

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

+ **Crl. M.C. No. 1876/2011**

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Reserved on: 20th December, 2011

Decided on: 26th March, 2012

OM PRAKASH SHARMA

..... Petitioner

Through: Mr. Sidharth Luthra, Sr. Adv. with Mr.
Pramod Kr. Dubey, Mr. Anurag
Ahluwalia, Mr. Kunal Sood, Advs.

versus

CBI

..... Respondent

Through: Mr. Hiren P. Rawal, ASG with Mr.
P.K. Sharma, SC for CBI, Mr. Uday
Prakash Yadav, Adv.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. By this petition the Petitioner challenges the order dated 4th May, 2011 passed by the Learned Special Judge CBI-I, Central Delhi framing charge for offence punishable under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act 1988 (in short 'PC Act') against the Petitioner in CC No. 141/2007 arising out of RC No. 8(A)/91-SIU-VIII CBI.

2. Learned counsel for the Petitioner contends that while framing the charge, the Learned Special Judge ignored all the documents, which were in possession of the CBI. He states that he is not basing his claim on the documents, which are not in possession of the CBI like the orders passed by the Income Tax Appellate authority adjudicating finally the income of the Petitioner's family members, which would be the defence available to the Petitioner at the time of trial, in view of the decision of the Hon'ble Supreme

Court in *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568. The documents, which were in the possession of the CBI, were required to be looked into at the stage of charge. Relying upon *Virender Singh Vs. CBI, 2011 (1) JCC 623* it is contended that as held the expression “known sources of income” occurring in Section 5(1)(e) means the sources known to the prosecution and not the sources relied upon and known to the accused. In the present case, the sources were clearly known to the prosecution, however they were not considered by the Learned Special Judge in the impugned order. The Petitioner has clearly stated in his two responses dated 2nd June 1995 and 11th June, 1995 to the notices under Section 160 of the Cr.P.C. that the Investigating Officer had examined him in December, 1991 and at that stage, all documents were given. The letter of the Petitioner dated 30th August, 1993 also stated that the Investigating Officer had examined the Petitioner on 30th December, 1991 when all details regarding sources of income and the assets acquired by him were informed to the Investigating Officer. In fact, statements of all the family members were recorded, which also the CBI withheld and the Petitioner was constrained to take a copy thereof by moving an application under Section 91 Cr.P.C. Relying upon *Shakuntala Devi Vs. State of Delhi 139 (2007) DLT 178* it is contended that a fair and just investigation is the hallmark of any investigation. Further the Court may not take into consideration the defence documents at this stage, however it is duty bound to consider all documents collected by the CBI whether they were relied upon or not because the investigating agency cannot withhold documents to make out a case against the Petitioner. The income and assets of the Petitioner’s relations and family members cannot be clubbed with that of the Petitioner. Documents, which were with the

prosecution like the estate duty paid on the late mother's property, son's scholarship, daughter's income, wife's personal income, younger son's income, have been disregarded. It is well settled that no person can be prosecuted except in accordance with the procedure established by law. Hon'ble Supreme Court in *State of West Bengal and Ors. v. The Committee for Protection of Democratic Rights, West Bengal and Ors.* AIR 2010 SC 1476 held that an accused has a right of free and fair investigation. In *State Inspector of Police, Visakhapatnam vs. Surya Sankaram Karri* (2006) 7 SCC 172 their Lordships condemned an unfair investigation. It was held that the least a Court of Law would expect from the prosecution is that the prosecution would be a fair one. Relying on *Hem Chand Vs. State of Jharkhand* (2008) 5 SCC 113 it is contended that on the basis of admitted documents i.e. the documents admitted by the prosecution, the accused has a right to show that no case is made out against him. In view of *Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijja and others* (1990) 4 SCC 76 it is contended that even at the stage of charge, the Court has to sift the evidence to see whether any charge is made out against the accused or not. Further the Court is duty bound to look at the material placed on record. Relying upon *State of Madhya Pradesh Vs. Sheetla Sahay and Ors.* (2009) 3 SCC Crl. 901 it is contended that the Court cannot ignore the material, which is in favour of the accused, at the stage of charge.

3. Despite the fact that no presumption for an offence under Section 13(1)(e) PC Act is available, the Learned Special Judge observed that since the Petitioner was involved in a case of accepting bribe of Rs. 10,00,000/-, it was quite possible that he was in possession of assets disproportionate to his

known sources of income. It is contended that the Courts can only presume whatever is permitted by the Statute and in the absence of any statutory presumption prescribed no such presumption can be raised. In the present case, the Petitioner has been intimating about his ancestral property to the CBI, which was his departmental authority, and even that material which was in possession of the CBI itself has been ignored, thus causing serious prejudice to the Petitioner . Further there is no requirement to declare the movable properties to the Department as the Rule regarding the same has been kept in abeyance since its inception in 1973. Reliance is placed on Rule 80 of the CCS Conduct Rules in this regard.

4. Learned Additional Solicitor General on behalf of CBI contends that the present is a petition against the order on charge. Under Section 227 Cr.P.C., the learned Special Judge is required to consider the record of the case and the documents thereof and find out if there is any sufficient ground for proceeding. If on consideration of the documents and hearing the parties, the Court finds that there is a ground for presuming that an offence has been committed, it would proceed with the trial after framing of charge. In view of the bar under Section 19(3) PC Act, the scope of the remedy available to the Petitioner under Section 482 Cr.P.C. and Article 227 of the Constitution is limited and this Court can interfere only if uncontroverted allegations taken on their face value show that no offence is made out or there is an abuse of the process of the Court. This Court in exercise of its power under Article 227 of the Constitution would not act as a Court of Appeal and hear every error of law. Relying upon *Surya Dev Rai v. Ram Chander Rai and Ors.* (2003) 6 SCC 675 it is contended that in a petition under Article 227 of

the Constitution every error of law need not be corrected. So long as the error of law can be corrected during the trial, it should not be resorted to in a revision petition. If the power under Article 227 of the Constitution is used to correct every error of law, the mandate of Section 19(3) PC Act will be defeated. Despite repeated notices to the Petitioner, he did not join investigation and sent the response only once. Relying upon *State of Bihar Vs. Ramesh Singh, (1977) 4 SCC 39*, it is contended that at the stage of charge the benefit of suspicion enures to the prosecution and not to the accused. Though the presumption under Section 20 PC Act is not available for an offence punishable under Section 13(1)(e), however holding of the assets is not denied. In the absence of such a denial, only after the evidence is led, it can be said that the Petitioner did not hold the assets beyond his known sources of income. The Petitioner had earlier approached the Special Judge and this Court wherein this Court held that he should go to the Trial Court and raise the grievance during trial. The legal position under Section 5(1)(e) of the Prevention of Corruption Act 1947 is totally different from 13(1)(e) of the PC Act. Since strong suspicion arises of the Petitioner having committed the offence under Section 13(2) read with 13(1)(e) of the PC Act, the absurdities in the calculation of income can be dealt with at the stage of trial. Relying upon *Sadhana Lodh vs. National Insurance Company Ltd. and Anr. (2003) 3 SCC 524* it is contended that a wrong decision is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution wherein it cannot even correct errors apparent on the face of record much less an error of law. Relying on *State of M.P. Vs. Virendra Kumar Tripathi (2009) 15 SCC 533* it is contended that defect in an investigation does not vitiate the trial. The exclusion of alleged income of the relatives would be a

matter of evidence to be dealt with by the Learned Special Judge in view of the decision of Hon'ble Supreme Court in *State of Orissa v. Debendra Nath Padhi* (2005) 1 SCC 568. At the stage of charge this Court cannot hold a mini trial. As held in *N.Ramakrishna Ayyar through legal heirs Vs. State of Andhra Pradesh* (2008) 17 SCC 83 and *Hem Chand v. State of Jharkhand* (2008) 5 SCC 113 at this stage the Court will not delve deep into the matter for the purpose of appreciating the evidence and the stage to weigh the evidence would be when the entire evidence is brought on record. 7 prosecution witnesses out of 145 have been examined and thus trial should be permitted to proceed.

5. I have heard learned counsel for the parties. The Petitioner was working as DIG of Police, CBI, when on the basis of source information abovementioned FIR was registered on 31st October, 1991 on the allegations that the Petitioner has been found to be in possession of assets to the tune of Rs. 15,53,461/- which were disproportionate to his known sources of income. The Petitioner was examined by the Investigating Officer in December 1991 and after the Petitioner superannuated from service on 30th September, 1995, a charge-sheet was filed against him for offences punishable under Section 13(1)(e) read with 13(2) of the PC Act. The Petitioner moved an application before the Learned Special Judge under Section 91 Cr.P.C. which was dismissed on 10th November, 2003 observing that the documents would be taken into consideration by the Court while considering the question on charge. The Petitioner filed a revision petition against that order and thereafter a Special Leave Petition, which were dismissed vide orders dated 17th May, 2004 and 3rd January, 2005. Petitioner

relying on the observations of the Learned Special Judge in the order dated 30th November, 2003 moved an application on 27th April, 2004 under Section 294/91 Cr.P.C. for placing on record original documents and for admission/denial of the documents by the prosecution. This application was also dismissed on 30th April, 2005. Vide order dated 30th April, 2005 the Learned Special Judge held that it would not be appropriate to call upon the prosecution to admit or deny the documents at this stage as the said documents could not be considered at the stage of framing of charge. On a challenge in a Criminal Miscellaneous case No. 4932/2005 under Section 482 Cr.P.C. this Court disposed of the petition vide order dated 30th September, 2005 giving directions to the Learned Special Judge to pass appropriate orders whenever an application is filed by the Petitioner for placing certified copy of the public documents on record of the present case. In pursuance of the order dated 30th September, 2005 the Petitioner filed an application before the Learned Special Judge for placing on record the orders/ public documents in the present case for consideration at the stage of charge, however the said application was dismissed on 27th October, 2006. The petition challenging the said order was dismissed by this Court on the 29th February, 2008 and the Special Leave Petition thereof was dismissed on 14th July, 2008. While arguments on framing of charge were heard before the Learned Special Judge, Petitioner relied only upon the documents relied upon by the prosecution without relying upon the documents which were earlier sought to be placed on record under Section 294/91 Cr.P.C. Learned counsel for the Petitioner readily conceded that these documents could not be looked into at the stage of charge in view of the judgment of the Hon'ble Supreme Court in *Debendra Nath Padhi* (supra). Finally, the arguments on

charge were heard and by the impugned order, charge under Section 13(1)(e) read with 13(2) of the PC Act was framed against the Petitioner.

6. The grievance of the Petitioner in the present petition is limited. According to him at this stage he is not pressing for consideration of the documents which are in his possession or which the CBI has withheld, though he has those documents in his possession and would bring the same in defence. According to the Petitioner, learned Special Judge did not sift the evidence even on the basis of documents which were relied upon by the CBI and decide the extent of disproportionate assets for which the Petitioner was liable to be charged with. Vide the impugned order though the learned Special Judge held that there was merit in the contentions of the Petitioner on account of the income of the wife, daughter and son from independent sources, being included in that of the Petitioner, however the Learned Special Judge took no note of the same and framed the charge as per the charge-sheet.

7. In *State of Maharashtra v. Wasudeo Ramchandra Kaidalwar* (1981) 3 SCC 199 the Hon'ble Supreme Court observed that the expression "known sources of income" occurring in Section 5(1)(e) has a definite and legal connotation which in the context must be the sources known to the prosecution and not sources relied upon and known to the accused. Their Lordships observed:

"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 v. 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 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.

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 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.”

8. A perusal of the impugned order shows that the learned Special Judge has accepted the contention of the learned counsel for the Petitioner that the entire jewellery and gold recovered from the house of the accused which has been added to the income of the Petitioner could not be attributed to him solely and would not have been purchased in the check period of 1967-1991 as some part of the same would certainly be possessed at the time of

marriage between the Petitioner and his wife and thereafter before the check period. However, no deduction thereof has been given. Further the entire jewellery recovered has been assessed at the rate of gold in the year 1991. The Learned Special Judge has accepted the contention of the learned counsel for the Petitioner that the CBI did not comply with its circular dated 29th November, 2011 as items even prior to pre-check period were added to the assets. Further the learned Special Judge accepted that more amounts were required to be deducted from the household expenses. Thus, it is apparent that the learned Special Judge has not done the sifting of evidence which it was required to do at this stage. As a matter of fact the perusal of the entire impugned order does not show consideration of the material facts and directs framing of charge on the basis of the charge-sheet.

9. It may be noted that for an offence punishable under Section 13(1)(e) read with Section 13(2) PC Act, no statutory presumption is available under Section 20 PC Act. However, the learned Special Judge has raised the presumption on the basis of the fact that the Petitioner has been involved in a case accepting Rs. 10 lakhs as bribe and has gone to the extent of holding that this would certainly be not his first misadventure, the Petitioner ought to have been indulging in this kind of activity in the past and getting caught while accepting bribe of Rs. 10 lakhs raises strong suspicion that indeed he had been indulging in this kind of practice earlier also and had accumulated assets disproportionate to his known sources of income. The Learned Special Judge lost sight of the presumption of innocence available to the accused. No presumption except a statutory presumption can be raised.

10. According to learned counsel for the Petitioner under the Head “income” the total interest earned on all the fixed deposits etc. has not been included. Further the cheques received by the Petitioner from the government in addition to his salary have also not been included and if these incomes under the various items are included in the Head “income” in the charge sheet, the total income would be Rs.32,87,778/- instead of Rs.22,55,353/-. In the Petitioner’s assets, property at Ghaziabad has been included without there being any evidence on judicial files relating to any property in Ghaziabad. Further the value of the movable assets and expenses have been inflated.

11. A perusal of the tabulation of income and assets as filed by the learned counsel for the Petitioner shows that certain incomes which were known to the CBI and are based on relied upon documents have not been excluded. No doubt the learned Special Judge has not performed its duty of sifting the evidence as he was required to do at this stage. In the entire impugned order, there is no discussion on merits except stating that there exists strong prima facie case against the Petitioner for having grossly misused his office and having mis-conducted himself by acquiring illegitimate wealth. The learned Special Judge after citing various judgments held as under:

“66. If we consider the report filed by CBI along with bunch of documents, it becomes abundantly clearly that assets of the accused are grossly disproportionate to his known sources of income. There exists strong prima facie case that accused had grossly misused his office and had misconducted himself and had acquired illegitimate wealth. Prima facie case u/s. 13 (2) r/w 13 (1) (e) of P.C. Act, 1988 is made out. let charge be framed accordingly.”

12. The learned Special Judge was required to enter into the exercise of sifting the material on record for yet another reason. In view of the excess amounts included the number of witnesses to be examined by the prosecution are 145. Assets not disproportionate to the known sources of income as known to the prosecution cannot be included as the same is not an offence. The sifting of the evidence at this stage would have the advantage of not examining unnecessary witnesses which would be now burdening and prolonging the trial.

13. The issue posed before this Court is whether in exercise of its jurisdiction under Section 482 Cr.P.C. and Article 227 of the Constitution this Court will sift the evidence and deduct the amounts which are not disproportionate to the known sources of income as known to the prosecution.

14. The Learned Additional Solicitor General in view of the decision in *Sadhana Lodh (supra)* has strenuously contended that this Court will not hold a mini trial and delve into the merits of the case or correct a mere wrong decision and would permit the trial to go on, as 7 witnesses have been examined. The Hon'ble Supreme Court in *Sadhana Lodh (supra)* held as under:-

“6. The right of appeal is a statutory right and where the law provides remedy by filing an appeal on limited grounds, the grounds of challenge cannot be enlarged by filing a petition under Articles 226/227 of the Constitution on the premise that the insurer has limited grounds available for challenging the award given by the Tribunal. Section 149(2) of the Act limits the insurer to file an appeal on those enumerated grounds and the appeal being a product of the statute it is not open to an

insurer to take any plea other than those provided under Section 149(2) of the Act (see *National Insurance Co. Ltd. v. Nicolledda Rohtagi*, (2002) 7 SCC 456). This being the legal position, the petition filed under Article 227 of the Constitution by the insurer was wholly misconceived. Where a statutory right to file an appeal has been provided for, it is not open to the High Court to entertain a petition under Article 227 of the Constitution. Even if where a remedy by way of an appeal has not been provided for against the order and judgment of a District Judge, the remedy available to the aggrieved person is to file a revision before the High Court under Section 115 of the Code of Civil Procedure. Where remedy for filing a revision before the High Court under Section 115 CPC has been expressly barred by a State enactment, only in such case a petition under Article 227 of the Constitution would lie and not under Article 226 of the Constitution. As a matter of illustration, where a trial court in a civil suit refused to grant temporary injunction and an appeal against refusal to grant injunction has been rejected, and a State enactment has barred the remedy of filing revision under Section 115 CPC, in such a situation a writ petition under Article 227 would lie and not under Article 226 of the Constitution. Thus, where the State Legislature has barred a remedy of filing a revision petition before the High Court under Section 115 CPC, no petition under Article 226 of the Constitution would lie for the reason that a mere wrong decision without anything more is not enough to attract jurisdiction of the High Court under Article 226 of the Constitution.

7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to

have passed the order or to correct errors of law in the decision.”

15. Their Lordships in *Surya Dev Rai (supra)* held as under:-

“38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1-7-2002 in Section 115 of the Code of Civil Procedure cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction — by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction — by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a writ of certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the subordinate court has chosen to take one view, the error cannot be called gross or patent.

(7) The power to issue a writ of certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a subordinate court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an appeal or revision preferred thereagainst and entertaining a petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in reappreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a writ of certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a writ of certiorari, the High Court may annul or set aside the act, order or proceedings of the subordinate courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the subordinate court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the subordinate court as the court should have made in the facts and circumstances of the case.”

16. The Hon’ble Supreme Court in *State of M.P. v. Awadh Kishore Gupta*, (2004) 1 SCC 691 held as under:-

“11. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceedings at any stage. (See *Janata Dal v. H.S. Chowdhary*, (1992) 4 SCC 305 and *Raghubir Saran (Dr) v. State of Bihar*, AIR 1964 SC 1.) It

would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In proceedings instituted on complaint, exercise of the 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. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an 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 the court which decide 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. [See *Dhanalakshmi v. R. Prasanna Kumar*, 1990 Supp SCC 686, *State of Bihar v. P.P. Sharma*, 1992 Supp (1) SCC 222, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, (1995) 6 SCC 194, *State of Kerala v. O.C. Kuttan*, (1999) 2 SCC 651, *State of U.P. v. O.P. Sharma*, (1996) 7 SCC 705, *Rashmi Kumar v. Mahesh Kumar Bhada*, (1997) 2 SCC 397, *Satvinder Kaur v. State (Govt. of NCT of Delhi)*, (1999) 8 SCC 728 and *Rajesh Bajaj v. State NCT of Delhi*, (1999) 3 SCC 259.]”

17. At this stage the scope of interference being very limited, this Court will not delve into the matter for the purpose of sifting the evidence and venture a mini trial. The error committed by the Learned Special Judge can be corrected during the trial. Even if the contentions of the Petitioner are accepted and certain amounts deducted, still there are parts of the assets which are known to the Petitioner and he can explain the same during trial by leading defense evidence. Thus, the Petitioner is required to face the trial for offence under Section 13(1)(e) read with 13(2) of the PC Act. Since the trial has already started and in view of the law laid down by the Supreme Court, this Court will not act as an appellate Court and enter into an exercise of calculating the assets at this stage. It would be thus appropriate that the issues raised by the Petitioner are dealt with during trial.

18. I find no reason to interfere with the impugned order. Petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 26, 2012
‘ga’