

HONOURABLE JUSTICE G. SRI DEVI

WRIT PETITION No. 8552 of 2018

ORDER:

This Writ Petition is filed by the petitioners/A-1 and A-2, under Article 226 of the Constitution of India, seeking to quash the F.I.R.No. RC MA1 2017 A 0021 of SPE, CBI, ACB Chennai, dated 20.09.2017 registered against them by the 2nd respondent herein under Section 13 (2) read with Section 13 (1) (e) of the Prevention of Corruption Act, 1988.

Brief facts of the case of the petitioners are that the 1st petitioner is the Civil Servant of I.R.S. 1992 batch and she is presently working as a Commissioner of Income Tax (Audit) at Hyderabad. She had built up her career in the Income Tax Department since 11th October, 1992 when she joined as Asst. Commissioner of Income Tax and she had worked in different places as Joint Commissioner, Additional Commissioner and the Commissioner of Income Tax and she had an unblemished career; her service record has always been excellent, outstanding and she never faced any departmental or disciplinary enquiry in her entire career of more than two and half decades.

The 2nd petitioner is the husband of the 1st petitioner. He was also a Civil Servant in Indian Railways Accounts Service. He held high positions as Deputy Financial Advisor and Chief Accounts Officer in the Indian Railways. He took voluntary retirement in the year 2009. At present he is a sitting Member of Legislative Assembly of Andhra Pradesh having been elected from Santhanutalapadu Constituency and representing the political party, YSRCP. He was a Member of Committee of Assurances, Member of Committee on Scheduled Caste and Scheduled Tribe Welfare and is also a member of Committee on Public Accounts.

It is further submitted that the petitioners reside in their house at Plot No. 126, Road No. 11, Jubilee Hills, Hyderabad and that both of them are Income Tax Assessors and the PAN number of the 1st petitioner is ABAPT0991J and the PAN number of the 2nd petitioner is ACLPA5607N and they have filed their Income Tax Returns regularly for all these two and half decades. Both the petitioners have disclosed their income and assets particulars to the Department. In this regard, the 1st petitioner, as a Central Government Employee under Rule 18 of Central Service Conduct Rules (CCA Conduct Rules), has to submit Immovable Property Returns (I.P.R) every year and she

has also required to disclose all the transactions every year, of immovable and movable properties. Similarly the 2nd petitioner herein is also obliged to declare his assets and income particulars while he was in service. Now the 2nd petitioner has contested to the State Assembly, under the provisions contained in Section 33 of the Representation of Peoples Act, 1951 read with Rules and Guidelines issued there under, he has to declare the assets with existing market value and income particulars.

It is also submitted that in the impugned F.I.R. registered on 20th September, 2017, it was, *inter alia*, stated that it was based on check period from 01/04/2010 to 29/02/2016. The assets held by the petitioners at the beginning of the check period were mentioned as Statement-A and the assets at the end of check period were mentioned as Statement-B. The income during the check period is mentioned as Statement-C. Though all the statements have been prepared on the basis of Income Tax Returns and I.P.Rs., submitted by the 1st petitioner and the Affidavits and Declarations made by her husband, the 2nd petitioner herein, at the time of his election to the State Assembly, but in the impugned F.I.R. it has been stated that they have acquired assets/pecuniary advantage to the tune of

Rs. 5,95,58,322/- against the income of Rs.4,84,76,630/- and, therefore, they are having disproportionate assets to a tune of Rs. 1,10,81,692/- which is 22.86% of the income earned by them. It is further submitted that the impugned F.I.R. is liable to be quashed as the very particulars mentioned in the F.I.R. do not support the conclusions therein. Even if all the averments in the F.I.R. and the particulars stated therein are taken on their face value, they do not constitute any offence of misconduct under Section 13 (1) (e) of the Prevention of Corruption Act, 1988. There is absolutely no chance of ending the proceedings in their conviction and the impugned F.I.R. is vitiated by lack of *bona fides*. In law, criminal proceeding should not be set in motion against anyone, especially those in Government Service, mechanically and even without any *prima facie* case. Obviously, as the 2nd petitioner belongs to a rival political party to the ruling party, the impugned F.I.R. was registered mechanically without there being any *prima facie* case. It is further submitted that Annexure-1 to 6 filed herein along with this Writ Petition are the Income Tax Returns of the 1st petitioner for the financial years 2010-11 to 2015-16 and she had disclosed all the particulars of taxable income regularly. Annexure-7 to 14 are the immovable property declarations for the period 2010 to 2017 made by the 1st petitioner as a Government servant, as

required under C.C.A. Conduct Rules and in the said I.P.Rs, she had declared all the assets held by her, whether acquired or inherited along with their values thereof. It is also submitted that Annexure-15 is a copy of the Affidavit filed by the 2nd petitioner herein as required under the Representation of Peoples Act, 1951 and the Rules made there under while contesting to the State Legislative Assembly in the year 2014. In this also, as required under the Rules and as per the Proforma indicated therein, he had declared the properties held by him, in his name or in the name of the 1st petitioner along with "Current Market Value", irrespective of whether the asset is acquired or inherited. Such current market value cannot be the basis for ascertaining as to whether the petitioners have assets disproportionate to their known sources of income. The Income Tax Returns filed by the 2nd petitioner for the financial year 2010-11 to 2015-16 are filed as Annexure-16 to 21.

It is further submitted that in the residence where the petitioners are residing i.e., Plot No.126, Road No. 11, Jubilee Hills, Hyderabad, they had made certain constructions on either side of their plot. By letter, dated 21st March, 2012 the 1st petitioner had given prior intimation to the Principal Chief Commissioner of Income Tax about the proposed construction.

The said intimation was taken on record by her employer vide letter, dated 7th March, 2012. The proposed plan and the estimated cost of construction were explained in that letter. The Greater Hyderabad Municipal Corporation had approved the building Plan. The said building plan and other details were furnished to the Principal Chief Commissioner of Income Tax by her letter, dated 14th March, 2016. The said letters along with Annexure enclosed to it are collectively filed as Annexure-22. The 1st petitioner had made construction after obtaining due permission as required under C.C.A. Rules. After the construction, the entire construction was valued by a Government Approved Valuer and a Chartered Engineer and the same was intimated to the Principal Chief Commissioner of Income Tax by letter, dated 14th March, 2016. The said letter along with the valuation report, dated 11th March, 2016 were filed before her higher officials and the same has been approved vide letter, dated 12th June, 2017. The said letter and valuation report are filed as Annexure-23. It is also submitted that in the impugned F.I.R. there are glaring illegalities, inconsistencies which the Court may kindly be pleased to take into consideration which will prove that the entire F.I.R. is based on misconception, misreading and ex-facie illegal. In a tabular form the said inconsistencies are filed as Annexure-24.

A tabulation of the incomes declared by the petitioners as per the Income Tax Returns are filed as Annexure- 25 and 26.

It is further submitted that major and substantial irregularity is in items as Sl. Nos. 6 and 7. These two items are: Western and Eastern side portions of their house in Plot No. 126. These items were purchased even as per the Statement-A in the F.I.R. in 1995-96 by the father of the 1st petitioner, late Sri T. Santhosham. In the said Statement-A, these two items value was shown as Rs.9,50,000/- and Rs.6 lakhs respectively. In Statement-B, these two items were valued at Rs.2,59,50,000/- and Rs.2,56,00,000/- respectively. These two portions, put together, was valued at Rs.5,15,50,000/-. These values were mentioned at the end of Sl. No. 7 of the Statement-B and that they are as per the valuation report, dated 11th March, 2016 which is filed herewith as Annexure-22. This Annexure-22 is the same valuation report which was filed by the 1st petitioner and which was accepted by the Department. As per this valuation report, the entire construction on both Eastern and Western side - i.e., Sl. Nos. 6 and 7 was valued at Rs.4,14,21,800/- but without any basis, without referring to and without relaying upon the said Valuation Report, the items at Sl. Nos. 6 and 7 have been arbitrarily valued at Rs. 5,15,50,000/-

instead of Rs.4,14,21,800/-. These two items are included in the Statement-B in the F.I.R. Thus, an amount of Rs. 85,78,200/- was shown in excess as value for the items at Sl. Nos. 6 and 7. Unimpeachable and impeccable record has been filed and the income which was the basis for the impugned F.I.R. does not support these values.

It is also submitted that another important *ex-facie* inconsistent and illegal reference in the F.I.R. is the asset mentioned at Sl.No.31 in the Statement-B. This relates to purchase and erection of an Elevator in the house in which they made construction and which are referred to at Sl.Nos. 6 and 7. This Elevator was valued at Rs.10.00 lakhs. When once the entire house is valued by an approved Valuer and that value has been accepted and that valuation report was furnished by the 1st petitioner, as required under C.C.A Rules and when the same has been accepted by the Department, this item which is part of the house cannot be included as a separate item. This item has to be deleted. If this item is deleted, there is no basis for the conclusion in the impugned F.I.R. that either of the petitioners have any assets disproportionate to their known sources of income. This item is liable to be deleted as the same is *ex-facie* illegal and the same forms part of house property

and the entire house property was valued separately. It is further submitted that the asset mentioned at Sl.No.26 is Ac.2.00 of land in Survey No. 61 in Devanahalli, Bangalore at a cost of Rs. 8 lakhs in the name of the 2nd petitioner. This item was sold as is evident from the Statement- C at Sl.No.9. When this land was sold at Rs.1 Crore, the income should have been taken as Rs.1 Crore, but arbitrarily the income earned was shown as Rs.72,50,000/- on sale of this asset, this is also ex-facie illegal. When, as per the item at Sl.No.9 of Statement-C, this item is no longer available, the same could not have been included as an asset at Sl. No.26 of Statement-B at Rs. 8.00 lakhs. This is another irregularity which is the excess value shown.

It is also submitted that the details of immovable assets furnished by the 2nd petitioner as required under the Representation of Peoples Act, 1951 and Rules made there under, Current Market Values are mentioned, though the said assets were purchased long back or were inherited long back. Those Current Market Values for those assets cannot be taken for the purpose of ascertaining or coming to a conclusion that the petitioners have assets disproportionate to their known sources of income. In this regard, properties in Sl.Nos.23, 24,

25 and 30 of the Statement-B, the approximate current market values were taken, though the assets were inherited by the 2nd petitioner long back. It is further submitted that substantially all the items mentioned as assets are either acquired long back by the petitioners or by their family members or were inherited by them decades ago. Those cannot be the basis for the impugned F.I.R. Even *prima facie* to conclude that the petitioners are guilty of offence under Section 13 (1) (e) of Prevention of Corruption Act, 1988 is ex-facie illegal. The declarations made by the petitioners about their values are as per the relevant Rules and Regulations mentioned by them either in the Income Tax Returns or in the I.P.Rs. or in the affidavits before the concerned authorities. As per the relevant provisions, Rules and Regulations, the petitioners are obliged to mention the Current Market Values to the assets. This cannot be the basis for the F.I.R. under the Prevention of Corruption Act, 1988 as if it is the value of the asset as indicated in the F.I.R. during the check period. This is a glaring illegality and irregularity which is evident on the face of it.

It is submitted that it is a settled law in *Krishnand Agnihotri V/s State of Madhya Pradesh*¹ wherein it was held that “Even assuming that there are any disproportionate assets

¹ AIR 1977 SC 796

to the known sources of income, unless they exceed 10%, it cannot be an offence of misconduct punishable under Sec. 13 (1) (e) of the Prevention of Corruption Act, 1988.” In the impugned F.I.R. what was alleged against the petitioners is that they are in possession of disproportionate assets of 22.86% worth around Rs.1 Crore. This estimate was made on the basis of above referred wrong and *ex-facie* illegal conclusions and without any basis the respondents herein having lost sight of the provisions contained in Explanation to Sec. 13 (1) (e) of the Prevention of Corruption Act. Under this explanation, **“known sources of income” - means “income received from any lawful source and receipt has been intimated in accordance with the provisions of any law, Rules or Orders, which are applicable to public servant”**. When both the petitioners have informed their known sources of income within the meaning of that Explanation under Section 13 (1) (e) of the Prevention of Corruption Act, 1988 and when assets are not in excess of their income, as is evident from the above referred aspects, there is no basis for the impugned F.I.R. requiring any enquiry or trial. It is apparent on the face of it that the assets have been arbitrarily valued ignoring the Valuation Report, I.T. Returns and I.P.R. Returns filed by the petitioners. As these are unimpeachable material on which

there can be no controversy and which in fact was the basis for the impugned F.I.R., this Court can look into these aspects and adjudicate as to whether the impugned F.I.R. has, even prima facie, any basis for continuing any further proceedings pursuant to it.

It is further submitted that both the petitioners are Income Tax Assesses and they have filed their Returns for the relevant periods. These income particulars are available with the respondents and the Returns indicate the income of the petitioners. But strangely without any basis in the impugned F.I.R, their incomes (at Sl. No.4 in Statement-C) are mentioned as “approximately”, which is ex-facie illegal. This is in respect of the 2nd petitioner’s income. There is no basis for taking his income approximately when his Income Tax Returns are available and which have been filed. There is no reference to the income of the 1st petitioner as declared by her in her Income Tax Returns. If these are taken into consideration, there will not be any asset disproportionate to their known source of income. It is a glaring irregularity and ex-facie illegal and arbitrary exercise of powers by the respondents to conclude without any basis that the petitioners are in possession of assets disproportionate to their known source of income. It is also

submitted that as required under C.C.A. Conduct Rules, the 1st petitioner had also declared all transactions in financial instruments viz., fixed deposits, mutual funds, PPF, LIC, etc., from time to time. The same has been taken on record by the Department of the 1st petitioner and the said particulars are filed as Annexure-27. As these particulars were furnished as per C.C.A. Rules, the same should also be taken into account while examining their known sources of income. The impugned F.I.R. was registered stating that on oral information, the petitioners have been guilty of possessing assets and pecuniary resources disproportionate to known sources of income and abatement of assets. The petitioners constitute undivided family.

It is also submitted that the impugned F.I.R. registered against the petitioners is not preceded by any preliminary enquiry as the petitioners were not asked to account for the assets/income possessed by them. Even assuming that the allegations contained in the F.I.R. are true, the petitioners submit that no case is made out against them for the offence under Section 13 (1) (e) of the Prevention of Corruption Act, 1988. It is submitted that by registering the impugned F.I.R., the respondents have violated the mandatory guidelines and procedures as stipulated in the CBI Manual, 2005. It is also

submitted that under Clause 9.1 of C.B.I. Manual, a preliminary enquiry is mandatory. Without any preliminary enquiry, the respondents cannot register a F.I.R. for regular investigation. It is also submitted that the respondents have taken the check period from 01.04.2010 to 29.02.2016 and the 2nd petitioner has been a Member of Legislative Assembly from 2009 onwards. Initiation of criminal proceedings is beset with serious consequences. It should not be triggered mechanically or casually. The impugned F.I.R. seems to have been registered with oblique motives and with *mala fide* intentions and out of political considerations, as the 2nd petitioner belongs to an opposite party to the Ruling Party in the State. There is absolutely no chance of conviction of the petitioners in the impugned F.I.R. registered against them and it is liable to be quashed as per the settled legal principles laid down by the Apex Court in series of judgments.

Respondents filed Counter denying the averments made in the affidavit filed in support of the writ petition. It is stated that the F.I.R. was registered based on the source information for possession of disproportionate assets to the tune of Rs.1,10,81,692/- which is 22.86% more than the known sources of income earned by the petitioners.. There is no requirement

of law to afford opportunity to the petitioners/accused to explain about their assets, income and expenditure before registration of the case. There is also no command of law to conduct Preliminary Enquiry (PE) before registration of FIR in all cases. The F.I.R. was registered based on the source information after obtaining the orders of the competent authority as per the Crime Manual of C.B.I. and it was not registered in a mechanical manner as there was *prima facie* evidence to conduct detailed investigation. During the course of investigation, the respondents would verify the actual assets, income and expenditure on the immovable properties vis-à-vis immovable property returns, income tax returns and the explanation of the petitioners, for assessing its truthfulness. The disproportionate assets as alleged in the F.I.R. are sufficient enough to register F.I.R. against the petitioners to set law into motion and to conduct detailed investigation and there is no illegality in registration of the case. It is also stated that the respondents are not conducting roving enquiry against the petitioners and the investigation is limited to the assets, income and expenditure pertaining to the petitioners and their family members which includes all their financial transactions. It is further stated that the investigation is in advance stage and is being conducted in fair and transparent manner and the

petitioners would be given opportunity to explain their positions based on the outcome of the investigation.

Heard Sri S.S.Prasad, learned Senior Counsel, for Ms.C.Sindhukumari, learned Counsel appearing for the petitioners and Sri K.Surender, learned Special Public prosecutor for C.B.I. Cases.

Learned Senior Counsel for the petitioners would submit that in the impugned F.I.R. it is stated that the petitioners have acquired assets/pecuniary advantage to the tune of Rs.5,95,58,322/- against the income of Rs.4,84,76,630/- and, therefore, they are having disproportionate assets to a tune of Rs.1,10,81,692/- which is 22.86% of the income earned by them. He further submits that no opportunity was afforded to the petitioners to explain about their assets, income and expenditure before registration of the case. The impugned F.I.R. was registered against the petitioners without conducting any preliminary enquiry and they were not asked to account for the assets/income possessed by them. It is further submitted that the F.I.R. was registered at Chennai and the check period was taken from 01.04.2010 to 29.02.2016 i.e., over a period of six years and during the said check period, the 1st petitioner worked at Chennai only for five months i.e., from 29.05.2015 to

07.11.2016 and the 2nd petitioner never worked at Chennai, as such there is no part of cause of action arisen in Chennai. It is also submitted that both the petitioners are income tax assesses and they have been filing their income tax returns regularly. The assets held by the petitioners at the beginning of the check period were mentioned as Statement-A and the assets at the end of check period were mentioned as Statement-B. The income during the check period is mentioned as Statement-C. Annexure-1 to 6 filed along with the writ petition are the Income Tax Returns of the 1st petitioner for the financial years 2010-11 to 2015-16 and Annexure-7 to 14 are her immovable property declarations for the period 2010 to 2017 made by her as a Government Servant and in the said I.P.Rs., she had declared all the assets held by her, whether acquired or inherited along with their values thereof. Annexure-15 is copy of the affidavit filed by the 2nd petitioner as required under the Representation of Peoples Act, 1951 and the Rules made there under. Annexure-16 to 21 are the income tax returns filed by the 2nd petitioner for the financial years 2010-2011 to 2015-2016. It is also stated that the value of Sl.Nos.6 and 7 was shown as Rs.9,50,000/- and Rs.6.00 lakhs respectively in Statement-A, whereas in Statement-B, these two items were valued at Rs.2,59,50,000/- and Rs.2,56,00,000/- respectively. Without any

basis and without relying upon the valuation report which was filed as Annexure-22, the respondents arbitrarily valued at Rs.5,15,50,000/- instead of Rs.4,14,21,800/-, thus an amount of Rs.85,78,200/- was shown in excess as value for the items at Sl.Nos.6 and 7. He further submits that the asset mentioned in Sl.No.26 is Ac.2.00 of land, which was sold at Rs.1.00 Crore, as is evident from Statement-C at Sl.No.9, but the respondents arbitrarily shown the income earned as Rs.72,50,000/-. He further submits that it is apparent on the face of record that the assets have been arbitrarily valued ignoring the Valuation Report, I.T. Returns and I.P.R. Returns filed by the petitioners. He also submits that the impugned F.I.R. seems to have been registered with an oblique motive and with *mala fide* intention and out of political considerations, as the 2nd petitioner belongs to an opposition party to the Ruling party in the State. It is apparent that there are serious errors in the F.I.R. as pointed out in the affidavit filed in support of the writ petition and the same are sufficient to conclude beyond reasonable doubt that there are no assets in possession of the petitioners which are disproportionate to the known source of income and no offence is made out against the petitioners. In support of his contentions, he relied on the following judgments.

1. *State of Telangana v. Habib Abdullah Jeelani and others*²
2. *Varala Bharath Kumar and another v. State of Telangana and another*³
3. *Kedarilal v. State of Madhya Pradesh and others*⁴
4. *Suryalakshmi Cotton Mills Limited v. Rajvir Industries Limited and others*⁵
5. *G.Sagar Suri and another v. State of U.P. and others*⁶
6. *Pepsi Foods Ltd. And another V. Special Judicial Magistrate and others*⁷
7. *State of U.P. through CBI SPE, Lucknow v. R.K.Srivatsava and another*⁸
8. *Krishnanand Agnihotri v. State of M.P. ((1 supra)*
9. *M.Krishna Reddy v. State Deputy Superintendent of Police, Hyderabad*⁹
10. *Oil and Natural Gas Commission v. Utpal Kumar Basu and others*¹⁰
11. *Navinchandra N.Majithia v. State of Maharashtra and others*¹¹
12. *Om Prakash Srivastava v. Union of India and another*¹²
13. *The First Custodian Fund (India) v. The Nedungadi Bank Limited*¹³

Learned Special Public Prosecutor for C.B.I. cases, while reiterating the contentions made in the counter, would submit that the High Court at Hyderabad for the State of Telangana

² (2017) 2 SCC 779

³ (2017) 9 SCC 413

⁴ (2015) 14 SCC 505

⁵ (2008) 13 SCC 678

⁶ (2000) 2 SCC 636

⁷ (1998) 5 SCC 749

⁸ (1989) 4 SCC 59

⁹ (1992) 4 SCC 45

¹⁰ (1994) 4 SCC 711

¹¹ (2000) 7 SCC 640

¹² (2006) 6 SCC 207

¹³ (2007) 6 MhLj 295

has no territorial jurisdiction to entertain the writ petition, because the F.I.R. is registered and submitted to the Principal Special Judge for C.B.I. Cases (VIII Additional City Civil Court, Chennai), therefore the High Court of Madras alone has jurisdiction. However, by an order, dated 24.09.2019, this Court has already held that most part of the cause of action arose within the territorial jurisdiction of this Court, this Court has got jurisdiction to entertain the Writ Petition. The respondents did not challenge the said order and as such the said order has attained finality. Hence, there is no need to answer this question once again.

Learned Special Public Prosecutor for C.B.I. cases, further contended that the F.I.R. is only in the investigation stage and the investigation is in progress. He further submits that the contentions raised by the petitioners are pure questions of fact and the same cannot be adjudicated in this writ petition. He further submits that the Income Tax Returns cannot be made basis to set aside the F.I.R., whether the source of income is lawful or not is a matter of investigation, evidence and trial to be adduced by both the parties. He further submits that even before collection of material, the petitioners have exclusive knowledge, which needs thorough investigation and at this

preliminary stage, drawing a logical conclusion would not be fair and that the petitioners ought to have cooperated for the investigation in a fair and transparent manner. He has also argued that the law is very clear that power of quashing the F.I.R. in economic offences should be used by the Courts very sparingly. Learned Special Public Prosecutor in support of his contentions relied upon the judgments of the Supreme Court in *State of Madhya Pradesh v. Awadh Kishore Gupta and others*¹⁴ and *State of Orissa and another v. Saroj Kumar Sahoo*¹⁵.

Power of High Court to quash the F.I.R.:

As a prologue to answering of the points above, this Court thinks it expedient to consider whether a F.I.R. can be quashed by exercising power either under Section 482 of Code of Criminal Procedure or under Article 226 of the Constitution of India. The criminal courts are clothed with inherent power to make such orders as may be necessary for the ends of justice. Such power though unrestricted and undefined should not be capriciously or arbitrarily exercised, but should be exercised in appropriate cases, ex debito justitiae to do real and substantial justice for the administration of which alone the Courts exist.

¹⁴ (2004) 1 SCC 691

¹⁵ (2005) 13 SCC 540

The powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Courts must be careful to see that its decision in exercise of this power is based on sound principles. The Supreme Court in *Roy V.D. v. State of Kerala*¹⁶ observed as follows:

“18. It is well settled that the power under Section 482 Cr.P.C has to be exercised by the High Court, *inter alia*, to prevent abuse of the process of any court or otherwise to secure the ends of justice. Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and sentence based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused. In our opinion, exercise of power under Section 482 CrPC to quash proceedings in a case like the one on hand, would indeed secure the ends of justice.....”

No doubt, as rightly submitted by the learned Special Public Prosecutor, quashing of F.I.R. is an exceptional incident.

¹⁶ (2000) 8 SCC 590

While explaining the power of the High Court under Section 482 of the Code and Article 226 of the Constitution of India, the Apex Court has laid down the principles where an F.I.R. can or cannot be quashed. (Vide *State of Haryana and others v. Ch.Bhajan Lal and others*¹⁷). The Court in the backdrop of interpretation of various relevant provisions of the Cr.P.C. under Chapter XIV and of the principles of law enunciated by the Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 of the Constitution of India or the inherent powers under Section 482 of Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice. The Supreme Court in *Bhajan Lal case* (17 *supra*) made it clear that it may not be possible to lay down any precise, formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised. According to this judgment, the High Court would be justified in exercising its power in cases of following categories:

- (1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima

¹⁷ (1992) Supp. (1) SCC 335

facie constitute any offence or make out a case against the accused;

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code

or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

The Apex Court in *Dinesh Chandubhai Patel v. State of Gujarat and another*¹⁸ has cautioned the High Courts to examine the merits of the case within the parameters prescribed in *Bhajan Lal* (17 supra). That means, while entertaining application for quashing of F.I.R., the High Court, shall not only examine whether it will fall within any one or the other tests provided by *Bhajan Lal* (17 supra) but also, for that purpose, may travel into examining the merits of the case in order to find whether there is chance of trial on the accusations made in the F.I.R.

While resisting the contentions of the petitioners, the learned Special Public Prosecutor for the respondents relied upon two precedents from the Supreme Court viz., *State of Madhya Pradesh v. Awadh Kishore Gupta and others* (14 supra) and *State of Orissa and another v. Saroj Kumar Sahoo* (15 supra).

¹⁸ (2018) 3 SCC 114

In the first case, the Court observed, on facts, that it is not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed. The Court said that it was erroneous to assess the material before it and conclude that the complaint cannot be proceeded with, because the material annexed to the Petition under Section 482 of the Code cannot be termed as “evidence” without being tested and proved. (Vide para 13 of the report).

In the latter case, the Supreme Court expressed the view that in a petition under Section 482 of the Code, and where the investigation is not completed, the Court shall not look into the materials, the acceptability of which is essentially a matter of trial. The learned Special Public Prosecutor exerted thrust upon the fact that the petitioners herein are producing certain documents to substantiate their plea that the F.I.R. referred assets, income etc., but they cannot be relied upon at the present stage as their truth has to be tested only during investigation.

A reading of those two judgments show that the documents relied upon by the petitioners/accused therein are

intending to destroy the allegations propounded in the F.I.R. by the Police and evidently those were the cases where only upon proof of those documents referred facts, the F.I.R. was sought to be quashed. But the position here is altogether different as argued by Sri S.S.Prasad, learned Senior Counsel. He would submit that even without looking at the documents filed by the petitioners, the Court can hold that the F.I.R. is abuse of process as it sans basic elements to constitute the offence of possessing Disproportionate assets by the petitioners. Learned Senior Counsel further argued that the power to quash F.I.R. has to be exercised even for reasons falling outside the guidelines given in **Bhajan Lal (17 supra)**. As rightly quoted by learned Senior Counsel in *State of Telangana v. Habib Abdullah Jeelani (2 supra)* it is observed by the Supreme Court that:

“It is worthy to note that the Court has clarified that the said parameters or guidelines are not exhaustive but only illustrative. Nevertheless, it throws light on the circumstances and situations where the Court’s inherent power can be exercised.”

If the material relied upon or referred in the F.I.R. itself shows that it is not paving a *prima facie* case to proceed with, and without reference to the documents filed by the petitioners, it is a fit case for believing that if further proceedings are taken

in pursuance of such F.I.R. that is lacking basic ingredients of offence, would amount to abuse of process of criminal law.

Whether the F.I.R. discloses offence under the P.C.Act:

One of the main arguments addressed on behalf of the petitioners is that the F.I.R. does not attract the penal provisions of Section 13 (2) read with 13 (e) of the Prevention of Corruption Act, even without considering the material produced by the petitioners. To this end, the petitioners' Counsel cited *Varala Bharath Kumar and another v. State of Telangana and another (3 supra)* wherein the Court at Para 8 of the report concluded that if the complaint did not disclose any wilful conduct which is of such a nature as is likely..... to attract the penal provisions of Section 498-A of I.P.C., the High Court is justified in quashing such F.I.R.

For this purpose, the provision of Section 13, prior to its substitution in the year 2018 is relevant for discussion is extracted for ready reference.

“(1) A public servant is said to commit the offence of criminal misconduct, —

(a) if he habitually accepts or obtains or agrees to accept or attempts to obtain from any person for himself or for any other person any gratification other than legal remuneration as a motive or reward such as is mentioned in section 7; or

(b) if he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any valuable thing without consideration or for a consideration which he knows to be inadequate from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he, —

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(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.

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine.”

However, it is pertinent to note that the above provision underwent amendment by the Prevention of Corruption (Amendment) act, 2018 with effect from 26.07.2018 Vide Notification No.SO3664(E) dated 26.07.2018. Since the F.I.R. is registered on 20.09.2017, it is only the pre-amended provision of Section 13 is rightly applicable.

The essential ingredient to attract sub section (1) (e) public servant possessing the property disproportionate to his known sources of income and according to sub-Section (2) the misconduct of the public servant shall be the element for punishment. Conjoint reading of both the provisions demonstrates that possessing assets disproportionate to the known sources of income of public servant is a punishable misconduct. Invariably, the F.I.R. shall disclose that the petitioners being public servants committed such misconduct. For this purpose, the F.I.R. shall be examined:

Against column 3 (a) in the F.I.R., it is mentioned:
 “Criminal misconduct of possessing assets and pecuniary

resources disproportionate to known sources of income and abetment of the same.”

Against column 12, “Information” is mentioned about the petitioners’ joining the public employment and it is mentioned then as a sort of mentioning the ‘misconduct’ of the petitioners, as below:

“During the period 01.04.2010 to 29.02.2016 Smt. T.H.Vijaya Lakshmi and her husband Dr.A.Suresh have accumulated assets and pecuniary resources and hence the Check period has been taken from 01.04.2010 to 29.02.2016.”

The F.I.R. gives statements A to D, and lastly summed up that-

“Thus Smt. T.H.Vijaya Lakshmi (A-1) and her husband Shri A.Suresh (A-2), have acquired assets/pecuniary advantage to the tune of Rs.5,95,58,322/- (Assets Rs.5,55,25,000/- and expenditure Rs.40,33,322/- against an income of Rs.4,84,76,630/- earned during the check period. Thereby Smt. T.H.Vijaya Lakshmi and her husband Shri A.Suresh have amassed disproportionate asset to the tune of Rs.1,10,81,692/- which is 22.86% of the income earned by them, which they cannot satisfactorily account for”. (Emphasised by me)

Thus, except the statements, there is no other material to support the above conclusion of the respondents, as per the F.I.R. Further it is also significant to note that a remark is made

in the above emphasised portion that the petitioners cannot satisfactorily account for. It is pertinent to recall the language in Section 13 (1) (e) which mandates that “*the public servant cannot satisfactory account for*”. It means, as rightly argued by learned Senior Counsel that an opportunity shall be given to the public servant to explain satisfactorily and to account for the assets.

The interesting question is at what stage such opportunity shall be made available to the public servant, viz., whether during the period between receipt of source information and registering the F.I.R., or during course of investigation or during regular trial. The argument of the learned Special Public Prosecutor for the respondents is that such opportunity to account for the assets shall be provided to the petitioners during course of investigation only and no preliminary enquiry before registering the F.I.R. is mandatory. Whereas, the contention of learned Senior Counsel for the petitioners is that such opportunity shall be provided to the petitioners after source information and before registering the F.I.R. and a preliminary enquiry, in such cases is mandated by the C.B.I. Manual. Otherwise, learned Senior Counsel maintains that the registration of F.I.R. without complying with such obligatory

preliminary enquiry is abuse of process and such would fall within the ambit of one or the other guidelines prescribed by **Bhajan Lal (17 supra)**. Learned Senior Counsel laid emphasis, for that purpose on Sl.Nos. 1, 3 and 5 of the said guidelines. He has taken this Court through the averments in the F.I.R. which reveals that mutually inconsistent and inherently improbable statements are made to bring the case under the purview of the penal provisions relating to misconduct of the petitioners. These objections/arguments are considered and analysed hereunder.

Whether preliminary enquiry is mandatory?

The learned Senior Counsel Sri S.S.Prasad has taken every pain to make this Court to read the Central Bureau of Investigation (Crime) Manual, 2005 extensively, of course, adhering to relevant paragraphs and their implications in the light of certain judicial precedents. However, this argument was dispelled by the learned Standing Counsel that the Manual is only guidance to the Investigating Officers and shall not be taken as mandatory. He would further submit that even if there is any deviation from following those rules, it does not vitiate the registration of F.I.R. and consequent investigation. It is appropriate to make little reference to the relevant rules in

the C.B.I. Manual for appreciation of arguments advanced by both the learned Counsel.

Paragraphs 27 to 31 of the Writ Petition, the petitioners have made reference to various clauses of the Manual and contended that these mandatory clauses have been observed in utter violation by the respondents and that will vitiate the entire process of registration of the F.I.R. To be more specific, the contention of the petitioners is that preliminary enquiry postulated by Chapter 9 of the Manual is not conducted by the respondents before registration of F.I.R.

Chapter 8 of the Manual deals with the complaint and source information. Every complaint from any source shall be entered in a register and that shall be treated as confidential at all stages (8.1) Verification of complaints is required in cases falling within Clause 8.6. They are (i) complaints pertaining to the subject matters which fall within the purview of C.B.I. either received from official channels or from well established and recognized public organisations or from individuals who are known and who can be traced and examined; and (ii) complaints containing specific and definite allegations involving corruption or serious misconduct against public servants etc., falling within the ambit of C.B.I. which can be

verified. Clause 8.8 provides for process of verification. According to clause 8.9 secret verification shall be completed within 3 months of the receipt of complaint or four months in complicated matters.

Similarly regarding 'source information' (SIR) clause 8.23 to 8.35 provides procedure. Clause 8.32 the verification of SIR must be completed within a period of three months.

Clause 9.1 makes it clear that a preliminary enquiry shall be held. It reads:

"When a complaint is received or information is available which may after verification as enjoined in this Manual, indicate serious misconduct on the part of a public servant but is not adequate to justify registration of a regular case under the provisions of Section 154 of Cr.P.C., a preliminary enquiry may be registered after obtaining approval of the competent Authority. A PE may be converted into RC as soon as sufficient material becomes available to show that *prima facie* there has been commission of a cognizable offence....."

Where a public servant is involved in the case, Courts are consistently expressing the view that a Preliminary Enquiry is advisable. In *Bhajan Lal and others* (17 *supra*) Supreme Court has categorically held that before a public servant is charged with an act of dishonesty which amounts to serious misdemeanour and a F.I.R. is lodged against him, there must be

some suitable preliminary enquiry into the allegations by a responsible officer. A Constitution Bench of Supreme Court in the case of **Lalitha Kumari v. Government of U.P. and others**¹⁹ endorsed the ratio in **P.Sirajuddin v. State of Madras**²⁰ and held that cases of corruption are ordinarily an exception to the mandatory rule of immediate registration of F.I.R. The Apex Court has held as follows:

“108. In the context of offences relating to corruption, this Court in **P.Sirajuddin (20 supra)** expressed the need for a preliminary inquiry before proceeding against public servants.”

However, the scope and ambit of a preliminary inquiry being necessary before lodging a F.I.R. would depend upon the facts of each case. There is no set format or manner in which a preliminary inquiry is to be conducted. The objective of the same is only to ensure that a criminal investigation process is not initiated on a frivolous and untenable complaint. That is the test laid down in **Lalita Kumari (19 supra)**.

On the question whether the C.B.I. Manual shall necessarily be followed, again the Supreme Court in **Vineet Narayan v. Union of India**²¹, held:

¹⁹ (2014) 2 SCC 1

²⁰ (1970) 1 SCC 595

²¹ (1998) 1 SCC 226

“The CBI Manual based on statutory provisions of the Cr. P.C. provides essential guidelines for the CBI's functioning. It is imperative that the CBI adheres scrupulously to the provisions in the Manual in relation to its investigative functions, like raids, seizure and arrests. Any deviation from the established procedure should be viewed seriously and severe disciplinary action taken against the officials concerned.

In *Shashikant v. Central Bureau of Investigation and another*²², the Court observed as under: -

“CBI Manual provides for a preliminary inquiry. By reason thereof a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry in terms of Para 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence.”

Para 9.7 of the C.B.I. Manual reads:

"As soon as it is decided to register a PE, the SP will take action to get the PE Registration Report prepared, which will invariably be vetted by him and in case of important enquiries even drafted by him. Registration Report of PE should be written in the PE Registration Report Form and not on the form prescribed for recording First Information Report under Section 154 Cr. PC. Beside the allegations in brief, the complete details of the suspects involved should be recorded in the PE Registration Report. In respect of the public servants found involved

²² (2007) CrL.L.J. 995

in the matter, their Group, the Service (IAS, IRS, IPS etc.), present designation, scale of pay, present pay and date of superannuation (if available) should also be mentioned in the PE. registration report. The copies of the PE Registration Reports should be sent to the authorities mentioned in the Annexure 9-A to this chapter.”

In **Noor Aga v. State of Punjab and another**²³ the Court held that the guidelines should be substantially complied. It is said:

“122. Guidelines issued should not only be substantially complied, but also in a case involving penal proceedings, vis-à-vis a departmental proceeding, rigours of such guidelines may be insisted upon. Another important factor which must be borne in mind is as to whether such directions have been issued in terms of the provisions of the statute or not. When directions are issued by an authority having the legal sanction granted therefor, it becomes obligatory on the part of the subordinate authorities to comply therewith.”

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124. Logical corollary of these discussions is that the guidelines such as those present in the Standing Order cannot be blatantly flouted and substantial compliance therewith must be insisted upon for so that sanctity of physical evidence in such cases remains intact. Clearly, there has been no substantial compliance of these guidelines by the investigating authority which leads to drawing of an adverse inference against them to the effect

²³ (2008) 16 SCC 417

that had such evidence been produced, the same would have gone against the prosecution.”

Keeping in view the law laid down in the aforesaid case laws, the point which emerges is that in cases involving public servant, a Preliminary Enquiry is compulsory and if it is not done, adverse inference may be drawn against the prosecution. It is also clear that the guidelines given in the C.B.I. Manual have to be substantially complied with by the C.B.I. This being the legal position, there is no dispute that the respondents did not hold any preliminary enquiry as contemplated by the Manual. In the Counter affidavit filed for the respondent, the following statements are made:

“11. ..There is no requirement of law to afford opportunity to the accused to explain before registration of the case. There is also no command of law to conduct preliminary enquiry (PE) before the registration of F.I.R. in all cases.”

“18. It is further submitted that before completion of investigation, the petitioners would be given ample opportunity to explain each and every item/property with regard to assets, income and expenditure of the petitioners and their family members, as per law. It is further submitted that opportunities are not required to be given to the person for registering any F.I.R. against any person for the offence committed by him/her. The same is the position of law in respect of offences under

Section 13 (2) read with 13 (1) (e) of the Prevention of Corruption Act, 1988 as well.”

Thereby, the respondents are admitting that before registration of F.I.R. and after the receipt of Source Information, no preliminary enquiry within two months was done. This is a deviation from the procedure. To strengthen this view of this Court, the counter affidavit further reads”

“29. The averments made in para No.21 are wrong and hence, denied. It is submitted that the F.I.R. is registered based on the reliable source information....”

It is, therefore, lucid from the affidavit of the respondents that no preliminary enquiry was conducted before the Registration of F.I.R. Whether this effect would vitiate the entire F.I.R. or not is a different question. The significance of this circumstance is that, according to the petitioners, there are multiple irregularities committed in showing the value of assets, omissions and commissions and had there been a preliminary enquiry before the registration of impugned F.I.R., this would not have been resulted and consequent to the said F.I.R. which is callously, arbitrarily and mechanically registered, the petitioners were put to unnecessary difficulties and this will attach stigma to them, being public servants and

particularly because, the 2nd petitioner is in active politics and is Member of Legislative Assembly.

To decide whether the F.I.R. is mechanically registered, without application of mind and with caprice, each of the points highlighted by the petitioners will be taken into consideration.

Whether the F.I.R. contains *prima facie* material to attract the misconduct that the petitioners possess assets disproportionate to their 'Known sources of income'?

The primary argument of the petitioners' Senior Counsel is that when the income therefrom are shown in the annual reports submitted to the Department and accounted for in the Income Tax Returns, it shall be accepted without any demur and the act of the respondents in under valuing the sales, over valuing the assets, and omissions in the computation of income would defeat the very object of the definition of 'known sources of income'. It is the line of argument advanced by the learned Senior Counsel for the petitioners that whereas 'known sources of income' is the focal point to register a F.I.R. for commencing investigation, because that element is absent, the F.I.R. is unsustainable.

In the Writ petition and also during course of arguments, the stand taken by the petitioners is that the 1st petitioner has filed her Income Tax Returns and also annual statements of disclosure of assets and their values to the department as per CCA Rules. Similarly, the 2nd petitioner during his service as IRAS Officer, submitted ITRs and Statements to the Department and later, while contesting for the seat of Member of Legislative Assembly, he has sworn affidavit and submitted the same to the Election Authority under the Representation of Peoples Act. It is argued that the values given in those documents shall be accepted for determining 'known sources of income' but the respondents have arbitrarily valued the assets, either purchase value or sale value and thereby a glaring illegality is committed in the registration of F.I.R. to bring the petitioners within the mischief of Section 13 of the Act. The counter argument of the respondents is that the IT Returns and the Statements of disclosures filed with the Department are not final and the truth of those particulars has to be verified and confirmed during course of investigation.

In the light of these contentions, the question that fall for consideration is whether the IT Returns or declarations to the department are entitled to be relied upon?

In **M.Krishna Reddy v. State, Deputy Superintendent of Police (9 supra)** the Apex Court remarked that under Section 5(1)(3) of the P.C.Act, 1947 which corresponds to Section 13(1)(e) of the present Act of 1988 discloses 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. The Court added-

“7..... 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.”

The expression “known sources of income” in Section 13 (1) (e) of the Act has two elements, first the income must be received from a lawful source and secondly the receipt of such income must have been intimated in accordance with the provisions of law, rules or orders for the time being applicable to the public servant. (Vide: *Kedari Lal v. State of M.P.*²⁴). In this reported case, the Supreme Court after approving earlier judgments, observed in para No.12 as under:

²⁴ (2015) Latest Case Law 229 SC

“12. In the instant case, every single amount received by the appellant has been proved on record through the testimony of the witnesses and is also supported by contemporaneous documents and intimations to the Government. It is not the case that the receipts so projected were bogus or was part of a calculated device. The fact that these amounts were actually received from the sources so named is not in dispute. Furthermore, these amounts are well reflected in the Income Tax Returns filed by the appellant. In similar circumstances, the acquisitions being reflected in Income Tax Returns weighed with this court in granting relief to the public servant.”

In view of the legal position made clear by the highest Court of land, the contention of the respondents that the correctness of the information filed with department requires to be verified and confirmed during course of investigation, is unsustainable and therefore it is repelled. In the F.I.R. itself, the respondents ought to have mentioned how they are not relying upon the I.T.R.s and the statement filed with Department. This could have been done, had the respondents conducted a preliminary enquiry as postulated by the C.B.I. Manual, which was already referred in the earlier paras of this order.

It is not disputed in the counter affidavit of the respondent that the petitioners have filed their I.R.T.s and statements of disclosure to the Department as per C.C.A. Rules

and the 2nd petitioner filed affidavit with the Election Authority, as required under the Representation of Peoples Act, 1951 and the Rules made thereunder. Annexures-P3 to P6 are the Income Tax Returns of the 1st petitioner for the financial years 2011-2012 (Assessment year 2012-13) to 2015-2016 (Assessment year 2016-17) and Annexure- P7 is the Acknowledgment along with computation of income issued by the I.T.Department for the financial year 2010-2011 (Assessment year 2011-2012).

Annexure-P15 is a letter by the 1st petitioner addressed to the Principal Chief Commissioner of Income Tax (CCA), Chennai on 14.03.2016 giving information about completion of construction of house property along with proforma under Rule 18 (2) as prescribed in CCS (Conduct) Rules, 1964. This letter has 5 annexures relating to details of total cost of construction, sources of funds, valuation report by registered valuer, bank statement relating to the funds, and building plan and contract agreement. This letter contains the office receipt stamp of the department on 15.03.2016. This information has been duly taken on record by the department as per the Official Memorandum, dated 12.06.2017 as per Annexure-P16.

Annexure P-19 is the letter from Deputy Commissioner of Income Tax, Hyderabad, dated 15.06.2016 with reference to the

intimation submitted by the 1st petitioner to the department about the disposal of immovable property and the value realised by such sale as per transaction effected on 27.02.2016, that the said intimation has been taken on record by the department. This annexure also contains three letters dated 07.08.2012 regarding the intimation given by the 1st petitioner as to the investment of Rs.3.5 lakhs, Rs.5.00 lakhs and Rs.7.00 lakhs in Fixed Deposits, as taken on record. There is another letter, dated 15.05.2012 from the department to the effect that the 1st petitioner's investment of Rs.10.00 lakhs in DSP Blackrock Money Manager Fund is taken on record; similarly, the letter, dated 02.03.2012 shows that the 1st petitioner has declared certain movable properties (investments) to the department and that intimation is recorded. The 1st petitioner has also informed the department under Rule 18 (2) of CCS (Conduct) Rules showing the transaction for immovable property, and also investment transactions of movable properties and by letter, dated 16.02.2012, that intimation has been recorded by the department but giving an advice to her to ensure filing such intimations without delay.

Annexures-P10 to P11 are the Income Tax Returns of the 2nd petitioner for the financial years 2013-2014 to 2016-2017

(Assessment Years 2014-2015 to 2017-2018). Annexure-P13 and P14 are the I.T.R. and Acknowledgments issued by the IT Department along with statement of computation for the Financial Years 2011-2012 and 2012-2013 (Assessment Years 2012-2013 and 2013-2014) pertaining to the 2nd petitioner.

Annexure-P9 is the copy of the affidavit sworn by the 2nd petitioner Dr.Suresh Audimulapu on 16.04.2014 containing acknowledgment of its filing by the Asst. Electoral Registration Officer, S.N.Padu Assemblies Constituency and Tahsildar, Chimakurthy (M).

There is absolutely no dispute that the above documents are true, in the sense they are filed with respective departments and available in the public domain. In view of the law referred above, the income assets and values of assets mentioned in those documents have to be treated as 'known source of income' for the purpose of Section 13 (1) (e) of the Prevention of Corruption Act.

It is apposite to mention in this perspective that the respondents in their counter have specifically admitted that the statements A to D in the F.I.R. are prepared totally basing on the Source Information and without verifying the Income Tax Returns and other documents only, because, no preliminary

enquiry was conducted. For ready reference, that part of the counter affidavit filed by the respondents is extracted hereunder:

“11. The averments made in para No.3 are not correct and hence denied. It is submitted that based on the source information, the said F.I.R. was registered against the petitioners for possession of pecuniary resources as mentioned in the F.I.R. which is disproportionate to their known sources of income....

18. It is submitted that the F.I.R. was registered based on the source information on the allegation of possession of disproportionate assets to the tune of Rs.1,10,81,692....”

The source information itself states that the petitioners are in possession of disproportionate assets worth RS.1,10,81,692/-. This Court is unable to comprehend how the source information would exactly reveal the amount of disproportionate assets. Even if it is there, the respondents ought to have confirmed it by calling explanation of the petitioners by holding a Preliminary Enquiry which is not done. This circumstance, as submitted by the learned Senior Counsel for the petitioners would emphasize that the F.I.R. is registered in a hurry that too at Chennai, even without taking pains to conduct preliminary enquiry to ascertain the truth and correctness of the figures of disproportionate assets mentioned

in the F.I.R., because, the counter affidavit speaks that on the sole basis of source information, directly F.I.R. is registered. This Court is unable to accept the correctness of the arguments advanced by the learned Standing Counsel for the respondent that the correctness of such information will be verified by giving ‘opportunity’ to the petitioners, during course of investigation. That means, the respondents are accepting their mistake in not conducting preliminary enquiry.

It is in the light of the above legal and factual issues, this Court is inclined to dwell upon the scrutiny of the irregularities pointed out by the petitioners in the statements A to D of the F.I.R. to adjudicate upon the core issue whether the respondents have *prima facie* material to conclude that the petitioners are in possession of disproportionate assets.

Miscalculation of income:

In detail, the petitioners, besides swearing to the facts in the petition also annexed a table showing the particulars of irregularities as Annexure-P17. Item No.1 in the said annexure shows the following:

Gross error in the F.I.R.	As shown in the FIR	As per the returns/declarations	Difference amount	Evidence
Salary, arrears and other remuneration	67,61,014.00	1,05,28,256.00	37,67,242.00	Extract of year-wise computa-

for the period from April, 2010 to March, 2012 of Smt. Vijayalakshmi Rs.17,64,000/- Salary, arrears and other remuneration for the period from March, 2012 to Feb. 2016 of Smt. Vijayalakshmi (Page No.10, Statement C. S.No.3)				tion of income as per the Income Tax Returns filed for F.Y. 2010-2011 to 2015-2016
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In Statement C, Item No.3 the F.I.R. shows that the 1st petitioner received Rs.17,64,000/- during Financial year 2010-2012 and for the Financial year 2012-2016 (Feb.) the net amount received by her towards salary and arrears is Rs.67,61,014/-. As per the I.T.Returns during the check period, the following is shown as total of the income declared in the I.T. Returns for the Financial years 2010-2011 to 2015-2016. The petitioners have filed the I.T. Returns with the relevant annexures which were already referred above and to facilitate easy understanding, they have filed a statement as Annexure-P18 of the Petition in a tabular form which is as follows :

FY	Gross salary as per Form-16	Rental receipts	Interest receipts	Agricultural Income	Total
2010-11	10,33,474	1,80,000	15,484	1,00,000	13,28,958
2011-12	11,25,531	1,30,500	20,996	1,00,000	13,77,027

2012-13	11,81,472	27,000	36,637	2,00,000	14,45,109
2013-14	13,87,838	0	83,628	2,50,000	17,21,466
2014-15	15,55,154	0	21,822	50,000	16,26,976
2015-16	19,73,017	8,57,765	47,938	1,50,000	30,28,720
Total	82,56,486	11,95,265	2,26,505	8,50,000	1,05,28,256

So far as the 2nd petitioner's income is concerned, the Annexure-P17 shows the following computations.

Details of errors in the FIR	Amount shown in the FIR	As per returns/ declaration	Difference amount	Evidence
Income for 1.4.10 to 31.03.2012 (12 lakhs pa approx.) 12 lakhs, Income of Dr. Suresh for 2012 to 2016 Rs.48,00,000/- Total Rs.72,00,000/- Page No.10, Statement-C : Sl.No.4	72,00,000/-	1,42,35,286	70,35,286	Extract of year wise computation of income as per the ITR filed for FY 2010-11 to 2015-16, Annexure-16 to 21

According to the Annexure referred above Annexure-P10 to P14, the 2nd petitioner has filed IT Return for the Financial Year 2010-2011 to 2015-2016 and the total income thus declared is given in a tabular form attached to the Writ Petition in Annexure-P18, which runs as follows :

FY	Gross receipts from salary	Pension from Railways	Rental income	Honorary received as tech. Advisor	Interest income	Profit share from businesses	Remuneration from business firm	Total
2010-2011	4,80,000	3,58,253	2,31,430	4,95,357	12,453	1,16,855	2,68,813	19,63,161

2011-2012	11,40,000	3,30,890	1,30,500	6,50,000	30,267	59,363	2,72,689	26,13,709
2012-2013	10,82,624	4,05,226	27,000	9,77,850	2,31,045	1,05,897	2,71,344	31,00,986
2013-2014	11,40,000	4,58,388	0.00	6,75,000	1,74,642	0.00	0.00	24,48,030
2014-2015	11,40,000	5,15,700	0.00	0.00	1,62,127	0.00	0.00	18,17,827
2015-2016	14,06,667	5,51,309	1,94,765	0.00	1,38,832	0.00	0.00	22,91,573
Total	6,389,291	26,19,766	5,83,695	27,98,207	7,49,366	2,82,115	8,12,846	1,42,35,286

Thus, the total income declared by both the petitioners in their I.T.returns comes to Rs.2,47,63,542/- whereas the income shown in the F.I.R. is Rs.1,39,61,014/-. The difference is Rs.1,08,02,528/-. This amount has to be included in the Statement-C.

Under valuation of income from sale of assets :

As per Statement-C, the Serial No.9, an immovable property situated in Bengaluru was sold by the 2nd petitioner for One Crore and after deducting a sum of Rs.27,50,000/- the F.I.R. shows that there is income of Rs.72,50,000/- earned by him. The contention of the petitioners is that the sale price realized is One Crore, there is no justification to reduce the same by a sum of Rs.27.50 lakhs. To substantiate this contention, the petitioners rely upon the ITR for the FY 2015-2016 shown at page No.170 of Annexure-P10. Whereas, it is shown in the ITR for the relevant assessment year, that full value has to be given as consideration by sale, received by the

2nd petitioner instead of discounting certain sum, at the whims and fancies of the respondents. Even according to the respondents, as given in the F.I.R., the value of consideration received by the 2nd petitioners by sale of immovable property is Rs.1,00,00,000/-. In the petitioner's affidavit at Para No.19 a specific question is raised about the justification of the respondents in deducting a sum of Rs.27,50,000/- from the consideration actually received. In the Counter affidavit, answering the said averment of the petition, the respondents state in Para No.18 that 'the averments in para 10 of the petition are wrong and hence denied' and further stated that 'as per the Source Information only the disproportionate assets was assessed in the F.I.R.'. In Para No.24 of the Counter affidavit, it is further stated as under :

'24.With regard to purchase and sale of Property at Survey No.61, Nallapanahalli Village, Chinnarayapatna Hobli, Devanahalli Taluk, Bangalore Rural District, it is submitted that the actual purchase and sale details are required to be collected from the concerned officials and the purchasers/sellers to arrive at the actual cost of purchase and sale of the land.....'

When the F.I.R. itself shown in Statement-C that the sale consideration received by the 2nd petitioner is ONE CRORE, there is no necessity of deducting Rs.27,50,000/- from the said consideration. When the respondents are yet to enquire

officials, purchasers/sellers regarding the actual consideration, what made them to give deduction of Rs.27.50 lakhs is unknown. There is no justification given by the respondents for this exercise to reduce the income from sale of immovable property by a larger sum of Rs.27,50,000/-. This is another mistake that occurred in registering the F.I.R. purely based on the Source Information, without conducting preliminary inquiry. Therefore, without looking into the evidence relied upon by the petitioners, this Court has no hesitation to hold that a sum of Rs.27,50,000/- shall be added to the income of the 2nd petitioner as a 'known source'.

Inclusion of assets not in existence :

One more delusion sneaked in the F.I.R. is including or showing the Bangalore property again in the assets list. At item No.26 of statement-B (Statement showing the assets at the end of the check period (29-02-2016), it is shown as under :

26	Survey No.61, Devanahalli, Bangalore (Agreement for sale executed on 01.11.2010) 2 acres (Purchase cost of Rs.8,00,000/- and Development Costs) in the name of A.Suresh	8,00,000/-
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Evidently, this Bangalore property that was sold in November, 2010, is not to be included in the Statement-B as it was not in the assets by February, 2016. There is absolutely no explanation offered by the Respondents in their counter

affidavit. Thus, it is clear, the respondents have shown the asset that was already sold, in the assets at the end of Check period, and that the sale consideration of the same was also shown as income in Statement-C albeit wrongly. This shows the mechanical way of preparing the F.I.R. by the respondents. These exercises have to be done before registering the F.I.R. and defending their mistaken deeds by pleading that everything shall be enquired during investigation is not acceptable.

This Court, therefore, concludes that a sum of Rs.27,50,000/- shall be included in the income against item No.9 making it Rs.1,00,00,000/- instead of Rs.72,50,000/- ; and Rs.8.00 lakhs shall be deducted from the total sum of Rs.6,90,51,066/- mentioned in Statement-B.

Over valuation of assets :

According to the petitioners, there is a house constructed by the 1st petitioner, both eastern and western portions in Plot No.126, Shaikpet Village, which is purchased by Sri T.Santhosham, father of the 1st petitioner from Smt. Y.Rishikanya vide document No.4330/1995 (Vide Sl.No.4 shown in Annexure-P1 (page-23) of the Writ Petition. This is referred as item Nos.6 and 7 in Statement-B (Assets at the end of the check period 29.02.2016). The value of the asset is shown

as Rs.2,59,50,000/- (western portion) and Rs.2,56,00,000/- (eastern portion) (Total Rs.5,15,50,000/-) in the said statement, which is part of the impugned F.I.R. Against these items, the contention of the petitioners is that the approved valuer has valued the cost of the building (both portions) as Rs.4,14,21,800/- only which is relied upon by the respondents in the F.I.R. but gave an excess value of Rs.85,78,200/- and this is uncalled for and without justification.

It is argued for the petitioners and also shown in the Annexure-P16 of the petition, that the valuation report, dated 11.03.2016 which is referred by the respondents is only Rs.4,14,21,800/- for both the portions and this excess value is not explained anywhere by the respondents and to that extent, it should be held that the F.I.R. is lacking *prima facie* material to sustain the value of Rs.5,15,50,000/-. The respondents in their Counter affidavit at Para No.23 as below :

'23..... It is submitted that the 1st petitioner had intimated her department about the construction of the house and also submitted the valuation report, dated 11.03.2016 with the valuation of Rs.4,14,21,800/-. She also declared that a total investment of Rs.4,43,76,986/- was made in construction of the said house property, till 29.02.2016. It is further submitted that the construction value of Rs.5,00,00,000/- (Statement-B) was taken in the F.I.R. based on the source information.'

However, in the further part of the said paragraph, it is explained by the respondents that after registration of F.I.R., during investigation, they got the value of the property assessed by the Central Public Works Department, who have examined the measurements and approved plans and arrived at the value of the said item at Rs.6,48,85,300/-. In their own words, the relevant part of the Counter Affidavit, reads as under :

‘Further during the investigation, in order to arrive at the actual expenditure on the construction of the said house property (Residential and Commercial buildings) valuation was done through competent and independent Government agency i.e., Central Public Works Department (CPWD). During the valuation the petitioners interacted with the CPWD Engineers and also submitted some bills/invoices towards construction, the copies of land documents.....’

It is thus interesting to note from the above statement in the counter affidavit, ‘during investigation’ only the respondents have ascertained the value of items 6 and 7 of Statement-B as against the approved valuer’s valuation submitted by the 1st petitioner to her department at Rs.4,14,21,800/-. The expression used in the statement is ‘during investigation’ presupposes registration of F.I.R.

because, the criminal law is set into motion only after registration of F.I.R. It is not the case of the respondents that they have conducted any preliminary enquiry before registration of F.I.R. Then how the respondents have arrived the value of items 6 and 7 at Rs.5,15,50,000/- even in the F.I.R., before commencing the investigation is unknown. In all, this Court could perceive that the respondents acted with utter haste in registering the F.I.R. without any basis and rushed to register the F.I.R. even before collecting *prima facie* material to substantiate the grounds to bring the penal provision of the Act to the fore. As an afterthought, the respondents are propounding a ground that they have got the valuation done by the CPWD Engineers during investigation, forgetting the fact, they cannot commence investigation before registration of the F.I.R. This Court, from the above circumstance has reason to believe that registration of the F.I.R. is done in a very informal but callous manner, which is uncalled for.

One more item relating to this topic is value of Elevator installed at the building constructed at Plot No.126, which is the building shown in items 6 and 7 of Statement-B. This Elevator is shown as Sl.No.31 in Statement-B at a value of Rs.10.00 lakhs. It is the contention of the petitioners that where the building in

items 6 and 7 is valued, that valuation is inclusive of fixtures and apparatus including the Elevator. While giving the value of the entire building, showing the value of Elevator again is nothing but arbitrary and erratic and thereby the respondents have increased the value of assets at the end of the check period by Rs.10.00 lakhs. Except saying that the CPWD Engineers valued the cost of the building during investigation, the respondents did not explain why the value of Elevator had to be shown separately. This is visibly a mistake committed by the respondents.

Annexure-P15 is the copy of letter, dated 14.03.2016 addressed by the 1st petitioner to the Principal Chief Commissioner of Income Tax (CCA), Chennai, intimating the department about completion of construction of house property, with Annexures 1 to 6 therewith. Out of them, Annexure-1 shows the details of cost of construction. In that Annexure item-H deals with Lifts. Sl.No.31 of Statement-B in Annexure-P1 is 'Oscan elevator for property is shown at a value of Rs.10,00,000/-. There is another lift Schindler at a cost of Rs.12,46,500/- and total cost of the Lifts comes to Rs.22,46,500/- In the abstract of cost of construction, this value is included.

The total construction costs in the abstract from A to W items is shown by the approved valuer at Rs.4,14,21,800/-.

In the Memorandum, dated 12.06.2017 (Page 227 of Annexure-P16), the Principal Chief Commissioner of Income Tax ordered that the intimation given by the 1st petitioner along with the valuation of the construction, source of funds etc., are taken on record. That means, the valuation of the approved valuer was examined and accepted by the department. When that value includes the cost of Elevator, showing the value at Rs.10.00 lakhs separately is not but swelling asset value in Statement-B. That Rs.10.00 lakhs shall be eliminated from item No.31 of Statement-B, resulting in further reduction of the total value.

Summary of the above mistakes/irregularities committed by the respondents in the registration of F.I.R. leads to the following conclusions.

I. The following values have to be included in the income of the petitioners shown in Statement-C.

1. Difference of Salary and arrears received by the 1st petitioner	37,67,242
2. Difference of Income of 2 nd petitioner	70,35,286
3. Difference of sale consideration received by Sale of immovable property in Bengalure	27,50,000

Total amount of income to be added in Statement-C	1,35,52,528

II. The following amounts have to be deducted from Statement-B

1. Difference of value of the Building Constructed by the 1st petitioner	85,78,200
2. Cost of Bengalure property which was already sold away by 2 nd petitioner	8,00,000
3. Value of Oscan Elevator which is included in the value of the construction of building by the 1st petitioner	10,00,000
Total amount of deduction to be made to Statement-B	1,03,78,200

a) Total Income as modified (Statement-C) 6,20,29,158

**b) Total value of assets possessed at the end of
check period as modified (Statement-B 5,86,72,866**

Adopting the modified figures, revised working is as
hereunder :

Sl. No.	Particulars of Assets	Amount
A	Assets at the beginning of the check period	1,35,26,066
B	Assets at the end of the check period	5,86,72,866
C	Assets during the check period (B-A)	4,51,46,800
D	Income during the check period	6,20,29,158
E	Expenditure during the check period	40,33,322
F	Assets + Expenditure - Income (DA)	-1,28,49,036

The above figures demonstrate that there is no
disproportionate asset at all. On the contrary there is an excess
of income of Rs.1,28,49,036/- over and above the assets.

The claim of the respondents that the petitioners are possessing disproportionate assets at a value of Rs.1,10,81,692/- that translates to 22.86% in excess of the known sources of income is therefore unsustainable.

This Court, therefore, concludes that the F.I.R. is registered without application of mind by the respondents, in a mechanical and whimsical manner. It is evident that the respondents did not provide any *prima facie* material to sustain a charge under Section 109 of I.P.C., and Section 13 (1) (e) of the Prevention of Corruption Act and the F.I.R. is unsustainable on its very face even without considering the evidence of the petitioners. By omission to conduct a preliminary enquiry, the respondents have simply acted upon the unverified Source Information contrary to the mandatory rules of the C.B.I. Manual. On this F.I.R., if any investigation is now proceeded with, it will be a futile, meaningless and vexatious exercise.

Keeping in view the guidelines prescribed by the Apex Court in **Bhajan Lal (17 supra)** and also after considering the admitted facts available on record, this Court finds that the F.I.R. in Crime No. RC MA1 2017 A 0021 of SPE, CBI, ACB Chennai, is liable to be quashed and is hereby quashed. All further proceedings taken up pursuant to that F.I.R., if any, are

hereby set aside. The assets seized and the bank accounts of the petitioners freezed, if any, shall be released forthwith by the respondents.

Accordingly, the Writ Petition is allowed. Miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G.SRI DEVI

11.02.2020
gkv/Gsn



