the administrative hierarchy. In the process, he had targeted a certain Parthiban, the then Municipal Commissioner of the Coimbatore Corporation, and demanded Rs 1 lakh from him. Parthiban lodged a complaint against Anbalagan, based on which a case came to be registered against

him, pursuant to which Anbalagan was arrested and was remanded to judicial custody on 27.04.2017. It is on the very day the FIR was registered against him by the St Thomas Mount Police Station on basis of the complaint of A1.

c) Anbalagan had made random accusation against A1. Given the fact that the complainant was a black-mailer against whom multiple complaints or FIRs have been filed at the instance of various public servants including the petitioner, it was all the more necessary the approval-proceedings contemplated under Sec.17A of the PCA are not reduced to a farce. Indeed, the respondent had taken few years to complete its enquiries before registering the FIR. Did not these authorities have an opportunity to refer to the very materials the petitioner has now produced to show why the FIR itself has become a tool of victimisation?

The merit of the complaint must be appreciated in the backdrop of the fact that the complainant has been a professional blackmailer.

6.2. Proceeding further, the learned counsel argued:

a) So far as the award of contract for cleaning the school toilets of the Municipality is concerted, the decision to award the contract was made by his predecessor, vide his proceedings dated 31.07.2015. The petitioner assumed charge as Commissioner only on 06.08.2015. The proceedings of his predecessor dated 31.07.2015 would show that all procedures were followed by his predecessor.

b) The first allegation is that the petitioner has awarded a contract to A3 without following the tender process and in particular had cleared the bills raised by A3 for the month of May, 2016, for a sum of Rs.8,55,000/- when he should have paid only Rs.1,75,000/-. The allegation was that during summer vacation since the schools are closed, the toilets need not be cleaned. But so far as the award of the contract is concerned, the Municipal Council had passed a resolution. The petitioner, as the Commissioner of the Municipality had passed proceedings on 19.10.2015 calling for tenders, pursuant to which three individuals had participated in the bid and contract was awarded to A3, as her quotation was the lowest and her bid indeed was accepted and approved by the Municipal Council, and it was recommended to A1 formally for his approval. A1 was satisfied that the quotation of A3 was the lowest and approved the same.

c) Secondly, so far as payment of bills for the month of May, 2016 to A3 is concerned, the petitioner, as the Commissioner of Municipality, cannot personally visit every school to ascertain whether A3 had executed the work. He necessarily has to rely on the bills as presented before him as per the procedure envisaged. As per the procedure, every month's bills might have to be raised by A3 and it has to be countersigned by the Headmaster of the school as well as A2, the Engineer of the Municipality. When these bills were presented before him for signature, the petitioner necessarily has to trust the same, and accordingly he had passed the bills bona fide. After all, and as stated earlier, it is humanly impossible for the Commissioner of a Municipality to inspect every school every day and to personally ascertain whether school-toilets have been cleaned by the contractor.

d) The next allegation was regarding the contract awarded to A4. Despite a long preliminary enquiry spreading over five years, the investigating agency has not been able to find any financial irregularities in the matter of procuring their services. (Page 71 of the typed set of papers). The tender was awarded to A4 not by the petitioner but by his predecessor in office vide his proceedings dated 31.07.2015. As stated earlier, the petitioner assumed charge as Commissioner of the concerned Municipality only on 06.08.2015. Indeed the proceedings of the then Commissioner of Pallavaram Municipality dated 31.07.2015 show that he had followed the tender procedures and awarded contract to A4 as his quotation was the lowest of the two who had participated in the bids. Inasmuch as no financial irregularities are alleged against the petitioner and since the contract was awarded only by following the tender procedure and that too by the predecessor in office of the petitioner, the accusation against the petitioner cannot be sustained.

e) Turning to the supply of medicine Fenthion, the choice of the supplier was identified by Tamil Nadu Medical Services Corporation Ltd. as could be seen from the proceedings dated 14.10.2015. As required, each of the Municipalities might have to enter into a formal contract with A5. This was done. Indeed, despite the proceedings of the Tamil Nadu Medical Services Corporation Ltd the medicine of A5 was tested for its quality with Bangalore Test House, and only based on its report the

Municipality has chosen to go ahead with the procurement of medicine from A5 for which a formal agreement was entered into. But the core allegation is that no stock register or distribution register of the said medicine to the tune of Rs.4,92,487/- was maintained. (The copies of the relevant stock register and distribution register are made available in Page 100 to 111 of Vol.I of petitioner's typed set of papers). Again if only the approval proceedings under Sec.17A and the enquiry of the first respondent had been meaningful, the petitioner herein would not have been forced to face the agony and embarrassment of a criminal accusation against him.

Summing up his arguments the learned counsel submitted that the petitioner is being victimized for no fault of his. Even after being made aware of the materials which the petitioner has now made available as part of his petition, the prosecution is yet to make a candid statement on a matter which it has been probing for seven years now, regarding something which is alleged to have taken place about nine years ago.

7. Per Contra, Mr. J. Ravindran, the learned Additional Advocate General made the following submissions:

a) The decision of the Government to outsource cleaning of toilets in the schools run by the local bodies was declared by the Government vide G.O.Ms.No.77, School Education Department, dated 13.04.2015. This was replaced by G.O.Ms. No.166, Municipal Administration and Water Supply (MA.IV) Department, dated 23.11.2016. It provides for engagement of Private Service Provider Agency for cleaning the toilets, removal of bushes around the toilets, sweeping the classrooms and dining hall etc., in the schools run by the Municipalities, and these agencies shall be identified as per the Tamil Nadu Transparency in Tenders Act. It further stipulates in Clause-I (iv) that "an estimation shall be prepared by the Urban Local Body adopting the rate (per day) fixed by the District Collector for the proposed sweepers / sanitary labourers". It also provides vide Clause I (vii) (viii) (ix) that the schools shall be provided with minimum of 1 female worker and 1 male worker for cleaning the toilet and one sweeper for cleaning the school campus; and in cases of Girls' schools, minimum two female workers shall be provided along with one sweeper; and in case of Boys' schools, minimum two male or female workers shall be provided along with one

sweeper.

b) So far as Pallavaram Municipality is concerned, the following facts are important:

- *The petitioner as the Commissioner of Pallavaram Municipality had invited tender vide his proceedings dated 19.10.2015, and the period of contract was fixed at 30 days;*
- *In response to the tender, three service providers had responded and the petitioner had awarded contract to A3 as if since it quoted the least.*
- *It is after the award of the contract to A3 as indicated above, the Government came out with G.O.Ms.No.166 dated 23.11.2016, to which reference has been made above. And in terms of G.O.Ms.No.166, contract can be awarded only by following the procedures of the Tamil Nadu Transparency in Tenders Act. However, instead of going for tender, the petitioner had issued the proceedings dated 30.12.2015 extending the period of contract to one year from 01.01.2016. This is in blatant violation of tenor of G.O.Ms.No.166, and he further extends it for three more months from 01.01.2017 vide his proceedings dated 02.01.2017, which again violates G.O.Ms.No.166. Moreover, he in his capacity as Special Officer of the Municipality had made a proposal for extending the contract to A3 from 01.04.2017 to 31.03.2018, and approved his own recommendations in his capacity as the Commissioner vide proceedings dated 30.03.2017.*
- *Thereafter, he again made a recommendation for extending the term of contract to A3 from April 2018 till a new contractor was selected, as Special Officer of the Municipality, and approved the same in his capacity as the Commissioner vide proceedings dated 16.03.2018. There has been continuous breach of the intent behind G.O.Ms.No.166.*
- *It is in these circumstances the Joint Director cum Assistant Commissioner, Tambaram Corporation had addressed a complaint dated 08.08.2024, wherein he had indicated that Rs.297/- as the daily wages payable for one staff as fixed by the District Collector for 2014-2015, if it is so calculated for 11 schools at three staff per school for 31 days, the total monthly outlay would be Rs.3,03,831/- per month, whereas A3 was paid Rs.9,20,000/- per month, and by this method there has been a wrongful loss to the Municipality to a tune of Rs.1,10,91,042/- from 01.01.2017 to 30.06.2018.*

c) And when this complaint was received, there was some enquiry made into this and whereupon necessary approval was

obtained and case has been registered.

d) So far as the remaining two allegations regarding 'Mosquito eradication scheme' and 'Medicine for Elephantiasis' are concerned, they are under investigation.

8.1 The learned counsel for the petitioner would now make the following submissions in reply:

a) To contend that G.O.(Ms) No.166 dated 23.11.2016 has replaced G.O.(Ms) No.77 dated 13.04.2015 is fundamentally wrong. In G.O.(Ms) No.77 dated 13.04.2015, the Government came out with a policy decision for cleaning the toilets of all schools run by local bodies, and this G.O. was issued by the School Education Department. However, the modalities of the same were not adequately delineated in G.O.(Ms) No.77. It is in these circumstances, the Government came out with G.O.(Ms) No.166 dated 23.11.2016, and this was issued by Municipal Administration Department. In other words, to give effect to the G.O. issued by the School Education Department, another G.O. was issued by the Municipal Administration Department. Hence, G.O.166 should not be read in isolation and in exclusion of G.O. (Ms) No.77, but in conjunction with G.O.(Ms) No.77.

b) As readily contended by the learned Additional Advocate General, G.O.(Ms) No.77 merely stipulated the number of toilets as the basis for making an estimate, but in G.O.(Ms) No.166, it proceeds to qualify that every school is entitled to be cleaned by three sanitary workers. Whereas in the estimate prepared for the year before tender was invited for award of contract to A3, one sanitary worker per day, which as per the estimate, is required to clean four ladies toilets, four gents toilets and toilets for physically handicapped persons and ten number of urinals. This is seen from Page 11 of Volume - I of Petitioner's type-set. Now based on G.O.Ms.No.166, if every school were to be provided with three sanitary workers, then the per day wages payable to the sanitary worker will increase threefolds.

c) Indeed the per day wages for daily-rated sanitary workers as fixed by the District Collector has been constantly on the rise. For instance, in 2016-2017, the wages for the daily-rated sanitary worker has increased from 346/- to 362/-. Now by capping the per day salary of sanitary worker and limiting it to one worker per day based on the tender quotation, the petitioner indeed has helped the Municipality to save money.

d) On this aspect, the Joint Director cum Deputy Commissioner of Tambaram Corporation in his proceedings dated 08.08.2024, has only computed the salary for 33 sanitary workers for the year 2016-2017 and 2017-2018, not at the rates fixed by the Collector, but at the initial rates fixed for the year 2015-2016, and he stops there. And this proceedings did not take into account the cleaning materials which necessarily include various items such as phenyl, toilet cleaning powder, broomsticks etc. And G.O.(Ms) No.166, Clause No.III (i) provides that the materials required for cleaning the toilets must be provided by the service provider itself, which implies, the estimate will necessarily include this.

e) Thus by extending the contract of M/s.Deepthi Enterprises, at the rate which M/s.Deepthi Enterprises has quoted in its quotation which led to the issue of work order, the petitioner has only capped the total amount payable.

8.2 Moving further, the learned counsel submitted that:

a) So far as the 30 days period for which the initial contract was awarded is concerned, the notification inviting tender dated 19.10.2015 has a tabulation with 5 columns. In Column 3 the estimated value of the work is indicated as Rs.9.75 lakhs. And in Column 5 the period of work is indicated as 30 days. What in effect it intended was the estimated value of the contract mentioned in column 3 is for a period of 30 days. This means the estimate which was prepared before the tender was invited for cleaning the toilets was prepared for 30 days. Here, extending the contract from 01.01.2016 for one year immediately after the expiry of 30 days period in December, 2015, will not invite any criminality for the rate was still the same. It should not be forgotten due to floods which the city witnessed in December, 2015, the entire city was floating. Therefore contingency decisions were taken to manage the situation. Owing to the same, if at all it is considered that this decision is bad, it cannot be tainted with criminality. It is hence Sec.17A approval must be done with seriousness.

b) Before 31.12.2016, G.O.166 has arrived in the scene. Clause I (xii) thereof stipulates that the successful private service provider should have an agreement with the local body and should have the witness of Head Master of the concerned school, and that the agreement might be terminated only if the service of

the contractor was not satisfactory. Therefore, the duration of the contract is extendable beyond 31.12.2016. The respondent now reads G.O.166 selectively.

c) This apart, Clause I (xiii) states that private service provider shall be paid on monthly basis the amount quoted in the tender after getting the performance satisfaction letter from the Head Master of the concerned school, but the petitioner had not received any such communication of dissatisfaction of the service rendered by the private service provider (A3).

d) In almost every Municipality or Corporation, the same contractor is retained year after year, essentially because Clause I (xii) of G.O.(MS) No.166 provides that the contract can be terminated only upon the Head Master of the school communicating his or her dissatisfaction over the service provided by the contractor. Illustratively, the learned counsel brought to the notice of this Court, the proceedings of the Coimbatore City Corporation dated 31.08.2016, wherein they have retained the same contractor to whom contract for cleaning the toilets of the schools run by the Corporation was awarded pursuant to G.O.(Ms) No.77, and the Coimbatore Corporation had invited a fresh tender only on 19.01.2023. This implies, since the publication of G.O.(Ms) No.77 till 19.01.2023, the same contractor continued in other jurisdictions as well notwithstanding G.O.(Ms) No.166. And till date, except the report of the Deputy Commissioner of Tambaram Corporation dated 08.08.2024, wherein he had egregiously erred in quantifying the loss, there is no audit objection on this issue.

8.3 So far as the communication of the Joint Director of Tambaram Corporation, dated 08.08.2024 is concerned, it was issued during the pendency of the present petition, providing false information, which implied there is an attempt to witch-hunt the petitioner and since the complaint of a blackmailer has come in handy, it is being used to harass the petitioner. It is hence proper application of mind under Sect.17A is essential before approval is granted.

9. In reply, the learned Additional Advocate General made the following submissions. Clause I (xii) of G.O.(Ms).No.166 only enables continuation of the contractor till a dissatisfaction is expressed by the Head Master of the school vis-a-vis the service provided by the contractor, but it contemplates existence of a contract as on the date of

coming into force of G.O.(Ms).No.166. Therefore, if the statement of the petitioner's counsel is to be appreciated, then there should have been a valid and subsisting contract granted only for 30 days under G.O.(Ms).77.

**Discussion & Decision**

10. There are two parts to this case. The one is on facts. The other is if the facts as argued before the Court taken along with the materials provided by both sides were to indicate that the prosecution case does not stand on surer footing, then how far the application of mind is necessary under Sec.17A of the PCA. It is underscored that while three specific accusations are made in the complaint and the same gets repeated in the FIR, till date the prosecution has been able to make some statements only with regard to the first allegation, and nothing about allegations 2 and 3.

11. There is merit in the argument of the learned AAG that at the time when FIR is challenged, the Court shall confine its probe only to the extent of allegations which the FIR discloses, and cannot travel beyond what it alleges. This Court partially agrees with it. However, it is also necessary to emphasise that the Court is not powerless to strike off a FIR if it is drenched and soaked in malafide or where the allegations therein, even if their truth is accepted, do not disclose an offence. The locus classicus governing the parameters for quashing a FIR under Section 482 Cr.P.C (presently Section 528 BNSS, 2023) is the decision of Ratnavel Pandian, J speaking for a Bench comprising of himself and Jayachandra Reddy, J in **State of Haryana Vs Bhajan Lal: 1992 Supp (1) SCC 335**. Setting out the parameters to quash a FIR in exercise of inherent power under Section 482 Cr.P.C, it was held:

> *"Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused."*

Nevertheless, even in ***Bhajan Lal***, the Supreme Court was alive to another category of cases which may require a slightly nuanced approach. These classes of cases are set out in paragraph 102 (7) of the judgment which is as under:

> *"(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

In **Mahmood Ali Vs State of U.P.: (2023) 15 SCC 488**, the Supreme Court has explained the scope of the High Court's powers in case involving malafides:

*"11. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the court owes a duty to look into the FIR with care and a little more closely.*

*12. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.*

*13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."*

The aforesaid decision is followed in **Saltb Vs State of U.P.: 2023 SCC Online SCI 947** and **Achin Gupta Vs State of Haryana: 2024 SCC Online SC 759**.

12. Therefore, a FIR is neither beyond challenge nor beyond judicial review of the Court. The issue here is whether the FIR in the instant case is liable to be quashed, and if so, on what parameters?

a There are three specific allegations which the FIR makes: (a) Awarding contract to A3 for cleaning the school toilets; (b) Allegation about mosquito eradication programme; (c) Issue relating to procurement and distribution of medicine for elephantiasis. And, the petitioner literally took on the prosecution by placing materials in the form of typed set of papers to defend these allegations in the FIR. He b would then attempt to highlight: (a) how baseless and frivolous the allegations in the FIR have been; and (b) how a wrong prosecution could have been avoided if only the authority who granted the approval had applied its mind to the materials that he had produced, to which the authority had access.

c

13. Producing the letter issued by the approving authority under Sec. 17-A of the P.C Act, for the perusal of the Court, the learned AAG submitted that proceedings under Sec.17A is not justiciable, for if investigation were to be halted based on a perceived d inadequacy of application of mind of the authority granting approval, then it will hamstring the very purpose of the PCA, and hence the Court may not be justified in embarking on a roving enquiry either of the adequacy of application of mind by the approval-granting authority under Sec.17A, or the materials which the accused may e produce in defence of his case at this stage, for Court is not expected to suspect a FIR, but to believe it. Reliance was place on the ratio of the Supreme Court in **State of Haryana Vs Bhajan Lal: AIR 1992 SC 604**.

f

14. According to Mr. V. Karthic, learned Senior Advocate, Sec. 17-A was enacted pursuant to the judgment of the Supreme Court in **Subramanian Swamy Vs Union of India: (2014) 8 SCC 682** and he added that material collected dehors the approval under Sec. 17-A cannot be obliterated in view of the decision in **Rishbud Vs State of** g **Delhi: AIR 1955 SC 156**. Mr. John Sathyan, learned Senior Advocate drew the attention of this Court to the SOP of the Government of India for processing cases under Sec. 17-A which contemplates that forwarding of clear and authenticated documents to the authority whose approval is mandatory for commencing any enquiry, inquiry h or investigation in terms of Sec.17A is mandatory. It was pointed out that para 4.2 of the SOP would indicate that the police officer must seek prior approval before verifying the materials which are collected. Referring to the ratio in **Shreeroopa Vs State of Karnataka: 2023 SCCOnline Kar 68**, the learned counsel submitted that the power to evaluate the material collected by the IO was with the authority at a

time when such applies his mind to consider a case for grant/refusal of approval. Hence, given the object behind Sec. 17-A, application of mind by the approval-granting authority is *sine qua non* before any enquiry, inquiry or investigation can take place.

15. This brings to fore a need to understand the functional objectives of Sec.17A of PC Act pragmatically. In jurisdictions or in genre of cases where Sec.17A does not have a role to play, there is greater merit in the contention that whenever Courts are required to consider the sustainability of a FIR, it might have to confine its enquiry to its contents for ascertaining if the FIR discloses an investigable case. However, the Parliament in its legislative wisdom has chosen to differentiate the criminal allegations against a public servant pertaining to the administrative decision taken or recommendation made from other classes of offences, and therefore in the classes of cases where Sec.17A is applicable, different consideration will necessarily prevail.

16. This now takes this Court to understand the scope of Sec.17A of the Prevention of Corruption Act. The provision has an interesting history which must be noticed. Vide Act 45 of 2003, Section 6-A was inserted into the Delhi Special Police Establishment Act, 1946. The provision was as under:

> ***"6-A.Approval of Central Government to conduct inquiry or investigation.—****(1) The Delhi Special Police Establishment shall not conduct any inquiry or investigation into any offence alleged to have been committed under the Prevention of Corruption Act, 1988 (49 of 1988) except with the previous approval of the Central Government where such allegation relates to –*
>
> *(a) the employees of the Central Government of the level of Joint Secretary and above; and*
>
> *(b) such officers as are appointed by the Central Government in corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by that Government.*
>
> *(2) Notwithstanding anything contained in sub-section (1), no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any gratification other than legal remuneration referred to in clause (c) of the Explanation to Section 7 of the Prevention of Corruption Act, 1988 (49 of 1988)."*

The constitutional validity of Section 6-A was assailed before

the Supreme Court in **Subramanian Swamy Vs CBI: (2014) 8 SCC 682**. The contention raised therein was that Section 6-A had the effect of shielding corrupt public servants and was, therefore, violative of the rule of law enshrined in Article 14. Section 6-A was eventually struck down by the Constitution Bench in 2014 in the decision cited above.

17. Section 17-A of the PC Act is therefore a variant of Section 6-A of the Delhi Special Police Establishment Act, 1946, and this Court is informed that there is a challenge pending to its constitutional validity in the Supreme Court. However, for the present, the Court must proceed on the basis of the provision as it exists. Section 17-A was inserted by Act 16 of 2018 and came into force on 26.07.2018, and it reads as follows:

> *"174. **Enquiry or Inquiry or investigation of offences relatable to recommendations made or decision taken by public servant in discharge of official functions or duties.—**No police officer shall conduct any enquiry or inquiry or investigation into any offence alleged to have been committed by a public servant under this Act, where the alleged offence is relatable to any recommendation made or decision taken by such public servant in discharge of his official functions or duties, without the previous approval –*
>
> *(a)in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of the Union, of that Government;*
>
> *(b) in the case of a person who is or was employed, at the time when the offence was alleged to have been committed, in connection with the affairs of a State, of that Government;*
>
> *(c) in the case of any other person, of the authority competent to remove him from his office, at the time when the offence was alleged to have been committed:*
>
> *Provided that no such approval shall be necessary for cases involving arrest of a person on the spot on the charge of accepting or attempting to accept any undue advantage for himself or for any other person:*
>
> *Provided further that the concerned authority shall convey its decision under this section within a period of three months, which may, for reasons to be recorded in writing by such authority, be extended by a further period of one month."*

The terms "inquiry", "enquiry", and "investigation" have been elaborately explained by the Supreme Court in **Nara**

**Chandrababu Naidu Vs State of Andhra Pradesh: 2024 SCC Online SC 47** and hence they do not require any reiteration.

18. From a plain reading of the provision, it is apparent that the scope of protection afforded by Section 17-A is now confined to alleged offences emanating from (i) any recommendation made or (ii) decision taken by the public servant while acting in discharge of his official functions or duties. In such cases any form of enquiry, inquiry or investigation is statutorily barred without obtaining previous approval from the authorities set out in Section17A (a) –(c). The obvious object is to safeguard the public servant from vexatious prosecutions and to allay the fear in the minds of the administration that even honest exercise of discretionary functions would expose them to criminal prosecution. The proviso carves out an obvious exception to cases which are at variance with the purpose of the protection.

In **Yashwant Sinha Vs CBI: (2020) 2 SCC 338**, the Supreme Court has held that the compliance with Section 17-A is mandatory. It declared:

> *"In terms of Section 17-A, no police officer is permitted to conduct any enquiry or inquiry or conduct investigation into any offence done by a public servant where the offence alleged is relatable to any recommendation made or decision taken by the public servant in discharge of his public functions without previous approval, inter alia, of the authority competent to remove the public servant from his office at the time when the offence was alleged to have been committed. In respect of the public servant, who is involved in this case, it is clause (c), which is applicable. Unless, therefore, there is previous approval, there could be neither inquiry or enquiry or investigation."*

Realising the above position perhaps, the State of Tamil Nadu came out with GO MS 173 dated 19.12.2018 to set down the procedure for processing complaints against public servants in the matter of according approval under Section 17-A. Paragraph 3 of the said GO reads as follows:

> *"i) On receipt of complaint / allegation / source report relating to offences alleged to have been committed under the Prevention of Corruption Act, 1988, the Directorate of Vigilance and Anti-Corruption shall initially take up a factual verification in the first instance and shall weed out baseless, vague, frivolous, vexatious complaints.*
>
> *ii) No action is required to be taken on anonymous complaints,*

*irrespective of the nature of allegations and such complaints need to be filed.*

*iii) If a complaint contains verifiable allegations, it shall be verified with the complainant for owning / disowning, as the case may be, and if no response is received from the complainant within a reasonable time, the said complaint may be filed as pseudonymous.*

*iv) Repeated complaints regarding the same allegations and previously disposed, may be filed.*

*v) Complaints / Petitions received against the elected members of the Local Bodies and the Officers and employees working under the local bodies, shall be forwarded to the Tamil Nadu Local Bodies Ombudsman for further action under the Tamil Nadu Local Bodies Ombudsman Act, 2014.*

Paragraph 4(vi) and 5 of the GO are relevant to the present case, and reads as follows:

*"(i) to (v)… …*

*vi) where it is proposed to register a Regular Case for investigation against Public Servants, the Directorate of* ***Vigilance and Anti-Corruption, shall forward the materials to the authority competent to remove him from his office, through the Vigilance Commission****, with a copy marked to the monitoring authority concerned as indicated in para 6 below.*

*The competent authority, on receipt of materials, shall arrive at a conclusion for it to be conveyed, within the time limit prescribed in the second proviso to section 17A(1) of the Prevention of Corruption Act, 1988, directly to the Directorate of Vigilance and Anti-Corruption, with a copy marked to the Secretary to Government / Head of the Department concerned, as the case may be and to the Vigilance Commission."*

In addition, the Government of India (DOPT) has issued a stage wise SOP for dealing with cases under Section 17-A on 03.09.2021.

20.1 The foregoing discussion informs that vis-a-vis the quashing of FIR involving criminal accusation against public servants as regards the decisions or recommendations they make in the course of their official duty must mandatorily go through a pre-enquiry or pre-investigation vetting process by a non-policeman (read it as the authority granting approval) since Sec.17A approval is mandatory before the policeman can take the first step towards enquiry or investigation. Therefore, the general rule that Court shall not look

beyond the allegation in the FIR while considering a challenge to it may not be applicable to cases where 17A of the PC Act applies. In other words, whenever a FIR pertaining to offences which falls within the net of Sec.17A is challenged, the Court may have to, nay, must have to refer to the quality of application of mind involved in granting approval.

20.2 It now becomes evident that the approval process mandated under Sec.17A of the PCA is a statutory filter, devised to ensure that the honest public servants are protected from vexatious and frivolous complaints against the bonafide decisions that they take. It is not a ritual but something that demands serious application of mind. However, if the argument of the learned AAG that a FIR can be tested for its merit only based on what it alleges is accepted in its entirety, then there is a risk of reducing the need for applying the mind at the time of granting approval under Sec.17A to redundancy. When the Parliament intends that Sec.17A approval-proceedings is mandatory, the Court is only expected to give the kind of prominence which the legislature has envisaged, and the Court must refrain from becoming a super legislature to reduce Sec.17A to redundancy with its interpretations, merely because it has the power to iron out absurdities while interpreting a statute.

21. While considering the grant or refusal of approval, Section 17-A places a duty on the approving authority to objectively take a call on whether prosecution is necessary. After all such authority would be an insider and would be part of the administrative set-up. Their appreciation of an allegation guided by their sheer familiarity and knowledge with the way decisions are taken and recommendations are made is critical to their decision to grant or refuse to grant approval. Besides, he or she can access relevant files if it is felt necessary in relation to the allegation made against a public servant in the course of application of mind to a request for granting approval under Sec.17A of the Act. After all, it is not every transgression of some rule that should necessarily invite criminal prosecution.

22. As stated in paragraph 5.2 above, Sec.17A has both the shades of procedural law and also substantive law. But the point is, whether any approval granted under Sec.17A is justiciable and whether the decision to accord or refuse approval under Section 17A is amenable to judicial review and if so to what extent? The Court now turns to address these questions.

23.1 In construing the nature of the power exercised by the

Government under Section 17-A there is no doubt that it is neither judicial nor quasi-judicial in character (as there is neither a lis involved nor does it affect any of the rights of the accused persons in praesenti). Thus, the power exercised by the Government is merely administrative in character. Nevertheless, it does not follow that merely because it is administrative in character the exercise of such power is outside the ken of judicial review. In the present age of evolved constitutionalism, there is no such thing as unreviewable powers. Indeed, in the context of reviewing the exercise of administrative powers, the Supreme Court itself has pointed out in **Ram Avtar Sharma Vs State of Haryana: (1985) 3 SCC 189** the following:

> *"Every administrative determination must be based on grounds relevant and germane to the exercise of power. If the administrative determination is based on the irrelevant, extraneous or grounds not germane to the exercise of power it is liable to be questioned in exercise of the power of judicial review."*

23.2 This takes us to the second aspect on ascertaining the outer contours of judicial review. Here it must be emphasised that the existence of a power is one thing and the manner of its exercise is quite another. In **Shreeroopa Vs State of Karnataka: 2023 SCC Online Kar 68**, a learned single judge of the Karnataka High Court has made the following observations in the context of Section 17-A:

> *"33. Section 17A of the Act is drafted with the overarching objective of ensuring that unnecessary investigations against public servants are prevented, and the State Government is required to take a decision to accord or refuse approval to conduct an investigation within a time frame. This indicates the balance that the law intended to strike in the manner of an investigation being conducted against a public servant.*
>
> *34. It is also clear from the wording of Section 17A of the Act that the State Government is not required to exhaustively and meticulously consider all the material available with the Investigating Officer at the time he seeks approval, and it is only required to examine and consider whether the opinion formed by the Investigating Officer that an investigation is warranted is justified or not. If the State Government is satisfied that the opinion formed by the Investigating Officer is justified and its employee is required to be subjected to an investigation, the State Government can accord its approval."*

24. This indicates Sec.17A does not require a meticulous

examination of all the materials, but it does require that the approving-authority examine and 'consider' some material which is essential to appreciate the need for an enquiry, inquiry or investigation into the complaint. If only complaint has to be considered by such authority, then the dictum in **Lalitakumari case: (2014) 2 SCC 1** would suffice. And if the legislative intent behind Sec.17A is to protect honest public servants from victimisation at the hands of the unscrupulous, and as in the instant case also at the hands of a suspected blackmailer, then approval under Sec.17A cannot be limited to a consideration of the mere complaint, but must be based on something beyond it. And therefore, it need not even be confined to the materials which the investigation agency may or may not provide. After all without an approval, the investigation agency cannot even enquire or investigate to collect materials necessary for the consideration of the approving authority.

25. The term consider means to think over; it connotes that there should be active application of the mind. In other words, the term consider postulates consideration of all the relevant aspects of the matter (See: **Bhikhubhai Vithlabhai Patel Vs State of Gujarat: 2008) 4 SCC 144**). If there is no proper consideration or application of mind as regards the requirements of law, the administrative action would stand vitiated (See: **S.N.Chandrashekar Vs State of Karnataka: 2006) 3 SCC 208**).

26. There may however, arise situations where the quality of application of mind in granting approval under Sec.17A may not be satisfactory, but the investigating agency may have laid their hands on incriminating material which in itself may establish that prima facie there exists an investigable case. Can the Court now reject the FIR and the investigation done merely because the quality of application of mind in granting approval under Sec.17A is not satisfactory? This Court considers that would be far-fetched since a good work an investigating agency may do cannot be sabotaged by an administrative authority's failure to apply its mind to the materials while granting approval under Sec.17A. The intent behind Sec.17A does not extend to the extent of undoing a good job done by an investigating agency.

27. It could now be derived, that non-compliance with Sec.17A of the PCA cannot be equated to inadequate application of mind by the authority who grants approval under Sec.17A. While the former is mandatory and its non-compliance can be a ground to set aside a FIR,

inadequate or unsatisfactory application of mind to materials while granting approval under Sec.17A can hardly be a ground to quash a FIR unless it is coupled with the inability of the investigating agency to gather any incriminatory evidence. It depends on the quality of allegation made in the FIR, and the kind of materials the investigating agency could gather from the date of FIR till the date of hearing of a case involving a challenge to the very FIR. It is while evaluating them, the Court may also refer to the quality of approval granted under Sec.17A.

28. To sum up the position:

a) An approval under Sec.17A is mandatory, and the authority who grants his approval shall chiefly focus to eliminate the possibility that a public servant who faces an accusation of criminality for any administrative decision he has taken, or administrative recommendation he has made is wrongly prosecuted or victimised;

b) While satisfying himself before granting or refusing to grant approval under Sec.17A of the PCA, the authority concerned is required to apply his mind not just to the complaint before it but also to other materials which may throw light on the allegation and need for a prosecution;

c) An authority granting approval need not examine all the materials the way the Court may examine the evidence before it; but such authority still has to apply his mind to such materials which his expertise, familiarity and knowledge in the field may direct him to probe to satisfy himself as to whether the nature of decision taken or recommendation made leads to a bonafide suspicion about the integrity of the public servant.

d) An order granting approval under Sec.17A is only in the nature of an administrative order to set the prosecution on a complaint in motion. It is not justiciable. However, a collateral argument may be placed on it while challenging a FIR.

e) When a FIR is challenged, it is always open to the Court to consider the quality of approval granted under Sec.17A.

f) If in any proceedings for quashing the FIR, the Court has reason to believe that the FIR might be vexatious, motivated or triggered by malafide or there exists an element of bonafide in the manner of decision taken or recommendation made by a public servant, then approval granted under Sec.17A of the PCA

without adequate application of mind may become critical to the outcome of the decision in the case.

g) If however, during the course of hearing, the Court finds that the quality of application of mind as disclosed in the proceedings of granting approval is inadequate, but if the investigating agency is found to have gathered incriminating material during investigation, then the quality of the approval granted may not impact the sustenance of the FIR.

29. It is on the touch stone of the above proposition, facts of this case are required to be appreciated. Admittedly, all the three accusations which form the subject matter of the allegations in the FIR were decisions taken/recommendations made by A1 in the course of discharge of his functions as a public servant/Commissioner of the Pallavaram Municipality.

30.1 Let the second and the third accusations be now considered. To repeat they pertain to an issue relating to mosquito eradication, and the other one relates to procuring and distribution of medicines for elephantiasis. As stated earlier, the accused has produced copies of all the records in defence of these accusations as if he is defending a charge. The learned AAG argues that it is too premature a stage for considering any materials which are extraneous to the accusation made in the FIR, and added that the investigating agency will consider them in the course of investigation. An absolutely impressive argument, but it is very much along a beaten-track and hence is easily predictable. What this argument overlooks is that there is a Sec.17A regime now in place, and any challenge to a FIR needs to be weighed also on the basis of the quality of application of mind in granting approval for prosecution.

30.2 Now, the FIR has been registered not immediately, but after a detailed enquiry by the investigating agency in terms of the V & AC manual, followed by a proceeding before an authority, who is not a policeman, under Sec.17A of the Act. Anbalagan had given his complaint in March, 2017, and it is more than seven years since the complaint was given and the prosecution says that it is still under investigation. And, the proceedings granting approval under Sec.17A was issued on 21.12.2021, and the FIR thereafter came to be registered on 13.03.2023. But the prosecution in paragraph 14 of its counter affidavit states that the documents in this regard are not available in the Pallavaram Municipality office, and that the said Municipality has merged with the Tambaram Municipality in 2021. In particular the

counter specifically states that "facts could be verified after getting the documents from the Tambaram Corporation." This means even as on date, the prosecution has no material on the basis of which the allegation is sought to be asserted.

30.3 The very same stand is taken with respect to the third allegation which pertains to purchase of medicines to cure elephantiasis, as is seen from paragraph 15 of the counter affidavit where it is stated that "facts should be verified after getting the documents from the Tambaram Corporation." In other words, paragraphs 14 and 15 indicate that the prosecution has not been able to unearth any material to show, even prima facie, the involvement of A1 in the alleged offences even after 6 years.

30.4 And during the hearing of this petition, the prosecution informs the Court that they are still investigating to ascertain the merit of allegations 2 and 3. This implies (a) till date the prosecution perhaps has not been able to lay its hands on any material in an accusation which is more than seven years old now; (b) that despite its possession of the materials which the petitioner has provided in his defence in the form of typed set of papers for about two months, it is still not in a position to make a statement on their merit. This leads to a just suspicion as to whether the petitioner is being targeted? Today this Court may not make any opinion on it. But what is intriguing is that with no materials till date, what then are the materials which the authority granting approval under Sec.17A has considered? Has there been a proper application of mind then?

31.1 Now comes consideration of the first allegation: that A1 had engaged the services of A3 and that during the summer vacation of 2015 only 47 toilets were cleaned instead of 184 toilets and in the process Rs. 8,55,000/- was paid instead of Rs. 1,70,000/-. It is alleged that the case is actually one where A1 had violated the tender rules by extending the tenure of A3 repeatedly. It is also alleged that A1 had extended 30 days tender and work guarantee for one year from 01.01.2016 which was inconsistent with the tender rules.

31.2 While approval under Sec.17A has been granted for registering a FIR, inter alia (the first allegation) that during 2016-2017, A1, A2 and A3 connived together and swindled public money of Rs. 9,20,000 per month by providing forged/fabricated bills and vouchers for cleaning of toilets by the Municipality, in paragraph 8 of its counter affidavit before this Court, the respondent has stated as under:

*"It is respectfully submitted that the documents related to the allegation 1 related to the allotment of tender for cleaning 184 toilets come under 11 schools of Pallavaram Municipality and bills paid to the contractor was received from the Tambaram Corporation only on 11.07.2024 and is under perusal. Some of the documents are not available in the Pallavaram Municipality since the Pallavaram Municipality was merged with Tambaram Corporation on 04.11.2021, which is yet to be submitted by the Tambaram Corporation."*

This implies till the point of filing the counter in 2024, even the Corporation did not have the documents, and if that is so, how the approval was granted under Sec.17A in 2021? This means that there was absolutely no material on the basis of which the respondent has sought and obtained approval from the Government under Section 17 -A to register a regular case in 2021. It is most curious and strange and utterly in defiance of common sense as to how the respondent has come to a conclusion that the bills were forged and fabricated in 2021. Though the respondent has sought to portray a case in its counter affidavit before this Court that the illegalities of A1 lay in allegedly violating the terms of the Tender Transparency Act, it is clear that approval under Section 17-A was accorded without any material.

32. The foundation for the prosecution case is G.O.166. But, as the learned counsel for the petitioner explained, there are quite many facets thereof which do not indicate that the contract period was extended without sanction of law, See: Clause I (xii). Similarly the very value of contract also needs to be seen in the context of Clause III of G.O. And, the communication of the Joint-Director Tambaram Corporation addressed to the respondent during the pendency of this petition quotes the wrongful loss to the Municipality but its believability is suspect since it apparently has not taken into account Clause III of G.O. 166. It also therefore indicates that even after the commencement of investigation, there is no clue if there has been a wrongful loss to the Municipality. Therefore, what is the quality of approval that has been given for investigation under Sec.17A?

33. And this Court waited for close to two months for the prosecution to gather and group its response to it, but it has merely placed reliance on G.O 77 and G.O.166. And the response of the petitioner to the prosecution's contentions instantly put the prosecution on the back foot. The arguments of both sides narrated above may be referred to. If the first accusation involving contract awarded for cleaning the toilets is concerned, the initial grant is not

under controversy but its extension beyond 30 days after December, 2015 and upto the date on which G.O.166 was issued alone is critical. But, as contended December, 2015 saw the whole Chennai floating in floods, and the explanation was that it then became necessary to extend the contract. Prima facie it appears to be a bonafide decision, but should not the authority who granted approval focus something on it? Secondly, extending contract after G.O.166. Here the prosecution has no answers to Clause I (xii) of the G.O. which mandates that the contractor should not be terminated unless the Headmaster of the school reports dissatisfaction about the quality of service of the contractor. Why the G.O.166 was selectively read? Turning to the letter of the Joint Director of Tambaram Corporation issued during the pendency of this case, it ignored Clause III of G.O.166 which requires that the contractor shall provide all the cleaning materials.

34. Now, if the approval granted in this case is considered in the backdrop of what has been herein above stated, there is not a sentence in the document evidencing approval as to how the authority had reached a conclusion that there were sufficient grounds to register a case against A1. It is well settled that even where the authority is required to exercise subjective satisfaction, such satisfaction must be grounded "on materials which are of rationally probative value". The grounds on which the satisfaction is based must be such that a rational human being can consider and connect them with the fact in respect of which the satisfaction is to be reached. They must be relevant to the subject-matter of the inquiry and must not be extraneous to the scope and purpose of the statute, See **Khudiram Das Vs State of W.B.: (1975) 2 SCC 81**.

35. To re-emphasise, having regard to the language of Section 17-A it is the authority who is enjoined with the duty to independently assess and consider the materials which are necessary for ensuring no vexatious prosecution is launched against an accused. This satisfaction cannot be mortgaged to the respondent, nor the authority who is required to grant approval can be treated as a counter-signatory to anything the DVAC may provide it with.

36. This Court has already explained in the earlier paragraphs that the fact the respondent could not have any material themselves demonstrates prima facie that the approval has been granted without any application of mind and the first respondent is now hunting for materials. This Court is now constrained to form its opinion: the

allegation in the FIR is wobbling, the quality of material placed before the Court by the Prosecution is unstable, and set in the circumstances the quality of approval is upsetting. a

37. This Court is of the view that the procedure as has been adopted cannot be countenanced as it would rob the very essence of the protection granted by Section 17-A which is a measure conceived in public interest. If ignored, then Sec. 17-A compliance will be b reduced to an empty ritual.

38. Turning to offence under Sec.406 and Sec.409 IPC, in terms of the accusation in the FIR, they are related to the decisions taken by the petitioner officially and hence necessarily will be hit by whatever c happens to the offence under the PCA.

39. As indicated in **Achin Gupta Vs State of Haryana: 2024 SCC Online SC 759**, where the High Court is approached for quashing a FIR essentially on the ground that such proceedings are d manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, then in such circumstances, the High Court owes a duty to look into the FIR with care and a little more closely. It was further observed that it will not be enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to e constitute the alleged offence are disclosed or not as, in frivolous or vexatious proceedings, the court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and f circumspection, to try and read between the lines. The case at hand falls within the situation contemplated under paragraph 28(f). The FIR as registered cannot stand.

40. Before signing off, the Court appreciates the efforts and assistance of Amici Curiae, Mr. V. Karthic and Mr. John Sathyan, g learned Senior Advocates, whose submissions on the point of law were of considerable significance in delivering this judgment.

41. The conclusion is to state the obvious. The petition is allowed, and the proceedings in FIR 2 of 2023 on the file of the h respondent are quashed in so far as the petitioner is concerned.

***Result*:-** The appeal is allowed.