



CrI.O.P.No.18583 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 06.07.2022

Pronounced on : 22.07.2022

Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

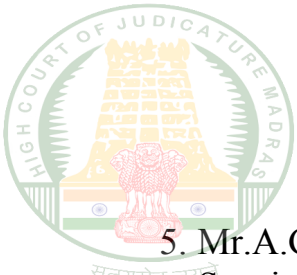
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1. Kader Batcha, M/A, 57 years,
S/o.R.Ibrahim,
No.17, Q-Block, G.3.New Police Quarters,
EVR Salai, Kilpauk,
Chennai – 600 010.

... Petitioner/Accused

/versus/

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department, (Police-2),
Secretariat, Fort, Chennai.
2. The Director General of Police,
Tamil Nadu,
Mylapore, Chennai - 4.
3. The ADGP, CBCID Wing,
Old City Commissioner Office,
Egmore, Chennai.
4. The Deputy Superintendent of Police,
CBCID Wing,
Old City Commissioner Office,
Egmore, Chennai.



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5. Mr.A.G.Ponn Manickavel,
Special Officer & Head of Special Investigation Team,
Idol Theft Cases, Special Camp Office,
District Armed & Reserve Campus,
Subramaniyapuram, Tiruchurapalli. ... Respondents 1 to 5

R5 is impleaded as per order in Crl.M.P.No.10088 of 2019 in Crl.O.P.No.18583 of 2019 dated 24.07.2019.

Prayer: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, 1973, to direct the 2nd respondent to register a case through 3rd or 4th respondent based on the complaints of the petitioner dated on 20.04.2019 & 15.06.2019 and subsequently act in accordance with law or pass further orders.

For Petitioner : Mr.L.Infant Dinesh

For R1 to R4 : Mr.N.S.Suganthan,
Government Advocate (Crl.Side)

For R5 : Mr.V.Selvaraj

ORDER

Mr.Kader Batcha, while he was serving as Inspector of Police, was arrayed as additional accused in Crime No.114 of 2005 for the alleged offences under Sections 193, 196, 213, 217 and 218 of I.P.C and Section 19 of Prevention of Corruption Act r/w 120-B and r/w 34 I.P.C and Section 3 and 25(1) of Antiquities and Art Treasures Act, 1972, pursuant to the further investigation.

2. A fresh case also registered against him in Crime No.1/2017 by the



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Special Team headed by Mr.A.G.Ponn Manickavel, Inspector General of Police, for

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offences under Sections 392 r/w 397 I.P.C, 331, 168, 506 (i & ii) 348, 468 r/w Section 5 of Antiquities and Art Treasures Act of 1972, Sections 166-A (a), (b) and (c) of I.P.C r/w 166 r/w 27 of Arms Act, 1959. Being aggrieved, this petition is filed under section 482 of Cr.P.C for the relief stated above.

3. According to the petitioner regarding theft of 13 idols from Palavoor Temple, a case in Crime No.114/2005 was registered on 19/06/2005 much prior to the petitioner joined the idol wing team as Inspector. After he joined the Idol wing team in the year 2006, he continued the investigation in Crime No.114/2005 and filed the final report in the year 2008 against 8 accused. Out of 13 idols stolen, 4 were recovered from the possession of one Deenadayalan, who is arrayed as the 8th accused in the final report. The report was taken on file as C.C.No.2/2008 and the trial underway.



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4. While so, the Idol Wing later headed by Mr.A.G.Ponn Manickavel, IPS., Inspector General of Police in collusion with Deenadayalan, the 8th accused in C.C.No.2/2008, who is also accused in various other idol theft cases had made Deenadayalan to give statement to the Magistrate before whom the trial pending and based on this statement believing it as 'judicial proved confession statement', the petitioner is falsely implicated in Crime No.114/2005 and also a new case in Crime No.1/2017 registered against him.

5. The petitioner has alleged malafide in this action and specifically accuses Mr.A.G.Ponn Manickavel, IPS., Inspector General of Police, the 5th respondent herein then Special Officer and Head of Special Investigation Team, Idol Wing cases, that he to gain the lens of the media, in collusion with Deenadayalan, had started to foist false cases on Officers like him, to quench his bureaucratic vengeance. Only to frame false cases on him, but for no other genuine reason, Mr.A.G.Ponn.Manickavel, had freed Deenadayalan the key accused from Palavoor case (Crime No.114 of 2005). In his additional final report Mr.A.G.Ponn Manickavel, I.P.S., included the name of Subash Chandra Kapoor and described him as the prime accused (A-1). In the report, he also gave an undertaking that

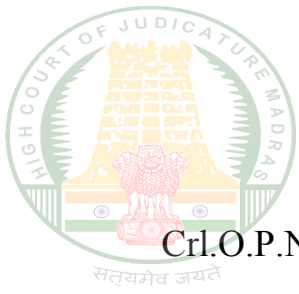


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steps will be taken to get consent from Republic of Germany to 'try' the extradited

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6. On the strength of the judicial confession statement alleged to have been given voluntarily by Deenadayalan, who is a notorious trader in stolen idols, Mr.A.G.Ponn Manickavel, Inspector General of Police, under the grab of further investigation, had impleaded him as additional accused in Crime No.114 of 2005. On coming to know about the desire and design of the Mr.A.G.Ponn. Manickavel, Inspector General of Police the petitioner sought for anticipatory bail before the High Court in Crl.O.P.No.29752 of 2018. The Hon'ble High Court clubbed



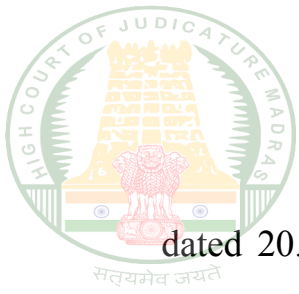
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CrI.O.P.No.6634 of 2019 and on 15th March, 2019 orally instructed the petitioner to

appear before Idol Wing for a week and cooperate to the investigation and report back to Court on 22/03/2019. Accordingly, the petitioner appeared till 21st March 2019. On 21st March 2019, when he went to attend the enquiry, he was taken into custody and remanded before the Additional Chief Judicial Magistrate, Kumbakonam. Making allegation of perversity and malafide, the petitioner has sent two representations to the Government. Since no action taken, the petition for direction filed.

7. To buttress his request to forward his representation for investigation, very serious allegations are made against Mr.A.G.Ponn Manickavel, I.P.S., that he has indulged in the act of illegal detention, illegal influencing of Judicial Officers, misusing High Courts name, harbouring the accused persons and safeguarding the interest of persons who have scrapped our sculptures and antiques and taking revenge against the innocent Officers like the petitioner.

8. It is contend that, the petitioner has forwarded complaints about the misdeed of Mr.A.G.Ponn Manickavel to the Inspector General of Police, *vide* letter



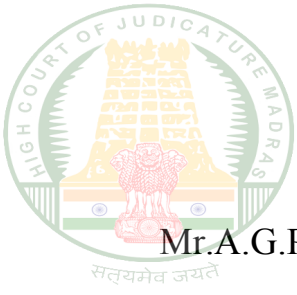
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dated 20.04.2019 and 15.06.2019 for immediate action against his revengeful act

WEB COPY against him. The authorities declined to accede his request citing the judgment of the High Court that no action be taken against the Special Team investigating Idol theft cases without the permission of the Court. Hence, he has approached this Court directing the 2nd respondent [Director General of Police] to register case through 3rd respondent [ADGP, CBCID] or 4th respondent [DSP, CBCID], Wing, based on his complaint, dated 20.04.2019 and 15.06.2019.

9. In his petition, at more than one places, this petitioner has questioned the bonafide in the action of Mr.A.G.Ponn Manickavel, I.P.S., According to the petitioner, remanding him in Crime No.114 of 2005 in Palavoor case is an act of vengeance and manifestation of Mr.Ponn Manickavel inability to handle the Idol Wing Team. Besides, it is alleged that it is an deliberate act to nullify the incriminating evidences collected against the hard core idol illegal traders like Thiru.Deenadayalan and Thiru.Subash Chandra Kapoor.

10. The petitioner claims that while he was in the idol wing team, he has successfully recovered idols and arrested the real culprits. Contrarily,



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Mr.A.G.Ponn Manickavel had acted with intention to nullify all the best and honest efforts taken by this petitioner and others in recovering idols and arrest of the real culprits of crime.

11. The below two specific instances are referred by the petitioner to support his contention.

i). Mr.Ponn Manickavel, Inspector General of Police, orchestrated the recording of statement of accused (Deenadayalan) by the Magistrate before whom the trial was progressing. He arranged for granting pardon to him and allowed to be exonerated from the grave crime, with an ulterior intention to fix this petitioner for an imaginary offence;

ii). The letter addressed to Additional Chief Secretary to Government (Home) Department, written by Mr.A.G.Ponn Manickavel, not to pursue any further in the matter of extraditing Subash Chandra Kapoor a notorious idol dealer, having his operation in foreign Countries with connivance of his local agents including Thiru.Deenadayalan.



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12. The discretion exercised by Mr.A.G.Ponn Manickavel, IPS., to arrange for pardon to Thiru.Deenadayalan, a notorious idol dealer in Tamil Nadu and the audacity to give his opinion on the foreign policy of the State to camouflage his inability and misaction, further to enable a fugitive to escape from the clutches of law of the land and preventing from recovering other idols which are in possession of Subash Chandra Kapoor all requires an independent probe. The petitioner states he is ready to subject himself to any kind of probe by any other agency except the one which is under the influence on Mr.A.G.Ponn Manickavel.

13. The Learned Counsel for the petitioner submitted that the service record of the petitioner may be called for and examined. His exemplary service to the police force will be seen. But, for the false cases registered at the instance of Mr.A.G.Ponn Manickavel, I.P.S., he had a unblemished career. Due to this false complaints scripted by Mr.A.G.Ponn Manickavel, I.P.S., his career ended with a mole. Even on attaining superannuation, he is not allowed to retire. He served as Inspector of Police from 1998. He was posted to the Idol Wing during the end of 2005. He got relieved from his place of posting to Idol Wing and joined duty in Idol wing in February, 2006 and served in the idol wing till 2011. While he was in the



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idol wing, he was instrumental for recovery of several antique idols and also for

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collecting evidence through Interpol regarding stolen idols kept in the antique shop at USA owned by Subash Chandra Kapoor. He was instrumental for the extradition of Subash Chandra Kapoor, who was arrested on October 2011 at Frankfurt Airport on Interpol notice issued pursuant to the action initiated by him as Inspector of Police, Idol Wing. Whereas, Mr.A.G.Ponn Manickavel, who took the reign of Idol Wing much later, had not done anything significantly except the follow up of the actions initiated by his predecessors. While doing so, with malicious intention and evil design, to save the real culprits from being prosecuted in other cases in which they are involved, Mr.A.G.Ponn Manickavel as tool in the hands of the real culprits particularly Deenadayalan and Subash Chandra Kapoor, (notorious the idol traders) had created documents in the nature of statements of accused and witnesses which are nothing but product of his fertile imagination. Therefore, let those statements be impartially probed by any other agency to unravel the truth.

14. The Learned Counsels, who represent the State as well the private respondent, question the maintainability of this petition in view of the judgment



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rendered by Division Bench of this Court, wherein, the Division Bench of this Court

has laid down when a petition under Section 482 of Cr.P.C can be entertained and when a prayer to register the complaint or to take cognizance of an offence can be allowed.

15. The directions laid in the Division Bench headed by Justice Mr.M.M.Sundresh (as he then was) and Justice Mr.N.Sathish Kumar, *vide* order dated 20.09.2019 is extracted below:-

“35. Accordingly, we answer the references in the following manner, while giving certain directions:-

(i) Section 482 Cr.P.C. cannot be invoked in all circumstances.

(ii) It is not an alternative remedy to Section 156(3) Cr.P.C. but a repository of inherent power.

(iii) The normal course of remedy on a failure or refusal to record the information is Section 156(3) of the Code of Criminal Procedure after due compliance of Section 154(3) Cr.P.C.

(iv) A petition can be filed invoking the inherent jurisdiction of this Court only after the completion of 15



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days from the date of receipt of the information by the Station House Officer. The Registry shall not receive any petition before the expiry of 15 days aforesaid.

(v) No petition shall be entertained without exhausting the remedy under Section 154(3) Cr.P.C.

(vi) An informant can send substance of the information to the Superintendent of Police on knowing the decision of the Station House Officer in not registering the case and proceeding with the preliminary enquiry. After conducting the preliminary enquiry, the Station House Officer's decision in either registering the compliant or closing it will have to be intimated to the informant immediately and in any case not later than 7 days. Once such a decision is made, the informant cannot invoke Section 482 Cr.P.C. as the remedy lies elsewhere.

(vii) The directions issued by the Director General of Police in the circulars referred are to be strictly complied with by all the Station House Officers.

(viii) The affidavit to be filed shall contain particulars regarding the date of complaint, receipt and the date of sending substances of the information to the superintendent of Police under Section 154(3) Cr.P.C. and its receipt. The Registry shall not number any



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petition without due compliance.

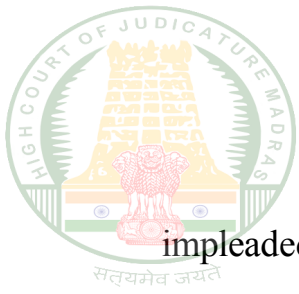
(ix) This Court is not bound to direct the police to register the complaint in all cases notwithstanding the breach of time table furnished in LalithaKumari's case.

(x) The judicial Magistrates, while dealing the petitions under Sections 156(3) Cr.P.C. are directed to keep in mind the narratives in LalithaKumari's case with specific reference to the cases, which might require a preliminary enquiry before issuing a direction to investigate and after careful perusal of the complaint. The other directions issued by the learned Single Judge in Sugesan Transport's case are upheld.

(xi) Eschewing Section 156(3) Cr.P.C. is only on exceptional and rarest of rare cases. Monstrosity of the offence, extreme official apathy and indifference, need to answer the judicial conscience, and existence of hostile environment are few of the factors to be borne in mind to bring a case under the rarest of rare one.

The references stands ordered accordingly.”

16. Apart from raising objection regarding the maintainability of the petition, on the side of the 5th respondent/A.G.Ponn Manickavel, who was



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impleaded as respondent subsequently *vide* order dated 24.07.2019, it was pleaded

that, in filing of this petition as well as the earlier petition Mr.Kader Batcha, has committed contempt. This petition is in violation of the orders passed by Division Bench of this Court, which was specially constituted to hear cases relating to idol theft cases. The Division Bench of this Court has barred taking any action or enquiry against the Special Officer or any member of his team except with the concurrence of this Court.

17. The Learned Counsel for the 5th respondent/A.G.Ponn Manickavel, has also filed counter affidavit, which reads as below:-

“2. I am the 5th respondent herein. I was formerly head of the Special Investigation Team, Idol Wing to investigate all idol theft cases pursuant to orders passed by the Hon'ble Division Bench of this Hon'ble Court confirmed by the Hon'ble Supreme Court of India.

3. I submit that the petition for direction filed by the petitioner under Section 482 Cr.P.C. is not maintainable and amounts to abuse of process of Court.



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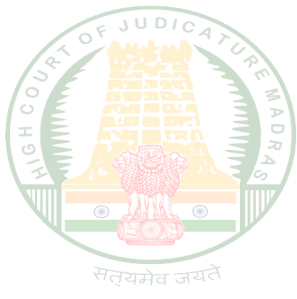
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4. *I submit that the petitioner relies upon two documents namely letter dated 20/04/2019 and letter dated 15/09/2019 addressed to respondents 1 to 3. The contents of the letters amount to criminal contempt. The petitioner is questioning the integrity of the Judicial System.*

5. *I submit that the petitioner has filed a communication dated 17/06/2019 from the then ADGP Idol Wing. The contents of the said letter are contrary to the judgment rendered by the Hon'ble Supreme Court of India and the Hon'ble Division Bench of this Hon'ble Court particularly the direction contained in the judgment pertaining to complaint if any against the Special Investigation team.*

6. *I submit that I have filed Contempt Petition No.1054 of 2019 seeking to punish the former Chief Secretary to Government, Former Director General of Police, the former Additional Chief Secretary to Government (Home Department) and the former Additional Director General of Police, Idol Wing CID, Chennai.*

7. *I submit that in the contempt petition I have alleged that the then Government, the former Director General of Police and the then Additional Director General of Police,*



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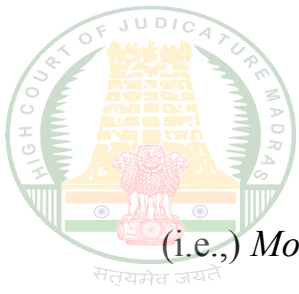
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Idol Wing CID, Chennai had been interfering with the investigation and prosecution of cases. The then Additional Director General of Police, Idol Wing CID, Chennai was preventing subordinate officers from registering FIR's, promptly investigating the cases and prosecuting the cases before the Court and that there was sabotage from within.

8. I submit that the Additional Final Reports filed by me in Cr.No.114 of 2005 on the file of Palvoor Police Station would disclose the gravity of the offence alleged against the police officers including the petitioner herein.

9. I submit that the allegations made against me are per se defamatory. I have done my job as an officer appointed by this Hon'ble Court strictly in accordance with law and procedure. The allegations are totally false and mischievous.”

18. After considering the submissions made by the petitioner as allegations against 5th respondent and response of the other respondents on his representation and the counter allegations made by the 5th respondent in his counter, this Court has no doubt that this is an exceptional case where the procedures contemplated under section 156 (3) Cr.P.C need to be eschewed. The facts of the case squarely satisfies the last direction laid by the Division Bench.



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(i.e.) *Monstrosity of the offence, extreme official apathy and indifference, need to*

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(Emphasis added)

19. The reason for the above conclusion is based on thorough scrutiny of the case materials relied by the parties and the respective pleadings by the Petitioner, State and the Private Respondent. The narrative below are the fundamental facts which necessitated this Court to arrive at the above conclusion.

20. The service record of the petitioner/Mr.Kader Batcha discloses that, he was serving in the cadre of Inspector of Police, Tamil Nadu Police Service from 19.06.1998. During the year 2007, from Tirunelveli range, he was transferred and posted to Idol Wing, CID, as per RC No.111/NGBV(1)/2007 dated 08.01.2007. He was transferred from Idol wing to Chennai Police, *vide* proceedings dated 24.06.2011. He was relieved from Idol wing on 18.07.2011 and he reported to Chennai Police on 19.07.2011.



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21. During his tenure as Inspector of Police, Idol Wing CID, he has received few commendation certificates from his superiors for recovery of 10 metal idols stolen from Shri Vallabha Vinayagar Temple at Bangalore City, 2 antique idols stolen from Shri. Murugan Temple at T.N.Palayam, 3 metal idols which were recovered from Shri Veeraraghava Temple, 6 antique metal idols stolen from Varadharaja Temple at Mugaiyur and two antique metal idols stolen from Selva Vinayagar Koil, Arcot Town Vellore, recovery of 17 metal idols. One of the commendation annexed in his Service Record indicates he had secured 8 notorious idol theft offenders. His service record also further reveals that, he has received 329 awards from his Department for his notable work as Police Officer.

22. At this juncture, it is apt, appropriate and fair to record the commendations about the 5th respondent which form part of two different judgments, one by a Single Judge of Madurai Bench of Madras High Court and another by Division Bench consisting of Two Hon'ble Judges at Principal Bench. They are extracted below:-

(i). In Crl.O.P.(MD)Nos.6778 and 6779 of 2018, a Learned Judge of this Court has observed:-



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“23. Taking judicial notice of the fact that Thiru.A.G. Ponn Manickavel, IPS is doing a remarkable job in tracking cases of idol theft, this Court exercising its inherent jurisdiction directs the transfer of investigation back to Idol Wing CID, Chennai from CBCID. In this case, transfer order was passed when the investigation was at a very nascent stage.”

(ii). Two Judges Division Bench of this Court in W.P.Nos.20392 of 2018 and 20963 of 2018, has observed that,

“(d)The Idol Wing of the State has so far secured 10 idols from foreign soil. Pertinent is the fact that the team headed by Mr.A.G.Ponn Manickavel, I.P.S. has been instrumental in securing 8 of the said idols. Even recently, idols were recovered from America and Australia.

(e). This Court has already reposed its confidence and trust in Mr.A.G.Ponn Manickavel and appointed him as the officer in charge of the ‘High Court Appointed Team’, which was affirmed by the Hon’ble Supreme Court by judgment made in SLP(Civil)Nos.6139 to 6140 of 2017 dated 01.09.2017. Pertinent to mention here that the confidence



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and trust has not diminished even at the atomic level.”

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23. The said view about the 5th respondent is part of the judicial pronouncements and this Court need no necessity to venture whether it is has any backing of records maintained by the Department or it is the personal perception of the Judges concern on seeing and hearing the pleadings and documents placed before them at that point to time. This Court is not sure whether the materials now placed and available were placed before the Judges who made the above observations about 4 years ago.

24. Back to the facts of the petition under consideration, a case in Crime No.114 of 2005 initially was registered on 19.06.2005 by the Idol Wing. Eight persons were shown as accused for offences under Section 457(2), 380(2), 414 & 34 of I.P.C. On completion of investigation final report was filed by this petitioner before Chief Judicial Magistrate, Srivilliputhur, on 28.02.2008.

25. This final report was followed by two more additional final reports. Therefore, the report filed on 28/02/2008 is referred as 1st final report. The two



additional final reports are referred as second and third report.

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26. To begin, the facts as found in the first final report is taken up first and the facts as found in the subsequent two additional final reports will be discussed at relevant stage later.

27. As far as the 1st final report, the facts narrated as, A1 [Sakthi Mohan] and A2 [Balaji] are father and son. Accused 3 to 7 are their friends. Accused 1 to 4 conspired to rob the metal idols in 'Narambu Nathar Sivan Temple', Palavoor at Tirunelveli District and pursuant to the said conspiracy on 18.06.2005 night the accused 1 to 4 went to that temple. 4th accused stood outside the temple. Accused 1 to 3 scaled the temple compound wall and broke open the grill gate and removed the idols of *Natarajar*, *SivagamiAmman*, *KaraikalAmmaiyar*, *Manickavasagar*, *Naarum Poonathar Piriyaudayal*, *Vinayagar*, *Valliamman*, *Krishnar*, *Balavinayagar*, *Veyilukathamman*, *Gomathiamman*, *Asthirathevar*, *Subramaniyar*. (totally 13 idols). Out of the 13 idols, the idol of '*Gomathi Amman*' was cut into pieces by 1st accused and sold. Based on the confession statement, 5 out of 13 idols stolen from Palavoor Temple, Tirunelveli District were recovered on



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13.09.2006 at Madurai. Accused 5 & 6 sold the rest of the idols for Rs.6,00,000/- to

WEB COPY the 7th Accused. 7th accused sold three idols for Rs.30,000/- and handed over 4 idols to the 8th accused Thiru.Deenadayalan, to sell it for a price of Rs.9,00,000/-. The four idols which were handed over to Thiru.Deenadayalan (A-8), was kept in A-8 godown at Chennai, which was later recovered during the search conducted on 01.08.2007 by the team headed by Tr.Jeevanantham then Inspector of Police, Idol Wing, in the presence of Sadiq Batcha, Son of Mohamed Ismail resident of No.544, R-Block, cemetery road, old Washermenpet, Chennai-27 and one Subburaj, Head Constable, attached to Idol Wing (official witness). The 1st witness [Sadiq Batcha] is an independent witness.

28. Since one of the accused Balaji @ Balachandaran and Kumar @ Arumugam remind absconding, case against them was split up in C.C.No.459 of 2012. In the said circumstances, after Mr.A.G.Ponn Manickavel, took charge of the Idol Wing he on obtaining formal order from the Court had conducted further investigation in Crime No.114 of 2005. The additional report under Section 173 of Cr.P.C pursuant to the further investigation conducted as per Section 173(8) of Cr.P.C was filed. The accused Balaji @ Balachandaran [A2] in the original final



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report and Thiru.Deenadayalan [A8] in the original final report were shown as

Approver. Their statements before the Judicial Magistrate was recorded after tendering pardon. By that time, the petitioner Kader Batcha, Inspector of Police, had been transferred from Idol wing to Chennai Police. After Thiru.Deenadayalan and Balaji @ Balachandaran turned approver and their statements were recorded, pardon was tendered and few more persons were added as accused.

29. Mr.Subash Chandra Kapoor was shown as prime accused and master brain who purported the crime of burglary at Palavoor Temple. It is alleged that Subash Chandra Kapoor on seeing the idols in the 'Narambu Nathar Temple' during his visit to India at the relevant point of time engaged the other accused persons to remove the idols stealthily, for him to take it to foreign Country clandestinely. Accordingly the burglary effected. Mr.Subash Chandra Kapoor took the four idols given to custody of Thiru.Deenadayalan, to different Countries by illegally smuggling it to places.

30. In the additional final reports, the trail of the stolen idols narrated in three parts:-



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First part, the movement of the idol within Tamil Nadu (i.e.,) the idol from Palavoor Temple was taken to Aruppukottai. From Aruppukottai to Kattamankottai. From Kattamankottai to Karaikkudi. From Karaikkudi to Chennai Aparna Art Gallery [owned by Thiru.Deenadayalan]

The second part, from Chennai to Mumbai, Indo-Nepal Art Centre. (owned by Vallabh Prakash [A-2] and his son Aditya Kumar Shrestha @ Aditya Prakash [A-3]). From Mumbai to Hong Kong, from Hong Kong to London, from London to Manhattan “Art of the Past” gallery, New York, USA [owned by Subash Chandra Kapoor (A-1)] from New York to Bangkok, from Bangkok to Nepal,

The Third part of the stolen idols journey, is from Nepal to Calcutta and from Calcutta back to Aparna Art gallery at Chennai. According to this report filed by Mr.A.G.Ponn Manickavel, the hand of the '*Nataraja*' idol was cut by the accused in India and it was attached and restored by an restoration expert at London by name Mr.Neil Perry Smith.



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31. In the Additional Final report, there is reliance of the report by one

Mr.Brenton Easter, Special Agent, Homeland Security Investigating Agency, New York, who claims to have conducted search at 'Art of the Past Gallery', New York owned by Subash Chandra Kapoor and collected several incriminating materials in connection with the idols stolen from Palavoor temple and other places. The digital records in different 'Folders', are referred and relied.

32. At this point, it is necessary to recollect and recapitulate certain facts stated earlier. The 4 idols out of 13 idols stolen from the Palavoor Temple at Thirunelveli District on 18/06/2005 night was found at Chennai and recovered on 01/08/2007 from the godown of A-8 Deenadayalan. The case as investigated by the petitioner stops with the trail of the idols from Palavoor – Aruppukottai – Chennai.

33. Whereas, the Additional Final Report of Mr.Ponn Manickavel, I.P.S., states that between these 28 months (date of theft and date of recovery) the 4 idols including the '*Natarajar*' idol with hand mutilated were taken to several Countries and brought back again to India. The '*Natarajar*' idol hands restored with the help of an expert. This came to light through the confession statement of



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Thiru.Deenadayalan given to the Learned Judicial Magistrate on 28/12/2006. In his

WEB COPY statement, Thiru.Deenadayalan implicates Subash Chandra Kapoor owner of Art of Past Gallery, Manhattan, New York, USA.

34. The records, in fact indicates Thiru.Subash Chandra Kapoor was arrested by the Federal Republic of Germany on 30/10/2011 and extradited to India on 14/07/2012 in connection with a case registered by Udayarpalayam Police Station in Crime No.65 of 2008. He was later formally arrested and remanded in Crime No.114/2005 on 26/12/2016, just 2 days prior to Thiru.Deenadayalan confession statement recorded by the Magistrate.

35. If the statement of Thiru.Deenadayalan implicating the petitioner after 12 years is to be believed, then his statement should also find place the answer for the reasonable question, if Thiru.Subash Chandra Kapoor had paid Rs.9 lakhs for 4 idols and took it to Mumbai and Deenadayalan, who sold the idols to Thiru.Subash Chandra Kapoor has shared the money with other accused, after selling the stolen idols for consideration received, why he should ask Subash Chandra Kapoor to return the idols back and why Subash Chandra Kapoor who paid



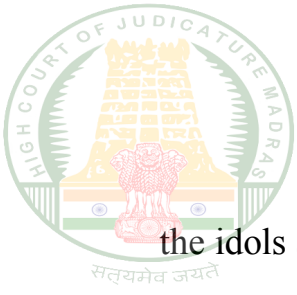
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the money and taken away the idols, after spending money for restoring the broken

WEB COPY hand of *Nataraja* idol with the help of idol restorer Neil Perry Smith bother to bring it back to India and give it to Deenadayalan.

36. Can a statement of an accused who spin a story of clandestine travel of idols to several countries cutting across continents and was brought back to India after 28 months for no other best reason except to be caught by the police be even *prima facie* believable?.

37. The statement of Deenadayalan came to be recorded 12 years after the theft and 9 years after the idols recovered from him. It is also to be noted that, Thiru.Deenadayalan statement incriminating the officer who raided his premises and seized the idols 8 years ago is now used against the same Officer. Then, to believe the belated statement of the thief against the cop atleast the investigation must have been on the lines. (i). Whether Deenadayalan disclosed the temporary custody of these 4 idols with Subash Chandra Kapoor and the clandestine travel of the 4 idols before it was recovered from him on 01.08.2007. (ii). If not disclosed, why he suppressed this fact to the Investigating Officer at the time of recovery. (iii). How



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the idols at first instance taken out from India, and why it was brought back to India

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and how it was brought back to India. Even an amateur thief, who fears that the theft will be deducted and he will be prosecuted if caught with the idols and he will only try to destroy the *corpus delicti* (idols) and not take the risk of bringing it back clandestinely into India and keep it, for the Police to later recover and prosecute him for its possession. Will notorious idol traders like Deenadayalan or Subash Chandra Kapoor would have ventured to take the risk of smuggling back the idols into India? The loop attempted to be spinned in fact remains with several untied loose ends, to make the story projected by Idol Wing illogic.

38. To add more credence to his line of investigation, the case registered at Seithur Police Station in Crime No.96/2007 is mentioned in the Additional Final report of Mr.Ponn Manickavel, I.P.S., This case is in respect of of recovery of 7 idols from one Paramasuriyan on 25/02/2007. As per the subsequent additional final report, these 7 idols are not antiques. They are replica of idols stolen from Palavoor Temple. One of the Accused Karaikudi Dinakaran (A-5) made 7 look alike idols through Stapathy Thiyagarajan of Swamimalai. This petitioner and others conspired to create record as if these 7 look alike idols of Palavoor Temple were



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recovered during raid and close the case of Palavoor Temple idols theft. Therefore,

WEB COPY Thiru.Dinakaran paid Rs.2 lakhs to the Sthapathy Thiyagrajan and made 7 idols which are replica of idols stolen at Palavoor temple. As part of conspiracy, they asked Thiru.Paramasuriyan to carry the idols in a gunny back in a public transport bus. The petitioner and others made a mock search of the bus and registered case in Crime No.96/2007 on the file of Seithur Police Station under Section 41(1)(d) and 102 Cr.P.C.

39. According to Mr.A.G.Ponn Manickavel, who has signed the additional Police Report on 12/06/2017, he reasonable believe that, this was an attempt by the accused persons to record the 7 idols seized on 25/02/2007 by the Seithur Police are the 7 antique idols stolen in Palavoor Temple so that, the police is relieved of its pressure and legal responsibility of recovering and repatriating the original 4 antique stolen idols from A-1 Subash Chandra Kapoor.

40. If his belief is reasonable, then the narration of facts in Crime No.96/2007 Seithur Police Station must be a make believe set up seizure to record the newly made idols as the antique stolen idols of Palavoor Temple. If so, there



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should have been some document to indicate such attempt made by the conspirators.

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Nothing worth available on record to indicate any attempt to record the 7 idols seized from Paramasuriyan are the antique idols of Narambu Nathar Temple, Palavoor.

41. Except statements of some residents of Palavoor who have deposed that, the some Policemen came to their village and asked them to accept the 7 new idols, but they refused because those idols were not the original idols of their temple. To substantiate these statements no document is available. The allegation of conspiracy can be inferred if there is any record to show such intention to substitute new idols as if it is the old idols recovered during the course of investigation.

42. However, on examining the facts of the case in Crime No.96/2007, this Court finds that case is a stand alone case. There is nothing to infer the investigation team attempted to project that the 7 idols which are subject matter of Crime No.96/2007 are idols stolen from Palavoor Temple. In fact, the Trial in that case completed and ended in conviction. From the additional final report, dated 12/06/2017, it appears that the appeal also in that case dismissed.



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43. In nutshell, in the first case, in Crime No.114 of 2005, the petitioner was included as additional accused for suppression of the mysterious travel of 4 idols of Tamil Nadu Temple to several countries and its return to India after 28 months, the temporary custody of the idols with Subash Chandra Kapoor and an attempt to make believe the 7 new idols recovered by Seithur Police as the old antique idols stolen from Palavoor, thereby to protect the possessor of the stolen idols and get ride of the pressure of not recovering the idols.

44. The second case against the petitioner/Kader Batcha is in Crime No.1 of 2017. This case is in connection with three idols alleged to have been robbed at gun point from the finders of the idols. It is alleged that, by misusing the official position, omission to report recovery of antique idols, but illegally taken possession and later sold to the illegal idol dealer Deenadayalan for a sum of Rs.15 lakhs.

45. This case relates to 3 idols, of '*Siva*' and '*Parvathi*' in one platform and a separate idol of '*Sivakami*'. According to the prosecution, these three idols



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were found in the land of one Thiru.Swamydoss and his cousin Mr.GnanaAnbu at

Aladipatti Village, Aruppukottai, while ploughing their field Mr.GnanaAnbu stumbled upon the idols and he informed above this to his junior uncle Thiru.Swamydoss, a retired Teacher and also co-owner of the land. On the advice of Swamydoss, they called one Sundaramoorthy, a professional Photographer-cum-Studio owner in Madurai to take photographs of the idols. Being Christians by religion, they then concealed the idols near their shed. Mr.Sundaramoorthy, who took photos of the idols, kept one set in the display Board of his studio. The petitioner and others under the guise of offering good price for the idols found in the photographs, took Mr.Sundaramoorthy to Aruppukottai. Pretending as buyers, took away the idols and brought it to travellers bungalow at Aruppukottai, thereafter took away the idols at gun point and chased away Thiru.Swamydoss, Mr.GnanaAnbu and Mr.Sundaramoorthy. Thereafter, the appellant contacted Deenadayalan, the antique idol dealer and showed him the '*Sivan*' and '*Parvathi*' idols to him. He asked him to fetch a buyer or himself to buy. When he refused, he forcible kept the idols in his car and later collected Rs.15 lakhs from him. Mr.Deenadayalan, in turn sold the two idols for Rs.20 lakhs to one Theerath Singh, another antique idol dealer at Delhi.



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46. This complaint in Crime No.1 of 2017 came to be registered after the preliminary enquiry conducted on an anonymous letter, dated 25/11/2016, received by the ADGP, EOW. The letter presumable written by a retired Police Officer, who claimed to have worked in the idol wing CID. He had disclosed that, while he was working in idol wing during the year 2008, the Inspector Kader Batcha (the petitioner herein), Head Constable Subburaj and another Police Constable in the course of their investigation regarding three idols unearthed by the land owners Aladipetti near Aruppukottai had screened the recovery and made gain out of it. In the preliminary enquiry, Sundaramoorthy (Photographer-cum-photo studio owner), Swamydass (land owner-Teacher), GnanaAnbu (land owner) and Deenadayalan (idol dealer) were examined.

47. The statement of witnesses discloses, the three idols were unearthed in the year 2007. After 1½ years, during the month of May-2008, the idol wing Team came to Aladipetti as buyers and took away the idols without any acknowledgement or record. They also got signatures in the blank stamp papers under threat. In the year 2008, Kader Batcha contacted Mr.Deenadayalan and



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offered to sell 'Sivan' and 'Parvathi' idols separated from its pedestal. Initially,

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Deenadayalan refused. After a week, Kader Batcha compelled Deenadayalan to come to a hotel at Montieth Road, Egmore and showed the idols kept in his car. Against his wish and protest, he transferred the idols in Thiru.Deenadayalan's car and forced him to sell it and give money, otherwise will foist cases against him. So, Deenadayalan, after few days negotiated with Mr.Kader Batcha and gave Rs.15 lakhs. Since materials for several cognizable offence made out from the preliminary enquiry, case came to be registered in Crime No.1/2017 on 07/02/2017 against the petitioner and others.

48. Strong suspicion of foisting and fabrication of evidence in two cases arise for the following reasons:-

The case of the prosecution in Crime No.114/2005 till Mr.A.G.Ponn Manickavel, took up further investigation was about 13 idols stolen from Palavoor Temple pursuant to the conspiracy between 8 persons. Along with the first final report, two recovery mahazars are enclosed, one relating to recovery of 5 idols on 13.09.2006 from Accused Shajahan (A-5) and Arunachalam (A-6) near Madurai Periyar Bus Stand. Another mahazar regarding the recovery of 4 idols on



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01/08/2007 from 'Aparna Art Gallery', owned by Deenadayalan. For 13 idols, the

WEB COPY First final report accounts as below:-

49. The '*Gomathi Amman*' idol cut into pieces by A-1 and sold it. A-4, A-5 and A-6 received Rs.6 lakhs from A-7 and gave remaining 12 idols. A-7 sold 3 idols for Rs.30,000/- to unknown person. Four idols to A-8 for Rs.9 lakhs.

50. The subsequent reports filed after Mr.Ponn Manickavel., I.P.S., took up the investigation discloses larger conspiracy, hatcher at the behest of Mr.Subash Chandra Kapoor and his temporary custody of the 4 idols and attempt to show 7 new idols as antique stolen idols.

51. The alleged mysterious travel of 4 idols which were given to Subash Chandra Kapoor is the foundation for prosecuting the petitioner alleging that he suppressed to disclose these facts and omitted to investigate properly in view to help the accused. Also, he to get over the pressure, attempted to substitute look alike 7 new idols to record all the stolen idols from Palavoor temple recovered. Omitted to register the case of recovery of 3 antique idols from Swamydoss and his

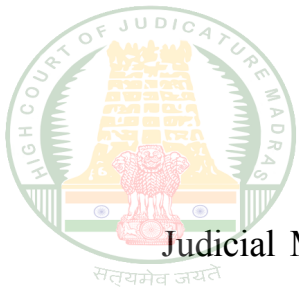


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cousin Gnana Anbu of Aladipatti near Aruppukottai. Besides, committed theft at gun point three idols from Gnana Anbu and Swamydoss and later forcible sold it to Deenadayalan for Rs.15 lakhs.

52. If the said conspiracy of swapping the new idols for the old antique stolen idols, which the Investigating Officer reasonable believes is to be accepted then, at the time of the seizure of 7 idols which gone on record as early as 25/02/2007, the conspirators must have made some attempt to create documents to show these 7 idols belongs to Palavoor Temple. They would have closed the investigation in Crime No.114 of 2005 immediately on recovery of 7 idols and would have not arrested and recovered 4 idols from Deenadayalan on 01.08.2007.

53. After Thiru.Deenadayalan arrested and 4 idols connected with Palavoor Temple idol theft were recovered from his possession, there is nothing new he disclosed about the crime which has been unable to be discovered in the 12 years. Even if his statement that the idols were smuggled out of India and came back before it was recovered from him is true, that does no way implicate the petitioner as Principal or an Abettor in the commission of the said act. In the statement to the



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Judicial Magistrate which gained him pardon Deenadayalan has not disclosed the

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whole truth within his knowledge. Facts such as, how the idols went out of India after it was stolen from Palavoor on 15/06/2005 and how it came back to his possession before it was recovered on 01/08/2007. The statement that the idols were taken to foreign Countries and returned to India is vague as vagueness could be, and definitely cannot be the whole truth within his knowledge. Without disclosing these facts, what for tender of pardon permitted by the prosecution is really a question which creates doubt about the fairness of the prosecution.

54. Reading the statement which gained pardon to Deenadayalan, in Crime No.114 of 2005, the final part of the confession statement is actually in connection with two idols which he alleged to have purchased on compulsion of the petitioner for Rs.15 lakhs and sold to one Theerath Singh of Delhi for Rs.20 lakhs. Nothing about the identity of Theerath Singh such as his address or physical identification to verify the truthfulness of the statement disclosed in the confession statement. Whether this statement can be considered as full and truthful disclosure of facts within one's knowledge which will entitle a person to get pardon is again a doubtful point.



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55. In Crime No.1/2017 against the petitioner is made to believe that it

was registered after the unanimous letter dated 25/11/2016 received by ADGP-EOW, who forwarded it to Inspector General of Police, Idol Wing-CID and he instructed for preliminary enquiry, *vide* order dated 14/12/2016. Around the same period, Thiru.Deenadayalan has voluntarily appeared before the Magistrate, Srivilliputtur as per the advice of his counsel and given statement in connection with C.C.No.2/2008 (Crime No.114/2005 – Palavoor case). He claims that his statement is a voluntary disclosure, not only in connection with his role in respect of the Crime No.114/2005 but also the role of other accused. Pardon tendered to Thiru.Deenadayalan, on 09/12/2016. His statement recorded by Investigating Officer on 03/01/2017. The F.I.R registered on 07/02/2017 as Crime No.1/2017. The other two witnesses namely Thiru.Swamydoss and GnanaAnbu, who admit that they found the idols in the year 2007, for more than 1½ years did not report it to any one except the photographer Sundaramoorthy at Madurai, who was asked to take photos of the idols. It is stated that Sundaramoorthy kept one set of photos in his studio display board. When he was offered to pay hefty commission, to mediate the sale of the idols, he accepted and came with the petitioner and his Team. This is a case of 3 idols which none have seen, except those persons who claim to have



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hidden it stealthily for months together after it was unearthed, but not reported to police or Revenue Authorities and the person who claims to have purchased it and sold to a idol dealer at Delhi. No enquiry made by the Investigating Officer, why they took photos of the idols and kept at the display board in the studio of the Sundaramoorthy before burying it. No investigation with the person who claims he purchased it for Rs.15 lakhs and sold it for Rs.20 lakhs to a dealer at Delhi but his identity not sought by the Investigating officer, while conducting preliminary enquiry before registration of the F.I.R or even thereafter, till date.

56. The additional final report in Crime No.114/2005 in which, this petitioner was added as additional accused was filed on 12/06/2017. In this additional final report, Mr.Ponn Manickavel, had appended a note before signing it with date. The note reads as below:-

Note:

As per the provisions of S.21(c) of Extradition (amendment) Act 1962, Extradited offender can be "TRIED only after getting the consent from the contracting State le.. the Gout. of Republic of Germany in the case of Subash Chandra Kapoor in this case. As per this provision, the legal embargo is only against



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*"**TRIAL**" of the extradited offender and not against his arrest, investigation, framing of charges with a view to provide him an opportunity to be "**Judicially Heard**". As such, it is most respectfully submitted before this Trial Court that charges may be framed against this **EXTRADITED OFFENDER** Subash Chandra Kapoor with a view to provide an opportunity so that he is Judicially Heard",*

It is most respectfully submitted that this H'ble Court may be pleased to issue a summon u/s 105 Cr.PC to the Homeland Security Investigation Agency, Special Agent Mr. Brenton Easter to testify before this Trial Court in this case and to produce the relevant document he had collected in relation to this case as per our Letter Rogatory sent to the contracting state/USA dt.7.9.2012 and 22.9.2012 in connection with the case in Vikkramangalam P.S Crime No.133/2008 and Udayarpalayam P.S Cr.No.65/2008.

Once he is "Judicially Heard" in this case in this Hon'ble Court, the undersigned/Chief Investigator/Inspector General of Police A.G.Ponn Manickavel IPS., would address to the Govt. of Republic of Germany through diplomatic channel to obtain the required prior consent before he is "Tried". In this connection the undersigned/Chief Investigator had obtained the legal opinion of the State Public Prosecutor, Gout of Tamil Nadu dated. 10.1.2017 (Letter attached) - relevant portion is reproduced:

"Therefore, in my considered opinion, after the charges are framed, you can inform the



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concerned authorities about the framing of charge after the accused are being heard about the accusations against them and get the "consent from Germany" for his prosecution".

Sd:-

(A.G.Pon.Manickavel, IPS.,)

*Chief Investigator/Inspector General of Police,
Idol Wing-CID.*

[The emphasis found in the letter are his]

57. After the above undertaking in the additional final report dated 12/06/2017, that he will address the Republic of Germany through Diplomatic Channel to obtain required prior consent before Mr.Subash Chandra Kapoor is tried, two years later, he has addressed a mail to the Home Secretary to Government of Tamil Nadu, which reads as below:-

Ponn Manickavel A.G<splofficeriwcid2018@gmail.com

Sat, Jun 29, 2019 at 4.13PM

To,

*Mr. Niranjana Mardy IAS,
Additional Chief Secretary to Govt. (Home) Dept.
Secretariat, Fort St. George, Chennai - 9.*

Sir,



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Sub:-	Meeting held on 12.06.2019 by the Learned Special Secretary (IS), MHA, New Delhi-Email missive is being sent to the Additional Chief Secretary (Home) Dept to immediately furnish the "Letter of Undertaking to Defray the Expenses" within 3 days - Likely to be incurred by the his New York witnesses in CC No.1/2016 (Udayarpalayam Police Station Crime No. 65/2008) - to issue a GO directing the Special Officer heading the Special Investigating Team constituted by the Hon'ble Courts not to prosecute the extradited offender Mr. Subash Chandra Kapoor in all other pending cases except the case in CC No. 1/2016 where the Trial is underway - In the interest of future prospect of the bilateral relationship between the Govt. of Rep. of Germany and the Govt. of Rep. of India with specific reference to pending extraditions from Germany - reg
Ref:-	Minutes of Meeting held on 12 th June 2019, MHA regarding Extradition of Mr.Subash Chandra Kapoor.

1). Kindly peruse 6 (IV) of the Minutes of Meeting held on 12.06.2019 wherein it was unanimously agreed that "As Mr. Kapoor is in custody for about 8 years and considering the maximum punishment provided u/s 457(2) is of 10 years, the Govt. of Tamil Nadu to examine the matter as per section 436A Cr.PC for taking it up with the Competent Court."

Note:-

Kindly note that the maximum punishment provided in S.457(2) IPC is 14 years (not 10 years) as per the TAMIL NADU IPC AMENDMENT ACT 28 of 1993,

2). In this context it requires to be noted that the IWCID headed by the then IGP are now headed by the



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Special Officer appointed by the Hon'ble High Court and confirmed by the Hon'ble Supreme Court of India proved capable of having detained the extradited offender Mr. Subash Chandra Kapoor for more than 7 long years since h was a notorious international Idol trafficker never ever apprehended by any Law Enforcement Agencies in the World.

3). The IWCID headed by the then IGP extradited him from the Govt. of Rep, Germany during 2012. Mr. Subash Chandra Kapoor is chiefly accountable for the theft and illegal export of antique idols of deities and artifacts from India which are worth beyond Rs. 600 Crores. We were able to repatriate stolen idols worth beyond Rs. 52 Crores concerned In Vikramangalam PS Cr. No. 133/2008 alone.

4). His detention by the Tamil Nadu IWCID sounded the death knell for all the international idol traffickers and in result no idol stolen from Tamil Nadu temples was illegally exported out of Tamil Nadu since 2012.

5). The IWCID headed by the then IGP proved capable of detaining this extradited offender in Judicial Custody for more than 7 long years even though the maximum period as per the provisions of S.436A Cr.PC in which this under trial prisoner could be detained is one half of the maximum period of imprisonment of 14 years specified for the offence punishable u/s 457(2) IPC as per the TAMIL



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NADU IPC AMENDMENT ACT 28 of 1993. We continuously appeared before the Hon'ble High Court objecting all his bail applications and the H'ble High Court after hearing the Public Prosecutor ordered for the continued detention of Mr. Subash Chandra Kapoor for a period longer than one half of the maximum punishment provided in S.457(2) IPC.

6). As per the provisions of S.427 Cr.P.C, (Sentence on offender already sentenced for another offence)

When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence.

As per S.428 Cr.P.C:-

S.428 CrPC: Where an accused person has, on conviction, been sentenced to imprisonment for a term, not being imprisonment in default of payment of fine, the period of detention, if any, undergone by him during the investigation, inquiry or trial of the same case and before the



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date of such conviction shall be set off against the term of imprisonment imposed on him on such conviction, and the liability of such person to undergo imprisonment on such conviction shall be restricted to the remainder, if any, of the term of imprisonment imposed on him.

Provided that in cases referred to in section 433A, such period of detention shall be set off against the period of fourteen years referred to in that section

7). We informed the participants of the meeting that we have prepared the Draft Consent Request and that the same will be finalized shortly. But it was not agreed, We stated that no prosecution will be undertaken against Mr. Subash Chandra Kapoor without the prior consent of the German Authorities. We further stated that the completion of examination of prosecution witnesses (except the two HSI, Now York foreign witnesses) will be completed by November 2019.

8). We further stated that there was no breach of Rule of Speciality because Mr. Subash Chandra Kapoor was not tried in respect of any other cases other than the case in CC No. 1/2016 (Udayarpalayam 65/2018).

9). He is being tried in respect of only one offence in



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Tamil Nadu (CC.No. 1/2016 in Udayarpalayam Police Station Crime No .65/2008). As such it is not correct to say that he is being tried before the Trial Court/Additional CJM Court Kumbakonam in respect of other offences also.

10). Prolonged detention before actual Trial helped the IWCID Police to completely not only close the scope available for this international idol trafficker Mr. Subash Chandra Kapoor but also to other idol traffickers in India and abroad to continuously engage in the theft and subsequent illegal export of the stolen antique idols out of Tamil Nadu since 2012.

11). With regard to the inordinate delay in the completion of Trial of the case in CC No 1/2016 (Udayarpalayam Police Station Crime No. 65/2008), the following observations are made or the Govt. of Tamil Nadu to take a decision for its expeditious completion of Trial before November 2019. Please refer my email missive (6 pages) intended for Mr. Anup Yadav, Deputy Legal Advisor, MHA (Copy Annexed)

12). It is sincerely requested that the Govt. of Tamil Nadu may be pleased to note that the German side is always linking the extradition of Mr. Subash Chandra Kapoor with other pending extradition cases, some of which are terrorism



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related and also linking with the signing of the Mutual Legal Assistance Treaty and as such the Govt. of Tamil Nadu may be pleased to take a holistic view of the situation in the interest of maintaining the credibility of the Indian Law Enforcement processes vis-a-vis our other extradition requests with foreign countries and we need to ensure that the delays in this case do not adversely affect the Govt. of India's pending request for extradition of terrorist from Germany.

13). We have already stated that no prosecution will be embarked upon against Mr. Subash Chandra Kapoor without the prior consent of the German side.

14). In the light of these objective facts I am to sincerely request that the Govt of Tamil Nadu may be pleased to take a decision to withdraw and not to prosecute extradited offender Mr Subash Chandra Kapoor in respect 2 cases viz.,

-Vikramangalam PS Crime No.133/2008

(CC.No.2/2016) -Palavoor PS Crime

No.114/2005 (Police Report has been filed)

and to direct the Special Officer to drop further action in respect of 2 cases viz

-Virudhachalam PS Cr. No.603/2013 (Under

Investigation) -Veeravanallur PS Cr.



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No.12/1995 (Under Investigation)

15). And that the Govt. of Tamil Nadu will extend all the assistance to the Special Investigation Team headed by me to expeditiously complete the examination of a the prosecution witnesses including the two foreign HSI witnesses in CC No. 1/2016 (Udayarpalayam PS Crime No. 65/2008) by November 2019 by immediately issuing within a reasonable period of 3 days a "Letter of Undertaking to Defray the Expenses" in CC No. 1/2016 (Udayarpalayam PS Cr. No. 65/2008) likely to be incurred by the visiting two foreign HSI, New York witnesses to testify in this case before the Trial Court.

16). I sincerely request that the Govt. of Tamil Nadu may be pleased to issue a GO intimating the decision of the Govt. of Tamil Nadu directing the Special Officer heading the SIT constituted by the Hon'ble High Court, not to prosecute the extradited offender Mr. Subash Chandra Kapoor in respect of all the other cases pending investigation and in respect of which Police Report has been filed (4 cases as per Para 14 above), in the interest of future prospect of smooth bilateral relationship between the Govt. of Republic of India and the Govt. of Republic of Germany with specific reference to pending extraditions from Germany.



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17). *The Govt. of Tamil Nadu may be pleased to note that the offences which are now under investigation and in respect of which Police Report has been forwarded to the Addl. CJM Court Kumbakonam not being an offence punishable with death and in respect of which accused Mr. Subash Chandra Kapoor had undergone detention for more than 7 years and whereas the maximum punishment provided in S.457(2) IPC is 14 years.*

18). *Hence, the Govt. of Tamil Nadu may be pleased to permit me to take up the matter with the Addl. CJM Court Kumbakonam through the Jurisdiction APP so that the Ld. Assistant Public Prosecutor (Grade 1) who is in charge of the cases viz.,*

- *Case in CC No. 2/2016 (Vikramangalam Police Station Crime. No.133/2008) and*
- *Case in Palavoor Police Station Cr. No. 114/2005 (Police report already filed Case before the Hon'ble Court).*

... may, with the consent of the Addl. CJM Court withdraw the extradited offender Mr. Subash Chandra Kapoor from the prosecution and upon such withdrawal the accused Mr. Subash Chandra Kapoor will be discharged in respect of these two cases since no charge had been framed against him by the Addl. CJM Court in respect of these two offences.



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19). *I again request the Additional Chief Secretary to Govt to issue a GO directing the Special Officer heading the SIT constituted by the H'ble High Court intimating the decision of the Govt. of Tamil Nadu to drop further proceedings against extradited accused Mr. Subash Chandra Kapoor in respect of the following offences which are still under investigation viz.,*

- *Virudhachalam Police Station Crime No. 603/2013 (Under Investigation)*
- *Veeravanallur Police Station Crime No. 12/1995 (Under Investigation)*

... on the ground of the supreme imperative to upkeep the prospect of future bilateral relationship between the Govt. of Republic of India and the Govt. of Republic of Germany with specific reference to pending extraditions, remains healthy for all days to come.

20). *As Special Officer appointed by the H'ble High Court and confirmed by the Hon'ble Supreme Court of India, it is my duty to be truly helpful to the Govt. of India and the Govt. of Tamil Nadu in this regard.*

Sd:-
SPECIAL OFFICER,
Appointed by the Hon'ble High Court and



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*confirmed by the Hon'ble Supreme Court of India,
to head the IWCID,
Special Camp Office, Trichy,
Camp at Chennai.*

58. Though his letter is reproduced fully for full appreciation, the sum and substance of his letter is to the effect that, to discharge Subash Chandra Kapoor from two cases and to stop proceedings against him in 2 other cases.

59. Reading together his note appended along with the additional final report dated 12/06/2017 made in consultation with State Public Prosecutor and the tenor of the letter dated 29.06.2019 addressed to the Additional Chief Secretary to the Government (Home) Department, apparently without State Public Prosecutor opinion, leaves an impression the allegations made by the petitioner, cannot be ignored.

60. The petitioner and the 5th respondent are Police Officers at different rank. They had been entrusted with specific responsibility, which involves pride and faith of this Nation. Their action also involves other ramifications like our foreign relationship, honouring the International Treaty obligations without compromising



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the interest of the Nation. Men entrusted with responsibility whether on the

Investigating side or on the Judicial side are expected to deal fairly in issues which has serious ramification on our Culture, Heritage, Faith and Emotion.

61. From the material placed, it is certain that only one among the two, the petitioner or the 5th respondent must have placed all the facts within their knowledge and those facts must be true. But, at no stretch of imagination, both versions could be true. Yet another possibility is both have wilfully come out only with half truth and suppressing the other half, it is then a case of suppression of the fact or suggestion of falsehood through fabrication of documents. One of the character here, had chosen to play the role of “*red herring*”. Either way, for the Court to satisfy its conscious, let fair and impartial investigation be conducted. Hence, this is a case which requires exercise of the inherent power under Section 482 of Cr.P.C to ensure fair and impartial investigation.

62. This Court also is of the opinion that it is appropriate also to take judicial notice of the communication produced by the Learned Counsel in a connected case, wherein the then Commissioner, HR&CE Department through her



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DO letter dated 31.07.2018 has highlighted 10 specific incidences, where

Mr.A.G.Ponn Manickavel, IPS., Inspector General of Police, had not cared to follow the rules and settle principles of law when dealing with Officers of HR&CE Department while carrying on his responsibility as Chief of the Special Team. His prejudiced approach towards the Officers of the HR&CE Department and forcing them to do act not permissible in law been brought to the notice of the Chief Secretary of the State and Director General of Police of the State, for necessary action.

63. Therefore, taking into consideration the international ramification of the offence, exchange of allegations against each other by two Police Officials, who were privy to the idols theft cases, the alleged attempt to screen the crime of theft and the thieves, this Court has no second opinion that this is a case to be investigated by Central Bureau of Investigation (CBI) to unravel the truth and to secure the culprits as well as recovery of other antique idols which are still in alleged possession/control of the prime accused Mr.Subash Chandra Kapoor, against whom the investigation has come to stand still in view of the opinion dated 29/06/2019 alleged to have been given by Mr.A.G.Ponn.Manickavel, Inspector



General of Police.

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64. Accordingly, Director of Central Bureau of Investigation, is directed to take cognizance of the representations of the petitioner dated 20/04/2019 and 15/06/2019 and make a preliminary enquiry by appointing an Investigating Officer not below the rank of Deputy Inspector General of Police. Hence, the investigation of Crime No.1 of 2017 from the file of Idol wing is transferred to Central Bureau of Investigation [CBI] for re-investigation.

65. In case, any concoction of fact and falsification of evidence in their investigation by any of the Police Officials in Crime No.114 of 2005 is made out, the Central Bureau of Investigation [CBI] is permitted to proceed against them, independently and file report before the Court which is trying the cases in Crime No.114 of 2005 for the offence of fabricating false evidence with intent to procure conviction.

66. Accordingly, this *Criminal Original Petition is allowed.*



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22.07.2022

Index :Yes.
Internet :Yes.
Speaking order/Non-speaking order.
bsm

To,

1. The Additional Chief Secretary to Government,
Home, Prohibition and Excise Department, (Police-2),
Secretariat, Fort, Chennai.
2. The Director General of Police,
Tamil Nadu,
Mylapore, Chennai - 4.
3. The ADGP, CBCID Wing,
Old City Commissioner Office,
Egmore, Chennai.
4. The Deputy Superintendent of Police,
CBCID Wing,
Old City Commissioner Office,
Egmore, Chennai.
5. The Special Officer & Head of Special Investigation Team,
Idol Theft Cases, Special Camp Office,
District Armed & Reserve Campus,
Subramaniyapuram, Trichy.
6. The Director,

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Central Bureau of Investigation,
Plot No.5-B, CGO Complex, Lodhi Road,
New Delhi-110 001.

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7. The Joint Director and Head of Chennai Zone,
Central Bureau of Investigation,
3rd Floor, EVK Sampath Building, College Road,
Chennai-6.
8. The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.

bsm

Delivery order made in
CrI.O.P.No.18583 of 2019

22.07.2022