**AFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Judgment Reserved on : 30.06.2020**

**Judgment Delivered on : 22.07.2020**

**Writ Appeal No. 295 of 2020**

*(Arising out of order dated 24.02.2020 passed by the learned Single Judge in W.P. (Cr) No. 390/2017)*

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

**---- Appellant**

**Versus**

- Sate of Chhattisgarh, Through Station Incharge, Anti Corruption Bureau, Raipur, District Raipur (C.G.)

**---- Respondent**

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| For Appellant | : | Shri Manoj Paranjpe, Advocate |
| For Respondent/State | : | Shri Sudeep Agrawal, Deputy Advocate General |

**Hon'ble Shri P. R. Ramachandra Menon, Chief Justice**
**Hon'ble Shri Parth Prateem Sahu, Judge**

**CAV JUDGMENT**

**Per P. R. Ramachandra Menon, Chief Justice**

1. Whether the accused, against whom a Crime has been registered in terms of Section 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act, 1988'), is entitled to have an “opportunity of hearing” on the explanation stated as submitted before the Investigating Officer in the course of the investigation, before submission of the charge-sheet ? The answer given in the 'negative' by the learned Single Judge is put to challenge in this appeal preferred by the Writ Petitioner.

2. The short factual matrix, necessary to have an effective adjudication in the matter is that, the Appellant, who is working as an Executive Engineer in the Office of the Superintending Engineer, Public Works Department,

Bilaspur is facing investigation at the hands of the Respondent-State Anti Corruption Bureau, Raipur, who has registered Crime No. 5/2016 under the provisions as aforesaid. It is stated that the Respondent had conducted a raid in the house of the Appellant and his Brother-in-law by name Ramesh Gulati (Appellant's wife's sister's husband) and had seized some incriminating materials. In the course of the search, seizure and investigation conducted by the Respondent, apart from the materials / records seized from the Appellant, a sum of Rs.45,63,900/- was seized from the house of the Appellant's Brother-in-law by name Ramesh Gulati. It is stated that, some jewellery were also seized from the house of the Sister-in-law and Annexure-P/1 inventory was prepared. As put-forth by the Appellant, after conducting the search and seizure, followed by preparation of inventory, the check period was determined by the Respondent as from 01.04.2001 to 16.01.2016. The income during the said period was reckoned as Rs.89,24,173/-, whereas the expenditure was worked out to be Rs.2,78,31,968/-. The Competent Authority also determined the income and expenditure from 23.07.1992 which is the date of joining of the Appellant in service, to 31.03.2001, particulars of which are not much necessary, in so far as the issue involved in this case is concerned.

3. The grievance of the Appellant is that, while determining the expenditure of the Appellant during the check period, the Respondent has also included :

(i) The amount seized from the house of his Brother-in-law by name Ramesh Gulati i.e., Rs.45,63,900/-;

(ii) The house belonging to Appellant's Mother-in-law valuing Rs.48,32,600/-; and

(iii) The income of the Appellant's deceased wife amounting to Rs.73,70,116/-.

4. It is pointed out that the seizure of currency from the house of the Brother-in-law by name Ramesh Gulati has been separately challenged by him, by filing CrMP No. 1174/2017, furnishing the source of cash and such other details. Similarly, with reference to the assets of the Mother-in-law, the Appellant points out that she has obtained some qualification in 'Electro Homoeopathy' and is having regular income from the practice, adding that she is a regular taxpayer to the Income Tax Department. In response to the clarification sought for by the Income Tax Department on 12.05.2016 (with regard to the property), it is stated that the same has been satisfactorily replied by her and that the matter has been closed by the Income Tax Department, giving her a clean chit; which hence cannot be reckoned as income at the hands of the Appellant. It is also the case of the Appellant, that the Respondent had called for an 'explanation' during the course of investigation, when all the above vital particulars were clarified; despite which it has not been looked into and the Respondent before proceeding with further steps for filing the charge-sheet before the appropriate Court. It was hence sought to be interdicted by filing the writ petition, seeking to direct the Respondent to consider the explanation regarding (i) the currency seized from the house of the Brother-in-law by name Ramesh Gulati (ii) as to the ownership of the house of the Petitioner's Mother-in-law and also (iii) as to the earnings of the Petitioner's deceased wife; before filing the charge-sheet, by way of a 'reasoned and speaking order'.

5. After hearing both the sides and referring to the case laws cited in support of the rival contentions, the learned Single Judge noted various other rulings rendered by the Apex Court as well, to decide whether the prayer sought for by the Writ Petitioner could be acceded to. It was accordingly held that, Section 13(1)(e) of the PC Act, 1988 or any other provision does not speak about any right of the accused / Writ Petitioner as to the 'opportunity of hearing prior to the submission of the charge-sheet'. It was also observed that, by virtue of the rulings rendered by the Apex Court, the initial burden is upon the prosecution to prove that the accused has amassed wealth disproportionate to his known sources of income and then it will be for the accused / Writ Petitioner to explain satisfactorily before the Court as to his assets and the resources / known source of income. It was further observed that, the judgments cited from the part of the Writ Petitioner were not applicable and were distinguishable for the reasons given. It was accordingly, that interference was declined and the writ petition was dismissed; correctness of which is brought up for consideration in this appeal.

6. We heard Shri Manoj Paranjpe, the learned counsel appearing for the Appellant as well as Shri Sudeep Agrawal, the learned Deputy Advocate General representing the Respondent at length.

7. Section 13(1)(e) of the PC Act, 1988 has undergone a substantial amendment with effect from 26.03.2018; prior to which it stood as follows :

> “13. **Criminal misconduct by a public servant. -** (1) A public servant is said to commit the offence of criminal misconduct, -

> (a) to (d) 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.
>
> 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."

There cannot be any dispute as to the various requirements / ingredients to be satisfied, to make an offence under Section 13(1)(e) of the PC Act, 1988. There is no dispute as to the sequence of events as well.

8. The crux of the explanation given by the Appellant is that, the Brother-in-law by name Ramesh Gulati, the Mother-in-law by name Smt. Indu Bedi, the deceased wife by name Sandhya Kunjam and the Sister-in-law are having independent source of income and hence the Cash / Jewellery / Property recovered / valued with reference to their names cannot be attributed or be assessable in the hands of the Appellant. The Appellant has sought to rely on the verdict passed by the Apex Court in ***K.C. Builders and Another v. Assistant Commissioner of Income Tax***[1] to contend that, when the Income Tax Appellate Tribunal / Adjudicating Authority has already concluded that there is no concealment of income, no offence survives thereafter under the Income Tax Act and hence there cannot be any prosecution.

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[1] (2004) 2 SCC 731

9. It was a case where the Income Tax Authorities had arrived at a finding that there was concealment of income and accordingly, penalty was imposed under Section 271(1)(c) of the Income Tax Act. However, on taking up the matter before the Appellate Tribunal, it was held that there was no concealment and accordingly, the penalty under Section 271(1)(c) was cancelled. Despite this, by filing separate complaints before the Magistrate having jurisdiction, prosecution proceedings were initiated in terms of Section 276-C of the Income Tax Act for the 'wilful' attempt to evade the tax. The Apex Court observed that the concealment was with reference to the original return filed earlier, showing only a lesser income and the revised return filed after the search and seizure; in turn leading to the penalty imposed under Section 271(1)(c). But the Income Tax Appellate Tribunal had held that the additions in the income were on the basis of the 'settlement' between the Assessee and the Revenue and it represented the Assessee's voluntarily offer and hence there was no concealment of income, thus leading to cancellation of the penalty. This order having become final, no offence under the Income tax Act was subsisting to be prosecuted under Section 276-C and accordingly, it was concluded that, once it was found that there was no concealment, quashing of the prosecution was to be automatic. The said decision does not come to rescue of the Appellant in any manner, as the prosecution in the instant case is not with reference to the violation of any provisions in the Income Tax Act, but for the offence of 'criminal misconduct' under Section 13(1)(e), read with 13(2) of the PC Act, 1988. That apart, whether the explanation stated as given by the Appellant is satisfactory

or not is a matter to be considered by the Trial Court and not a matter to be adjudicated by the Investigating Officer by passing any reasoned order, which in fact is the prayer sought for in the writ petition.

10. The learned counsel for the Appellant has also sought to rely on the verdict passed by the Apex Court in ***Radheshyam Kejriwal v. State of West Bengal and Another***[2] to contend that, when the finding in the adjudication proceedings stands in favour of the person facing the trial for identical violation and the person concerned is held innocent on merit, the criminal prosecution under the same set of facts and circumstances cannot be let to continue; the underlying principle being the 'higher standard of proof' in criminal cases. It is contended that the finding reached by the Income Tax Authorities with reference to the income declared in the returns filed by the persons concerned has become final and as such, the said income cannot be treated as possessed or earned by the Appellant, to connect him with the offence under the PC Act, 1988. More so, when the seizure of the currency from the Brother-in-law by name Ramesh Gulati has been separately challenged in CrMP No. 1174/2017 and the Mother-in-law by name Smt. Indu Bedi has been given clean chit by the Income Tax Authorities holding that the house belongs to her.

11. Similarly, separate source of income of the deceased wife of the Appellant by name Sandhya Kunjam as a practitioner in 'Electro Homoeopathy' System of Medicine is pointed out, contending that she had earned a sum of Rs.73,70,116.97 during the period from 1995-96 to

[2] (2011) 3 SCC 581

2014-15, which is stated as already cleared by the Income Tax Authorities; particulars of which are stated as given to the Respondent, but not considered. ***Radheshyam Kejriwal*** (supra) (where it has been declared that judgment cannot be read as a statute) was a case with reference to the offence under the Foreign Exchange Regulation Act, 1973. The 'majority' held that, since in the adjudication proceedings, the Adjudicating Authority had categorically held on merit, that the charges levelled against the assessee as to contravention of the relevant provisions of law cannot be sustained, the Enforcement Directorate could not act contrary to the adjudication proceedings and proceed with the criminal prosecution. It was accordingly, that the appeal filed by the accused was allowed and the judgment of the Metropolitan Magistrate and the order of the High Court affirming the same were set aside. The said judgment does not have any application to the proposition mooted by the Appellant herein.

12. The learned counsel for the Appellant submits that, in view of the law declared by the Apex Court in ***DSP, Chennai v. K. Inbasagaran***[3], the income of the other members of the house cannot be accounted to be as of the accused and as such, non consideration of the explanation preferred by the Petitioner and the denial of 'opportunity of hearing' in this regard are fatal to the case of the Respondent. Here again, there cannot be any dispute with regard to the law declared by the Supreme Court. It is always open for the Appellant to have the position satisfactorily explained before the Trial Court at the appropriate time, when the charge-sheet is filed or thereafter. So far as the Investigating Officer /

[3] (2006) 1 SCC 420

Agency is concerned, charge-sheet is nothing but the 'final report', to be submitted in terms of Section 173(2) of the CrPC, based on the materials collected to connect the accused with the offence. ***DSP, Chennai*** (supra) was a case under Section 13(1)(e), read with Section 13(2) of the PC Act, 1988. After completing the investigation and submission of charge-sheet against a senior IAS Officer (in respect of the above offences) the trial was completed, where he was found guilty, convicted and sentenced by the Special court. But on appeal, the Madras High Court acquitted him, which came to be challenged by the State, before the Apex Court. With reference to the materials brought on record, the Apex Court observed that the accused had satisfactorily explained that the monies and assets recovered belonged to his wife, which she had amassed from the business run by her separately and in absence of any evidence that the assets belonged to the accused, he could not be held liable under the 'PC Act' for such assets. The said judgment does not support the Appellant in any manner, as the charge is yet to be framed, evidence is yet to be adduced and a finding is yet to be made by the Trial Court. It is open for the Writ Petitioner / Appellant to explain the position satisfactorily before the Trial Court and get favourable orders, if substantiated on facts and in law.

13. The Appellant has also placed reliance on the verdicts passed by some other High Courts; particularly, the Madras High Court and the Orissa High Court, as given in paragraph 16/17 and 19 respectively of the Memorandum of Appeal. Admittedly, the proceedings before the said Courts were with reference to the applications filed for '**discharge**' and

orders passed by the Special Court either granting or declining the relief. Such a stage is still to come in the case of the Appellant herein; admittedly since the charge-sheet / final report is still to be submitted by the Respondent. Once the charge-sheet is filed, after completion of the investigation, it is quite open for the Appellant to pursue appropriate proceedings of his choice, as available in accordance with law. Hence, the reliance sought to be placed on the said verdicts is out of context and misconceived.

14. The verdict passed by the Apex Court in ***State of M.P. v. Mohanlal Soni***[4] was an appeal filed by the State of Madhya Pradesh, aggrieved by the judgment passed by the High Court of Madhya Pradesh on discharging the respondent in connection with the offence punishable under Section 13(1)(e) of the PA Act, 1988. It was the specific case of the accused that, during the investigation, properties and assets belonging to the mother-in-law, father, brother and nephew were shown as the assets of the accused; despite the fact that the wife herself was a self-earning member and an income tax payer. While submitting the charge-sheet, several documents which were collected by the Investigating Agency were withheld, without producing the same before the Court. According to the accused, if those documents were considered, even *prima facie,* there was no scope for framing any charge against him. It was accordingly, that an application was filed seeking for production of these documents before framing the charges, which however came to be rejected by the Special Court holding that, for framing charges only those documents forwarded to the Court under Section 173(5) of the CrPC alone needed to

[4] (2000) 6 SCC 338

be considered. On challenging the said order in revision, the High Court disposed off the Revision Petition as per order dated 08.09.1997, directing the said documents [made available by the accused during investigation] to be produced and to be considered by the Court below while framing the charge. This order was not complied with, despite its having become final and it was for not following the said order by the Trial Court, that the High Court (in the second round of litigation) interdicted the charge framed by the Trial Court and discharged the accused. The scope of such opportunity, as envisaged under Section 227 of the CrPC, <u>to enable the Court</u> to decide whether it was necessary to proceed to conduct the trial, was highlighted by the Apex Court and accordingly, the verdict passed by the High Court was upheld and the appeal preferred by the State was dismissed. The above decision does not support the proposition mooted by the Petitioner, to grant the relief sought for, *i.e.* to grant an 'opportunity of hearing' <u>before submission of the charge-sheet</u> by the Investigating Agency.

15. The question pertinent in this appeal is, whether the accused is entitled to get an opportunity of hearing before the Investigating Officer with reference to the disproportionality between the assets and the known sources of income and whether the charge sheet should contain a statement to that effect ? This question, involving unsatisfactory way of accounting by the public servant, had come up for consideration before a Constitution Bench of the Apex Court in ***K. Veeraswami v. Union of India & Others***[5]. That was a case filed by a former Chief Justice of the Madras High Court, against whom a case was registered by the Central

[5] (1991) 3 SCC 655

Bureau of Investigation with reference to the offences under Section 5(2) read with 5(1) (b), (d) and (e) of the Prevention of Corruption Act, 1947. Section 5(1) (e) and 5(2) are *pari materia* with Section 13(1) and 13(2) of the PC Act, 1988. But, on coming to know lodgement of an FIR before the Court of Special Judge, Madras, the said Appellant proceeded on leave from 09.03.1976 and subsequently retired from service on 08.04.1976, on attaining the age of superannuation. After completing the investigation, final report was filed in terms of Section 173(2) CrPC before the Special Court, Madras. The Appellant filed a petition under Section 482 of the CrPC to quash the prosecution proceedings, which came to be dismissed by a Full Bench of the Madras High Court, however, granting a 'Certificate for Appeal' before the Supreme Court, in view of the importance of the constitutional questions involved.

16. The two questions formulated by the Apex Court for consideration were as follows:

> "1. The Judges of the High Courts and the Supreme Court are not within the purview of the Act, which is a special enactment applicable to public servants, in whose case prosecution can be launched after sanction granted under Section 6 of the Act, which is alien to the scheme envisaged for constitutional functionaries like Judges of the High Courts and Supreme Court.
>
> 2. The appellant was entitled to an opportunity before the Investigating Officer to explain the disproprotionality between the assets and the known sources of income and the charge-sheet must contain a statement to that effect, that is, to the unsatisfactory way of accounting by the public servant. Unless the charge-sheet contains such an averment an offence under clause (e) of Section 5(1) of the Act is not made out."

17. The judgment was rendered (per majority of 4:1) holding that the Judges of the High Court and Supreme Court would also be covered by the PC Act, 1947 and that sanction for prosecution of the Judge of the Supreme Court or High Court was not required after he ceased to hold the office, even if the offence relates to the period when he was holding the office. It was categorically held that, Section 5(1)(e) of the PC Act, 1947 (pari materia to Section 13(1)(e) of the Act, 1988) does not indicate that the Investigating Officer is obliged to afford any opportunity to the public servant to explain the alleged disproportionality of his assets and furnish his averments in the charge sheet; clearly pointing out that the charge sheet to be submitted must be in compliance with Section 173(2) of the CrPC and nothing else. The Apex Court held that, the Investigating Officer is only required to collect the materials to find out whether the alleged offence appeared to have been committed. In the course of investigation, he may seek clarification from the accused and may necessarily cross-check the position with the known sources of income as possessed by the latter; however, ensuring that 'fair investigation' requires that the accused should not be kept in the darkness. It was observed in explicit terms that, this does not mean that after collection of all the materials, the Investigating Officer must give an opportunity to the accused and call upon him to account for his access of the assets or the known sources of income and then decide whether the accounting is satisfactory or not; which otherwise would be elevating the Investigating Officer to the position of an Enquiry Officer or a Judge. The Apex Court alerted that the Investigating Officer is not holding an enquiry against the

conduct of the public servant or determining the disputed issues regarding the disproportionality between the assets and the income of the accused; whereas he only collects materials from all sides and prepares a report, which he files in the Court as the 'charge-sheet'. The Apex Court also made it clear that the report will be complete, if it is accompanied with all the documents and statement of witnesses as required under Section 173(5) CrPC, simultaneously adding that, nothing more needs be stated in the report of the Investigating Officer. It was also asserted that, it was not at all necessary that all the details of the offence must be stated and further that the details of the offence are required to be proved, to bring home the guilt of the accused at a later stage i.e. in the course of the trial of the case by adducing acceptable evidence.

18. The law declared by the Constitution Bench of the Apex Court as above was followed by a two-member Bench of the Apex Court in ***State of Maharashtra & Others v. Ishwar Piraji Kalpatri & Others***[6]***,*** to hold that it was not obligatory to give 'opportunity of being heard' to the person against whom the report was lodged. It was also observed that there was no provision in law which made it obligatory to give an 'opportunity of hearing' to a person against whom the report is to be tagged. The decision rendered by the Bombay High Court to the contrary, was reversed by the Apex Court; making it crystal clear that, the opportunity which was to be afforded to the delinquent officer under Section 5(1)(e) of the PC Act 1947 (*pari materia* to Section 13(1)(c) of the Act 1988) of 'satisfactorily explaining' about his assets and resources is '<u>before the Court' when the trial commences</u> and not at an earlier stage. Thus, it

[6] AIR 1996 SC 722

was held that, the finding that the 'principles of natural justice' had been violated, as no opportunity was given before registration of the case, was not correct or sustainable.

19. The issue had come up for consideration again before the Apex Court, quite recently as well, in ***Central Bureau of Investigation v. Pramila Virendra Kumar Agrawal & Another***[7]. A crime was registered against two accused under Section 13(1)(e), read with Section 13(2) of the PC Act, 1988 and after completion of the investigation, charge sheet was submitted against both the accused, who filed separate applications seeking for their discharge. One application was allowed, while the other was dismissed by the trial Court. This led to two separate revision petitions before the Bombay High Court; one filed by the CBI, being aggrieved of the discharge of accused No.1 and the other filed by accused No.2, as aggrieved of the dismissal of his application for discharge. Both the matters were clubbed, considered and disposed off as per common verdict dated 14.12.2015, whereby the revision petition filed by the accused No.2 was allowed; while the revision petition filed by the CBI was dismissed, virtually resulting in 'discharge' of both the accused. The main questions raised for consideration before the High Court were whether it was obligatory for the Investigating Officer to record the 'explanation' offered by the accused and whether such explanation should be part of the 'charge sheet' ? In the above background, a further question was also raised, as to whether the 'sanction for prosecution' was defective ? The learned Judge of the Bombay High Court was of the opinion that the Investigating Officer ought

[7] (2019) SCC OnLine SC 1265

to have given specific opportunity for submitting an explanation and observing it as a lapse, it was held that the 'sanction' would also be defective. This was put to challenge by filing separate SLPs by the CBI before the Apex Court. After discussing the facts and figures, the Apex Court held that, in the course of investigation, the accused had been summoned and their statements were recorded; which by itself was for the purpose that they were required to explain the position with regard to the assets, which according to the prosecution, was disproportionate to the known source of income. The Apex Court declared that, the said procedure to be followed in the course of investigation, does not contemplate the consideration of the explanation in the nature of a 'mini trial', if not satisfactory (even before the charge sheet was filed, based on the materials collected and the statement recorded in the course of investigation). The Apex Court further observed that the accused, in any event, would have an opportunity for putting forth their defence in the trial and it was accordingly, that the verdict passed by the Bombay High Court and the order passed by the Special Court were set aside and the proceedings initiated before the Special Court were restored, to be proceeded in accordance with law.

20. It is relevant to note, that the Appellant has conceded in 'paragraph 20' and 'Ground No.11' of the memorandum of writ appeal that, Section 13(1)(e) of the PC Act, 1988 does not say that at the stage of investigation, the explanation offered by the accused has to be considered by the Investigating Officer before arriving at the conclusion; however adding that, it is the duty of the Investigating Officer to ascertain and assess the

entire materials before forming an opinion, which comes under the gamut of “fair investigation”. In 'paragraph 21', the Appellant has conceded that the Investigating Officer has considered the explanation, but contends that he has not considered it with regard to the property of the Mother-in-law and the jewellery seized from the house of the Brother-in-law and his Sister. The version of the Appellant, as given in 'paragraph 22' that, after consideration of the explanation submitted by the accused during the investigation, “the reasons for accepting or not has to be mentioned in the charge sheet” is not supported by any provision of law or precedent. In fact, such contention stands repelled by the Apex Court as per the decision rendered in ***Ishwar Piraji Kalpatri*** (supra) and the Constitution Bench in ***K. Veeraswami*** (supra).

21. In the instant case, the rights and liberties of the Appellant / Accused have been clearly mentioned by the learned Single Judge in 'paragraphs 16 and 17' of the Judgment under challenge. The 'finding and reasoning' given by the learned Single Judge are in conformity with the law declared by the Apex Court as discussed above. In the above circumstance, we do not find any tenable ground to call for interference; the verdict under challenge being within the four walls of law. The appeal fails. It is dismissed accordingly.

Sd/-
**(P.R. Ramachandra Menon)**
**Chief Justice**

Sd/-
**(Parth Prateem Sahu)**
**Judge**

Chandra