

GAHC020001822022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl. Pet./5/2022

MES-243985 SHRI. LEKH BAHADUR BOHARA
BOHARA, JAA, GE 868 EWS, C/O 99APO. PRESENTLY POSTED AS
JAA, (LDC) GE(PROJECT) AIR FORCE, HASHIMARA, WEST BENGAL

VERSUS

THE STATE OF NAGALAND AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, KOHIMA
NAGALAND

2:SHRI. RAVI TOMAR
MAJOR
GARRISON ENGINEER
GE 868 EWS
C/O 99 APO
RANGAPAHAR MILITARY STATIO

Advocate for the petitioner : Mr. P.B. Paul;

Advocate for the respondents : Mr. K. Angami, Public Prosecutor, for
respondent No. 1,
Mr. Y.P. Gupta, CGC, for respondent
No. 2.

Date of hearing : 18.03.2024

Date of judgment : 27.03.2024

**BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN**

JUDGMENT & ORDER (CAV)

Heard Mr. P.B. Paul, learned counsel for the petitioner and Mr. K. Angami, learned Public Prosecutor for the State respondent No. 1. Also heard Mr. Y.P. Gupta, learned Central Government Counsel (CGC) for the respondent No. 2.

2. In this petition, under Section 482 of the Cr.P.C., the petitioner, namely, MES-243985 Shri Lekh Bahadur Bohara, JAA, has prayed for quashing the FIR of Urban P.S. Case No. 21/2021, under Section 420 of the IPC, read with Sections 11/13 of the Prevention of Corruption Act, 1988 (for short 'the P.C. Act'), dated 20.04.2021.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Shri Ravi Tomar, Major, Garrison Engineer, GE 868 EWS of Rangapahar Military Station, on 08.04.2021.

4. The background facts leading to filing of the present petition are adumbrated herein below:

“(i) During the Summary General Court Martial in respect of IC-71216L Ex. Major Jaspreet Singh Duggal of GE 868 Engineer Works Section, attached to Headquarter 44 Mountain Brigade, from

02.07.2016 to 09.05.2017, it has come to the notice of the authority that MES-243985 Shri Lekh Bahadur Bohara, JAA (LDC) had transferred an amount of Rs. 3,19,000/- from his bank account to the bank account of Ex. Major Jaspreet Singh Duggal. MES-243985 Shri Lekh Bahadur Bohara, JAA (LDC) had fail to give any satisfactory explanation not only for the deposit made by him in the account of Ex. Major Jaspreet Singh Duggal, but also failed to explain how substantial amount of cash came to be deposited in his account on various occasions, which was beyond his known source of income.

(ii) Though departmental action was taken against MES-243985 Shri Lekh Bahadur Bohara, JAA (LDC), yet, it does not exonerate him from criminal liability under the P.C. Act. Accordingly, as per direction of competent authority, (Headquarters 3 Corps), an FIR has been lodged against MES-243985 Shri Lekh Bahadur Bohara, JAA (LDC) of GE (Project), under the provisions of the P.C. Act and IPC at police station, Dimapur, to discharge his criminal liability.

(iii) Accordingly, Shri Ravi Tomar, Major, Garrison Engineer, the respondent No. 2 herein, had lodged an FIR with the Officer-in-charge of Sub-Urban Police Station, Dimapur, on 08.04.2021. Upon the said FIR, the Officer-in-charge of Sub-Urban Police Station, Dimapur has registered a case, being SBN P.S. No. 21/2021, under Sections 11/13 of the P.C. Act, read with Section 420 of the IPC and endorsed one Shri Ketuokhrilie Metho, ACP 'D' division, for investigation."

5. Being aggrieved, the petitioner has approached this Court by filing the present petition, for quashing the aforesaid FIR on the following grounds:

(i) That, the allegation made in the FIR is totally false, concocted and baseless and made up by the respondent No. 2 with some ulterior motive.

(ii) That, the allegation made in the FIR, even if taken at their face value, the same failed to constitute any offence under Section 420 of the IPC, read with Sections 11/13 of the P.C. Act, and on such count the FIR is liable to be quashed, in view of the law laid down by the Hon'ble Supreme Court in the case of **State of Haryana and Ors. Vs Ch. Bhajanlal and Ors.**, reported in **1992 Supp (1) SCC 335**.

(ii) That, the Investigating Officer had acted illegally and with material irregularity in exercise of jurisdiction vested upon him in registering the case and it was lodged only to malign the petitioner as the FIR does not indicate any financial loss of the department and the aforesaid act of the petitioner is a case of clear violation of CCS (Conduct) Rules, 1964.

(iii) That, while the departmental enquiry was conducted against the petitioner and concluded on 08.03.2019, the FIR was lodged on 20.04.2021, after delay of about two years and no explanation has been offered for the delay, and thereby occasioned failure of justice and caused irreparable loss or injury to the petitioner.

(iv) That, the Investigating Officer had committed gross error of law and facts while taking up the investigation as before registering the case,

no preliminary enquiry was conducted, as mandated by a Constitutional Bench of Hon'ble Supreme Court in the case of **Lalita Kumari Vs. Government of U.P. and Ors.**, reported in **(2014) 2 SCC 1**, as the case has been registered under Sections 11/13 of the P.C. Act.

6. The respondent No. 2 has filed an objection petition stating that he had lodged the FIR not in his personal capacity, but in his official capacity, as instructed by the authority of his department. It is also stated that the FIR was lodged for transferring of a sum of Rs. 3,19,000/-, from his account to the account of Major Jaspreet Singh Duggal, for which the petitioner could not produce any valid documents and also from the staff court of enquiry, deposits, amounting to Rs. 17,09,954/- were found to be made in the account of the petitioner, which were disproportionate to the petitioner's known source of income. It is also stated that the petitioner was found to be blameworthy for receiving large amount of money by cash/cheques in his bank account w.e.f. 01.04.2016 to 30.01.2018, much beyond his known source of income, as per findings of court of enquiry proceeding conducted by Headquarters 3 Corps and the petitioner was suspended and the departmental enquiry was conducted under Rule 14 of CCS (CCA) Rules, 1965, and conducting of such departmental enquiry does not exonerate the petitioner from criminal liability under the P.C. Act. It is also stated that during departmental enquiry, it has been found that the petitioner has made transactions at SBI, Rangapahar Branch, between 01.04.2016 and 15.05.2018, through various cheques/electronic modes amounting to Rs. 16,81,100/-, wherein the transaction between the petitioner and Ex. Major Jaspreet Singh Duggal was also found, and apart

from the same, various transactions were found to be made with many other private parties, beyond comprehensive explanation and that the petitioner had failed to offer any justification for the large sum of illegal transactions, and that he had also never revealed his assets (purchase of lands and mortgage of ornaments etc.) in his annual property return report, which indicates that he was trying to hide the same due to unjustified and also disproportionate to his known source of income, and that he also concealed the said facts in his IT return, and that a clear case under Sections 11/13 of the P.C. Act has been made out against the petitioner as he has failed to justify disproportionate cash deposits in his account beyond his known source of income.

7. Mr. P.B. Paul, learned counsel for the petitioner, submits that though several grounds are being canvassed in the petition, yet, the main ground, which he has been pressing hand is that the FIR has been registered against the petitioner under the P.C. Act without there being any preliminary enquiry, which is mandated by a Constitutional Bench of Hon'ble Supreme Court in the case of **Lalita Kumari** (supra). Further, Mr. Paul submits that there is an inordinate delay in filing the FIR. While the departmental enquiry was concluded against the petitioner on 08.03.2019, the FIR was lodged on 20.04.2021, and no explanation is being offered for the delay of almost two years. Mr. Paul further submits that the departmental proceeding drawn up against the petitioner has already been concluded and penalty of reduction of scale of pay was imposed upon him as per Rules 11 and 14 of the CCS (CCA) Rules, 1965, and in the said proceeding, the petitioner, in his reply, has explained how the

amount of Rs. 3,19,000/- came to be deposited in his account. And further, Mr. Paul submits that the account, from where the sum of Rs. 3,19,000/- was transferred to the bank account of Ex. Major Jaspreet Singh Duggal, was a joint account with his wife, and in the departmental proceeding everything has been explained as to how the amount came to be deposited and therefore, Mr. Paul has contended to allow the petition by setting aside and quashing the FIR.

8. On the other hand, Mr. Y.P. Gupta, learned CGC for the respondent No. 2 submits that not only Rs. 3,19,000/- was transferred from bank account of the petitioner to the account of Ex. Major Jaspreet Singh Duggal, but there were numerous transaction in the account of the petitioner, which were beyond the known source of income of the petitioner and that there is no merit in this petition and therefore, it is contended to dismiss the same. Mr. Gupta has also referred to a decision of Hon'ble Supreme Court in the case of **Charansingh Vs. State of Maharashtra and Ors.**, in **Criminal Appeal No. 363 of 2021** (arising from S.L.P. (Criminal) No. 6764 of 2020), to contended that preliminary enquiry, before registering a case, is not required.

9. Whereas, Mr. K. Angami, learned Public Prosecutor for the State respondent No. 1, submits that no prima facie case is made out for quashing the FIR, which is being registered under Section 420 of the IPC, read with Sections 11/13 of the P.C. Act, and the grounds so assigned by the petitioner for quashing the FIR does not fall in any of the category of cases fit for quashing the FIR/criminal proceeding that have been mentioned in the decision of Hon'ble Supreme Court in **Niharika**

Infrastructure Pvt. Ltd. vs. The State of Maharashtra, reported in **(2021) SCC Online SC 315**. Mr. Angami has, therefore, contended to dismiss the petition.

10. The petitioner has also filed one affidavit-in-reply, denying the averments made in the objection petition filed by the respondent No. 2 and it is stated that he has taken loan from the State Bank of India for a sum of Rs. 3,80,000/- and the amount deposited in his account was the loan taken by him, and from sale of land, and withdrawal of GPF fund etc. and the same has nothing to do with cheating, illegal gratification and/or any other offences and all these aspects were placed before the departmental enquiry. It is further stated that he had also sold a plot of land belonging his wife and he had received a sum of Rs. 6,20,000/- for the same, which cannot be treated as illegal transaction, and that an amount of Rs. 3,19,000/- was deposited in the bank account of Ex. Major Jaspreet Singh Duggal is a fair transaction through his bank account and that there is no proof of demand and illegal gratification so as to establish the ingredients of offences under Sections 11/13 of the P.C. Act, and therefore, it is contended to allow the petition.

11. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also gone through the case laws referred by learned Advocates of both the parties.

12. It appears that the FIR has been lodged by the respondent No. 2, as per instruction of the authority of the department, in his official capacity,

wherein allegation has been made that the petitioner has transferred a sum of Rs. 3,19,000/- to the bank account of Ex. Major Jaspreet Singh Duggal, and the petitioner has failed to offer any explanation let alone a plausible for the same during Summary General Court Martial of Ex. Major Jaspreet Singh Duggal. It is also appears that the petitioner had failed to give any satisfactory explanation of not only the transfer of a sum of Rs. 3,19,000/- into the account of Ex. Major Jaspreet Singh Duggal, but also for the substantial amount of cash deposited into his account on various occasions, which were beyond his known source of income. Further it appears that a departmental enquiry was conducted against him and as submitted by the learned counsel for the petitioner, the petitioner was found guilty in the said departmental enquiry and a penalty of reduction of scale of pay was imposed upon the petitioner as per Rules 11 and 14 of the CCS (CCA) Rules, 1965.

13. Thus, from a careful perusal of the allegations made in the FIR, it cannot be said that no offence under Sections 11/13 of the P.C. Act is made out against the petitioner and Mr. Gupta, learned counsel for the respondent No. 2, has rightly pointed this out during his argument and the ratio laid down in **Charansingh (supra)**, referred by him, also strengthened his submission that no preliminary enquiry is required to be conducted as a clear case under Sections 11/13 of the P.C. Act is made out against the petitioner. In the case of **Charansingh (supra)**, it has been held that an enquiry at pre-FIR stage is also to be permissible and not only permissible, but to be desirable, more particularly in the cases where the allegations are of misconduct of corrupt practice acquiring the

assets/properties disproportionate to his own known sources of income. After the enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter, FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

14. Though Mr. Paul, learned counsel for the petitioner, by referring to the ratio laid down in the case of **Lalita Kumari (supra)**, submits that registration of FIR without preliminary enquiry in corruption cases is not permissible, yet, the ratio laid down in the case of **Lalita Kumari (supra)** stands explained in the case of **Central Bureau of Investigation (CBI) and Anr. vs. Thommandru Hannah Vijayalakshmi Alias T.H. Vijayalakshmi and Anr.**, reported in **(2021) 18 SCC 135**.

15. It is to be noted here that in the case of **Lalita Kumari (supra)**, Hon'ble Supreme Court has held as under:

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

120.1. The registration of FIR is mandatory under Section 154

of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

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

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

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

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

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

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

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

120.7. While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time-bound and in any case it should not exceed fifteen days

generally and in exceptional cases, by giving adequate reasons, six weeks' time is provided. The fact of such delay and the causes of it must be reflected in the General Diary entry.

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

16. While explaining the ratio laid down in **Lalita Kumari (supra)**, Hon'ble Supreme Court in the case of **Thommandru Hannah Vijayalakshmi Alias T.H. Vijayalakshmi (supra)**, in paragraph 22, had held as under:

"22. The Constitution Bench in Lalita Kumari case, thus, held that a preliminary enquiry is not mandatory when the information received discloses the commission of a cognizable offence. Even when it is conducted, the scope of a preliminary enquiry is not to ascertain the veracity of the information, but only whether it reveals the commission of a cognizable offence. The need for a preliminary enquiry will depend on the facts and circumstances of each case. As an illustration, "corruption cases" fall in that category of cases where a preliminary enquiry "may be made". The use of the expression "may be made" goes to emphasise that holding a preliminary enquiry is not mandatory. Dwelling on the CBI Manual, the Constitution Bench held that : (i) it is not a statute enacted by the legislature; and (ii) it is a compendium of administrative orders for the internal guidance of CBI."

17. Thereafter, Hon'ble Supreme Court in paragraph 24 of the said judgment has held as under:

"24. The decision of a two-Judge Bench in Managipet [State of Telangana v. Managipet, (2019) 19 SCC 87 thereafter has noted that while the decision in Lalita Kumari held that a preliminary enquiry was desirable in cases of alleged

corruption, that does not vest a right in the accused to demand a preliminary enquiry. Whether a preliminary enquiry is required or not will depend on the facts and circumstances of each case, and it cannot be said to be mandatory requirement without which a case cannot be registered against the accused in corruption cases. Hemant Gupta, J. held thus : (Managipet case [State of Telangana v. Managipet, (2019) 19 SCC 87])

“28. In Lalita Kumari the Court has laid down the cases in which a preliminary inquiry is warranted, more so, to avoid an abuse of the process of law rather than vesting any right in favour of an accused. Herein, the argument made was that if a police officer is doubtful about the veracity of an accusation, he has to conduct a preliminary inquiry and that in certain appropriate cases, it would be proper for such officer, on the receipt of a complaint of a cognizable offence, to satisfy himself that prima facie, the allegations levelled against the accused in the complaint are credible. ...

29. The Court concluded that the registration of an FIR is mandatory under Section 154 of the Code if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. ...

30. It must be pointed out that this Court has not held that a preliminary inquiry is a must in all cases. A preliminary enquiry may be conducted pertaining to matrimonial disputes/family disputes, commercial offences, medical negligence cases, corruption cases, etc. The judgment of this Court in Lalita Kumari does not state that proceedings cannot be initiated against an accused without conducting a preliminary inquiry.

32. ... The scope and ambit of a preliminary inquiry being necessary before lodging an FIR would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in Lalita Kumari.

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

34. Therefore, we hold that the preliminary inquiry warranted in Lalita is not required to be mandatorily conducted in all corruption cases. It has been reiterated by this Court in multiple instances that the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case. There are no fixed parameters on which such inquiry can be said to be conducted. Therefore, any formal and informal collection of information disclosing a cognizable offence to the satisfaction of the person recording the FIR is sufficient."

18. And in the said case, Hon'ble Supreme Court has discussed the case of **Charansingh (supra)**, referred by Mr. Y.P. Gupta, learned counsel for the respondent No. 2, in paragraph 25 of the case as under:

“25. In Charansingh [Charansingh v. State of Maharashtra, (2021) 5 SCC 469, the two-Judge Bench was confronted with a challenge to a decision to hold a preliminary enquiry. The Court adverted to the ACB Manual in Maharashtra and held that a statement provided by an individual in an “open inquiry” in the nature of a preliminary enquiry would not be confessional in nature and hence, the individual cannot refuse to appear in such an inquiry on that basis. M.R. Shah, J. writing for the two-Judge Bench consisting also of one of us (D.Y. Chandrachud, J.) held :

“11. However, whether in a case of a complaint against a public servant regarding accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, an enquiry at pre-FIR stage is permissible or not and/or it is desirable or not, if any decision is required, the same is governed by the decision of this Court in Lalita Kumari.

11.1. While considering the larger question, whether police is duty-bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in Lalita Kumari has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/ desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/ lodging of an FIR. It is further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case.

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

15.1. Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made.

15.2. Even as held by this Court in CBI v. Tapan Kumar Singh [CBI v. Tapan Kumar Singh, (2003) 6 SCC 175] , a GD entry recording the information by the informant disclosing the commission of a cognizable offence can be treated as FIR in a given case and the police has the power and jurisdiction to investigate the same. However, in an appropriate case, such as allegations of misconduct of corrupt practice by a public servant, before lodging the first information report and further conducting the investigation, if the preliminary enquiry is conducted to ascertain whether a cognizable offence is disclosed or

not, no fault can be found. Even at the stage of registering the FIR, what is required to be considered is whether the information given discloses the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage, it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. Despite the proposition of law laid down by this Court in a catena of decisions that at the stage of lodging the first information report, the police officer need not be satisfied or convinced that a cognizable offence has been committed, considering the observations made by this Court in *P. Sirajuddin [P. Sirajuddin v. State of Madras, (1970) 1 SCC 595]* and considering the observations by this Court in *Lalita Kumari* before lodging the FIR, an enquiry is held and/or conducted after following the procedure as per Maharashtra State Anti-Corruption & Prohibition Intelligence Bureau Manual, it cannot be said that the same is illegal and/or the police officer, Anti-Corruption Bureau has no jurisdiction and/or authority and/or power at all to conduct such an enquiry at pre-registration of FIR stage."

19. It is to be noted here that while dealing with quashing of FIR/criminal proceeding, even if the parties have settled the dispute, the Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Laxmi Narayan and Ors.**, reported in **(2019) 5 SCC 688**, relying on two other judgments in **Gian Singh vs. State of Punjab**, reported in **(2012) 10 SCC 303** and **Narinder Singh vs. State of Punjab**, reported in **(2014) 6 SCC 466**, has held as under:

“(i) that the power conferred under Section 482 of the Code to quash the criminal proceedings for the non-compoundable offences under Section 320 of the Code can be exercised having overwhelmingly and predominantly the civil character, particularly those arising out of commercial transactions or

arising out of matrimonial relationship or family disputes and when the parties have resolved the entire dispute amongst themselves;

ii) such power is not to be exercised in those prosecutions which involved heinous and serious offences of mental depravity or offences like murder, rape, dacoity, etc. Such offences are not private in nature and have a serious impact on society;

iii) similarly, such power is not to be exercised for the offences under the special statutes like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed merely on the basis of compromise between the victim and the offender;

v) while exercising the power under Section 482 of the Code to quash the criminal proceedings in respect of non-compoundable offences, which are private in nature and do not have a serious impact on society, on the ground that there is a settlement/compromise between the victim and the offender, the High Court is required to consider the antecedents of the accused; the conduct of the accused, namely, whether the accused was absconding and why he was absconding, how he had managed with the complainant to enter into a compromise etc."

20. Again, in the case of **Dineshbhai Chandubhai Patel Vs. The State Of Gujarat**, reported in **(2018) 3 SCC 104**, following earlier decision in **State Of West Bengal & Ors. vs Swapan Kumar Guha & Ors.**, reported in **(1982) 1 SCC 561**, it has been held that High Court cannot decide the issue arising out of the case like an investigating agency or/and appellate authority decides, by little realizing that it was exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure.

21. In the case of **Swapan Kumar Guha (supra)**, it was held that "right of inquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have

reason so to suspect unless the F.I.R., prima facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on. The Court has then no power to stop the investigation, for to do so would be to trench upon the lawful power to investigate into cognizable offences.”

22. In the case of M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra & Ors. (2021 SCC OnLine SC 315), the Hon’ble Supreme Court has held as under:

- “i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;**
- ii) Courts would not thwart any investigation into the cognizable offences;**
- ii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;**
- iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of death penalty).**
- v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;**
- vi) Criminal proceedings ought not to be scuttled at the initial stage;**
- vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;**
- viii) Ordinarily, the courts are barred from usurping the**

jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

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

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

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

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

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

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur (supra) and Bhajan Lal (supra), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable

offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

xviii)"

23. The proposition of law that can be crystallized from the discussion made herein above is that the power under Section 482 of the Code of

Criminal Procedure should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases and quashing of a complaint/FIR is an exception rather than an ordinary rule. Criminal proceedings should not be scuttled at the initial stage. It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on. Courts should not thwart any investigation into the cognizable offences. The power under Section 482 of the Code of Criminal Procedure should not be exercised to quash those prosecution cases, which involve heinous and serious offence of mental depravity or offence like murder, rape, dacoity etc. Such offences are not private in nature and have a serious impact upon society. Besides, the offences under the special statutes, like Prevention of Corruption Act or the offences committed by public servants while working in that capacity are not to be quashed even if the victim and the offender have entered into compromise.

24. Now, advertent to the facts and circumstances of the case in hand, we find from the materials placed on record and upon a careful perusal of the FIR dated 20.04.2021, that the same discloses commission of a cognizable offence under Sections 11/13 of the P.C. Act. Further, it appears that departmental enquiry was conducted against the petitioner and he was found guilty and punishment of reduction of rank was imposed upon him, under Rule 14 of CCS (CCA) Rule, 1965. Further, it appears that during departmental enquiry, it has come to light that he has made transfer at Rangapahar Branch of SBI, between 01.04.2016 and 15.05.2018, through various cheques/electronic mode, an amount of Rs.

16,81,100/- which includes the transaction between him and Ex. Major Jaspreet Singh Duggal. Besides various transactions were found to be made with various private parties and the petitioner could not offer any explanation, let alone a plausible one for such illegal transaction, which is beyond his known source of income. And as such, this Court is unable to record concurrence with the submission of Mr. Paul, learned counsel for the petitioner that no prima facie case is made out, and as such, the ratio laid down in the case of **Bhajanlal** (supra), is not applicable in all force to the given facts and circumstances of the case in hand. In the given facts and circumstances on the record, no exceptional case, where non-interference would result in miscarriage of justice, is made out so as to invoke the extra-ordinary jurisdiction of this court, as held in the case of **Neeharika Infrastructure** (supra).

25. Though, Mr. Paul, the learned counsel for the petitioner, submits that there is delay in lodging the FIR, this Court is of the view that it is premature to consider such an issue at this stage as investigation has not yet been completed.

26. Drawing premises from the illuminating discourse and also considering the given facts and circumstances on the record, this Court is of the view that this is not a fit case where the extraordinary power under Section 482 of the Cr.P.C. can be exercised to quash the FIR. And accordingly, this petition stands dismissed.

27. Interim order passed earlier, if any, stands vacated.

JUDGE

Comparing Assistant