

\$~35

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

+ W.P.(CRL) 1351/2013

% ***Judgment pronounced on 11th May, 2015***

MANOJ KUMAR AGARWAL

..... Petitioner

Through: Mr.Pramod Kumar Dubey, Mr.Shri
Singh, Ms.Shruti Srivastava,
Mr.Shiv Pandey and Ms.Akansha
Singh, Advs.

versus

C B I & ORS

..... Respondents

Through: Mr.P.K. Sharma, standing counsel
for CBI with Mr.Rakesh Kr.
Sharma, Ms.Renu Malik and
Ms.Soni Mehra, Advs.
Ms.Karuna Chhatwal with Mr.J.
Sukhija, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J.

1. By the present petition filed under Article 226 read with Article 227 of the Constitution of India, the petitioner seeks a direction to quash RC No. 6(A)/2009 dated 15.12.2009 entitled '*CBI v. Manoj Kumar Agarwal*' under section 109 IPC and section 13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988 and all the acts and proceedings emanating therefrom.
2. The brief facts of the case are that the petitioner joined government service as an IAS Probationer on 20.08.1990 and was allotted West Bengal cadre. The Petitioner continued to serve in West Bengal at different positions till 02.10.2003. Thereafter, the Petitioner was selected

for central deputation on 03.10.2003 as Deputy Secretary in the Ministry of Personnel, Public Grievances and Pensions. Subsequently from 01.10.2009 till 04.06.2010, the petitioner was posted as Commissioner (L&D) in the Delhi Development Authority by the Central Government. Upon the expiry of his central deputation, the Petitioner rejoined the State of West Bengal and at the time of filing of the present petition, he was posted as Secretary, North Bengal Development Authority with additional charge of MD, West Bengal Highway Development Corporation.

3. At the time when the petitioner was posted as Deputy Secretary, DoPT, a complaint was filed against him to the Central Vigilance Commission on 23.10.2006 alleging acquisition of disproportionate assets by the Petitioner and his wife. The Petitioner was called upon by the DoPT to file his response which was duly filed on 03.09.2007 explaining all his assets and eventually the complaint was closed in February, 2009 with no adverse remarks against the Petitioner; as has been stated by the Petitioner before the Court.
4. Subsequently when the Petitioner was posted as Commissioner (L&D), DDA, Vikas Sadan, New Delhi; a case being RC no.6(A)/2009 was registered against him by the Central Bureau of Investigation (CBI) upon an oral source information under section 109 of the Indian Penal Code and sections 13(2) read with section 13(1)(e) of the Prevention of Corruption Act, 1988, alleging amassing of disproportionate assets. The check period for the alleged offences is from 20.08.1990 to 30.06.2008. Out of a total check period of about 18 years, the petitioner was employed with the State of West Bengal for 13 years, one month and fourteen days, and during the rest of the check period, he was on central deputation, in New Delhi.

5. At the outset, the counsel for the Petitioner has sought for quashing of the present RC having been registered in violation of the provisions of section 6 and 6A of the Delhi Special Police Establishment Act (hereinafter referred to as “DSPE Act”) and also being in violation of the CBI Manual. Though lengthy arguments have been advanced by the counsel for the Petitioner seeking protection under section 6A of the DSPE Act, the said issue is no more *res integra* since a Five Judge Bench of the Hon’ble Apex Court in its judgment titled as ***Subramanian Swamy v. CBI*** reported at (2014)8 SCC 682, has struck down the said section to be constitutionally invalid.
6. As regards section 6 of The Delhi Special Police Establishment (DSPE) Act is concerned, it is submitted by the Counsel for the Petitioner that there is a specific bar on the members of DSPE to exercise powers within the State without the consent of the concerned State Government. The counsel for the Petitioner has drawn the attention of this Court to Circular No. 228/40/88-AVD.II (II) dated 23.08.1990 issued by the Ministry of Personnel, PG & Pensions, DoPT, Government of India whereby the Central Government with the consent of the Government of West Bengal extended the powers and jurisdiction of the members of the DSPE to the whole of the State of West Bengal for investigation of offences under the Prevent of Corruption Act, 1988. Emphasis has been laid upon the proviso to the Circular whereby the notification was made inapplicable in respect of public servants defined under section 2 (c) of the PC Act employed in connection with the affairs of the State or any authority controlled or aided wholly or partly by the State Government, except at the specified request and with the prior concurrence of the State Government. Reliance has also been placed in this regard on ***Mayawati v. Union of India*** reported at (2012) 8 SCC 106, more particularly para 9 to show that in the

absence of the consent of the State Government, the RC is *non est* and *void ab initio*.

7. It is the case of the Petitioner that it is the State Government of West Bengal which is the competent authority to grant consent for the investigation of offences against the Petitioner since the check period in the present case includes the period of service of the Petitioner with the Government of West Bengal, i.e., from 20.08.1990 to 02.10.2003. The counsel has relied upon section 2 (c) and (e) of the All India Services (Discipline and Appeal) Rules, 1969 in furtherance of his argument. It has also been contended that the Central Government or the DoPT does not have the jurisdiction to grant/entertain sanction for the above mentioned period. The learned counsel for the Respondent No. 3, i.e., Government of West Bengal, has supported the contention of the Counsel for the Petitioner and submits that Respondent no. 1 has no power and jurisdiction to carry out the investigation against an IAS Officer belonging to a particular state cadre without the consent of the State Government. Reliance has been placed upon *M. Balakrishna Reddy v. Director, CBI* reported at (2008) 4 SCC 409 at paras 15, 18 and 19, which read as under:

“15. At the outset, we must frankly admit that the two factors weighed with the High Court, namely, (i) the Head Office of the UPSC is located at New Delhi; and (ii) the appellant is an employee of Central Government and on those grounds, the Delhi Act would be applicable have not impressed us. The said grounds, in our opinion, do not confer jurisdiction on CBI to invoke the Delhi Act. The main ground, therefore, which remains to be considered is whether 'consent' as envisaged by Section 6 of the Delhi Act has been given by the State Government of Madhya Pradesh to the Central Government so as to enable the latter to invoke the provisions of the Delhi Act. For the said purpose, it is necessary to bear in mind the relevant provisions of the Delhi Act.

18. Section 6 is very important which requires consent of State Government for exercising powers and jurisdiction under the Act by Special Police Establishment to any area in a State not being Union Territory or Railway. The said section, therefore, may be quoted in extenso;

6. Consent of the State Government to exercise powers and jurisdiction:- Nothing contained in Sec. 5 shall be deemed to enable any member of the Delhi Special Police Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area without the consent of the Government of that State.

19. Plain reading of the above provisions goes to show that for exercise of jurisdiction by the CBI in a State (other than Union Territory or Railway Area), consent of the State Government is necessary. In other words, before the provisions of the Delhi Act are invoked to exercise power and jurisdiction by Special Police Establishment in any State, the following conditions must be fulfilled;

(i) A notification must be issued by the Central Government specifying the offences to be investigated by Delhi Special Police Establishment (Section 3);

(ii) An order must be passed by the Central Government extending the powers and jurisdiction of Delhi Special Police Establishment to any State in respect of the offences specified under Section 3 (Section 5); and

(iii) Consent of the State Government must be obtained for the exercise of powers by Delhi Special Police Establishment in the State (Section 6).

8. Reliance is also placed on *State of West Bengal & Others v. Committee for Protection of Democratic Rights, West Bengal and Others* reported at (2010) 3 SCC 571 at paras 27-30, 35, 36.

“27. Though, undoubtedly, the Constitution exhibits supremacy of Parliament over State Legislatures, yet the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and the State Lists. Thus, there is no quarrel with the broad proposition that under the Constitution there is a clear demarcation of legislative powers between the Union and the States and they have to confine themselves within the field entrusted to them. It may also be borne in mind that the function of the Lists is not to confer powers; they merely demarcate the Legislative field. But the issue we are called upon to determine is that when the scheme of Constitution prohibits encroachment by the Union upon a matter which exclusively falls within the domain of the State Legislature, like public order, police etc., can the third organ of the State viz. the Judiciary, direct the CBI, an agency established by the Union to do something in respect of a State subject, without the consent of the concerned State Government?

28. In order to adjudicate upon the issue at hand, it would be necessary to refer to some other relevant Constitutional and Statutory provisions as well. As noted earlier, the Special Police Act was enacted by the Governor General in Council in exercise of the powers conferred by the Government of India Act, 1935 (Entry 39 of List I, Seventh Schedule). The said Entry reads as under:-

"Extension of the powers and jurisdiction of members of a police force belonging to any part of British India to any area in another Governor's Province or Chief Commissioner's Province, but not so as to enable the police of one part to exercise powers and jurisdiction elsewhere without the consent of the Government of the Province or the Chief Commissioner as the case may be; extension of the powers and jurisdiction of members of a police force belonging to any unit to railway areas outside that unit."

It is manifest that the Special Police Act was passed in terms of the said Entry imposing prohibition on the Federal Legislature to enact any law permitting the police of one State from investigating an offence committed in another State, without the consent of the State. The said Entry was replaced by Entry 80 of List I of the Seventh Schedule to the Constitution of India. The said entry reads thus:

"Extension of the powers and jurisdiction of members of a police force belonging to any State to any area outside that State, but not so as to enable the police of one State to exercise powers and jurisdiction in any area outside that State without the consent of the Govt. of the State in which such area is situated; extension of the powers and jurisdiction of members of a police force belonging to any State to railway areas outside that State.

29. Entry 2 of List II of the Constitution of India, which corresponds to Entry 2 List II of the Government of India Act, conferring exclusive jurisdiction to the States in matter relating to police reads as under:

Entry 2 List II:

"2. Police (including railway and village police) subject to the provisions of entry 2A of List I."

Entry 2A of List I:

"D-A. Development of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment."

30. From a bare reading of the afore-noted Constitutional provisions, it is manifest that by virtue of these entries, the legislative power of the Union to provide for the regular police force of one State to exercise power and jurisdiction in any area outside the State can only be exercised with the consent of the Government of that particular State in which such area is situated, except the police force belonging to any State to exercise power and jurisdiction to railway areas outside that State.

35. Section 6, the pivotal provision, reads as follows:-

"6. Consent of State Government to exercise of powers and jurisdiction. - Nothing contained in Section 5 shall be deemed to enable any member of the Delhi Special Police

Establishment to exercise powers and jurisdiction in any area in a State, not being a Union Territory or railway area, without the consent of the Government of that State."

Thus, although Section 5(1) empowers the Central Government to extend the powers and jurisdiction of members of the Delhi Special Police Establishment to any area in a State, but Section 6 imposes a restriction on the power of the Central Government to extend the jurisdiction of the said Establishment only with the consent of the State Government concerned.

36. Having noticed the scope and amplitude of Sections 5 and 6 of the Special Police Act, the question for consideration is whether the restriction imposed on the powers of the Central Government would apply mutatis mutandis to the Constitutional Courts as well. As stated above, the main thrust of the argument of Shri K.K. Venugopal, learned senior counsel, is that the course adopted by the High Court in directing the CBI to undertake investigation in the State of West Bengal without the consent of the State is incompatible with the federal structure as also the doctrine of separation of powers between the three organs of the State, embodied in the Constitution even when the High Court, on the material before it, was convinced that the State Police was dragging its feet in so far as investigation into the 4th January, 2001 carnage was concerned."

9. Refuting the contention of the Petitioner, the Counsel for CBI submits that the provisions of section 6 of the DSPE Act are not applicable to the petitioner on account of the fact that on the date of registration of the case, the Petitioner was posted as Commissioner (L&D), DDA which is a central deputation and thus it is the Central Government/DoPT that has full competence to grant sanction for the entire check period. It has further been argued that consent under section 3 of the DSPE Act, 1946 has been given by the Central Government thereby giving CBI full jurisdiction to investigate into the matter.
10. I have heard counsel for the parties, considered their rival submissions and also perused the case record, the notification as well as the relevant

rules. It is trite that section 6 of the Act is mandatory in nature and the jurisdiction of DSPE can only be enlarged vide consent of the concerned State Government. However, the present case gives rise to a peculiar situation wherein the check period comprises of different postings of the Petitioner within the State of West Bengal as well as the central deputation of the Petitioner. It may, however, be noted that on the date of registration of the RC, the Petitioner was on central deputation and was posted as Commissioner (L&D), DDA, Vikas Sadan, New Delhi and more particularly, was not subordinate to the Government of West Bengal. None of the judgments cited by either of the parties deal with this peculiar situation and thus the judgments cited are not applicable to the present case.

11. Though there is no judgment on this issue as regards Section 6 DSPE Act is concerned, however the Hon'ble Supreme Court in ***Abhay Singh Chautala v. Central Bureau of Investigation***, reported at (2011)7 SCC 141, has considered the question of sanction under Section 19 of the Prevention of Corruption Act, 1988, in a situation where the Public Servant, though continues to be a public servant on the day of registration of RC, but has ceased to hold the office for whose abuse the RC has been registered. In this case, the petitioner-accused had allegedly misused a public office but on the date of taking cognizance, he had ceased to hold the office alleged to have been misused and was holding another public office. While reiterating its in ***RS Nayak v. AR Antulay***, reported at (1984) 2 SCC 183, it was observed as under:

“22. It will be, therefore, our task to see as to whether the judgment in A. R. Antulay's case (cited supra) and the law decided therein, particularly in paragraphs 24, 25 and 26 is obiter. Paragraphs 24, 25 and 26 are as under:

"24. Now if the public servant holds two offices and he is accused of having abused one and from which he is removed but continues to hold the other which is neither alleged to have been used nor abused, is a sanction of the authority competent to remove him from the office which is neither alleged or shown to have been abused or misused necessary? The submission is that if the harassment of the public servant by a frivolous prosecution and criminal waste of his time in law courts keeping him away from discharging public duty, are the objects underlying Section 6, the same would be defeated if it is held that the sanction of the latter authority is not necessary. The submission does not commend to use. We fail to see how the competent authority entitled to remove the public servant from an office which is neither alleged to have been used or abused would be able to decide whether the prosecution is frivolous or tendentious. An illustration was posed to the learned Counsel that a Minister who is indisputably a public servant greased his palms by abusing his office as Minister, and then ceased to hold the office before the court was called upon to take cognizance of the offence against him and therefore, sanction as contemplated by Section 6 would not be necessary; but if after committing the offence and before the date of taking of cognizance of the offence, he was elected as a Municipal President in which capacity he was a public servant under the relevant Municipal law, and was holding that office on the date on which court proceeded to take cognizance of the offence committed by him as a Minister, would a sanction be necessary and that too of that authority competent to remove him from the office of the Municipal President. The answer was- in affirmative. But the very illustration would show that such cannot be the law. Such an interpretation of Section 6 would render it as a shield to an unscrupulous public servant. Someone interested in protecting may shift him from one office of public servant to another and thereby defeat the process of law. One can legitimately envisage a situation wherein a person may hold a dozen different offices, each one clothing him with the status of a public servant under Section 21 IPC and even if he has abused only one office for which either there is a valid sanction to prosecute him or he has ceased to hold that office by the time court was called upon to take cognizance, yet on this assumption, sanction of

11 different competent authorities each of which was entitled to remove him from 11 different public offices would be necessary before the court can take cognizance of the offence committed by such public servant/while abusing one office which he may have ceased to hold. Such an interpretation is contrary to all canons of construction and leads to an absurdity and product which of necessity must be avoided. Legislation must at all costs be interpreted in such a way that it would not operate as a rogue's charter. [See Davis & Sons Ltd. v. Atkins [1977] ICR 662 (HL)]

29. The Court answered the first question that the relevant date of sanction would be the date on which the cognizance was taken of the offence. Since in paragraph 23 to 26 the Court found that the accused in that case did not continue to hold the office that he had allegedly abused on the date of cognizance, there was no necessity of granting any sanction. The Court held so in paragraph 27 in the most unequivocal terms. The Court goes on to record : (Antulay case, SCC p. 209)

"therefore, it is crystal clear that the complaint filed against the accused charged him with criminal abuse or misuse of only his office as Chief Minister. By the time, the court was called upon to take cognizance of the offences, so alleged in the complaint, the accused had ceased to hold the office of the Chief Minister. On this short ground, it can be held that no sanction to prosecute him was necessary as former Chief Minister of Maharashtra State. The appeal can succeed on this short ground." (Emphasis supplied).

54. The learned senior counsel tried to support their argument on the basis of the theory of "legal fiction". We do not see as to how the theory of "legal fiction" can work in this case. It may be that the appellants in this case held more than one offices during the check period which they are alleged to have abused; however, there will be no question of any doubt if on the date when the cognizance is taken, they are not continuing to hold that very office. The relevant time, as held in S.A. Venkataraman Vs. State (cited supra), is the date on which the cognizance is taken. If on that date, the appellant is not a public servant, there will be no question of any sanction. If he continues to be a public servant but in a different capacity or holding a different office than the one which is alleged to have been

abused, still there will be no question of sanction and in that case, there will also be no question of any doubt arising because the doubt can arise only when the sanction is necessary. In case of the present appellants, there was no question of there being any doubt because basically there was no question of the appellants' getting any protection by a sanction.

56. Thus, we are of the clear view that the High Court was absolutely right in relying on the decision in *Prakash Singh Badal v. State of Punjab* (cited supra) to hold that the appellants in both the appeals had abused entirely different office or offices than the one which they were holding on the date on which cognizance was taken and, therefore, there was no necessity of sanction under Section 19 of the Act as held in *K. Karunakaran v. State of Kerala* (cited supra) and the later decision in *Prakash Singh Badal v. State of Punjab* (cited supra). The appeals are without any merit and are dismissed.”

12. The above observation made by the Hon’ble Apex Court can be treated as an authority to the limited extent of determining as to which is the authority competent to grant sanction or to give consent as stated under section 6 of the DSPE Act. As per the aforesaid judgment, the relevant date shall be the date on which the cognizance is taken; which in the present case shall be the date on which the FIR is registered. Since on the day the FIR is registered, the petitioner was Commissioner, (L&D), DDA, New Delhi; the CBI has duly exercised its powers without any consent under section 6 from the Government of West Bengal.
13. Further since the check period constitutes of the period during the postings with State Government as well as some tenure of the Central Deputation, I am of the view that it was sufficient for the investigating agency, which is CBI in the present case, to choose either mode of investigation, that is to say, to either seek consent of the State Government under section 6 DSPE Act or abide by section 3 of the DSPE Act and seek consent of the Central Government. From the pleadings of

the CBI, it is revealed that it chose to follow the mandate under section 3 DSPE Act since the check period included the period of central deputation as well as due to the fact that on the date of registration of RC, the Petitioner had ceased to be under the control of the Government of West Bengal nor was he managing the affairs of the Government of West Bengal.

14. It is a settled position of law that the courts cannot direct the investigating agencies as to the manner in which the investigation should be conducted. To choose the manner of investigation and the modes adopted is the sole prerogative of the investigation agency. I thus do not find any merit in the argument of the counsel for the petitioner.
15. Another contention raised by the counsel for the Petitioner is that since the majority of the check period includes the period that the Petitioner has served in the State of West Bengal, CBI ought to have taken the consent under section 6 DSPE Act. I do not find force in this submission of the Counsel for the Petitioner either. It is an admitted position that though for a majority of the check period, the petitioner was holding various designations in the State of West Bengal; the day on which the RC was registered against the Petitioner, the Petitioner was on Central deputation and was stationed at Delhi. Further a perusal of the RC reveals that a majority of the assets, which are subject-matter of the offence, are in Delhi while some are in Gaziabad, NOIDA, Punjab, Mathura etc. No asset has been mentioned in the RC to be situated /located in the State of West Bengal. To say that only because the majority check period is his tenure in State of West Bengal, the CBI ought to have taken consent under section 6 DSPE Act would be improper especially when the consent under section 3 of the Act is in operation. Further, the CBI cannot be asked to chase the petitioner into every State where the petitioner may be posted or

has accumulated assets. It must be remembered that the present case is not of accumulation of wealth by a single act of bribery or series of acts but pertains to the accumulation of disproportionate assets over a long period of time.

16. Another fact that needs attention is that the CBI has sought sanction for prosecution from the Ministry of the Department of Personnel and Training, Government of India, i.e, Central Government under section 19 of the Prevention of Corruption Act, 1988. During the course of hearing of the petition, it was brought to the notice of the Court that the said sanction has been granted by the Central Government. The CBI has also placed on record circulars CVC Circular No. 012/VGL/020 dated 29.03.2012 as well as DoPT Circular no. 107/8/99-A-VD-.1 dated 27.10.1999 stating that DoPT is the competent authority to grant sanction under section 19 of the PC Act in respect of the IAS Officer serving in connection with the affairs of the State. Thus, no prejudice has been caused to the Petitioner with the non-compliance of section 6 DSPE Act.
17. Another contention raised by the counsel for the Petitioner is that the CBI has wrongly included the income of the wife of the petitioner though the same was properly disclosed as her income from her own independent sources since 1987, even before the Petitioner joined the Indian Administrative Services on 20.08.1990 and much before her marriage on 18.06.1994. So far as the exclusion of certain alleged income is concerned, it needs to be noted that these are matters of evidence and cannot be gone into in a petition under Article 226 of the Constitution. In such matters, the decision given by the Hon'ble Supreme Court in *State of Orissa v. Debendra Nath Padhi*, reported at AIR 2005 SC 359, is relevant.

18. Lastly it has also been contended by the counsel for the petitioner that the petitioner was granted vigilance clearance by the CBI as well as the CVC on 04.06.2009, the date which is outside the check period and thus there is no occasion for the registration of the FIR in question. As far as the said vigilance clearance by the CBI and CVC is concerned, a perusal of the said clearance annexed as Annexure P-3 to the petition under Article 226 of the Constitution of India reveals that the said clearance is only based on a previous record check of the petitioner to the effect if any case has been registered against him on a prior occasion. The clearance nowhere indicates that his assets were probed into and he was not found to be in possession of disproportionate assets. The procedure of vigilance clearance, at the time of promotion, is only to the effect that no disciplinary proceedings or criminal case is pending against the civil servant; which as evidence was not in the case of the petitioner and that is why he was granted the vigilance clearance. The scope and ambit of the vigilance clearance is very narrow and, thus, the petitioner cannot claim that because he was granted vigilance clearance at the time of promotion, no complaint can now be filed against him for acquisition of disproportionate assets. As far as the contention of the closure of a previous complaint by CVC is concerned, the petitioner herein has placed on record a copy of the said closure which clearly specifies that the complaint was closed purely upon the comments of the Ministry of Information and Broadcasting, DoPT and the Government of West Bengal and that the closure was not after any inquiry/investigation by the CVC. Further, sanction u/s 19 PC Act has already been granted by the DoPT for the prosecution of the petitioner in the FIR in question.
19. Lastly, it has been contended by the counsel for the petitioner that the FIR in question has been registered in violation of the provisions of the

CBI Manual and has relied upon Rule 10.6 of the CBI Manual which states as under:

“10.6 If a case is required to be registered under the Prevention of Corruption Act, 1988 against an officer of the rank of Joint Secretary and above or a Government appointee in the Central Public Sector Undertakings, prior permission of the Government should be taken before enquiry/investigation as required under section 6A of the DSPE Act except under Section 7 of the PC Act wherein the registration is followed by immediate arrest of the accused.....”

20. The above rule is inapplicable to the petitioner herein who, at the time of the registration of the FIR, was Commissioner (L&D), DDA, New Delhi.
21. It has been further contended by the counsel for the petitioner that no preliminary enquiry has been conducted being in complete violation of Chapter 9 of the CBI Manual as well as the dictates of the Hon'ble Apex Court in ***P. Sirajuddin v. State of Madras*** reported at AIR 1971 SC 520, ***State of Haryana v. Bhajan Lal*** reported at AIR 1991 SC 604. I do not find force in the submission of the counsel for the petitioner since a perusal of the provisions of the CBI Manual would reveal it clear that a preliminary enquiry is not a mandatory procedural requirement under the CBI Manual and is to be resorted to only when the complaint or information so received is not adequate to justify registration of a regular case under the provisions of section 154 of the Code of Criminal Procedure. Further, in the case of ***Lalita Kumari v. Government of U.P.*** reported at (2014)2 SCC 1 the Hon'ble Apex Court has now clarified that registration of FIR is mandatory in cases where the complaint discloses a cognizable offence and it is only when the information given does not disclose a cognizable offence that the police may conduct short preliminary verification or inquiry to the limited extent of ascertaining if

any cognizable offence is made out. Paras 119 and 120 are reproduced as under:

119. Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.

Conclusion/Directions

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

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

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

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such

closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

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

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

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

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

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

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

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

22. During the course of arguments, it has also been brought to the notice of this Court that the chargesheet has already been filed in the case and sanction under section 19 of the PC Act has also been granted by the DoPT. Thus, the present petition, with the observations made above, is dismissed with liberty to the petitioner to raise all the grounds at the time of framing of charges/discharge. It is clarified that the observations made by this Court shall not cause any prejudice to the petitioner herein at the time of consideration of the application for discharge by the learned Trial Court.

CRL. M.A. 12618/2013

23. Application stands dismissed in view of the order passed in the criminal writ petition.

G.S.SISTANI, J

11th May , 2015

msr