

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 226 OF 2020

Charansingh S/o Babulalji Thakur,
Aged about 57 years, Occu. - Agriculturist,
R/o. Railway Station, Main Road, Katol,
Tahsil Katol, Dist. Nagpur.

.... **PETITIONER**

// **VERSUS** //

- 1) State of Maharashtra,
through its Principal Secretary,
Department of Home,
Mantralaya, Mumbai-32.
- 2) Shri Anil Deshmukh,
Aged about 70 years., Occu. Agriculturist,
Hon'ble Cabinet Minister (Home)
State of Maharashtra,
R/o. GPO Square,
Civil Lines, Nagpur.
- 3) Police Inspector,
Anti Corruption Bureau,
Gondia, Camp at Nagpur,
New Administrative Building No.1,
2nd Floor, Civil Lines, Nagpur.
- 4) Shashikant Patil,
Police Inspector,
Anti Corruption Bureau,
Gondia.

.... **RESPONDENTS**

Shri M. P. Khajanchi, counsel for the petitioner.
Shri S. S. Doifode, A. G. P. for the respondent No.1, 3 and 4.

**CORAM : SUNIL B. SHUKRE AND
AVINASH G. GHAROTE, JJ.**

DATED : 25th November, 2020

ORAL JUDGMENT : (Per : SUNIL B. SHUKRE, J.)

1. Heard. **Rule.** Rule made returnable forthwith.
2. Heard finally by consent of the learned counsel appearing for the parties.
3. Being aggrieved by the notice dated 04.03.2020 issued to the petitioner by the respondent No.3, calling upon the petitioner to personally remain present before the Investigating Officer of the Anti Corruption Bureau, Nagpur in an open inquiry initiated into the property of the petitioner, the petitioner has filed the present petition. According to the learned counsel for the petitioner, the respondent No.3 does not have any power to issue any such notice.
4. Relying upon the law laid down by the Hon'ble Apex Court in the case of **Lalita Kumari Vs. Govt. of U. P. and Ors., AIR 2014 SC 187**, Shri Doifode, learned A.P.P. submits that this open inquiry is in the nature of preliminary inquiry into the complaint received by the Anti Corruption Bureau, Nagpur regarding amassing of huge properties by

the petitioner in a manner not transparent to law. He submits that preliminary inquiry in such a scenario is permissible, as held by Apex Court in the case of **Lalita Kumari** (supra), to ascertain whether the allegations so made would lead to disclosure of commission of any cognizable offence or not. He submits that as per Condition No.16 of the State Anti Corruption Bureau Manual, such preliminary inquiry is permissible and if the person to whom a notice for personal appearance is issued and is a person against whom some allegations are made, does not appear before the Anti Corruption Bureau in response to the notice issued to him, as per condition No.16 of the State Anti Corruption Bureau Manual, necessary inferences can be drawn against that person and permission of the higher authority for registration of the offence can be sought. He also submits that till any cognizable offence is registered, no steps regarding arrest could be taken.

5. Shri Khajanchi, learned counsel for the petitioner would also like to draw support from the law laid down by the Apex Court in the case of **Lalita Kumari** (supra) on the point that instructions given in the State Anti Corruption Bureau Manual are executive in nature, having no force of law. In the case of **Lalita Kumari** (supra), various directions have been issued by the Hon'ble Apex Court in paragraph

Nos.111 and 112. For the sake of convenience, they are reproduced as under :-

“111. In view of the aforesaid discussion, we hold:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.

(ii) If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend

on the facts and circumstance of each case. The category of cases in which preliminary inquiry may be made are as under :

- (a) Matrimonial disputes/family disputes*
- (b) Commercial offences*
- (c) Medical negligence cases*
- (d) Corruption cases*
- (e) Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.

6. It is quite clear from the above referred directions that when the complaint made against a person does not disclose

commission of any cognizable offence, offence cannot be registered but, a preliminary inquiry in order to verify the correctness of the allegations and also to elicit some information/material which is relevant for deciding the question regarding commission or non commission of cognizable offence, can be held by the police officer. The time given for completion of this inquiry is of seven days. The Supreme Court has also held authoritatively that instructions given in the C.B.I. Manual are executive in nature, meant for guidance of the officers and regulating the internal working of the department and that these instructions, having no support of law, do not have any force of law. Relevant observations of the Supreme Court in this regard could be found in paragraph No.79 of the judgment in **Lalita Kumari** (Supra). It is reproduced as under :

“79. Besides, learned senior counsel relied on the special procedure prescribed under the CBI manual to be read into Section 154. It is true that the concept of “preliminary inquiry” is contained in Chapter IX of the Crime Manual of the CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that the CBI is constituted under a Special Act, namely, the Delhi Special Police

Establishment Act, 1946 and it derives its power to investigate from this Act.”

7. So, it would follow that the impugned notice having been issued only for facilitating the purpose of preliminary inquiry, cannot be held to be bad in law. Now the question would arise as to whether such notice would compel the person like the petitioner to make his personal appearance before the officials of the Anti Corruption Bureau, Nagpur and in our considered view, the answer would have to be given as in the negative. Such a notice cannot force a person like the petitioner to make his personal appearance before the concerned officials. But, not responding to such a notice, it is quite likely, may be at the peril of the noticee himself for the reason that the officials of the Anti Corruption Bureau may draw some adverse inference against the person not co-operating with the preliminary inquiry. This is what is also implied in condition No.16 of the State Anti Corruption Bureau Manual, on which reliance has been placed by the learned Addl.PP. Of course, as held in the **Lalita Kumari** (supra), these instructions do not have any force of law but they would certainly have binding effect upon the officers of the A.C.B. and they would be required to comply with those instructions. The relevant instruction is to the effect that on completion of the inquiry, the detailed report would have to be submitted by the concerned investigation officer to the Director

General for sanction for registration of the offence. These instructions contained in Condition No.16, according to us, are consistent with law laid down by the Apex Court in the case of **Lalita Kumari** (supra).

8. In the circumstance, we find no merit in this petition and the petition stands dismissed subject to the observations made herein above.

Rule is discharged.

(AVINASH G. GHAROTE, J.)

(SUNIL B. SHUKRE J.)

Kirtak