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HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(Cr.) No. 362 of 2016****Order Reserved on 24.08.2017****Order Delivered on 31.08.2017**

Shri Munna Lal Saini S/o Late Shri C.L. Saini, Aged About 60 Years
Presently posted as Sub Divisional Officer, Water Resources, Sub
Division Deobhog, District Gariyaband Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Water Resources Department, Government Of Chhattisgarh, Mantralaya, Mahanadi Bhawan, New Raipur Chhattisgarh.
2. Superintendent Of Police, State Anti Corruption Bureau, Raipur Chhattisgarh
3. Investigation Officer, Inspector Of Police, Anti Corruption Bureau, Raipur, Chhattisgarh

---- Respondents

For the Petitioner	:	Shri Sharad Mishra, Shri Prasad and Shri Sachin Singh Rajput, Advocates.
For the Respondent/State	:	Shri Ashish Shukla, Government Advocate.

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

1. Heard.
2. This petition has been filed under Article 226 of the Constitution of India. The petitioner had been a public servant working in the capacity of Sub-Engineer, Department of Irrigation, Sub-Division Nagri, District Dhamtari, Chhattisgarh. A raid was conducted by Respondents No. 2 and 3 – Superintendent of Police and Investigation Officer/ Inspector of Police in the premises of the petitioner situated at Irrigation Colony, Nagri, Dhamtari and the residential house situated at Geetanjali Nagar, Raipur. On 29.12.2009, an entry was made and a First Information Report was lodged

vide Crime No. 56 of 2009 which was registered under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 (for short 'the PC Act') and thereafter investigation was carried on.

3. Learned counsel for the petitioner submits that the investigation in the case is not being done in accordance with the provision under Section 17 of the Prevention of Corruption Act, 1988. The investigation is being conducted by the Officer of Inspector level. Part-C of this provision specifically provides that the investigation shall be done by a Deputy Superintendent of Police or a Police Officer of equivalent rank. Reliance has been placed on the judgments of Supreme Court in **State Inspector of Police, Visakhapatnam vs. Surya Sankaram Karri** reported in **(2006) 7 SCC 172** and **State of Andhra Pradesh vs. P.V. Narayana** reported in **1971 AIR (SC) 811** wherein it was held that authorization to investigate is not a mere formality but the provision is mandatory and hence, the ignorance of mandatory provision by itself vitiates the raid conducted by respondents No.2 and 3 and the investigation that is being carried on thereafter. It is also submitted that the ingredients of Section 13(1)(e) of the PC Act are not made out in this case. The petitioner has submitted all the documents of his income and the documents showing income of his wife and son which has been clubbed with the income of the petitioner, which is totally uncalled for. The petitioner has objected for taking into consideration the acquisition and income of his wife and son which is not being considered by respondents No.2 and 3. Hence, principles of natural justice have not been followed and free and fair investigation is not being conducted by respondents No.2 and 3.

4. Learned counsel for the petitioner also submitted that the sanction for prosecution has been sought from the parent department of the petitioner vide order dated 1.7.2016 and the parent department of the petitioner and the department concerned has given a negative opinion with respect to grant of sanction for the prosecution. Hence, it is prayed that the investigation intended by the prosecution against the petitioner amounts to abuse of process of law. A prayer has been made to quash all the proceedings and grant leave in favour of the petitioner.

4. Learned State counsel submits that this is second round of litigation brought by the petitioner before this Court. Earlier, the petitioner preferred W.P.(Cr.) No. 332 of 2016 (Munna Lal Saini vs. State of Chhattigarh and Others) which was disposed off with a direction and later on this petition has been filed. In reply to the contention that the officer of Inspector level of police does not have capacity to investigate, it is submitted that under proviso of Section 17 of the PC Act provides that an Officer not below the rank of Inspector of Police if authorized by the State Government by a general or special order may also investigate such offences. The Government of Chhattisgarh has vide notification dated 17.9.2003 authorized all the officers of the rank of police inspector to investigate the cases under the PC Act. It is also submitted that the investigation has been conducted and in the result it has been found that the petitioner is amassing disproportionate assets to the tune of Rs.78,69,559/-. It is also submitted that although the parent department of the petitioner and the department concerned has given a negative opinion but the opinion of department of law legislation is pending. Hence, under these circumstances, the petitioner has no case.

5. Perused the record.

6. Considering the submissions made and perused the documents on record. The first ground of challenge by the petitioner is negated as there is a State Notification under the proviso to Section 17 of the PC Act and according to which Inspector of Police is authorized to investigate the cases under the PC Act. The second ground of objection that the income of wife and son of accused has also been clubbed with the income of the petitioner had been a matter of investigation which has been investigated and a different conclusion has been drawn by the respondents in this respect. The allegations made by the petitioner are subject to be rebutted and disproved it can be done only when a trial is conducted. Reliance has been placed by the petitioner on the judgment of Supreme Court in the case of **D.S.P. Chennai vs. K. Inbasakaran** reported in **2006(1) SCC 420**, which is a decision of criminal appeal after the trial was completed and it is a finding of fact, which was on the basis of the evidence on record and cannot be taken into consideration at this stage in this matter.

7. After due consideration, it is found that the case of the petitioner is without any substance and no interference is called for at this stage. Hence, for these reasons, this petition is dismissed at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge