

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 153 of 2017****Order Reserved on 25.08.2017****Order Delivered on 12.10.2017**

Harish Pandey S/o Late Shri Jairam Pandey, Aged About 56 Years
Assistant Conservator Of Forests, Forest Division Dhamtari, District
Dhamtari (Chhattisgarh).

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Law And Legislative Affairs, Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
2. Principal Secretary Department Of Forests, New Mantralaya, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)
3. Superintendent Of Police, Anti- Corruption Bureau, G E Road, Raipur, Near Anand Nagar, Raipur (Chhattisgarh)
4. Station House Officer, Anti- Corruption Bureau, G E Road, Raipur, Near Anand Nagar, Raipur (Chhattisgarh)

---- Respondents

For the Petitioner	: Shri Kanak Tiwari, Senior Advocate with Shri Varun Sharma, Advocate.
For the Respondent / State :	Shri Anil S. Pandey, Government Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

1. Heard.
2. This petition has been brought under Article 226 of the Constitution of India with a prayer to quash the order of sanction for the prosecution passed by respondent No.1 alongwith grant of other reliefs.
3. It is submitted by counsel for the petitioner that the petitioner is an employee of the Department of Forests, Government of Chhattisgarh and holds designation of Assistant Conservative of Forest. A raid was conducted

at his residence and other places of the close relatives of the petitioner on 8.9.2010. On the basis of the enquiry and the articles found in possession of the petitioner, his family members and close relatives, the First Information Report was lodged. The case was investigated and the prosecution has been instituted against the petitioner for the offences under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act').

4. Learned counsel for the petitioner submits that in the instant case against the petitioner, the investigation suffers from various *lacunas*. Head-Constable – Natthe Singh submitted a preliminary verification report stating that the petitioner, who is a public servant, is in possession of assets which are disproportionate compared to his sources of income. It is also submitted that this preliminary report is not an information as defined under Section 154 of the Code of Criminal Procedure. Reliance has been placed on the judgments of the Supreme Court in **Ashok Bhutia Vs. State of Sikkim** reported in (2011)4 SCC 402, **P. Sirazuuddin vs. State of Madras** reported in (1970)1 SCC 595, **State of Haryana and Others vs. Bhajan Lal and Others** reported in (1992) Supp 1 SCC 335, **Suryasankaran Karri vs. State** reported in (2006) 7 SCC 172 and **State of Uttar Pradesh vs. Bhagwant Kishore Joshi** reported in AIR 1964 SC 221. On the basis of the above judgments, the position is settled that preliminary enquiry has to be made before registering any FIR.

5. The First Information Report against the petitioner was recorded on 8.9.2010 which is a verbatim copy of the preliminary verification report, which shows that no enquiry as postulated in the various judgments of

Supreme Court was conducted. It is submitted that a search warrant was issued on 7.9.2010 before registration of FIR, hence, the search conducted was unauthorized. Reliance has been placed on **State of Haryana and Others vs. Bhajan Lal and Others** (supra), **Lalita Kumari vs. State** reported in **2012 AIR SCW 1831**, wherein it has been laid down by the Hon'ble Supreme Court that an enquiry has to be made to ascertain and verify the commission of cognizable offence in particular cases before any FIR is registered. It is submitted that the preliminary verification report submitted by Head-Constable – Natthe Singh is totally vague, without specific particulars which could not have been made the basis for lodging of the FIR and initiating the investigation process.

6. It is further submitted that Inspector – U.K. Chandravanshi was authorized by the Superintendent of Police on 7.9.2010 to make search and investigate the case thereafter. This authorization as mentioned in the application for search warrant dated 7.9.2010 does not show any application of mind which is contrary to the directions given in the **State of Haryana and Others vs. Bhajan Lal and Others** (supra). It is submitted that investigation in the case has not been done in accordance with the provisions of the Cr.P.C. and in accordance with the provisions under the PC Act. Inspector of Police is not authorized to investigate the case under Section 17 of the PC Act.

7. It is submitted that the scribe of the FIR cannot investigate the same case and on this point, reliance has been placed on the judgment of the Supreme Court in the cases of **H.N. Rishbud and Anr. vs. State of Delhi**, reported in **AIR 1955 SC 196**, **Bhagwan Singh vs. State of Rajasthan**,

reported in **(1976) 1 SCC 15, Megha Singh vs. State of Haryana**, reported in **1996 (11) SCC 709, State vs. Rajangam**, reported in **(2010) 15 SCC 369** and **State of Madhya Pradesh and Others vs. Ram Singh**, reported in **2000 (5) SCC 88**.

8. It is submitted that the petitioner provided the detailed explanation regarding the lawful acquisition of articles of property of which the inventory was made by the Investigation Officer and the same has not been looked into and considered by the Investigating Officer. The case under Section 13(1)(e) read with Section 13(2) of the PC Act can be prosecuted only when the person concerned is unable to explain satisfactorily about the legal acquisition of the property found in his possession. Reliance has been placed on the judgments in the cases of **State of Madhya Pradesh vs. Mubarak Ali**, reported in **1959 Supp (2) SCR 201 : AIR 1959 SC 707**, **Din Dayal Sharma vs. State of Uttar Pradesh**, reported in **AIR 1959 SC 831**, **Muni Lal vs. Delhi Administration**, reported in **(1971) 2 SCC 48**, **State of Haryana and Others vs. Bhajan Lal and Others** (supra), **Union of India and Others vs. T. Nathamuni**, reported in **(2014) 16 SCC 285** and **B. Ranganathan vs. State (Madras High Court)**, reported in **2003 Cr.L.J. 3779**.

9. It is also submitted that before allowing the application for issuance of search warrant, the Special Court has not applied its mind. It is submitted by the Senior Counsel for the petitioner that a free and fair investigation has not been conducted in this case because of which this writ petition is entertainable. Reliance has been placed on the judgments of **S.N. Sharma vs. Bipen Kumar Tiwari**, reported in **(1970) 1 SCC 653**, **State of West**

Bengal vs. Swapan Kumar Guha, reported in **(1982) 1 SCC 561**, **Madhavrao Jiwajirao Scindia vs. Sambhajirao**, reported in **(1988) 1 SCC 692**, **Prabhudayal Dewrah vs. District Magistrate**, reported in **(1974) 1 SCC 103**, **State of U.P. vs. R.K. Shrivastava**, reported in **(1989) 4 SCC 59**, **State Inspector of Police vs. Surya Sankaram Karri**, reported in **(2006) 7 SCC 172**, **A.R. Antule vs. S.R. Nayak**, reported in **(1988) 2 SCC 608**, **State of M.P. vs. Mohan Lal Soni**, reported in **(2000) 6 SCC 338**, **Allahabad High Court Amravati vs. State of Uttar Pradesh**, reported in **2005 Cr.L.J. 755**, **Rajiv Thapar vs. Madan Lal Kapoor**, reported in **(2013) 3 SCC 330** and **Manoj Kumar Sharma vs. State of Chhattisgarh**, reported in **(2016) 9 SCC 1**.

10. It is further submitted, that the case against the petitioner has been concocted on the basis of various allegations. The details regarding the articles of property of which the inventory was made by the Investigation Officer, has been explained satisfactorily by the petitioner, even then that was not taken into consideration by the Investigating Officer. All the acquisitions made by the petitioner has been intimated to the department as per rules. It is also submitted that the sanction granted for prosecution is not proper and without application of mind. Looking to the various lapses committed in the enquiry and investigation of the case and that the investigation was done without proper authorization and by an officer of police who is not authorized under the PC Act to investigate, prayer is made for quashing of sanction order. Further, it is prayed that the case against the petitioner has not been investigated in a free and fair manner, hence, the petitioner is apprehending regarding fair trial. Hence, the criminal proceedings against the petitioner be quashed.

11. Learned counsel for the respondent/ State submits that all the arguments submitted by counsel for the petitioner, in fact related to the defence of the petitioner, which can be raised before the trial Court by the petitioner/ accused.

12. Inspector of Police is the investigator of the case, who is authorized by the State of Chhattisgarh to investigate the case under the PC Act in accordance with the notification under first proviso to Section 17 of the PC Act. It is submitted that the Head-Constable – Natthe Singh who submitted the preliminary verification report consisted of complete details and this report was based on constant vigilance done by the Anti-Corruption Bureau. It is submitted that it cannot be held at this stage that the report submitted by the Head-Constable – Natthe Singh was a copy for recording of FIR because the informant of FIR is another Constable – Ramprasad Mishra. Learned State counsel relied on the judgments of **State of Telangana vs. Habib Abdullah Jeelani and Others**, reported in (2017) 2 SCC 779 in which it was held by the Supreme Court, that if the information given to police discloses commission of cognizable offence, then at that stage other considerations such as genuineness or credibility of information is not relevant. The objections regarding the investigation being not fair, can very well be raised before the trial Court as well by way of defence and the petition has been brought without any basis.

13. It is submitted by the State counsel that no objection can be raised by the petitioner before this Court regarding any error, omission or irregularity in the sanction granted for prosecution as it is clearly provided under Section 19(3) of the PC Act that no finding, sentence or order passed by a Special

Judge shall be reversed or altered by a Court, in appeal, confirmation or revision on the ground of the absence of, or any error, omission or irregularity in the sanction required under sub-section (1), unless in the opinion of that court, a failure of justice has in fact been occasioned thereby. The reference has been made to the case of **Indu Bhusan Chatterjee vs. State of West Bengal**, reported in **1958 Cr.L.J. 279**, **C.S. Krishna Murthy vs. State of Karnataka**, reported in **2005(4) SCC 81**, **State of Madhya Pradesh vs. Virendra Kumar Tripathi**, reported in **(2009) 15 SCC 533**, **State of Bihar and Others vs. Rajmangal Ram** reported in **2014(11) SCC 388**.

14. Reference has been made to the judgment of Division Bench of this Court in Writ Appeal No. 242 of 2017 dated 4.8.2017 in which it has been clearly held that grant of sanction is essentially a question of fact and challenge which should be left to be determined by the trial Court. Hence, the question raised by the petitioner that the sanction granted is not proper has no force as it has to be determined on the basis of evidence produced before the trial Court. The submission made by counsel for the petitioner cannot be accepted in its face value. On these grounds, it is prayed that the petition is without substance, which may be dismissed.

15. In reply to the above arguments submitted, counsel for the petitioner submits that he does not want to press the question raised regarding the sanction of prosecution. It is again submitted that free and fair investigation is missing in this case which is directly affecting the fundamental rights of the petitioner under Article 21 of the Constitution of India.

16. Heard counsel for both the parties and perused the documents on record.

17. The grounds in the instant petition are considered in the light of the guidelines laid down by the Supreme Court in **State of Haryana and Others vs. Bhajan Lal and Others** (supra) in paragraph 102:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under [Section 482](#) of the Code of Criminal Procedure which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to given an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the First Information Report 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;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate

within the purview of Section 155(2) of the Code;

- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;
- (7) Where a criminal proceeding is manifestly attended with mala fide 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.'

18. It is true that the prosecution under Section 13(1)(e) of the PC Act is lodged only in case the public servant is unable to explain satisfactorily account for the pecuniary resources or property disproportionate to his known sources of income, found in the investigation. The petitioner has given explanation before the Investigation Officer which has not been accepted by him. Hence, for the present, the same explanation can be offered before the trial Court by way of defence with the support of statements of witnesses and other documents which may be taken into consideration by the trial Court while adjudicating the case against the petitioner. The submissions made on behalf of the petitioner regarding irregularities committed cannot be regarded as sufficient to hold that the investigation against the petitioner was conducted in a casual manner.

19. Section 93 (1) (c) of the Code of Criminal Procedure provides that where the Court considers that for the purpose of any enquiry, trial or other proceedings under the Code search warrant may be issued, it may issue the same and hence looking to this provision there is no such requirement that FIR is to be registered prior to make any application for issuance of search warrant to the concerned Court.

20. Regarding the role of investigator, as discussed in the arguments submitted, it has to be established before the trial Court that the investigation conducted in this matter has caused failure of justice or has caused prejudice in the case. Whatever has been submitted by counsel for the petitioner is infact the ground of defence before the trial Court and these

submissions cannot be entertained by way of the writ petition to hold that the proceedings against the petitioner amounts to miscarriage of justice. Hence, for these reasons, this petition is found to be devoid of merits and it is dismissed accordingly.

Sd/-

(Rajendra Chandra Singh Samant)
Judge