

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision: 6.7.2012**

+ (Formerly CrI. Rev. 338 of 2006)

WP(CrI.) No.870/2010

Sh. Vishwa Vibhuti ... Petitioner

versus

Central Bureau of Investigations. ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr.R.N.Mittal, Sr. Advocate with
Mr. Pushkar Sood & Mr. Shalabh Rastogi,
Advocates

For Respondents : Mr.P.K.Sharma Standing Counsel &
Mr. Uday Prakash Yadav, Advocate for the
respondent/CBI with Sh. Lalit Phular,
SI/AC-II/CBI.

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR

ANIL KUMAR, J.

1. The petitioner has impugned the order on charge dated 19th April, 2005 and the charge framed under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 by the learned Special Judge, Delhi in complaint case no. 64/1998 arising out of R.C.No. 1(A)/96 and order dated 12th April, 2006 passed by Special Judge, Delhi rejecting the application of the petitioner under Section

216 of Cr.P.C. , filed in furtherance of the order dated 16h October, 2005 passed by this Court in Revision petition No. 730/05.

2. The brief facts for comprehending the dispute in the present petition are that the petitioner while working in the capacity of Deputy Assistant Director General/Assistant Director General, Government Medical Store Depot at Hyderabad and New Delhi is alleged to have acquired disproportionate assets to the tune of Rs. 19,00,851/- during the period 1st June, 1985 to 16th June 1996, in his name as well as in the name of his family members. After investigation a charge sheet was filed by the respondent against the petitioner in the Court of Special Judge, Delhi on 13th July, 1998. The learned Special Judge vide order dated 19th April, 2005 directed framing of charge against the petitioner under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988. The said order of charge was challenged by the petitioner on the ground that the order does not mention the mandate provided under Section 13(1)(e) of the Prevention of Corruption Act, 1988 through a revision petition being CrI Rev. No. 730/05, which petition was disposed of by this Court vide order dated 6th October, 2006 observing that ‘the trial court may, if so required amend/alter the charge to include the mandate of Section 13(1)(e) of the Act for which the petitioner if so advised may move the trial court.’

3. Subsequent to the order of this Court the petitioner moved an application before the trial court dated 22nd November, 2005 for reconsideration of charges. The said application was dismissed by the trial court vide order dated 12th April, 2006 holding that the submissions of the petitioner could not be appreciated at the pre-trial stage.

4. The petitioner has contended that charge has been framed against him not on merits and statements on record but on conjectures and surmises. It is contended that the learned trial judge while ordering framing of charge against the petitioner never gave a finding that the petitioner has assets disproportionate to his known sources of income, but proceeded on the ground that the petitioner has not intimated the Government Department about the business activities or earnings of his family members. It is contended that the learned Special Judge while framing charges proceeded on the wrong assumption that a violation of Rule 15(3) of CCS (Conduct) Rules would be considered as a breach as explained in the explanation to Section 13(1)(e) of the Prevention of Corruption Act, 1988. It is contended that the word 'intimation' as is used in Section 13(1)(e) of the Prevention of Corruption Act, 1988 cannot be equated with the 'report' as it occurs in rule 15(3) of the CCS (Conduct) Rules, 1964. It is further contended that the learned trial judge failed to consider the documents whereby the petitioner had

intimated his department that his wife was engaged in business including pharmaceuticals, manufacturing and purchases. It is contended that though the petitioner had intimated the Investigating Officer that he had informed the Government vide letter dated 31st September, 1991 about the business activities of his wife and daughters, the investigating officer had failed to bring it on record.

5. It is contended by the petitioner that his mother had purchased the House No. 178, Munirka Enclave, New Delhi from her own Istridhan and that the learned trial judge has erred in considering her as a person possessing property 'on his behalf'. It is also contended that the wife of the petitioner as well as his three daughters were filling independent income tax returns since the year 1985 and that the assets possessed by them were acquired by them out of their own incomes and savings. It is contended that they cannot be treated as persons possessing pecuniary resources or property on the petitioner's behalf. The petitioner has placed reliance on an order of the Income Tax Appellate Tribunal 'C' Bench, Kolkata dated 31st December, 2003 wherein it was held that the assets, funds and investments by the petitioner's family members cannot be connected to the alleged income illegally earned by the petitioner. It is also contended that the learned Special Judge, erred in not considering the above mentioned order of the ITAT while passing the order dated 12th April, 2006. It is contended that the

learned Special Judge misinterpreted the judgment of the Hon'ble Supreme Court in State of Orissa v. Debendra Nath Padhi 2004 (10) SCALE 50 in not considering the judgment of the ITAT. It is contended that though the Hon'ble Supreme Court had held in Debendra Nath Padhi's case that at the time of framing of charge the accused has no right to produce any 'material', the word 'material' does not preclude a judgment of a judicial body. It is contended that a reading of Sections 74, 76, 77, 79 & 80 of the Indian Evidence Act also makes it clear that a judgment of a Court cannot fall within the ambit of the word 'material'. The petitioner has also relied on Janaki Ballavh Patnaik v. State of Orissa in support of his contention. It is also contended that in Debendra Nath Padhi's case the Supreme Court had held that the accused can produce material of unimpeachable character or sterling quality and that the width of the powers of the High Court under Section 482 of Cr.P.C. and Article 226 of the Constitution is unlimited. Relying on M/s. Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors. 1998 Cri.L.J 1 it is contended that the power of superintendence and control of the High Court remains even in Revisional Jurisdiction.

6. During the pendency of the Criminal Revision Petition, the petitioner had filed and Crl.Misc App No.2310 of 2010 dated 25th February, 2010 seeking conversion of revision petition into a Writ Petition under Article 226 and 227 of the Constitution of India which

was allowed by order dated 21st May, 2010. Consequently the petition was registered as WP (Crl.) No. 870 of 2010.

7. The petitioner has contended that the Central Vigilance Commission in its second advice had exonerated him of the same charges as has been pressed in the present case and the ITAT also had upheld the advice of the CVC in its order dated 31st December, 2003 and therefore in view of the judgment of the Hon'ble Supreme Court in V.K. Bhutiani v. Central Bureau of Investigation 2005 (2) JCC 764 and P.S. Rajya v. State of Bihar 1996 SCC (Cri) 897, the CBI cannot be allowed to prosecute the petitioner on the same facts.

8. It is contended that the total income of the family, excluding the income of the mother, was Rs. 78,51,491/- till 31st March, 1995 whereas the total expenses and assets of the family till 16th June, 1996 was Rs. 77,18,849/-. It is contended that the income being Rs. 1,33,642/- more than the expenses and assets, no case of disproportionate assets has been made out and therefore no charges under Section 13(1)(e) read with Section 13(2) could have been framed.

9. The learned counsel for the petitioner also contended that the charge sheet dated 27.04.1998 was issued against the petitioner and the disciplinary authority had imposed the punishment of compulsory

punishment was challenged by the petitioner in O.A No.1151 of 2004 before Central Administrative Tribunal Principal Bench. The tribunal had held that the requirement of Rule 15 (2) of CCS (CCA) was not followed and therefore the original application filed by the petitioner was allowed and the order of punishment was quashed. The concerned authorities were however given liberties, if so advised, to proceed in the matter strictly in accordance with law and rules. A copy of the order dated 16th August, 2007 passed by Central Administrative Tribunal Principal Bench in OA 1151/2004 titled as Vishwa Vibhuti Vs Union of India & ors. was produced by the learned counsel for the petitioner in the present Writ Petition.

10. The respondent has contended that the petitioner himself had made the acquisition of various properties in the name of his mother, his wife and three daughters. It is also contended that during the check period the three daughters of the petitioner were in education and that the petitioner's mother got prepared drafts after availing cheques from the account of the petitioner's wife and on one single day huge cash was deposited in the mother's account and then draft was prepared in the name of the seller of the flat in Munirka Enclave. It is also contended that the income/expenditure of the wife of the petitioner has also been considered during investigation. It is also contended that the legitimate income of the petitioner and his family members as shown in the

income tax return has been given benefit of to the tune of Rs. 18,64,246/- even though the salary received by the petitioner during the check period was only Rs. 4,98,446/-.

11. It is contended that in view of the 'explanation' to Section 13(1)(e) of the Prevention Act, 1988 and the judgment of the Supreme Court in P. Nallammal & Another v. State 1999 SCC (Cri) 1133, the petitioner had to intimate his department the income acquired from any source. It is contended that a categorical statement of Shri. Harsh Malviya (PW-1) is on record to the effect that the petitioner did not intimate the competent authority regarding the business activities of his wife. As regards the letter dated 31st September, 1991 whereby the petitioner had allegedly informed his department about the business activities of his wife, the respondent has contended that the said letter was produced by the petitioner himself to the investigating officer and that it could not be proved during investigation whether the letter was received by the competent authority.

12. The respondent has further contended that the order passed by the learned trial Court is in consonance with the judgment of the Supreme Court in Debendra Nath Padhi's case (supra) and the expression 'any material' as used in the judgment would include the

judgment of ITAT and so the petitioner has no right to place on record the judgment of the ITAT at the stage of framing of charge.

13. The respondent has further contended that the CVC is only an advisory body and the decision on the enquiry report of the CVC is subject to the decision of the competent authority and therefore it cannot be said that the CVC had exonerated the petitioner of the charge of having acquired or disposed of property in his name and in the name of family members without the knowledge of the competent authority as required vide Rule 18 of CCS (Conduct) Rules. It is further contended that the competent authority, i.e. the Govt. of India, Ministry of Health and Family Welfare did not accept the finding of the CVC and was of the view that on the principle of preponderance of probability the charge was proved against the petitioner.

14. It is also contended that the law laid down in Janki Ballabh Patnaik's case and V.K. Bhutani's case is not applicable to the facts and circumstances of this case. It is contended that the petitioner was found guilty of misconduct and was punished by the President of India vide order No. C.13011/31/96-Vig dated 26th May, 2003 imposing a penalty of compulsory retirement from service with immediate effect with 30% cut in pension otherwise admissible on a permanent basis.

15. The petitioner had challenged the order of compulsory retirement from service with immediate effect with 30% cut in pension otherwise admissible on a permanent basis inter alia on the grounds that the correct procedure as prescribed in Rule 15 (2) of CCS (CCA) contemplating that in case of disagreement with the findings of the enquiry officer on any article of charge, the disciplinary authority has to send the copy of the report of the enquiry officer together with its own tentative reason for disagreement. The Central administrative tribunal agreed with the contention of the petitioner that there had been violation of Rule 15 (2) of CCS (CCA) rules and therefore, had set aside the order of compulsory retirement and cut in pension, however, liberty was granted to the respondent to proceed in the matter strictly in accordance with the law and the rules by order dated 16th August, 2007 in O.A No. 1151 of 2004 titled as Vishwa Vibhuti Vs Union of India & ors.

16. This Court has heard the learned counsel for the parties and have also perused the documents on record and various precedents cited and relied on by the counsel for the parties. It will be appropriate to consider first the precedents relied on by the counsel for the parties.

17. In P.Nallamal Vs State rep. by Inspector of Police, JT 1999 (5) SC 410 relied on by the petitioner, some former Ministers of the Tamil Nadu government were being prosecuted before certain Special Courts

for the offence under S-13(1)(e) of the PC Act, 1988. In all these cases some of their kith and kin were also arraigned as co-accused to face the said offence r/w S-109 IPC. The issue before the court was whether the kith and kin of the ministers, being non-public servants, were liable to be prosecuted along with public servants for the offence under section 109 of IPC r/w S-13(1)(e) PC Act. The Apex Court held:-

“Thus, Clause (b) of section-3(1) encompasses the offences committed in conspiracy with others or by abetment of "any of the offences" punishable under the P.C. Act. If such conspiracy or abetment of "any of the offences" punishable under the P.C. Act can be tried "only" by the Special Judge, it is inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the P.C. Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the court of a Special Judge having jurisdiction in the matter

18. The petitioner has also relied on State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568. The issue before the Apex Court was whether, at the time of framing of charges, the trial court can consider the material filed by the accused. The Court held:-

“...No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. The right is granted only at the stage of trial.”

The Court further observed:-

“..If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the

stage of framing of charge, the defense of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defense at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence....”

Though the accused haven't got a right to adduce any material at the time of framing of charge, the Court observed:-

“Regarding the argument of accused having to face the trial despite being in a position to produce material of unimpeachable character of sterling quality, the width of the powers of the High Court under Section 482 of the Code and Article 226 of Constitution of India is unlimited whereunder in the interests of justice the High Court can make such orders as may be necessary to prevent abuse of the process of any Court or otherwise to secure the ends of justice within the parameters laid down in Bhajan Lal's case”

19. Another precedent relied on by the petitioner is Janaki Ballav Patnaik v. State of Orissa, 1995 Cri.L.J. 1110 in which the petitioner was facing charges u/s 13(2) r/w S-13(1)(e) of the PC Act on the allegation that he was in possession of assets disproportionate to his known sources of income, to the tune of Rs. 5,49,060.31. He filed an application u/s 227 Cr.P.C. for discharge, on the ground that there was no sufficient ground to proceed against him, which was rejected. The entire basis of the petitioner's case in the application for discharge was that the prosecution has not taken into consideration one of the known sources of income, namely the income of the petitioner's wife, which would have covered the alleged disproportionate assets. The accused thereafter, invoked the writ jurisdiction of the Orissa High Court. The

issue before the Orissa High Court was ‘if the Court comes to the conclusion that prosecution has deliberately not taken into consideration a particular item of evidence, which if taken into account will have a vital bearing even in the matter of evaluation and finding out a prima facie case, would the Court be justified in refusing to frame charge and in calling upon the prosecution to further investigate into the matter, or to frame the charge on the materials as they stood leaving the matter for trial? The Court had observed:-

“.....But at the same time, in a case coming under Section 13(1)(e) of the Act, if the prosecution ignores a material source of income of the accused which the prosecution was aware of and that income would have a vital bearing in the matter of framing of charge, then the evaluation made by the Court for satisfying itself that all the ingredients constituting the alleged offence exist becomes vitiated and in such a case, calling upon the accused to face trial would be a travesty of justice. In such a case framing a charge and calling upon the accused to go through the entire gamut of trial would tantamount to abuse of the process of Court and, therefore, this Court would be justified in interfering with the same. When charges are framed on the materials produced by the prosecution, in which case the High Court would be justified in interfering, no inflexible guidelines or rigid formula can be set out and it depends upon the facts and circumstances of each case. But the position is beyond pale of controversy that the High Court would be fully justified in interfering either to prevent the abuse of the process of court or to secure the ends of justice..”

20. In this case relied on by the petitioner it had been established that the prosecution was aware that the wife of the petitioner was a member of the Parliament and that she had received a substantial amount, Rs. 7,45,335.62 as allowances during the check period. The

prosecution did not proceed in accordance with the guidelines of the Lok Sabha Secretariat to find out the income of the petitioner's wife. Further when the accused produced the certificate from the Lok Sabha Secretariat along with the application for discharge, the prosecution never denied or doubted the authenticity of the same. On the above-said facts the Court was of the opinion that there has been a gross miscarriage of justice and the accused will be grossly prejudiced if the matter is not interfered with at this stage and the accused is called upon to face the trial. Therefore the High Court quashed the order of framing of charges.

21. Another precedent relied on by the petitioner is V.K. Bhutani v. CBI, 2005 (2) JCC 764. In this case the petitioner, a senior manager in the New Bank of India, was charged with the offence of committing conspiracy to cheat the Bank with the help of forged documents punishable u/s 120B r/w section 467/468/471 of IPC and for committing an offence punishable u/s 13(2) r/w S-13(1)(d) of the PC Act. The order of framing of charges was challenged in the revision petition. The defense put forth by the petitioner at the time of arguments on charge was that he had already been exonerated by the enquiry conducted by the Central Vigilance Commission (CVC). The Delhi High Court was of the opinion that each and every allegation against the petitioner was considered thoroughly by the CVC. The

charges in the case were also found to be based on the same allegations which were under consideration before the CVC. The Court had held:-

“ If the charge could not be proved before the Central Vigilance Commission where the standard of proof was much lower it is very unlikely that the same charge could be proved in a criminal trial where the standard of proof is more stringent. If the petitioner is tried, the respondent-CBI will at best prove the factors mentioned above to indicate involvement of the petitioner in the conspiracy. The vigilance report has actually taken note of all of them and has yet exonerated the petitioner. Following the judgment of the Supreme Court in the case of P.S. Rajya v. State of Bihar (Supra), I am of the opinion that the prosecution of the petitioner will only result in nothing more than harassment. Hence the petition is allowed and the impugned orders are set aside. The petitioner is discharged.”

22. In the case of P.S. Rajya v. State of Bihar, (1996) 9 SCC 1, an officer of the income-tax department despite being exonerated by the Central Vigilance Commission was being prosecuted by the CBI for offence under Sections 13(2) & 13(1)(b) of the Prevention of Corruption Act. The Supreme Court observed that the standard of proof required to be established in a criminal case is far higher than the standard of proof required to establish the guilt in a departmental proceedings. Further the Supreme Court observed that the charge in the departmental proceedings and in the criminal proceedings was one and the same and if the same could not be established in the departmental proceedings, there was lesser chance of the charge being established in a criminal trial. The Supreme Court said that the criminal proceedings would only result in harassment and, therefore, found it fit to quash the

FIR against the accused. In another case relied on by the petitioner D.S.P., Chennai v. K. Inbasakaran, 2005 X AD(SC) 368, the Income-Tax Authorities conducted a raid in the house of the accused, a senior IAS officer and recovered a huge amount of cash amounting to Rs. 30 lakhs, 7 gold biscuits weighing 819 grams, \$1118 and certain documents regarding purchase of immovable properties and also fixed deposit receipts of the Bank for Rs. 25,000/- in the name of third parties. The accused was charged with the offence punishable under section 13(2) r/w S-13(1)(e) of the PC Act. The issue before the Apex Court was whether, in view of the fact that both the accused and his wife were living together, the unaccounted money which has been recovered from the house could not be said to be in exclusive possession of the accused. The Apex Court had observed:-

“.....when the accused has come forward with the plea that all the money which has been recovered from his house and purchase of real estate or the recovery of the gold and other deposits in the Bank, all have been owned by his wife, then in that situation how can all these recoveries of unaccounted money could be laid in his hands. The question is when the accused has provided satisfactorily explanation that all the money belonged to his wife and she has owned it and the Income-tax Department has assessed in her hand, then in that case, whether he could be charged under the Prevention of Corruption Act. It is true that when there is joint possession between the wife and husband, or father and son and if some of the members of the family are involved in amassing illegal wealth, then unless there is categorical evidence to believe, that this can be read in the hands of the husband or as the case may be, it cannot be fastened on the husband or head of family. It is true that the prosecution in the present case has tried its best to lead the evidence to show that all these moneys belonged to the accused but when the wife has fully owned the entire money and the other wealth earned by her

by not showing in the Income-tax return and she has accepted the whole responsibilities, in that case, it is very difficult to hold the accused guilty of the charge. It is very difficult to segregate that how much of wealth belonged to the husband and how much belonged to the wife. The prosecution has not been able to lead evidence to establish that some of the money could be held in the hands of the accused. In case of joint possession it is very difficult when one of the persons accepted the entire responsibility. The wife of the accused has not been prosecuted and it is only the husband who has been charged being the public servant. In view of the explanation given by the husband and when it has been substantiated by the evidence of the wife, the other witnesses who have been produced on behalf of the accused coupled with the fact that the entire money has been treated in the hands of the wife and she has owned it and she has been assessed by the Income-tax Department, it will not be proper to hold the accused guilty under the prevention of Corruption Act as his explanation appears to be plausible and justifiable.”

23. In P.S. Rajya (supra) a departmental enquiry was conducted by the CVC and after a detailed enquiry, CVC submitted a report exonerating the accused of all charges. The report was forwarded by the department to the UPSC for its opinion. By a long report, the UPSC concurred with the conclusion of exonerating the appellant of all charges. Accepting the report of the UPSC, the President passed final orders in favor of the appellant. The appellant then moved the High Court u/s 482 of Cr.P.C for quashing of the cognizance of charge. The High Court dismissed the petition holding that the issues raised before it have to be gone into in the final proceedings and those cannot be gone into at the preliminary stage. The Apex Court observed:-

“At the outset we may point out that the learned Counsel for the respondent could not but accept the position that the standard of proof required to establish the guilt in a criminal case is far higher than the standard of proof required to establish the guilt in the departmental proceedings. He also accepted that in the present case, the charge in the departmental proceedings and in the criminal proceedings is one and the same. He did not dispute the findings rendered in the departmental proceedings and the ultimate result of it. On these premises, if we proceed further then there is no difficulty in accepting the case of the appellant. For if the charge which is identical could not be established in a departmental proceedings and in view of the admitted discrepancies in the reports submitted by the valuers one wonders what is there further to proceed against the appellant in criminal proceedings.”

The Court was of the opinion that the case could be brought under more than one head enunciated in Bhajan Lal's case and quashed the proceedings.

24. Gulab Chand Sharma v. Shri. H.P. Sharma, ILR (1974) 1 Delhi 190 is another precedent relied on by the petitioner in which two complaints were filed against the accused, one by the Income Tax Officer and the other by the Commissioner of Income Tax for having committed offences u/s-277 Income Tax Act, 1961 and sections 193, 467 and 471 of IPC. The petitioner filed a writ petition praying that the complainants be restrained from pursuing the said complaints. The writ petition was dismissed by a Division Bench of the Delhi High Court. The petitioner then filed the petitions u/s 561A Cr.P.C. praying that the complaints against him be quashed. Some of the grounds raised in the petition were the same as those raised in the earlier writ petition. The

question for consideration before the High Court was whether the decision of the Court in the Civil writ petition would be res judicata, with the effect that the contentions rejected in the writ petition could not be raised in subsequent petitions u/s 561-A Cr.P.C. The Court had observed:-

“ In our view, the general principle of res judicata is based firstly on public policy and secondly on private justice both of which apply to all judicial proceedings whether civil, criminal or otherwise. Public policy requires that in the general interest of the community litigation must come to an end and its conclusion must have finality. Private justice requires that an individual should be protected from vexatious multiplication of suits and prosecutions at the instance of an opponent whose superior power and resources may enable him to abuse the process of court. The principle of res judicata should, therefore, apply equally to civil and criminal proceedings inasmuch as the decisions of courts in both the proceedings are justified by and rest upon "the same theoretical basis of public policy and private justice" (Spencer-Bower and Turner on Res Judicata 2nd Edition paragraph 13).”

“.....But in all criminal proceedings, the principle of res judicata or issue of estoppel may come into conflict with another principle, namely, that the prosecution must prove that the accused is guilty and unless this is done the accused is presumed to be innocent. But principle of estoppel cannot over-ride the principle of presumption of innocence of the accused. Similarly, the following special features of the criminal proceeding would further modify the application of issue estoppel. Firstly, in a criminal case there is no duty on the accused to adduce evidence in defense while in a civil case adverse inference may be drawn from the refusal of a party to adduce evidence in his possession or power. Secondly, the burden of proof to prove the guilt of the accused is higher on the prosecution in a criminal case as compared to the burden of proof on the plaintiff to prove his case against the defendant in a civil case. Lastly, certain evidence such as confessions in certain circumstances cannot be proved in a criminal case against accused though there is no such restriction between the parties to a civil proceeding. The result is that a finding of

fact arrived at in a civil proceeding may not be binding in a criminal proceeding against the accused.”

The Court had further held:-

“Generally speaking, the principle of issue estoppel is invoked to bar the adducing of evidence to prove facts which have been already adjudicated upon in a previous proceeding between the parties. It being easier (for the reasons stated above) to obtain a finding of fact for a plaintiff against a defendant in a civil proceeding than for the prosecution to do so against the accused in a criminal proceeding, the finding of fact given in a previous civil proceeding may not act as *res judicata* in a subsequent criminal proceeding. For the same reasons, therefore, a finding of fact in a criminal proceeding against an accused person should act as *res judicata* in a subsequent civil proceeding between the same parties.”

It was further held:-

“However that may be, there is no question of presumption of innocence of the accused and no question of the rules of procedure and evidence being more favorable to him when a pure question of law is decided in a criminal or a civil proceeding. In respect of a finding on a question of law, therefore, both the civil and the criminal proceedings ought to be on par. The finding of law in a previous civil proceeding should, therefore, act as *res judicata* in a subsequent criminal proceeding in accordance with the well established general law of *res judicata*.”

25. The petitioner has also referred to M/s Pepsi Foods Ltd. & another v. Special Judicial Magistrate and Others 1998 Cri.L.J. 1 in which, the complaint was filed alleging that the complainant had sold a bottle of beverage which was adulterated. After recording preliminary evidence the Magistrate passed orders summoning the appellants and others. The appellants filed a writ petition under Articles 226 & 227 of the Constitution in the Allahabad High Court praying for quashing of

the complaint against them. The High Court refused to entertain the writ petition on the ground that the appellants should approach the Judicial Magistrate u/s 245 Cr.P.C. for their discharge, if the complaint did not disclose commission of any offence by the appellants and the Court considered the charge to be groundless. The Apex Court observed:-

“ Nomenclature under which petition is filed is not quite relevant and that does not debar the court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one, the court finds that the appellants could not invoke its jurisdiction under Article 226, the court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not however, be lost sight of that provisions exist in the Code of revision and appeal but sometime for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.”

“ Summoning of an accused in criminal cases is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then

examine if any offence is prima facie committed by all or any of the accused.”

“ No doubt the magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court under Section 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial.”

26. In *K.C. Builders and Another v. Assistant Commissioner of Income Tax*, (2004) 2 SCC 731 relied on by the petitioner, the appellant was engaged in the business of construction and sale of flats. He filed the returns of income for Assessment years 1983-84 to 1986-87 disclosing the assessed income as income. As these returns were found to be defective the appellants filed revised returns, which were accepted by the department. The assessing authority treated the difference between the income as per the original return and revised income, as concealed income and the Asst. Commissioner of Income Tax levied penalties u/s 271(1)(c) of the IT Act. The first appeal against the order of penalties was confirmed by the CIT (Appeals). Four complaints were also filed against the appellants u/s 276-C (2), 277 and 278-B of the IT Act and sections 120-B, 34, 193, 196, and 420 IPC. The appellant preferred an appeal against the order of the CIT (Appeals) to the Income Tax Appellate Tribunal. The Tribunal held that there was no concealment of income by the assessee and accordingly the penalties

were cancelled. The application filed by the Revenue Department u/s 271(1)(c) of the IT Act for reference of the question of law which had arisen out of the IT Appellate tribunal's order was rejected. The tribunals order was given effect to and the penalties levied were cancelled by the respondents. Consequent to the IT Appellate Tribunal's order the appellant moved an application before the Additional CMM praying the Court for adjourning the proceedings in the criminal case, to enable them to move the necessary petition and to file the copy of the order of the Tribunal which allowed the appeal against the levy of penalty. However, the Magistrate permitted the appellants to mark the order of the Tribunal in evidence at the appropriate stage of the trial. The appellants filed a criminal revision u/s 397 and 401 of Cr.P.C. before the High Court for setting aside the order of the Additional CMM. The criminal revision petition was rejected holding that the Income Tax Appellate Tribunal's order was inapplicable, since it was not marked as defense document. The Apex Court in these circumstances had held:-

“...the High Court is not justified in dismissing the criminal revision vide its judgment ignoring the settled law as laid down by this Court that the finding of the appellate Tribunal was conclusive and the prosecution cannot be sustained since the penalty after having been cancelled by the complainant following the Appellate Tribunal's order, no offence survives under the Income Tax Act and thus quashing of prosecution is automatic.”

“ In the instant case, the penalties levied under Section 271(1)(c) were cancelled by the respondent by giving effect to the order of the Income Tax Appellate Tribunal in I.T.A. Nos. 3129-3132. It is settled law that levy, of penalties and prosecution under Section 276C are simultaneous. Hence, once the penalties are cancelled on the ground that there is

no concealment, the quashing of prosecution under Section 276C is automatic”

“ In our opinion, the appellants cannot be made to suffer and face the rigorous of criminal trial when the same cannot be sustained in the eyes of law because the entire prosecution in view of a conclusive finding of the Income Tax Tribunal that there is no concealment of income becomes devoid of jurisdiction and under Section 254 of the Act, a finding of the Appellate Tribunal supersedes the order of the Assessing Officer under Section 143(3) more so when the Assessing Officer cancelled the penalty levied.”

“ In our view, once the finding of concealment and subsequent levy of penalties under Section 271(1)(c) of the Act has been struck down by the Tribunal, the Assessing Officer has no other alternative except to correct his order under Section 154 of the Act as per the directions of the Tribunal. As already noticed, the subject matter of the complaint before this Court is concealment of income arrived at on the basis of the finding of the Assessing Officer. If the Tribunal has set aside the order of concealment and penalties, there is no concealment in the eyes of law and, therefore, the prosecution cannot be proceeded with by the complainant and further proceedings will be illegal and without jurisdiction. The Assistant Commissioner of Income Tax cannot proceed with the prosecution even after the order of concealment has been set aside by the Tribunal. When the Tribunal has set aside the levy of penalty, the criminal proceedings against the appellants cannot survive for further consideration. In our view, the High Court has taken the view that the charges have been framed and the matter is in the stage of further cross-examination and, therefore, the prosecution may proceed with the trial. In our opinion, the view taken by the learned Magistrate and the High Court is fallacious. In our view, if the trial is allowed to proceed further after the order of the Tribunal and the consequent cancellation of penalty, it will be an idle and empty formality to require the appellants to have the order of Tribunal exhibited as a

defence document inasmuch as the passing of the order as
aforementioned is unsustainable and unquestionable.”

27. In Baldev Singh v. State & Ors., 2006(3) JCC 1281 relied on by the petitioner, the complainant filed a complaint before the Crime Against Women (CAW) Cell. The petitioner was called by the CAW cell and proceedings were conducted, wherein the petitioner is said to have filed various documents. The Cell could not reconcile the parties and ultimately a FIR was registered. Investigation was conducted and charge sheet was filed and the case was at the stage of framing of charges. The petitioner had moved an application before the MM requesting the Court to summon the record of the CAW cells, which was rejected. A revision petition filed by the petitioner was also rejected by the ASJ, who relying on State of Orissa v. Debendra Nath Pandhi was of the opinion that at that stage the accused could not rely upon the documents submitted by him. The High Court in these circumstances had held:-

“ As noted above, the CAW Cell is an amalgam of investigating agency which is also entrusted with the function of attempting to reconcile the parties. The proceedings before the CAW Cell are initiated pursuant to the complaint filed by the complainant in which there may be allegations of harassment on account of demand of dowry, etc./ on the basis of which complaint generally is under section 498-A/406 IPC. I am, therefore of the opinion that there is no harm in summoning the record of the CAW Cells at Krishna Nagar and Nanak Pura. At the same time while hearing arguments on charge, the learned trial Court should be prudent enough to see as to which documents

contained in the record before the CAW Cells are to be considered and parties allowed to rely thereupon.”

28. The petitioner has also referred to *Shakuntala v. State of Delhi*, 139 (2007) DLT 178, in which case, the complainant Smt. Radha had married Nagender Singh who was the son of the petitioner. A divorce petition was filed by Nagender which was contested by the complainant. Ultimately the divorce petition was withdrawn by Nagender under an arrangement. It was decided that Nagender and the complainant would live separate from her in-laws in a rented accommodation. The complainant shifted to that house along with all her articles. However Nagender married another woman with whom he was having an affair. She left the house for her parent's house and she along with her father and Nagender's father made an application to the Police station. However the complainant filed a complaint with the CAW Cell alleging that her husband was not returning her istridhan and dowry articles. Although under the directions of the CAW Cell the husband had returned some goods. The complainant averred that these were not complete goods and more istridhan and dowry articles were lying with her husband. She got an FIR registered wherein she made allegations against her father-in-law, mother-in-law, sister-in-law and her sister-in-law's husband apart from her husband. The MM after considering the statement of the complainant and evidence collected by the police discharged the father-in-law, sister-in-law and sister-in-law's husband.

However the MM was of the opinion that charge under sec 406 was made out against the mother-in-law. A revision petition before the ASJ was also dismissed. The reason for upholding the order of MM by ASJ was that the documents relied upon by the petitioner were not the part of the charge- sheet filed by police. The documents relied upon by the petitioners were those documents which were the case diary of the investigating officer, but the investigating officer did not make them part of the challan. These documents included the earlier complaint made by the complainant, her father and father- in-law to the police, supplementary statements of the complainant recorded after filing of FIR regarding return of istridhan. The High Court in these circumstances had held:-

“ It is settled law that fair and just investigation is a hallmark of any investigation. It is not the duty of the Investigating Officer to strengthen the case of prosecution by withholding the evidence collected by him. If an Investigating Officer withholds the evidence collected by him, the accused has a right to rely upon that evidence and tell the Court to take that evidence into account while framing the charges. The Court while framing charges may not take into account the defense of the accused or the documents in custody of the accused which were not produced by the accused before the Investigating Officer or which did not form part of the investigation but the Court is duty bound to consider the evidence collected by the Investigating Officer during the investigation of the case. If it is brought to the notice of the Court by the accused that some of the evidence or documents have been withheld by the Investigating Officer or the prosecution deliberately, so that truth does not come out before the Court, the Court, before framing of charge can order the Investigating Officer to place the entire investigation before it and ask him to produce case diaries. Fair investigation is the right of the accused and this right can be exercised by the accused at

the time of charge and the accused can insist upon the Court to consider the evidence collected by the Investigating Officer but not made part of the charge-sheet. In this case the evidence relied upon by the accused is not produced by the accused from his custody but is the evidence collected by the Investigating Officer. These are the supplementary statements of complainant under Section 161, Cr.P.C. recorded by the I.O.....”

29. In State of Madhya Pradesh v. Mohan Lal Soni, AIR 2000 SC 2583 referred to by the counsel for the petitioner, a complaint u/s 13(1)(e) r/w section 13(2) of the PC Act was filed against the respondent, a Road Transport Inspector. While submitting the charge sheet several important documents which were collected during the course of the investigation were withheld. At the time of framing of charge the respondent made an application seeking production of these documents in Court before proceeding to frame charge. The said application was rejected holding that for the purpose of framing of charge only the documents forwarded to the court u/s 173(5) Cr.P.C need to be considered. The revision petition against the said order was disposed of by the High Court by its order dated 8.9.1997, holding that the documents made available by the accused during investigation be produced and be taken into consideration by the trial Court while framing of charges. Thereafter, the trial court framed charges under section 13(1)(e) r/w section 13(2) of the Act. Aggrieved by the order framing charges the respondent filed a criminal revision petition in the High Court. The High Court set aside the order framing charges and

discharged the respondent. The High Court while making the order in the Criminal revision petition had relied upon the decision in Satish Mehra v. Delhi Administration, which was specifically overruled by the Supreme Court in State of Orissa v. Debendra Nath Pandhi. The State filed a petition challenging the said order in which the Apex Court had held and observed:-

“ Our attention was specifically drawn to the earlier order of the High court dated 8.9.1997 passed in Criminal Revision No. 337/97 in which the trial court was directed that the documents made available by the accused during investigation be produced and they be taken into consideration by the court while framing charges. The said order became final, it having not been challenged further. In this situation the parties and the trial court were bound and governed by the said direction. Since the trial court did not follow the said direction, the High Court having considered all the material including the documents produced by the prosecution itself, which were collected during the course of investigation, and on being prima facie satisfied taking the documents on their face value held that no offence was made out and as such no charge could be framed against the respondent. In this view, the High Court set aside the order of the trial court and passed the order discharging the respondent. The High Court in the order under appeal has elaborately considered the documents collected during the course of investigation and produced by the prosecution itself which were available at the time of framing charges.....”

The Court further held:-

“ From the decisions referred to in the same paragraph and the decisions already referred to above there was no bar to consider the material on record in the case on hand, which was collected during the course of investigation and produced before the court and particularly in view of the directions given earlier by the High Court.”

30. Per Contra the learned counsel for the respondent, CBI has relied on Iqbal Singh Marwah and Another v. Meenakshi Marwah and Another, (2005) 2 SCC 370. In the said case the appellants filed proceedings before the District Judge for grant of probate of a will, allegedly executed by the deceased brother of the appellants. The respondents filed a criminal complaint for prosecution of the appellants and their mother u/s- 192,193, 463, 464, 465, 467, 469, 471, 499 & 500 of IPC on the ground that the said will produced by the appellants was a forged and fictitious document. The Magistrate dismissed the complaint in view of the bar contained in section 195(1)(b)(ii). In revision the ASJ held that the bar contained in section 195(1)(b)(ii) would not apply where forgery of a document was committed before the said document was produced in Court. The High Court upheld the order of the ASJ. The issue before the Apex Court was the interpretation of the expression “when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court.” Occurring in S-195(1)(b)(ii) Cr.P.C. The Apex Court had held:-

“ Section 195(1)(b)(ii) Cr.P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e. during the time when the document was in custodial legis.”

“ In the present case, the will has been produced in the Court subsequently. It is nobody's case that any offence as enumerated in Section 195(b)(ii) was committed in respect to the said will after it had been produced or filed in the Court of District Judge. Therefore, the bar created by Section 195(1)(b)(ii) Cr.P.C. would not come into play and there is no embargo on the power of the Court to take cognizance of the offence on the basis of the complaint filed by the respondents.”

31. In *V.K. Puri v. CBI*, (2007) 6 SCC 91 relied on by the Respondent, the issue before the Apex Court was the territorial jurisdiction of a Special Court within the meaning of the provisions of Prevention of Corruption Act, 1988. The appellant was an officer working in the Customs Department. The CBI registered an FIR against him purported to be for the commission of an offence under section 13(2) r/w S-13(1)(e) of the PC Act. The contention of the appellant was that since he has never been posted in Delhi during the check period, The Delhi Courts has no jurisdiction to his case. The Court had observed:-

“Ingredients of the offence under Section 13(1)(e) of the 1988 Act are:

- (i) The accused is a public servant;
- (ii) The nature and extent of the pecuniary resources of property found in his possession;
- (iii) His known sources of income, i.e., known to the prosecution.
- (iv) Such resources or properties found in possession of the accused were disproportionate to his known sources of income.

One of the ingredients of offences, therefore, is known sources of income. What is material therefore is that the criminal misconduct had been committed during the period he held office and not the places where he had held offices.”

The Court had further held:-

“ In a case involving section 13(1)(e) of the 1988 Act, what is necessary is as to whether keeping in view the period in question, commonly known as check period, the public servant has acquired wealth which is disproportionate to his known sources of income. It has nothing to do with individual case of bribery. It has nothing to do with a series of acts culminated into an offence. Each Court, where a part of the offence has been committed, would, therefore, be entitled to try an accused. The 1988 Act does not bar application of Section 178 of the Code of Criminal Procedure. If application of the provision of Section 178 of the Code of Criminal Procedure is not barred, the fact that the appellant has a part of his known source of income at Delhi, in our opinion, would confer jurisdiction upon the Delhi Courts. It is one thing to say that only the Special Courts will have jurisdiction to try the offence, but for the purpose of arriving at a decision as to the Special Judge of which place shall have the requisite jurisdiction, the situs of the property may or may not have any relevance. Once the situs of the property is held to have relevance for the purpose of ascertaining his known source of income and consequent acquisition of disproportionate assets, in our opinion, the Special Judge concerned will also have the requisite jurisdiction to try the case.”

32. In another judgment relied on by the respondent, Hem Chand v. State of Jharkhand, (2008) 5 SCC 113, a raid was conducted by the CBI officials at the residence of the appellant, an IPS officer, pursuant to which an FIR was lodged and a charge sheet was filed. The appellant filed an application for discharge on the ground that no case for framing

of charge has been made out. He also filed some documents in his own defense. The said application for discharge was rejected by the Special Judge, CBI, opining that the documents relied on by the appellant cannot be looked into for the purpose of passing an order on his application for discharge. A revision application filed by the appellant in the High Court was also disposed off. The issue before the Apex Court was whether any documents whereupon the appellant may rely in support of his defense, can be looked into at the stage of framing of charge. The Court had held:-

“ It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weigh the evidence. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on record at the trial.”

“ It is one thing to say that on the basis of the admitted documents, the appellant was in a position to show that the charges could not have been framed against him, but it is another thing to say that for the said purpose he could rely upon some documents whereupon the prosecution would not rely upon.”

“ The Court at the stage of framing charge exercises a limited jurisdiction. It would only have to see as to whether a prima facie case has been made out. Whether a case of probable conviction for commission of an offence has been made out on the basis of the materials found during investigation should be the concern of the Court. It, at that stage, would not delve deep into the matter for the purpose of appreciation of evidence. It would ordinarily not consider as to whether the accused would be able to establish his defence, if any.

33. In *State of Maharashtra v. Ishwar Piraji Kalpatri*, (1996) 1 SCC 542, another precedent relied on by the respondent, the Anti-Corruption Bureau, Bombay made enquiries with regard to the respondent, who was holding the post of Vigilance Officer at the relevant time. A FIR was recorded and the case was registered u/s-15(2) r/w section 5(1)(e) of the PC Act. The government of Maharashtra accorded sanction to prosecute the respondent. The respondent filed a Criminal Writ petition which was allowed and all the proceedings which were pending before the Special Judge against him were quashed. One of the grounds on which the High Court quashed the prosecution was that the appellants were guilty of mala fides. As to this point the Apex Court held:-

“ In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or mis-conduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not. Allegations

of mala fides were also made in P.P. Sharma's case (supra) against the informer. It was held by this Court that when information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.”

“ This Court has consistently taken the view that the Court should not, except in extra-ordinary circumstances, exercise its jurisdiction under Section 482 Cr.P.C. so as to quash the prosecution proceedings after they have been launched.....at the stage of quashing an First Information Report or complaint, the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein. This is precisely what has been done by the learned Judge in the present case. The First Information Report having been lodged, the Government of Maharashtra having accorded sanction and thereafter, the charge having been filed, there was absolutely no justification for the High Court to have stopped the normal procedure of the trial being allowed to continue.”

34. In P. Nallammal and Another v. State, (1999) 6 SCC 559 which precedent has also been relied on by the respondent, as already detailed hereinabove, some former Ministers of the Tamil Nadu government were being prosecuted before certain Special Courts for the offence under section 13(1)(e) of the PC Act, 1988. In all these cases some of their kith and kin were also arraigned as co-accused to face the said offence r/w section 109 of IPC. The issue before the court was whether the kith and kin of the ministers, being non-public servants, were liable to be prosecuted along with public servants for the offence under section 109 IPC r/w S-13(1)(e) PC Act. The Apex Court held:-

“ Thus, Clause (b) of section-3(1) encompasses the offences committed in conspiracy with others or by abetment of "any of the offences" punishable under the P.C. Act. If such conspiracy or abetment of "any of the offences" punishable under the P.C. Act can be tried "only" by the Special Judge, it is inconceivable that the abettor or the conspirator can be delinked from the delinquent public servant for the purpose of trial of the offence. If a non-public servant is also a member of the criminal conspiracy for a public servant to commit any offence under the P.C. Act, or if such non-public servant has abetted any of the offences which the public servant commits, such non-public servant is also liable to be tried along with the public servant before the court of a Special Judge having jurisdiction in the matter”

35. In *Soma Chakravarty v. State*, (2007) 5 SCC 403 also relied on by the respondent, the appellant is alleged to have entered into criminal conspiracy with two other persons and by misusing their official position to have caused undue pecuniary advantage to themselves and caused a corresponding loss to the Indian Trade Promotion Organization (ITPO). They have been charged for offences u/s 12B, 429, 468 and 471 of IPC as well as various provisions of the PC Act. The appellant filed criminal revision on the High Court against the framing of charges which was dismissed. He impugned the above said order in the Special Leave petition. The Apex Court observed:

(as per Katju J) “ It may be mentioned that the settled legal position, as mentioned in the above decisions, is that if on the basis of material on record the Court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record

cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.”

(As per Sinha,J.) – “ The learned Trial Judge, it appears, did not properly apply its mind in regard to the different categories of accused while framing charges. It ought to have been done. Charge may although be directed to be framed when there exists a strong suspicion but it is also trite that the court must come to a prima facie finding that there exists some materials therefore. Suspicion cannot alone, without anything more, it is trite, form the basis therefore or held to be sufficient for framing charge.”

“The courts although may take a strict view of an offence where fraud is alleged against a public servant, but only because it is found to have been committed, the same by itself may not be sufficient to arrive at a conclusion that all officers who have dealt with the files at one point of time or the other would be taking part in conspiracy thereof or would otherwise be guilty for aiding and abetting the offence. It is necessary to deal with the individual acts of criminal misconduct for finding out a case therefore.”

“In a case of this nature, the learned Special Judge also should have considered the question having regard to the 'doctrine of parity' in mind. An accused similarly situated has not been proceeded against only because, the departmental proceedings ended in his favour. Whether an accused before him although stands on a similar footing despite he having not been departmentally proceeded against or had not been completed exonerated also required to be considered. If exoneration in a departmental proceeding is the basis for not framing a charge against an accused person who is said to be similarly situated, the question which requires a further consideration was as to whether the applicant before it was similarly situated or not and/ or whether the exonerated officer in the department proceeding also faced same charges including the charge of being a party to the larger conspiracy.”

36. The respondent also relied on (2005) 1 SCC 568, State of Orissa Vs Debendra Nath Padhi, which precedent has also been relied on by the petitioner, to contend that 'the record of the case' as used in section 227 of Cr.P.C relate to the case and the documents referred to in Section 209 of Cr. P.C. It was further contended that expression 'hearing the submission of the accused' means hearing the submission of the accused on the record of the case as filed by the prosecution and documents submitted therewith and it cannot mean opportunity to file material to be granted to the accused. Regarding Court's power to summon the documents under section 97 of Cr. P.C it was held that a police officer may move the Court for summoning and production of a document at any of the stages mentioned in the section but the accused can seek such order only at the stage of defense. It was specifically held that no right is conferred on the accused to produce document in his possession to prove his defense at the stage of framing of charge. The law is that at the time of framing charge or taking cognizance the accused has no right to produce any material. No provision in the Code of Criminal Procedure, 1973, grants to the accused any right to file any material or document at that stage of framing of charge. That right is granted only at that stage of the trial. Referring to Satish Mehra case, (1996) 9 SCC 766 where it was held that the trial Court has powers to consider even materials which the accused may produce at this stage of section 227 of the Code had not been correctly decided. It is well settled that at the stage of framing of charge the defense of the accused cannot

be put forth. The acceptance of the contention of the accused would mean permitting the accused to adduce his defense at that stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. In para 8 at page 574 and in para 25 on pages 579,-580 the Apex Court had held as under:

8. What is the meaning of the expression “the record of the case” as used in Section 227 of the Code. Though the word “case” is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to the Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit “the case” to the Court of Session and send to that court “the record of the case” and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code. No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

25. Any document or other thing envisaged under the aforesaid provision can be ordered to be produced on finding that the same is “necessary or desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code”. The first and foremost requirement of the section is about the document being necessary or desirable. The necessity or desirability would have to be seen with reference to the stage when a prayer is made for the production. If any document is necessary or desirable for the defence of the accused, the question of invoking Section 91 at the initial stage of  framing of a charge would not arise since defence of the accused is not relevant at that

stage. When the section refers to investigation, inquiry, trial or other proceedings, it is to be borne in mind that under the section a police officer may move the court for summoning and production of a document as may be necessary at any of the stages mentioned in the section. Insofar as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defence. When the section talks of the document being necessary and desirable, it is implicit that necessity and desirability is to be examined considering the stage when such a prayer for summoning and production is made and the party who makes it, whether police or accused. If under Section 227, what is necessary and relevant is only the record produced in terms of Section 173 of the Code, the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. Under Section 91 summons for production of document can be issued by court and under a written order an officer in charge of a police station can also direct production thereof. Section 91 does not confer any right on the accused to produce document in his possession to prove his defence. Section 91 presupposes that when the document is not produced process may be initiated to compel production thereof.

37. Both the parties have referred to a number of decisions which have been referred to hereinabove. Some of the precedents have been relied on by both the parties referring to different observations in the same precedent. However, it has to be remembered that a decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot

of difference in the precedential value of a decision. The Supreme Court in *Bharat Petroleum Corporation Ltd and Anr. v. N.R.Vairamani and Anr.*, AIR 2004 SC 778 had observed:-

" Court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

" Each case depends on its own facts and a close similarity between one case and Anr. is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of Anr.. To decide therefore, on which side of the line a case falls, the broad resemblance to Anr. case is not at all decisive."

In *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59), the Supreme had observed:-

" It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

Similarly In *Ambica Quarry Works v. State of Gujarat and Ors.*

MANU/SC/0049/1986 the Supreme Court had also observed:-

"The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it."

38. By order dated 12th April, 2006 the Special Judge had dismissed the application which had been filed by the petitioner pursuant to order dated 6th October, 2005 passed in Criminal Revision Petition No.730/2005 titled as *Vishwa Vibhuti v. CBI* holding that the expression "known source of income" must have reference to source known to the prosecution and the prosecution cannot, in every nature of offence, be expected to know firms of the accused person. It was further held that the prosecution could only lead evidence to show that the accused was known to earn his living by service under Government during the material period. Relying on Section 13(1)(e) of the PC Act it was held that it casts burden on the accused not only to offer a plausible explanation as to how he came to have his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance. The reliance was placed on *P.Nallamal v. State* (Supra); *State of Maharashtra v. Ishwar Piraji Kapatri*, (1996) 1 SCC 542 and *State through CBI v. S.Bangarappa*, 2000 (4) Crimes 276 (SC).

39. This cannot be disputed that to substantiate a charge, the prosecution must prove the following ingredients namely:- 1) the prosecution 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. In Hem Chand (Supra) the issue before the Apex Court was whether any documents which the accused may rely in support of his defense could be looked into at the stage of framing of charge or not. It was held that at the stage of framing of charge, the Court will not weigh the evidence as the stage for appreciating the evidence for the purpose of arriving at a conclusion is where the prosecution was able to bring home the charge against the accused or not, would arise only if all the evidence is brought on record at the trial. Though on the basis of admitted documents the accused may be in a position to show that the charge could not have been framed against him but the accused could not rely upon some documents upon which the prosecution does not rely. The Court at the stage of framing charge exercises a limited jurisdiction and what is to be seen is whether prima facie case has been made out or not. What is also to be considered is whether a case of probable conviction for commission of an offence has been made out on the basis

of the materials found during investigation and at that stage the Court should not delve deep into the matter for the purpose of appreciation of evidence as it would ordinarily not consider as to whether the accused would be able to establish his defense, if any. In Debendra Nath Padhi the Apex Court had held that if any document is necessary or desirable for the defense of the accused, the question of invoking Section 91 at the initial stage of framing of charge would not arise since the defense of the accused is not relevant at that stage. As far as the accused is concerned, his entitlement to seek order under Section 91 would ordinarily not come till the stage of defense. It was further held that under Section 227 Cr. P.C, what is necessary and relevant is only the record produced in terms of Section 173 of the Code and the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence.

40. The learned counsel for the petitioner had laid great emphasis on a decision of Division Bench of Orissa High Court, Janaki Ballav Patnaik (Supra) to contend that the order passed by IATA should be considered as in the case relied on by the petitioner, the accused case was that the prosecution had not taken into consideration one of the known sources of income, namely the income of the petitioner accused wife. In the said case the prosecution was aware that the wife of the petitioner was a Member of Parliament and that she had received a substantial amount as allowances during the cheque period still the

prosecution had not proceeded in accordance with the guidelines of Lok Sabha Secretariat to find out the income of the petitioner's wife. Even the certificate produced by the accused in the said case from the Lok Sabha Secretariat, the said certificate was not denied or doubted by the prosecution. In contra distinction to the case of Janaki Ballav Patnaik, the case of the respondent is that the petitioner had not intimated about the business activities or earnings of his family members. The plea of the petitioner is that the trial Judge failed to consider the documents whereby the petitioner had intimated his department that his wife was engaged in business including pharmaceuticals manufacturing sale and purchase and relied on a letter dated 31st September, 1991 which was produced by the petitioner. However, the said document is not admitted by the prosecution and at the stage of framing of charge, the Court is not to embark on a mini trial. The acceptance of contention of the petitioner would rather mean permitting him to adduce his defense at the stage of framing of charge and this is against the criminal jurisprudence. The reliance has also placed by the petitioner on the 2nd stage advice of the Central Vigilance Commission allegedly exonerating him of the same charges as has been proposed in the criminal case. According to the petitioner the advice of CVC has also been upheld by ITAT, however, it is to be noted that on the basis of 2nd stage advice of CVC the disciplinary proceedings initiated against the petitioner have not concluded and the punishment of compulsory retirement with 30% cut in pension has only been set aside for non

compliance of Rule 15(2) of CCS (CCA) Rules which contemplates that in case of disagreement with the findings of the enquiry authority on any article of charge, the disciplinary authority has to send the copy of the report of the enquiry authority together with its tentative reasons for disagreement, which was not done in the case of the petitioner and thus though the order of punishment in disciplinary proceedings of compulsory retirement and 30% cut in the pension was set aside, the disciplinary authorities were, however, given liberty to proceed in the matter strictly in accordance with law and rules.

41. Lot of emphasis has also been laid by the learned counsel for the petitioner on the order of Income Tax Appellate Tribunal dated 31st December, 2003, however, perusal of the said order, even if it can be considered though it has been produced by the petitioner on the ground that it is of impeachable character, the same is only for the assessment year 1995-1996 in an appeal filed by the revenue against the reliefs given by CIT Appellate in the matter of an amount of Rs.2,46,000/- received in cash by the assessee's wife from 17 loan creditors, unexplained investment in immovable properties and unexplained household appliances and jewellery. The order categorically stipulates that on behalf of petitioner it was represented before the Income Tax Appellate Tribunal that all the disciplinary proceedings have been cancelled against him which, however, is contrary to the order dated 16th August, 2007 passed in O.A No.1151/2004 Vishwa Vibhuti v.

Union of India and Ors where the disciplinary authorities were permitted to proceed in the matter against the petitioner in accordance with rules and law.

42. The plea of the respondent that during the cheque period which is from 1st January, 1985 to 16th June, 1996, the daughters of the petitioner were having income and even the petitioner's mother had got the drafts prepared for payment to seller of the property after availing the cheques from the account of petitioner's wife and on single day huge cash was deposited in the mother's account. It is thereafter, that a draft was got prepared in the name of the seller of the flat in Munirka Enclave. The respondent has contended that the legitimate income of the petitioner and his family members as shown in the income tax return had been given benefit to the tune of Rs.18,64,246/- even though the salary received by the petitioner during the cheque period was only Rs.4,98,446/-. Prima facie reliance has also been placed on the categorical statement of Sh.Harsh Malviya (PW-1) that the petitioner had not intimated to the competent authority regarding the alleged business activities of his wife by the petitioner.

43. On behalf of the petitioner it was contended that if in a departmental proceedings a person stood exonerated, can the criminal proceedings continue against him. The said proposition on behalf of petitioner is based on the premise that he has been exonerated in the

departmental proceedings whereas what has happened is that the order had been set aside on account of technical violation of Rule 15(2) of CCS (CCA) Rules with liberty to the disciplinary authority to proceed in accordance with law and rules. There is not the complete exoneration of the petitioner as is sought to be made out.

44. The respondents have also emphasized that the petitioner cannot avail the benefit of alleged intimation about the income of his wife and children and he would be hit by explanation to Section 13(1)(e), however, at the stage of framing of charge this Court in exercise of its jurisdiction under Article 226 of the Constitution of India does not have to start a mini trial. Even the trial Judge at the stage of framing charge exercises a limited jurisdiction and has to see as to whether a prima facie case has been made out or not. At this stage this Court would not delve into the matter for the purpose of appreciation of evidence nor it would consider as to whether the petitioner would be able to establish his defense if any. This also has been the consistent view that the Court, should not except in extraordinary circumstances, exercise its jurisdiction so as to quash the prosecution proceedings after they have been launched as the High Court is not justified in embarking upon an enquiry as to the probability, reliability or genuineness of the allegations made therein.

45. On behalf of the petitioner it was also contended that only one person PW.1 was called to enquire whether any intimation was on record or not, by the petitioner about the income of the business activities of his wife and daughters and any steps were taken to summon the appropriate persons and seeking an official explanation in enquiry about the intimation of the petitioner about the business of the wife and the daughter. This plea of the petitioner is also to be repelled as the Court does not have to embark upon a mini trial at this stage at the time of framing of charge.

46. The contention of the learned counsel that the law does not require intimation about the assets of the wife and the daughter also cannot be accepted as no satisfactory explanation has been given by the learned counsel for the petitioner except making an allegation in this regard.

47. From the written submissions dated 20th March, 2012 filed on behalf of the respondent what also transpires that at the stage of 294 Criminal Procedure Code, the petitioner has admitted 175 documents out of 256 documents relied upon by the respondent. If the petitioner has not relied upon 81 documents which can be proved only during the trial, it cannot be contended on behalf of the petitioner that prima facie case has not been made out against him. The learned counsel for the petitioner has also not addressed about the documents which have not

been admitted by the petitioner. It has also not been addressed that the documents which have not been admitted by the petitioner are not relevant or that on the basis of the same the charge cannot be framed against the petitioner.

48. The learned counsel for the respondent had relied on Crl.M.C No. 1876 of 2011 titled Om Prakash Sharma Vs CBI decided on 26th March, 2012. However, in the said case the petitioner had not based his claim on the documents like the order of Income Tax Appellate Authority. The said case is therefore, distinguishable with the present case of the petitioner who is basing his claim on the order passed by the Income Tax Appellate Tribunal. It was however, held that the supervisory jurisdiction conferred on the High Court is to be used sparingly and only in appropriate cases where the judicial conscience dictates to act, lest a gross failure of justice or grave injustice should occasion. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India is not to convert itself into a court of appeal and indulge in reappraisal or reevaluation of evidence or correct errors in drawing inferences or errors of mere formal technical character. On the basis of date of birth of daughters, the petitioner has tried to emphasize that the daughters could earn and this fact has been admitted by The Income Tax authorities. The petitioner has asserted that the deduction of Rs.19,00,851.00 is not correct in the facts and circumstances. However this Court does not have to recalculate the various figures and

facts in detail propounded by prosecution to arrive at a different mathematical calculations in order to ascertain whether the charge framed against the petitioner is liable to be quashed or not in the facts and circumstances this case. This court in exercise of its jurisdiction under Article 226 of the Constitution of India will not shift through the evidence and the deduct that the amounts which are allegedly not disproportionate to the known source of income, as known to the prosecution has been taken into consideration. It would be erroneous to assess the material relied on by the petitioner and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. It is not necessary that there should be meticulous analysis of the evidence produced by the petitioner on the ground that the evidence is of impeccable nature and on the basis of same the case would not end in conviction. At this stage the scope of interference being very limited, this court will not delve into the matter for the purpose of shifting the evidence and venture a mini trial. The learned counsel for the respondent had also relied on Ankur Kumar Jain Vs Central Bureau of Investigation , 178 (2011) DLT 501 in which it was held that an order framing charge under Prevention of Corruption Act, 1988 is an interlocutory order and a revision against an interlocutory order and framing of charge being also an interlocutory order, a revision will not be maintainable. The petitioner had filed a

revision petition which was later on converted into a Writ Petition. In the circumstances the respondent cannot contend that the writ petition cannot be filed by the petitioner. However, in a writ petition whether this High Court will interfere with the order of framing the charge against the petitioner or not is a different matter. The learned counsel for the respondent has also relied on (1991) 3 SCC 655, K.Veerarwami Vs Union of India & ors where the Supreme Court had held that that fair investigation requires that the accused should not be kept in darkness. But it does not contemplate 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. This cannot be done as it would amount to elevating the investigating officer to the position of an enquiry officer or a Judge.

49. In the totality of the facts and circumstances and for the foregoing reasons it cannot be held that the order of the Income Tax Appellate Tribunal will be “any material” of unimpeachable sterling quality which can be considered in the present facts and circumstances and which will absolve the petitioner completely. The material sought to be produced by the petitioner cannot be considered at the stage of framing of charge in the present facts and circumstances and consequently the decision of the trial Judge in framing charge against the petitioner

cannot be faulted. Even if the said order is considered, it will not absolve the petitioner completely of the charge framed against him. It is beyond any doubt or dispute that at the stage of framing of charge, the Court will not weigh the evidence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. The stage for appreciating the evidence for the purpose of arriving at a conclusion as to whether the prosecution was able to bring home the charge against the accused or not would arise only after all the evidences are brought on record at the trial. The Court at the stage of framing charge exercises a limited jurisdiction. No right is conferred on the accused to produce document in his possession to prove his defense at the stage of framing of charge. Under Section 227 of Cr. P.C, what is necessary and relevant is only the record produced in terms of Section 173 of the Code and the accused cannot at that stage invoke Section 91 to seek production of any document to show his innocence. The Court only have to see as to whether a prima facie case has been made out. If that be so then the Criminal Court has not committed any jurisdictional error which is to be corrected by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

50. Consequently, for the foregoing reasons the writ petition is without any merit and it is dismissed. On 31st July, 2006 this Court had directed to fix the matter before the trial Court after 22nd August, 2006, as the writ petition was ordered to be listed on the said date which order has been treated as an interim order since that day. The said order is, therefore, vacated. The trial Court shall conclude the trial as expeditiously as possible in the facts and circumstances of the case. All the pending applications are also disposed of.

JULY 6, 2012
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ANIL KUMAR, J.