IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70356 of 2021

Arising Out of PS. Case No.-39 Year-2018 Thana- VIGILANCE District- Patna

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RAM PRABESH SAW Son of Sri Mishri Saw Resident of village - Poktha, P.S.- Obra, District - Aurangabad at present Vijay Nagar (Rukanpura), P.S.- Rupaspur, District - Patna.

... ... Petitioner/s

Versus

The State of Bihar, Through Vigilance, Patna Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. A.K. Thakur
Mrs. Vaishnavi Singh

For the Opposite Party/s : Mr. Arvind Kumar
Mr. Anil Singh

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV ORDER

10 21-03-2023 Heard the learned counsel for petitioner, learned APP for the State as well as learned Spl. PP for the Vigilance.

The petitioner apprehends his arrest in connection with Vigilance PS Case No. 39 of 2018 dated 07.09.2018 for the alleged offence under section 13 (2) read with section 13 (1) (b) of the Prevention of Corruption Act, 1988.

The prosecution case in brief is that, on the basis of confidential information an inquiry was conducted in respect of amassing disproportionate assets by the petitioner namely, Sri Ram Prabesh Saw, Executive Engineer, Rural Works Division, Siwan. During inquiry it has been found that Ram Prabesh Saw was appointed as Assistant Engineer on 08.07.1987 and during his service he remained posted in various districts including Nawada and Lakhisarai. It was also revealed during inquiry that the petitioner by misusing his official position and by adopting illegal and corrupt means amassed assets like several pieces of land and flats at Patna as well as investment in so many financial institutions including banks, disproportionate to the known sources of his income in his name and in the name of his wife. Further during the check period the expected income of the petitioner from salary, bank loan and other sources has been calculated to the tune of Rs.90,32,264/-, out of which his expenditure as per the set principle comes to Rs.26,66,000/- and in this way savings during the check period comes to Rs.63,66,264/-, but he has been found in possession of movable and immovable properties worth Rs. 1,10,87,939/- As such the accused has been found in possession of properties worth Rs.47,21,675/- disproportionate to his known sources of income.

Learned counsel for the petitioner submits that the petitioner is quite innocent and has falsely been implicated in this instant case and has clean antecedent. Learned Counsel for petitioner submits that neither proper inquiry was conducted by informant nor by proper authority to trace out the actual income and expenditure of petitioner and his wife namely, Prabha Kumari and without proper enquiry present case has been lodged. He submits that in view of Section 17(C) r/w proviso of section 17(1)(b) of the Prevention of Corruption Act it will be evident that the police inspector has no jurisdiction to investigate against the Government servant and Class-I officer without approval of the State Government and section 17(c) specially provides that if a police officer not below the rank of an Inspector of Police is authorized by the State Government will investigate the said case and any Government notification will not override the Act.

Learned Counsel for petitioner submits that petitioner neither misused his official position ever nor has acquired any property beyond his known sources of income. He further submits that the prosecution by ignoring the actual income of the petitioner and his wife, has lodged out the present false case with false allegation of acquisition of property beyond known sources of income. He submits the gross salary amount of the petitioner earned from the Assistant Engineer, posted in TISCO (from July 1986 to June 1987) is Rs. 18,000/-, the gross salary amount of the petitioner earned as Assistant Engineer and Executive Engineer, Road Construction Department (from

08.07.1987 to 07.09.2018) is Rs.1,19,46,058/- as per salary received and income tax return, gross income other than salary that is from interest on NSC/KVP/Bank Deposit/rental as per income tax return is Rs.20,06,767/-, gross income other than salary that is from maturity of LIC, ULIP (UTI), Tax Saving Bonds, Tax free Different UT Schemes like RUP, US-64 which were taken from savings from the year 1998-99 and onwards is Rs.7,98,000/-. So it is evidently clear that from the source of income of the petitioner mentioned above that the total income of the petitioner is Rs.1,47,62,825/- and the petitioner has paid a total income tax of Rs.11,13,804/- from the year 1997-98 to 7.9.2018. It has further been submitted that the wife of the petitioner Prabha Kumari has got training of sewing, hand embroidery and knitting and she is doing business at her home since 1982 and is raising income and she is also an income tax assessee and has paid income tax of Rs.80,243/- during the aforesaid period and no notice has been issued to her from the Income-Tax Department. It has also been submitted that the petitioner took total loan of Rs.17,53,000/- from different banks for the purpose of construction of house, purchase of flat and vehicle and still Rs.10,32,264/- loan amount is outstanding against him. Lastly he submitted that the total saving of the petitioner and his wife during the check period is Rs.1,96,61,823/- which is much more than total cost of movable and immovable property that is Rs.1,08,75,750/-. The department has also requested the Vigilance to give the detail as to how he calculated the total income of the petitioner as Rs.80 lacs on the basis of salary and other as well as other income but till date they have not submitted any such detail. So it has been prayed to admit the petitioner on anticipatory bail.

Learned APP for the State as well as Learned Spl. PP for the Vigilance vehemently oppose the prayer for anticipatory bail by submitting that petitioner has misused his official position and by adopting illegal and corrupt means acquired property disproportionate to the known sources of his income. Learned Spl. P.P. for the Vigilance submits that Inspector of Police, Vigilance Investigation Bureau has been legally authorized for conducting enquiry/investigation for cases under P.C. Act vide Government Notification O.S. No.-2442, dated 30.06.2000. Learned Counsel further submits that from perusal of the memo of evidence it is apparent the IO has found no document regarding income made by the petitioner through his service at TISCO during the year 1986-87. The petitioner has also not produced document showing income of interest from the amounts deposited in bank and through KVP, he has only produced document investment of Rs.7,40,000/- in the NSC, likewise no document has been produced by the petitioner showing the maturity amount of Rs.7,98,000/- from LIC, UPIP(UTI) Bands, UTI Scheme, RUP and US 64 nor the petitioner has produced document in respect of his income through salary, rent and interest from bank. It is also stated in the memo that the petitioner has only shown the investment incurred on the movable and immovable properties as Rs.1,081,75,750/-, but he has not added the expenditure incurred on other items like house-hold articles, jewelleries and higher education cost of his daughters which is Rs.1,01,00000/-. Lastly it is stated that uptill now an amount of Rs.3,00,85,685.87/- has been found to be invested by the petitioner and further more properties is likely to be unearthed in future as this case is still under investigation. Learned counsel for the Vigilance further submits that the petitioner and his wife were enquired about how all the properties i.e. movable and immovable were acquired by them by showing papers/documents of all these properties but no valid papers/documents were shown by them regarding acquisitions of all the properties. Mrs. Prabha Kumari (non-government servant) has induced her husband to earn illegal money and acquire illegal properties and in order to conceal these properties, both of them entered into a criminal conspiracy for keeping the properties in their respective names. It is further submitted that on the basis of evidence gathered during investigation against the FIR named accused Mr. Ram Prabesh Saw, Executive Engineer, Technical Assistant, Rural Works Department, the Government has recommended to issue sanction order for prosecution u/s 197 Cr.PC and section 19 of PC Act for the offences u/s 13 (2) read with section 13(1)(B) of PC Act and section 120B of IPC. Learned Spl. P.P. further submits that petitioner does not deserve anticipatory bail since there is apprehension of tampering with evidence and affecting the on-going investigation as further investigation is still going on.

Learned counsel for the Vigilance relied upon the judgment of the Apex Court reported in ***2021 (4) PLJR 197 Central Bureau of Investigation vs. Thommandru Hannah Vijayalakshmi (SC) 197***. In para-44 of the said judgment, it is observed that the respondents have filed before us their Income Tax Returns, statements under the CCS Rules, affidavits under the RP Act and all other document filed before the Telangana

High Court as well. Based on these documents, the respondents have urged that the calculation of their income, expenditure and value of assets during the check period in the FIR is incorrect. In support of the proposition that these documents can be relied upon, they have pointed out the following observations in the judgment in **Kedari Lal** (*supra*):

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 M. Krishna Reddy v. State [M. Krishna Reddy v. State*, (1992)4 SCC 45 : 1992 SCC (Cri) 801], it was observed in para 14: (SCC p.49)

"14. … Therefore, on the face of these unassailable documents i.e. the wealth tax and income tax returns, we hold that the appellant is entitled to have a deduction of Rs.56,240 from the disproportionate assets of Rs.2,37,842."

If the amounts in question, which were duly intimated and are reflected in the income tax return are thus deducted, the alleged disproportionate assets stand reduced to Rs.37,605, which is less than 10% of the income of the appellant. In *Krishnanand v. State of M.P.* [(1977) 1 SCC 816 : 1977 SCC (Cri) 190] and in *M. Krishna Reddy [M. Krishna Reddy v. State,* (1992)4 SCC 45 : 1992 SCC (Cri) 801], this Court had granted benefit to the public servants in similar circumstances. We respectfully follow the said decisions."

In para-48 of the said judgment, it is mentioned that at the very outset, we must categorically hold that the documents which have been relied upon by the respondents cannot form the basis of quashing the FIR. The value and weight to be ascribed to the documents is a matter of trial. Both the parties have cited previous decisions of two Judge Benches of this Court in order to support their submissions. There is no clash between the decisions in **Kedari Lal** *(supra)* and **J. Jayalalitha** *(supra)* for two reasons: (I) the judgment in **J. Jayalalitha** *(supra)* notes that a document like the Income Tax Return, by itself, would not be definitive evidence in providing if the "source" of one's income was lawful since the Income Tax Department is not responsible for investigation that, while the facts in the judgment of **Kedari Lal** *(supra)* were such that the "source" of the income was not in question at all and hence, the Income Tax Returns were relied upon conclusively; and (ii) in any case, the decision in **Kedari Lal** *(supra)* was delivered while considering a criminal appeal challenging a conviction under the PC Act, while the present matter is at the stage of quashing of an FIR.

Learned counsel for the Vigilance further relied upon another judgment reported in ***2022 (4) PLJR 4 State through Deputy Superintendent of Police vs. R. Soundirarasu etc***. Para-41 of the said judgment states that while the expression "known sources of income" refers to the sources known to the prosecution, the expression "for which the public servant cannot satisfactorily account" refers to the onus or burden on the accused to satisfactorily explain and account for the assets found to be possessed by the public servant. This burden is on the accused as the said facts are within his special knowledge. Section 106 of the Evident Act applies. The explanation to Section 13(1)(e) is a procedural Section which seeks to define the expression "known sources of income" as sources known to the prosecution and not to accused. <u>The explanation applies and relates to the mode and manner of investigation to be conducted</u>

by the prosecution, it does away with the requirement and necessity of the prosecution to have an open, wide and roving investigation and enquire into the alleged sources of income which the accused may have. It curtails the need and necessity of the prosecution to go into the alleged sources of income which a public servant may or possibly have but are not legal or have not been declared. The undeclared alleged sources are by their very nature are expected to be known to the accused only and are within his special knowledge. The effect of the explanation is to clarify and reinforce the existing position and understanding of the expression “known sources of income” i.e. the expression refers to sources known to the prosecution and not sources known to the accused. The second part of the explanation does away with the need and requirement for the prosecution to conduct an open ended or roving enquiry or investigation to find out all alleged/claimed known sources of income of an accused who is investigated under the PC Act, 1988. The prosecution can rely upon the information furnished by the accused to the authorities under law, rules and orders for the time being applicable to a public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. No further investigation is required by the prosecution to find out the known sources of income of the accused public servant. As notice above, the first part of the explanation refers to income received from legal/lawful sources. This first part of the expression states the obvious as is clear from the judgment of this Court in **N. Ramakrishnaiah** *(supra)*.

In the para-45 of the said judgment, in **K. Veeraswami (supra)**, the **Apex Court** held as-

"75…. since the legality of the charge-sheet has been impeached, we will deal with that contention also. Counsel laid great emphasis on the expression-for which he cannot satisfactorily account-used in clause (e) of Section 5(1) of the Act. He argued that term means that the public servant is entitled to an opportunity before the Investigating Officer to explain the alleged disproportionality between assets and the known sources of income. The Investigating Officer is required to consider his explanation and the charge-sheet filed by him must contain such averment. The failure to mention that requirement would vitiate the charge-sheet and renders it invalid. This submission, if we may say so, completely overlooks the powers of the Investigating Officer. The Investigating Officer is only required to collect material to find out whether the offence alleged appears to have been committed. In the course of the investigation, he may examine the accused. He may seek his clarification and if necessary, he may cross check with him about his known sources of income and assets possessed by him. Indeed, fair investigation requires as rightly stated by Mr. A.D. Giri, learned Solicitor General, that the accused should not be kept in darkness. He should be taken into confidence if he is willing to cooperate. But to state that after collection of all material the Investigating Officer must give an opportunity to the accused and call upon him to account for the excess of the assets over the known sources of income and then decide whether the accounting is satisfactory or not, would be elevating the Investigating Officer to the position of an enquiry officer or a judge. The Investigating Officer is not holding an enquiry against the conduct of the public servant or determining the disputed issues regarding the disporportionality between the assets and the income of the accused. He just collects material from all sides and prepares a report which he files in the court as charge-sheet."

Para-46 of the said judgment states that the second contention canvassed on behalf of the accused persons that every bit of information in regard to the assets had been intimated to the Income Tax Authorities and the documents in regard to the same should be sufficient to exonerate the accused persons from the charges is without any merit. In other words, the contention that the High Court righly took into consideration the aforesaid for the purpose of discharging the accused persons from the prosecution is without any merit and erroneous more particularly in view of the decision of this Court in the case of Thommandra Hannah Vijayalakshmi @ T.H. Vijayalakshmi (supra). This court has observed in paras 58, 60 & 61 reply as under:-

58. On the other hand, it has been argued on behalf of the appellant that the documents relied upon by the respondents are not unimpeachable and have to be proved at the stage of trial. Hence, it was urged that the arguments made on the basis of these documents should not be accepted by this Court. The appellant has relied upon the judgment of a two Judge Bench of this Court in *J. Jayalalitha (supra)*, where it has been held that documents such as Income Tax Returns cannot be relied upon as conclusive proof to show that the income is from a lawful source under the PC Act. Justice P.C. Ghose held thus:

"191. Though considerable exchanges had been made in course of the arguments, centering around Section 43 of the Evidence Act, 1872, we are of the comprehension that those need not be expatiated in details. Suffice it to state that even assuming that the income tax returns, the proceedings in connection therewith and the decisions rendered therein relevant and admissible in evidence as well, nothing as such, turns thereon definitively as those do not furnish any guarantee or authentication of the lawfulness of the source(s) of income, the pith of the charge levelled against the respondents. It is the plea of the defence that the income tax returns and orders, while proved by the accused persons had not been objected to by the prosecution and further it (prosecution) as well had called in evidence the income tax returns/orders and thus, it cannot object to the admissibility of the records produced by the defence. To reiterate, even if such returns and orders are admissible, the probative value would depend on the nature of the information furnished, the findings recorded in the orders and having a bearing on the charge levelled. In any view of the matter, however, such returns and orders would not ipso facto either conclusively prove or disprove the charge and can at best be pieces of evidence which have to be evaluated alongwith other materials on record. Noticeably, none of the respondents has been examined on oath in the case in hand. Further, the income tax returns relied upon by the defence as well as the orders passed in the proceedings pertaining thereto have been filed/passed after the charge-sheet had been submitted. Significantly, there is a charge of conspiracy and abetment against the accused persons. In the overall perspective therefore neither the income tax returns nor the orders passed in the proceedings relatable thereto, either definitively attest the lawfulness of the sources of income of the accused persons or are of any avail to them to satisfactorily account the disproportionateness of their pecuniary resources and properties as mandated by Section 13(1)(e) of the Act. In *Vishwanath Chaturvedi* (3) v. Union of India *[Vishwanath Chaturvedi (3) v. Union of India, (2007) 4 SCC 380 : (2007)2 SCC (Cri) 302]*, a writ petition was filed under Article 32 of the Constitution of India seeking an appropriate writ for directing the Union of India to take appropriate action to prosecute R-2 to R-5 under the 1988 Act for having amassed assets disproportionate to the known sources of income by misusing their power and authority. The respondents were the then sitting Chief Minister of U.P. and his relatives. Having noticed that the basic issue was with regard to alleged investments and sources of such investments, Respondents 2 to 5 were ordered by this Court to file copies of income tax and wealth tax returns of the relevant assessment years which was done. It was pointed out on behalf of the petitioner that the net assets of the family though were Rs.9,22,72,000 as per the calculation made by the official valuer, the then value of the net assets came to be Rs.24 crores. It was pleaded on behalf of the respondents that income tax returns had already been filed and the matters were pending before the authorities concerned and all the payments were made by cheques, and thus the allegation levelled against them were baseless. It was observed that the minuteness of the details furnished by the parties and the income tax returns and assessment orders, sale deeds, etc. were necessary to be carefully looked into and analyzed only by an independent agency with the assistance of chartered accountants and other accredited engineers and valuers of the property. It was observed that the Income Tax Department was concerned only with the source of income and whether the tax was paid or not and, therefore, only an independent agency or CBI could, on court direction, determine the question of disproportionate assets. CBI as thus directed to conduct a preliminary enquiry into the assets of all the respondents and to take further action in the matter after scrutinizing as to whether a case was made out or not. This decision is to emphasize that submission of income tax returns and the assessments orders passed thereon, would not constitute a foolproof defence against a charge of acquisition of assets disproportionate to the known lawlful sources of income as contemplated under the PC Act and that further scrutiny/analysis thereof is imperative to determine as to whether the offence as contemplated by the PC Act is made out or not.

60. At the very outset, we must categorically hold that the documents which have been relied upon by the respondents cannot form the basis of quashing the FIR. The value and weight to be ascribed to the documents of two Judge Benches of this Court in order to support their submissions. There is no clash between the decisions in *Kedari Lal (supra)* and *J. Jayalalitha (supra)* for two

reasons: (I) the judgment in *J. Jayalalitha (supra)* notes that a document like the Income Tax Return, by itself, would not be definitive evidence in providing if the source of one's income was lawful since the Income Tax Department is not responsible for investigating that, while the facts in the judgment in *Kedari Lal (supra)* were such that the source of income was not in question at all and hence, the Income Tax Returns were relied upon conclusively; and (ii) in any case, the decision in *Kedari Lal (supra)* was delivered while considering a criminal appeal challenging a conviction under the PC Act, while the present matter is at the stage of quashing of an FIR.

61. In the present case, the appellant is challenging the very-source of the respondents' income. Hence, at the stage of quashing of an FIR where the Court only has to ascertain whether the FIR prima facie makes out the commission of a cognizable offence, reliance on the documents produced by the respondents to quash the FIR would be contrary to fundamental principles of law. The High Court has gone far beyond the ambit of its jurisdiction by virtually conducting a trial in an effort to absolve the respondents."

Learned counsel for the Vigilance further submits that the notice has been issued to the wife of the petitioner to appear before the Investigation Officer for the investigation of the present case but she never appeared before the I.O., thus it clearly shows that the wife of the petitioner did not co-operated in the further investigation of the case and the investigation is still going on.

Considering the facts and circumstances of the case as well as submissions made on behalf of parties and the fact that petitioner has acquired assets disproportionate to his sources of income by misusing his official positions and adopting illegal and corrupt means and the fact that the further investigation is still going on, I am not inclined to grant the petitioner privilege of anticipatory bail. Hence the prayer of anticipatory bail of the petitioner is hereby rejected.

This application is accordingly dismissed.

(Anjani Kumar Sharan, J)

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