



WP No. 7911 of 2022

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF JULY, 2022

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BEFORE

THE HON'BLE MR JUSTICE M.NAGAPRASANNA

WRIT PETITION NO. 7911 OF 2022 (GM-RES)

BETWEEN:

SRI K.R.KUMAR NAIK

... PETITIONER

(BY SRI SATISH K., ADVOCATE)

AND:

THE STATE BY ANTI CORRUPTION BUREAU
REPRESENTED BY ITS DEPUTY
SUPERINTENDENT OF POLICE
BENGALURU CITY POLICE STATION
KHANIJA BHAVAN, RACE COURSE ROAD
BENGALURU - 560 001.

... RESPONDENT

(BY SRI MANMOHAN P.N., SPL.P.P.)



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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 ISSUE WRIT OR ORDER QUASHING THE IMPUGNED FIRST INFORMATION REPORT REGISTERED BY THE RESPONDENT- POLICE IN CRIME NO.24/2022 DATED 16/03/2022 ANNEXUR-E AND ALL FURTHER PROCEEDINGS PURSUANT THERETO, IN SO FAR AS THE PETITIONER IS CONCERNED (ACCUSED NO.1)

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.07.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioner is before this Court calling in question registration of crime in Crime No.24 of 2022 for offences punishable under Section 13(1)(b) read with 13(2) of the Prevention of Corruption Act, 1988 ('the Act' for short).

2. Succinctly stated, facts germane for a decision are as follows:

The petitioner is a public servant working as an Executive Engineer in the Karnataka Power Transmission Corporation Limited. This case brings out a strange



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circumstance where the petitioner is hauled into the impugned proceedings. A little background for such hauling of the petitioner into the web of the provisions of the Act is that, a crime in Crime No.23 of 2022 was registered against one Sri J.Jnanendra Kumar, Additional Commissioner for Transport by the respondent/Anti-Corruption Bureau. The crime against one Sri J.Jnanendra Kumar was registered on 15-03-2022 on an allegation that he possessed disproportionate assets to the known source of income. In connection with the case registered against one Sri J.Jnanendra Kumar the house of one Sri Munavar Pasha was searched on 16.03.2022, the next day of registration of crime against Sri J.Jnanendra Kumar in Crime No.23 of 2022. During the search two travel bags and one carton box were found which were said to be belonging to the petitioner. Based on the search conducted in Crime No.23 of 2022 a source report was immediately prepared against the petitioner alleging that the petitioner had amassed wealth disproportionate to his



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known source of income on the very day i.e., 16-03-2022 and based upon the said source report a fresh crime came to be registered in Crime No.24 of 2022, also on the very day i.e., 16-03-2022 for offences punishable under Section 13(1)(b) and 13(2) of the Act against the petitioner. Pursuant to registration of FIR on 16-03-2022 the respondent/ACB conduct a raid/search on the house and office of the petitioner. It is the registration of crime in Crime No.24 of 2022 that drives the petitioner to this Court in the subject petition.

3. Heard Sri K. Satish, learned counsel appearing for the petitioner and Sri P.N. Manmohan, Special Public Prosecutor representing the respondent.

4. The learned counsel appearing for the petitioner would contend with vehemence that the entire process initiated by the ACB is contrary to law, as there was no preliminary inquiry conducted as is necessary, no source



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report is prepared earlier again as is necessary and disproportionate assets that are shown in the so prepared source report is zero. Notwithstanding this, an FIR is registered, search is conducted and the petitioner is harassed.

5. On the other hand, the learned counsel representing the ACB would seek to refute the submissions to contend that while conducting search in Crime No.23 of 2022 incriminating material was found, may not be in connection with Crime No.23 of 2022 but to a fresh case of disproportionate assets. It is his submission that a search warrant was obtained, FIR is registered and house and office of the petitioner was searched and the investigation is on and as such, this Court should not interfere or interject at this stage and has produced original records for perusal of the Court.



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6. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

7. It is not in dispute that the employer of the petitioner is the Karnataka Power Transmission Corporation Limited to whom assets and liabilities statement is to be submitted by the petitioner and the claim is it has been submitted. It is further not in dispute that a crime in Crime No.23 of 2022 was registered against one Sri J.Jnanendra Kumar on 15-03-2022. In connection with Crime No.23 of 2022 house of one Munavar Pasha was searched which was a product of preliminary enquiry conducted by the ACB against Sri J.Jnanendra Kumar, who allegedly had links with Sri Munavar Pasha. While searching the house of Sri Munavar Pasha two travel bags and one carton box, neither belonging to Sri Munavar Pasha nor Sri J.Jnanendra Kumar were found. They were allegedly belonging to the



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petitioner. This fact is told by the lady in the house of Sri Munavar Pasha at the time of search that they belong to the owner of Flat No.21, which flat belonged to the petitioner, in the apartment complex. The ACB immediately went back, prepared a source report, registered a FIR and conducted search in the house and office of the petitioner on 17-03-2022.

8. The house of the petitioner was searched on the basis of FIR registered on 16-03-2022 after drawing up a source information report which also was prepared on 16-03-2022. Therefore, the dates assume significance. On 15-03-2022 in connection with Crime No.23 of 2022 of some other person, the house of a person connected with the said crime was searched and articles belonging to the petitioner who was the neighbour of the said flat were found and immediately thereafter on the very same day a source information report was prepared and FIR was registered for offences punishable under Section 13(1)(b)



and 13(2) of the Act against the petitioner. Thus, it becomes necessary to notice Section 13(1)(b) and 13(2) of the Act. They read as follows:

"13. Criminal misconduct by a public servant.— (1) A public servant is said to commit the offence of criminal misconduct,—

- (a) *if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or*
- (b) *if he intentionally enriches himself illicitly during the period of his office.*

Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.

Explanation 2.—The expression "known sources of income" means income received from any lawful sources.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine."



Section 13(1) deals with a public servant who is said to have committed an offence of criminal misconduct. Criminal misconduct would be, if he intentionally enriches himself illicitly during the period of his office. Explanation offered to Section 13(1)(b) is that the person is presumed to have intentionally enriched himself illicitly, if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income, which the public servant cannot satisfactorily account for. Known source of income is also explained.

9. Therefore, to charge a public servant with Section 13(1) which deals with criminal misconduct, and being in possession of assets disproportionate to his known source of income, there must be a basis. The basis emanates from a report. The report in corruption parlance is a source information report. A source information report cannot be



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generated at the drop of the hat. It is a responsible work of a responsible officer i.e., Inspector of Police, under the guidance and supervision of a superior police officer, a Deputy Superintendent of Police and it has to be drawn up after calculating entire period of service of a public servant and arrive at a conclusion *albeit, prima facie*, that he has amassed wealth disproportionate to his known source of income.

10. These are the broad contours of generation of a source information report which can become criminal misconduct as obtaining under Section 13(1) of the Act which would become punishable under Section 13(2) of the Act. An allegation of criminal misconduct on a public servant is serious one. Therefore, it cannot be a casual or a frolicsome act of the ACB in preparing the source information report at the drop of the hat. The importance of the source report being thus, it is germane to notice the source information report generated in the case at hand,



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which on the face of it, depicts it being prepared in a hottest haste. The source information report against petitioner reads as follows:-

"SOURCE INFORMATION REPORT (S.I.R)

1.	Name of the AGO	Kumar Naik, Age-37Yrs aprox(22.08.1984)
2.	Present designation (dept) and Group	Executive Engineer, BESCO, BBMP, Bengaluru. "Group - A"
3.	Place of working	Executive Engineer, BESCO, BBMP, Bengaluru
4.	Joined in	
5.	Joined as (designation and group	Joined As Assistant Engineer, BESCO.
6.	Caste	SC-Lambani
7.	Native Place	
8.	Family tree (Parents, Siblings, wife, children, close relatives of Wife)	Father: Rajendra Naik Wife: Smt.Ashalatha,
9.	Total years of Service	Not yet ascertained
10	Check Period	From the date of joining service to till date.
11	Whether wife is working?(Y/N)	No
12	Wife's designation, Dept, Group, Salary particulars, A.P.R.etc.,	No
AGO PROPERTY DETAILS AS PER RECORDS FOUND DURING SEARCH CONDUCTED IN PREMISES OF MUNAVAR PASHA		
13	Homes/Constructed buildings	.



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Description of Property	Total No. of Homes/Constructed Buildings	Name of the property owner	Place of the property	Total value of property
#2103, Karle Zenith, Kempapura Bangalore	3- bed room Flat	Kumar Naik	Kempapura, Bangalore	Rs. 2,00,00,000/- (approx)
#43, 301, MU Nest, 5 th Main, near Bhoopasandra Bus Stop, Sanjay nagar Post, Bangalore North, Bengaluru- 94.	This address has been figured in one of the document seized during the searches conducted at the residence of Munavar Pasha, Kale Zenith, Kempapura, Bangalore which needs to be further verified and ascertained the ownership. The address was found in the KIADB allotment letter issued to Smt.Ashalatha B w/o Kumar Naik.			
#363 Brindavana, 4 th Main road, Kengeri Satellite Town, Kengeri Gollahalli, Bangalore	This address has been figured in one of the document seized during the searches conducted at the residence of Munavar Pasha, Karle Zenith, Kempapura, Bangalore which needs to be further verified and ascertained the ownership. The address was found in the Aadhar card of the Kumar Naik.			
Muralidhar Banjara (29.01.199 3) C/o Anil Kumar B.,	This address has been figured in one of the document seized during the searches conducted at the residence of Munvar Pasha, Karle Zenith, Kempapura, Bangalore which needs to be further verified and ascertained the ownership. He is suspected to be the brother of Kumar Naik and proprietor Ms.Maltesh Industries having PAN No.CWSPM0215M.			



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	#285, Bhagya Nidhi, Railway mens layout, 2 nd Phase, Ullal Upanagar, ullalu Bangalore, Karnataka - 56.				
	Total				
14	KIADB - sites				
		Total No. of SQ Fts	Name of the property owner	Place of the property	Total value of property
	Ashalatha w/o Kumar Naik, 2103, Karle Zenith, Kempapu ra, Bangalore	4103 Sq meters.	-	Plot Nos 3A5, 3A6, of Hardware Sector, Hitech Defence & Aerospace Park, Industrial Area, Bengaluru Urban Dist.	Rs.1,33,00, 000/-
	-	-	-	-	-
15	<i>Vehicles and other movable properties</i>				
	At time of search at the house of Sri.Munavar Pasha, Gold and silver articles				



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	belongs to the Kumar Naik were found and the details are as follows.			
	Gold Silver Ornaments	1290 Gms of Gold and 9,226 Gms of Silver	Rs.64,00,000-00	The Gold and Silver were measured and valued by registered Valuer namely Suresh.
	Silk Sarees	9 Nos.	Rs.2,00,000-00 (Approximately)	
	Cash	-	Rs.3,06,000-00	
	Yet to be ascertained			
	Total	-	-	-
16	Official income			
	AGO's Salary (from date of joining to till date)			
	AGO's wife Saiary (from date of joining to till date)			
	AGO's Son/Daughter Salary/Income (If not married)			
	Ancestral property Income			
	Land Income			
	Income from site/others			
	Loan Sanctioned (Income)			
	Filled the loan amount			



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	<i>(Expenditure)</i>	<i>Yet to be ascertained</i>
1 7	<i>D.A. Calculation Total Value of Property</i>	
	<i>Total Property</i>	<i>4,00,00,000.00 (aprox)</i>
	<i>Total Expenditure</i>	
	<i>Total Property + Total Expenditure</i>	
	<i>Total Income</i>	
	<i>Disproportionate Income</i>	
	<i>Percentage of disproportionate Income</i>	

*Sd/-
(Basavaraj Magadum)
Deputy Superintendent of
Police,
Anti Corruption Bureau,
Bangalore."*

(Emphasis added)

11. In the source information report, the column total years of service of the petitioner reads 'not yet ascertained'. Therefore, the ACB did not even know how many years of service a public servant has put in. The check period which is the most important ingredient of a source information report is left vague by stating 'from the date of joining service to till date'. Wife's designation,



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salary particulars, Annual Property Returns ('APR') etc. are not even looked into. APR of the petitioner is also not even looked into. What is seen is property details as per the records found during the search in connection with Crime No.23 of 2022 of some other public servant. The official income at column No.16 that is petitioner's salary and petitioner's wife's salary reads as 'yet to be ascertained'. At column No.17 value of total property is mentioned and percentage of disproportionate income is zero as it is left completely blank. It is this source information report that becomes a FIR under Section 13(1)(b) and 13(2) of the Act. Section 13(1)(b) deals with criminal misconduct against a public servant. The basis being the source information report, it is trite that the report assumes a great significance while imputing allegations of criminal misconduct.

12. The FIR is registered on 16-03-2022 and source information report is also drawn on 16-03-2022 which is



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ostensibly done at a jiffy. The Anti-Corruption Bureau which performs a very significant role in checking corruption amongst public servants cannot indulge itself in such casual act of drawing up the source information report on the instant, registering the FIR and conducting the search. The entire narration of allegation which would become criminal misconduct against the petitioner is on the basis of the records found in somebody else's house in connection with someone else's crime. Such a source information report against the petitioner is no report in the eye of law.

13. The law also contemplates conduct of a preliminary inquiry in cases of corruption alleged as against public servants. The Apex Court right from the judgment in the case of ***P.SIRAJUDDIN v. STATE OF MADRAS***¹ has clearly held that before a public servant, whatever be his status, is publicly charged with acts of dishonesty, some suitable preliminary inquiry into the

¹ ***(1970) 1 SCC 595***



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allegations by a responsible officer should be made. It could be in the nature of source information report or otherwise. The observations of the Apex Court are as follows:

*"17. In our view the procedure adopted against the appellant before the laying of the first information report though not in terms forbidden by law, was so unprecedented and outrageous as to shock one's sense of justice and fairplay. No doubt when allegations about dishonesty of a person of the appellant's rank were brought to the notice of the Chief Minister it was his duty to direct an enquiry into the matter. The Chief Minister in our view pursued the right course. The High Court was not impressed by the allegation of the appellant that the Chief Minister was moved to take an initiative at the instance of person who was going to benefit by the retirement of the appellant and who was said to be a relation of the Chief Minister. The High Court rightly held that the relationship between the said person and the Chief Minister, if any, was so distant that it could not possibly have influenced him and we are of the same view. **Before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious mis-demeanour or misconduct of the type alleged in this case 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, specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the***



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*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 but any such enquiry must proceed in a fair and reasonable manner. The enquiring officer must not act under any preconceived idea of guilt of the person whose conduct was being enquired into or pursue the enquiry in such a manner as to lead to an inference that he was bent upon securing the conviction of the said person by adopting measures which are of doubtful validity or sanction. The means adopted no less than the end to be achieved must be impeccable. In ordinary departmental proceedings against a Government servant charged with delinquency, the normal practice before the issue of a charge-sheet is for someone in authority to take down statements of persons involved in the matter and to examine documents which have a bearing on the issue involved. It is only thereafter that a charge-sheet is submitted and a full-scale enquiry is launched. **When the enquiry is to be held for the purpose of finding out whether criminal proceedings are to be restored to the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the delinquent officer and documents bearing on the same to find out whether there is prima facie evidence of guilt of the officer. Thereafter the ordinary law of the land must take its course and further inquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report.***

(Emphasis supplied)



The judgment in the case of **P.SIRAJUDDIN** was rendered 2 score and 10 years ago. The concept of conduct of preliminary inquiry has been reiterated by Five Judge Bench of the Apex Court, in the case of **LALITA KUMARI v. GOVT.OF U.P. AND OTHERS**² wherein the Apex Court has held as follows:

Conclusion/Directions

120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in

² **(2014) 2 SCC 1**



brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases***
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."



After 51 years of rendering the judgment in the case of **P.SIRAJUDDIN** (*supra*) the Apex Court in the case of **CHARANSINGH v. STATE OF MAHARASHTRA AND OTHERS**³ while following both the judgments i.e., Five Judge Bench in **LALITA KUMARI** and in **P.SIRAJUDDIN** (*supra*) has held as follows:

"12. As per the decision of this Court in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], the categories of cases in which preliminary enquiry may be made are as under : (*Lalita Kumari* case [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524], SCC p. 61, para 120)

"120.6. .. (a) Matrimonial disputes/family disputes

(b) Commercial offences

(c) Medical negligence cases

(d) **Corruption cases**

(e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry."

13. In para 120, this Court concluded and issued directions as under: (*Lalita Kumari* case [*Lalita*

³ (2021) 5 SCC 469



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Kumari v. State of U.P., (2014) 2 SCC 1: (2014) 1 SCC (Cri) 524] , SCC p. 61)

"120. In view of the aforesaid discussion, we hold:

120.1. The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.



120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- (a) Matrimonial disputes/family disputes
- (b) Commercial offences
- (c) Medical negligence cases
- (d) **Corruption cases**
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months' delay in reporting the matter without satisfactorily explaining the reasons for delay.

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

120.8. Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said diary and the decision to



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conduct a preliminary inquiry must also be reflected, as mentioned above."

14. *In the context of offences relating to corruption, in para 117 in Lalita Kumari [Lalita Kumari v. State of U.P., (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] , this Court also took note of the decision of this Court in P. Sirajuddin v. State of Madras [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] in which case this Court expressed the need for a preliminary enquiry before proceeding against public servants.*

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. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] 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.



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It is further observed that: (P. Sirajuddin case [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] , 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.

15.2. Even as held by this Court in *CBI v. Tapan Kumar Singh* [*CBI v. Tapan Kumar Singh*, (2003) 6 SCC 175: 2003 SCC (Cri) 1305], a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the observations made by this Court in *P. Sirajuddin* [*P. Sirajuddin v. State of Madras*, (1970) 1 SCC 595 : 1970 SCC (Cri) 240] and considering the observations by this Court in *Lalita Kumari* [*Lalita Kumari v. State of U.P.*, (2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] before lodging



the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-Corruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage.

... ..

18.13. After completing the enquiry, a final report along with the papers of the enquiry is required to be sent to the Director General, ACB. Even, while submitting the final report and the papers of the enquiry, which are the points to be considered and/or borne in mind are stated in Para 16 of the Manual. Only thereafter and if it is found that a cognizable offence is made out and there is substance in the allegations, an FIR would be lodged and further investigation will be carried out after following the procedure as per the Code of Criminal Procedure. Therefore, a foolproof safeguard and procedure is provided before lodging an FIR/complaint before the Court against the public servant, who is facing the allegations of corrupt practice. However, as observed hereinabove, such an enquiry would be conducted to ascertain whether a cognizable offence is disclosed or not. As observed hereinabove, even at the stage of registering the first information report, the police officer is not required to be satisfied or convinced that a cognizable offence has been committed. It is enough if the information discloses the commission of a cognizable offence as the information only sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in



accordance with law. Therefore, as such, holding such an enquiry, may be discrete/open enquiry, at pre-registration of FIR stage in the case of allegation of corrupt practice of accumulating assets disproportionate to his known sources of income, cannot be said to be per se illegal.

19. However, the next question posed for the consideration of this Court is, whether to what extent such an enquiry is permissible and what would be the scope and ambit of such an enquiry. By the impugned notice, impugned before the High Court, and during the course of the "open enquiry", the appellant has been called upon to give his statement and he has been called upon to carry along with the information on the points, which are referred to hereinabove for the purpose of recording his statement. The information sought on the aforesaid points is having a direct connection with the allegations made against the appellant, namely, accumulating assets disproportionate to his known sources of income. However, such a notice, while conducting the "open enquiry", shall be restricted to facilitate the appellant to clarify regarding his assets and known sources of income. The same cannot be said to be a fishing or roving enquiry. Such a statement cannot be said to be a statement under Section 160 and/or the statement to be recorded during the course of investigation as per the Code of Criminal Procedure. Such a statement even cannot be used against the appellant during the course of trial. Statement of the appellant and the information so received during the course of discrete enquiry shall be only for the purpose to satisfy and find out whether an offence under Section 13(1)(e) of the PC Act, 1988 is disclosed. Such a statement cannot be said to be confessional in character, and as and when and/or if such a statement is considered to be confessional, in that



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case only, it can be said to be a statement which is self-incriminatory, which can be said to be impermissible in law.

*20. At this stage, it is required to be noted that in the present case as such the appellant has produced the relevant documents of some of the properties owned by him and the appellant has joined the "open enquiry". It also appears from the counter filed on behalf of the Anti-Corruption Bureau that on the basis of the information given by the appellant, letters have been issued to various authorities/banks, seeking further and better particulars. Partial statement of the appellant has already been recorded. However, as observed hereinabove, such a statement/enquiry would be restricted only to ascertain whether a cognizable offence is disclosed or not. Such a statement cannot be said to be a confessional statement. After having been satisfied and after conclusion of the enquiry and on the basis of the material collected, if it is found that there is substance in the allegations against the appellant and it discloses a cognizable offence, FIR will be lodged and the investigating agency has to collect the evidence/further evidence to substantiate the allegations/charge of accumulating the assets disproportionate to his known sources of income. However, if during the enquiry at pre-registration of FIR stage, if the appellant satisfies on production of the materials produced relating to his known sources of income and the assets, in that case, no FIR will be lodged and if he is not able to clarify his assets, vis-à-vis, known sources of income, then the FIR will be lodged and he will be subjected to trial. **Therefore, as such, such an enquiry would be to safeguard his interest also which may avoid further harassment to him.**"*

(Emphasis supplied)



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On the bedrock of the principles laid down by the Apex Court in the cases of ***P.SIRAJUDDIN, LALITA KUMARI and CHARANSINGH***, if the case at hand is considered, what would unmistakably emerge is that the entire proceedings instituted by the ACB against the petitioner cannot but be termed to be a mockery of the procedure. The very perusal of the source information report which had to contain all the particulars would indicate that it does not contain any particulars. It was no source information report in the eye of law. In cases where a public servant is charged with offences punishable under Section 13 of the Act to become punishable under Section 13(2) of the Act, as they deal with amassing wealth disproportionate to the known sources of income, every ingredient that is required to be assessed in the source report must be present. The check period, the period of service of the accused Government servant and the sources of income should be assessed *albeit*, by a preliminary inquiry to arrive at a *prima facie* conclusion



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that the officer is liable to be proceeded against for criminal misconduct.

14. The afore-quoted incident of discovery of certain material allegedly belonging to the petitioner could at best have triggered the conduct of a preliminary enquiry and could not become the basis for registration of an FIR, as has been done. There is no preliminary inquiry worth the name that is even conducted by the ACB in the case of the petitioner as every act of the ACB i.e., preparation of the source information report, registration of FIR and conduct of search on the house of the petitioner have all happened on one single day – 24 hours. A source information report, according to the norm or procedure what is followed by the ACB, requires an Inspector of Police to conduct such enquiry and collect those documents which would become a part of a source information report and such source information report is to be placed before the Deputy Superintendent of Police who would then give his nod for



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registration of the crime. These procedures and the time required for these procedures are thrown to the winds. A perusal at the original records that were placed before the Court would also indicate no collection of any material, in the nature of preliminary inquiry or a source information report taking place prior to registration of the FIR. All that the file contains is the search conducted in Crime No.23 of 2022 concerning some other officer and that material being used against the petitioner to register the crime in Crime No.24 of 2022. Every record is sought to be built up subsequent to the said date i.e., the date of registration of the crime against the petitioner.

15. Therefore, it becomes a fit case, where this Court cannot turn a blind eye to the plea of petitioner for exercise of jurisdiction of this Court under Section 482 of the Cr.P.C. and obliterate registration of crime against the petitioner, failing which, it would become a classic illustration of a case becoming an abuse of process of law



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and resulting in miscarriage of justice and above all, putting a premium on the action of the ACB, notwithstanding the fact that **'the ACB blissfully ignored the ABC of procedure'**.

16. For the aforesaid reasons, I pass the following:

ORDER

- (i) Writ Petition is allowed.
- (ii) The FIR in Crime No.24 of 2022 registered against the petitioner on 16-03-2022 and all further proceedings thereto stand quashed.
- (iii) The petitioner is entitled to all consequential benefits that would flow from quashing of the FIR in Crime No.24 of 2022.

**Sd/-
JUDGE**

BKP