

* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ WRIT PETITION (CRIMINAL) NO. 871 OF 2010

% Reserved on : 10th September, 2010.
Date of Decision : 22nd November, 2010.

NAVEEN KUMAR

Through

... Petitioner

Mr. Sanjay Mann and Mr. R.K.
Pillai, Advocates.

VERSUS

STATE THR. CENTRAL BUREAU OF INVESTIGATION ...Respondent
Through Mr. Vikas Pahwa, Standing Counsel
with Ms. Suchiti Chandra,
Advocate.

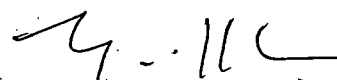
CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

SANJIV KHANNA, J.:

For detailed order see *Writ Petition (Crl.) 765 of 2010* titled *Virender Singh versus Central Bureau of Investigation* pronounced today.


(SANJIV KHANNA)
JUDGE

NOVEMBER 22nd, 2010.
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IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CRIMINAL) NO. 765 OF 2010

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Reserved on : 10th September, 2010.
Date of Decision : 27th November, 2010.

VIRENDER SINGH

Through

..... Petitioner
Mr. Sidhartha Luthra, Sr. Advocate
with Mr. Anurag Ahluwalia,
Advocate.

VERSUS

CENTRAL BUREAU OF INVESTIGATION

Through

... Respondent.
Mr. Vikas Pahwa, Standing Counsel
with Ms. Suchiti Chandra,
Advocate.

AND

WRIT PETITION (CRIMINAL) NO. 871 OF 2010

NAVEEN KUMAR

Through

... Petitioner
Mr. Sanjay Mann and Mr. R.K.
Pillai, Advocates.

VERSUS

STATE THR. CENTRAL BUREAU OF INVESTIGATION ... Respondent

Through

Mr. Vikas Pahwa, Standing Counsel
with Ms. Suchiti Chandra,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

SANJIV KHANNA, J.:

1. Virender Singh and his son Naveen Kumar have filed the present writ petitions impugning the order dated 13th December, 2007 passed by the Special Judge, CBI directing that charges be framed against both of them under Section 120B/419/467/471 of the Indian Penal Code, 1860.

(hereinafter referred to as IPC, for short) and Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 (hereinafter referred to as PC Act, 1988, for short). Substantive charges have also been directed to be framed against the petitioner-Virender Singh under Section 13(2) read with Section 13(1)(c) of the PC Act, 1988 and against Naveen Kumar under Section 109 IPC read with Section 13(2) read with Section 13(1)(c) of the PC Act, 1988 and Section 419/467/471 IPC.

2. The allegation against the petitioner-Virender Singh in the charge sheet is that during the check period 1st July, 1982 to 12th May, 2000 he had acquired and was found to be in possession of assets disproportionate to his known sources of income to the extent of ₹ 2,62,68,298/. The charge sheet sets out the career profile of Virender Singh, who was inducted and joined Indian Administrative Services (IAS) in July, 1969. The charge sheet sets out details of the income earned by Virender Singh, his wife Geeta Singh, his son Naveen Kumar as well as the assets owned by them to arrive at the said conclusion/finding. It is alleged in the charge sheet that Naveen Kumar had actively participated and abetted Virender Singh in acquisition of assets, which were found disproportionate to the known sources of income. Specific instances have been discussed later on.

3. In brief, it is submitted on behalf of the petitioners that the PC Act, 1988 came into force with effect from 9th September, 1988 and consequent thereto the Prevention of Corruption Act, 1947 (PC Act, 1947 for short) was repealed. Accordingly the check period between July, 1982 to 12th May, 2000 partly includes period prior to enforcement of the PC Act, 1988 with effect from 9th September, 1988 during the period when the PC Act, 1947 was in force. It was submitted that for the period prior to 9th September, 1988, provisions of Section 13(1)(c) of the PC Act, 1988 read with

Explanation cannot be applied as it would amount to violation of the constitutional right under Article 20(1) of the Constitution of India. Reliance is placed upon *Jagan M. Seshadri versus State of Tamil Nadu*, (2002) 9 SCC 639. It was argued that PC Act, 1988 should not be given retrospective effect as the Explanation to Section 13(1)(e) of the PC Act, 1988 has brought about and creates a new offence which is not similar or the same offence as was defined and covered by Section 5(1)(e) of the PC Act, 1947.

4. Article 20(1) of the Constitution of India, reads:

"20.(1) No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

5. Interpreting the said Article in *Rao Shiv Bahadur Singh and Another versus The State of Vindhya Pradesh*, AIR 1953 SC 394, it has been held that this Article in broad import, prohibits conviction and sentence under ex post facto laws. No one should be punished for something, which was lawful when it was done or omitted. This would be highly inequitable, unjust and contrary to the universal notion of fairness and justice. In the aforesaid case, the Supreme Court noticed the difference in language of Article 20(1) of the Constitution of India and Sections 9(3) and 10 of Article 1 of the American Constitution and it was held that the Article 20(1) of the Indian Constitution prohibits conviction of a person or his subjection to a sentence under ex post facto laws. Accordingly, it was observed:-

"12. In this context it is necessary to notice that what is prohibited under Article 20 is only conviction or sentence under ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the

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commission of the offence or by a court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except in so far as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved."

(emphasis supplied)

6. Following this judgment, the Supreme Court in *Sajjan Singh versus State of Punjab*, AIR 1964 Supreme Court 464 examined the effect of Section 5(3) of the PC Act, 1947. In the said case, the contention raised was that the PC Act, 1947 was enforced on 11th March, 1947 and, therefore, Section 5(3) of the PC Act, 1947 cannot be basis for conviction by taking into consideration assets and income acquired prior to the said date. Section 5(1), (2) and (3) of the PC Act, 1947 as originally enacted and enforced with effect from 11th March, 1947; read as under:-

"5. (1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duty-

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward such as is mentioned in section 161 of the Indian Penal Code, or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own

use any property entrusted to him or under his control as a public servant or allows any other person so to do, or

(d) if he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage.

(2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

(3) In any trial of an offence punishable under sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume, unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption."

7. The Supreme Court in *Sajjan Singh's* case (supra) has held that the PC Act, 1947 did not have retrospective operation, but was unable to agree that taking into consideration pecuniary resources or property in possession of the accused or any other person on his behalf before the PC Act, 1947 was enacted was in any way giving the PC Act, 1947 a retrospective operation. It was observed that a statute cannot be said to be retrospective because a part of the requisites of its action is drawn from a time antecedent to its passing. It has been held in *Sajjan Singh* (supra) as under:-

"14. Looking at the words of the section and giving them their plain and natural meaning we find it impossible to say that pecuniary resources and property acquired before the date on which the Prevention of Corruption Act came into force should not be taken into account even if in possession of the accused or any other person on his behalf. To accept

the contention that such pecuniary resources or property should not be taken into consideration one has to read into the section the additional word "if acquired after the date of this Act" after the word "property". For this there is no justification.

15. It may also be mentioned that if pecuniary resources or property acquired before the date of commencement of the Act were to be left out of account in applying sub-section (3) of S.5 it would be proper and reasonable to limit the receipt of income against which the proportion is to be considered also to the period after the Act. On the face of it this would lead to a curious and anomalous position by no means satisfactory or helpful to the accused himself.....

16. Mention has next to be made of the learned Counsel's submission that the section is meaningless. According to the learned Counsel, every pecuniary resource or property is itself a source of income and therefore it is a contradiction in terms to say that the pecuniary resources or property can be disproportionate to the known sources of income. This argument is wholly misconceived. While it is quite true that pecuniary resources and property are themselves sources of income that does not present any difficulty in understanding a position that at a particular point of time the total pecuniary resources or property can be regarded as assets, and an attempt being made to see whether the known sources of income including, it may be, these very items of property in the past could yield such income as to explain reasonably the emergence of these assets at this point of time."

8. In *Sajjan Singh's* case (supra), the Supreme Court had examined the contention whether Section 5(3) of the PC Act created a new offence and this contention was rejected holding, inter alia, that the said Section places in the hands of the prosecution a new mode of proving an offence under Section 5(1) of the PC Act, 1947 with which the accused were already charged. It was accordingly observed :-

"13.....On the basis of this contention the further argument is built that if the pecuniary resources or property acquired before the date of the Act is taken into consideration under sub-sec. (3) what is in fact being done is that a person is being convicted for the

acquisition of pecuniary resources or property, though it was not in violation of a law in force at the time of the commission of such act of acquisition. If this argument were correct a conviction of a person under the presumption raised under S. 5(3) in respect of pecuniary resources or property acquired before the Prevention of Corruption Act would be a breach of fundamental rights under Art. 20(1) of the Constitution and so it would be proper for the Court to construe S. 5(3) in a way so as not to include possession of pecuniary resources or property acquired before the Act for the purpose of that sub-section. The basis of the argument that S. 5(3) creates a new kind of offence of criminal misconduct by a public servant in the discharge of his official duty is however unsound. The sub-section does nothing of the kind. It merely prescribes a rule of evidence for the purpose of proving the offence of criminal misconduct as defined in S. 5(1) for which an accused person is already under trial...."

(emphasis supplied)

9. Learned counsel for the petitioner has submitted that Section 5(3) of the PC Act, 1947 as originally enacted was deleted vide the Anti Corruption Laws (Amendment) Act, 1964 and substituted by a new sub-section. The original clause 5(3) of the PC Act, 1947 was modified and re-enacted as Section 5(1)(e) of the PC Act, 1947 and in this connection my attention was drawn to the effect of enactment of Section 5(1)(e) of the PC Act, 1947 as a result of the Anti Corruption Laws (Amendment) Act, 1964 in *State of Maharashtra versus Kaliai Koil Subramaniam Ramaswamy*, (1977) 3 SCC 524. In the said case, the residential premises of the accused were searched on 17th May, 1964 and a lot of assets were detected. While the matter was still pending investigation, the PC Act, 1947 underwent amendment on 18th December, 1964 with enactment of Anti Corruption Laws (Amendment) Act, 1964, which resulted in insertion of clause (c) to Section 5(1), which became a new offence punishable under Section 5(2) of the PC Act, 1947. The Supreme Court has in paragraph 3 of the judgment

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observed that the High Court on an appeal filed by the accused had come to the conclusion that offences under Section 5(1)(a), (b) and (d) of the PC Act, 1947 were not made out. He was acquitted under the said Sections. A question arose whether accused could be convicted under Section 5(1)(e) of the PC Act, 1947, which came into force on 18th December, 1964. The Supreme Court held that the accused could not be convicted under Section 5(1)(e) of PC Act, 1947 in the absence of any evidence on record to show that the appellant had acquired or was found to be in possession of pecuniary sources of property disproportionate to his known sources of income after coming into force of the Anti Corruption (Amendment) Act, 1964 with effect from 18th December, 1964 in view of Article 20(1) of the Constitution. As noticed above, the search was conducted in the premises of the accused on 17th May, 1964 i.e. before the Anti Corruption (Amendment) Act, 1964 was enforced. The Supreme Court in the case of *Kaliar Koil Subramaniam Ramaswamy* (supra) has observed as under:-

"20.....So when there was no law in force at the time when the accused was found in possession of disproportionate assets by the search which was made on May 17, 1964, under which his possession could be said to constitute an offence, he was entitled to the protection of clause (1) of Article 20 and it was not permissible for the trial court to convict him of an offence under clause (e) of sub-section (1) of Section 5 as no such clause was in existence at the relevant time. The accused could not therefore be said to have committed an offence under clause (c) of sub-section (1) of Section 5 read with sub-section (2) of that section."

10. In *Kaliar Koil Subramaniam Ramaswamy's* case (supra), the Supreme Court distinguished the decision in the case of *Sajjan Singh* (supra) as originally Section 5(3) of the PC Act, 1947 was merely prescribing a rule of evidence for the purpose of proving the offence of criminal misconduct as defined under Section 5(1) of the PC Act, 1947. The

original Section 5(3) of the PC Act, 1947 did not constitute an offence in itself.

11. It may be relevant to notice here the legislative history and enactment of the Anti Corruption Laws (Amendment) Act, 1967, which was deemed to come into force with effect from 5th May, 1967. Section 2 of the said 1967 Act reads as under:-

"2. Amendment of Anti-Corruption Law in relation to certain pending trials.- (1) Notwithstanding-

(a) The substitution of new provisions for sub-section (3) of Sec. 5 of the Prevention of Corruption Act, 1947 (hereinafter referred to as the 1947-Act) by Sec. 6(2)(c) of the Anti-Corruption Laws (Amendment) Act, 1964. (hereinafter referred to as the 1964-Act), and

(b) Any judgment or order of any Court, the said sub-section (3) as it stood immediately before the commencement of the 1964 Act, shall apply and shall be deemed always to have applied to and in relation to trials of offences punishable under sub-section (2) of Sec. 5 of the 1947 Act pending before any Court immediately before such commencement as if no such new provisions had been substituted for the said sub-section (3).

(2) The accused person in any trial to and in relation to which sub-section (1) applies may, at the earliest opportunity available to him after the commencement of this Act, demand that the trial of the offence should proceed from the stage at which it was immediately before the commencement of the 1964 Act and on any such demand being made the Court shall proceed with the trial from that stage.

(3) For the removal of doubt it is hereby provided that any Court-

(i) before which an appeal or application for revision against any judgment, order or sentence passed or made in any trial to which sub-section (1) applies is pending immediately before the commencement of this Act, or

(ii) before which an appeal or application for revision against any judgment, order or sentence passed or made before the commencement of this

Act in any such trial, is filed after such commencement.

Shall remand the case for trial in conformity with the provisions of this section."

12. The aforesaid 1967 Act and the effect thereof were made subject matter of challenge before the Delhi High Court, but the challenge was rejected. Appeal before the Supreme Court was dismissed in the decision *G.P. Nayar versus State, (1972) 2 SCC 523*, observing as under:-

"7.....Article 20(1) deals with ex post facto laws though that expression has not been used in the Article. Usually, a law prescribes a rule of conduct by which persons ought to be governed in respect of their civil rights. Certain penalties are also imposed under the criminal law for breach of any law. Though a sovereign legislature has power to legislate retrospectively, creation of an offence for an act which at the time of its commission was not an offence or imposition of a penalty greater than that which was under the law provided violates Article 20(1). In the well-known case of *Phillips v. Eyre* and also in the American case of *Calder v. Bull* the principle underlying the provision has been fully discussed. All that Article 20(1) prohibits is ex post facto laws and is designed to prevent a person being punished for an act or omission which was considered innocent when done. It only prohibits the conviction of a person or his being subjected to a penalty under ex post facto laws. In *Rao Shiv Bahadur Singh v. State of Vindhya Pradesh* the Court pointed out that

"what is prohibited under Article 20(1) is only conviction or sentence under an ex post facto law and not the trial thereof. Such trial under a procedure different from what obtained at the time of the commission of the offence or by a court different from that which had competence at the time cannot ipso facto be held to be unconstitutional. A person accused of the commission of an offence has no fundamental right to trial by a particular court or by a particular procedure, except insofar as any constitutional objection by way of discrimination or the violation of any other fundamental right may be involved."

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Thus the appellant cannot object to a procedure different from what obtained at the time of the commission of the offence. The offence that was committed was when Section 5(3) was in force and by Act 16 of 1967 the procedure is revived. It is not as if the procedure is brought into force for the first time.

"Where an Act is repealed and the repealing enactment is then repealed by another, which manifests no intention that the original Act shall continue repealed, the common law rule was that the repeal of the second Act revived the first ab initio."

There can be no objection in law to the revival of the procedure which was in force at the time when the offence was committed. The effect of the amendment is that sub-section (3) of Section 5 as it stood before the commencement of the 1964 Act shall apply and shall be deemed to have always applied in relation to trial of offences. It may be if by this deeming provision a new offence was created, then the prohibition under Article 20(1) may come into operation. But in this case, as already pointed out, what is done is no more than reiterating the effect of Section 6(1) of the General Clauses Act. Mr Garg, the learned counsel, submitted that by amending procedure drastically and giving it retrospective effect a new offence may be created retrospectively. It was contended that by shifting the burden of proof as provided for in Section 5(3) of the Prevention of Corruption Act, 1947, a new offence is created. It is unnecessary for us to consider the larger question as to whether in certain circumstances giving retrospective effect to the procedure may amount to creation of an offence retrospectively. In the present case the old procedure is revived and no new procedure is given retrospective effect. The procedure given effect to is not of such a nature as to result in the creation of a new offence."

13. Section 13(1)(c) of the PC Act, 1988 and 5(1)(e) of the PC Act, 1947 are identical and *pari materia* (except for two changes or additions noticed below). It is, therefore, not possible to accept the contention that Section 13(1)(c) of the PC Act, 1988 enacts a new offence. It does not make any difference if the check period overlaps the PC Act, 1947 and the PC Act, 1988. It is not possible to accept the contention that the check period in the

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case in question is prior to 9th September, 1988 and, therefore, the PC Act, 1988 is being given retrospective effect in view of the authoritative pronouncement of the Supreme Court in *Sajjan Singh's* case (supra). As noticed above, the Supreme Court in the case of *Kaliar Koil Subramaniam Ramaswamy* (supra) was dealing with altogether different aspect i.e. enactment of a new offence with introduction of Section 5(1)(e) of PC Act, 1947. The two changes/additions in Section 13(1)(e) of the PC Act, 1988 are the Explanation and removal of the clause giving discretion to the Courts to award punishment of less than one year for reasons to be recorded in writing.

14. Learned counsel for the petitioner, however, relies upon the Explanation to Section 13(1)(e) of the PC Act, 1988 and submits that the said explanation creates a new offence and, therefore, the ratio in the case of *Kaliar Koil Subramaniam Ramaswamy's* (supra) is applicable.

15. Section 13(1)(e) of the PC Act, 1988 including explanation thereto read as under:-

"13. Criminal misconduct by a public servant.-

(1) A public servant is said to commit the offence of criminal misconduct,-

(e) 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 for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

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16. The explanation to Section 13(1)(c) defines the expression 'known sources of income' and states that this expression means income received from any lawful source and also requires that the receipt should have been intimated by the public servant in accordance with any provisions of law, rules or orders. As noticed above, this explanation was not there in the PC Act, 1947. Noticing this fact in *Jagan M. Seshadri* (supra), the Supreme Court has observed as under:-

"7. A bare reading of Section 30(2) of the 1988 Act shows that any act done or any action taken or purported to have been done or taken under or in pursuance of the repealed Act, shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under or in pursuance of the corresponding provisions of the Act. It does not substitute Section 13 in place of Section 5 of the 1947 Act. Section 30(2) is applicable "without prejudice to the application of Section 6 of the General Clauses Act, 1897". In our opinion, the application of Section 13 of the 1988 Act to the fact situation of the present case would offend Section 6 of the General Clauses Act, which, inter alia provides that repeal shall not (i) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or (ii) affect any investigation, legal proceedings or remedy in respect of any such rights, privilege, obligation, penalty, forfeiture or punishment. Section 13, both in the matter of punishment as also by the addition of the Explanation to Section 13(1)(e) is materially different from Section 5 of the 1947 Act. The presumption permitted to be raised under the Explanation to Section 13(1)(e) was not available to be raised under Section 5(1)(e) of the 1947 Act. This difference can have a material bearing on the case."

17. Before dwelling further on the said aspect, it may be relevant to note the facts in the case of *Jagan M. Seshadri* (supra), which had resulted in the aforesaid observations. In the said case, the check period was from 11th May, 1977 to 31st April, 1984, i.e., prior to enforcement of the PC Act, 1988 with effect from 9th September, 1988. The charges were also framed under Section 5(1)(d) and (e) read with Section 5(2) of the PC Act, 1947. The trial

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court acquitted the accused vide judgment dated 9th July, 1990 but the decision was reversed and the High Court convicted the accused for offences under Section 13(1)(e) of the PC Act, 1988 holding, inter alia, that the PC Act, 1947 stands repealed with enactment of PC Act, 1988. Relying upon Section 30(2) of the PC Act, 1988, the High Court opined that the accused should be deemed to have been charged for offences under Section 13(1)(e) read with Section 13(2) of the PC Act, 1988. On further appeal by the accused to the Supreme Court, the same was allowed observing that the alleged offences were committed when PC Act, 1947 was in operation. It was held that Section 30(2) of the PC Act, 1988 was not applicable. On merits, it was also observed that the High Court had failed to deal with various reasons given by the trial court in support of the order on acquittal. The evidence on record has been discussed by the Supreme Court in paragraph 9 onwards. The Supreme Court has observed that the High Court was not right in rejecting the findings of the trial court relying upon the explanation to Section 13(1)(e) of the PC Act, 1988 as the accused had not intimated the amount allegedly received from his mother-in-law to the Government.

18. The decision of the Supreme Court in *Jagan M. Seshadri* (supra) was considered by the Supreme Court in *State of Maharashtra versus Krishnarao Dudhappa Shinde*, (2009) 4 SCC 219. In the said case, the check period was from 29th May, 1944, when the accused was inducted into service till the date of the raid in his house on 28th December, 1971. As noticed above, Section 5(1)(e) was enacted and incorporated in PC Act, 1947 with effect from 18th December, 1964. The High Court had observed that acquisition of wealth said to be disproportionate to his known sources of income prior to 1964 could not be taken into account since prior to 1964

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Section 5(1)(c) of the PC Act, 1947 was not an offence. The Supreme Court allowed the appeal after referring to the decision in *Sajjan Singh's* case (supra) and remanded the matter back to the High Court. The Supreme Court while remanding the matter back expressly referred to paragraphs 14 and 15 of the decision of the Supreme Court in *Sajjan Singh's* case (supra), which have been quoted above.

19. The expression "known sources of income" was used in Section 5(3) of the PC Act, 1947 and also in Section 5(1)(c) after it was incorporated in 1964 in PC Act, 1947. The said expression is incorporated in Section 13(1)(c) of the PC Act, 1988, albeit with an explanation defining the said expression. The question raised is whether introduction of the explanation defining the expression "known sources of income" has resulted in a new offence or the explanation is merely clarificatory or procedural in nature and does not create a substantive new offence so as to offend Article 20(1) of the Constitution of India.

20. The explanation to Section 13(1)(c) of the PC Act, 1988 has the effect of defining the expression 'known sources of income' used in Section 13(1)(c) of the PC Act, 1988. The explanation to Section 13(1)(c) of the PC Act, 1988 consists of two parts. The first part states that known sources of income means income received from any lawful source and the second part states that such receipt should have been intimated by the public servant in accordance with the provisions of law, rules and orders for the time being applicable.

21. Referring to the first part of the expression "known sources of income" in *N. Ramakrishnaiah vs State of A.P.* 2009 Cr.L.J. 1767 the Supreme Court observed as under:-

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"15. The emphasis of the phrase "known sources of income" in Section 13(1)(e) (old Section 5(1)(e)) is clearly on the word "income". It would be primary to observe that qua the public servant, the income would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is classic and has a wide connotation. Whatever comes in or is received is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and being further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "Income". Therefore, it can be said that, though "income" in receipt in the hand of its recipient, every receipt would not partake into the character of income. For the public servant, whatever return he gets of his service, will be the primary item of his income. Other income which can conceivably be income qua the public servant will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft crime or immoral secretions by persons prima facie would not be receipt for the "known source of income" of a public servant."

(See also, *State of M.P. versus Avadh Kishore Gupta* (2004) 1 SCC 694).

22. This brings us to the second part of the explanation, defining the expression "known sources of income" i.e. intimation by the public servant in accordance with any provisions of law, rules or orders applicable to a public servant. Section 5(3) of the PC Act, 1947 before it was amended and Section 5(1)(e) of the PC Act, 1947 and Section 13(1)(e) of the PC Act, 1988 have been quoted above. The language of the substantive provisions in the three Sections continues to be the same though Section 5(3) before it was amended was held to be a procedural Section in the case of *Sajjan Kumar* (supra). The Section 5(3) of the PC Act, 1947 before its amendment w.e.f.

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18th December, 1964 was interpreted in *C.D.S. Swami Vs. State* AIR 1960 SC 7 and it was observed:

"4. It is true that Section 5(3) of the Act, does not create a new offence but only lays down a rule of evidence, enabling the court to raise a presumption of guilt in certain circumstances — a rule which is a complete departure from the established principle of criminal jurisprudence that the burden always lies on the prosecution to prove all the ingredients of the offence charged, and that the burden never shifts on to the accused to disprove the charge framed against him. With reference to the provisions of Section 5(3) of the Act, it has been contended, in the first instance, that the charge of criminal misconduct in the discharge of his official duties, is now confined to the fact as disclosed in his bank accounts with Imperial Bank of India (New Delhi Branch) and Chartered Bank of India, Australia and China (Chandni Chowk Branch), that his net credit with those Banks totalled up to a figure just over Rs 91,000. He accounted for that large balance by stating that he was the only son of his father who had been able to give him advanced education in England for a period of over seven years; that after his return to India, he had been holding highly paid posts for about 20 years in Imperial Chemical Industries, in the Army and in the Government of India; that he had no children and no other dependants except his wife; that with his limited household expenses, he was able to save a good round sum out of his salary and allowances which were considerable; because his duty took him throughout the length and breadth of the country, thus enabling him to earn large sums of money by way of travelling allowances, which he saved by staying with his friends and relations during his official tours. He added that he had received a gratuity for services rendered to the Army, and also considerable sums of money as his provident fund from Imperial Chemical Industries, towards the end of November 1947.

5. Reference was also made to cases in which courts had held that if plausible explanation had been offered by an accused person for being in possession of property which was the subject-matter of the charge, the court could exonerate the accused from criminal responsibility for possessing incriminating property. In our opinion, those cases have no bearing upon the charge against the appellant in this case, because the section requires the accused

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person to "satisfactorily account" for the possession of pecuniary resources or property disproportionate to his known sources of income. Ordinarily, an accused person is entitled to acquittal if he can account for honest possession of property which has been proved to have been recently stolen (see illustration (a) to Section 114 of the Indian Evidence Act, 1872). The rule of law is that if there is a prima facie explanation of the accused that he came by the stolen goods in an honest way, the inference of guilty knowledge is displaced. This is based upon the well-established principle that if there is a doubt in the mind of the court as to a necessary ingredient of an offence, the benefit of that doubt must go to the accused. But the legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily", and the legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the court that his explanation was worthy of acceptance.

6. Another argument bearing on the same aspect of the case, is that the prosecution has not led evidence to show as to what are the known sources of the appellant's income. In this connection, our attention was invited to the evidence of the investigating officers, and with reference to that evidence, it was contended that those officers have not said, in terms, as to what were the known sources of income of the accused, or that the salary was the only source of his income. Now, the expression "known sources of income" must have reference to sources known to the prosecution on a thorough investigation of the case. It was not, and it could not be, contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Evidence Act. The prosecution can only lead evidence, as it has done in the instant case, to show that the accused was known to earn his living by service under the Government during the material period. The prosecution would not be justified in concluding that travelling allowance was also a source of income when such allowance is ordinarily meant to compensate an officer concerned for his out-of-pocket expenses incidental to journeys performed by him for his official tours. That could not possibly be alleged to be a very substantial source of income. The source of income of a

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particular individual will depend upon his position in life with particular reference to his occupation or avocation in life. In the case of a government servant, the prosecution would, naturally, infer that his known source of income would be the salary earned by him during his active service. His pension or his provident fund would come into calculation only after his retirement; unless he had a justification for borrowing from his provident fund. We are not, therefore, impressed by the argument that the prosecution has failed to lead proper evidence as to the appellant's known sources of income. It may be that the accused may have made statements to the investigating officers as to his alleged sources of income, but the same, strictly, would not be evidence in the case, and if the prosecution has failed to disclose all the sources of income of an accused person, it is always open to him to prove those other sources of income which have not been taken into account or brought into evidence by the prosecution. In the present case, the prosecution has adduced the best evidence as to the pecuniary resources of the accused person, namely, his bank accounts. They show that during the years 1947 and 1948, he had credit at the banks, amounting to a little over Rs 91,000. His average salary per mensem, during the relevant period, would be a little over Rs 1100. His salary, during the period of the two years, assuming that the whole amount was put into the banks, would be less than one-third of the total amount aforesaid, to his credit. It cannot, therefore, be said that he was not in possession of pecuniary resources disproportionate to his known sources of income."

(emphasis supplied)

23. Even after Section 5(3) was deleted and Section 5(1)(e) was enacted, the Supreme Court in the case of *State of Maharashtra versus Wasudeo Ram Chandra Kaidalwar* (1981) 3 SCC 199 has observed that the expression "known sources of income" occurring in Section 5(1)(e) has a definite legal connotation which in the context must mean the sources known to the prosecution and not sources relied upon and known to the accused. Section 5(1)(e), it was observed by the Supreme Court, casts a burden on the accused for it uses the words "for which the public servant cannot satisfactorily account". The onus is on the accused to account for

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and satisfactorily explain the assets. Accordingly, in *Wasudeo Ram Chandra Kaidalwar* (supra) it was observed:

"11. The provisions of Section 5(3) have been subject of judicial interpretation. First the expression "known sources of income" in the context of Section 5(3) meant "sources known to the prosecution". The other principle is equally well-settled. The onus placed on the accused under Section 5(3) was, however, not to prove his innocence beyond reasonable doubt, but only to establish a preponderance of probability. These are the well-settled principles: see *C.S.D. Swamy v. State*; *Sajjan Singh v. State of Punjab* and *V.D. Jhingan v. State of U.P.* The legislature thought it fit to dispense with the rule of evidence under Section 5(3) and make the possession of disproportionate assets by a public servant as one of the species of the offence of criminal misconduct by inserting Section 5(1)(e) due to widespread corruption in public services.

12. The terms and expressions appearing in Section 5(1)(e) of the Act are the same as those used in the old Section 5(3). Although the two provisions operate in two different fields, the meaning to be assigned to them must be the same. The expression "known sources of incomes" means "sources known to the prosecution". So also, the same meaning must be given to the words "for which the public servant cannot satisfactorily account" occurring in Section 5(1)(e). No doubt, Section 4(1) provides for presumption of guilt in cases falling under Section 5(1)(a) and (b), but there was, in our opinion, no need to mention Section 5(1)(e) therein. For, the reason is obvious. The provision contained in Section 5(1)(e) of the Act is a self-contained provision. The first part of the section casts a burden on the prosecution and the second on the accused. When Section 5(1)(e) uses the words "for which the public servant cannot satisfactorily account", it is implied that the burden is on such public servant to account for the sources for the acquisition of disproportionate assets. The High Court, therefore, was in error in holding that a public servant charged for having disproportionate assets in his possession for which he cannot satisfactorily account, cannot be convicted of an offence under Section 5(2) read with Section 5(1)(e) of the Act unless the prosecution disproves all possible sources of income.

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13. That takes us to the difficult question as to the nature and extent of the burden of proof under Section 5(1)(e) of the Act. The expression "burden of proof" has two distinct meanings (1) the legal burden i.e. the burden of establishing the guilt, and (2) the evidential burden i.e. the burden of leading evidence. In a criminal trial, the burden of proving everything essential to establish the charge against the accused lies upon the prosecution, and that burden never shifts. Notwithstanding the general rule that the burden of proof lies exclusively upon the prosecution, in the case of certain offences, the burden of proving a particular fact in issue may be laid by law upon the accused. The burden resting on the accused in such cases is, however, not so onerous as that which lies on the prosecution and is discharged by proof of a balance of probabilities. The ingredients of the offence of criminal misconduct under Section 5(2) read with Section 5(1)(e) are the possession of pecuniary resources or property disproportionate to the known sources of income for which the public servant cannot satisfactorily account. To substantiate the charge, the prosecution must prove the following facts before it can bring a case under Section 5(1)(e), namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (3) it must be proved as to what were his known sources of income i.e. known to the prosecution, and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets. The extent and nature of burden of proof resting upon the public servant to be found in possession of disproportionate assets under Section 5(1)(e) cannot be higher than the test laid by the Court in *Jhingan* case i.e. to establish his case by a preponderance of probability. That test was laid down by the court following the dictum of Viscount Sankey, L.C., in *Woolmington v. Director of Public Prosecution*. The High Court has placed an impossible burden on the prosecution to disprove all possible sources of income which were within the special knowledge of the accused. As laid down in *Swamy* case, the prosecution cannot, in the very nature of things, be expected to know the affairs of a public servant

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found in possession of resources or property disproportionate to his known sources of income i.e. his salary. Those will be matters specially within the knowledge of the public servant within the meaning of Section 106 of the Evidence Act, 1872. Section 106 reads:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

(emphasis supplied).

(See observations of the Supreme Court in *K. Veeraswami Vs. Union of India* (1991) 3 SCC 665 in paragraphs 69 to 73)

24. Thus the expression "known sources 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. While the expression "known sources of income" refers to the sources known to the prosecution, the expression "for which the public servant cannot satisfactorily account" refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden is on the accused as the said facts are within his special knowledge. Section 106 of the Evidence act applies. Read in this light and background, the explanation to Section 13(1)(c) is merely a procedural Section which seeks to define the expression "known sources of income" as sources known to the prosecution and not to the accused. The explanation applies and relates to the mode and manner of investigation to be conducted by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and ranging investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the

accused only and are within his special knowledge. Read in this manner, the explanation to Section 13(1)(e) of the P.C. Act, 1988 is merely procedural and not substantive and it does not create a new offence. The effect of the explanation is to clarify and reinforce the existing position and understanding of the expression "known sources of income" i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the explanation does away with the need and requirement for the prosecution to conduct an open ended or roving enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out known sources of income of the accused public servant. As noticed above, the first part of the explanation refers to income received from legal/lawful sources. This first part of the expression states the obvious as is clear from the judgment of the Supreme Court in *N. Ramakrishnaiah* (supra).

25. Thus, the obligation of the accused public servant to satisfactorily account for the assets remains the same under both PC Act, 1947 (after 1964 amendment) and under the PC Act, 1988. Enactment of Section 13(1)(e) of the PC Act, 1988, which is replacement and pari materia to Section 5(1)(e) of the PC Act, 1947, in this regard makes no distinction. The requirement of law remains the same. The public servant/accused has to account for to the satisfaction of the Court that the assets available with him or his resources for purchase of the assets were not disproportionate to the known sources of his income. The onus in this regard does not undergo

any change or modification with the introduction of the Explanation to Section 13(1)(e) of the PC Act, 1988. It is a different matter that a public servant may find it difficult to discharge the said onus unless he has a lawful source of income and the said income has been intimated to the authorities concerned in accordance with law. But the explanation does not enact or create an absolute prohibition/bar to curtail right of the accused public servant to satisfactorily account for the assets. Similarly, the explanation does not alter or change the law on what or which assets the accused/public servant are required to be account for. The assets can be those which have been disclosed and also other assets which have not been disclosed by the public servant but there is evidence that the asset are possessed, belongs to or held by the accused public servant. The Law on the said aspect has not undergone a change or altered by introduction of the explanation.

26. Proviso to Section 5(2) PC Act, 1947 gave discretion to Courts to award punishment of less than one year. The proviso is missing and absent in Section 13(2) of the PC Act, 1988. But this aspect is not required to be examined at this stage; while deciding the question whether or not charge should be framed. This aspect can be examined after the trial and if there is conviction, when the order on sentence is passed. To be fair, counsels have not addressed specific arguments in this regard.

27. As noticed above, Section 13(1)(e) of the PC Act, 1988 makes a departure from the principle of criminal jurisprudence that the burden always lies on the prosecution to prove the ingredients of the offences charged and never shifts on the accused to disprove the charge framed against him. Thus, the legal effect of the Section 13(1)(e) is that it is for the prosecution to establish that the accused was in possession of property disproportionate to his known sources of income but the term 'known

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sources of income' will mean the sources known to the prosecution and not the sources known to the accused and within the knowledge of the accused. In view of the explanation, the 'known sources of income' must be legal and declared by the public servant. It is for the accused to account satisfactorily for the money/assets in his hands or the property possessed by him and satisfy the Court that his explanation is worthy of acceptance. Onus in this regard is upon the accused to give satisfactory explanation. Therefore, at this stage, the contention of the petitioners Virender Singh and Naveen Kumar that they have some sources of income, which have not been taken into consideration while deciding the question of disproportionate assets has to be rejected.

28. In the present case, learned trial court has examined the averments made in the charge sheet and the evidence on record while deciding the question whether or not charge should be framed against the two petitioners. The said order is elaborate and has pointed out specific instance relating to property No. C-8, Ansal Villa Farm House, Satbari, which has not been accounted for. The order also deals with the income and assets of Virender Singh and Naveen Kumar. At the stage of framing of charge, only a prima facie view is to be taken. At this stage, elaborate discussion of the evidence, pros and cons and evidentiary value as is required to be discussed and considered at the time of final judgment is not required. This is not a stage to hold a mini trial. At this stage, the Court is concerned, whether there is substantial material to proceed with the trial and allow the prosecution to prove their case. The material placed by the prosecution is generally treated as correct as it has not been subjected to cross-examination and test (See, *State versus*

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Mehrunisa and Others, Criminal Revision Petition No. 428/2008 decided on 10th September, 2010).

29. Learned counsel for the petitioners have referred to the written submissions, which were filed before the learned Special Court. It is submitted that the petitioner Virender Singh had given various explanations with regard to the sources of income but these have not been specifically dealt with and examined in the impugned order. Before me also, tabulated charts have been filed giving explanation and pointing out that the CBI has not taken into consideration some sources of income. Reference was also made to decisions in *State versus K. Ponmudi*, MANU/TN/9641/2006, *N.P. Lotlikar versus C.B.I.*, 1993 CRL.L.J. 2951, *Ananda Bezbaruah versus Union of India*, 1994 CRL.L.J. 12, *J.B. Patnaik versus State of Orissa*, 1995 CRL.L.J. 1110, *S.K. Puri versus State*, 2004 CRL.L.J. 3198, *State of Haryana versus Bhajan Lal*, 1992 Supp. (1) SCC 335, *Alexander versus CBI*, 2006 (2) KLT 240, *Shakuntla versus State of Delhi*, 139 (2007) DLT 178 and *State of Maharashtra versus Laxmi Narsimhanm*, 1977 Mh.L.J. 715.

30. These contentions do not have any merit. As noticed above, under Section 13(1)(c), the onus is upon the public servant accused to satisfactorily account for the assets/sources of income, which were used for the purchase of the assets. In *Sajjan Singh's* case (supra), the Supreme Court referred to the earlier decision in the case of *Swami* (supra) and had observed that the expression 'known sources of income' must have reference to the sources known to the prosecution on a thorough investigation of a case and it could not be contended that sources of income means sources known to the accused.

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31. It was contended on behalf of Virender Singh that the CBI has failed to take into account even salary income paid to Virender Singh for approximately 51 months. There is some dispute about the period and the amount of salary, which has not been taken into account though it is conceded by the CBI that salary for the check period for about 18 years, i.e., 216 months has been accounted for but salary for some period approximately 42 months has not been accounted for. It is pointed out that the total salary for this period would be about ₹ 3,43,800/-. With regard to some other receipts and expenditure, CBI has accepted that these can be taken into consideration. However, the total amount on this account including salary of ₹ 3,43,800/- is ₹ 4,46,240/-. There is a substantial gap between the disproportionate assets and the known sources of income as per the prosecution case of about ₹ 2,62,68,298/-. This explanation now given by the petitioner Virender Singh of a small amount of ₹ 4,46,240/- is merely a drop in the ocean. It was submitted on behalf of the petitioners that the prosecution has not acted in a fair and just manner. Reference was made to decisions of the Supreme Court in *State of Haryana versus Bhajan Lal*, 1992 SUPP. (1) SCC 335 and *State versus Surya Sankaram Karri*, (2006) 7 SCC 172. It is the duty of the State to conduct free and impartial investigation. The purpose of investigation is to find out whether any offence has been committed and is obviously not to punish or harass innocents. In the present case, however, allegations of unfair and unjust investigation against the respondent-CBI do not appear to be justified. After the raid was conducted, it is alleged that Virender Singh had turned non-cooperative. He was sent a proforma to be filled up. The said proforma had required Virender Singh to give full details about his assets and sources of income, including assets purchased from his income but in

the name of his family members/others. Virender Singh did not fill up the proforma and submit or furnish the said information. He took the plea that under Article 20(3) of the Constitution, he was not required to answer the said questions and submit the proforma. It was submitted by the petitioner that this letter was written to the Joint Secretary, Services, JC&T, Delhi and not to the CBI. The plea is baseless and does not merit acceptance. The fact of the matter is that Virender Singh did not fill up the proforma and send it to the CBI. In these circumstances, the CBI had to rely upon the information collected and gathered from various departments in which Virender Singh was posted during the check period. It may be also noted that it is now settled by the Supreme Court that the sanctioning authority or the prosecution is not required to issue show cause notice to the accused before sanction is granted (See, *Assistant Commissioner versus Velliappi Textiles Limited*, (2003) 11 SCC 405, *State Anti Corruption Bureau versus P. Suryaprakasam*, (2008) 14 SCC 13). Various defences raised by the petitioner-Virender Singh are a matter of trial and at this stage there is sufficient material and evidence in the charge sheet and the documents filed in support thereof against the petitioner. Some of the aspects have been mentioned in the impugned order dated 13th December, 2007. It was not necessary for the trial court to deal with each and every explanation of the petitioner with regard to his income and expenditure at the stage of framing of charge as this is a matter of evidence/trial and the explanation has to be established and proved. Learned trial court has made specific reference to property No. C-8, Ansal Villa Farm House, Satbari. The allegation is that this is a benami property of Virender Singh. Papers with regard to purchase of the property, property tax etc. were recovered from the premises of Virender Singh and Naveen

Kumar. Some papers were also recovered from a locker, which it is alleged was operated by Naveen Kumar. It is alleged that purchase of the property in the name of Jassa Ram and Sons was an eye wash and Virender Singh was bearing the expenses for maintaining the property. In *K. Veeraswami Vs. Union of India*, (1991) 3 SCC 655, it has been observed :

"75. In the view that we have taken as to the nature of the offence created under clause (e), it may not be necessary to examine the contention relating to ingredient of the offence. But 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.

76. The charge-sheet is nothing but a final report of police officer under Section 173(2) of the CrPC. The Section 173(2) provides that on completion of the investigation the police officer investigating into a cognizable offence shall submit a report. The report must be in the form prescribed by the State Government and stating therein (a) the names of the parties; (b) the nature of the information; (c) the names of the persons who appear to be acquainted with the circumstances of the case; (d) whether any offence appears to have been committed and, if so, by whom (e) whether the accused has been arrested; (f) whether he had been released on his bond and, if so, whether with or without sureties; and (g) whether he has been forwarded in custody under Section 170. As observed by this Court in *Satya Narain Musadi v. State of Bihar* that the statutory requirement of the report under Section 173(2) would be complied with if the various details prescribed therein are included in the report. This report is an intimation to the magistrate that upon investigation into a cognizable offence the Investigating Officer has been able to procure sufficient evidence for the court to inquire into the offence and the necessary information is being sent to the court. In fact, the report under Section 173(2) purports to be an opinion of the Investigating Officer that as far as he is concerned he has been able to procure sufficient material for the trial of the accused by the court. The report is complete if it is accompanied with all the documents and statements of witnesses as required by Section 175(5). Nothing more need be stated in the report of the Investigating Officer. It is also not necessary that all the details of the offence must be stated. The details of the offence are required to be proved to bring home the guilt to the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence."

(See also observations of the Supreme Court in *State of Maharashtra Vs. Ishwar Piraji Kalpatri* (1996) 1 SCC 542).

32. In the charge as framed, it is mentioned that Virender Singh had acquired assets worth ₹ 14,02,65,000/- as against total saving of ₹ 30,00,000/-. It is pointed out that this figure of ₹ 14,02,65,000/- is incorrect. It will be open to the learned Trial Court to correct the said arithmetical/clerical error. This arithmetical/clerical error does not make

any difference to the substantive charge and the allegations of the prosecution that the accused-Virender Singh is required to account for and satisfactorily explain assets disproportionate to the known sources of income to the extent of ₹ 2,62,68,298/-.

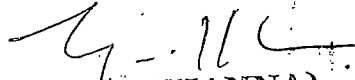
33. With regard to Naveen Kumar, it is alleged that he is a estranged son of Virender Singh and was living separately. It is further submitted that he was not dependent on Virender Singh as per the service rules and, therefore, his assets cannot be clubbed. Naveen Kumar is the son of Virender Singh and this fact is not in dispute. As per the prosecution, Naveen Kumar was born on 4th December, 1965 (though this date was disputed before me) but it is admitted that he was studying Engineering till 1989 and thereafter did MBA till 1992. He completed LL.B in 1996. As per the prosecution case, from the locker, which was operated by Virender Singh, documents relating to acquisition of various immovable properties have been recovered. It is also alleged that locker No. 1063 Allahabad Bank, Behra Enclave Branch in the name of Ranvijay Singh was operated by Naveen Kumar. He had forged the signatures of Ranvijay Singh, who had expired. It is alleged that the forgery has been established as per the report received from the Government Examiner of Questioned Documents. The question whether Naveen Kumar was dependent on Virender Singh for the purpose of availing certain benefits under the service rules is totally irrelevant for the prosecution under the PC Act, 1947 or 1988 and IPC. The charges against Naveen Kumar are that he had entered into conspiracy or had aided or abetted commission of various offences by Virender Singh. These charges stand on their own footing and have nothing to do with the question whether or not Naveen Kumar was 'dependent' on his father as

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per service rules of the Government to avail certain benefits or for the purpose of declaration.

34. In view of the above, it is clear that there are sufficient grounds to frame charges against both the petitioners.

The writ petitions are accordingly dismissed.

Observations made above are for the disposal of the present writ petitions and will not be construed as observations on merits binding on the trial court.


(SANJIV KHANNA)
JUDGE

NOVEMBER 22nd, 2010.
VKR/P