

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31st DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

WRIT PETITION NO. 4416 OF 2022

BETWEEN:

T. N. CHIKKARAYAPPA
S/O S. NARAYANAPPA,
AGED ABOUT 60 YEARS,
R/AT NO.546, 1ST MAIN ROAD,
1ST CROSS, 3RD BLOCK,
DOLLARS COLONY, RMV 2ND STAGE,
BENGALURU - 560 094.

...PETITIONER

(BY SRI. M.S. SHYAM SUNDAR, SENIOR COUNSEL FOR
SMT. VANDANA P.L., ADVOCATE)

AND:

STATE OF KARNATAKA
BY LOKAYUKTHA POLICE,
BANGALORE CITY, REPRESENTED BY S.P.P.,
HIGH COURT OF KARNATAKA,
BANGALORE - 560 001.

...RESPONDENT

(BY SRI. B. B. PATIL, SPECIAL COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C. PRAYING TO QUASH THE SOURCE REPORT DATED.5.12.2016 THE RESULTANT FIR IN CRIME NO.26/2016 DATED.5.12.2016 AND THE CHARGE SHEET IN SPL C NO.656/2021 FILED BY THE RESPONDENT ANTI-CORRUPTION BUREAU BENGALURU CITY POLICE STATION BENGALURU FOR THE OFFENCE

PUNISHABLE UNDER SECTION 13(1)(D) 13(1)(E) READ WITH 13(2) OF THE PREVENTION OF CORRUPTION ACT 1988 ARRAIGNING THE PRESENT PETITIONER AS THE ACCUSED NO.1 PENDING ON THE FILES OF THE HON'BLE XXIII ADDL CITY CIVIL AND SESSIONS JUDGE (CCH-24) AT BENGALURU ANNEXURE-A AND B TO THE W.P.)

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.04.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

RESERVED FOR ORDERS ON: 25.04.2024
PRONOUNCED ON : 31.05.2024

ORDER

This petition is filed by the petitioner/accused No.1 under Articles 226 and 227 of Constitution of India read with section 482 of Cr.P.C., for quashing the FIR and the charge sheet in Crime No.26/2016 in Spl.CC.No.656/2021 registered by Anti-corruption Bureau (ACB) and charge sheeted for the offences punishable under Sections 13(1)(d), 13(1)(e) read with 13(2) of The Prevention of Corruption Act 1988 (hereinafter referred to as "PC Act") pending on the file of XXIII Additional City Civil and Sessions Judge, Bengaluru.

2. Heard the learned senior counsel for the petitioner and learned special counsel for the Lokayuktha/respondent.

3. The case of the prosecution is that, on the basis of the source report prepared by the then Anti-corruption Bureau (ACB) dated 05.12.2016, the ACB registered case in Crime No.26/2016 and charge sheeted against petitioner and others for the above said offences. It is alleged in the source report that, the petitioner joined his service as Assistant Engineer in the year 1987, then he has passed the KPSC examination and became Assistant Executive Engineer, thereafter he was promoted as Executive Engineer. During the service, he has amassed the wealth in the name of his wife and daughter. His daughter is studying in M.S.Ramaiah Medical College and petitioner is staying in the apartment. The income tax officials conducted raid on 30.11.2016 in the house of the petitioner/accused and they have issued letter to the Chief Secretary, Government of Karnataka with regard to the seizure during the raid. Accordingly, the source report prepared by the ACB police,

wherein, it is shown that the petitioner had earned Rs.80 lakhs from his salary and Rs.50 lakhs through other sources and total being Rs.1.30 crores and he is also having landed properties in his name and benami names, for worth of rupees Rs.5 crores and 35 lakhs. His expenditure was Rs.25 lakhs and Rs.1 crore was spent towards medical education of the children, thereby, he has amassed more than Rs.5 crores and Rs.35 lakhs against the known source of income. Based upon the source report, the Superintendent of Police, ACB passed an order on 5.12.2016, directing the ACB Police to register FIR and take up the investigation. Accordingly, the investigation was conducted by one Dy.S.P and filed the charge sheet against the petitioner and four others. Based upon the charge sheet, the trial court took the cognizance of the offences punishable under Sections 13(1)(d), 13(1)(e) read with 13(2) of the PC Act and under Section 109 of IPC, against all the accused persons, which is under challenge by the accused No.1.

4. Learned Senior Counsel appearing for the petitioner has seriously contended by challenging charge sheet and taking cognizance of the offence alleging that, there was Income Tax raid by the income tax authorities and they have seized the documents during the raid and subsequently, they took up the matter under investigation. They have to file the proceedings before the court for any undeclared assets and income of the petitioner, but the investigation by the IT department is still pending. IT Department have not concluded and given findings. The proceedings before the income tax authorities under section 135 of Income Tax Act, amounts to judicial proceedings, until they gave findings regarding undeclared assets or income, the ACB police cannot register the FIR. There is insufficient materials collected by them. The IT department sent a letter to the Chief Secretary and inturn, the FIR came to be registered. There is no details of the assets and liabilities, known sources of income, declared income by the petitioner in the letter sent by the income tax authorities. Such being the case, the Superintendent of Police given

permission to register FIR, which is not correct. Even otherwise, if the cognizance case is made out, the Superintendent of Police could have registered FIR and thereafter forward the same to the Superintendent of Police and then Superintendent of Police shall permit for investigation. The impugned order passed by the Superintendent of Police reveals he has informed to the ACB to register FIR and investigate the matter as per section 17(C) proviso 2 of the PC Act the Superintendent of Police is authorized upto the officer not below the rank of DYSP only for the purpose of investigation. That means the police is required to register the FIR and thereafter should seek permission to investigate the matter. But here in this case, the source report prepared by the police is insufficient. They have not collected proper materials and information from the Income Tax (IT) Department. Therefore, the FIR cannot be registered and investigation also became illegal. It is further contended that the IT case is pending and the co-accused No.3 has been charge sheeted where he has filed application for discharging the accused No.3, before the

Magistrate, which came to be dismissed and the High Court also dismissed the same. However, the Hon'ble Supreme Court has allowed and proceedings against the accused No.3 has been quashed. Therefore, it is contended that the petitioner is also entitled for the same relief.

5. Learned senior counsel further contended that the trial court took cognizance, there is no reference in respect of taking twice while taking cognizance regarding obtaining the sanction either under section 19 of PC Act or under section 197 of Cr.P.C. Thereby proceedings is not sustainable. It is also contended by the Learned Senior Counsel regarding known source of income, is source known to the prosecution and action of investigation begun only at the request of the income tax authority. The source of income is known to Income Tax department, they have to conclude the proceedings and determine about the undisclosed assets or income. The Superintendent of Police directed the police inspector to investigate the matter which is against the section 17(c) of PC Act.

6. Learned senior counsel further contended that the source report must be independent report and they have to collect the documents and the materials for arriving at the conclusion there is disproportionate assets, but the source report is purely based upon the letter sent by the Income Tax Department to Chief Secretary and proceedings before the IT Department is not concluded. It has to reach a logical end as per Section 135 of the Income Tax Act. Learned senior counsel further contended that if the IT department had given clean chit then how the police will file the charge sheet? The accused can give reply, he can satisfy the IT department, if they have sought any documents. Such being the case, until conclusion of the income tax proceedings, registering the FIR and taking action in the PC Act, is unlawful and erroneous. The genesis lies in the Income Tax Department and they have to probe entire matter and the police cannot probe the same parallelly.

7. Learned Senior Counsel further contended as per the source report shown some Benami assets, but there is no proper details and names of the Benami details. There is no nexus in the mentioning of the property. If any Benami property is there, the same has to be followed under the Benami Act. He further contended that there is no preliminary enquiry conducted by the ACB, even the preliminary enquiry started by the IT department was not concluded and the check period as per the FIR was 1987 till 5-12-2016. But the IT department have not mentioned anything about the same and source report does not reveal, it is based upon the Income tax report. Therefore, the act of the police is totally inconsistent, therefore, prayed for quashing the same.

8. Per contra, learned special counsel for the Lokayuktha has seriously objected the petition and contended that the entire arguments of the learned senior counsel for the petitioner is under surmise. There are two different agencies which took up the proceedings and

investigated the matter and it is separate and parallel proceedings which is permissible under the law. The IT department is concerned only about verifying whether income is taxable or not, and they cannot initiate the proceedings under the PC Act and punish the public servant. The preliminary enquiry is not required, the source report also not mandatory and there is no statute to prepare source report. Therefore, the source report, and preliminary enquiry is not required. He, further contended, after conducting the IT raid, there is some kind of correspondence between IT department and police department and they shared some information. Based upon the same, the FIR was registered, investigation was conducted. It is further contended that it is permissible five investigation agency they can coordinate to each other as held by Hon'ble Supreme in case of ***Vijay Rajmohan Vs Central Bureau of investigation*** reported in (2023) 1 SCC 329. One proceedings cannot be supplemented to the another proceedings, both are totally independent. Unless and until FIR is registered, which is based upon section 17 of the PC

Act and registering the FIR after the permission under section 17 of the PC Act, will not prejudice the case of the accused. In the source report, it is also mentioned about the source report, where the accused was found 407% disproportionate income and subsequently ACB police took up the raid in the house of the accused and found materials and collected the materials and conducted preliminary enquiry where it was revealed 799.13% was disproportionate to known source of income. Hence charge sheet came to be filed. The other co-accused persons filed application for discharge, which came to be dismissed, except accused No.3 which was allowed by the Hon'ble Supreme Court for having paid the school fees by way of scholarship. The court is required to quash the proceedings, only if there is no cognizable offence is committed and the proceedings is abuse of process of law and not otherwise. The sanction was accorded by the concerned authorities for prosecuting the petitioner, the validity of the sanction cannot be challenged in this petition, it has to be challenged during the course of trial. Further contended under section

197 of Cr.P.C., permission is not required, hence accused committed offence under sections 13(1)(d), 13(1)(e) read with 13(2) of the PC Act and under Section 109 of IPC is against other accused for abatement. Therefore, the permission under section 197 of Cr.P.C. is not required. There is no flaw in the letter sent by the IT department and source report for passing the order under section 17 of PC Act. The preliminary report was conducted after the FIR. Therefore, prayed for dismissing the petition.

9. In reply, learned senior counsel for the petitioner has contended the IT department sent letter as per section 113 of IT Act. The letter clearly reveals that they have already seized all the documents and materials while conducting the raid on 2-12-2016. Therefore, the question of once again conducting the raid seizing same properties does not arise. The alleged benamidar accused No.3, the case has been quashed by the Hon'ble Supreme Court, when all the documents are with the IT Department, the question of coming to the conclusion that there is amassing of the property by the petitioner does not arise. As per the

section 461 of Cr.P.C., the illegality in the investigation and taking cognizance cannot be cured. Therefore, proceedings is vitiated. Hence, prayed for quashing the Criminal proceedings.

10. Learned counsel for the petitioner in support of his arguments relied upon the various judgments of the Hon'ble Supreme Court and the judgment of the High Court in **WP.No.3107/2024** in case of ***Sri.N.Satish Babu Vs Lokayuktha and Anr*** and in **WP No.13460/2023** in case of ***Sri.T.N.Sudhakar Reddy Vs Lokayuktha*** and other judgments. The learned counsel for the respondent also relied upon the various judgments of Hon'ble Supreme Court.

11. Having heard the arguments of learned senior counsel for the petitioner and learned special counsel for Lokayuktha and perused the records. On perusal of the same, which reveals the income tax authorities have conducted raid i.e., search and seizure in the house of the petitioner on 30.11.2016 and they said to have seized some

cash, jewellery and documents relating to the financial transactions and they took up the investigation. Subsequently, the income tax authorities have sent a letter to the Chief Secretary, Government of Karnataka on 2.12.2016 intimating the search and seizure of documents and valuables in the house of the petitioner and they have stated they are conducting the investigation, which is under progress. Based upon the letter received from the income tax authorities, the Chief Secretary passed an order on 5.12.2016 for suspending the petitioner. Subsequently, letter was referred to the ACB. Accordingly on 5.12.2016 police inspector one Prashanth R.Varni prepared a source report and based upon the source report, the Superintendent of Police, ACB directed to register the FIR against the petitioner.

12. The main contention of the learned senior counsel for the petitioner is that there is no preliminary enquiry conducted to verify about the disproportionate assets said to be in possession of the petitioner and if the cognizable

offence is made out, the FIR could have been registered by the ACB, thereafter should obtain the permission from the Superintendent of Police under section 17 of the PC Act for the purpose of investigation. But no such preliminary enquiry was conducted and FIR was not registered. However, based upon the report of the income tax officials, case was registered as per the direction of the Superintendent of Police and investigated the matter. Therefore, registering the FIR is not sustainable and investigation is incurable defect. Therefore, proceedings is vitiated.

13. On perusal of the order of ACB dated 5.12.2016 Superintendent of Police, ACB passed order under Section 17 of the PC Act, directing the Deputy Superintendent of Police to register the FIR and investigate the matter. Admittedly, there is no preliminary enquiry conducted and FIR was not registered prior to passing an order to investigate as per section 17 of the PC Act. The very first

paragraph of the order dated 05.12.2016 which reveals as under;-

*"ORDER NO.ACB/INV/B.CITY/SP/08/2016,
DATED 05-12-2016.*

Therefore by virtue of the powers vested in me under provisions of Section 17 of the Prevention of Corruption Act 1988, 1, Girish. S, Superintendent of Police, Anti Corruption Bureau, Bangalore City Division, Bangalore order that Sri Vazeer Ali Khan, Deputy Superintendent of Police, Anti Corruption Bureau, Bangalore City Police Station, Bangalore to register a case under Section 13(1)(e), 13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988 against Sri T.N.Chikkarayappa, Managing Director of Cauvery Neeravari Nigam, Bengaluru and to investigate the said case.

Further I authorize Sri Vazeer Ali Khan, Deputy Superintendent of Police, Anti Corruption Bureau, Bangalore City Police Station, Bangalore, under the provisions of the section 18 of the Prevention of Corruption Act 1988 to inspect the bankers books in so far as it relates to the accounts of the persons suspected to be holding money on behalf of the said Sri T.N. Chikkarayappa, Managing Director of Cauvery Neeravari Nigam, Bengaluru and to take or cause to be taken certified copies of the relevant entries there from and the bankers concerned shall be bound to assist the police officer Sri Vazeer Ali Khan, Deputy Superintendent of Police, Anti Corruption Bureau, Bangalore City Police Bangalore, in the exercise of the powers under the said section of law."

14. As per the judgment of the coordinate bench as well as the order passed by the court in similar cases in **Sri.N.Satish Babu Vs State by Lokayuktha** in **Writ Petition No.3107/2024** wherein this court relied upon the judgments of the coordinate bench passed in (1) **W.P.No.43817/2018 (GM-RES)** in case of **Navaneeth Mohan N Vs. SHO, ACB, Bengaluru** dated 21.04.2021, (2) **W.P.No.15886/2022 (GM-RES)** in case of **Balakrishna H.N. Vs. State of Karnataka by ACB, Mysuru**, dated 03.01.2023 and (3) In case of Charansingh Vs. State of Maharashtra & Ors., reported in **(2021) 5 SCC 469** has held at paragraph Nos.6 to 10 as under:-

"6. Having heard the arguments, perused the records. The main contention of the learned counsel for the petitioner is that the Section 17, proviso 2 of the PC Act, was not followed, which is mandatory in nature. Prior to according permission, the SP is required to verify the source report and should make preliminary enquiry and to register FIR. Thereafter, shall pass the order under Section 17 of PC Act, for investigating the matter. But here in this case, no FIR was registered and

based upon the source report, he has accorded the permission under Section 17 proviso 2 of the PC Act. In support of his case, learned counsel relied upon the judgment of the Hon'ble Supreme Court in Bhajan Lal's case stated supra. Hon'ble Supreme Court has held at paragraph 128 as under;

"128. The conspectus of the above decisions clearly shows that the granting of permission under Section 5-A authorising an officer of lower rank to conduct the investigation is not to be treated by a Magistrate as a mere matter of routine, but it is an exercise of his judicial discretion having regard to the policy underlying and the order giving the permission should, on the face of it, disclose the reasons for granting such permission. It is, therefore, clear in the light of the above principle of law that the Superintendent of Police or any police officer of above rank while granting permission to a non-designated police officer in exercise of his power under the second proviso to Section 5-A(1), should satisfy himself that there are good and sufficient reasons to entrust the investigation with such police officer of a lower rank and record his reasons for doing so; because the very object of the legislature in enacting Section 5-A is to see that the investigation of offences punishable under Section 161, 165 or 165-A of Indian Penal Code as well as those under Section 5 of the Act should be done ordinarily by the officers designated in clauses (a) to (d) of Section 5-A(1). The exception should be for adequate reasons which should be disclosed on the face of the order. In this connection, it is worthy to note that the strict compliance with Section 5-A(1) becomes absolutely necessary, because Section 5- A(1)

expressly prohibits police officers, below certain ranks, from investigating into offences under Sections 161, 165 and 165-A, IPC and under Section 5 of the Act without orders of Magistrates specified there- in or without authorisation of the State Government in this behalf and from effecting arrests for those offences without a warrant. See also A.C. Sharma v. Delhi Administration".

7. Learned counsel also relied upon the judgment of the Hon'ble Supreme Court in Charansingh v. State of Maharashtra & Ors, Hon'ble Supreme Court held in paragraph Nos. 15 and 15.1 are as under;

"15. While expressing the need for a preliminary enquiry before proceeding against public servants who are charged with the allegation of corruption, it is observed in P. Sirajuddin³ that: (SCC p. 601, para 17),

"before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of indulging into corrupt practice and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person who is occupying the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with

enquiries of this kind, no exception can be taken to an enquiry by officers of this Department.

It is further observed that: (P. Sirajuddin case³, SCC p. 601, para 17)

"when such an enquiry is to be held for the purpose of finding out whether criminal proceedings are to be initiated and the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the person against whom the allegations are made and documents bearing on the same to find out whether there is a prima facie evidence of guilt of the officer, thereafter, the ordinary law of the land must take its course and further enquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report."

15.1. Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/ or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and

the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

8. Learned counsel also relied upon the coordinate bench in Navaneeth Mohan's case stated supra at paragraph Nos.15 and 16 as under;

"15. The source report which is part of Annexure-A submitted before Superintendent of Police, ACB, Bengaluru, the note of Superintendent of Police, ACB do not indicate that along with the said report any material was placed before him to grant permission to register the FIR and investigate the matter. In the order of Superintendent Police absolutely, there is no reference to submission of any documents along with the source report. In one stroke the Superintendent of Police says that he is convinced that it is a fit case to register the FIR and investigate the case. He does not even say that any preliminary enquiry was conducted prior to placing source report before him. Therefore, there is clear violation of the direction issued by the Hon'ble Supreme Court in Lalitha Kumari's case in registering the FIR.

16. In the judgment of the Hon'ble Supreme Court in Charansingh Vs. State of Maharashtra and others in Crl.A.No.363/2021 dated 24.03.2021 relied upon by the learned Spl. Public Prosecutor himself, in para 12 it was held that before

registering the FIR a preliminary enquiry shall be conducted either confidential or open enquiry."

9. *Another coordinate bench in Balakrishna's case stated supra also taken similar view and has held at paragraph 12 as under;*

"12. If the reasons rendered by Apex Court are noticed, two factors would emerge one, that the prosecution is required to draw up source report after conducting some sort of a preliminary enquiry to know the assets of the Government servant and two, after the source information report is placed before the Superior Officer - Superintendent of Police, he has to verify as to whether a crime should be registered or otherwise. If these principles that would emerge from the judgment of the Apex Court are considered qua the facts obtaining in the case at hand, the registration of the crime would fall foul of the principles laid down by the Apex Court and that of this Court in the afore-quoted judgment. Therefore, on this short ground that the source information report disclosed blatant non-application of mind and non-conduct of preliminary inquiry as is necessary in law only in cases concerning disproportionate assets.

10. *In view of the judgment rendered by Hon'ble Supreme Court as well as coordinate benches of this court and looking to the fact of the case, where the superintendent of police have granted permission on 8.1.2024 and directed the Dy.SP to investigate the matter. The said order has been passed just based upon the source report submitted by one Ramakrishna Dy.SP -06. On perusal of the order it does not reveal the application of mind by the SP directing to register and investigate*

the matter. Just that he has passed the order as per the source report of the Dy.SP-06 and he has authorised to register and investigate the case. But learned SP has not at all applied his mind as to how the said figure was required to be investigated and registered the FIR. The coordinate bench has held in the Balakrishna's case stated supra, the source report, if makes out a cognizable offence, the police officer can register the FIR by making a preliminary enquiry then forward the FIR as well as preliminary enquiry report, along with the source report to the SP for according permission to investigate the matter. However, herein this case, it is a clear violation of the mandatory provision of Section 17 (proviso 2) of PC Act. In the Charan Singh's case stated supra, has considered the same. Here in this case, even if there is no preliminary enquiry to be conducted by the police in order to know the veracity of the source report and if the cognizable offence is made out, they have registered FIR and then forwarded the same to SP for according the permission to investigate the matter. In this case, after according permission by the SP, the FIR has been registered. Absolutely there is no preliminary enquiry conducted by police. FIR was also not registered prior to order of SP. The coordinate bench of this court while considering the Lalita Kumari's case in Balakrishna's case stated supra had quashed the criminal proceeding and another coordinate bench in WP.No.43817/2018 in Navaneeth Mohan's case also had quashed the criminal proceedings based upon the non-compliance of the guidance issued by the Hon'ble Supreme Court in the Lalita Kumari's case and Charan Singh's case stated supra.

Therefore, considering the facts and circumstances of the case, there is clear violation of guidelines issued in Lalita Kumari's case and Charan Singh's case and in view of the judgment of the Hon'ble Supreme Court in Bhajan Lal's case, the prosecution launched by the respondent is abuse of process of law. It is not a fit case for investigating the matter and FIR is liable to be quashed.

Accordingly, this petition is allowed."

15. This court also held in case of ***T.N.Sudhakar Reddy Vs State of Karnataka*** in ***Crl.P.No.13460/20253 dated 4.3.2024*** taken the similar view and quashed the FIR. Here in this case, though the police have stated in the alleged source report dated 5.12.2015, which reveals as under:-

Sl.Nos.	(i) Income Details	Estimated Value
1.	The income of the petitioner shown as salary	Rs.80 lakhs
2.	Other sources	Rs.50 lakhs
	Total	Rs.130 lakhs
(ii) Asset details		

1.	The property in possession there were 5 properties worth	Rs.5.35 crores
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Out of the properties worth Rs.5.35 crores, only one item which was worth Rs.75 lakhs was seized during the raid. But this raid was conducted by the Income tax department and they have already taken up the investigation and intimated to the Chief Secretary of Government of Karnataka. In turn, the source report was prepared by the ACB, but it does not contain the details of the income of the petitioners in respect of other sources and other details with respect of purchasing the landed properties were also not mentioned in the source report and there are no dates for having purchased the property and also the value of the property and sale consideration in the source report. But it was blindly mentioned as 4 properties and worth Rs.75 lakhs cash and the expenditure was Rs.1.25 crores and there is no details in the source report, in order to come to the conclusion that there was disproportionate assets in

possession of the petitioner, which is more than the known source of income.

16. That apart absolutely there is no mentioning about the details as to what was the assets and other properties? and whether it was movable property declared by the petitioner while joining the service? It is simply mentioned during the check period 1987 to 2016 these are the properties held by the petitioner. Absolutely there is no prima facie case made out in the source report in order to register the FIR, therefore it is necessary for the ACB police to conduct a preliminary enquiry prior for registering the FIR, as held by the Hon'ble Supreme Court in ***Lalita Kumari vs. Government of Uttar Pradesh and others reported in (2014) 2 SCC 1.*** It is seen from the record all the alleged concocted source report, which is totally based upon the letter sent by the income tax authorities and the Superintendent of Police directed the Dy.SP to register the FIR and investigate the matter. There is no application of mind in passing the order for investigating the matter and

registering the FIR. Therefore, the very investigation itself vitiates as it is illegal and incurable defect.

17. Learned senior counsel also contended the income tax authorities have taken up the investigation and initiated the proceedings under Section 135 of the Income Tax Act, which is a judicial proceedings. Admittedly the letter of the IT department sent by the Chief Secretary where it is clearly mentioned that they have seized some documents, cash and jewellery in the house of the accused during the raid and they have categorically stated the investigation is under progress and they have not mentioned what was the actual investigation report conducted by them and they have not concluded the investigation in order to show there was huge properties or assets than the known source of income, when they have not completed investigation and in the given findings in the proceedings, it is not possible to come to any conclusion that there was disproportionate asset or properties than the known source of income. Even the investigation authorities

have not filed any complaint to the special court against the petitioner for not paying any income taxes for holding the assets or more in respect of income held by the petitioner. It is very premature to come to the conclusion without concluding the investigation by the income tax authorities what was the properties held by the petitioner and what was the income declared or not declared income, in order to show that the petitioner is also liable for prosecution under Section 13 of the PC Act.

18. It is well settled by the Hon'ble Supreme Court in order to calculate the disproportionate asset, it is necessary to place the assets and liabilities held by the petitioner or a public servant during joining of the public service and subsequently what was the assets held by him and what was the income earned and expenditure, then only they should ascertain. After ascertaining the same, only then they should come to the conclusion regarding prima facie case or register the FIR and then schedule property is required to pass an order under Section 17 of the PC Act for

investigation. Herein this case, the income tax authorities not concluded the investigation and sent letter to the Chief Secretary, in turn the Chief Secretary forwarded the letter to the ACB and ACB immediately registered FIR by preparing alleged source report, which does not contain any details of the property. Therefore, as contended by the learned senior counsel for the petitioner, the prosecution cannot be launched and the very investigation is incurable defect. Therefore as per section 461 of Cr.P.C. the trial vitiates. Though learned counsel for the respondent relied upon the various judgments such as;

(i) State of Maharashtra Vs Pollonji Darabshow Daruwalla 1987 (Supp) SCC 379,

(ii) State of M.P & Ors Vs Ram Singh (2000) 5 SCC 88,

(iii) State of M.P. V/s. Awadh Kishore Gupta and Ors (2004) 1 SCC 691,

(iv) State of W.B. Vs Kailash Chandra Pandey (2004) 1 SCC 29,

(v) DSP, Chennai V/s Inbasagarama (2006) 1 SCC 420,

(vi) Ashok Tshering Bhutia V/s. State of Sikkim (2011) 4 SCC 402,

(vii) Central Bureau of Investigation & ors V/s. Parmila Virendra Kumar Agarwal & Anr (2020) 17 SCC 664 and

(viii) CBI & Anr V/s. Thommandru Hannah Vijayalakshmi Alias T. H. Vijayalakshmi & Anr (2021) 18 SCC 135

and various other cases and held the court cannot sit as chartered accountant in disproportionate assets case and other various judgments, to the facts and circumstances, which was not applicable to the case on hand, since the very basic ingredients are absent in this case, while registering the FIR or starting the investigation. Apart from that, the criminal proceedings against accused No.3 who alleged to be benami of the petitioner where Hon'ble Supreme Court already quashed the Criminal proceedings. Though it is contended the income tax raid and subsequently the ACB conducted raid on the same places they said to have 799.13% of disproportionate assets but there is no details in the source report and also there is no preliminary enquiry conducted by the ACB police.

19. There is no basic foundation in this case to say that the petitioner was having so much assets and liabilities

at the time of joining the service and Subsequently he has amassed the assets, absolutely there is no material place either in the source report or in the FIR or in the charge sheet. Totally blank regarding the assets and liabilities which were declared by the petitioner while joining the service. The prosecution blindly stated, he has amassed the property between 1987 to till date but there is no details in the case records. Therefore, continuing proceedings is nothing but abuse of process of law.

Such being the case absolutely there is no ground for framing of charge and proceeding the trial against the petitioner. Therefore, as held by the Hon'ble Supreme Court in *Bhajan Lal's case* the proceedings against the accused petitioner is abuse of process of law and liable to be quashed.

Accordingly, this petition is ***allowed***

The entire criminal proceedings against the petitioner in Crime No.26/2016 in Spl.CC.No.656/2021 registered by ACB, pending on the file of XXIII Additional City Civil and Sessions Judge, Bengaluru, is hereby quashed.

**Sd/-
JUDGE**

AKV
CT:SK