



**Jammu and Kashmir  
State Vigilance Commission**  
Old Assembly Complex, Srinagar.

**Order No: 01 of 2013**  
**DATED: 29 - 08-2013**

The matter regarding the supervision of State Vigilance Commission over the Vigilance Organization related to the investigation of offences under the Prevention of Corruption Act, SVT 2006 came before us for consideration. We have scrutinized the Act and the law laid down by the Apex Court in this regard.

Section 8 of the State Vigilance Commission Act, 2011, inter-alia empowers the State Vigilance Commission to exercise following functions:

- (a) To exercise superintendence over the functioning of the Vigilance organization so far as it relates to investigation of offences under Prevention of Corruption Act, Samvat 2006:
- (b) Give directions to Vigilance Organization for the purposes of discharging the responsibility entrusted to it under the Prevention of Corruption Act Samvat, 2006.
- (c) Review the progress of investigations conducted by the Vigilance Organization.
- (d) Review the progress of cases pending with competent authorities for accord of prosecution sanctions.

Whereas, the Vigilance Organization has been bestowed with the power of conducting investigations into the acts of omission and commission by the public servants constituting offences under the Prevention of Corruption Act, 2006 and by virtue of section 11 of the J&K Prevention of Corruption Act, 2011 the State Vigilance Commission has been empowered to supervise and review the investigations being conducted by the Vigilance Organization. This power of review and supervision over investigations has been conferred on State Vigilance Commission exclusively to the exclusion of the Government in General Administration Department.

Whereas, every complaint received by the Vigilance Organization has to be verified/investigated to ascertain the veracity and truthfulness of the allegations levelled therein. To do so different steps are taken like secret verifications, open verifications, joint surprise checks, preliminary enquiries, registration of regular FIRs or enquiry by the Departmental Vigilance Officers as has been mentioned in the Vigilance Manual, 2008.

Whereas, the Hon'ble Supreme Court in a case reported in AIR 1959 SC 707 followed by the Hon'ble High Court of J&K in a case reported in 2004(2) JKJ 77, has unambiguously held that formation of opinion as to whether on the material collected, there is a case to place the accused before a Magistrate for trial and if so, taking the necessary steps for the same by filing a charge sheet under section 173, is one of the stages of investigation.

Whereas, the Hon'ble Supreme Court in case Maneka Gandhi V/S Union of India and others reported in 1978(1) SCC 248 it has been held that " In the light of Article 21, provisions of Section 154 of Cr.P.C must be read down to mean that before registering an FIR, the Station House Officer must have a prima-facie satisfaction that there is commission of cognizable offence as registration of an FIR leads to serious consequences for the person named as accused and for this purpose, requirement of preliminary enquiry can be said to be spelt out in section 154 and can be said to be implicit within the provisions of section 154 of Cr.P.C." Same view has been taken in a case reported in 1990(1) SCC 328.

Whereas, in view of the law laid down as aforesaid as well as the aforementioned provisions of State Vigilance Commission Act r/w Prevention of Corruption Act the Commission is empowered and under legal obligation to review the investigations/enquiries of whatever nature and/or by whatsoever nomenclature called, being carried out by the Vigilance organization right from the stage these are taken up till the decision to obtain sanction for prosecution, if required, or filing of charge sheet is taken.

Now, therefore, in exercise of powers conferred upon the Commission by virtue of section 8 of J&K State Vigilance Commission Act, 2011 r/w section 11 of J&K Prevention of Corruption Act, Samvat 2006 it is advised that the Vigilance Organization shall, henceforth, on completion of investigations, forward the cases along with records to the Vigilance Commission so that these are reviewed before being actually sent to the competent authority for accord of sanction. The FIR cases and enquiries by

whatsoever nomenclature called shall also be supervised and reviewed as per the calendar fixed by the Commission.

Sd/  
Ghous-ul-Nisa Jeelani  
(Member)

Sd/  
Dr. R.K. Jerath  
(Member)

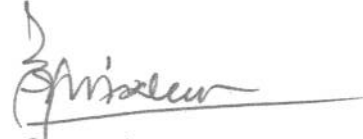
Sd/  
(Kuldeep Khoda)  
(Chairperson)

No: SVC/50/2013

Dated: 29/08/2013

Copy to the:-

1. The Advocate General, J&K Srinagar.
2. The Secretary to the Government,  
General Administration Department for information.
3. Director Vigilance Organization for information and compliance.
4. Principal pvt secretary to the Chief Secretary.
5. Office File for record and reference.



Secretary,  
State Vigilance Commission.