R

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 27TH DAY OF MAY, 2024

BEFORE

THE HON'BLE MR. JUSTICE S.VISHWAJITH SHETTY

W.P.No.2413/2024 (GM-RES)

BETWEEN:

1 . SRI D.M. PADMANABHA
S/O LATE K. MUDALAPPA
AGED ABOUT 51 YEARS
WORKING AS PANCHAYATH
DEVELOPMENT OFFICER
KUNDANA GRAMA PANCHAYATH
DEVANAHALLI TALUK
BANGALORE RURAL DISTRICT
RESIDING AT NO.169
MUKTHI APRTMENTES
3RD MAIN ROAD, 6TH CROSS
MALLESHWARAM
BANGALORE - 560 003.

2 . SMT. BHAVYA
W/O D.M. PADMANABHA
AGED ABOUT 36 YEARS
R/AT NO.169, MUKTHI APARTMENTS
3RD MAIN ROAD, 6TH CROSS
MALLESHWARAM
BANGALORE - 560 003.

3 . SMT. LAKSHMAMMA
W/O BALIANJANAPPA
AGED ABOUT 62 YEARS
R/AT 2ND CROSS, 12TH WARD
NEAR RAMA MANDIRA
CHIKKASANDRA
BANGALORE - 560 097.

...PETITIONERS

(BY SRI M.S. BHAGAVAT, SR. ADV., FOR
SRI SUVARNA LAKSHMI M.L, ADV.)

AND:

1 . THE STATE BY KARNATAKA LOKAYUKTHA
REPRESENTED BY DEPUTY SUPERINTENDENT
OF POLICE 8, BANGALORE URBAN
BANGALORE - 560 001.

2 . THE STATE BY KARNATAKA LOKYAUKTA
REP BY INSPECTOR OF POLICE 8
BANGALORE URBAN DIVISION
BANGALORE - 560 001.

…RESPONDENTS

(BY SRI LETHIF B, ADV., FOR R-1 R-2)

THIS W.P. IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED FIRST INFORMATION REPORT IN CRIME NO. 04/2024 DATED 08/01/2024 REGISTERED BY THE R1 UNDER SECTION 13 (1)(b) READ WITH 13(2) AND 12 OF THE PREVENTION OF CORRUPTION ACT, 1988 (ANNEXURE-AB) AND ALL FURTHER PROCEEDINGS PURSUANT THERETO, PENDING ON THE FILE OF THE 23RD ADDL CITY CIVIL AND SESSIONS JUDGE, BANGALORE.

THIS PETITION HAVING BEEN HEARD AND RESEVED ON 15.04.2024, COMING ON FOR PRONOUNCEMENT OF ORDER ON THIS DAY,THE COURT MADE THE FOLLOWING:

ORDER

Accused Nos.1 to 3 are before this Court under Articles 226 and 227 of the Constitution of India r/w Section 482 of Cr.P.C, with a prayer to quash the FIR in Crime No.4/2024 registered by respondent No.1 for the offences punishable under section 13(1) (b) R/w Section 13(2) and Section 12 of the Prevention of Corruption Act.

1988, (for short, 'P.C.Act'), pending before the Court of XXIII Addl. City Civil and Sessions Judge, Bengaluru.

2. Heard the learned counsel appearing for the parties.

3. Facts leading to filing of this writ petition as revealed from the records narrated briefly are, petitioner No.1 was appointed on compassionate ground as Secretary Grade-II on 26.03.2002 and in the year 2007 he was promoted as Secretary Grade-I. In the year 2011, he was promoted to the post of Panchayat Development Officer and during the year 2023 when he was working as a Panchayat Development Officer at Kundana Grama Panchayat, Devanahalli taluk, he was suspected of acquiring assets disproportionate to his known source of income, and therefore, the Police Inspector attached to Karnataka Lokayukta, Bengaluru Urban Division had held preliminary enquiry and thereafter submitted a source report on 22.12.2023. On the basis of the said report, the Superintendent of Police, Karnataka Lokayukta Bengaluru urban division had directed respondent no.1 herein to register FIR against accused no.1 for the

offences punishable under Section 13(1)(b) R/w Section 13(2) and Section 12 of the P.C Act. Based on the order passed by the Superintendent of Police in exercise of his power under Section 17 and 18 of the P.C. Act, respondent no.1 had registered FIR in crime No.4/2024 against the petitioners. Thereafter, respondent no.1 after obtaining search warrant had conducted search on various properties which stood in the name of petitioner no.1 and also on the properties allegedly purchased by petitioner no.1 in the name of petitioner Nos.2 and 3, who are his wife and mother-in-law, respectively. It is at this stage the petitioners have approached this Court with a prayer to quash the impugned proceedings in Crime No.4/2024.

4. Learned Senior Counsel appearing for the petitioners submits the allegation against petitioner no.1 is that he has acquired assets disproportionate to his known source of income and therefore preliminary enquiry was required before registering FIR. In support of his arguments he has placed reliance on the judgments of Hon'ble Apex Court in the case of **LALITA KUMARI V.**

GOVERNMENT OF UTTAR PRADESH AND OTHERS - (2014) 2 SCC 1 and **CHARANSINGH V. STATE OF MAHARASHTRA AND OTHERS - (2021) 5 SCC 469.** He has also placed reliance on the orders passed by the Co-ordinate Benches of this Court in the following cases:-

1. NAVNEETH MOHAN N V. THE STATION HOUSE OFFICER AND ANOTHER (WRIPT PETITION NO. 43817/2018) DECIDED ON 21.04.2021.

2. BALAKRISHNA H.N. V. STATE OF KARNATAKA (WRIT PETITION NO.15886/2022) DECIDED ON 03.01.2023.

3. J. GNANENDRA KUMAR V. CHIEF SECRETARY AND ANOTHER (WRIT PETITION NO.8170/2022) DECIDED ON 20.07.2022

4. K.L. GANGADHARAIAH V. STATE OF KARNATAKA BY LOKAYUKTHA POLICE (WRIT PETITION NO.11822/2023) DECIDED ON 28.07.2023.

5. SRI T.N. SUDHAKAR REDDY V. STATE OF KARNATAKA (WRIT PETITION NO.13460/2023) DECIDED ON 04.03.2024.

5. He submits that the Superintendent of Police without application of mind has passed order under Section 17 of the P.C. Act, which is not permissible. He submits that the Superintendent of Police has authorised

respondent no.1 only to register a case against accused no.1 but FIR has been registered even as against accused nos.2 and 3, who are not government servants. He has referred to various documents produced at Annexures-A to Z and submits that the source report has been prepared without appreciation of the relevant documents and no opportunity was given to the petitioners. In the source report, the property value has been deliberately boosted and the properties which absolutely belong to the mother and mother-in-law of petitioner no.1 are also considered as property of petitioner no.1. He accordingly prays to allow the petition.

6. Per contra, learned counsel appearing for the respondent who has filed his statement of objection has opposed the prayer made in the petition. He submit that the source report submitted by the Inspector of Police is self explanatory and perusal of the same would go to show that preliminary enquiry was done and details of the properties of the accused has been mentioned in the source report and it was found that the petitioner no.1

had acquired 488.5% assets disproportionate to his known source of income. He submits that, if the source report makes out a prima-facie case against the accused, holding of preliminary enquiry is not mandatory. In support of his arguments he has placed reliance on the following judgments of the Hon'ble Apex Court.

(i) **STATE OF TELANGANA V. MANAGIPET ALIAS MANGIPET SARVESHWAR REDDY - 2019 SCC ONLINE SC 1559;**

(ii) **CENTRAL BUREAU OF INVESTIGATION (CBI) AND ANOTHER V. THOMMANDRU HANNAH VIJAYALAKSHMI ALIAS T.H. VIJAYALAKSHMI AND ANOTHER - (2021) SCC ONLINE SC 923.**

7. He submits that the case is at the preliminary stage and further investigation is under progress and at this stage this Court cannot look into the documents produced by the accused in support of their defence. In support of his arguments, he has placed reliance on the judgements of Hon'ble Apex Court in the case of **STATE OF CHHATTISGARH AND ANOTHER V. AMAN KUMAR SINGH AND OTHERS - 2023 SCC ONLINE SC 198** and also in the case of **STATE OF TAMIL NADU V. R SOUNDIRARASU AND OTHERS - 2022 SCC ONLINE SC**

1150. He submits that even if there is any defect or illegality in the investigation, the same cannot be a ground for this Court to quash the FIR unless the accused points out that continuation of investigation would amount to miscarriage of justice. In support of his arguments, he has placed reliance on the judgement of the Hon'ble Apex Court in the case of **STATE OF M.P. AND OTHERS V. RAM SINGH - 2000 SCC ONLINE SC 297.**

8. Learned Senior Counsel appearing for the petitioners has raised strong objection for continuation of criminal proceedings against the petitioners on the ground that FIR has been registered in the case without holding a preliminary enquiry. In support of his arguments, he has relied on the judgment of Hon'ble Apex Court in the case of **LALITA KUMARI** (supra) and in the case of **CHARAN SINGH** (supra). He has also placed reliance on the judgement of the Co-ordinate Bench of this Court in the case of **NAVNEETH MOHAN** (supra).

9. In the case of **MANAGIPET** (supra), the Hon'ble Apex Court after referring to Lalitha Kumari's case, at paragraph Nos.33 and 34 has observed as follows:-

"33. *In the present case, the FIR itself shows that the information collected is in respect of disproportionate assets of the accused officer. The purpose of a preliminary inquiry is to screen wholly frivolous and motivated complaints, in furtherance of acting fairly and objectively. Herein, relevant information was available with the informant in respect of prima facie allegations disclosing a cognizable offence. Therefore, once the officer recording the FIR is satisfied with such disclosure, he can proceed against the accused even without conducting any inquiry or by any other manner on the basis of the credible information received by him. It cannot be said that the FIR is liable to be quashed for the reason that the preliminary inquiry was not conducted. The same can only be done if upon a reading of the entirety of an FIR, no offence is disclosed. Reference in this regard, is made to a judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] wherein, this Court held inter alia that where the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused and also where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an*

ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

34. *Therefore, we hold that the preliminary inquiry warranted in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient."*

10. The Coordinate Bench of this Court in the case of **BALAKRISHNA H.N** (supra), after considering the judgement of the Hon'ble Apex Court in the case of **LALITHA KUMARI** (supra), **CHARAN SINGH**(supra) and **MANAGIPET** (supra) and judgement of this Court in the case of **NAVNEETH MOHAN** (supra) in paragraph Nos.24 to 26 has observed as follows:-

"24. Hence, all these decisions do not mandate that a Preliminary Enquiry must be conducted before the registration of an FIR in

corruption cases. An FIR will not stand vitiated because a Preliminary Enquiry has not been conducted. The decision in Managipet (supra) dealt specifically with a case of Disproportionate Assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a Preliminary Enquiry.

25. This conclusion is also supported by the judgment of another Constitution Bench in K. Veeraswami (supra). The judgment was in context of Section 5(1)(e) of the old Prevention of Corruption Act 1947, which is similar to Section 13(1)(e) of the PC Act. It was argued that : (i) a public servant must be afforded an opportunity to explain the alleged Disproportionate Assets before an Investigating Officer; (ii) this must then be included and explained by the Investigating Officer while filing the charge sheet; and (iii) the failure to do so would render the charge sheet invalid. Rejecting this submission, the Constitution Bench held that doing so would elevate the Investigating Officer to the role of an enquiry officer or a Judge and that their role was limited only to collect material in order to ascertain whether the alleged offence has been committed by the public servant. In his opinion

for himself and Justice Venkatachaliah, Justice K Jagannatha Shetty held thus:

"75…since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression "for which he cannot satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge- sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr. A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all

material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

(emphasis supplied)

26. Therefore, since an accused public servant does not have a right to be afforded a chance to explain the alleged Disproportionate Assets to the Investigating Officer before the filing of a charge sheet, a similar right cannot be granted to the accused before the filing of an FIR by making a Preliminary Enquiry mandatory."

11. The Hon'ble Apex Court in the case of **THOMMANDRU HANNAH VIJAYALAKSHMI** (supra) at paragraph No.26 has observed as follows:-

"26. *Hence, all these decisions do not mandate that a preliminary enquiry must be conducted before the registration of an FIR in*

> *corruption cases. An FIR will not stand vitiated because a preliminary enquiry has not been conducted. The decision in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 : (2020) 3 SCC (Cri) 702] dealt specifically with a case of disproportionate assets. In that context, the judgment holds that where relevant information regarding prima facie allegations disclosing a cognizable offence is available, the officer recording the FIR can proceed against the accused on the basis of the information without conducting a preliminary enquiry.*

12. Therefore, I am of the view that since the source report submitted by the Inspector of Police contains sufficient material evidencing acquisition of assets by petitioner no.1 disproportionate to his known source of income to the tune of 488.5%, respondent no.1 was fully justified in registering FIR against the accused persons and proceeding to investigate the case.

13. Learned Senior Counsel appearing for the petitioners has also submitted that there was no application of mind by the Superintendent of Police while passing order under Section 17 of the P.C. Act granting permission to respondent no.1 to register a case against

petitioner no.1. He also submitted that permission was granted by the Superintendent of Police only to register a case against accused no.1 whereas respondent no.1 has proceeded to register a case even against accused nos.2 and 3, who are not government servants.

14. A perusal of the order passed by the Superintendent of Police which is annexed by the advocate for respondent to the statement of objections would go to show that, along with the source report the material which was the basis for preparation of source report was also made available to the Superintendent of Police and after verification of the same, being satisfied that there was a case made out for the investigation for the alleged offences he has proceeded to pass the order in exercise of his power under Section 17 and 18 of the P.C. Act. Therefore, it cannot be said that there was no application of mind by the Superintendent of Police before passing order under Section 17 of the P.C. Act authorising respondent no.1 to investigate the case. Petitioner no.1 is the only government servant in the present case and petitioner no.2 and 3 are his wife and

mother-in-law and they are not government servants. Petitioner nos.2 and 3 are arrayed as accused Nos.2 and 3 by invoking Section 12 of the P.C. Act, which provides for punishment for abetment of offences.

15. The principal offences in the present case are under Section 13(1)(b) R/w 13(2) of the P.C. Act which are allegedly committed by accused no.1. The very fact that the Superintendent of Police has granted permission under Section 17 of the P.C. Act to register a case under Section 13(1)(b) and Section 12 of the P.C. Act against accused no.1 and to investigate the said case would go to show that permission is granted to register a case and to investigate the same even as against abettors. Therefore, it cannot be said that registration of FIR against accused nos.2 & 3 is bad in law.

16. Learned Senior Counsel appearing for the petitioners has placed reliance on the documents produced by the petitioners at Annexures-A to Z and has submitted that these documents have not been appreciated while preparing the source report. He has

also submitted that the petitioners were not heard before preparing the source report.

17. The Hon'ble Apex Court in the case of **THOMMANDRU HANNAH VIJAYALAKSHMI**(supra) had deprecated the practice of High Court appreciating the documents produced by the accused in support of their defence and in paragraph Nos.54 and 64, it is observed as follows:-

> *"**54.** From the above, it becomes evident that the Single Judge of the Telangana High Court has acted completely beyond the settled parameters which govern the power to quash an FIR. The Single Judge has donned the role of a Chartered Accountant. The Single Judge has completely ignored that the Court was not at the stage of trial or considering an appeal against a verdict in a trial. The Single Judge has enquired into the material adduced by the respondents, compared it with the information provided by CBI in the FIR and their counter-affidavit, and then pronounced a verdict on the merits of each individual allegation raised by the respondents largely relying upon the documents filed by them [by considering them to be "known sources of income" within the meaning of Section 13(1)(e) of the PC Act]. This exercised has been justified*

on account of the appellant not having conducted a preliminary enquiry and hence, not having addressed the respondents' objections relying upon the documents adduced by them. The reasons provided by the Single Judge for entering into the merits of the dispute while quashing the FIR are specious, especially so considering our finding that CBI need not hold a preliminary enquiry mandatorily. While exercising its jurisdiction under Article 226 of the Constitution to adjudicate on a petition seeking the quashing of an FIR, the High Court should have only considered whether the contents of the FIR — as they stand and on their face — prima facie make out a cognizable offence. However, it is evident that in a judgment spanning a hundred and seven pages (of the paper book in this appeal) the Single Judge has conducted a mini-trial, overlooking binding principles which govern a plea for quashing an FIR.

64. *In the present case, the appellant is challenging the very "source" of the respondents' income and questioning the assets acquired by them based on such income. Hence, at the stage of quashing of an FIR where the Court only has to ascertain whether the FIR prima facie makes out the commission of a cognizable offence, reliance on the documents produced by the respondents to quash the FIR would be contrary to fundamental principles of law. The High Court has*

gone far beyond the ambit of its jurisdiction by virtually conducting a trial in an effort to absolve the respondents. During the course of her submissions, Ms Bhati, learned ASG has stated on the instructions of the investigating officer, that during the course of the investigation about 140 witnesses have been examined and over 500 documents have been obtained. The investigation is stated to be at an advanced stage and is likely to conclude within a period of two to three months. At the same time, the Court has been assured by the ASG on the instructions of the investigating officer that before concluding the investigation, the first and second respondents will be called in order to enable them to tender their explanation in respect of the heads of disproportionate assets referred to in the FIR.

18. In the case of **R SOUNDIRARASU** (supra), the Hon'ble Apex Court has held that the burden is on the accused to prove that his assets are not disproportionate to his known source of income which he is required to explain/establish during the course of trial. In paragraph Nos.42 to 45 of the said judgement the Hon'ble Apex Court has observed as follows:-

"42. *Thus, it is evident from the aforesaid that the expression "known source of income" is*

not synonymous with the words "for which the public servant cannot satisfactorily account." The two expressions connote and have different meaning, scope and requirements.

43. *In CBI v. Thommandru Hannah Vijayalakshmi [CBI v. Thommandru Hannah Vijayalakshmi, (2021) 18 SCC 135 : 2021 SCC OnLine SC 923] , this Court, after an exhaustive review of its various other decisions, more particularly the decision in K. Veeraswami v. Union of India [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] , held that since the accused public servant does not have a right to be afforded a chance to explain the alleged disproportionate assets to the investigating officer before the filing of a charge-sheet, a similar right cannot be granted to the accused before the filing of an FIR by making a preliminary inquiry mandatory.*

44. *The above decision of this Court in Thommandru Hannah Vijayalakshmi [CBI v. Thommandru Hannah Vijayalakshmi, (2021) 18 SCC 135 : 2021 SCC OnLine SC 923] is a direct answer to the contention raised on behalf of the accused persons that the investigating officer wrongly declined to consider the explanation offered by the public servant in regard to the allegations and also failed to take into consideration the assets lawfully acquired by his wife.*

45. *In K. Veeraswami [K. Veeraswami v. Union of India, (1991) 3 SCC 655 : 1991 SCC (Cri) 734] , this Court held thus : (SCC p. 715, para 75)*

"75. … since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression "for which he cannot satisfactorily account" used in clause (e) of Section 5(1) of the Act. He argued that that term means that the public servant is entitled to an opportunity before the investigating officer to explain the alleged disproportionality between assets and the known sources of income. The investigating officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the investigating officer. The investigating officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary, he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr A.D. Giri, learned Solicitor General, that the accused

should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the investigating officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the investigating officer to the position of an enquiry officer or a Judge. The investigating officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

19. In the judgments of the Co-ordinate Benches of this Court, on which reliance has been placed by learned Senior Counsel appearing for the petitioners in support of his arguments, the judgements of Hon'ble Apex Court in the case of **MANAGIPET** (supra), **THOMMANDRU HANNAH VIJAYALAKSHMI** (supra) and **R.SOUNDIRARASU** (supra) have not been considered and the same have been passed having regard to the facts

and circumstances of the said case and therefore, the same cannot be made applicable to the case on hand.

20. In the case of **AMAN KUMAR SINGH** (supra) the Hon'ble Apex Court taking into consideration its earlier judgements wherein it was held that, if the information given discloses commission of cognizable offences which sets law in motion, the investigating officer will have to register FIR and carry on investigation with a view to collect all necessary evidence and thereafter file a report, at paragraph No.65, has observed as follows:-

> ***"65.*** *Thus, it being the settled principle of law that when an investigation is yet to start, there should be no scrutiny to what extent the allegations in a first information report are probable, reliable or genuine and also that a first information report can be registered merely on suspicion, the High Court ought to have realised that the FIR which, according to it, was based on "probabilities" ought not to have been interdicted. Viewed through the prism of gravity of allegations, a first information report based on "probability" of a crime having been committed would obviously be of a higher degree as compared to a first information report lodged on a "mere suspicion" that a crime has been*

committed. The High Court failed to bear in mind these principles and precisely did what it was not supposed to do at this stage. We are, thus, unhesitatingly of the view that the High Court was not justified in its interference on the ground it did."

21. The inherent powers of the High Court under Section 482 Cr.PC is to be exercised to uphold justice, right wrong and prevent abuse of process of law. At the stage of investigation, the High Courts are required to be cautious while exercising its inherent powers. The Criminal Procedure Code provides for various other remedies to the aggrieved after filing of final report but not before that. Therefore, the intent and object of the legislature needs to be kept in mind by the High Courts while exercising its inherent powers. If the First Information Report makes out a prima facie case for cognizable offence, in normal circumstances, there should not be any interference with the investigation. Stalling of the investigation at the initial stage may have an adverse impact and it also may give scope for tampering with the evidence. Therefore, only in

exceptional cases, very sparingly the High Court needs to interfere with the investigation of criminal cases.

22. Section 227 of Cr.PC provides for discharge in a criminal case before Court of Sessions while Section 239 of Cr.PC provides for discharge in warrant case triable by Magistrate. Section 245 of Cr.PC provides power to the court to discharge accused in any warrant case instituted otherwise than on a police report after recording evidence of prosecution under Section 244 Cr.PC. Section 245(2) of Cr.PC provides that even at a earlier stage for reasons to be recorded, court can discharge the accused. Power under Sections 227 and 239 is to be exercised before charge is framed and the court exercising such power needs to consider the entire record of the case and documents submitted before it. At that stage, court is required to consider whether prosecution has made out a prima facie case for trial.

23. The power under Section 482 of Cr.PC should not be invoked to perform the job of Trial Court in the aforesaid provisions of law, unless in exceptional circumstances where failure to exercise power would

result in miscarriage of justice. Power under Section 482 of Cr.PC needs to be exercised if the High Court is fully satisfied that not only the ends of justice could be met, but complete justice could be done. The word used in Section 482 of Cr.PC is 'nothing' and not 'notwithstanding'. Therefore, Section 482 of Cr.PC has no overriding power on the other provisions of the Code and the provisions of the Code cannot be completely ignored. It is only if the High Court finds that the case on hand falls under the three categories mentioned in Section 482 of Cr.PC, the power under the said provision of law should be exercised. But in exceptional cases, the High Court can exercise power under Section 482 of Cr.PC depending on the factual matrix of the case if the High Court is fully convinced that complete justice can be done to the parties. Otherwise, the parties are required to be relegated to work out their remedies by invoking the statutory provisions. The High Court should not venture into holding a mini trial at this stage by evaluating the statements of the charge sheet witnesses and documents produced by the prosecution along with the final report. The orders passed under Sections 227, 239, 245 of Cr.PC

and other statutory provisions is subject to scrutiny by this Court, and therefore, it cannot be said that remedies provided under the Code or other statute is not an efficacious remedy.

24. The Hon'ble Supreme Court in the case of ***Neeharika Infrastructure Vs State Of Maharashtra & Others*** reported in ***2021 SCC ONLINE 315***, at paragraph 57, has observed as under:

> *"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:*
>
> *i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences;*
>
> *ii) Courts would not thwart any investigation into the cognizable offences;*
>
> *iii) However, in cases where no cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;*
>
> *iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases'. (The rarest of rare cases*

standard in its application for quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;

xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by

law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint; and xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

25. In the case of ***SKODA AUTO VOLKSWAGEN (INDIA) PRIVATE LIMITED VS STATE OF UTTAR PRADESH & OTHERS*** reported in ***(2021) 5 SCC 795***, the Hon'ble Supreme Court in paragraphs 41 & 42, has observed as under:

"41. As cautioned by this Court in State of Haryana v. Bhajan Lal, the power of quashing should be exercised very sparingly and with circumspection and that too in the rarest of rare cases. While examining a complaint, the quashing of which is sought, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or in the complaint.

> *42. In S.M. Datta v. State of Gujarat, this Court again cautioned that criminal proceedings ought not to be scuttled at the initial stage. Quashing of a complaint should rather be an exception and a rarity than an ordinary rule. In S.M. Datta, this Court held that if a perusal of the first information report leads to disclosure of an offence even broadly, law courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere."*

26. In the present case, the source report prepared for the check period i.e., from the date of appointment till the date of source report would go to show that petitioner no.1 has acquired assets which is 488.5% disproportionate to his known source of income. The officer who has prepared the source report has prepared a chart of assets and also chart of lawful income and expenditure during the check period.

27. During the course of investigation, raid was conducted to various properties of the petitioners and panchanamas were also drawn which are available on record. Considering the material available on record and

on the basis of the aforesaid analysis of the matter, I am of the view that a prima facie case for the alleged offences as against the petitioners has been made out by the prosecution, which needs investigation, and therefore, the prayer made by the petitioners cannot be granted. Accordingly, the writ petition is ***dismissed***.

Sd/-
JUDGE

NMS