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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.09.2021

PRONOUNCED ON : 15 .09.2021

CORAM

THE HON'BLE Mr. JUSTICE C.V.KARTHIKEYAN

Crl.O.P.No. 12766 of 2021

1. G.Selvakumaran (A-1)

2. R.Jayanthi (A-2)

...Petitioners/Accused

Vs.

State by:

Deputy Superintendent of Police/Inspector of Police

Vigilance and Anti-Corruption, Salem ...

Respondent/complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in F.I.R.No.4/AC/2021 on the file of the Inspector of Police, Vigilance and Anti-Corruption, Salem, for the perusal of this Hon'ble Court and quash the same.

For Petitioners : Mr. K.Suresh Babu

For Respondent : Mr. E.Raj Thilak
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to call for the records in F.I.R.No.4/AC/2021 on the file of the Inspector of Police, Vigilance and Anti-Corruption, Salem and quash the same.

2. The petitioners are A-1 and A-2 in FIR No. 4/AC/2021 which had been registered under Sections 13(2) read with 13(1) (e) of PC Act 1988, 13(1)(b) of PC Act, 1988 as amended and under Section 109 IPC. The first petitioner is a public servant and was employed as Executive Engineer, Rural Development Department, District Rural Development Agency in Tirupathur District. The second petitioner is his wife. The First Information Report came to be registered on 05.02.2021 based on source information received on 18.01.2021.



3. In the First Information Report, it had been stated that information was received that the first petitioner / public servant was in possession of pecuniary resources and properties in his name and in the name of the second petitioner disproportionate to the known sources of income. On receipt of such information, a confidential enquiry was first conducted and after a prima facie opinion was formed, the First Information Report was registered and simultaneously entry was also made in the General Diary. The First Information Report had been registered by the Inspector of Police, Vigilance and Anti Corruption, Salem, at 17.00 hours on 05.02.2021. The First Information Report was forwarded to the Special Court for Trial of Cases and Prevention of Corruption Act, Salem District and the endorsement in the First Information Report shows that it had been received by the Special Judge for Trial of Cases under Prevention of Corruption Act in Salem District at her residence at 18.15 hours, the same day on 05.02.2021.

4. It had also been stated that a copy of the First Information Report was also submitted to the Superintendent of Police, Vigilance and Anti-corruption, Western Range, Chennai for issuing orders under Section 17 of the Prevention of Corruption Act 1988 for investigation and to issue authorisation under Section 18 of the said Act to inspect bankers books in relation to the accounts of the first petitioner and his family members.

5. In the First Information Report, it had also been mentioned under column 13 relating to action taken, that a case had been registered since the report revealed commission of offence as mentioned and that Thiru.S.Chandramouli, Additional Superintendent of Police, had taken up investigation.

6. In the First Information Report, the check period had been determined as between 01.04.2012 and 31.03.2019 and the details regarding the assets found in the names of the petitioners at the commencement of the check period, the assets found in the names of the petitioners at the end of the check period, the income of the petitioners from known sources during the check period, the expenditure incurred by the petitioners during the check period, the value of the assets acquired by the petitioners during the check period and the likely savings of the petitioners during the check period had all been given and thereafter the disproportionate assets determined to have been acquired by the petitioners during the check period had also been given. It was stated that the disproportionate assets comes to 284% over and above the known sources of income.

7. This First Information Report is now sought to be interfered with by this Court by this petition.



8. Heard Mr.K.Suresh Babu, learned counsel for the petitioners and Mr.E.Raj Thilak, learned Government (Crl. Side) for the respondent.

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9. Mr.K.Suresh Babu, learned counsel for the petitioners first laid a charge that the mandatory requirements as stipulated under both Section 13(1)(e) of PC Act 1988 and under the amendment provision under Section 13(1)(b) of PC Act had not been followed. He stated that there was no specific averment in the First Information Report indicating that opportunity had been granted to the first petitioner to satisfactorily account for the assets said to have been acquired during the check period. He stated that the provisions would be attracted only when the public servant was not able to satisfactorily account for the assets mentioned in the First Information Report and therefore, stated it went without saying that opportunity must be granted.

10. It was urged by the learned counsel that even at the pre-registration stage of the First Information Report, an opportunity should have been given to the petitioners herein to explain the assets in their hands at the end of the check period.

11. The learned counsel then stated that there was no order under the second proviso to Section 17 of the Prevention of Corruption Act 1988 authorising Thiru.S.Chandramouli, Additional Superintendent of Police, to take up investigation. The learned counsel pointed out that a copy of the First Information Report had been forwarded only after it had been registered at 17.00 hours on 05.02.2021 to the Superintendent of Police and however the First Information Report contained the name of the Investigating Officer and therefore, the learned counsel wondered as to how this was possible and stated that this was a procedural irregularity which cannot be cured and which necessitated that the First Information Report should be quashed.

12. The learned counsel then pointed out that the information received had not been immediately entered in the General Diary as required and as directed by the Hon'ble Supreme Court in the Judgement reported in 2014 (2) SCC 1 [Lalita Kumar Vs. Government of U.P & Others], wherein the Hon'ble Supreme Court had directed that all information relating to cognizable offences whether resulting in registration of First Information Report or leading to an enquiry must be mandatorily and meticulously reflected in the General Diary which is the record of all informations received in the police station.



13. The learned counsel pointed out the First Information Report and stated that even according to the said document, information had been received on 18.01.2021 but it had been entered in the General Diary only on 05.02.2021 which was in direct violation of the aforesaid direction of the Hon'ble Supreme Court. It was therefore urged by the learned counsel that the First Information Report should be quashed by this Court.

14. The learned counsel then stated that the allegations in the First Information Report, even if taken on the face value and accepted in their entirety, do not constitute any offence, much less an offence under Section 13(1)(e) of PC Act 1988. In this connection, learned counsel stated that an offence under the said provision can be said to be made out only when a public servant had enriched himself or was in possession of pecuniary resources, disproportionate to his known sources of income and which the public servant cannot satisfactorily account. The learned counsel stated that there is no material in the First Information Report to show that opportunity was granted to the petitioners to explain the assets as stated to be in their possession at the end of the check period.

15. The learned counsel then stated that the police station, namely, the Vigilance and Anti-corruption in Salem District is not a notified police station under Section 2(s) of the Code of Criminal Procedure. He stated that the Government had not issued any notification declaring that the office of Inspector of Police, Vigilance and Anti-corruption, Salem, as a police station. He therefore stated that the First Information Report should be quashed.

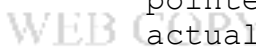
16. The learned counsel finally stated that a preliminary enquiry had not been conducted in accordance with the guidelines of the Hon'ble Supreme Court. In this connection, the learned counsel relied on the Judgment report in Charansingh Vs. State of Maharashtra and others [(2021) 5 SCC 469]. He pointed out that the petitioners were not summoned by the prosecution for preliminary enquiry and therefore, the investigating authority had not correctly ascertained whether the assets are disproportionate to the known sources of income and further stated that had the petitioners been summoned they could have given necessary explanations with respect to their known sources of income and if such explanations had been taken into consideration, the First Information Report would not have been lodged at all. The learned counsel therefore stated that the First Information Report registered against the petitioners in FIR No. 4/AC/2021 by the respondent should be quashed by this Court.



17. Mr. E.Raj Thilak, learned Government Advocate (Crl. Side) however very seriously disputed the contentions raised. The learned Government Advocate pointed out that a reading of the First Information Report would show that suo moto information had been received regarding acquisition of assets disproportionate to known sources of income by the first petitioner and on receipt of such information, a confidential enquiry had been first conducted and only after a prima facie opinion had been formulated, was the First Information Report registered.

18. The learned Government Advocate (Crl.Side) pointed out that after further investigation is conducted and the actual assets are determined at the end of the check period, opportunity will certainly be granted to the petitioners herein to give their necessary explanation and only thereafter will a final report be filed before the competent Court. The learned Government Advocate (Crl. Side) stated that therefore at this stage, investigation is only proceeding to gather information by recording statements from witnesses, collecting documents and analysing the statements and the documents and thereafter, a final report would be prepared with respect to the income and expenditure and assets of the petitioners which would certainly be placed before the petitioners for their explanations and therefore, the learned counsel justified registration of the First Information Report.

19. The learned Government Advocate (Crl. Side) also pointed out that even in the Judgment of the Hon'ble Supreme Court in Lalita Kumari (referred supra) an exception had been given to corruption cases for mandatory recording of information in the general diary. The Hon'ble Supreme Court was conscious that on receipt of information, a preliminary enquiry would have to be done and only on subjective satisfaction, First Information Report will be registered. At any rate, the learned Government Advocate (Crl. Side) stated that the First Information Report does not suffer from any irregularity as alleged by the counsel for the petitioners. The learned Government Advocate (Crl. Side) also pointed out that the First Information Report contained all necessary materials required to be stated. It had been registered and immediately thereafter, the original had been forwarded to the jurisdictional Court which had been received on 18.15 hours at the residence by the Special Judge for Prevention of Corruption Act cases, Salem. He also stated that a copy of the First Information Report had actually been forwarded to the Superintendent of Police, who had given necessary orders appointing Thiru.S.Chandramouli, Additional Superintendent of Police, to take up investigation. The learned Government Advocate (Crl. Side) stated that



20. The learned Government Advocate (Crl. Side) also pointed out that the Vigilance and Anti-corruption Department is actually a police station and functions in every District and the Inspector of Police has authority to register the First Information Report and therefore, justified the registration of the First Information Report by the respondent. The learned Government Advocate (Crl. Side) stated that the guidelines of the Hon'ble Supreme Court had been meticulously followed and the First Information Report did not suffer from any irregularity warranting the same to be quashed.

22. Even before entering into a discussion on the aspects raised, it would be worthwhile to examine the guidelines given by the Constitution Bench of the Hon'ble Supreme Court in 2014 (2) SCC 1 [Lalita Kumari Vs. Government of U.P & Ors.]

120.1. The 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.

120.3. 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.



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120.4. 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.

120.5. 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.

120.6. As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances 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.

120.7. 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.

120.8. 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. "

[Emphasis Supplied]

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23. It is thus seen that in Lalita Kumari referred supra, the Hon'ble Supreme Court had stated that when information is received disclosing cognizable offence, a preliminary enquiry is required in among other categories of cases, also in corruption cases. It had also been stated that the scope of preliminary enquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether such information reveals any cognizable offence. It is thus evident that a prima facie opinion whether the information had revealed commission of a cognizable offence should be first formed after conducting preliminary enquiry.

24. In the instant case, the information received was that the first petitioner had acquired assets disproportionate to his known sources of income during the check period which had been determined as between 01.04.2012 and 31.03.2019. The scope of the preliminary enquiry was not to verify the veracity or otherwise of the information but to ascertain whether the offence had been made. Such an enquiry was conducted and that fact had been reduced to writing in the First Information Report itself and on conducting such enquiry, it had been determined that the petitioners had acquired assets to the extent of 284% over and above their known sources of income.

25. It had also been stated that in Lalita Kumari referred supra, that preliminary enquiry should be conducted expeditiously. In the instant case, the information had been received on 18.01.2021 and on 05.02.2021 within 20 days, the First Information Report had been registered. Simultaneously, entry had also been made in the general diary. I therefore hold that the charge of Mr. K.Suresh Babu, learned counsel for the petitioners that the mandatory requirements under Section 13(1) (e) had not been complied with cannot be accepted at this stage.

26. Moreover, in Chapter 8 of Vigilance Mannual issued by the Tamil Nadu Government relating to the cases of disproportionate asset, it had been sated that a detailed enquiry or a regular case is registered to collect evidence of possession of disproportionate asset. It had also been stated that the investigation shall not be conducted without an order of a police officer not below the rank of Superintendent of Police. In this case, a reading of the First Information Report itself shows that a copy had been forwarded to the Superintendent of Police, Vigilance and Anti-corruption, Western Range, Chennai, for issuing orders under Section 17 of the Act



directing appointment of an Investigating Officer. Such Officer had also been appointed. Merely because the name of the Officer is mentioned in the First Information Report cannot, at this preliminary stage, be a ground to quash the First Information Report. Circumstances surrounding as to when, the Superintendent of Police communicated the order to the First Information Report registering Officer will be part of the records and these are all issues which the petitioners can take up during the course of trial.

27. In the said Manual by DAVC circular memo No. 33672/VAC-4/90 dated 23.11.1990, it had been stated that if after investigation, when "actionable material is found, after approval of the final report at the Head Quarters, the accused should be given the final opportunity by the Investigating Officer, communicating to the accused Officer, in writing and under acknowledgement, the details of total income and total expenditure during the check period and the likely savings at the end of the check period, details of the properties and pecuniary resources found possessed as also the quantum of disproportion at the end of the check period, as worked out in Basic Statements 1 to VI, asking him to explain, within a reasonable time, the disproportion in assets as determined against the Accused Officer."

[Emphasis Supplied]

28. It had also been stated as follows:-

"On receipt of the reply from the Accused Officer, the Investigating Officer should send it to Headquarters Office with a draft paragraph to this effect to be incorporated in the Final Report. If the Accused Officer comes forward with any new plea or explanation, the same should be verified by the Investigating Officer and a definite finding regarding such plea or explanation, should be given for incorporation in the Final Report."

29. It is thus seen that necessary protection is offered to the petitioners after investigation is completed into the allegations mentioned in the First Information Report to give necessary explanations.

30. The learned counsel for the petitioner had very strongly relied on the Judgment reported in (2021) 5 SCC 469 [Charansingh Vs. State of Maharashtra & Others]. In that case, the Hon'ble Supreme Court had also stated as follows:-



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"8. However, whether in a case of a complaint against a public servant regarding accumulating the assets disproportionate to his known sources of income, which can be said to be an offence under Section 13(1)(e) of the Prevention of Corruption Act, 1988, an enquiry at pre-FIR stage is permissible or not and/or it is desirable or not, if any decision is required, the same is governed by the decision of this Court in the case of Lalita Kumari (supra).

8.1 While considering the larger question, whether police is duty bound to register an FIR and/or it is mandatory for registration of FIR on receipt of information disclosing a cognizable offence and whether it is mandatory or the police officer has option, discretion or latitude of conducting preliminary enquiry before registering FIR, this Court in the case of Lalita Kumari (supra) has observed that it is mandatory to register an FIR on receipt of information disclosing a cognizable offence and it is the general rule. However, while holding so, this Court has also considered the situations/cases in which preliminary enquiry is permissible/desirable. While holding that the registration of FIR is mandatory under Section 154, if the information discloses commission of a cognizable offence and no preliminary enquiry is permissible in such a situation and the same is the general rule and must be strictly complied with, this Court has carved out certain situations/cases in which the preliminary enquiry is held to be permissible/desirable before registering/lodging of an FIR. It is further observed that if the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary enquiry may be conducted to ascertain whether cognizable offence is disclosed or not. It is observed that as to what type and in which cases the preliminary enquiry is to be conducted will depend upon the facts and circumstances of each case. As per the decision of this Court, the categories of cases in which preliminary enquiry may be made are as under:



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- (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."

..... [Emphasis
Supplied]

9. In the context of offences relating to corruption, in paragraph 117 in the case of Lalita Kumari (supra), this Court also took note of the decision of this Court in the case of P. Sirajuddin v. State of Madras (1970) 1 SCC 595 in which case this Court expressed the need for a preliminary enquiry before proceeding against public servants. While expressing the need for a preliminary enquiry before proceeding against public servants who are charged with the allegation 16 of corruption, it is observed in the case of P. Sirajuddin (supra) that "before a public servant, whatever be his status, is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of indulging into corrupt practice and a first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person who is occupying the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to in general. If the Government had set up a Vigilance and Anti-Corruption Department as was done in the State of Madras and the said department was entrusted with enquiries of this kind, no exception can be taken to an enquiry by officers of this department". It is further observed that "when such an enquiry is to be



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held for the purpose of finding out whether criminal proceedings are to be initiated and the scope thereof must be limited to the examination of persons who have knowledge of the affairs of the person against whom the allegations are made and documents bearing on the same to find out whether there is a prima facie evidence of guilt of the officer, thereafter, the ordinary law of the land must take its course and further enquiry be proceeded with in terms of the Code of Criminal Procedure by lodging a first information report".

9.1 Thus, an enquiry at pre-FIR stage is held to be permissible and not only permissible but desirable, more particularly in cases where the allegations are of misconduct of corrupt practice acquiring the assets/properties disproportionate to his known sources of income. After the enquiry/enquiry at pre-registration of FIR stage/preliminary enquiry, if, on the basis of the material collected during such enquiry, it is found that the complaint is vexatious and/or there is no substance at all in the complaint, the FIR shall not be lodged. However, if the material discloses prima facie a commission of the offence alleged, the FIR will be lodged and the criminal proceedings will be put in motion and the further investigation will be carried out in terms of the Code of Criminal Procedure. Therefore, such a preliminary enquiry would be permissible only to ascertain whether cognizable offence is disclosed or not and only thereafter FIR would be registered. Therefore, such a preliminary enquiry would be in the interest of the alleged accused also against whom the complaint is made."

31. It must be kept in mind that Charansingh referred supra, examined the stipulations provided under the Maharashtra State Anti-corruption Manual. The stipulations as provided under a similar manual in Tamil Nadu had been referred supra and it is seen that after final investigation is completed, an opportunity shall certainly be granted to the petitioners herein to explain the assets which they had in their hands.



32. In 2019 19 SCC 87, [The State Of Telangana vs Managipet @ Mangipet Sarveshwar Reddy], the Hon'ble Supreme Court, in a case where acquisition of assets disproportionate to known sources of income had been alleged and in an appeal against the order of the High Court which had held that there was no authorisation to register the crime and that the informant cannot be the Investigating Officer and therefore had quashed the First Information Report, after examining the terms of re-employment of the Officer therein and holding that he had authorised the Deputy Superintendent of Police to register a case against the accused under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act 1988 to conduct investigation, and referred to the Judgment reported in (2011) 5 SCC 214 [P.H. Paul Manoj Pandian v. P. Veldurai] where it was held as follows:-

"48. The powers of the executive are not limited merely to the carrying out of the laws. In a welfare State the functions of the executive are ever widening, which cover within their ambit various aspects of social and economic activities. Therefore, the executive exercises power to fill gaps by issuing various departmental orders. The executive power of the State is coterminous with the legislative power of the State Legislature. In other words, if the State Legislature has jurisdiction to make law with respect to a subject, the State executive can make regulations and issue government orders with respect to it, subject, however, to the constitutional limitations.

Such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject. Thus, the High Court was not justified in brushing aside the Government Order on the ground that it contained administrative instructions."

33. It was also found in Managipet (referred supra) that the Officer therein while discharging the duties of Joint Director under the Anti Corruption Bureau discharged duty in public interest and not for his own benefit.

34. In paragraph No.15, the Hon'ble Supreme Court stated as follows:-

"15. We further find that Sri K. Sampath Kumar's acts whilst discharging the duties of



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Joint Director in the Anti-Corruption Bureau were within the scope of the assumed official authority in public interest and not for his own benefit. Therefore, acts undertaken in this regard by the officer will be taken to be valid."

35. A careful reading of the above dictums shows that the Officer registering the First Information Report did not act for his personal benefit. He discharged his public duty. Similarly, the Superintendent of Police who had to appoint an Investigating Officer had so appointed Thiru.S.Chandramouli, Additional Superintendent of Police, as the Investigating Officer. I hold that there is no apparent irregularity and at this preliminary stage when investigation is going on, the prosecution should be given necessary opportunity to determine whether the petitioners herein had actually acquired assets disproportionate to their known sources of income.

36. In the case reported in 1992 SCC (Cr1.) 426 [State of Harayana Vs. Bhajanlal], the Hon'ble Supreme Court had also laid down guidelines wherein the Court can interfere with investigation of cognizable offence.

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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



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(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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."



37. In the instant case, none of the aforesaid conditions are satisfied. Possession of assets, disproportionate to known sources of income if proved, is a very serious offence committed by a public servant. The investigation is at the nascent stage. It has to proceed further by recording of statements of witnesses and collection of documents. As a matter of fact, even in the First Information Report, authority had been sought to inspect the bankers books which indicate that the investigation is proceeding in manner known to law.

38. In M/s. Neeharika Infrastructure Pvt. Ltd., Vs. State of Maharashtra and others [2021 SCC Online 315], the Hon'ble Supreme Court had given guidelines to the High Courts with respect to interfering with investigation and had held as follows:-

"23. In view of the above and for the reasons stated above, our final conclusions on the principal/core issue, whether the High Court would be justified in passing an interim order of stay of investigation and/or "no coercive steps to be adopted", during the pendency of the quashing petition under Section 482 Cr.P.C and/or under Article 226 of the Constitution of India and in what circumstances and whether the High Court would be justified in passing the order of not to arrest the accused or "no coercive steps to be adopted" during the investigation or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of/not entertaining/not quashing the criminal proceedings/complaint/FIR in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India, our final conclusions are as under:

- i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into a cognizable offence;
- ii) Courts would not thwart any investigation into the cognizable offences;



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iii) It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;

iv) The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the 'rarest of rare cases (not to be confused with the formation in the context of death penalty).

v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint

vi) Criminal proceedings ought not to be scuttled at the initial stage;

vii) Quashing of a complaint/FIR should be an exception rather than an ordinary rule;

viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;

ix) The functions of the judiciary and the police are complementary, not overlapping;

x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;

xi) Extraordinary and inherent powers of the Court do not confer an arbitrary



jurisdiction on the Court to act according to its whims or caprice;

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xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;

xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the court;

xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint imposed by law, more particularly the parameters laid down by this Court in the cases of R.P. Kapur Vs. State of Punjab (AIR 1960 SC 866) and State of Haryana Vs. Bhajan Lal, (1992 Supp. (1) SCC 335), has the jurisdiction to quash the FIR/complaint;

xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not



the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;

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xvi) The aforesaid parameters would be applicable and/or the aforesaid aspects are required to be considered by the High Court while passing an interim order in a quashing petition in exercise of powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India. However, an interim order of stay of investigation during the pendency of the quashing petition can be passed with circumspection. Such an interim order should not require to be passed routinely, casually and/or mechanically. Normally, when the investigation is in progress and the facts are hazy and the entire evidence/material is not before the High Court, the High Court should restrain itself from passing the interim order of not to arrest or "no coercive steps to be adopted" and the accused should be relegated to apply for anticipatory bail under Section 438 Cr.P.C. before the competent court. The High Court shall not and as such is not justified in passing the order of not to arrest and/or "no coercive steps" either during the investigation or till the investigation is completed and/or till the final report/chargesheet is filed under Section 173 Cr.P.C., while dismissing/disposing of the quashing petition under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India.

xvii) Even in a case where the High Court is prima facie of the opinion that an exceptional case is made out for grant of interim stay of further investigation, after considering the broad parameters while exercising the powers under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India referred to hereinabove, the High Court has to give brief reasons why such an interim order is warranted and/or is required to be passed so that it can



demonstrate the application of mind by the Court and the higher forum can consider what was weighed with the High Court while passing such an interim order.

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xviii) Whenever an interim order is passed by the High Court of "no coercive steps to be adopted" within the aforesaid parameters, the High Court must clarify what does it mean by "no coercive steps to be adopted" as the term "no coercive steps to be adopted" can be said to be too vague and/or broad which can be misunderstood and/or misapplied."

[Emphasis supplied]

39. In view of the above guidelines in which it had been very categorically held that the power of quashing should be exercised sparingly with circumspection and the Court cannot embark upon an enquiry as to the genuineness of the allegations made and that criminal proceedings ought not to be scuttled at the initial stage and that quashing of an First Information Report should be an exception rather than an ordinary rule, I hold that in the instant case this Petition will have to suffer an order of dismissal and that opportunity has to be granted to the Investigating Officer to deal further into the allegations against the petitioners in accordance with law. I would therefore not accede to the request made in the petition and dismiss the petition.

40. Accordingly, this Criminal Petition is dismissed. No order as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vsg

To

1. Deputy Superintendent of Police/Inspector of Police
Vigilance and Anti-Corruption,
Salem.



2. The Superintendent of Police,
Vigilance and Anti-Corruption,
Western Range, Chennai.

3. The Public Prosecutor,
High Court, Chennai.

CrI.O.P.No. 12766 of 2021

BS[col]
NSK 28/09/2021