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HIGH COURT OF CHHATTISGARH, BILASPUR
Order reserved on:07.02.2020
Order delivered on:24.02.2020

Writ Petition (Cr.) No.390 of 2017

T.R.Kunjam, S/o Late A.G. Shanker Kunjam, Age-47 years, posted as Executive Engineer, Public Works Department, Bilaspur, R/o E/4, Nutan Colony, Sarkanda Bilaspur

---Petitioner

Versus

State of Chhattisgarh Through Station In-charge, Anti Corruption Bureau, Raipur (CG)

---Respondent

For Petitioner	: Mr.Sourabh Dangi, Advocate
For respondent	: Mr.H.S. Ahluwalia, Dy. Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The State of Chhattisgarh through the Anti Corruption Bureau has registered Crime No.5/2006 for offence punishable under Sections 13(1) (e) and 13(2) of the Prevention of Corruption Act, 1988 (hereinafter called as 'PC Act') against the petitioner on 16.1.2016 and has seized various articles from the house of the petitioner and also seized currency from the house of his brother-in-law and jewellery from his sister-in-law's house and has prepared inventory (Annexure P-1) and asked the petitioner to furnish explanation. It is the case of the petitioner that he has submitted the

explanation thrice and that is not being considered and the respondent is ready and willing to submit the charge-sheet without considering and deciding the explanation submitted by the petitioner. Therefore, appropriate writ/direction be issued to the respondent/State to consider the explanation regarding currency found in Ramesh Gulati's house (brother-in-law of the petitioner), ownership of petitioner's mother-in-law's house, other explanation with regard to ornaments seized from the house of sister-in-law of the petitioner and house in the name of his mother-in-law before filing of the charge-sheet and to pass a reasoned and speaking order.

2. Return has been filed by the respondent/State opposing the averments made in the writ petition stating inter-alia that the writ petition as framed and filed is not maintainable, investigation has been completed and the writ petition is pre-mature. Explanation submitted by sister-in-law of the petitioner has also been considered and investigation is at final stage and on account of interim order, no further steps could be taken.

3. Mr.Sourabh Dangi, learned counsel for the petitioner, would submit that investigating officer

is duty bound to consider the explanation submitted by the petitioner with regard to disproportionate assets before filing of charge-sheet and that appropriate direction is required to be issued to consider such explanation before arriving at any conclusion. He relied upon the judgment of the Supreme Court in the matter of **State of M.P. v. Mohanlal Soni**[1]**, Central Bureau of Investigation v. Parmila Virendra Kumar Agrawal and others**[2] and **Babubhai v. State of Gujarat**[3]**.**

4. On the other hand, Mr.H.S. Ahluwalia, learned Deputy Advocate General for the respondent/State, would submit that no direction can be issued as the writ petition is pre-mature and explanation submitted by the petitioner has already been considered and that would amount to directing the investigation to investigate the offence in particular manner. He relied upon the judgment of Division Bench of this Court in the matter of **Mahesh Kumar Agrawal v. State of Chhattisgarh and others**[4]**.**

5. I have heard learned counsel for the parties and considered their rival submissions made hereinabove

1 (2000) 6 SCC 338
2 2019 SCC Online 1265
3 (2010) 12 SCC 254
4 ILR 2019 CG 2377

and also went through the records with utmost circumspection.

6. In order to consider the plea raised at the Bar, it would be appropriate to notice unamended Section 13 (1) (e) of the PC Act, 1988 (amended w.e.f. 26.7.2018) which states as under:-

> "**13. Criminal misconduct by a public servant.**-(1) A public servant is said to commit the offence of criminal misconduct,-
>
> (a) to (c) xxx xxx xxx
>
> (e) if he or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.
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> Explanation.-For the purposes of this section, "known sources of income" means income received from any lawful source and such receipt has been intimated in accordance with the provisions of any law, rules or orders for the time being applicable to a public servant."

7. In order to prove the charge under Section 13(1)(e) of the PC Act, 1988, the prosecution must prove the the following ingredients, namely (1) the prosecution must prove that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which are found in his possession, (3) it must be proved as to what were

his known sources of income i.e. known to the prosecution, (4) it must prove quite objectively that the resources or property found in possession of the accused were disproportionate to his known source of income. Once the above-mentioned ingredients are satisfactorily proved, the offence of criminal misconduct under Section 13(1)(e) of the PC Act, 1988 is complete, unless the accused is able to account for such resources or property and it is only thereafter the burden shifts to the accused to prove his innocence.

8. The Supreme Court in the matter of **State of Maharashtra v. Wasudeo Ramchandra Kaidalwar**[5] dealing with Section 5(1)(e) of the Prevention of Corruption Act, 1947 which is pari-materia to Section 13(1)(e) of the PC Act, 1988, has held that the accused having been found in possession of disproportionate assets, he is duty bound to account satisfactorily for such possession. It was observed as under:-

> "13.....To substantiate the charge, the prosecution must prove the following facts before it can bring a case under S. 5(1)(e); namely, (1) it must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession, (3)

5 AIR 1981 SC 1186

> it must be proved as to what were his known sources of income i.e. known to the prosecution, and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once these four ingredients are established, the offence of criminal misconduct under S. 5(1)(e) is complete, unless the accused is able to account for such resources or property. The burden then shifts to the accused to satisfactorily account for his possession of disproportionate assets.....”

9. Similarly, in the matter of **M. Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad**[6], Their Lordships of the Supreme Court again analyzing the provisions contained in Section 5(1)(e) of the Prevention of Corruption Act, 1947 (pari-materia provision to Section 13(1)(e) of the Act of 1988) held that it is not the mere acquisition of property that constitute an offence under the provisions of the Act but it is the failure of accused to satisfactorily account for such possession that makes the possession objectionable as offending the law. Their Lordship further held that only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused. It was observed as under:-

6 AIR 1993 SC 313

> "6. An analysis of Section 5(1)(e) of the Act, 1947 which corresponds to S. 13(1)(e) of the new Act of 1988 shows that (it) is not the mere acquisition of property that constitutes an offence under the provisions of the Act but it is the failure to satisfactorily account for such possession that makes the possession objectionable as offending the law.
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> 7. To substantiate a charge under S.5(1)(e) of the Act, the prosecution must prove the following ingredients, namely, (1) the prosecution must establish that the accused is a public servant, (2) the nature and extent of the pecuniary resources or property which were found in his possession (3) it must be proved as to what were his known sources of income, i.e. known to the prosecution and (4) it must prove, quite objectively, that such resources or property found in possession of the accused were disproportionate to his known sources of income. Once the above ingredients are satisfactorily established, the offence of criminal misconduct under Section 5(1)(e) is complete, unless the accused is able to account for such resources or property. In other words, only after the prosecution has proved the required ingredients, the burden of satisfactorily accounting for the possession of such resources or property shifts to the accused."

10. The Supreme Court in the matter of **K. Veeraswami v. Union of India and others**[7] with reference to Section 5(1) (e) of the PC Act, 1947 observed as under:-

> "Clause (e) creates a statutory offence which must be proved by the prosecution. It is for the prosecution to prove that

7 1991 (3) SCC 655

> the accused or any person on his behalf, has been in possession of pecuniary resources or property disproportionate to his known sources of income. When that onus is discharged by the prosecution, it is for the accused to account satisfactorily for the disproportionality of the properties possessed by him. The Section makes available statutory defence which must be proved by the accused. It is a restricted defence that is accorded to the accused to account for the disproportionality of the assets over the income. But the legal burden of proof placed on the accused is not so onerous as that of the prosecution. However, it is just not throwing some doubt on the prosecution version. The legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily". That means the accused has to satisfy the court that that his explanation is worthy of acceptance. The burden of proof placed on the accused is an evidential burden though not a persuasive burden. The accused, however, could discharge that burden of proof "on the balance of probabilities" either from the evidence of the prosecution and/or evidence from the defence.
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> (emphasis added)"

11. In the matter of **State of Maharashtra and others v. Ishwar Piraji Kalpatri and others**[8] the Supreme Court following the principle of law laid down in **K. Veeraswami** (supra) has held that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e) of satisfactorily explaining about his assets and resources is before the Court when the trial

8 AIR 1996 SC 722

commences and not at an earlier stage. It was observed as under:-

> "15. In our opinion, there is a complete misreading of the aforesaid provision by the High Court. It is no doubt true that a satisfactory explanations was required to be given by the Delinquent Officer. But this opportunity is only to be given during the course of the trial. It is no doubt true that evidence, had to be gathered and a prima facie opinion formed that the provisions of Section 5(1)(e) of the Act are attracted before a first information report was lodged. During the course of gathering of the material, it does happen that the officer concerned or other person may be questioned or other queries made. For the formation of a prima facie opinion that an officer may be guilty of criminal misconduct leading to filing of the First Information Report. There is no provision in law or otherwise which makes it obligatory of an opportunity of being heard to be given to a person against whom the report is to be lodged. That such satisfactory account had to be rendered before a Court is also borne out from the judgment of this Court in Veerswami' case (supra).
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> 16. The aforesaid passage leaves no manner of doubt that the opportunity which is to be afforded to the delinquent officer under Section 5(1)(e) of the Act of satisfactorily explaining about his assets and resources is before the Court when the trial commences and not at an earlier stage. The conclusion arrived at by the learned Single Judge that principles of natural justice had been violated, as no opportunity was given before the registration of the case is clearly unwarranted and contrary to the aforesaid observations of this Court in

K. Veeraswami's case (supra)"

12. The Madhya Pradesh High Court in the matter of **Permanand Kedar Natha Jha v. State of M.P.**[9] has held that investigative trial before filing chargesheet and after completion of investigation not contemplated by any provision in law and also also held that there is no provision in law, or otherwise which makes it obligatory for an opportunity of being heard to be given to the person against whom the report is to be lodged. It was observed as under:-

> "9. In these judgments the Court was nowhere faced with the question whether an investigative trial before filing the charge-sheet and after completion of the investigation is called for on the part of investigating officer. In our case the investigations are completed and challan has been filed showing the extent of properties being beyond the known sources of income and in the face of the explanation of the wife of the accused that only accused could explain about her acquisition. The trial Court, in rejecting the objection of the petitioner on the point of need of prior notice prior to filing of challan, relied upon the observation of the Supreme Court in *AIR 1996 SCW 15* where the Court observed that it was no doubt true that a satisfactory explanation was required to be given by the delinquent officer, but, this opportunity is only to be given during the course of trial. It was also no doubt true that evidence had to be gathered and prima facie opinion formed whether the provisions of section 5(1)(e) of the Act (old Act) are

9 2000(1) M.P.L.J. 360

> attracted before the first information report was lodged. During the course of gathering of the material it does happen that the officer concerned or other person may be questioned or other queries made for the formation of guilty criminal misconduct leading to filing of first information report. There is no provision in law or otherwise which makes it obligatory for an opportunity of being heard to be given to the person against whom the report is to be lodged. The said satisfactory account is to be rendered before the Court. The same result was reached by the Supreme Court in case of *Veera Swami* cited at *1991 (3) SCC 655*. The trial Court has observed regarding assets of the son of the accused and his sources of income that there is a vast difference between them also and similar about the wife of the accused on the basis of the material placed on record. So the Court said that the trial was necessary. The accused could give satisfactory account, in his evidence after the prosecution has discharged the initial burden of proof placed on them to prove the various ingredients of the offence. The accused could disprove by giving satisfactory account by evidence worth acceptance, the accused could discharge the burden which comes on him on the balance of probability either from the evidence of the prosecution or from the defence or both as was held in *Veeraswami's* case by the Supreme Court. So the trial Court has fully discussed the material placed before it and kept in mind the various guidelines laid down by the Supreme Court."

13. The Supreme Court in the matter of **State of M.P. v. Awadh Kishore Gupta and other**s[10] has held as under:-

> "5. Section 13 deals with various

10 AIR 2004 SC 517

situations when a public servant can be said to have committed criminal misconduct. Clause (e) of sub-section (1) of the Section is pressed into service against the accused. The same is applicable when the public servant or any person on his behalf, is in possession or has, at any time during the period of his office, been in possession, for which the public servant cannot satisfactorily account pecuniary resources or property disproportionate to his known sources of income. Clause (e) of sub-section (1) of S.13 corresponds to Cl. (e) of sub-section (1) of S.5 of the Prevention of Corruption Act, 1947 (referred to as 'Old Act'). But there has been drastical amendments. Under the new clause, the earlier concept of "known sources of income" has undergone a radical change. As per the explanation appended, the prosecution is relieved of the burden of investigating into "source of income" of an accused to a large extent, as it is stated in the explanation that "known sources of income" mean income received from any lawful source, the receipt of which has been intimated in accordance with the provisions of any law, rules orders for the time being applicable to a public servant. The expression "known sources of income" has reference to sources known to the prosecution after thorough investigation of the case. It is not, and cannot be contended that "known sources of income" means sources known to the accused. The prosecution cannot, in the very nature of things, be expected to know the affairs of an accused person. Those will be matters "specially within the knowledge" of the accused, within the meaning of Section 106 of the Indian Evidence Act, 1872 (in short the 'Evidence Act').

14. The phrase "known sources of income" in S.13(1)(e) (old S.5(1)(e)} has clearly the emphasis on the word "income". It would be primary to observe that qua the public servant, the income

> would be what is attached to his office or post, commonly known as remuneration or salary. The term "income" by itself, is elastic and has a wide connotation. Whatever comes in or is received, is income. But, however, wide the import and connotation of the term "income", it is incapable of being understood as meaning receipt having no nexus to one's labour, or expertise, or property, or investment, and having further a source which may or may not yield a regular revenue. These essential characteristics are vital in understanding the term "income". Therefore, it can be said that, though "income" is receipt in the hand of its recipient, every receipt would not partake into the character of income. Qua the public servant, whatever return he gets of his service, will be the primary item of his income. Other incomes which can conceivably are income qua the public servant, will be in the regular receipt from (a) his property, or (b) his investment. A receipt from windfall, or gains of graft, crime, or immoral secretions by persons prima facie would not be receipt from the "known sources of income" of a public servant.
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> **15.** The Legislature has advisedly used the expression "satisfactorily account". The emphasis must be on the word "satisfactorily" and the Legislature has, thus, deliberately cast a burden on the accused not only to offer a plausible explanation as to how he came by his large wealth, but also to satisfy the Court that his explanation was worthy of acceptance. ”

16. Applying the principle of law laid down by the Supreme Court and the High Court of the Madhya Pradesh in the above-quoted judgments (supra), it is quite vivid that opportunity which is to be afforded to the accused under Section 13(1)(e) of the PC Act, 1988 of satisfactorily explaining about his assets and resources/known source of income is available to the accused before the Court when the trial commences and not at an earlier stage of investigation and he has to satisfy the Court that his explanation is worthy of acceptance after the prosecution discharges his burden that he (accused) has resources/property in his possession disproportionate to his known source of income.

17. In the light of aforesaid legal analysis and principles of law flowing from the judgments of the Supreme Court (supra), it is quite vivid that the petitioner will have an opportunity to explain his known source of income before the Court during the course of the trial and after the prosecution would establish that the accused is a public servant, the nature and extent of the pecuniary resources or property which were found in his possession, as to what were his known sources of income and it must prove that such resources or property found in possession of the accused were disproportionate to his known sources of income, then only the petitioner will have an opportunity to satisfactorily account for his possession of disproportionate property during the course of trial, as such, the petitioner's submission that the explanation submitted by him before the investigating officer be directed to be considered in consonance with the principle of natural justice is not available to him and the judgments cited by him as recorded in para-3 are clearly inapplicable/distinguishable in the light of finding recorded hereinabove.

18. Consequently, the writ petition deserves to be and is hereby dismissed. No cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-