

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO.1856 OF 2008

ORDER:

This criminal revision case is filed by the petitioner/A-1 challenging the order in CrI.M.P.No.962 of 2007 in C.C.No.12 of 2004 dated 08.12.2008, passed by the Special Judge for CBI Cases at Hyderabad, registered for the offences punishable under Section 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act (for short 'P.C. Act').

The facts of the case in nutshell are that, during the check period from 01.01.1997 to 11.06.2002, Smt. K. Mythili Rani/A-1, while discharging her duties as Commissioner of Income Tax, an IRS Officer in Central Government Class-I Service acquired disproportionate assets worth Rs.2,42,50,941/- to her known source of income, which she could not satisfactorily account for.

The following are the grounds urged by A-1 before the Trial Court:

- a) The respondent has no right to register the FIR and investigate the crime against the petitioner without obtaining prior consent from the Central Government as the petitioner is working as Commissioner of Income Tax, which is equivalent to the post of Joint Secretary in the Central Government as per the Central Vigilance Commission Ordinance dated 04.04.1999, which was amended vide Resolution dated 13.08.2002. Subsequently the same was

enacted and incorporated in C.V.C. Act and amended Section 6(A) of Delhi Special Police Enactment (DSPE) Act.

- b) The respondent took a check period of ten years in the FIR and subsequently it was reduced to five years without any reason. The five year check period does not give a comprehensive and true picture of the known sources of income, pecuniary resources and property in possession of the petitioner.
- c) Though the respondent is well-aware that the petitioner joined the Central Government Class-I service as an IRS officer in the year 1979, before that, she worked as an Officer in Union Bank of India, which is a Nationalized Bank for two years and also worked as a Research Scholar in Indiana University, USA for one year, it is stated that the petitioner received substantial amount during her student days, being an awardee of the National Science Talent Scholarship from Intermediate course onwards upto completion of her post graduation in M.Sc (Bio-Chemistry). Thus, A-1 started earning income for more than 25 years prior to the check period, which were ignored by the respondent without giving any credit.
- d) *Prima facie*, the properties of the A-1, her husband A-2, her son and father were tagged to the petitioner/A-1 under the colour of benami without any substantive material produced before this Court. The investigation itself revealed that they have got substantial pecuniary resources to acquire the properties standing on their names. The respondent inflated

and exaggerated the expenditure and concealed the income of the peititioner/A-1 and over valued the assets for foisting a false case against her.

- e) The sanction for prosecution against the petitioner/A-1 is not valid in the eye of law, as the Under Secretary who is junior to the peititioner/A-1 is not competent to issue sanction order for prosecution under Section 19(1)(a) of P.C. Act, against the petitioner.
- f) Finally, it is contended that, the material produced along with the charge-sheet is not sufficient to frame any charge for the offences referred supra, against the petitioner/A-1 and requested to discharge the petitioner/A-1 for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act.

It is also contended by Sri K. Surender, learned Special Public Prosecutor appearing for respondent/C.B.I that the material collected during investigation disclosed that petitioner/A-1 *prima facie* owned, possessed and acquired the properties disproportionate to known source of her income and petitioner/A-1 aided and abetted her in amassing the said wealth and that, it is for the prosecution to choose the check period, having regard to the acquisitive activities of the public servant, and characterise and isolate that period for special scrutiny (vide **State of Maharashtra v. Pollonji Darabshaw Daruwalla**¹) and that there is no truth in the allegations that petitioner/A-1 was earning income from her college days itself for the past 25 years and the check

¹ AIR 1988 SUPREME COURT 88

period cannot be considered in any event. It is also further contended that the sanction under Section 19(1)(a) of P.C. Act against the peititoner/A-1 is in accordance with law, as sanction was accorded by and in the name of the President of India, but signed by the Under Secretary to the Government of India. When the President of India who is the appointing authority accorded sanction, it cannot be a ground to discharge this petitioner/A-1 for the offences punishable under Section 13(2) r/w Section 13(1)(e) of P.C. Act. Further, the material on record also disclosed the grounds and the charges framed against the petitioner/A-1. Therefore, the petitioner/A-1 cannot be discharged for any of the offences referred supra.

The Special Judge for CBI Cases at Hyderabad upon hearing argument of both the counsel, pronounced the common order in CrI.M.P.No.962 of 2007 in C.C.No.12 of 2004 on 08.12.2008, dismissing the petition assigning its reasons.

Aggrieved by the order in CrI.M.P.No.962 of 2007 in C.C.No.12 of 2004 dated 08.12.2008, petitioner/A-1, filed this criminal revision case, questioning the propriety and legality of the order passed by the Trial Court.

Of course, there is a little improvement in the grounds urged in the petition filed before this Court, than the grounds raised before the Court below. The specific grounds of the peititoner/A-1 are as follows:

- 1) The respondent/C.B.I was not authorised to investigate and file charge-sheet by the Superintendent of Police, C.B.I and

therefore, filing of a charge-sheet is against the statute and without any validity.

- 2) No reasons were recorded for giving authorization, which is a mandatory requirement as per the judgment of the Apex Court in **State, Inspector of Police, Visakhapatnam v. Surya Sankaram Karri**² and in the absence of any reasons, filing of charge-sheet before this Court is vitiated by irregularity, as it is in violation of mandatory requirement.
- 3) The order passed by the Superintendent of Police, C.B.I, did not disclose any reason as to why Sri B. Shankar Rao, Inspector, C.B.I was authorised to complete investigation and Sri B. Satish Prabhu, Inspector, C.B.I, SPE to assist Sri B. Shankar Rao, without recording her inability to take up the investigation and therefore, it is contrary to Section 17 of P.C. Act, which permits the Superintendent of Police alone to conduct investigation. The entire investigation was done by Sri B. Satish Prabhu, Inspector, C.B.I, SPE and Sri B. Shankar Rao, Inspector, C.B.I and thereby, the petitioner/A-1 is liable to be discharged for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act, since the petitioner/A-1 worked as Commissioner of Income Tax, Appeal-II, Hyderabad, and conducting investigation by the respondent/C.B.I against a officer in the cadre of Joint Secretary is contrary to C.B.I manual and in the absence of any advise from C.V.C, the petitioner/A-1 is liable to be

² 2006 (3) SCC (CrI) 225

discharged for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act.

- 4) The Trial Court failed to consider the manner of investigation and clubbing of properties of husband, father, father-in-law and others who have their own independent sources of legal income and that the check period was not properly fixed.
- 5) The Investigating Agency took only five years as the check period, though the petitioner/A-1 started earning from her college days, having received scholarship and thereby, the charges are groundless.
- 6) Issue of F.I.R without conducting any preliminary enquiry or without obtaining advise from the Central Vigilance Commission is contrary to Section 6(A) of Central Vigilance Commission Act and on this ground also the petitioner/A-1 is liable to be discharged for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act.
- 7) It is also further contended that the sanction order is defective and when the sanction is defective, there is no scope for convicting the accused even after trial and when sanction order was passed erroneously, the petitioner/A-1 is liable to be discharged for the offences stated supra.
- 8) Finally, it is contended that, no authorization was given by the Superintendent of Police, C.B.I, SPE, Hyd, to the Investigating Officers to inspect the bankers books as per Section 18 of P.C. Act. But, the Investigating Officers verified the books of accounts, including bankers books of the petitioner/A-1.

During hearing, Sri Bhaskara Mohan appearing for the learned counsel for the petitioner specifically raised a contention that, there is further improvement in the grounds from the stand taken by this petitioner in the Trial Court. When Section 13(1)(e) of P.C. Act made a person or any person on his behalf, is in possession or has, at any stage during the period of his offence, has been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, then a public servant is said to commit the offence of criminal misconduct. When proper reply was given to the show cause notice issued, the authorities did not record any finding whether they were satisfied with the explanation offered or not, accounting for the assets possessed and owned by A-1. In the absence of recording of satisfaction, investigating into the offence and filing of charge-sheet is an illegality. Further, no preliminary enquiry was conducted, which is mandatory, in view of C.B.I manual and on this ground also, the proceedings are vitiated.

The learned counsel for the petitioner further contended that Sri B. Satish Prabhu, Inspector, CBI, SPE is incompetent to investigate into the offence, as he was not authorised by the Superintendent of Police to file any charge-sheet and he was only directed to assist Sri B. Shankar Rao, Inspector, CBI, Hyd, a senior officer who was authorised to investigate into the offences. Therefore, the Sri B. Satish Prabhu, Inspector, CBI, SPE is incompetent to investigate into the crime and the investigation

taken up by the respondent/C.B.I is vitiated, as the petitioner/A-1 is in the cadre of Joint Secretary and the Director of C.B.I is alone competent to take up investigation, but not Sri B. Satish Prabhu, Inspector, CBI, SPE and on this ground alone, the proceedings against the petitioner/A-1 are liable to be dropped for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act.

It is also contended that Sri B. Satish Prabhu, Inspector, CBI, SPE, Hyderabad who conducted investigation is only deputed from Railway Protection Force and no such permission was issued to him to conduct investigation on his deputation and consequently, he is not a 'police officer' within the meaning of Section 2(o) of Cr.P.C and thereby, conducting investigation and filing charge-sheet by the Superintendent of Police, C.B.I, SPE, Hyd with subordinate officers in the cadre i.e. to the petitioner/A-1, is an illegality and on this ground, the petitioner/A-1 is liable to be discharged for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act.

When the Investigating Officers were not authorized to inspect bankers books of accounts, as required under Section 18 of P.C. Act, inspection of bank accounts and drawing up conclusion that the petitioner/A-1 possessed assets disproportionate to her known source of income is a serious illegality and on this ground alone, the petitioner/A-1 is liable to be discharged for the offences mentioned supra. Finally, it is contended that, sanction under Section 19 of P.C. Act is not in accordance with law, as it was signed by the Under Secretary by order and in the name of President. But, the Under Secretary is

inferior in cadre to A-1 and in the absence of any reference as to the explanation of this petitioner to the show cause notice, the proceedings against the petitioner/A-1 are liable to be discharged.

Sri K. Surender, learned Special Public Prosecutor for C.B.I contended that Sri B. Satish Prabhu, Inspector, CBI, SPE was authorized to investigate and arrest the petitioner/A-1. Therefore, failure to obtain authorization from the Superintendent of Police, C.B.I, SPE and file charge-sheet does not amount to breach and on this ground the proceedings cannot be held to be vitiated. It is contended that, Sri B. Satish Prabhu, Inspector, was deputed to C.B.I from Railway Protection Force and when he was deputed to work in C.B.I, he is deemed to be discharging his duties as an officer of C.B.I, but not as an officer of Railway Protection Force, thereby, he is entitled to investigate and file charge-sheet subject to compliance of other conditions, since he was the in-charge of the police station as defined under Section 2(o) Cr.P.C.

Learned Special Public Prosecutor for C.B.I contended that, no preliminary enquiry is required to investigate into the offence and that advice of Central Vigilance Commission is not mandatory, as the Central Vigilance Commission does not have any control over the C.B.I. In addition to that, the order according sanction to prosecute the petitioner/A-1 is in compliance of Section 19 of P.C Act, since it reflected entire material and application of mind and that too legality in the sanction cannot be considered in a petition filed under Section 439 Cr.P.C and therefore, A-1 is not liable to be discharged for the offences stated supra.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1) Whether preliminary enquiry is required to be conducted after obtaining permission from Central Vigilance Commission (CVC)?**
- 2) Whether Sri B. Satish Prabhu, Inspector of Police (CBI, SPE, who filed charge-sheet was authorized to conduct investigation and file charge-sheet in terms of Section 17 of P.C. Act. If not, any prejudice is caused to A-1 on account of filing charge-sheet, duly signed by the Inspector of Police (CBI, SPE, Hyderabad)?**
- 3) Whether Sri B. Satish Prabhu, Inspector of Police (CBI, SPE), who was on deputation from Railway Protection Force, would fall within the definition of Section 2(o) Cr.P.C i.e within the definition of 'Officer in-charge of the police station'? If so, whether he is competent to investigate into the offence and file charge-sheet?**
- 4) Whether validity of the sanction accorded to prosecute the petitioner/A-1 can be decided in a petition filed under Section 239 Cr.P.C?**
- 5) If not, whether the petitioner/A-1 is liable to be discharged from the offences referred supra?**

POINT NO.1

The specific ground raised by the learned counsel for the petitioner is that, as the petitioner/A-1 is a higher official and requires sanction from the Central Vigilance Commission (CVC) for conducting preliminary enquiry and for registration of crime against her and contended that, though the same is adverted in

paragraph 18 of the order on that aspect, the Trial Court did not answer to this contention anywhere in the order.

In support of this contention referred above, learned counsel for the petitioner mainly contended that the C.B.I (Admin) Manual contained a specific rule which requires the Investigating Agency to obtain an advice from the Central Vigilance Commission (C.V.C) before proceeding to register the crime as to whether preliminary enquiry is to be conducted, since the petitioner is in the cadre of Joint Secretary in the Central Government.

Learned counsel for the petitioner drawn attention of this Court to Section 8(1)(a) r/w 8(2) of Central Vigilance Commission Act. Section 8(1) deals with functions and powers of the commission and according to Clause (a), the Central Vigilance Commission can exercise superintendence over the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988 or an offence with which a public servant specified in sub-section (2) may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

This provision is directly deals with the power of superintendence of Central Vigilance Commission over the Investigating Officer under Delhi Special Police Establishment Act.

Section 8(1)(c) of The Central Vigilance Commission Act, 2003, deals with the functions and powers of the Commission and according to it, inquire or cause an inquiry or investigation to be made on a reference made by the Central Government wherein it is alleged that a public servant being an employee of the Central

Government or a corporation established by or under any Central Act, Government company, society and any local authority owned or controlled by that Government, has committed an offence under the Prevention of Corruption Act, 1988 or an offence with which a public servant may, under the Code of Criminal Procedure, 1973, be charged at the same trial.

Learned counsel for the petitioner also placed on record the gazette notification issued by the Central Vigilance Commission. But, it is not relevant for the purpose of deciding the present issue.

The Government of Andhra Pradesh issued a notification on 18.06.1994 giving its consent to all members of Delhi Special Police Establishment to exercise powers and jurisdiction under the said Act to the whole of State of Andhra Pradesh for investigation of the offences against (i) private persons for alleged offences committed whether acting separately or in conjunction with Central Government/undertaking employees and in case or (ii) State Government employees upto First Gazetted Level when acting along with or in conjunction with private persons or Central Govt. employee. However, in case of State Government employees from 2nd level gazetted posts, sitting or former legislators, Member of Parliament and Members of Legislative Assembly (even Ministers/ Chairman of Corporation etc), the C.B.I shall obtain prior consent of the State Government in each case:

- a) (i) Offences punishable under the relevant sections of Prevention of Corruption Act, 1947 (Central Act 3 of 1947) and the Prevention of Corruption Act 1988 (Central Act 49 of 1988)

(ii) Offences under the Indian Penal Code 1860 (Central Act, 45 of 1860) (List in Annexure- II)

(iii) Offences under the Central Acts (List in Annexure- I)

By virtue of the notification issued by the Government, in exercise of power conferred under Section 6 of Delhi Special Police Establishment Act, 1946, (Central Act XXV of 1946) the jurisdiction of the Delhi Special Police Establishment is extended to the State of Andhra Pradesh to investigate into the offences punishable under relevant sections of P.C Act and other enactments. Therefore, Delhi Special Police Establishment is competent to investigate into the offences in the State of Andhra Pradesh and they are bound to follow the guidelines and they are under the direct supervision of Central Vigilance Commission.

Learned counsel for the petitioner further contended that, when the CBI (Admin) Manual mandates a preliminary enquiry before registration of crime under the supervision of Central Vigilance Commission, the very registration of crime against the petitioner/A-1 is illegal.

If the prosecution was based on the investigation done by an officer, who failed to produce any record to show that has been granted authorisation, a prosecution case would fail and therefore, the peititoner/A-1 is sought to be discharged for the offences on this ground.

I am unable to agree with the submission of the learned counsel for the petitioner, for the reason that, the jurisdiction of the Central Vigilance Commission is supervisory in nature i.e. to supervise the sanctions being granted by the Appellate Authority in

exercise of power under Section 19 of P.C. Act and they have no control over the department.

Per contra, learned Special Public Prosecutor for C.B.I contended that, no preliminary enquiry is required to be conducted before registration of a crime and no sanction from Central Vigilance Commission is required to be obtained for registration of crime and placed reliance on the judgment of the Apex Court in **Union of India v. Prakash P. Hinduja**³, wherein, the Apex Court while advertng to the provisions of Central Vigilance Commission Act and C.B.I (Admin) Manual, in paragraph 33, held as follows:

"With respect we find the High Court judgment to be quite confusing and self contradictory. In para 18(c) it is observed that "there is no requirement to seek clearance before charge sheets are filed" and in para 19 it is said that "the only requirement in this regard is of reporting and the role of the CVC on this would be to give its comments in its annual report." In para 20 it is said that "the direct power of review granted to the CVC is only of pending applications for sanction" and "the CVC is not cast with the role of reviewing as such the steps taken in the course of investigation and thereafter." In para 21 it is said that "the duty to report of the steps taken in the course of investigation is not and cannot be equated with the duty to obtain prior approval or consent of any other authority to these steps." Again in para 24 it is said that "the contention of the petitioner that a breach of these directions would render the action of the CBI void since the directions are to be rigidly complied with is equally misconceived."

While holding so, the Apex Court concluded that the Magistrate or a High Court cannot interfere with the investigation or during investigation and quash the proceedings in a case, though not based on any grounds settled by the decisions of Supreme Court.

³ AIR 2003 (6) SCC 195

The directions issued by the Apex Court in **Vineet Narain & Ors. v. Union of India**⁴ do not confer any right to hold that, CBI will have to take concurrence or sanction from the Central Vigilance Commission before filing charge sheet in Court. No right of any kind has been conferred upon the alleged offender or the accused to approach the Central Vigilance Commission or to challenge the action of C.B.I in submission of charge-sheet in Court on the ground of some purported irregularity in making a report to the Central Vigilance Commission regarding progress of investigation.

After referring to the judgments in **Prabhu v. Emperor**⁵ and **Lumbhardar Zutshi v. The King**⁶ the Supreme Court held that, if cognizance is in fact taken on a police report initiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial, which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice and that an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial. This being the legal position, even assuming for the sake of argument that the C.B.I committed an error or irregularity in submitting the charge sheet without the approval of Central Vigilance Commission, the cognizance taken by the learned Special Judge on the basis of such a charge sheet can not be set aside or further proceedings in pursuance thereof could be quashed.

⁴ 1998 (1) SCC 226

⁵ AIR 1944 SC 73

⁶ AIR 1950 PC 26

If, these principles are applied to the present facts of the case, no prior sanction or advice is required to be obtained either for registration of crime for conducting investigation or for filing charge sheet. When it is not mandatory, the petitioner/A-1 cannot be discharged on the ground of failure to conduct any preliminary enquiry before registration of crime or filing of a charge sheet before the Special Judge for C.B.I Cases at Hyderabad. Independently, on this ground urged before the Trial Court and this Court, the petitioner/A-1 cannot be discharged for the above offences.

Further, learned counsel for the petitioner relied on the judgment of **Sirajuddin v. State of Madras** (referred supra), wherein, the Apex Court held that a preliminary investigation is required to be done before registration of crime. This principle cannot be applied to the present facts of the case, since, no such preliminary investigation is contemplated under the provisions of P.C. Act. Accordingly, this point is answered.

POINT NOs. 2 & 3

As these two points are interconnected to one another, I find that it is expedient to decide both these grounds by common discussion.

One of the core contentions raised by the learned counsel for the petitioner before this Court is that, Sri B. Satish Prabhu, Inspector, CBI, SPE, who filed charge sheet was a Member of Railway Protection Force and he was deputed to C.B.I and thereby,

he is not entitled to conduct investigation and file charge sheet, since he is not a police officer.

Whereas, the learned Special Public Prosecutor for C.B.I would contend that incompetency of the police officer to conduct investigation would not vitiate the proceedings, unless such investigation caused any prejudice to the petitioner/A-1 and therefore, the least prejudice was neither pleaded before the Trial Court or before this Court in the petition filed under Section 239 Cr.P.C and in the revision filed under Section 397 Cr.P.C. Therefore, in the absence of any prejudice to the petitioner/A-1 and proof of it on account of incompetency of the Investigating Officers, the petitioner/A-1 cannot be discharged for the offences stated supra.

The Prevention of Corruption Act, 1988, is a special enactment and the provisions therein have to be adhered to strictly to prosecute any personnel. It is relevant to advert to Section 17 of P.C. Act at this stage, in view of the specific contentions raised by the learned counsel for the petitioner.

“17. Persons authorised to investigate.— Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,—

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank, shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefor without a warrant: Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by

general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant: Provided further that an offence referred to in clause (e) of sub-section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.”

Thus, to prosecute a person, requirement of authorization is mandatory and the burden of proof of fulfilment of statute is on the prosecution. When the authority of a person to carry out investigation is questioned on the ground that he did not fulfil the statutory requirements laid down therefor in terms of the second proviso, the burden, undoubtedly, was on the prosecution to prove the same.

Learned counsel for the petitioner placed reliance on the judgment of the Supreme Court in **State, Inspector of Police, Visakhapatnam v. Surya Sankaram Karri** (referred supra), wherein, the Division Bench of the Supreme Court adverted to Section 17(2) of P.C. Act and held as follows:

“Provisions of the 1988 Act, no doubt, like the 1947 Act seek to protect public servant from a vexatious prosecution. Section 17 provides for investigation by a person authorized in this behalf. The said provision contains a non-obstante clause. It makes investigation only by police officer of the ranks specified therein to be imperative in character. The second proviso appended to Section 17 of the Act provides that an offence referred to in clause (e) of sub-Section (1) of Section 13, shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. Authorization by a Superintendent of Police in favour of an officer so as to enable him to carry out investigation in terms of section 17 of the Act is a statutory one. The power to grant such sanction has been conferred upon the authorities not below the rank of Superintendent of Police. The proviso uses a negative expression. It also uses the expression "shall". Ex-facie it is mandatory in character. When the authority of a person to carry out investigation is questioned on the ground that he did not fulfil the statutory requirements laid down therefor in terms of the second proviso, the burden, undoubtedly, was on the prosecution to prove the same.”

In view of the law declared by the Apex Court, unless a mandatory procedure is followed, the proceedings are liable to be quashed and the Apex Court while deciding an appeal against a conviction passed by the Courts below, adverted to these provisions and recorded such finding. But, in the present case is at the stage of framing charges. No doubt, the statutory functionaries are enjoined with a duty to pass written orders and issuance of an oral direction is not contemplated under the Act and such a concept is unknown in Administrative Law.

Sanction is a pre-requisite to conduct investigation and the provisions of Section 17 of P.C. Act are mandatory and the sanction by an officer not below the rank of Superintendent of Police, in respect of an offence under clause (e) of Sub-section (1) of Section 13, is a pre-requisite to conduct the investigation. (vide **H.S. Gotla v. State**⁷). Therefore, Section 17 of P.C. Act mandates the persons who are competent to investigate into the offences that the order of Metropolitan Magistrate or Magistrate of First Class, or make any arrest therefor without a warrant. The first proviso made it clear that, provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefor without a warrant. Further, the second proviso made it

⁷ 2001 Cri.L.J 2695

clear that, an offence referred to in clause (e) of sub-section (1) of Section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

Here, the offences allegedly committed by the petitioner/A-1 are offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act. Therefore, the first proviso made it clear that, Inspector of Police may also investigate any such offence without the order of a Metropolitan Magistrate or a Magistrate of the First Class or make arrest therefor without a warrant. The second proviso made it clear that, an offence shall not be investigated without the order of Superintendent of Police. As such, authorization of a police officer not below the rank of a Superintendent of Police is mandatory, in view of Section 17 of P.C. Act.

Turning to the facts of the present case, the Inspector of Police, C.B.I filed a charge sheet, but did not obtain any authorization to investigate into the offence as required under Section 17(2) of P.C Act. In compliance of Section 17(2) of P.C. Act, the Superintendent of Police, CBI, SPE, Hyderabad, issued authorization on 10.06.2002, the last paragraph of the order is extracted hereunder for better appreciation of the case.

“Whereas, I, B. Radhika, IPS, Superintendent of Police, CBI, SPE, Hyderabad, being the authority competent to direct investigation under proviso to Section 17 of P.C. Act, 1988, after fully and carefully considering the aforesaid credible information before me consider that Smt. K. Mythili Rani appears to have committed offence under Section 13(2) r/w 13(1)(d)(e) of P.C. Act, 1988 and therefore, order that Shri K. Srinivas Rao, Inspector, CBI, SPE, Hyd to assist Sri B. Shankar Rao, Inspector, CBI, Hyd. in the investigation of the case registered vide R.C.26(A)/02/Hyd.”

Thus, it is clear from the authorisation extracted above, Sri B. Shankar Rao, Inspector, CBI, Hyd was authorized to conduct investigation, whereas, Sri B. Satish Prabhu, Inspector, CBI, SPE was authorized to assist said Sri B. Shankar Rao in the investigation. But, the charge-sheet was filed by Sri B. Satish Prabhu, Inspector, CBI, SPE, who was authorized to assist Sri B. Shankar Rao, Inspector, CBI, Hyderabad. Therefore, the petitioner/A-1 challenged the very validity of the charge sheet filed by Sri B. Satish Prabhu, Inspector, CBI, SPE, who was on deputation from Railway Protection Force on two grounds.

The first ground is that, he was an officer in Railway Protection force and he is not a police officer, within the definition of 'Police Officer' and the second ground is that, he was not authorized to investigate into the offence and file charge sheet, who was authorized only to assist Sri B. Shankar Rao, Inspector, CBI, Hyderabad.

In view of the specific grounds, it is appropriate to advert to the grounds before deciding the validity of the charge sheet.

Sri B. Satish Prabhu, Inspector, CBI, SPE is admittedly an officer in Railway Protection Force, who was taken on deputation to C.B.I in terms of 2.1 of Recruitment Rules, Appendix 3 of C.B.I (Admin) Manual. According to Recruitment Rules 2.1(vii), Fifty percent posts of Inspectors are filled up by promotion of the Sub-Inspectors in the C.B.I with 5 years regular service in the grade. Remaining fifty percent posts are filled up on deputation/transfer basis of the officers of Centre/State Police Organisations holding analogous posts.

Sri B. Satish Prabhu, Inspector, CBI, SPE, was working in Railway Protection Force, which is a Central Government organization and therefore, he was taken into C.B.I on deputation. Thus, it is clear from the material on record that Sri B. Satish Prabhu, Inspector, CBI, SPE, was taken on deputation into C.B.I from Railway Protection Force in terms of Clause 2.1(vii). If, he was taken into service on transfer, he is deemed to be an officer of C.B.I. Even assuming for a moment that he was taken into service of C.B.I on deputation, he is deemed to have discharged the duties of C.B.I officer till he is repatriated to his parent department after completion of deputation period in C.B.I. When he is discharging his duties as police officer on deputation, he is deemed to be an officer in the C.B.I for all practical purposes.

The contention of the learned counsel for the petitioner is that, as per Rule 8 of The Police Act, 1861 (Act 5 of 1861), which deals with certificates to police officers, every police officer (appointed to the police-force, other than an officer mentioned in section 4) shall receive on his appointment, a certificate in the form annexed to this Act, under the seal of the Inspector-General or such other officer as the Inspector-General shall appoint, by virtue of which the person holding such certificate shall be vested with the powers, functions, and privileges of a police-officer. On the aspect of surrender of certificate, such certificate shall cease to have effect whenever the person named in it cases for any reason, to be a police-officer, and on his ceasing to be such an officer, shall be forthwith surrendered by him to any officer empowered to receive the same.

Indirectly, the argument of the learned counsel for the petitioner is that, unless the Investigating Officer Sri B. Satish Prabhu, Inspector, CBI, SPE holds the certificate, as contemplated under Section 8 of the Police Act, 1861, he cannot be deemed to be discharging his duties as a police officer. The word 'police' shall include all persons who shall be enrolled under the Police Act, 1861. On careful analysis of Section 8, only the officers who are appointed to the police force shall be given such certificate under Section 8, under the seal of Inspector General of Police. But, here in this case, Sri B. Satish Prabhu, Inspector, CBI, SPE was not appointed to the police force initially, but he was taken to the C.B.I department either on deputation or on transfer and if it is on transfer, he is deemed to be a full member of C.B.I. Even otherwise, he is discharging his duties as an officer in C.B.I, on deputation, till he is repatriated to the parent department, he is deemed to be an officer of C.B.I and he is entitled to discharge the duties as an officer of the C.B.I. It is not known whether any such certificate was issued to Sri B. Satish Prabhu, Inspector, CBI, SPE for deputation period and whether any certificate was issued under Section 8 of the Police Act, 1861 or at the time of transfer in terms of Sub-rule (7) of Rule 2.7 of Police Manual and it was not the case of the petitioner before the Trial Court and this is nothing but improvement at the stage of revisions before this Court. In the absence of valid grounds before the Trial Court, the Presiding Officer of the Court has not recorded any findings on this aspect and when such question is raised for the first time, the same cannot be entertained, since the jurisdiction of this Court under

Section 397(1) r/w 401 Cr.P.C is limited and this Court can interfere only if the Court records a finding that the order of the Court below is irregular, illegal or vitiated by any impropriety. But, when such question was not raised before the Trial Court, there is no meaning in raising such question before this Court. However, the issuance of any certificate under Section 8 of Police Act, 1861 is a question to be decided during trial and such issues need not be taken into consideration while framing charges.

The second ground urged before the Trial Court and this Court is that, Sri B. Satish Prabhu, Inspector, C.B.I, SPE was not authorized to conduct investigation and file charge sheet. Undoubtedly, as per the authorisation issued by the Superintendent of Police dated 10.06.2002, which is extracted above, Sri B. Satish Prabhu, Inspector, C.B.I, SPE was authorised to assist Sri B. Shankar Rao, Inspector, C.B.I, Hyd in the investigation. In fact, Sri B. Satish Prabhu, Inspector, CBI, SPE participated in the entire investigation and filed charge sheet also. For filing charge sheet, no authorisation is required, but for conducting investigation, authorisation under Section 17(2) of P.C Act is required from the officer in the cadre of Superintendent of Police. Here, Sri B. Satish Prabhu, Inspector, C.B.I, SPE was authorised to assist Sri B. Shankar Rao, Inspector, C.B.I.

No doubt, Sri B. Satish Prabhu, Inspector, CBI, SPE, himself completed investigation and filed charge sheet. When, Sri B. Satish Prabhu, Inspector, CBI, SPE conducted investigation and filed charge sheet, is it a ground to discharge the petitioner/A-1 is a question.

Learned counsel for the petitioner contended that, the investigation done by the Investigating Officer is contrary to the law laid down by the Apex Court in **Sirajuddin v. State of Madras**⁸, since Sri B. Satish Prabhu, Inspector, CBI, SPE was authorised to assist Sri B. Shankar Rao in the investigation.

Learned counsel for the petitioner placed reliance on the judgment of the Apex Court in **Balkishan A. Devidayal v. State Of Maharashtra**⁹, where an identical question arose with reference to Section 25 of Evidence Act and the Apex Court adverted to the definition of 'police officer' and laid down the test for determining whether an officer is a police officer or not. Whether the officer concerned under the special Act, has been invested with all the powers exercisable by an officer-in-charge of a Police Station under Chapter XIV of the Code, qua investigation of offences under that Act, including the power to initiate prosecution by submitting a report (charge-sheet) under Section 173 of the Code. In order to bring him within The purview of a 'police officer' for the purpose of Section 25 of Evidence Act, it is not enough to show that he exercises some or even many of the powers of a police officer conducting an investigation under the Code. The Apex Court also held that, from the comparative study of the relevant provisions of the Railway Property (Unlawful Possession) Act, 1966 and Cr.P.C, it is abundantly clear that an officer of the RPF making an inquiry under Section 8(1) of the Railway Property (Unlawful Possession) Act, 1966 does not possess several important attributes of an officer-in-charge of a police station conducting an investigation

⁸ 1971 AIR 520

⁹ 1981 AIR 379

under Chapter XIV of the Code. The character of the 'inquiry' is different from that of an 'investigation' under the Code. The official status and powers of an officer of the Force in the matter of inquiry under the 1966 Act differ in material aspects from those of a police officer conducting an investigation under the Code. Particularly, he has no power to initiate prosecution by filing a charge- sheet before the Magistrate concerned under Section 173 of the Code, which has been held to be the clinching attribute of an investigating 'police officer' and therefore, any confessional or incriminating statement recorded by him in the course of an inquiry under Section 8(1) of the 1966 Act, cannot be excluded from evidence under the said section. In paragraphs 39, 54 & 58, the Supreme Court recorded a specific finding to the effect stated above. Therefore, the main attribute of the police officer is his competency to investigate and file final report under Section 173 Cr.P.C before the Magistrate.

In the present facts of the case, if Sri B. Satish Prabhu, Inspector, C.B.I, SPE, was discharging his duties in Railway Protection Force, he was incompetent to file a charge sheet or final report under Section 173 Cr.P.C before the Magistrate. But, whereas, he was deputed to C.B.I and working as such, as an officer in C.B.I and in terms of 2.1 of Recruitment Rules, Appendix 3 of C.B.I (Admin) Manual and he acquired the status of police officer in C.B.I on account of his deputation. But, in the facts of the above judgment, the Court did not consider the status of an officer deputed to a police department and discharging duties in the police department or C.B.I, as an officer. In such case, the

principle laid down in the above decision cannot be applied to the present facts of the case, as the officer therein was discharging his duties as an officer of Railway Protection Force, but not as an officer in C.B.I.

Learned counsel for the petitioner relied on the judgment of the Supreme Court in **State of Haryana and others v. Ch. Bhajan Lal and others**¹⁰ and also judgments rendered by Calcutta, Punjab and Orissa High Courts in **Sudhir Kumar v. The State**¹¹, **The State v. Madan Lal**¹², **Chandra Sekhar Pani and others v. State of Orissa**¹³ respectively, to contend that, unless the officer is authorized to investigate into the crime and file charge sheet or final report, the officers deputed from CISF or RPF are not competent to investigate and file charge sheet. But, in **Chandra Sekhar Pani and others v. State of Orissa** (referred supra), Rule 7 of SC/ST (POA) Rules, came up for consideration and the Orissa High Court held that the investigation done by an officer not below the rank of Deputy Superintendent of Police is an illegality. But, the judgment of Single Judge is contrary to the judgment of the Full Bench of our High Court in **Yannam Satyanarayana v. State of Andhra Pradesh**¹⁴ However, there is another conflicting judgment. Hence, it is not relevant at this stage.

Even if the principles laid down in the above judgment are applied to the present facts of the case, when the officer is incompetent to investigate into the crime and file charge sheet, the investigation done by such officer vitiates the entire proceedings.

¹⁰ AIR 1992 SC 604

¹¹ AIR 1953 Cal. 226 (Vol.40, C.N.78)(1)

¹² 1954 CriLJ 310

¹³ 2004 Cri.L.J 2626

¹⁴ 2006 Cri.LJ 2320

The learned Special Public Prosecutor for C.B.I contended that, unless prejudice is caused to the petitioner/A-1 on account of investigation done by the incompetent officer, the petitioner/A-1 cannot be discharged by exercising power under Section 239 Cr.P.C and placed reliance on the judgment of Division Bench of the Apex Court in **State of Madhya Pradesh v. Ram Singh**¹⁵. In the said judgment, an identical question under Section 17 of P.C. Act came up for consideration, wherein, the court was of the view that, Persons authorised to investigate Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no police officer below the rank,--

- (a) in the case of the Delhi Special Police Establishment, of an Inspector of Police;
- (b) in the metropolitan area of Bombay, Calcutta, Madras and Ahmedabad and in any other metropolitan area notified as such under sub-section (1) of Section 8 of the Code of Criminal Procedure, 1973 (2 of 1974), of an Assistant Commissioner of Police;
- (c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank.

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant;

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without the order of a

¹⁵ (2000) 5 Supreme Court Cases 88

Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant;

Provided further that an offence referred to in clause

(e) of sub- section (1) of section 13 shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police.

This Section provides that no police officer below the rank of an Inspector in the case of Delhi Special Police Establishment, an Assistant Commissioner of Police in the metropolitan areas of Bombay, Calcutta, Madras and Ahmedabad and any other metropolitan area notified as such and Dy. Superintendent of Police or a police officer of the equivalent rank shall investigate an offence punishable under the Act without prior order of the metropolitan Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest thereof without warrant. According to the first proviso if a police officer not below the rank of an Inspector of Police is authorised by the Government in this behalf by general or special order, he can also investigate in such offences without the order of Metropolitan Magistrate or the Magistrate of First Class, as the case may be, or make arrest thereof without a warrant. Regarding compliance of this part of the section there is no controversy in the present appeals. However, the second proviso provides that where an offence referred to in clause. The Apex Court adverted to the principles laid down in **State of Haryana and others v. Ch. Bhajan Lal and others**¹⁶ and finally concluded that the order passed by the High Court that the investigation done

¹⁶ AIR 1992 SC 604

by a competent officer, who was not authorized is unsustainable and directed the Trial Court to proceed with the case. In the facts of the judgment, order clearly indicates the name of the accused and number of F.I.R and also authorisation to investigate.

Coming to the present facts of the case, Sri B. Satish Prabhu, Inspector, CBI, SPE was authorised to assist Sri B. Shankar Rao, Inspector, CBI, Hyderabad in the investigation. But, instead of assisting B. Shankar Rao, Sri B. Satish Prabhu himself investigated into the crime and filed charge sheet. In such case, what is the prejudice caused to this petitioner/A-1 is a question to be decided. If the question is answered in affirmative, the petitioner is entitled to be discharged, since the prosecution is groundless.

An identical question about the competency of the Investigating Officer came up for consideration in various judgments and in view of the present controversy, I would like to advert to the law laid down by various Courts.

In **Prabhu v. Emperor**¹⁷ and **Lumbhardar Zutshi v. The King**¹⁸, the Privy Council held that, if, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled.

¹⁷ A.I.R. 1944 P.C. 73

¹⁸ A.I.R. 1950 P.C. 26

There is no doubt relate to the illegality of arrest in the course of investigation while the Court concerned in the present cases with the illegality with reference to the machinery for the collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. Therefore, it is clear that whether the cognizance of the case has in fact been taken and the case has proceeded, the invalidity of the investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

Since, the prior authorisation is peremptory, that itself allows an officer of the rank to make the investigation, if permitted by the Magistrate. But this is not any indication by the Legislature that an investigation by an officer of a lower rank without such permission cannot be said to **cause** prejudice. When a Magistrate is approached for granting such permission he is expected to satisfy himself that there are good and sufficient reasons for authorising an officer of a lower rank to conduct the investigation. The grant of such permission is not to be treated by a Magistrate as a mere matter of routine but it is an exercise of his judicial discretion having regard to the policy underlying it.

In **Union of India v. T. Nathamuni**¹⁹, the Apex Court is of the view that, it is clear that in the case of investigation under the Delhi Special Police Establishment Act, an officer below the rank of Inspector cannot investigate without the order of a competent

¹⁹ (2014) 16 SCC 285

Magistrate. In the present case, order of the Special Judge was obtained by filing an application. That order dated 24.9.2009 shows that it was passed on request and in the interest of justice, investigation pursuant to such order did not suffer from want of jurisdiction.

In **Dr. M.C. Sulkunte vs. The State of Mysore**²⁰, the main question raised by the appellant in an appeal against the order of conviction was that the sanction to investigate the offence given by the Magistrate was not proper in as much as he had not recorded any reason as to why he had given permission to the Inspector of Police to investigate the offence of criminal misconduct of obtaining illegal gratification. Considering Section 5(A) of the P.C. Act, the Supreme Court observed that, although laying the trap was part of the investigation and it had been done by a Police Officer below the rank of a Deputy Superintendent of Police, cannot on that ground be held that the sanction was invalid or that the conviction ought not to be maintained on that ground. It has been emphasised in a number of decisions of this Court that to set aside a conviction it must be shown that there has been miscarriage of justice as a result of an irregular investigation. The observations in **State of M.P. v. Mubarak Ali**²¹, to the effect that when the Magistrate without applying his mind only mechanically issues the order giving permission the investigation is tainted cannot help the appellant before us.

²⁰ AIR 1971 SC 508

²¹ [1959 Supp 2 SCR 201 at pp 210 and 211]

In the case of **Muni Lal vs. Delhi Administration**²², the Apex Court considered the question with regard to the irregularity in investigation for the offence under the Prevention of Corruption Act. Following earlier decisions, the Apex Court was of the view that, where cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the preceding investigation will not vitiate the result unless miscarriage of justice has been caused thereby and the accused has been prejudiced. Assuming in favour of the appellant, that there was an irregularity in the investigation and that Section 5-A of the Act, was not complied with in substance, the trial by the Special Judge cannot be held to be illegal unless it is shown that miscarriage of justice has been caused on account of illegal investigation. The learned counsel for the appellant was unable to show, how there has been any miscarriage of justice in this case and how the accused has been prejudiced by any irregular investigation. Similarly, in the case of **A.C. Sharma vs. Delhi Administration**²³, the provisions of Section 5-A were again considered by this Court and held as under:

"15. As the foregoing discussion shows the investigation in the present case by the Deputy Superintendent of Police cannot be considered to be in any way unauthorised or contrary to law. In this connection it may not be out of place also to point out that the function of investigation is merely to collect evidence and any irregularity or even illegality in the course of collection of evidence can scarcely be considered by itself to affect the legality of the trial by an otherwise competent court of the offence so investigated. In *H.N. Rishabud and Inder Singh v. State of Delhi* (supra) it was held that an illegality committed in the course of investigation does not affect the competence and jurisdiction of the court for trial and where cognizance of the case has in fact

²² AIR 1971 SC 1525

²³ (1973) 1 SCC 726

been taken and the case has proceeded to termination of the invalidity of the preceding investigation does not vitiate the result unless miscarriage of justice has been caused thereby. When any breach of the mandatory provisions relating to investigation is brought to the notice of the court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly, and by such officer as it considers appropriate with reference to the requirements of Section 5-A of the Prevention of Corruption Act, 1952. This decision was followed in *Munna Lal v. State of U.P* where the decision in *State of Madhya Pradesh v. Mubarak Ali*, AIR 1959 SC 707 was distinguished. The same view was taken in the *State of Andhra Pradesh v. M. Venugopal*, 1964 (3) SCR 742 and more recently in *Khandu Sonu Dhobi v. State of Maharashtra* (supra). The decisions of the Calcutta, Punjab and Saurashtra High Courts relied upon by Mr Anthony deal with different points: in any event to the extent they contain any observations against the view expressed by this Court in the decisions just cited those observations cannot be considered good law."

In **R.A.H.Siguran v. Shankare Gowda & Anr**²⁴, the Apex Court held that, even if investigation is not conducted by an authorised officer, the trial is not vitiated, unless prejudice is shown.

In **Raj Kumar Karwal v. Union of India**²⁵, an identical question came up for consideration before the Supreme Court where, the Officers of the Department of Revenue Intelligence who have been invested with the powers of an officer-in-charge of a police station under Section 53 of the Narcotic Drugs and Psychotropic Substances Act, 1985, are not "police officers" within the meaning of Section 25 of the Evidence Act, 1872. Therefore, a confessional statement recorded by such officer in the course of investigation of a person accused of an offence under the Act is admissible in evidence as against him. Officer appointed under

²⁴ 2017 (16) SCC 126

²⁵ 1990 SCC (Cri) 330

Section 53 other than a police officer is not entitled to exercise “all” the powers under Chapter XII of the Code including the power to submit a charge-sheet under Section 173 Cr.P.C. However, such officer is entitled to file a complaint and it would be under Section 19 of P.C. Act. Though the fact situation is different, but, such a report can be treated as a private complaint under Section 19 of P.C. Act. If, this principle is applied to the present facts of the case, report filed by the respondent can also be treated as a private complaint.

In the leading judgment **H.N. Rishbud and Inder Singh v. State of Delhi**²⁶, the Full Bench of the Apex Court considered the ground that the investigations on the basis of which the appellants were being prosecuted were in contravention of the provisions of Sub-section (4) of Section 5 of P.C. Act and held that under Section 5(4) of P.C. Act, a police officer below the rank of a Deputy Superintendent of Police shall not investigate any offence punishable under sub-section (2) of Section 5 without the order of a Magistrate of the First Class and the contention was that, the first information reports in these cases were laid in April and June, 1949, but permission of the Magistrate, for investigation as against the public servants concerned, by a police officer of a rank lower than a Deputy Superintendent of Police, was given in March and April, 1951. The charge- sheets in all these cases were filed by such officers in August and November, 1951, i.e. subsequent to the date on which permission as above was given. But admittedly the investigation was entirely or mostly completed in between the

²⁶ AIR 1955 SC 196

dates when the first information was laid and the permission to investigate by an officer of a lower rank was accorded. It appears from the evidence taken in this behalf that such investigation was conducted not by any Deputy Superintendent of Police but by officers of lower rank and that after the permission was accorded little or no further investigation was made. The question, therefore, that has been raised is, that the proceedings pending for trial initiated on such charge-sheets are illegal and require to be quashed.

The Supreme Court, after adverting to Section 5(4) of P.C. Act, which is identical to Section 13(1)(e) & Section 17 of P.C. Act, laid down a test to determine that the provision of the P.C. Act enacting that the investigation into the offences specified therein shall not be conducted by any police officer of a rank lower than a Deputy Superintendent of Police without the specific order of a Magistrate, directory or mandatory and to determine whether the trial following upon an investigation in contravention of this provision illegal and held that, to determine the first question it is necessary to consider carefully both the language and scope of the section and the policy underlying it. As has been pointed out by Lord Campbell in *Liverpool Borough Bank v. Turner*(1), "there is no universal rule to aid in determining whether mandatory enactments shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Court to try to get at the real intention of the Legislature by carefully attending to the whole scope of the statute to be construed". (See *Craies on Statute Law*, page 242, Fifth Edition). The Code of

Criminal Procedure provides not merely for judicial enquiry into or trial of alleged offences but also for prior investigation thereof. Section 5 of the Code shows that all offences "shall be investigated, inquired into, tried and otherwise dealt with in accordance with the Code" (except in so far as any special enactment may provide otherwise). For the purposes of investigation, offences are divided into two categories 'cognizable' and 'non-cognizable'. When information of the commission of a cognizable offence is received or such commission is suspected, the appropriate police officer has the authority to enter on the investigation of the same (unless it appears to him that there is no sufficient ground). But where the information relates to a non-cognizable offence, he shall not investigate it without the order of a competent Magistrate. Thus it may be seen that according to the scheme of the Code, investigation is a normal preliminary to an accused being put up for trial for a cognizable offence (except when the Magistrate takes cognizance otherwise than on a police report in which case he has the power under section 202 of the Code to order investigation if he thinks fit). Therefore, it is clear that when the Legislature made the offences in the Act cognizable, prior investigation by the appropriate police officer was contemplated as the normal preliminary to the trial in respect of such offences under the Act. In order to ascertain the scope of and the reason for requiring such investigation to be conducted by an officer of high rank (except when otherwise permitted by a Magistrate), it is useful to consider what "investigation" under the Code comprises. Investigation usually starts on information relating to the commission of an

offence given to an officer in charge of a police station and recorded under section 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has to proceed to the spot to investigate the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes "all the proceedings under the Code for the collection of evidence conducted by a police officer". For the above purposes, the investigating officer is given the power to require before himself the attendance of any person appearing to be acquainted with the circumstances of the case. He has also the authority to examine such person orally either by himself or by a duly authorised deputy. The officer examining any person in the course of investigation may reduce his statement into writing and such writing is available, in the trial that may follow, for use in the manner provided in this behalf in section 162. Under section 155 the officer in charge of a police station has the power of making a search in any place for the seizure of anything believed to be - necessary for the purpose of the investigation. The search has to be conducted by such officer in person. A subordinate officer may be deputed by him for the purpose only for reasons to be recorded in writing if he is unable to conduct the search in person and there is no other competent officer available. The investigating officer has also the power to arrest the person or persons suspected of the

commission of the offence under section 54 of the Code. A police officer making an investigation is enjoined to enter his proceedings in a diary from day-to-day. Where such investigation cannot be completed within the period of 24 hours and the accused is in custody he is enjoined also to send a copy of the entries in the diary to the Magistrate concerned. It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of

their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173. The scheme of the Code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is that of the person in the situation of the officer in charge of the police station, it having been clearly provided in section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz. the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate under Section 551.

In view of the law declared by the Apex Court in the judgment referred supra, though the investigation was conducted by Sri B. Satish Prabhu, Inspector, CBI, SPE, who is authorized to assist Sri B. Shankar Rao, Inspector, CBI, the investigation is not vitiated by any illegality or irregularity, unless it is done with any motive, prejudice or if any miscarriage of justice is caused to the petitioner/A-1, thereby, it is not a ground to exercise power under

Section 239 Cr.P.C. to discharge this petitioner/A-1 for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act, since the petitioner/A-1 did not plead any such miscarriage of justice either before the Trial Court or before this Court to avail the benefit of this judgment. Moreover, such miscarriage of justice or prejudice is a question of fact to be determined at the end of trial and such questions cannot be decided at this stage, while deciding an application under Section 239 Cr.P.C to discharge this petitioner/A-1.

In view of the long line of perspective pronouncements of Supreme Court and Privy Council, at this stage, the competency of the Investigating Officer is not relevant, since the scope of revision under Section 397 Cr.P.C is limited and this Court may look that the propriety, legality and regularity of the order passed by the Trial Court under Section 397(1) r/w 401 Cr.P.C, but not beyond that. Hence, both the point nos. 2 & 3 are held against the petitioner/ A-1, as I find no substance in the contentions raised by the learned counsel for the petitioner and it is an improvement in the grounds raised by the petitioner/A-1, in the Trial Court no such contention was urged. Accordingly, point nos. 2 & 3 are answered.

POINT NO.4

Before advertng to the contentions raised before this Court it is apposite to examine the scope of Section 397 and 401 of Cr.P.C., with reference to Section 239 Cr.P.C.

The present revision is filed under Section 397 and 401 of Cr.P.C. Jurisdiction of this Court under Section 397 and 401 of Cr.P.C. is limited.

According to Section 239 of Cr.P.C if the Court is of the opinion upon considering the police report and documents sent with it under Section 173 Cr.P.C and making such examination, if any, of the accused as the Magistrate or Sessions Judge thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate or Sessions Judge considers the charge against the accused to be groundless, he shall discharge the accused after recording his reasons for so doing.

The documents referred to in Section 207 of Cr.P.C also must relate to such documents which can be subsequently transferred into evidence at the time of the trial. Hearing of the prosecution and the accused under this section does not mean the hearing of arguments only, it includes the hearing of the evidence if needed. The word “groundless” would mean the absence of reasonable ground to expect a conviction. “Groundless” is equivalent to saying that there is no ground for framing the charges, which depends on the facts and circumstances of each case. Therefore, only when the Magistrate or Sessions Judge comes to conclusion that there are no grounds to frame a charge for specific offence, the Court can discharge the accused for such offence. Even the scope of Section 238 and 239 Cr.P.C. is limited, such power has to be exercised only when the Magistrate or

Sessions Judge came to conclusion that it is groundless, based on charge sheet and documents filed under Section 173 of Cr.P.C.

Consideration of records and documents at the stage of framing charge is for the limited purpose of ascertaining whether or not there is sufficient ground to proceed against the accused. Whether the material at the hands of the prosecution is sufficient and whether the trial will end in conviction or acquittal are not relevant considerations at the stage of framing of charge as held by the Apex Court in “**P.Vijayan v. State of Kerala**”²⁷

It is also contended that when the material available on record is groundless, the Court cannot proceed, since, it would amount to harassment. No doubt, summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only few witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate or Sessions Judge summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate or Sessions Judge is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate or Sessions Judge has to carefully scrutinise the evidence brought on record and may even

²⁷ AIR 2010 SC 663

himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

In **Manakshi Bala v. Sudhir Kumar**²⁸ and **Kanti Bhadr Shah And Anr. v. The State of West Bengal**²⁹, the Apex Court while deciding an appeal in a petition filed for discharge held that Magistrate at the stage of discharge petition filed under Section 239 Cr.P.C., has to record his reasons for discharging the accused, but there is no such requirement if he forms an opinion that there is a ground for *presuming the accused had committed an offence which he is competent to try*. In such situation he is only required to frame a charge in writing against the accused. Even in cases instituted otherwise than on police report, the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per sub-section(1) of Section 245, if a Magistrate, after taking all the evidence considers that no case against the accused has been made out which if unrebutted would warrant his conviction, he shall discharge the accused. As per sub-section (2) of Section 245, the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. On both sub-sections he is obliged to record his reasons for doing so. In the present case, a presumption shall be

²⁸ [1994] INSC 308

²⁹ AIR 2000 SC 522

drawn under Section 20 that the accused committed *prima facie* offence, when he failed to account for the amount.

In this context, it is pertinent to point out that even in a trial before a Court of Sessions; the Judge is required to record reasons only if he decides to discharge the accused. But if he is to frame the charge he may do so without recording his reasons for showing why he framed the charge.

In later judgment reported in **Sheoraj Singh Ahlawat & Ors v. State of Uttar Pradesh & Anr**³⁰, the Apex Court on elaborate consideration of entire law regarding discharge of an accused, with the approval of law declared in **State of M.P. v. Mohanlal Soni**³¹ and **State of Maharashtra & Ors v. Som Nath Thapa and Ors**³² held that, if on the basis of material on record, a Court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence, it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of charge, probative value of the materials on record cannot be gone into the materials brought on record by the prosecution has to be accepted as true at that stage. So also in **State of M.P. v. Mohanlal Soni** (referred supra), it is made clear that the crystallized judicial view is that at the stage of framing charge, the court has to *prima facie* consider whether there is sufficient

³⁰ AIR 2013 SC 52

³¹ 2000 Cri.LJ 3504

³² 1996 Cri.LJ 2448

ground for proceeding against the accused and the court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

Similarly in **State of Orissa v. Debendra Nath Padhi**³³ supra) the Apex Court held as follows:

“18. We are unable to accept the aforesaid contention. The reliance on Articles 14 and 21 is misplaced. Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity

³³ (2005) 1 SCC 568

to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the police.”

In earlier judgment reported in **Union of India v. Prafulla Kumar Samal and Anr**³⁴ the Apex Court laid the following principles:

- (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out
- (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial.
- (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.
- (4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

³⁴ (1979) 3 SCC 4

Based on various principles laid down in the judgments referred supra, Apex Court concluded that when the allegations made against the accused are specific and having concluded that those allegations would constitute *prima facie* offence, the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for conviction the accused has been made out. It is well settled that, at the stage of framing of charge, the defence of accused cannot be put forth. The submissions of the accused has to be confined to the material produced by the police. Clearly the law is that at the time of framing charge or taking cognizance the accused has no right to produce any material as held in **Onkar Nath Mishra and Ors vs. State (NCT of Delhi) and Anr**³⁵ and **State of Maharashtra & Ors v. Som Nath Thapa & Ors**³⁶ and **State of M.P. v. Mohan Lal Soni**³⁷ and **State of Orissa v. Debendra Nath Padhi** (referred supra).

In **State of Orissa v. Debendra Nath Padhi**³⁸ which I referred and in **Ajay Kumar Parmar vs. State of Rajasthan**³⁹ in paragraph 16 of the judgment, the Court held that it was not permissible for the Judicial Magistrate to take into consideration

³⁵ (2008) 2 SCC 561

³⁶ 1996 Cri.LJ 2448

³⁷ AIR 2000 SC 2583

³⁸ (2012) 12 SCC 406

³⁹ (2012) 12 SCC 406

the evidence of defence produced by the appellant as it has consistently been held by this Court that at the time of framing the charge, the only documents which are required to be considered are the documents submitted by the investigating agency along with the charge sheet. Any document which the accused wants to rely upon cannot be read as evidence. If such evidence is to be considered, there would be a mini-trial at the stage of framing of charge. That would defeat the very object of the code. Even for hearing submission of accused as per Section 227 means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. Even if, in a rare case it is permissible to consider the defence evidence, if such material convincingly establishes that the whole prosecution version is totally absurd, preposterous or concocted.

In view of the law declared by the Apex Court in various judgments referred supra as to considering an application filed under Section 239 Cr.P.C, at the stage of framing charges, the duty of the Court is only to look into allegations made in the final report and the documents annexed to it including statements of witnesses recorded and examined during investigation, and afford an opportunity to the accused to advance arguments. But said argument must be connected to the material on record i.e., allegations in charge sheet and documents filed along with report under Section 173 Cr.P.C, not more than that. The accused is not entitled to produce any documents and adduce any evidence at the

time of framing charges or at the time of disposal of petition filed under Section 239 Cr.P.C.

As discussed above, the power of the Court to discharge the accused would arise only in few circumstances and the Court, if, satisfied that the prosecution against this petitioner is groundless, the Court can discharge the accused for any offence.

However, there are series of cases wherein the Apex Court while dealing with the provisions of Sections 227, 228, 239, 240, 241, 242 and 245 Code of Criminal Procedure, has consistently held that the court at the stage of framing of the charge has to apply its mind to the question whether or not there is any ground for presuming the commission of an offence by the accused. The court has to see as to whether the material brought on record reasonably connects the accused with the offence. Nothing more is required to be enquired into. While dealing with the aforesaid provisions, the test of *prima facie* case is to be applied. The Court has to find out whether the materials offered by the prosecution to be adduced as evidence are sufficient for the court to proceed against the accused further. (Vide: **State of Karnataka v. L. Muniswamy and Ors**⁴⁰; **All India Bank Officers' Confederation etc. v. Union of India and Ors**⁴¹; **Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia**⁴²; **State of M.P. v. Dr. Krishna Chandra Saksena**⁴³; and **State of M.P. v. Mohan Lal Soni (referred supra)**).

⁴⁰ AIR 1977 SC 1489

⁴¹ AIR 1989 SC 2045

⁴² (1989) 1 SCC 715

⁴³ (1996) 11 SCC 439

In **Dilawar Babu Kurane v. State of Maharashtra**⁴⁴, the Apex Court while dealing with the provisions of Sections 227 and 228 Code of Criminal Procedure, with the approval of law laid down in **Union of India v. Prafulla Kumar Samal and Anr**⁴⁵, held that while considering the question of framing the charges, the court may weigh the evidence for the limited purpose of finding out whether or not a *prima facie* case against the accused has been made out and whether the materials placed before the Court disclose **grave suspicion** against the accused which has not been properly explained. In such an eventuality, the court is justified in framing the charges and proceeding with the trial. The Court has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court but court should not make a roving enquiry into the pros and cons of the matter and weigh evidence as if it is conducting a trial.

In **Suresh v. State of Maharashtra**⁴⁶, the Apex Court after taking note of the earlier judgments in **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya**⁴⁷ and **State of Maharashtra v. Priya Sharan Maharaj**⁴⁸, held as under:

9...at the stage of Sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The Court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad

⁴⁴ AIR 2002 SC 564

⁴⁵ AIR 1979 SC 366

⁴⁶ AIR 2001 SC 1375

⁴⁷ AIR 1990 SC 1962

⁴⁸ AIR 1997 SC 2041

*probabilities of the case. Therefore, at the stage of framing of the charge the Court has to consider the material with a view to find out if there is ground for **presuming that the accused has committed the offence** or that there is not sufficient ground for proceeding against him and **not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.***

(Emphasis supplied)

Similarly in **State of Bihar v. Ramesh Singh**⁴⁹, while dealing with the issue, the Supreme Court held as follows:

“...If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial....”

(Emphasis supplied)

In view of the law declared by the Apex Court in the catena of decisions referred supra, the jurisdiction of the Inferior Criminal Court is limited, unless, the Court concludes that the prosecution is groundless or there is no *prima facie* material to proceed against this petitioner for various offences allegedly committed by this petitioner, the Court cannot discharge the accused for grave offences. However, what is *prima facie* case, remains as a question while dealing with a petition filed under Section 239 Cr.P.C.

The Apex Court in **Mauvin Godinho v. State of Goa**⁵⁰, highlighted the scope of Section 228 Cr.P.C, with the approval of law declared in **Sajjan Kumar v. CBI**⁵¹ **State v. A. Arun Kumar**⁵²,

⁴⁹ AIR 1977 SC 2018

⁵⁰ AIR 2018 SC 749

⁵¹ (2010) 9 SCC 368

⁵² (2015) 2 SCC 417

State v. S. Selvi⁵³ was of the view that, a Court while framing charges under Section 227 of the Code of Criminal Procedure should apply the “*prima facie*” standard. Although the application of this standard depends on facts and circumstance in each case, a *prima facie* case against the accused is said to be made out when the probative value of the evidence on all the essential elements in the charge taken as a whole is such that it is sufficient to induce the court to believe in the existence of the facts pertaining to such essential elements or to consider its existence so probable that a prudent man ought to act upon the supposition that those facts existed or did happen. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

How to determine a *prima facie* case is not highlighted in the judgment. However, the general principle laid down as to the *prima facie* case in civil cases cannot be applied in criminal cases, and whether the material collected constitute an offence is sufficient to conclude that there is a *prima facie* case to proceed against this petitioner by framing charges. By applying the same standard of *prima facie* to the present facts of the case, I find that there is voluminous material against the petitioner/A-1 to frame charges and try the accused.

Turning to the facts of the present case on the question of *prima facie* standard, this Court has to verify the material to find out whether the allegations made in the charge sheet are sufficient to proceed against this petitioner/A-1 for the charges referred

⁵³ (2018) 4 SCC 641

supra. The allegations made in the charge sheet clearly pointing out the complicity of the petitioner/A-1, there is direct material against her to frame charges and proceed against her, as she worked as Commissioner of Income Tax. The income shown in the books and accounts maintained by her are totally disproportionate to the income she received through known source. Though, she gave an explanation for the above, the explanation was not satisfactory. Therefore, based on the evidence collected during investigation, the Trial Court declined to discharge this petitioner having found that there are grounds to proceed against this petitioner. The statements of witnesses recorded during investigation directly pointed out the complicity of the petitioner/A-1 for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act *prima facie*. The non-consideration of the reply issued by the petitioner/A-1 is not at all a ground to discharge this petitioner/A-1 for the offences referred supra. In view of the scope of Section 397(1) r/w 401 Cr.P.C and 239 Cr.P.C, discussed in the earlier paragraphs, since it is for the petitioner/A-1 to account for the properties which she owned and possessed either by her or by her family members. When she failed to account for, to the satisfaction of the respondent, filing of charge sheet and proceeding further against her cannot be said to be illegality.

The case of prosecution is based on the voluminous evidence collected by the Investigating Agency. The Investigating Agency collected as many as 527 documents to substantiate the case of prosecution, more particularly, about the disproportionate assets acquired by the petitioner/A-1 from the known source of

her income. The total gold items seized from the possession of petitioner/A-1 are 92 in number and the weight of those gold items is also mentioned in the table. Similarly, 21 silver items were seized from her possession, weight of which is mentioned in another table annexed to the charge sheet. If, the value of gold and silver items is taken into consideration, the value would far exceed to known source of income.

The statements of Sri Guna Keshav Rao (L.W.1), Assistant Administrative Officer, The New India Assurance Company Limited, Regional Office, Secunderabad and other witnesses, including Sri Kagidala Ibrahim, Chief Manager, State Bank of India (L.W.2), Sri Mamallapalli Ambedkar, Senior Manager, Canara Bank (L.W.3), Sri Tandra Pratap Reddy, Deputy Manager, State Bank of Hyderabad (L.W.4), Sri Anand Prakash Jaiswal, Manager-Public Relations, Bank of Maharashtra (L.W.5), Sri Mangaiahgari Sudhakar, Officer, Andhra Bank (L.W.6), Sri Arumilli Ramachandra Rao, Officer, Canara Bank (L.W.7) and other witnesses, would clearly disclose *prima facie* that this petitioner deposited amounts in various banks accounts. Further, Sri Gunda Keshav Rao is the mediator at the time of search by Sri B. Shanker Rao, Inspector, CBI who issued search warrant for conducting searches at the residential premises of the Smt. K. Mythili Rani, Commissioner of Income Tax (Appeals), Hyderabad situated at H.No.8-2-686/B/5/K, Road No12, Banjara Hills, Hyderabad in the presence of Sri K. Ibrahim, Chief Manager, Vigilance Department, State Bank of India, Head office, Hyderabad and found in the various properties shown in the list. Similarly, the statements of other witnesses and search proceedings *prima*

facie show that there is material to proceed against this petitioner for the offences mentioned supra.

For framing charges, the Court is required to advert to the evidence collected and produced before the court along with final report. Except that, nothing can be considered and defence set up by the petitioner/A-1 cannot be considered at the stage of framing charges. If, the Court found that the material is suffice to proceed against this petitioner/A-1, by framing charges, the Court cannot discharge the petitioner for the offences referred supra. Only in case, the Court found that there is no material *prima facie*, to proceed against this petitioner by framing charges or the prosecution is groundless, the Court can discharge the accused. But, in the present case, there is voluminous evidence on record *prima facie*, to show that the petitioner indulged in a grave economic offence, as such, the petitioner/A-1 cannot be discharged from the offences referred supra.

Learned counsel for the petitioner during hearing, raised various contentions, though they were not raised before the Court below.

One of the contentions raised during hearing is that, when a show cause notice was issued calling the petitioner/A-1 to account for the properties owned and possessed by her and by her relatives, which are disproportionate to her known source of income, which was not referred in the charge sheet. But, there was no need to refer to the reply issued by the petitioner/A-1 and on that ground, the Court cannot discharge the petitioner for the offences referred supra.

Yet, another contention raised by the learned counsel for the petitioner is that, the Investigating Agency is incompetent to inspect the bankers books i.e the accounts maintained by the petitioner and unless specific leave was obtained from the competent authority in terms of Section 18 of P.C Act. Admittedly, the officials of C.B.I/respondent verified the books of accounts maintained under the provisions of bankers books of Evidence Act.

Section 18 of P.C. Act deals with Power to inspect bankers' books and according to it, if from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books in so far as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspect to be holding money on behalf of such person, and take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under this section, provided that no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police. Explanation thereto clarified that, in this section, the expressions "bank" and

“bankers’ books” shall have the meanings respectively assigned to them in the Bankers’ Books Evidence Act, 1891 (18 of 1891).

But, in the present case, there is nothing to show that the Investigating Officer was authorised to inspect the bankers’ books and accounts in exercise power under Section 18 of P.C. Act. That by itself is not a ground to vitiate the entire investigation. However, when the Investigating Officers were authorized to investigate into the offence under Subsection (2) of Section 17 of P.C. Act, special authorisation is not required, since it is an authorisation which covers both Sections 17(2) & 18 of P.C. Act, as inspection of bankers’ books is part of investigation by the officer-in-charge of police station.

Though there is a bar, as per proviso to Section 18 of P.C. Act to verify the books and accounts, without the authorisation of the officer in the rank of Superintendent of Police, it can be decided only at the appropriate stage, and even assuming for a moment that the Investigating Agency verified the books and accounts, the petitioner is not disputing the books and accounts and such inspection/investigation would not vitiate the entire investigation, in the absence of prejudice and miscarriage of justice and that too, it is a question of fact to be decided at the end of trial. Therefore, on this ground, the Court cannot discharge the petitioner/A-1 for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act.

Apart from that, no such ground was raised before the Special Court about the irregularity in the inspection of books and

accounts, inviting an order of discharge under Section 239 Cr.P.C on that ground. In the absence of any request before the Court below, the petitioner is incompetent to raise such objection for the first time before this Court in a petition filed under Section 397 & 401 Cr.P.C, in view of the limited jurisdiction conferred on this Court and thereby, the order passed by the Court below cannot be held to be irregular, improper and illegal for the failure to answer such question.

In support of his contention, learned counsel for the petitioner has placed reliance on the judgment of this Court in **S. Kurminaidu v. State of A.P**⁵⁴. In the facts of the above judgment, a show cause notice was issued calling upon the employee to account for the alleged disproportionate assets possessed by him. But, in the order passed by the authorities while granting sanction by exercising power under Sections 5(2) r/w 5(1)(e) of P.C Act, 1947, this Court held that, the order passed by the competent authority according sanction to prosecute the accused is illegal and it is mechanical without applying the mind and thereby, the Court has no jurisdiction to try the offence.

But, I am unable to agree with the contention for the reason that, at best, failure to record the explanation submitted by the petitioner in the order according sanction to prosecute this petitioner, is not a ground, since, the validity of such sanction can be decided only at the end of the trial, in view of the judgment of the Apex Court in **Parkash Singh Badal v. Union of India**⁵⁵. Consequently, on this ground also, the case of the prosecution

⁵⁴ 1999 (1) ALT (CrI.) 69 (A.P)

⁵⁵ AIR 2007 SC 1274

cannot be thrown out at the threshold, discharging this petitioner for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act.

In view of my foregoing discussion, I find no substance in the contention raised by the learned counsel for the petitioner to discharge the petitioner/A-1 for the offences punishable under Sections 13(2) r/w 13(1)(e) of P.C. Act, as none of the grounds are relevant at this stage. At best, the Court is required to examine whether the material produced along with the final report or charge sheet is sufficient to proceed against this petitioner framing charges or the prosecution is groundless. But, in the present facts of the case, there is prima facie material and that the prosecution is based on sufficient material. Consequently, it is difficult to hold that the prosecution is groundless at this stage. Therefore, I find no illegality or irregularity or impropriety in the order passed by the Court below, calling for interference of this Court, while exercising power under Section 397 & 401 Cr.P.C. Hence, I find no ground to discharge the petitioner/A-1 and thereby, the order passed by the Court below in C.C.No.12 of 2004 on the file of Special Judge for CBI Cases at Hyderabad, is hereby upheld, dismissing the revision petition. Accordingly, the point is answered.

POINT No.5:

In view of the aforesaid discussion, the grounds urged do not stand to any legal scrutiny and this Court cannot interfere with the order passed by the Court below while exercising power under

Sections 397 & 401 Cr.P.C, since the petitioner confined his defence only to the legality in the investigation. Therefore, in view of my foregoing discussion, I find no ground to discharge the petitioner/A-1 at this stage and consequently, the point is answered.

In the result, criminal revision case is dismissed, confirming the order in CrI.M.P.No.962 of 2007 in C.C.No.12 of 2004 dated 08.12.2008 passed by the file of Special Judge for CBI Cases at Hyderabad.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

Date: 09.11.2018
SP

JUSTICE M. SATYANARAYANA MURTHY

